

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:	:	EB Docket No.
	:	11-71
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC	:	File No.
	:	EB-09-IH-1751
Participant in Auction No.	:	
61 and Licensee of Various	:	FRN:
Authorizations in the	:	0013587779
Wireless Radio Services	:	
	:	Application
Applicant for Modification	:	File Nos.
of Various Authorizations in	:	0004030479,
the Wireless Radio Services	:	0004193028,
	:	0004193328,
Applicant with ENCANA OIL	:	0004354053,
AND GAS (USA), INC.; DUQUESNE	:	0004309872,
LIGHT COMPANY, DCP MIDSTREAM,	:	0004310060,
LP; JACKSON COUNTY RURAL	:	0004314903,
MEMBERSHIP ELECTRIC	:	0004315013,
COOPERATIVE; PUGET SOUND	:	0004430505,
ENERGY, INC.; ENBRIDGE ENERGY	:	0004417199,
COMPANY, INC.; INTERSTATE	:	0004419431,
POWER AND LIGHT COMPANY;	:	0004422320,
WISCONSIN POWER AND LIGHT	:	0004422329,
COMPANY; DIXIE ELECTRIC	:	0004507921,
MEMBERSHIP CORPORATION, INC.;	:	0004526264,
and ATLAS PIPELINE-MID	:	and
CONTINENT, LLC;	:	0004604962
	:	
For Commission Consent to	:	
the Assignment of Various	:	
Authorizations in the	:	
Wireless Radio Service	:	
	:	

Tuesday,
December 9, 2014

VOLUME 11

Courtroom TWA-363
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

RICHARD L. SIPPEL,
Chief Administrative Law Judge

APPEARANCES:

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ALSO PRESENT:

AUSTIN RANDAZZO, Attorney Advisor, Office
of Administrative Law Judges

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Opening Statements

None

Closing Statement

None

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Sandra DePriest	1268	1271		
John Reardon	1372	1374		

EXHIBITS

Bench	Identified	Received	Rejected
2A, B, C	1238		

Hearing Began: 10:02 a.m. Hearing Ended: 4:23 p.m.

1 P-R-O-C-E-E-D-I-N-G-S

2 (10:02 a.m.)

3 JUDGE SIPPEL: Okay. Let me take attendance first and go
4 around to the Bureau, please?

5 MS. KANE: Pamela Kane on behalf of the Enforcement
6 Bureau.

7 JUDGE SIPPEL: Ms. Kane and Mr. Engel.

8 MR. ENGEL: Good morning, Your Honor. Mike Engel, E-N-G-
9 E-L, on behalf of the Enforcement Bureau.

10 JUDGE SIPPEL: Sir?

11 MR. PLACHE: I'm Matthew Plache on behalf of Pinnacle.

12 JUDGE SIPPEL: Okay, Mr. Plache. Good to have you.

13 MR. PLACHE: Thank you.

14 JUDGE SIPPEL: And the next one down the end. You, sir?

15 MR. HAVENS: Warren Havens.

16 JUDGE SIPPEL: Representing who?

17 MR. HAVENS: Myself.

18 JUDGE SIPPEL: That's good. And the next one is Mr.
19 Stenger?

20 MR. STENGER: James Stenger, representing Environmental,
21 LLC and Verde Systems, LLC.

22 JUDGE SIPPEL: And Mr. Kirk?

23 MR. KIRK: Correct, on behalf of Choctaw.

24 JUDGE SIPPEL: Okay. And Mr. Keller.

25 MR. KELLER: On behalf of Maritime.

1 JUDGE SIPPEL: Okay. I want to ask a kind of an off-the-
2 wall question, all the attorneys that have identified themselves
3 except the Bureau, all the attorneys that are representing
4 themselves, are they being paid by the client that they're
5 representing? If you're representing who you say you are, are you
6 being paid by that client?

7 MR. PLACHE: Yes, I am.

8 JUDGE SIPPEL: Okay. How about you, Mr. Keller?

9 MR. KELLER: Well, I'm being paid by the client, but
10 through the financing, or I'm not sure exactly how the bankruptcy
11 procedures.

12 JUDGE SIPPEL: Oh.

13 MR. KELLER: I know Choctaw is running the --

14 JUDGE SIPPEL: I knew that would be a complicated answer.
15 Okay.

16 MR. KIRK: And I'm being paid by Choctaw, Your Honor.

17 JUDGE SIPPEL: Okay. And Mr.?

18 MR. STENGER: Stenger. Yes, we're being paid by our
19 clients.

20 JUDGE SIPPEL: Who's that?

21 MR. STENGER: Environmental and Verde Systems.

22 JUDGE SIPPEL: There's nobody coming for Mr. Havens?

23 MR. STENGER: I don't know how the companies are funded,
24 but -- and that --

25 JUDGE SIPPEL: The check doesn't bounce, you don't care.

1 MR. STENGER: I mean, we don't get checks, we work wire,
2 so there's no checks.

3 JUDGE SIPPEL: That's all right. How about you, Mr.
4 Havens? Can you verify that because it's confusing?

5 MR. HAVENS: What was the question?

6 JUDGE SIPPEL: The question is, who is paying Mr.
7 Stenger; his fees?

8 MR. HAVENS: The two companies he represents.

9 JUDGE SIPPEL: Okay. And who controls those companies?

10 MR. HAVENS: I'm the president.

11 JUDGE SIPPEL: Are you the sole stockholder?

12 MR. HAVENS: No, I am not.

13 JUDGE SIPPEL: Who else owns stock in it? How many other
14 people hold stock? I'm sorry.

15 MR. HAVENS: Let me think.

16 JUDGE SIPPEL: Environmental?

17 MR. HAVENS: Yes. Environmental has one, two, three,
18 four other interest holders.

19 JUDGE SIPPEL: Okay. And are they stockholders? The
20 interest holders, are they stockholders?

21 MR. HAVENS: Yes. That's what I mean.

22 JUDGE SIPPEL: Okay.

23 MR. HAVENS: They're equity.

24 JUDGE SIPPEL: Equity owners.

25 MR. HAVENS: Yes.

1 JUDGE SIPPEL: And what about the other company? What is
2 it?

3 MR. HAVENS: The other one is Verde Systems.

4 JUDGE SIPPEL: Verde. Thank you.

5 MR. HAVENS: That has three other direct equity holders.

6 JUDGE SIPPEL: Okay. So there's, two of the companies
7 have three or four stockholders, well, it sounded like four
8 stockholders, maybe five, you're the president of each of those
9 companies. Do you hold the majority of the stock?

10 MR. HAVENS: Yes.

11 JUDGE SIPPEL: Okay.

12 MR. HAVENS: I hold the majority of the stock in Verde
13 and Verde has majority of the stock in Environmental. So
14 indirectly, I have majority interest in Environmental.

15 JUDGE SIPPEL: Okay. That's good enough for me. Okay.
16 So let's see, I have something here. Ah, this is -- so we're
17 starting the trial phase, the hearing phase, in Maritime Case,
18 docket number EB11-71. This is 9 December 2014, Tuesday. The
19 hearing is commenced at -- well, we came in at 10 o'clock. That
20 clock on my left, by the way, is going to be the official time for
21 the courtroom, so when we say we're going to meet in ten minutes,
22 it's ten minutes by that clock.

23 I never take a break that lasts ten minutes, believe me.
24 Fifteen is the minimum. The issue is whether there is reliable
25 evidence that establishes a reasonable likelihood that 16 AMTS

1 site-based licenses, whether their operations are presently
2 discontinued, they are presently discontinued, will remain
3 permanently discontinued.

4 The AMTS stations are the automated maritime
5 telecommunications systems. And my stipulations, Bureau Exhibit
6 97, is in evidence, and 153 of 169 site-based licenses that were
7 issued to Maritime have been permanently ceased to operate -- have
8 permanently ceased operations, according to the stipulation, which
9 I have accepted. So we're down to 16 out of 169.

10 And there's two of those stations -- actually, there's
11 two of those stations that the school system controlled, is that
12 right, or somehow or another -- yes, and Mr. Thackery isn't here to
13 testify about it. So that one doesn't look too good as far as
14 whether or not -- I don't know how the evidence is going to be --
15 how you're going to show, or the Bureau's going to show, how those
16 two site-based stations are continuously operating, or will
17 continuously operate. We'll find that out when we get to it.

18 Okay. So having said that, we have a little bit of
19 housekeeping. The question came up yesterday from Mr. Engel, and
20 Mr. Stenger filed suit, on how we're going to question witnesses.
21 Are they going to be questioned with original documents -- I'm
22 sorry, with official documents that are going to be in the record
23 or whether copies can be used to question them.

24 My position has always been that these are not criminal
25 cases, there's always been counsel handling these documents that

1 I've been very confident in, and usually, there's no problem in
2 terms of using copies. I'm going to have the original, or the
3 official, copy of the EVH documents in front of me, and I can share
4 those with the witness. The witness is going to be sitting right
5 here.

6 The other documents, I'd like to work with copies, if
7 it's okay with counsel. We have the originals upstairs. I say the
8 original, I mean, we have the official ones, the ones that have
9 been marked, and are going to be put in the record. We have those
10 upstairs if there's any serious question about authenticity or
11 whatever.

12 But, you know, with copies and the looseness of the rules
13 on copies with administrative proceedings, plus the fact that, as
14 I say, the credibility, the reliability, the reputation of counsel,
15 I just don't see a problem.

16 MR. STENGER: Your Honor, I did not have any problem with
17 that. I simply wanted to know that the witness would be supplied
18 with a binder, would it be all right.

19 JUDGE SIPPEL: Yes, absolutely. Don't worry. The
20 witness it not going to be left without binders.

21 MR. STENGER: Because I didn't bring an extra copy of the
22 binders.

23 JUDGE SIPPEL: Well, he can use mine.

24 MR. STENGER: Thank you very much, Your Honor.

25 JUDGE SIPPEL: And, Mr. Engel, does this answer your

1 point?

2 MR. ENGEL: Perfectly, Your Honor. Thank you.

3 JUDGE SIPPEL: Okay. All right. The other thing I had
4 was some indexes. Some indexing that Pat, my secretary, diligently
5 prepared. And the first bench exhibit is Exhibit 1, is the
6 Calabrese testimony. That's been modified, proving there's nobody
7 else who wanted to sponsor it. There could be, but let's see.
8 What's done is done, unless anybody has -- nobody has an objection
9 to that.

10 EVH admitted exhibits EVH, let's see -- well, I got one
11 stack of EVH admitted exhibits that we need to be careful here, EVH
12 partially admitted exhibits, and EVH pending exhibits. EVH
13 admitted exhibits. Oh, I got two of those. All right. Let me
14 just pull that apart.

15 What I'm going to do is mark these as Bench Exhibits 2A,
16 2B, and 2C. They're obviously just demonstrative and nothing to do
17 with evidence, per se, but for purposes of identification.
18 Admitted exhibits will be 2A, partially admitted exhibits will be
19 2B, and pending exhibits will be 2C, all right?

20 So I'll have Mr. Randazzo give copies of these, or pass
21 copies of these, out. Okay. And you've gotten my memorandum on
22 the rules of the road, or the mechanics here. Is there anybody --
23 well, I'm not going to -- does anybody have any questions on that;
24 on what our housekeeping rules are and that kind of thing?

25 MR. STENGER: Your Honor, I'd just like to apologize. I

1 was given indexes for these books to give you and I neglected to do
2 that. And I apologize that the assistants went to the work to do
3 this because we have produced an index and I --

4 JUDGE SIPPEL: Which one is the better one?

5 MR. STENGER: I'm going to use yours, sir.

6 JUDGE SIPPEL: Thank you. That's all right. I didn't
7 want to get -- I don't want to bother counsel the night before a
8 hearing trial. All right. Now, I mean, I'm comfortable now that
9 everybody's ready to go. What I'm going to try and do is, I'm
10 going to try and finish six witnesses in two days.

11 We want to finish, with the witnesses, them with your
12 witness and Mr. Havens witness, Mr. Calabrese, by the end of the
13 week, anyway. I'm hoping to do it by Thursday; Thursday afternoon.

14 It's up to you folks as to whether or not that happens.
15 But I would think some time on Thursday, it's pretty safe to say
16 that Mr. Calabrese will be on the stand and off the stand
17 relatively quickly. I think quite quickly.

18 MR. STENGER: That's what we've told him, Your Honor.

19 JUDGE SIPPEL: Okay.

20 MR. STENGER: To be here Thursday.

21 JUDGE SIPPEL: All right. Still want to use him.

22 MR. STENGER: Yes.

23 JUDGE SIPPEL: Okay. All right. If we run into any --
24 the only snafu we should run into that is, we have more time on
25 Wednesday.

1 MR. STENGER: Your Honor, I don't want to speak for the
2 Bureau, but I believe that the Bureau had given me an order of
3 witnesses, but I believe that I got an email from them indicating
4 that the order of witnesses might change.

5 JUDGE SIPPEL: Well, Thackery is out.

6 MR. STENGER: Thackery is out, but also, you'll have to
7 refresh my recollection, one of the other witnesses, was it Larry
8 Allen, or one of them, couldn't be here until Wednesday? Someone
9 had sent me an email about that.

10 MS. KANE: That's correct.

11 MR. STENGER: And so I'm sorry, how does that change the
12 schedule then?

13 MS. KANE: Based on your representation of which
14 witnesses you were going to be able to cover today, it doesn't
15 change our order at all.

16 MR. STENGER: Okay. So Larry Allen will be here
17 Wednesday; tomorrow.

18 MS. KANE: He'll be prepared to testify tomorrow morning.

19 MR. STENGER: I don't want to speak out of school, but
20 you had said something about one of the other witnesses to me this
21 morning.

22 MR. ENGEL: Yes, Your Honor, we have some housekeeping
23 I'd like to take up with you, Your Honor, and there's another
24 witness issue I want to take up when the time is appropriate, Your
25 Honor.

