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November 18, 2014

Via Email (Amanda.Huetinck@fcc.gov)
Hard Copy Sent via USPS

Ms. Amanda Huetinck, Attorney Advisor
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, N.W., Room 6312
Washington, D.C. 20554

In re: FOIA Control No. 2015-058

Dear Ms. Huetinck:

On behalf of Maritime Communications/Land Mobile LLC, Debtor-in-Possession (“Maritime”) and Mr. Donald R. DePriest, this is in response to your November 7, 2014, letter regarding the above-referenced matter.

On October 14, 2014, Maritime submitted its Petition for Reconsideration in WT Docket No. 13-85. Maritime redacted from the publicly filed version of the pleading paragraphs 14 and 15 and Exhibits 4 through 6. An unredacted version under seal with a request for confidential treatment. In the above-referenced FOIA request, Warren C. Havens seeks disclosure of the redacted information. For the reasons stated in Maritime’s October 14, 2014, Request for Confidential Treatment and further discussed herein, Maritime and Mr. DePriest object to the disclosure of all or any part of the redacted material.¹

The redacted material includes, inter alia, information regarding business loans to Mr. DePriest, as well as other materials specifically involving his personal finances. This is clearly commercial and financial information that must be withheld from public disclosure

¹ Mr. Havens also suggests sanctions against Maritime for having improperly designated materials as confidential. To make such a serious charge based solely on speculation is inexcusably frivolous and itself a sanctionable abuse of process typical of Mr. Havens and his entities. See, e.g., *Telesaurus VPC, LLC v. Power*, 888 F. Supp. 2d 963 (D. Ariz. 2012), affirmed, No. 12-16399 (9th Cir., Oct. 3, 2014); *Warren C. Havens*, 27 FCC Rcd 2756, 2757 (2012). Maritime will not respond to the merits—such as they are—of this oblique, speculative, and entirely unsupported accusation, except to state that that redactions and confidentiality request are made in good faith.

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pursuant to FOIA Exemption 4, 42 U.S.C. § 4001(b)(4).² The information was provided to Maritime by Mr. DePriest on the understanding and expectation that it would not be publicly disclosed. Maritime provided this information to the Commission voluntarily and subject to a specific request for confidentiality. This sort of information that is not customarily made public. It is therefore categorically protected from disclosure. *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (en banc); *New York Times Co. v. NASA*, 920 F.2d 1002, 1006 (D.C. Cir. 1990) (en banc).

The redacted material reveals and relates to the personal financial affairs of Mr. DePriest and is therefore also protected from public disclosure by FOIA Exemption 6, 42 U.S.C. § 4001(b)(6), and the Privacy Act, 5 U.S.C. § 552a.³ FOIA Exemption 6 is to be construed broadly and includes in its scope personal financial records. *U.S. Dept. of State v. Washington Post Co.*, 456 U.S. 595, 599-600 (1982); *Fraternal Order of Police v. City of Philadelphia*, 812 F.2d 105, 115 (3rd Cir. 1987); *McVane v. FDIC*, 44 F.3d 1127, 1140 n.4 (2d Cir. 1995); *DeMasi v. Weiss*, 669 F.2d 114, 119 (3d Cir. 1982); *Plante v. Gonzalez*, 575 F.2d 1119, 1136 (5th Cir. 1978). As observed by the Supreme Court: "Congress' primary purpose in enacting Exemption 6 was to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Dept. of State v. Washington Post Co.*, 456 U.S. at 599.⁴ See also *National Parks & Conservation Association v. Kleppe*, 547 F.2d 673, 685 (D.C. Cir. 1976); *Simpson v. Vance*, 648 F.2d 10, 14 (D.C. Cir. 1980). The material redacted from the Petition for Reconsideration is precisely the type of highly personal, embarrassing, and potentially injurious information Exemption 6 was designed to protect from disclosure.

The above-referenced FOIA request must be denied.

Very truly yours,



Robert J. Keller

cc: Warren C. Havens

² As used in Exemption 4, commercial "means [anything] pertaining or relating to or dealing with commerce." *American Airlines v. National Mediation Board*, 588 F.2d 863, 870 (2d Cir. 1978). Commercial bank loans clearly fall within this definition.

³ Insofar as this matter arises in connection with regulatory enforcement proceedings, the redactions may also be "law enforcement materials," subject to FOIA Exemption 7(c). 42 U.S.C. § 4001(b)(7)(c).

⁴ It is thus for Mr. DePriest, not the government, and certainly not a private litigant who is clearly biased against Maritime and the DePriests, to selectively decide whether to disclose such information and to whom. "The first interest protected by [Exemption 6] (and judging from the legislative history of the act, the one its draftsmen had most clearly in mind) is the interest individuals have in concealing-or more neutrally, in retaining the power to selectively disclose-embarrassing facts about themselves." Anthony T. Kronman, *The Privacy Exemption to the Freedom of Information Act*, 9 *Journal of Legal Studies*, 727, 743 n.60 (1980).