

EVH Ex. No.	Descriptive Title	Enforcement Bureau Objections
	licenses Greene v Mobex.pdf	Confusing, Misleading, Wasteful
416	Greene v. Mobex case: Sarina declaration Greene v Mobex.pdf	Relevance Hearsay Confusing, Misleading, Wasteful
417	Greene v. Mobex case: Sarina ltr to Reardon re going concern Greene v Mobex.pdf	Relevance Hearsay Confusing, Misleading, Wasteful
418	Greene v. Mobex case: Sarina suplemtl declaration re Watercom Greene v Mobex.pdf	Relevance Hearsay Confusing, Misleading, Wasteful
419	errata Opp to MCLM PtRecon Chicago Order 4-14-10.pdf	Relevance Confusing, Misleading, Wasteful
420	MCLM Opp PtRecon w Shorenstein affidavit 2-28-07.pdf	Relevance Confusing, Misleading, Wasteful
421	MCLM PtRecon Chicago Order 4- 14-10.pdf	Relevance Confusing, Misleading, Wasteful
422	MCLM Reply Opp to MCLM PtRecon Chicago Order 4-14-10.pdf	Relevance Confusing, Misleading, Wasteful
423	Opp to MCLM PtRecon Chicago Order 4-14-10.pdf	Relevance Confusing, Misleading, Wasteful
424	PtRecon w Shorenstein affidavit 2- 28-07.pdf	Relevance Confusing, Misleading, Wasteful
425	Reply MCLM Opp PtRecon w Shorenstein affidavit 2-28-07.pdf	Relevance Confusing, Misleading, Wasteful
426	FCC 308 Letter to PSI re WHX782 Mt. Wilson 2-12-13.pdf	Relevance Confusing, Misleading, Wasteful
427	PSI Response to 308 Ltr WHX782 3-14-13.pdf	Relevance Hearsay

EVH Ex. No.	Descriptive Title	Enforcement Bureau Objections
		Confusing, Misleading, Wasteful
428	11-71 Pinnacle Response to Interrogatories.pdf	No objection
429	11-71 Pinnacle Response to Second Interrogatories.pdf	No objection
430	Reply to PSI Response 308 NY 11-5-12.pdf	Relevance Hearsay Confusing, Misleading, Wasteful
431	MCLM 12 Boxes: KAE889_12 Portland OR.pdf	Relevance Confusing, Misleading, Wasteful
432	MCLM 12 Boxes: WRV374_31 WTC NY docs.pdf	Relevance Confusing, Misleading, Wasteful
433	MCLM 12 Boxes: WRV374_32 Exchange place NY docs.pdf	Relevance Confusing, Misleading, Wasteful
434	MCLM 12 Boxes: WRV374_36 Hamden CT docs.pdf	Relevance Confusing, Misleading, Wasteful
435	MCLM MS Bankruptcy Case Docs: [170] Amended SOFA.111511.pdf	Relevance Confusing, Misleading, Wasteful
436	MCLM MS Bankruptcy Case Docs: [171-1] Part 2.pdf	Relevance Confusing, Misleading, Wasteful
437	MCLM MS Bankruptcy Case Docs: [171] Amended Schedules.111511.pdf	Relevance Confusing, Misleading, Wasteful
438	MCLM MS Bankruptcy Case Docs: [424-1] Exhibit A (part 1).pdf	Relevance Confusing, Misleading, Wasteful
439	MCLM MS Bankruptcy Case Docs: [424-2] Exhibit A (part 2).pdf	Relevance Confusing, Misleading, Wasteful
440	MCLM MS Bankruptcy Case Docs:	Relevance

EVH Ex. No.	Descriptive Title	Enforcement Bureau Objections
	[46] Statement of Financial Affairs.090711.pdf	Confusing, Misleading, Wasteful
441	MCLM MS Bankruptcy Case Docs: [47-1] Part 2.pdf	Relevance Confusing, Misleading, Wasteful
442	MCLM MS Bankruptcy Case Docs: [47-2] Part 3.pdf	Relevance Confusing, Misleading, Wasteful
443	MCLM MS Bankruptcy Case Docs: [47] Schedules.090711.pdf	Relevance Confusing, Misleading, Wasteful
444	11-71 MCLM MS Bankruptcy Case Docs: 9.11.14.Joint Stipulation Between EB and Maritime.pdf	No objection
EVH CE 1	Comms with LIN TV re MCLM Hamden CT Station .pdf	Relevance Hearsay Confusing, Misleading, Wasteful
EVH CE 2	Spectrum Bridge Prospectus for MCLM spectrum	Relevance Hearsay Confusing, Misleading, Wasteful
EVH CE 3	MCLM Response to AMTRAK RFP 7.25.10	Relevance Hearsay Confusing, Misleading, Wasteful
EVH CE 4	Google Search MCLM Proposal to Amtrak	Relevance Hearsay Confusing, Misleading, Wasteful