1 JUDGE SIPPEL: That's fine. Let's keep going. Thank
2 you. That's good. As long as there's a witness on the stand
3 keeping the seat warm, we'll make progress, and we'll move ahead.
4 So everything is dependent on the scope of the cross-examinations.

5 MR. ENGEL: Your Honor, I apologize. I wasn't clear.
6 There's another witness we believe won't be able to make it to the
7 hearing. We found out last night that he has a prior legal
8 commitment. Mr. Zdebski is here, I believe, now, and he can
9 clarify the witnesses for Duquesne, Your Honor.

10 JUDGE SIPPEL: Oh, okay.

11 MR. ENGEL: We received the first official notice of that
12 last night, Your Honor. We previously thought the witness would be
13 here, but Mr. Zdebski can clarify this.

14 JUDGE SIPPEL: Mr. Zdebski?

15 MR. ZDEBSKI: Thank you, Judge Sippel. Mr. Engel is
16 right. I was informed yesterday that Lee Pillar, the witness from
17 Duquesne Light Company, whose testimony the Enforcement Bureau had
18 submitted, is a very contentious child custody hearing, it involves
19 five children, and unable to be here this week.

20 So I'm here to inform Your Honor of that and to see if
21 there's some other way his testimony can be offered. Perhaps if
22 there's additional hearing on Thursday, he may be able to make it.
23 I was going to ask Your Honor if he could participate by phone, but
24 I saw the order yesterday not allowing that, so I wanted to make
25 sure that you understood in-person.

1 JUDGE SIPPEL: I appreciate that. As long as the
2 reporter's in the courtroom, he's able to come testify.

3 MR. ZDEBSKI: Thank you, Your Honor. I will --

4 JUDGE SIPPEL: So it's up to you to keep track of what
5 we're doing here, but just get him in town and we'll put him on.

6 MR. ZDEBSKI: I will confer with Duquesne Light and see
7 what happens with his custody hearing and communicate with counsel
8 for the Enforcement Bureau, and that's true, they did not know
9 until yesterday afternoon, because I didn't know until yesterday
10 afternoon.

11 JUDGE SIPPEL: Well, I'm not going to comment on that,
12 but you can assure him that after the pounding he's going to take
13 in that custody case, it's going to be easy-breezy here for him.

14 MR. STENGER: Your Honor, I've done some preparation to
15 cross-examine Mr. Allen already, but whether I devote more time to
16 preparing to cross-examine Mr. Allen will obviously depend on
17 whether he's going to appear, so if I could get some advance notice
18 from Mr. Zdebski as to whether he's going to appear or not, I don't
19 want to just show up unprepared, on the other hand, I don't want to
20 spend hours preparing, or an hour preparing, and then have him not
21 show up.

22 So if we could have some decision from Your Honor about
23 some reasonable lead time for me to know whether I'm going to
24 cross-examine him or not.

25 JUDGE SIPPEL: That's part of the poetry of a litigator.

1 MR. STENGER: Okay. Thank you.

2 JUDGE SIPPEL: You know, you're only one cellphone call
3 away and do the best you can. Okay?

4 MR. ZDEBSKI: Your Honor, I'll confer with Duquesne Light
5 today and communicate with Mr. Stenger and the Enforcement Bureau
6 today as well.

7 JUDGE SIPPEL: Thank you very much. Keep Mr. Randazzo
8 apprised also. He's not made any scheduling up here, but you don't
9 have to do that, but I'm saying, if you feel you need to let us
10 know what you're doing, contact Mr. Randazzo. Put him on the list
11 of --

12 MR. ENGEL: Your Honor, apologies for speaking over.
13 There's two additional issues. The first is a housekeeping issue
14 regarding the confidential materials in the record, and then Ms.
15 Kane has a more substantive point to raise with the court.

16 Your Honor, there's confidential materials in the
17 testimony and in the exhibits. We just want to find out what Your
18 Honor's preference is for clearing the courtroom, because my
19 understanding, still to this day, is that, EVH, and when I say EVH,
20 I mean Environmental Verde, counsel for them, and Mr. Havens, EVH
21 has not joined the protective order, Your Honor, so they're not,
22 you know, permitted to be in the courtroom, is my understanding,
23 for the confidential materials.

24 What is your preference for how we want to address when
25 that issue comes up?

1 JUDGE SIPPEL: Well, anybody who's not covered by the
2 order is out of here until we finish. Now, who hasn't signed on to
3 it or is not covered by it, now, anybody with the FCC, of course,
4 is covered by it, but I don't know --

5 MR. STENGER: Well, Your Honor --

6 JUDGE SIPPEL: -- the only people that are here, I don't
7 know, besides what their respective roles might be, except counsel
8 for --

9 MR. ENGEL: It's my understanding that EVH has not signed
10 the protective order, Your Honor.

11 MR. STENGER: Well, we have been given redacted binders,
12 Your Honor, that don't have those materials in them.

13 JUDGE SIPPEL: Yes, but you can't sit here in the
14 courtroom while we're talking about protected documents.

15 MR. STENGER: Understood.

16 JUDGE SIPPEL: It's your call. I've got a copy of the
17 protective order here and I have two signature pages, broken out,
18 that you can sign anytime you want, and you can even use my pen, so
19 you and Mr. Havens are free to enter into this as far as you wish.

20 MS. KANE: Actually, Your Honor, under the protective
21 order, Mr. Havens is not entitled to see confidential information
22 since he is an actual party.

23 JUDGE SIPPEL: I stand corrected. I'm sorry, Mr. Havens.
24 I didn't mean to mislead you on that, but certainly, Mr. Stenger.

25 MR. STENGER: Your Honor, while we're on that subject,

1 there are -- okay, in my binder of the Government's exhibits -- I'm
2 sorry, Mr. Engel, I didn't mean to interrupt you. Are you finished
3 with your question?

4 MR. ENGEL: Please continue.

5 MR. STENGER: In the Government's binder, Your Honor, if
6 you could get the Government's Binder Number 1 in front of you, I
7 wanted to ask you about three documents, and I've discussed this
8 with Mr. Keller, and with Ms. Kane, and Mr. Engel this morning. I
9 wasn't able to reach a resolution with them, so I want to bring it
10 up now.

11 If you look at --

12 JUDGE SIPPEL: What page are you on?

13 MR. STENGER: I'm just looking at the index, Your Honor.

14 JUDGE SIPPEL: Okay.

15 MR. STENGER: ON the first page of the index, you'll see
16 that Item Number 38 is a copy of the contract between Mr. Zdebski
17 client, Duquesne, and Maritime, and it's been redacted in its
18 entirety from the Government's public exhibits. Okay. So in my
19 binder, I don't have that contract at all.

20 JUDGE SIPPEL: Okay.

21 MR. STENGER: Now, if you look at the EVH pending
22 exhibits, EVH Pending Exhibit 367 --

23 JUDGE SIPPEL: Hold on just a second. That would be 2C.

24 MR. STENGER: EVH 367 -- I'm sorry, did I misspeak? 367.

25 JUDGE SIPPEL: That's not on my list.

1 MR. STENGER: On your index, it's 367, it says, Duquesne
2 Light Company.

3 JUDGE SIPPEL: That looks like 30, I see. Oh, I see.
4 I'm sorry. I take that back. I see, your exhibit number.

5 MR. STENGER: Yes, my exhibit number 367.

6 JUDGE SIPPEL: Yes, I see that. I see it.

7 MR. STENGER: Now, if you get my binder in front of you,
8 Your Honor, with that, I believe Mr. Randazzo has handed that to
9 you, and he has that page open.

10 JUDGE SIPPEL: Yes.

11 MR. STENGER: What my exhibit consists of, Your Honor, is
12 a copy of the application for approval of the assignment of the
13 spectrum from Maritime to Duquesne, and I believe that as part of
14 that assignment application, that the contract was filed in ULS.
15 If you flip over some pages, you'll see that the contract is there.

16 Now, there's a request for confidential treatment and the
17 request for confidential treatment says MCLM has continuously
18 afforded this agreement, highly confidential treatment.

19 JUDGE SIPPEL: Is that the asset purchase agreement?

20 MR. STENGER: Yes, Your Honor. EVH OM Page 11077, 11076,
21 and 11077 is a letter to Ruth --

22 JUDGE SIPPEL: I see it.

23 MR. STENGER: -- from Dennis Brown, who requests
24 confidential treatment of the document. And then behind that, Your
25 Honor, is a copy of the asset purchase agreement, and on the second

1 page of the asset purchase agreement, at the top of the page, you
2 can see that the price has been redacted. That's Page 11079.

3 JUDGE SIPPEL: I see it.

4 MR. STENGER: And the price has been redacted there, and
5 then if you go to the last page of the contract, which is 11085,
6 under Article 10(d), the refund amount has been redacted.

7 JUDGE SIPPEL: Article 10, what was the --

8 MR. STENGER: D as in dog.

9 JUDGE SIPPEL: I got it.

10 MR. STENGER: The refund amount has been redacted, but
11 those are the only two redactions in that filing, and so, Your
12 Honor, what I asked Mr. -- I pointed this out to Mr. Keller and the
13 Bureau this morning, and I pointed out the fact that this document
14 has not been redacted in its entirety in other situations.

15 The other issue that I raised, Your Honor, is that
16 Maritime is in a bankruptcy proceeding, and as far as I know,
17 Maritime filed copies of these contracts in the bankruptcy
18 proceeding because the creditors want to see contracts, the DIP
19 financing entities want to see contracts, and in order for the
20 creditors to know whether the DIP financing is reasonable, the
21 creditors also want to see -- so I have a copy of the --

22 JUDGE SIPPEL: Wait a minute. I think I see where you're
23 going with this.

24 MR. STENGER: So what I'm saying --

25 JUDGE SIPPEL: You're saying that there's been a waiver

1 of the confidentiality?

2 MR. STENGER: I asked Mr. Keller if in view of the fact
3 that a mostly unredacted copy of this had been filed with the
4 Commission and in view of the fact that a completely unredacted
5 copy is in the bankruptcy case, which also includes the price
6 terms, that I asked him if he would waive confidentiality so that
7 we can avoid wasting time with me asking the witness about a
8 document that I have and acting like --

9 JUDGE SIPPEL: Right. Right. You've made your point.
10 So where did you come out with that agreement?

11 MR. STENGER: I did not reach an agreement with either
12 party this morning, Your Honor, which is why I'm bringing it up.

13 JUDGE SIPPEL: You're still up in the air with it.

14 MR. STENGER: Yes.

15 JUDGE SIPPEL: All right. We'll just have to rule on it
16 as it comes up.

17 MR. STENGER: And, Your Honor, there are two more, just
18 to give Your Honor a heads up, if you go back to the index to the
19 Government's book, Number 1?

20 JUDGE SIPPEL: Right.

21 MR. STENGER: If you look at the second page of their
22 book --

23 JUDGE SIPPEL: Page 2?

24 MR. STENGER: Yes, Page 2 of their book, Items 45 and 46
25 are omitted from my public book because they're Evergreen

1 contracts.

2 JUDGE SIPPEL: That's on Page 3 actually.

3 MR. STENGER: Oh, I'm sorry, Your Honor. You're correct.
4 That's Page 3 of their exhibit.

5 JUDGE SIPPEL: Yes.

6 MR. STENGER: I'm not going to get into those two
7 documents right now.

8 JUDGE SIPPEL: There's no witness anyway.

9 MR. STENGER: Right. But I'm just pointing that out, but
10 I'm not making an issue out of it at this point.

11 JUDGE SIPPEL: Okay.

12 MR. STENGER: Because I have no one to question about
13 those agreements anyway.

14 JUDGE SIPPEL: Okay.

15 MR. STENGER: If you come farther down the page, Items
16 51, 52, and 53 are the Pinnacle documents.

17 JUDGE SIPPEL: Yes.

18 MR. STENGER: Now, I have found that the Pinnacle
19 Spectrum, Item 53, lease agreement with Maritime, which, there's a
20 great deal of testimony about that, Your Honor, in the written
21 testimony, I believe that a copy of that was publicly filed in the
22 bankruptcy proceeding.

23 JUDGE SIPPEL: All right.

24 MR. STENGER: And I have a copy of that agreement from
25 that proceeding. If Your Honor turns over the page to Page 4 of

1 the index, Item Number 60 is the asset purchase agreement between
2 Maritime and Puget Sound Energy. Now again, Puget Sound Energy is
3 not testifying, they don't have a witness here, but I just point
4 out to Your Honor that that agreement, which has been redacted from
5 my book, has been publicly filed in the bankruptcy proceeding as
6 far as I know.

7 So my request, Your Honor, was that Maritime and the
8 Bureau allow these contracts to go into the public file and allow
9 me to have them. I would also like to verify that what was filed
10 in the bankruptcy is the same thing that they're showing Your
11 Honor. In fact, Mr. Engel raised that question. He said, how can
12 you be sure that the contract that you have is the same one that I
13 filed in front of Your Honor?

14 And I have the same question, Your Honor. I would like
15 to make sure that we're all talking about the same contract.

16 MR. ENGEL: Your Honor? May I be heard?

17 JUDGE SIPPEL: Yes.

18 MR. ENGEL: This is just a preview of the legal jujitsu
19 they're going to continuously ask you over the next two days.
20 They're going to try to squeeze stuff into the record when they
21 could simply sign the protective order, Your Honor. This is just
22 wasteful. None of this discussion is necessary if they just sign
23 the protective order.

24 It's inexplicable why counsel hasn't reviewed all the
25 evidence in this case, Your Honor. They have --

1 JUDGE SIPPEL: I agree with you. I'm sorry. I'm going
2 to cut you off right there. Why don't you sign this contract?

3 MR. STENGER: Well, because Mr. Havens can't sign the
4 protective order.

5 JUDGE SIPPEL: I don't care about him. What about you?
6 You're a lawyer, for God sakes, man.

7 MR. STENGER: Well, the problem is that it's a closely
8 held company and he's also appearing, and it would be unworkable
9 for me to, you know, allegedly have knowledge that I can't discuss
10 with him. He's indicated to you that he's the president of these
11 entities.

12 JUDGE SIPPEL: It happens every day. It happens every
13 day. All the way down from Comcast acquiring, whatever they're
14 acquiring now, all the way down the line. I mean, this is a fact
15 of life in these cases. What's the point with this?

16 MR. STENGER: Well, Your Honor, the Bureau is stating
17 this as a broad generality.

18 JUDGE SIPPEL: You're stating -- okay.

19 MR. STENGER: I've only raised it as to three specific
20 contracts. That's all I've asked about, Your Honor. Just some
21 contracts.

22 MR. ZDEBSKI: Your Honor, on behalf of Duquesne Light
23 Company, may I address this issue?

24 JUDGE SIPPEL: Yes, you certainly may.

25 MR. ZDEBSKI: Your Honor, I don't know what happened in

1 the bankruptcy proceeding, we're not the counsel there, but the
2 alleged waiver there shouldn't have any effect here. And it's
3 quite possible, maybe even probable, that it was an inadvertent
4 omission. We've taken care to make sure that the price is
5 redacted. That's the very confidential information that we want to
6 protect.

7 In fact, I have emails from Mr. Havens seeking to sell
8 Spectrum to Duquesne Light Company should he recover the Spectrum,
9 so I don't want him to know what the price is that we paid for the
10 other spectrum.

11 JUDGE SIPPEL: Are we having a sideboard auction going on
12 here?

13 MR. HAVENS: I would like to address any fact I disagree
14 with.

15 JUDGE SIPPEL: Yes, your name has come up, so go ahead,
16 sir, because Mr. Havens saw it, correct? This is Mr. Havens
17 talking, correct? Mr. Havens?

18 MR. HAVENS: Yes, sir.

19 JUDGE SIPPEL: Identify yourself for the record, please.

20 MR. HAVENS: This is Warren Havens.

21 JUDGE SIPPEL: Thank you, you're talking. Go ahead.

22 MR. HAVENS: If a party here represents something I
23 believe is inaccurate, I want to --

24 JUDGE SIPPEL: Go ahead. Say what you're going to say.

25 MR. HAVENS: I am not offering to Duquesne, the Maritime

1 spectrum if it is recovered. One of my companies has the entirely
2 different block of spectrum and that is incorrect.

3 JUDGE SIPPEL: So are you making that statement for the
4 record right now, Mr. Havens?

5 MR. HAVENS: I am.

6 JUDGE SIPPEL: Okay. So you're free and clear as far as
7 I'm concerned. I mean, the record speaks for itself. He's saying
8 he's denied any interest in that spectrum.

9 MR. HAVENS: I'm not saying I'm denying interest, I'm
10 saying --

11 JUDGE SIPPEL: Oh, you didn't. What did you say?

12 MR. HAVENS: I'll tell you what I say, again, my
13 companies have the mid-Atlantic B-Block AMTS geographic license.
14 There's another -- I don't know if the Great Lakes B-Block is
15 involved with Duquesne because it's not clear where their signal
16 strength goes, but I would have to pull up the particular, I could
17 do that on a break, email that --

18 JUDGE SIPPEL: Well, we're not going to go back to it
19 here. You can deal with that independently. Right now, it's not
20 an issue in this case, so I'm finished with it right now. If you
21 want to make a motion at some point to get -- on the question of
22 waiver, we can get into that.

23 MR. STENGER: Yes, Your Honor. Thank you. And, Your
24 Honor, my understanding --

25 JUDGE SIPPEL: Yes, but you're not going to get witnesses

1 called back. I mean, if you get that -- if I give you relief down
2 the road, or you haven't acted quickly enough on this, and if you
3 want to do it, I'll do it, but it's not going to affect the
4 witnesses. The witnesses are going to come in, they're going to go
5 on the stand, they're going to go off the stand, they're going
6 home. Period. That's it. No call-backs.

7 MR. STENGER: I understand, Your Honor.

8 JUDGE SIPPEL: All right. That's all I'm going to say on
9 that. Let's move on with the testimony.

10 MS. KANE: Your Honor, if we may, just before we --

11 JUDGE SIPPEL: You certainly may.

12 MS. KANE: -- start calling our first witness, we have
13 two motions in limine that we'd like to raise with you. The first
14 is that we would ask Your Honor to issue an order that would
15 exclude counsel for EVH or Mr. Havens for any cross-examining
16 questions concerning the character or qualification issues that are
17 raised by the remaining issues in the HDO.

18 These are all issues that will be investigated at a
19 further date and we don't think they have any bearing on Issue G,
20 and we would ask that you issue an order excluding questioning
21 regarding the issues other than Issue G.

22 JUDGE SIPPEL: Well, yes, I hear you. There's a
23 relevance call on that if the question on cross-examination is not
24 related to Issue G, and there's an appropriate objection made, in
25 all likelihood, the objection is going to be sustained.

1 MS. KANE: Well, similarly, Your Honor, we'd like you to
2 take into consideration an exclusion of questions that relate to
3 construction.

4 JUDGE SIPPEL: Same thing. Well, I'm not so sure about
5 that. Let me hold off there. Issue G is concerned about
6 construction.

7 MS. KANE: Your Honor, you've already ruled that the 16
8 licenses at issue are, in fact, timely constructed.

9 JUDGE SIPPEL: I understand that.

10 MS. KANE: So questions as to the timely construction
11 should be already determined.

12 JUDGE SIPPEL: I understand that, but sometimes the
13 entities have overlap between construction and operation as a fact
14 matter, but if it's too far afield, again, with an appropriate
15 objection, I may or may not sustain it. So I'll have to hear the
16 question before I can do that.

17 MS. KANE: Thank you, Your Honor.

18 JUDGE SIPPEL: But definitely, any -- well, I've made my
19 rulings. That's it.

20 MR. STENGER: Your Honor, will you have a rule against
21 witnesses, I assume, that once Ms. DePriest takes the stand that
22 any other witnesses will have to leave the room. Is that correct,
23 Your Honor?

24 JUDGE SIPPEL: If you want them to.

25 MR. STENGER: Yes, I would, Your Honor.

1 MR. KELLER: We were going to request that too, Your
2 Honor.

3 JUDGE SIPPEL: Right. Okay. Is there anybody else here
4 that I should know about or that either should be here or not here,
5 or whatever? I always want to start because I don't want to have
6 --

7 MR. KELLER: Well, there are some witnesses in the room
8 that I don't know about, so I would instruct them to -- or you said
9 we'd probably would want them to leave once Ms. DePriest takes the
10 stand.

11 JUDGE SIPPEL: Is she going first?

12 MR. KELLER: Yes.

13 MS. KANE: Yes, Your Honor.

14 JUDGE SIPPEL: All right. Well, why don't we call her
15 up.

16 MS. KANE: Your Honor, before that, we wanted to indulge
17 your patience just a few moments longer. We know it's unusual to
18 offer an opening statement in hearings, but the Bureau is concerned
19 that the record has become muddied in the past few weeks with all
20 of the recent filings and that it may be unclear in the public
21 record as to what issues are actually before Your Honor in today's
22 hearing and the state of the law for permanent discontinuance of
23 these site-based licenses.

24 So we would ask if we could offer a few very brief
25 statements to clarify the public record.

1 JUDGE SIPPEL: Well, everybody gets to do the same thing.

2 MS. KANE: We understand, Your Honor.

3 JUDGE SIPPEL: Okay. It's 25 to 11:00 and I'm wide awake
4 and alert, so be careful. You may proceed.

5 MS. KANE: Thank you, Your Honor. As I believe you noted
6 earlier, this case arises from the Commission's release of an order
7 to show cause, hearing designation order, and notice of opportunity
8 and hearing that we refer to as the HDO. Issue G of this HDO,
9 placed upon the Enforcement Bureau, the burden of proving first,
10 whether 169 site-based AMTS licenses were timely constructed, and
11 second, whether operations of any of the facilities subject to
12 those licenses had been permanently discontinued.

13 As a result of the presiding judge's earlier rulings on
14 the Bureau and Maritime's joint motion for summary decision, and a
15 joint stipulation, the only question before Your Honor today is
16 whether operations at 16 of these site-based facilities have been
17 permanently discontinued.

18 As the record will reflect, there is no dispute that
19 operations at each of these 16 facilities have been discontinued.
20 The only issue before Your Honor is whether this discontinuance is
21 permanent.

22 There is no Commission rule with regard to the Part A
23 AMTS licenses at issue here as to when discontinuance is considered
24 permanent. In Northeast Utilities and Mobex, the Commission
25 concluded it would not retroactively apply a specific time limit.

1 Instead, the Commission has made clear that the question
2 of when operations of discontinuance is permanent, should be
3 decided on a case-by-case basis, and that factors such as the
4 construction and operation of fill-in sites, affirmative steps
5 taken to resume operations at the license locations, and the
6 existence of equipment that is capable of operations should all be
7 considered in a case-by-base analysis.

8 The Bureau intends to demonstrate by a preponderance of
9 the evidence that when these factors are taken into consideration,
10 Maritime took concrete steps to ensure that the discontinuance of
11 operations at WRV374, locations 14, 15, 16, 18, 25, 33, 35, and 40,
12 WHG750, and KAE889, locations 4, 20, 30, 34, and 48 was not
13 permanent. Thank you, Your Honor.

14 JUDGE SIPPEL: All right.

15 MR. KELLER: Your Honor, I'm not going to offer a fuller
16 statement. I'll just say that most of what Ms. Kane said, I agree
17 with. There are some points in there that are questions of law
18 that are already addressed in our trial brief.

19 Essentially, I don't know that it's true that we all
20 agree about what operation is, and also, the two cases that she
21 cited or the Northeast Utilities case she cited, there's plenty of
22 that in our trial brief, is not related to matters of spectrum
23 leases.

24 I was not prepared to offer any kind of an opening
25 statement, but I'll just say, I'll refer to the brief that takes a

1 slightly different stance on a few of those things, but the
2 questions of law, I believe, that those will be able to be
3 addressed in proposed conclusions at the end of the hearing.

4 JUDGE SIPPEL: All right. And, Mr. Stenger?

5 MR. STENGER: Well, Your Honor, you didn't have any
6 provision in the scheduling or for opening statements, so I didn't
7 prepare one, so I would just refer Your Honor to our trial brief.

8 JUDGE SIPPEL: Mr. Havens, the same?

9 MR. HAVENS: Yes.

10 JUDGE SIPPEL: Thank you, sir. All right.

11 MR. KELLER: One last item, just before you put the first
12 witness on, there were questions raised before about concerns about
13 Maritime cross-examining its own witnesses, even though,
14 technically, they're the Bureau's witnesses, because they're two of
15 them, or three of them, are former employees or principles of
16 Maritime.

17 I would like to suggest, what I'm going to do, if it's
18 okay with Your Honor, was, I will forego any cross-examination of
19 those particular witnesses, but would reserve the right, if
20 necessary, to just ask a few questions on redirect.

21 JUDGE SIPPEL: I like that idea. Any objections to that?

22 MR. STENGER: Well, Your Honor, I don't see how he can be
23 doing redirect --

24 JUDGE SIPPEL: Wait a minute, no, you're not affected by
25 what he's doing. He's not going to work for you. You're not going

1 to work for him. We're all going to work independently.

2 MR. STENGER: I would prefer that he ask his questions
3 before me so that I know what testimony he's eliciting from the
4 witnesses when I do my cross.

5 JUDGE SIPPEL: You're going to hear it all before you
6 cross, you know that. I feel like you're playing with me some
7 times, Mr. Stenger.

8 MR. STENGER: Well, the order that you --

9 JUDGE SIPPEL: Well, no, no, I opened the door again. I
10 take that back. I have a question though. I don't understand,
11 clearly, and maybe there is no explanation for it, but Mr. Havens
12 comes into this case as -- is invited into this case, not as an
13 initial party, but as a party who deserves -- should be in the case
14 because the information that he has brought to the attention of the
15 Commission.

16 In other words, kind of a -- well, that's basically my
17 understanding of why he's in here. And the idea would be that he
18 would be in here to assist the Bureau in prosecuting its case
19 against the Respondent, whoever that might be. I'll put it more in
20 a hypothetical way, this is the first case I ever had where the
21 Bureau comes around the other end and assists the Respondent and is
22 against the attacks of the intervener, in effect, or against the --
23 in other words, you got cases against each other, where normally,
24 you'd expect them to be combined against the Respondent.

25 It's flipped around. Can you explain that to me?

1 MS. KANE: Well, Your Honor, as we understand the HDO, it
2 did not direct the Bureau to conclude a -- come to a particular
3 conclusion, but rather, to develop a complete and fulsome record on
4 whether, for this issue, Issue G, the 169 site-based stations had
5 been timely constructed, and whether the operations of those
6 stations had been discontinued, and if so, whether that
7 discontinuance was permanent.

8 The Bureau endeavored in that for nearly 18 months of
9 discovery in building a record and taking depositions of all the
10 interested parties, and reviewing information that was produced by
11 the parties, including Mr. Havens, as well as documents that were
12 produced during the bankruptcy proceeding, and during that
13 investigation, have come to the conclusion that for 14 of these
14 stations, the evidence, the preponderance of the evidence, would
15 demonstrate that Maritime took concrete steps to resume operations
16 of those 14 stations, and that's the position that we're advocating
17 here today.

18 JUDGE SIPPEL: So you start out --

19 MS. KANE: We started out in a neutral position, Your
20 Honor.

21 JUDGE SIPPEL: -- the case in a neutral position.

22 MS. KANE: Correct.

23 JUDGE SIPPEL: Strange position for the Government, but
24 I guess you're right. I mean, I'm not quarreling with you. That's
25 a fair reading of the HDO, and in fact, you know, the Bureau has

1 reminded me of that more than once. I just have this --

2 MR. KELLER: Your Honor.

3 JUDGE SIPPEL: Wait just a minute. Let me finish this.

4 So if Mr. Havens hadn't intervened in this case, hadn't been
5 permitted to intervene in this case, we wouldn't even have an issue
6 today.