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 29th day of October, 2014, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S WRITTEN OBJECTIONS TO EVH'S DIRECT CASE EXHIBITS" to

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Chief Administrative Law Judge
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Alicia McCannon

OCT 29 2014

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re)
)
MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)
)
Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio)
Services)
)
Applicant for Modification of Various)
Authorizations in the Wireless Radio Services)
)
Applicant with **ENCANA OIL AND GAS (USA),**)
INC.; DUQUESNE LIGHT COMPANY; DCP)
MIDSTREAM, LP; JACKSON COUNTY)
RURAL MEMBERSHIP ELECTRIC)
COOPERATIVE; PUGET SOUND ENERGY,)
INC.; ENBRIDGE ENERGY COMPANY,)
INC.; INTERSTATE POWER AND LIGHT)
COMPANY; WISCONSIN POWER AND)
LIGHT COMPANY; DIXIE ELECTRIC)
MEMBERSHIP CORPORATION, INC.;)
ATLAS PIPELINE – MID CONTINENT, LLC;)
DENTON COUNTY ELECTRIC)
COOPERATIVE, INC., DBA COSERV)
ELECTRIC; AND SOUTHERN CALIFORNIA)
REGIONAL RAIL AUTHORITY)

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos. 0004030479,
0004144435, 0004193028, 0004193328,
0004354053, 0004309872, 0004310060,
0004314903, 0004315013, 0004430505,
0004417199, 0004419431, 0004422320,
0004422329, 0004507921, 0004153701,
0004526264, 0004636537,
and 0004604962

DOCKET FILE COPY ORIGINAL

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S WRITTEN OBJECTIONS
TO EVH'S DIRECT CASE EXHIBITS**

1. Pursuant to *Orders*, FCC 14M-27,¹ and FCC 14M-32,² the Enforcement Bureau
(Bureau) herein submits its written objections to the introduction into evidence of certain

¹ See Order, FCC 14M-27 (ALJ, rel. Aug. 21, 2014).

² See Order, FCC 14M-32 (ALJ, rel. Oct. 9, 2014).

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List ABCDE

exhibits submitted by Environmental, LLC and Verde Systems, LLC (collectively, ENL-VSL) and Mr. Havens for examination at the hearing scheduled to commence December 9, 2014, before Chief Administrative Judge Richard L. Sippel. For the purposes of collectively referring to ENL-VSL and Mr. Havens, the Bureau will use the term “EVH.”

Objections

2. On June 17, 2014, the Presiding Judge granted the motion for summary decision filed jointly by the Bureau and Maritime Communications/Land Mobile, LLC (Maritime) on the question of timely construction of 16 site-based facilities licensed to Maritime.³ On September 11, 2014, the Presiding Judge adopted the Bureau and Maritime’s joint stipulation supporting the legal conclusion that operations at an additional 153 site-based facilities licensed to Maritime had been permanently discontinued and that, pursuant to Section 1.955(a)(3) of the Commission’s rules,⁴ these authorizations had automatically terminated.⁵ As a result, the only question requiring resolution at the hearing scheduled for December 9, 2014 is whether the discontinuance of operations at 16 of Maritime’s site-based facilities should be deemed permanent.⁶

3. Pursuant to *Order*, FCC 14M-27, the parties were directed to submit, by September 16, 2014, the exhibits on which they intend to rely as part of their direct case.⁷ On

³ See *Memorandum Opinion and Order*, FCC 14M-18 (ALJ, rel. Jun. 17, 2014), at 18, ¶ 50.

⁴ See 47 C.F.R. § 1.955(a).

⁵ See email from Austin Randazzo, dated Sept. 11, 2014, informing the parties that the Presiding Judge asked that Mr. Randazzo “advise the parties of the following ruling: For purposes of Issue G of this proceeding, the Joint Stipulation ... is accepted as to both its stipulated facts and legal conclusions as to automatic termination.” The Presiding Judge issued a formal order adopting the Joint Stipulation on October 9, 2014. See *Order*, FCC 14M-31 (ALJ, rel. Oct. 9, 2014).