7 MS. KANE: Well, Your Honor, Mr. Havens didn't intervene
8 as part of this case. He was designated by the HDO as an
9 interested party, and therefore, he has always been a party to this
10 case. I think what you're recalling is that there were some
11 concerns early on that he was disrupting some of the proceedings
12 and there had been calls from some of the parties to have him
13 removed as a party, and that's where you may be thinking that he
14 had intervened.

15 He was always designated by the HDO as a party because he
16 has interests in this spectrum.

17 JUDGE SIPPEL: Well, he's not an interested party because
18 he's a -- well, I'm trying to think of the word, he's not a -- oh,
19 he's not a -- what is that word now? He's not like a goodwill
20 public defender, or something, who roams around looking for good
21 cases to get involved in. He really has a business interest in
22 this case, is that right?

23 MS. KANE: Your Honor, pursuant to the Commission's
24 rules, should Your Honor determine that some of these stations have
25 been permanently discontinued, they would automatically revert to

1 the geographic license holder, which in some instance, is Mr.
2 Havens.

3 MR. HAVENS: That's not correct.

4 MS. KANE: And he has an ultimate legal interest in --

5 JUDGE SIPPEL: Business interest though.

6 MS. KANE: I don't know whether it's a business interest
7 or at least an interest pursuant to our rules in the spectrum that
8 is at issue before Your Honor today.

9 JUDGE SIPPEL: All right. Well, I think I have a fair
10 understanding of that. I'm sorry. Let me get a clarification.
11 This is for clarification purposes only. Let me start with Mr.
12 Keller.

13 MR. KELLER: Yes. I just wanted to say two things.
14 First of all, Mr. Havens is a party in this case because under the
15 Commission's rules and practices, he had protested several of the
16 applications that were designated in this case. He personally, as
17 well as many of his companies, and it's the Commission's practice
18 if you file a petition to deny in the cases designated for hearing,
19 the petitioners are your party.

20 So he was one of the petitioners against the various
21 assignment applications in this case.

22 JUDGE SIPPEL: Is that by right or is that at the
23 Commission's discretion?

24 MR. KELLER: I don't know whether it's by right, but I
25 think it probably is, but it doesn't really -- that's the reason.

1 JUDGE SIPPEL: But it happens.

2 MR. KELLER: It happens. Secondly, as far as the
3 Bureau's neutrality, I would just point out that Maritime entered
4 this case with 168 site-based authorizations. Through the Bureau's
5 litigation and negotiation, whatever, we're now sitting here trying
6 to maintain 16 of them, only 14 of which the Bureau supports. The
7 Bureau still opposes Maritime on the basic qualifications issue and
8 challenges it before the Commission on second Thursday, so I hardly
9 think it's fair to characterize the Bureau as being neutral or
10 anything like that.

11 I mean, they're just doing their job and this is where we
12 ended up.

13 JUDGE SIPPEL: Well, that's a shame and the cheese is
14 pretty thin, but I think I see where we're at. Mr. Havens?

15 MR. HAVENS: No, Your Honor, I was just going to respond
16 that I believe that, you know, we don't have any insight into the
17 question that Your Honor proposed about it being an unusual
18 situation.

19 JUDGE SIPPEL: This is in my experience now. This may be
20 normal.

21 MR. HAVENS: No, it's very unusual --

22 JUDGE SIPPEL: I've only been here 20 years.

23 MR. HAVENS: It's very unusual for me as well, which is
24 why I believe at the first status conference that I attended in the
25 case, which is after I had been served with the Government's direct

1 case, I indicated surprise to Your Honor that their direct case was
2 witnesses from Maritime, but I would only say that I think that the
3 Bureau is mistaken and that they should be on my side, but I just
4 have to live with the fact that they're not.

5 JUDGE SIPPEL: Well, that's an understandable litigated
6 position. I don't want to hear that now. I'm trying to get
7 clarification for me. I get paid the same no matter how she goes
8 on this case. Okay. I didn't mean any disrespect by that, Ms.
9 Kane.

10 MS. KANE: Understood, Your Honor. We're happy to
11 clarify.

12 JUDGE SIPPEL: It's just I'd like to see a witness on the
13 stand before I lose my voice.

14 MR. KELLER: I believe if there was any other witnesses
15 should leave.

16 JUDGE SIPPEL: Mr. Havens.

17 MR. HAVENS: I just want to comment that when I hear
18 statements I believe are factually incorrect, I'm not trying to
19 take time to object to the, but -- so the question is, if I find
20 someone like Ms. Kane making a statement I believe is factually
21 incorrect, that appears to be relevant to the point she's making,
22 should I respond and explain my position or not?

23 If I don't respond, is it going to be assumed that, in
24 the record of this case, that she made a correct representation?

25 JUDGE SIPPEL: It's not going to be assumed, sir. It's

1 not going to be assumed at all.

2 MR. HAVENS: Well, then I won't take time to object.

3 JUDGE SIPPEL: But you can certainly -- if your name is
4 spoken in vain, and you want to defend your name, I have no
5 objection to that, but it'd be helpful if you work through your
6 attorney to do it so I don't have too many voices to have to
7 address, but you're doing fine Mr. Havens. Just sit there and
8 let's see what happens. Just wait and see what happens.

9 MR. HAVENS: To the degree possible, I will let Mr.
10 Stenger present, but if in the course of the hearing something
11 comes up quickly, then I might directly say something, just on Ms.
12 Kane's point that I am personally -- as to why I'm a party, I agree
13 --

14 JUDGE SIPPEL: No, I don't want to get into it. I'm
15 sorry.

16 MR. HAVENS: Okay.

17 JUDGE SIPPEL: You'll have your turn when your case is
18 presented. I want the witness to get on the stand. Witnesses are
19 sitting here waiting to get a plane, perhaps. The first witness,
20 please.

21 MS. KANE: May it please the court, Your Honor, the
22 Bureau would like to call Sandra DePriest to the stand.

23 JUDGE SIPPEL: Ms. DePriest. Counsel.

24 MR. PLACHE: I have a question. And I think Mr. Havens
25 raises an interesting point, which is that, he does have a lot of

1 factual information and he's really more of a fact witness than a
2 lawyer in this proceeding.

3 MR. HAVENS: That was not my point.

4 JUDGE SIPPEL: Well, just a second. Don't interrupt.

5 MR. PLACHE: And one of the reasons we feel that is
6 because of all the factual information that Mr. Havens presented to
7 the Bureau. So there's a possibility that somebody may need to
8 call him later in this proceeding as a witness for cross or to put
9 something on, but if he wants to be here and provide factual
10 information, he really should be considered a witness and not an
11 attorney in this proceeding.

12 JUDGE SIPPEL: Well, when he's speaking about facts, I
13 don't consider him to be an attorney. When he speaks about
14 representing his rights, then he speaks up as a pro se party, but
15 when it comes to facts, he's the guy that's got the facts.

16 MR. KELLER: But he was talking -- excuse me, Your Honor.
17 He was talking about why you correct facts, and restate facts, if
18 they aren't held to be facts, or challenge other facts that are
19 presumed in the case, then he should have been made a witness.

20 MR. STENGER: I think this is a misunderstanding, Your
21 Honor. All Mr. Havens was saying is that when Ms. Kane was
22 explaining to you what happens to --

23 JUDGE SIPPEL: No, no, don't tell me what he said. I
24 heard what the man said. And the record is there to prove it to
25 me.

1 MR. STENGER: But it only relays --

2 JUDGE SIPPEL: We got to do something about those
3 glasses. I'm sorry, ma'am.

4 MS. DEPRIEST: It's all right.

5 JUDGE SIPPEL: Just help this -- this is much more
6 important. Take it easy now.

7 MR. STENGER: It only --

8 JUDGE SIPPEL: You see what these leads to?

9 MR. STENGER: It only related to --

10 JUDGE SIPPEL: Come on. Knock it off. Please, Mr.
11 Stenger, I'm going to lose my voice here. This is the most
12 important thing we have to do today. I'm sorry, Ms. DePriest.
13 Would you raise your right hand, please?

14 WHEREUPON,

15 SANDRA DEPRIEST

16 was called as a witness by Counsel for the Bureau and, having been
17 first duly sworn, assumed the witness stand, was examined and
18 testified as follows:

19 JUDGE SIPPEL: Thank you, ma'am. Please be seated. And
20 that was a wonderful technique to get the attention to where it
21 belongs. I got to remember that. I am so happy. Please.

22 MS. KANE: Mrs. DePriest, if you could please state your
23 full name for the record.

24 THE WITNESS: Sandra DePriest.

25 DIRECT EXAMINATION

1 BY MS. KANE:

2 Q And what is your occupation?

3 A I am an Episcopal Priest.

4 Q And what is your relationship to Maritime?

5 A I'm the president and owner.

6 Q Do you recall that at some point in this time you have
7 prepared written direct testimony?

8 A Yes.

9 Q And do you understand that that testimony has been
10 admitted previously as an Enforcement Bureau exhibit?

11 A Yes.

12 MS. KANE: Thank you. We are ready to turn the witness
13 over for cross-examination.

14 JUDGE SIPPEL: Well, where is that testimony? What
15 exhibit number is it?

16 MS. KANE: That is at EB Exhibit 1-D, Your Honor, and
17 just to clarify what happened to put the -- after we informed the
18 witness, we just weren't sure if that's how you wanted us to handle
19 it.

20 JUDGE SIPPEL: Please do. This is 1-D. D like Delta.

21 MS. KANE: 1 Delta, Your Honor.

22 JUDGE SIPPEL: I got it right here. And we're talking
23 about five pages of testimony, and I'll do it, Ms. DePriest, is
24 that your signature?

25 THE WITNESS: Yes.

1 JUDGE SIPPEL: Okay. And I'm going to have counsel put
2 your written testimony before you and we're going to ask you
3 identify it as the testimony that you prepared and that you want to
4 offer today.

5 THE WITNESS: Thank you.

6 MS. KANE: Your Honor, may I approach the witness?

7 JUDGE SIPPEL: Please do.

8 MS. KANE: We'd like to note for the record, Your Honor,
9 that we've presented EB Exhibit 1-D to the witness. I'm going to
10 ask you to take a look at that, Mrs. DePriest. Is that what you
11 recall signing?

12 THE WITNESS: Yes, it is.

13 MS. KANE: And is that your signature on the back page of
14 this document?

15 THE WITNESS: Yes, it is.

16 MS. KANE: Thank you, Mrs. DePriest. Your Honor, now
17 we're ready to turn over the witness for cross-examination.

18 JUDGE SIPPEL: All right. Who's going to cross-examine?
19 Mr. Keller?

20 MR. KELLER: Remember, I said I was going to defer cross-
21 examination.

22 JUDGE SIPPEL: Yes, you did say that. Mr. Kirk?

23 MR. KIRK: No, Your Honor.

24 MR. STENGER: Yes, Your Honor.

25 JUDGE SIPPEL: Mr. Kirk. Mr. Stenger.

1 MR. STENGER: Yes.

2 JUDGE SIPPEL: Come forward. Your witness.

3 CROSS EXAMINATION

4 BY MR. STENGER:

5 Q Ms. DePriest, who prepared your written testimony?

6 A I think it was prepared by me with the assistance of
7 counsel and I think that probably was Ms. Kane and probably with
8 input from the MCLM attorney, Bob Keller.

9 Q And who else reviewed your testimony besides Ms. Kane and
10 Mr. Keller?

11 A I couldn't say. Are you talking about prior to my
12 signature?

13 Q Well, let's start with prior to your signature, who else
14 reviewed it?

15 A I don't know.

16 Q What about after your signature?

17 A I don't know.

18 Q Who did you discuss your testimony with during the
19 preparation process, other than Ms. Kane and Mr. Keller?

20 A I don't think any specifics were discussed with anyone
21 than with counsel. I think --

22 JUDGE SIPPEL: When you say counsel, please verify which
23 one.

24 THE WITNESS: With both Ms. Kane and Mr. Keller.

25 JUDGE SIPPEL: Thank you.

1 THE WITNESS: And Mike. Mr. Ingram.

2 JUDGE SIPPEL: Who's Mr. Ingram?

3 MR. ENGEL: Engel, Your Honor, I believe.

4 JUDGE SIPPEL: Oh, Mr. Engel.

5 THE WITNESS: Engel. I am so sorry. With Mr. Engel, and
6 that was simply in preparation for today.

7 JUDGE SIPPEL: Do you know what Engel means in German?

8 THE WITNESS: No, sir, I don't.

9 JUDGE SIPPEL: Angel. You're an Episcopal Priest? Is
10 that correct?

11 MR. ENGEL: Yes, Your Honor. Thank you.

12 JUDGE SIPPEL: Okay. I'm sorry. I'm interrupting.

13 MR. STENGER: Ms. DePriest, my name, Stenger, by the way,
14 I believe means carpenter in German --

15 JUDGE SIPPEL: I thought that was Zimmerman.

16 MR. STENGER: -- so I'm a rung below Mr. Engel.

17 JUDGE SIPPEL: Are you kidding me? Carpenter is a great
18 Biblical name.

19 BY MR. STENGER:

20 Q What documents did you review in preparing your
21 testimony?

22 A I think this probably came out of deposition testimony
23 that had been previously taken. And I do think this was probably
24 based on information that I had obtained through conversations with
25 John Reardon, but it was -- and possibly Tim Smith, in terms of

1 just making sure that the information, the technical information,
2 was correct.