⁶ Given the Presiding Judge’s adoption of the legal conclusion that operations at the 153 site-based facilities had been permanently discontinued, it is no longer necessary to consider the question of their timely construction.

⁷ See *Order*, FCC 14M-27 (ALJ, rel. Aug. 21, 2014) at 4.

that date, EVH submitted more than 440 exhibits. EVH conceded that these 440-plus exhibits include materials “beyond those with information narrowly focused only on the 16 stations.”⁸ During the October 1, 2014 prehearing conference, the Bureau asked the Presiding Judge to order EVH to identify which of these numerous exhibits were relevant to the sole question for the scheduled hearing: whether the operations of 16 of Maritime’s site-based facilities have been permanently discontinued. In response, the Presiding Judge ordered all parties participating in the litigation, including EVH, to file a Description of Documentary Evidence that “identifies each document intended to be offered into evidence, including its date, its source, its preparer or author, a subject matter description, a specification of whether it was prepared in the course of business or for litigation, and the identification of the issue(s) to which it is relevant.”⁹

4. In response, EVH filed a “List of Documents with Explanations”¹⁰ that demonstrates little or no effort to comply with the Presiding Judge’s directive to identify the issues to which EVH’s exhibits are relevant. For example, despite the earlier admission that EVH’s initial set of proposed exhibits included materials “beyond those with information narrowly focused only on the 16 stations,”¹¹ EVH made no effort to reduce the number of exhibits. Rather, EVH’s “List of Documents with Explanations,” filed in response to *Order*, FCC 14M-30, includes the same 440-plus exhibits as EVH first identified on September 16. Plainly, EVH has still included within its proposed exhibits those which are not relevant to the discontinuance of operations at 16 of Maritime’s site-based facilities. EVH’s massive assortment of documents includes, for example:

⁸ ENL-VSL and Havens Direct Case Exchange, filed Sept. 16, 2014 (EVH Direct Case Exchange), at 3.

⁹ *Order*, FCC 14M-30 (ALJ, rel. Oct. 1, 2014), at 2.

¹⁰ See *ENL-VSL List of Documents with Explanations*, filed October 10, 2014 (10/10/14 List of Documents).

¹¹ EVH Direct Case Exchange at 3.

- Over 120 copies of unrelated licenses – that is, 120-plus licenses that are not the licenses at issue for the hearing. *See* EVH Exhibits 90-217;
- Over 1,200 pages of transcripts (submitted in their entirety) from a New Jersey antitrust case involving parties who are not parties to the instant proceeding. *See* EVH Exhibits 228-36;
- At least two exhibits that appear to be copies of other EVH exhibits. *Compare* EVH Exhibits 47 and 49; *compare also* EVH Exhibits 256 and 258; and
- A “Trial Exhibits Index” that mislabels the majority of EVH’s exhibits. That is, EVH appears to have submitted, as the “Descriptive Title” of its exhibits, the “pdf” file name that EVH itself created for the documents, and not the actual titles/labels appearing on the documents themselves, or a fair description. This renders EVH’s Trial Exhibits Index effectively useless.

5. In addition, fifty-eight (58) EVH exhibits are labeled only as being relevant to “O,” which is EVH’s manufactured code for “Document with Other Information” regarding “pending appeals” and “certain Orders in this proceeding.”¹² For these reasons, the Bureau objects to each of EVH’s exhibits, and requests that the Presiding Judge strike all of EVH’s exhibits as overly burdensome and wasteful, and/or as a sanction for disregarding the Presiding Judge’s evidentiary directives.¹³

6. In the alternative, as discussed below, the Bureau submits that nearly all of EVH’s exhibits are inadmissible under one or more of the following rules of evidence:¹⁴

Relevance. Pursuant to Rule 402 of the Federal Rules of Evidence, “irrelevant evidence is not admissible.”¹⁵ The sole issue before the Presiding Judge at the December 9, 2014 hearing is whether the operations of 16 site-based facilities licensed to

¹² 10/10/14 List of Documents at 6.

¹³ EVH’s exhibit filing represents another “convoluted and confusing” submission that defies the Presiding Judge and is aimed at delaying this proceeding. *See, e.g., Order*, 14M-25 (Aug. 11, 2014) (“Overall, the [EVH] proposal is a mess of convoluted and confusing deadlines, unnecessary motions, and proposed delays with no timely filed justification. It actually defies the Presiding Judge’s aim to establish firm dates that will allow this proceeding to finally move forward.”).