3 Q And did you review any information in the FCC universal
4 licensing system database, which I'll refer to as ULS?

5 A I did not access the ULS. If any of the documents were
6 represented there, then that's a possibility.

7 Q I would like to ask you some questions, and to assist
8 you, I would like you to have a copy of the WRV374 license in front
9 of you, and there is a copy that's available as EVH Exhibit Number
10 150 in the EVH --

11 MR. PLACHE: Your Honor, can I please have one of those,
12 please?

13 JUDGE SIPPEL: Yes.

14 MR. PLACHE: I was not provided with the exhibits.

15 MR. STENGER: Your Honor, we were ordered to serve these
16 exhibits on the litigating parties, which has always referred to
17 the Bureau and Maritime, and that's who we served our exhibits on.

18 JUDGE SIPPEL: Well, I meant that anybody who's going to
19 be at table. I mean, so many people come in and out.

20 MR. PLACHE: In fairness, I'll need a copy.

21 JUDGE SIPPEL: Do we have an extra copy here?

22 MR. PLACHE: Which exhibit number was it?

23 MR. STENGER: In the book, I'm referring to the book
24 called EVH admitted exhibits, and it's Exhibit Number 150. It's
25 just a reference copy of the WRV374 license. And again, I'm just

1 providing this to the witness as an aide in referring to the
2 locations on the license. Do you have that in front of you?

3 THE WITNESS: Well, that one has -- give me a minute.

4 MR. ENGEL: Your Honor, our understanding, from your
5 earlier guidance, was the witness would have access to your binder
6 of EVH exhibits.

7 JUDGE SIPPEL: I'm sorry. That's the document, I
8 believe.

9 MR. STENGER: So what you have in front of you is a
10 reference copy of the radio station authorization, WRV374? EVH
11 Exhibit 150. If we could just turn back to your testimony.
12 Looking at the last paragraph of your testimony, Paragraph 10, can
13 you just take a moment to look at that paragraph, and I want to ask
14 you about the last sentence of the paragraph, which is the last
15 sentence of your testimony on Page 4.

16 THE WITNESS: Yes.

17 BY MR. STENGER:

18 Q And I'm referring to the sentence that says, "Maritime
19 maintained equipment that was capable of operation at many of these
20 locations, including WRV374, locations 35 and 40." Do you see that
21 sentence?

22 A Yes.

23 Q In that sentence, the word, these locations, are you
24 referring to locations on WRV374?

25 A I was not looking at this exhibit, so I was thinking

1 generally in terms of WRV374 at the time of that reference.

2 Q But the locations that you're referring to in this
3 paragraph are all locations on that particular license, 374.

4 JUDGE SIPPPEL: Take your time. Paragraph is all about
5 374, is that right? So there's nothing --

6 MR. STENGER: That's my understanding of the way the
7 witness' testimony is organized, that there was some preceding
8 paragraphs that deal with WHG750 and KAE889, and then in Paragraph
9 10, we're getting to WRV374.

10 THE WITNESS: That's correct.

11 MR. STENGER: I just want to make sure that in the words,
12 these locations, in the last sentence are ones on WRV374.

13 THE WITNESS: They do refer to 374.

14 MR. STENGER: Okay. Now, you say that you maintained
15 equipment, in the past tense, can you tell me when you stopped
16 maintaining equipment at the eight locations that are in dispute on
17 WRV374?

18 MS. KANE: Objection, Your Honor. That assumes facts not
19 in evidence.

20 JUDGE SIPPPEL: Do you want to repeat that question,
21 please?

22 MR. STENGER: Can the reporter read it? Let me try to
23 repeat it.

24 JUDGE SIPPPEL: Thank you.

25 MR. STENGER: Your question says that you maintained

1 equipment, in the past tense, at these locations.

2 JUDGE SIPPEL: Where does it say that?

3 MR. STENGER: Well, the sentence reads, "Maritime
4 maintained equipment that was capable of operation at many of these
5 locations."

6 JUDGE SIPPEL: That's on Page 4.

7 MR. STENGER: Yes.

8 JUDGE SIPPEL: Okay.

9 MR. STENGER: That's the last sentence of her testimony.

10 JUDGE SIPPEL: And your question is?

11 MR. STENGER: When did you stop maintaining equipment at
12 those locations on WRV374?

13 MS. KANE: And, Your Honor, I'd have the same objection.

14 JUDGE SIPPEL: Overruled.

15 THE WITNESS: I would not be the best person to answer
16 that question.

17 JUDGE SIPPEL: That's not an answer. These questions are
18 straight-up. How can you answer it straight-up; yes, no, or what?
19 You don't know.

20 THE WITNESS: I don't know.

21 JUDGE SIPPEL: I'm sorry. I didn't mean to prompt the
22 witness. I'm sorry. I didn't mean to do that, but she was giving
23 you something that you didn't ask for.

24 MR. STENGER: I'm fine, Your Honor.

25 JUDGE SIPPEL: Okay. Go ahead.

1 MR. STENGER: Let me just go -- if you could refer to the
2 reference copy of the license that is in the book in front of you.
3 On the first page, the last location that's listed on the first
4 page, is Location 14, Sullivan, New York. Do you see that one?

5 THE WITNESS: Yes.

6 MR. STENGER: Do you have any recollection as to when you
7 stopped maintaining equipment capable of operation at that
8 location?

9 MS. KANE: Objection, Your Honor. Assumes facts not in
10 evidence.

11 MR. STENGER: Or again, you say --

12 JUDGE SIPPEL: Don't get into a reply. I'm going to
13 overrule the objection. I understand it's maybe not technically in
14 evidence, but we know what we're talking about here. I mean, I'm
15 just not going to go down that road with you. Go ahead, Ms.
16 DePriest.

17 THE WITNESS: I don't know that there has been
18 discontinued or I mean in terms of the equipment that has been
19 removed, or anything, that you're suggesting it has been, and I'm
20 saying, I don't know that it has been.

21 MR. STENGER: I didn't mean to suggest anything. You
22 phrased your sentence in the past tense and so are you changing
23 your testimony to say that you are currently maintaining equipment
24 at Location 14?

25 THE WITNESS: I'm not trying to be evasive in any way.

1 I'm just saying that it was not intended to be exclusively past
2 there.

3 MR. STENGER: If you turn over to the next page of the
4 license in the binder, Location 15, Verona, New Jersey. Do you
5 have any recollection as to whether you have stopped maintaining
6 equipment at that location?

7 MS. KANE: Objection, Your Honor. Asked and answered.

8 JUDGE SIPPEL: Overruled.

9 THE WITNESS: At the time this was -- this statement is
10 correct, Maritime maintained equipment that was capable of
11 operation. I don't have any reason to think that that's changed.

12 MR. STENGER: So you're now saying that you maintain
13 equipment at Location 15?

14 THE WITNESS: I believe it's possible that we do. I'm
15 not the engineer, but I believe it's possible that we still do.

16 JUDGE SIPPEL: I'm going to take that as an I don't know.

17 MR. STENGER: Well, let me -- would your answer be on
18 your reference copy of the license that's in the book there, the
19 next location -- I'm just going to read off the locations that are
20 in issue.

21 JUDGE SIPPEL: What paragraph are you on now?

22 MR. STENGER: I'm on the license. I'm back to the
23 license.

24 JUDGE SIPPEL: Oh, yes. Okay.

25 MR. STENGER: The license in the book. The next location

1 that's at issue in this hearing is location 16. And do you know
2 whether you are maintaining facilities at that location?

3 JUDGE SIPPEL: Now, this is Allentown, right?

4 MR. STENGER: Allentown, Pennsylvania.

5 JUDGE SIPPEL: All right. Just call it something. We're
6 talking about Allentown now.

7 THE WITNESS: I don't know.

8 MR. STENGER: Do you have any recollection that your
9 attorney, Mr. Keller, prepared a chart for answers to
10 interrogatories that indicated whether or not there was equipment
11 at these various locations?

12 THE WITNESS: I don't remember specifically what the
13 chart represented. I do remember seeing the chart.

14 MR. STENGER: Okay. The next location is Location 18,
15 which is Valhalla, New York. Do you know whether or not equipment
16 is maintained at that location?

17 THE WITNESS: I believe it is. I think I recall a
18 conversation about that. Yes, it is.

19 JUDGE SIPPEL: That's where my mother is buried; in
20 Valhalla.

21 MR. STENGER: When you say you recall a conversation
22 about that, with whom?

23 THE WITNESS: With Tim Smith.

24 BY MR. STENGER:

25 Q And when would that conversation have been?

1 A In the last few days.

2 Q The next location is Location 25, which is Perrineville,
3 New Jersey. Do you have any recollection whether equipment is
4 maintained there?

5 A No, I don't.

6 Q And the next one is Location 33. It's on Page 3 of the
7 license in the middle of the page, New York, New York, 1 World
8 Trade Center.

9 A Unfortunately, I know that we do not have equipment there
10 right now.

11 Q And the next location is 35, Rehoboth, Massachusetts.

12 A And I do believe we have equipment there.

13 Q And the last location is 40, Hamden, Connecticut.

14 A And I do believe we have equipment there.

15 Q And what is the basis of your belief that you have
16 equipment at Locations 35 and 40?

17 A Conversations with Tim Smith, our engineer.

18 Q Is Tim Smith an employee of Maritime?

19 A Not at this time.

20 Q And you said the conversations occurred within the last
21 few days, I believe?

22 A That's correct. I don't believe anything has changed
23 since the bankruptcy, and so I think he has had -- nothing has
24 changed since he departed, which I think was around May of 2013.

25 Q Departed from?

1 A MCLM.

2 Q So Tim Smith has not been an employee of MCLM since May
3 of 2013, is that --

4 A Technically, since the end of 2012, but I think he was an
5 employee of Choctaw, which had a management contract with the
6 debtor in possession, MCLM, debtor in possession, and I think -- so
7 during that period of time, from the first of 2013 until the middle
8 of 2013, he was employed by Choctaw.

9 Q And where is he employed or where has he been employed at
10 the time that you recently had these conversations with him?

11 A With NRTC.

12 Q NRTC is the National Rural Telecommunications
13 Cooperative?

14 A Yes.

15 Q Do you know whether you are paying site rents at the
16 sites, the eight sites, that we just went over?

17 MS. KANE: Objection, Your Honor. Vague and outside the
18 scope of her direct testimony.

19 MR. STENGER: Well, let me refer you --

20 JUDGE SIPPEL: Just a second. Sustained. Don't go on
21 too fast, Mr. Stenger.

22 MR. STENGER: If you could look at your written
23 testimony, the Paragraph 8, the last sentence of Paragraph 8 says,
24 "Because Maritime intended to resume commercial operation KAE889,
25 it maintained equipment at the license locations that was capable

1 of operation for as long as Maritime was financially able to do
2 so."

3 MS. KANE: Objection, Your Honor. I would just note for
4 the record that counsel did not read that correctly into the
5 record.

6 JUDGE SIPPEL: You want to read it again?

7 MR. STENGER: With regard to Paragraph 8 of your
8 testimony, the last sentence, "Because Maritime intended to resume
9 commercial operation of Station KAE889, it maintained equipment at
10 the licensed locations that was capable of operation for as long as
11 Maritime was able to financially do so." Do you see that sentence?

12 THE WITNESS: Yes.

13 BY MR. STENGER:

14 Q So did there come a point in time for that license,
15 KAE889, when you were no longer maintaining the sites because you
16 were financially unable to do so?

17 A That's true. We did not financially support the sites or
18 maintain the sites.

19 Q And when was the point in time when you were no longer
20 financially able to support those sites and no -- when you were no
21 longer supporting those sites?

22 A Some of the sites may have been supported after the
23 management contract entered into with Choctaw, but as of the
24 bankruptcy file date, which was August 1, 2011, we were no longer
25 financially able to, you know, maintain the site.

1 Q Now, if you would refer to Paragraph 6 of your testimony,
2 the last sentence of Paragraph 6 says, "Because Maritime at all
3 times intended to resume commercial operation of these stations, it
4 maintained equipment at these facilities that was capable of
5 operation for as long as Maritime was able to pay site leases,
6 utilities, and related expenses." Do you see that sentence?

7 A Yes.

8 Q And that paragraph is referring to WHG750, is that
9 correct?

10 A Yes.

11 Q Okay. Now, when did you become unable to maintain the
12 WHG750 locations?

13 A If there had been any, you know, new requirements or new
14 payments required, that would have been as of August 1, 2011.

15 Q Okay. So with regard to WHG750, which is Paragraph 6 of
16 your testimony, and KAE889, which is Paragraph 8, you say that you
17 stopped maintaining the sites at some point because you were
18 financially unable to do so, so is the same -- but you don't have
19 that same sentence in WRV374, so are you testifying that you were
20 unable to financially maintain the WHG750 and the KAE889 sites, but
21 somehow you were able to maintain the WRV374?

22 MS. KANE: Objection, Your Honor. Compound and I believe
23 also mischaracterizes her previous testimony.

24 JUDGE SIPPEL: Well, it comes close, but I'll go with the
25 compound. I'm going to sustain the objection, but I don't want you

1 to move away from the question. I want you to --

2 MR. STENGER: Let me try to simplify that.

3 JUDGE SIPPEL: Thank you.

4 MR. STENGER: How is it that you -- is it your testimony
5 that you were able to financially maintain the sites on WRV374?

6 THE WITNESS: We didn't. I don't recall any specific
7 statements or needs to do anything on those sites during that
8 period of time. So I don't think, you know, we were challenged or
9 asked to do anything about that. What I'm saying is, if we had to
10 make a payment, we could not make that payment as of August 1,
11 2011.

12 MR. STENGER: So just to be clear, you have not paid any
13 of the site owners for the eight locations on WRV374 since the date
14 that you just specified?

15 MS. KANE: Objection, Your Honor. Mischaracterizes her
16 previous testimony.

17 JUDGE SIPPEL: I'm sure you're paraphrasing and I'd ask
18 you to please --

19 MR. STENGER: I'll withdraw that question.

20 JUDGE SIPPEL: Thank you. I'm sustaining your objection,
21 by the way.

22 MS. KANE: Thank you, Your Honor.

23 MR. STENGER: Is it your understanding that the site
24 owners allow you to continue to use the WRV374 sites, even though
25 you're not paying them?

1 MS. KANE: Objection, Your Honor. Outside the scope of
2 her direct testimony and mischaracterizes her previous testimony.

3 JUDGE SIPPEL: No, I'm going to allow the question.

4 THE WITNESS: In some instances, they've allowed us to
5 maintain our equipment on the site.

6 BY MR. STENGER:

7 Q And what instances are those?

8 A The only instances that I would know would be -- as far
9 as I know, all of them, unless our engineer specifically went to
10 the site and removed the requirement, and so that would be up to
11 his testimony, but I didn't have any letters that came to my
12 attention saying, you know, come get your equipment, or anything,
13 so as far as I know, it's still there in many of those instances.

14 Q Who was the engineer that you just referred to who would
15 be removing equipment from the sites?

16 A It would have been Tim Smith.

17 Q After he left Maritime and went to work for NRTC, who
18 would be the engineer at that point?

19 A It would be anyone that Choctaw, our managing company,
20 would have retained to maintain any of the sites.

21 Q Let's go back to Paragraph 10 of your testimony, if you
22 would. The third sentence of your Paragraph 10 says, "This lease
23 impacts Locations 14-16, 18, 25, and 33 of call sign WRV374." Do
24 you see that sentence?

25 A I do.

1 Q What do you mean by, impacts?

2 A That those sites would be the subject or would be
3 included within that lease.

4 Q Is it your testimony that you are leasing all eight of
5 those -- I'm sorry, one, two -- well, you say 14 to 16, so you
6 mean, 14, 15, and 16 --

7 JUDGE SIPPEL: I count three.

8 MR. STENGER: That's three, 18, 25, and 33, that's six.
9 Is it your testimony that you're leasing all six of those sites to
10 Pinnacle?

11 THE WITNESS: I have to look at the lease, but as far as
12 I recall, that these -- if I put that these would be impacted by
13 that, that they, along with 35 and 40, would be included in that
14 lease.

15 JUDGE SIPPEL: I'm sorry. Let me just ask a quick one
16 here. Was that sentence prepared by you or by counsel assisting
17 you?

18 THE WITNESS: Counsel assisting me.

19 JUDGE SIPPEL: Thank you.

20 MR. STENGER: If I could ask to have the Enforcement
21 Bureau Binder Number 2, to give you a copy of Binder Number 2, so
22 you can refer to some exhibits in Binder Number 2.

23 MS. KANE: Your Honor, for clarification purposes, are
24 you referring to the Enforcement Bureau's public exhibits or its
25 confidential exhibits?

1 MR. STENGER: The public is what I have, Your Honor.

2 JUDGE SIPPEL: Yes.

3 MR. STENGER: She can be given the public binder.

4 JUDGE SIPPEL: Yes, the public binder is going to be for
5 Ms. Duquesne. It's okay if I don't call you reverend.

6 THE WITNESS: Ms. DePriest.

7 JUDGE SIPPEL: I mean Ms. DePriest.

8 THE WITNESS: That's fine.

9 MR. STENGER: If you could open up that Binder Number 2
10 to EB Exhibit 83. And this is a further supplemental response to
11 interrogatories from Maritime to the Bureau that was served on
12 February 28, 2012.

13 JUDGE SIPPEL: What exhibit number is this?

14 MR. STENGER: 83. Bureau Exhibit 83.

15 JUDGE SIPPEL: I have it. We have it. Unfortunately,
16 the numbers -- the pages are upside down from the numbers. Well,
17 in this copy, but we have it. We're with you.

18 MR. STENGER: Okay. If you could turn to Page 8 of that
19 exhibit. The Bureau has little handwritten page numbers.

20 JUDGE SIPPEL: She has it.

21 MR. STENGER: I just want to let you know that whenever
22 I refer to page numbers, I'm going to refer to the Bureau's little
23 handwritten page numbers, which happen to be the same, in this
24 case, as the document. Now, that is a chart and I would ask you to
25 take a moment to look at that chart. Page 8 is the part of the

1 chart that deals with WRV374.

2 JUDGE SIPPEL: And?

3 MR. STENGER: Did you have any involvement in preparing
4 this chart?

5 THE WITNESS: No.

6 BY MR. STENGER:

7 Q Who prepared the chart, do you know?

8 A I don't know.

9 Q If you look at the fourth line of the chart, refers to
10 Location 14 on that license. And the status is listed as O, and
11 then Location 15, the status is listed as L, 16 is O, 18 is O, 25
12 is L, I'm just giving you examples, do you see the column that I'm
13 referring to?

14 A I do.

15 Q Okay. So of the locations that you mentioned in your
16 testimony, Locations 14-16, 18, 25, and 33, which ones have Ls next
17 to them?

18 MR. KELLER: Objection.

19 MS. KANE: Your Honor?

20 MR. KELLER: The document speaks for itself and she's
21 already testified that she didn't prepare this, was not aware of
22 it, doesn't know who prepared it.

23 JUDGE SIPPEL: Sustained; on both sides.

24 MS. KANE: Thank you, Your Honor.

25 MR. STENGER: Do you have any reason to believe that this

1 chart is incorrect in listing Locations 15 and 25 as the only ones
2 that are leased?

3 MS. KANE: Same objection, Your Honor. She's already
4 testified that she didn't prepare this document.

5 JUDGE SIPPEL: Sustained.

6 MR. STENGER: Do you believe that this chart is wrong and
7 that locations besides 15 and 25 are leased to Pinnacle?

8 MS. KANE: Your Honor, the same objection.

9 JUDGE SIPPEL: Sustained. She's not going to be quizzed
10 on an exhibit she didn't prepare or know about.

11 MR. STENGER: Okay. Can we -- do you have any direct
12 knowledge of what is covered by the lease and what isn't?

13 MS. KANE: Objection. Vague and compound.

14 JUDGE SIPPEL: I agree. Sustained.

15 MR. STENGER: Does the spectrum lease agreement between
16 Maritime and Pinnacle specify specific locations on WRV374 that are
17 leased to Pinnacle?

18 MS. KANE: Objection, Your Honor, to the extent that
19 we're going into a document that -- or the content of a document
20 that has been designated confidential. Mr. Stenger is not covered
21 by the protective order. And to the extent Mrs. DePriest can
22 answer that question, she would be potentially revealing
23 confidential information.

24 JUDGE SIPPEL: Well, I'll sustain the objection. If
25 you're going to ask the witness a question like that, you have to

1 put the document in front of her. You can't ask her what she
2 recalls about a document. That's not fair.

3 MR. STENGER: Well, Your Honor, I have a copy of the
4 document from the bankruptcy proceeding; from the Maritime
5 bankruptcy proceeding. I can put it in front of her.

6 JUDGE SIPPEL: Well, we have a problem with that. We've
7 already had an objection to that. There was no intent to waive it
8 in that context, in the context of that case, as opposed to this
9 case here. I mean, I say, that's the issue that can be briefed
10 down the road, but if you had signed the doggone agreement -- all
11 seats buckled up and we take off.

12 MR. STENGER: Let's turn to the EB Exhibit 85 in the book
13 that you have in front of you.

14 JUDGE SIPPEL: Well, again, we have the numbers up, but
15 the document is upside down. No, we have it. I'm looking at the
16 witness when I say we.

17 MR. STENGER: Okay. So on that document, if you could
18 turn to Page 3. And you see the answer to Question Number 8 on
19 Page 3?

20 JUDGE SIPPEL: Page 3?

21 MR. STENGER: Yes.

22 JUDGE SIPPEL: The answer to Number 8, starts off with,
23 "Are the authorizations identified"?

24 MR. STENGER: Yes, Your Honor.

25 JUDGE SIPPEL: What's your question?

1 MR. STENGER: And the third bullet point says, "Station
2 WRV374, Locations 15 and 25, to Pinnacle Wireless." Do you have
3 any reason to believe that that answer is incorrect?

4 MS. KANE: Objection, Your Honor. Lack of foundation.

5 JUDGE SIPPEL: I would sustain your objection.

6 MR. STENGER: Well, these --

7 JUDGE SIPPEL: I mean, you can't ask a question like that
8 about, do you whether it's false. I mean, it's like asking -- why
9 should she think it's false? I'm not giving your answer, I'm not
10 speaking for the witness, I mean, why would anybody think it's
11 false? She didn't prepare these documents.

12 MR. STENGER: I believe you're under an obligation to
13 keep your answers to interrogatories current. Do you want to amend
14 that answer to that interrogatory to claim that there are
15 additional locations that are leased to Pinnacle besides 15 and 25?

16 JUDGE SIPPEL: That's a legal question you're asking her.
17 She's not pro se, like some people are. She's just working with
18 the advice of her attorney.

19 MR. STENGER: Okay. Let's turn to Document 89, Exhibit
20 89, EB Exhibit 89.

21 JUDGE SIPPEL: Still with the Enforcement Bureau
22 exhibits. Exhibit 89. Okay. What page?

23 MR. STENGER: Page 2, Your Honor.

24 JUDGE SIPPEL: Page 2. Which paragraph?

25 MR. STENGER: The last paragraph on the page. It's

1 Paragraph Number 1.

2 JUDGE SIPPEL: I see it.

3 MR. STENGER: And about halfway through that paragraph it
4 says, "Call sign WRV374, Locations 15 and 25, are now, and have
5 been since 2005, under lease to Pinnacle Wireless, Inc." Do you
6 see that sentence?

7 MR. KELLER: Same objection as to the other document,
8 Your Honor. I mean, these are legal documents that she didn't
9 sign. There's no foundation for this.

10 JUDGE SIPPEL: Is there a question pending?

11 MR. STENGER: I haven't asked a question yet.

12 JUDGE SIPPEL: He just brought it to our attention.

13 MR. STENGER: At the time that these interrogatories were
14 filed, the statement was that those locations are now and have been
15 leased to Pinnacle Wireless.

16 JUDGE SIPPEL: These interrogatories or these answers?

17 MR. STENGER: These answers were filed. After that point
18 in time, did you lease additional locations, besides those two?

19 MS. KANE: Objection, Your Honor. Lack of foundation.

20 JUDGE SIPPEL: Well, I'm going to sustain it, but not for
21 that reason. It seems to just assume an awful lot of facts that's
22 not in that quadrant of language before her. And there's been no
23 -- again, as counsel said, there's been no foundation laid.
24 There's been no development of evidence in this quadrant. All of
25 a sudden you jump in with some -- I'm not being critical. I'm

1 saying, that's what the witness is left with and that's not fair.
2 Try it again.

3 MR. STENGER: Since these answer were filed --

4 JUDGE SIPPEL: Now, does she know what an interrogatory
5 is; what an answer to an interrogatory is? We're just out here in
6 the wild blue yonder and I'm not sure how much she knows about this
7 process.

8 MR. STENGER: Well, Ms. DePriest, let me ask you, when
9 these answers to interrogatories are --

10 JUDGE SIPPEL: Let me ask you a question. Do you know
11 what an interrogatory is?

12 THE WITNESS: Yes, Your Honor. I do.

13 JUDGE SIPPEL: Okay. And did you work with anybody -- in
14 the document before you, were you consulted in any way in preparing
15 the answers to these interrogatories?

16 THE WITNESS: No, Your Honor. I was not.

17 JUDGE SIPPEL: Okay.

18 THE WITNESS: It's --

19 JUDGE SIPPEL: Have you seen these before?

20 THE WITNESS: I have not looked at them, that I can
21 recall.

22 BY MR. STENGER:

23 Q Are you an attorney, Ms. DePriest?

24 A I'm not a practicing attorney, but I am trained.

25 Q Are you a former telecommunications FCC attorney?

1 A Before 1998. Actually, before 1987, yes, I practiced,
2 for a couple of years in telecommunications law.

3 Q And what is your position at Maritime Communications?

4 A I'm the president of the debtor of possession now.

5 Q When Maritime was answering the Bureau's interrogatories,
6 there was a series of interrogatories from the Bureau, were you
7 involved in putting together the answers to any of those
8 interrogatories?

9 JUDGE SIPPEL: That's not relevant. You're on cross-
10 examination. You want to know about this document.

11 MR. STENGER: Well, she just said she was not involved in
12 preparing these answers, I believe.

13 JUDGE SIPPEL: That's correct.

14 MR. STENGER: Were there any answers to interrogatories
15 that you were involved in preparing?

16 JUDGE SIPPEL: Anything in this document, you mean?

17 MR. STENGER: No, any answers to interrogatories. The
18 Bureau has multiple answers to interrogatories that I've been going
19 through, and the objection that she doesn't know anything about
20 these answers, and I'm just --

21 JUDGE SIPPEL: No, this answer. Wait a minute now,
22 Counsel. We're talking about this answer. We're talking about A-1
23 on Page 2 of Exhibit 85 -- what is it, 86, whatever it is. There's
24 no focus to the question.

25 MR. STENGER: Well, I'll ask again. What locations on

1 WRV374 are leased to Pinnacle Wireless, to the best of your
2 knowledge?

3 MS. KANE: Objection, Your Honor. This is still calling,
4 potentially, for confidential information that's subject to the
5 lease agreement itself.

6 JUDGE SIPPEL: Just a second now. How does that follow?
7 It's laid out here in the testimony. No, this is not the
8 testimony. This is an answer to an interrogatory.

9 MR. STENGER: Well, it's laid out in the testimony
10 depending upon what the sentence --

11 JUDGE SIPPEL: I'm going to overrule that objection. Go
12 ahead with it.

13 THE WITNESS: Would you repeat the question, please?

14 MR. STENGER: Which locations, to the best of your
15 knowledge, on WRV374 are leased to Pinnacle Wireless?

16 THE WITNESS: 14 through 16, 18, 25, and 33.

17 MR. STENGER: So are you saying that this answer to
18 interrogatories that was submitted to the FCC Enforcement Bureau on
19 9 August 2012 was incorrect?