¹⁴ *See* 47 C.F.R. § 1.351 (“Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings.”)

¹⁵ Fed. R. Evid. 402.

Maritime were permanently discontinued. EVH, however, seeks to offer hundreds of exhibits with no relation to this Issue and which, at best, *may* be relevant only to the other Issues in this proceeding set to be considered at a subsequent hearing. Accordingly, because these exhibits do not tend to make any fact of consequence relating to the permanent discontinuance of Maritime's 16 site-based facilities more or less probable, they should be excluded.

Overly Prejudicial, Confusing, Misleading, or Cumulative Evidence. Rule 403 of the Federal Rules of Evidence provides that "the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the [fact-finder], undue delay, wasting time, or needlessly presenting cumulative evidence."¹⁶ Here, EVH seeks to introduce hundreds of exhibits unrelated to the permanent discontinuance of Maritime's 16 site-based facilities. As described above, EVH seeks to introduce dozens of copies of license authorizations for licenses unrelated to these 16 facilities. Moreover, EVH inexplicably seeks to introduce over 1,200 pages of transcripts from a New Jersey antitrust case (which Mr. Havens recently lost). These unrelated exhibits will only serve to confuse and mislead the record in this case and should be excluded.

Improper Character Evidence. Rule 404 of the Federal Rules of Evidence provides "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait."¹⁷ Based upon statements of counsel for ENL-VSL at the October 1, 2014 pre-hearing conference, it appears that EVH is seeking to hold a "trial-within-a-trial" on the Issues relating to Maritime's *qualifications* to hold Commission licenses – Issues that the Presiding Judge will consider at a subsequent hearing. Thus, it would appear that a purpose for EVH's extensive exhibit list containing, for example, self-serving emails and testimony from Mr. Havens, is to challenge Maritime's qualifications to hold licenses. These exhibits, however, are in no way probative as to the Issue scheduled for hearing, and, again, at best, *may* relate to Issues to be addressed at a later hearing.¹⁸

¹⁶ Fed. R. Evid. 403.

¹⁷ Fed. R. Evid. 404.

¹⁸ Statements made herein do not constitute any agreement by the Bureau as to the admissibility of EVH's exhibits at any later proceedings; the Bureau reserves the right to object if necessary to these exhibits at later proceedings on the other Issues before the Presiding Judge.

Hearsay. Several of EVH's exhibits constitute hearsay that does not fall within a recognized exception and thus must be excluded under Rules 801 and 802 of the Federal Rules of Evidence.¹⁹ For example, EVH seeks to introduce numerous pleadings from bankruptcy and antitrust proceedings that all constitute impermissible hearsay.

7. The Bureau's specific objections to each of EVH's direct case exhibits are provided in the attached chart.

¹⁹ See, e.g., Fed. R. Evid. 801 and 802.

Respectfully submitted,

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October 29, 2014

ATTACHMENT

**ENFORCEMENT BUREAU'S WRITTEN OBJECTIONS TO
EVH'S DIRECT CASE EXHIBITS¹**

EVH Ex. No.	Descriptive Title	Enforcement Bureau Objections
1	11-71 01-03-2013 Maritime Communications-Land Mobile, LLC 7022097078 SUPPLEMENTAL AND CORRECTED RESPONSES TO INTERROGATORIES.pdf	No objection
2	11-71 01-06-2012 Pinnacle Wireless, Inc. 7021753347 REPLY TO SKYTEL OPPOSITION.pdf	Relevance Hearsay
3	11-71 01-07-2013 Puget Sound Energy, Inc. 7022099614.pdf	Relevance
4	11-71 01-07-2014 Warren Havens 7521064755.pdf	Relevance, Confusing, Misleading, Wasteful
5	11-71 01-07-2014 Warren Havens 7521064757.pdf	Relevance Confusing, Misleading, Wasteful
6	11-71 01-07-2014 Warren Havens 7521064867.pdf	Relevance Hearsay Confusing, Misleading, Wasteful
7	11-71 01-07-2014 Warren Havens 7521065037.pdf	Relevance Confusing, Misleading, Wasteful
8	11-71 01-15-2014 W Havens 7521065795 Motion For Relief Regarding Order FCC	Relevance Confusing, Misleading, Wasteful

¹ The "Descriptive Title" of each EVH exhibit here is the title given to that exhibit in *ENL-VSL List of Documents with Explanations*, EB Docket No. 11-71 (filed Oct 10, 2014).