20 MS. KANE: Objection, Your Honor, to the extent he's
21 referring to a document that was identified as EB Exhibit 89. It
22 is not a response to interrogatories. It's entitled supplemental
23 responses per Order FCC 12N-38. That's number one, and number two,
24 he's still failed to establish any foundation for this witness to
25 be able to answer with regard to this document.

1 JUDGE SIPPEL: Well, she's been asked and answered the
2 question. She doesn't have to -- you can argue your conclusions in
3 post findings. You're not going to put the witness through that.
4 What's your next question?

5 MR. STENGER: If you could turn to the Enforcement Bureau
6 Exhibit 96. It's on that same book that you have in front of you.
7 Page 9. And again --

8 JUDGE SIPPEL: I have an extra copy so I'm not bothering
9 the witness. Page 9. Number 15?

10 MR. STENGER: Page 9, at the very top of that page,
11 before you get to Question 15, there's an answer to a question on
12 the previous page, and what I'm interested in is, at the top of
13 Page 9, the second bullet point, little round bullet point, it
14 says, "Locations 14-16, 18, 25, and 33 of Station WRV374 are
15 subject to and/or impacted by a spectrum lease agreement with" --

16 JUDGE SIPPEL: Arrangement.

17 MR. STENGER: "Spectrum lease arrangement with Pinnacle
18 Wireless." Now, looking at that sentence, can you be more specific
19 as to which of those locations are subject to the spectrum lease
20 and which ones are impacted by the spectrum lease?

21 MS. KANE: Objection, Your Honor. Lack of foundation.

22 JUDGE SIPPEL: Well, I'm going to sustain the objection.
23 Again, you have to ask the witness what she knows about this
24 document.

25 MR. STENGER: Well, I'm asking the witness what she knows

1 about the licenses that her company owns and the leases that her
2 company has signed.

3 JUDGE SIPPEL: Oh, you can ask that question. What do
4 you know about station WRV374 that pertains to this question and
5 the answer, if anything. I mean, what do you know?

6 THE WITNESS: As it pertains to my testimony or as it
7 pertains to the --

8 JUDGE SIPPEL: This document here.

9 THE WITNESS: This document.

10 JUDGE SIPPEL: Just this document.

11 THE WITNESS: Your Honor, may I make a clarification?

12 JUDGE SIPPEL: Go ahead.

13 THE WITNESS: On Page 11 of this document, it notes that
14 my part in the preparation of this document related to the MCLM's
15 intentions and plans regarding the income at stations, and Mr. John
16 Reardon and Robert Smith provide the information regarding the
17 operation of Maritime's incumbent stations. Just clarifying that,
18 but otherwise, the statement that you're referring to is consistent
19 with my testimony at Paragraph 10.

20 MR. STENGER: Well, your testimony in Paragraph 10 says,
21 "This lease impacts Locations 14-16, 18, 25, and 33 of call sign
22 WRV374." Whereas, this answer says, "Locations 14-16, 18, 25, and
23 33 of Station WRV374 are subject to or impacted by" --

24 JUDGE SIPPEL: And/or impacted.

25 MR. STENGER: Yes. Let me go back and --

1 JUDGE SIPPEL: Wait a minute. Are you looking for an
2 inconsistency there? Because I don't see it.

3 MR. STENGER: I'm just trying to figure out which
4 locations are leased and which locations are simply impacted by a
5 lease. That's all I'm asking. What do you mean by impacted?

6 JUDGE SIPPEL: Good question.

7 THE WITNESS: That they're covered in the territory of
8 that lease, so that could refer to specific locations where tower
9 sites are.

10 MR. STENGER: Were you involved in negotiating the lease
11 agreement with Pinnacle Wireless?

12 THE WITNESS: Not in the technical terms, no.

13 MR. STENGER: What aspects of it were you involved in?

14 THE WITNESS: I would be consulted on the financial side
15 of things.

16 MR. STENGER: So are you familiar with the lease between
17 Maritime and Pinnacle Wireless?

18 JUDGE SIPPEL: Well, I'm sorry to interrupt here, we're
19 talking about a permanent intentions to abandon a thing, or
20 something, you know, that issue of burdency, and we're waltzing all
21 around that here. We're not getting to it. I don't understand.
22 Do you know what I'm talking about?

23 MR. STENGER: Your Honor, I believe that --

24 JUDGE SIPPEL: Wait just a minute. Frame the issue, Ms.
25 Kane. What exactly is the issue here?

1 MS. KANE: The issue in the hearing, Your Honor, go to
2 the operations at certain locations, and in particular, I believe
3 what Ms. DePriest is talking about, WRV374, Locations 14 through
4 16, 18, 25, 33, whether the operations of those locations have been
5 permanently discontinued.

6 JUDGE SIPPEL: Right. So what's that got -- those
7 questions that you're asking got to do with this?

8 MR. STENGER: Ms. DePriest, to your knowledge, is
9 Pinnacle Wireless operating any of those locations that Ms. Kane
10 just read off? Is Pinnacle Wireless operating those stations?

11 MS. KANE: Objection. Lack of foundation and outside the
12 scope of her written direct testimony.

13 JUDGE SIPPEL: Well, I'm going to overrule the objection.
14 Again, I'm trying to get to the heart of this thing.

15 MR. STENGER: The heart of it, Your Honor, as I
16 understand it --

17 JUDGE SIPPEL: Well, no, don't paraphrase me. Go back to
18 your question.

19 MR. STENGER: Does the lease require Pinnacle Wireless to
20 operate any of these locations --

21 MS. KANE: Your Honor.

22 MR. STENGER: -- or does the lease provide for Pinnacle
23 -- can I at least finish a question?

24 JUDGE SIPPEL: Yes, please.

25 MR. STENGER: Does the lease require or permit Pinnacle

1 Wireless to actually operate the authorized stations at any of
2 these eight locations?

3 MS. KANE: Your Honor, I object to the extent that Mr.
4 Stenger is trying to delve into the terms of a lease agreement that
5 have been designated by Pinnacle as confidential, and to the extent
6 Mrs. DePriest would respond to that question, and she would be
7 revealing confidential information. Mr. Stenger is not subject to
8 the protective order and is not entitled to hear confidential
9 information.

10 JUDGE SIPPEL: Well, I'm sustaining the objection, but a
11 little slightly different ground. I mean, you're really getting
12 into legal conclusions and everything about documents that are not
13 before her. I mean, this particular document is the only one we're
14 talking about right now.

15 MR. STENGER: And she testified that these locations are
16 impacted by this lease, so I'm asking --

17 JUDGE SIPPEL: Well, wait a minute, it says -- yes, it
18 said, what, impacted by a special lease agreement.

19 MR. STENGER: I'm trying to figure out what she means by
20 impacted. Does she mean that Maritime is -- that Pinnacle Wireless
21 -- that the reason that -- are you saying that Maritime is not
22 operating these stations because Pinnacle Wireless is operating the
23 stations?

24 MS. KANE: Objection. Lack of foundation and
25 mischaracterizes her previous testimony.

1 JUDGE SIPPEL: Well, I'll sustain it, but the point is
2 that, you've answered about what you meant by impacted. She didn't
3 prepare this document. She's trying to help you in terms of what
4 she knows about it and what you're asking her to testify to doesn't
5 seem to be within the scope of that.

6 MR. STENGER: Are you finding that Maritime is unable to
7 operate from these locations because it would interfere with
8 Pinnacle Wireless' operations?

9 MS. KANE: Objection. Lack of foundation.

10 MR. STENGER: I'm still trying to figure out what she
11 means by impacted.

12 JUDGE SIPPEL: No, on cross-examination, I'm going to
13 permit it. Say it again. Can you repeat it one more time?

14 MR. STENGER: Is Maritime claiming that Maritime is not
15 operating these stations because operating them would interfere
16 with Pinnacle Wireless? Is that what you mean by impacted?

17 THE WITNESS: That's not what I mean by impacted.

18 JUDGE SIPPEL: Well, is that true? I mean, is what he
19 said true, that they're not operating it because they'd be
20 interfering or something like that?

21 THE WITNESS: I believe, and I -- so my confidence in
22 terms of testifying to this, but the --

23 JUDGE SIPPEL: Don't testify to it.

24 THE WITNESS: Okay.

25 JUDGE SIPPEL: I don't want to hear you say anything to

1 this testimony here. Let me ask you this. What site are we
2 talking about here? WRV374, Locations, et cetera, again, I'm on
3 Page 9 of the EB 96, it's what we were left with, do you know, is
4 there any -- what do you know about that station WRV374? Is there
5 any equipment there?

6 THE WITNESS: Are you talking about one of the particular
7 locations or this station --

8 JUDGE SIPPEL: Any location you want that's in the scope
9 of that answer there. Do you know anything about the equipment
10 that's there?

11 THE WITNESS: I don't know anything about the specific
12 equipment that's there. I do know that there are sites under lease
13 to Pinnacle and that Pinnacle is operating to the extent that it is
14 able.

15 JUDGE SIPPEL: But you don't know anything -- you don't
16 know anything more about -- you don't know anything about
17 equipment, vis-a-vis, these locations, at V374, I don't want to
18 repeat them now, but it's all in that Page 9, Bullet 2, locations
19 that he has there.

20 THE WITNESS: I have no personal knowledge about
21 equipment at the sites.

22 JUDGE SIPPEL: Do you have any idea at all or any general
23 idea about the equipment?

24 THE WITNESS: I do believe that Pinnacle is still
25 operating under the lease.

1 JUDGE SIPPEL: Okay. That's good enough. Now, I've
2 tried to clarify to that point. Do you want to pick up from there?

3 MR. STENGER: Yes, Your Honor.

4 JUDGE SIPPEL: That's her testimony.

5 MR. STENGER: Yes, Your Honor. If you could lend her
6 your EVH Admitted Exhibits binder again, or maybe she still has the
7 EVH --

8 JUDGE SIPPEL: Yes, I have my own right now.

9 MR. STENGER: The EVH Admitted Exhibits binder.

10 JUDGE SIPPEL: Yes. Oh, I'm sorry, EVH?

11 MR. STENGER: Yes. I'm going to turn to the EVH Admitted
12 Exhibits binder.

13 JUDGE SIPPEL: We're shifting gears here. All right. We
14 have it.

15 MR. STENGER: Okay. And if you turn to EVH Exhibit 350,
16 which is the first one from the back of the book.

17 JUDGE SIPPEL: You've done an excellent job, Mr. Stenger,
18 in terms of customizing this documents compared to what we started
19 out in admissions.

20 MR. STENGER: Thank you, Your Honor.

21 JUDGE SIPPEL: Beautiful job.

22 MR. STENGER: This is a partial -- this exhibit was
23 admitted, in part, by the judge, and it is a printout from ULS
24 regarding a lease between Maritime and Pinnacle Wireless, but it's
25 only a partial printout because only part of the document was

1 admitted into evidence. And it is --

2 JUDGE SIPPPEL: The best it was considered to be
3 irrelevant by Ms. Kane because it was a bad document.

4 MR. STENGER: Unfortunately, the page that shows when the
5 lease approval expired is not here. This shows when the lease was
6 approved, but it doesn't show when the approval expired.

7 MS. KANE: Objection, Your Honor. Counsel is testifying.
8 We'd ask that be stricken from the record.

9 MR. STENGER: That's fine. Do you --

10 JUDGE SIPPPEL: Wait a minute. He's explaining what's --

11 MS. KANE: What's not in the document.

12 JUDGE SIPPPEL: -- in or not in the document. He's not
13 saying -- I don't. I hear the objection, but I think it's
14 perfectly proper for counsel to point out an imperfection of that
15 sign, if it's true. If it's accurate.

16 MR. STENGER: I'm just trying to save the witness time
17 that she shouldn't look for an expiration date.

18 JUDGE SIPPPEL: Yes, I understand. No, I'm supporting
19 you. You don't have to talk. Ms. Kane has to talk. Go ahead.

20 MR. STENGER: I believe Mr. Keller wanted to say
21 something.

22 JUDGE SIPPPEL: Yes, sir, Mr. Keller.

23 MR. KELLER: I just wanted to take exception to the
24 characterization. In certain instances I'm not sure that he's
25 correct to say that the Commission approves leases. You file

1 notifications of them --

2 JUDGE SIPPEL: They don't approve leases. They don't
3 approve leases.

4 MR. KELLER: And they disapprove them. They don't take
5 affirmative action.

6 MR. STENGER: Well, perhaps accepted was the word that I
7 was looking for, Your Honor.

8 MR. KELLER: That's probably better.

9 MR. STENGER: My question, looking at this document is,
10 do you know when the FCC approval, or acceptance, of this lease, do
11 you know when it expired?

12 MS. KANE: Objection, Your Honor. Lack of foundation.

13 JUDGE SIPPEL: Sustained.

14 MR. STENGER: Well --

15 JUDGE SIPPEL: I'll just ask you a question about how
16 much did you know about this lease? How much do you know about
17 that lease?

18 THE WITNESS: I know that it exists and, you know, it's
19 been four or five years since we went into it, but, you know, and
20 I've been into a number of leases, so I'd have to look at the
21 specific terms of that lease to see if it said anything in
22 particular, but --

23 JUDGE SIPPEL: What about expiration?

24 THE WITNESS: I don't think there was one. I mean, I
25 don't think --

1 JUDGE SIPPEL: She's not sure. There's a document in
2 front of her. Well, I guess, why isn't the document in front of
3 her?

4 MR. STENGER: Which document is that? The lease?

5 JUDGE SIPPEL: The lease.

6 MR. STENGER: Well, I have it from the bankruptcy court,
7 but they won't let me use it because they are saying it's
8 confidential here.

9 JUDGE SIPPEL: Well, the problem is, you're creating an
10 issue that doesn't have to exist if you just take my pen and sign
11 that piece of paper. That's all you have to do.

12 MR. STENGER: I'll consult with my client about that,
13 Your Honor.

14 JUDGE SIPPEL: Please do.

15 MR. STENGER: But in the --

16 JUDGE SIPPEL: I'll give him a sandwich until he comes to
17 your agreement.

18 MR. STENGER: My question was not, when did the lease
19 expire, Your Honor, my question is, when did the FCC lease
20 approval, as set forth in this document, when did that expire? If
21 you know.

22 MS. KANE: Objection. Lack of foundation.

23 JUDGE SIPPEL: I'll permit it. Overruled.

24 THE WITNESS: I don't know. I don't know if it states in
25 this document or not.

1 MR. STENGER: Who is Dennis Brown? You see it lists
2 here, Licensee Contact Information, Dennis Brown. Who is that?

3 JUDGE SIPPEL: What page are you on?

4 MR. STENGER: I'm on the front page of this EVH OMs 991.
5 And where it says, Licensee Contact Information for Maritime, it
6 lists Dennis C. Brown. Can you tell me who that is?

7 THE WITNESS: He's one of our FCC attorneys.

8 MR. STENGER: Do you supervise him when he makes filings
9 at the FCC, like this one?

10 THE WITNESS: I did not supervise him on the filing of
11 this document.

12 MR. STENGER: Well, who does he report to?

13 THE WITNESS: He would report to me if he had a question
14 about it. If it were something routine, he would not.

15 MR. STENGER: Does he get your authorization before he
16 makes a filing in ULS?

17 MS. KANE: Objection, Your Honor. We've given him a
18 little leeway, but this is irrelevance.

19 JUDGE SIPPEL: Yes. And asked and answered.

20 MR. STENGER: Okay. Let's turn to --

21 JUDGE SIPPEL: Sustained, by the way.

22 MR. STENGER: -- the explanation of notification page,
23 which is 9916. It's a page that has typewritten information on it
24 and it lists various frequencies. It says, "The following sub-
25 bands are leased to Pinnacle Wireless." Do you see where that --

1 well, let me read the complete sentence before the chart of
2 frequencies. It says, "MCLM has clicked the only spectrum band
3 offered by ULS, but here notifies the Commission of the lease to
4 Pinnacle Wireless of only the following sub-bands."

5 And then it has a bunch of frequencies listed there. Do
6 you see that sentence?

7 THE WITNESS: Yes.

8 MR. STENGER: Okay. So is it your understanding that
9 Maritime is leasing to Pinnacle, all of the frequencies on WRV374
10 or only some of the frequencies?

11 MS. KANE: Objection, Your Honor. Lack of foundation and
12 asked and answered.

13 JUDGE SIPPEL: I'll permit it. Overruled. Go ahead. Do
14 the best you can.

15 THE WITNESS: Could you repeat the question just so I'm
16 clear?

17 MR. STENGER: Is it your understanding, as you sit here,
18 that Maritime is leasing all of the spectrum on WRV374 or only some
19 of the spectrum on that license to Pinnacle?

20 MS. KANE: Objection. Compound and vague.

21 JUDGE SIPPEL: It's overruled.

22 THE WITNESS: While I'm not sure, legally, whether or not
23 what Mr. Graham is talking about when he says that it's clicked the
24 only spectrum band, I do see he's identified sub-bands.

25 JUDGE SIPPEL: Clicked? Where is the word clicked?

1 THE WITNESS: "MCLM has clicked the only spectrum band
2 offered by ULS."

3 JUDGE SIPPEL: What does clicked mean? Do you know? Is
4 there any kind of a technical --

5 THE WITNESS: I'm wondering if it's a computer issue,
6 whether he tried to be able to identify and notify the Commission.

7 JUDGE SIPPEL: All right. That's the best she can do.
8 She doesn't know what a click is. I don't know what a click is.

9 MR. STENGER: Well, I'm asking about the lease and based
10 on this, does this refresh your recollection as to whether you're
11 leasing all the spectrum to Pinnacle or only part of the spectrum.

12 JUDGE SIPPEL: I don't see how it could.

13 MR. STENGER: Okay.

14 JUDGE SIPPEL: You're going to be so much better off
15 getting into those leases if you sign a little piece of paper.

16 MR. STENGER: Well, this document is a matter of public
17 record.

18 JUDGE SIPPEL: Go ahead. How much more do you have to go
19 on this? With this witness, I mean.

20 MR. STENGER: Quite a bit, Your Honor, because, you know,
21 it's been slow going.

22 JUDGE SIPPEL: Well, I hate to tell you this, but it's
23 not because of the witness, necessarily. I mean, you're not asking
24 the questions that go to the gut of the issue.

25 MR. STENGER: Well, her claim, as I understand the gut of

1 the issue, was that, none of these locations are being operated by
2 Maritime because if Maritime operated the locations, they would
3 interfere with what Pinnacle is doing. And what I've just asked
4 her is, are you leasing all the spectrum to Pinnacle, and I guess
5 if I had gotten an answer saying, no, we're not leasing all of it
6 to Pinnacle, or yes, we are, that would help me understand the
7 interference issue.

8 If Maritime still has some spectrum, why can't they
9 operate the stations on the spectrum that they still have? That's
10 what I'm trying to get at.

11 MS. KANE: Your Honor.

12 MR. STENGER: Are you precluded from operating --

13 JUDGE SIPPEL: Wait a minute. Just a second. Let Ms.
14 Kane answer to that.

15 MS. KANE: The last recitation was merely counsel
16 testifying for the record, mischaracterizing Mrs. DePriest's
17 previous testimony, and going far afield from what her written
18 direct testimony is directed to. I'm not sure if there was a
19 question in that, but we've wasted half of the morning with Mr.
20 Stenger and EVH trying to get to the terms of the lease that they
21 have refused to sign a protective, and therefore, don't have the
22 ability to determine.

23 And if this is what it's going to be going forward, then
24 I feel like Your Honor needs to provide some sort of direction.

25 MR. STENGER: I'm not trying to get to the terms of the

1 lease, Your Honor. I'm trying to get to what one word means. The
2 excuse --

3 JUDGE SIPPEL: What word? What word are you looking at?

4 MR. STENGER: word. Impacts. This lease impacts these
5 locations. It's a vague excuse that we're not operating any of
6 these stations because we have a lease that --

7 JUDGE SIPPEL: No, don't characterize it yourself.
8 That's not helping you cross-examine anybody. The witness has --
9 you know, you've done everything you can with this witness on
10 impact, so why don't you move on to another subject.

11 MR. STENGER: All right. If you could look at EVH
12 Exhibit 67.

13 JUDGE SIPPEL: This EVH?

14 MR. STENGER: Yes.

15 JUDGE SIPPEL: These are Bureau Exhibits?

16 MR. STENGER: No. EVH's Exhibit 67.

17 JUDGE SIPPEL: You got it?

18 THE WITNESS: Okay. 67.

19 JUDGE SIPPEL: Okay. And this is a response to
20 interrogatories.

21 MR. STENGER: Yes, Your Honor.

22 JUDGE SIPPEL: What page?

23 MR. STENGER: Pages 8 and 9. At the bottom of Page 8 is
24 the beginning of an answer, 22, which continues over at the top of
25 Page 9. Do you see that answer?

1 JUDGE SIPPEL: 22?

2 MR. STENGER: 22. Begins with an objection.

3 JUDGE SIPPEL: Describe any relationship?

4 MR. STENGER: Yes, Your Honor. Maritime objects to this
5 interrogatory because it seeks information that is not relevant.

6 JUDGE SIPPEL: So what's your question.

7 MR. STENGER: Okay. You testified earlier that Tim Smith
8 works for the National Rural Telecommunications Cooperative, is
9 that correct?

10 THE WITNESS: Yes, as of May 2013.

11 MR. STENGER: And you also testified that within the last
12 few days, you asked him for information about the operation of the
13 WRV374 sites, is that correct?

14 MS. KANE: Objection. Mischaracterizes her previous
15 testimony.

16 MR. STENGER: Well, what was --

17 JUDGE SIPPEL: Well, wait just a second. We got an
18 objection. I'm going to sustain the objection, but I'm going to
19 let counsel proceed further with the laying of proper foundation.

20 MR. STENGER: Well, again, I'll run into another
21 objection, asked and answered, but let me go back then. In
22 preparing for your testimony today, did you ask Tim Smith about the
23 presence or absence of equipment at these various sites.

24 MS. KANE: Objection. Asked and answered.

25 JUDGE SIPPEL: No, that's permissible. That's overruled.

1 Can you answer that question for him?

2 THE WITNESS: Not specifically.

3 MR. STENGER: Well, I thought you said earlier that you
4 consulted with Tim Smith and that's where you got the information
5 about what was at these sites and what wasn't at these sites.

6 MS. KANE: Objection.

7 JUDGE SIPPEL: No, I'm going to overrule that because --
8 I mean, I'm going to sustain that objection because I don't know
9 what context you're talking about. Let's just keep away from what
10 went on before and let's keep going forward.

11 MR. STENGER: Okay. Because Tim Smith works for the
12 NRTC, is that correct?

13 MS. KANE: Objection. Asked and answered.

14 MR. STENGER: Okay. So then --

15 JUDGE SIPPEL: Correct. Sustained.

16 MR. STENGER: All right. Now, the second sentence of
17 this answer says, "This entity has no involvement with respect to
18 Maritime's incumbent licenses." Do you see that sentence?

19 JUDGE SIPPEL: Oh, I'm sorry. Is that the objection,
20 because it's not relevant, that this entity has no involvement with
21 Maritime's incumbent licenses. What's the question?

22 MR. STENGER: So why would Tim Smith, as an employee of
23 the NRTC, have any information about your incumbent stations?

24 MS. KANE: Objection. Lack of foundation. Outside the
25 scope of her direct testimony.

1 JUDGE SIPPEL: Sustained.

2 MR. STENGER: What was the relationship between Maritime
3 and the NRTC?

4 MS. KANE: Objection. Lack of foundation.

5 JUDGE SIPPEL: Sustained. That's got nothing to do with
6 the permanency or not of ceasing operations. I mean, it's just got
7 nothing to do with it.

8 MR. STENGER: Does the NRTC have a claim against Maritime
9 in the bankruptcy proceeding?

10 MS. KANE: Objection, Your Honor. Irrelevant.

11 JUDGE SIPPEL: Sustained.

12 MR. STENGER: Well, Your Honor, Tim Smith is going to be
13 testifying Maritime, and he works for this entity, and this entity
14 has a relationship with Maritime, and so what I'm getting at, or
15 trying to get at from this witness, is an understanding of what the
16 relationship is between Maritime and the NRTC. Tim Smith is not a
17 disinterested -- my point is that Tim Smith is not going to be --

18 JUDGE SIPPEL: He still might tell you the truth. You
19 don't know.

20 MR. STENGER: Okay.

21 MR. KELLER: Your Honor. Tim Smith is going to be
22 testifying because he's a former employee of Maritime. That's the
23 reason.

24 JUDGE SIPPEL: Tim Smith is -- yes, you're asking the
25 wrong witness the wrong question at the wrong time. Getting close

1 to lunch time.

2 MR. STENGER: Okay. Well, let's move on to the EVH
3 Exhibit 429.

4 JUDGE SIPPEL: EVH Number 429.

5 MR. STENGER: Yes.

6 JUDGE SIPPEL: Is it in the same book?

7 MR. STENGER: Yes, in the same book.

8 JUDGE SIPPEL: I've got 428.

9 MR. KELLER: Did you say 429?

10 MR. STENGER: Yes, 429.

11 JUDGE SIPPEL: We have it. Do we have it?

12 MR. STENGER: It's Pinnacle's response.

13 MR. PLACHE: Pinnacle?

14 MR. STENGER: Pinnacle.

15 MR. PLACHE: Your Honor, I've got a problem with this
16 one.

17 JUDGE SIPPEL: Yes.

18 MR. PLACHE: It's highly confidential and it shouldn't be
19 in this exhibit.

20 JUDGE SIPPEL: How did it get in there?

21 MR. PLACHE: I inadvertently served it on Mr. Stenger
22 thinking that he had become subject to the protective order, which
23 means it's a mistake on my part, which he seems to have taken
24 advantage of and made it a public document, and given it to Mr.
25 Havens.

1 JUDGE SIPPEL: Let's forget about that document for now
2 then.

3 MR. STENGER: Fine. Well, let's look at the public
4 testimony of Pinnacle Wireless. If you turn to the Enforcement
5 Bureau binder, the white Enforcement Bureau binder, Number 1.

6 JUDGE SIPPEL: Number 1?

7 MR. STENGER: Yes.

8 MS. KANE: Your Honor, point of clarification. He's
9 referring to written direct testimony of a witness who hasn't
10 testified before Your Honor. And I understand you've admitted the
11 testimony, but that's generally in lieu of live testimony and not
12 in the absence of the witness being on the witness chair.

13 JUDGE SIPPEL: No, for cross-examination purposes,
14 sometimes that's permissible. What are you looking for? No, you
15 can't establish facts.

16 MR. STENGER: No, I want to ask her --

17 JUDGE SIPPEL: What number are you looking for?

18 MR. STENGER: I want to refer to his testimony and ask
19 her what her understanding is.

20 JUDGE SIPPEL: What number exhibit are you looking at?

21 MR. STENGER: I'm looking at Exhibit G, which is -- 1-G.

22 JUDGE SIPPEL: Thank you.

23 MR. STENGER: 1-G.

24 JUDGE SIPPEL: Testimony of Larry Allen.

25 MR. STENGER: Testimony of Larry Allen.

1 JUDGE SIPPEL: Okay.

2 MR. STENGER: I just want to ask this witness her
3 understanding of some of the facts.

4 JUDGE SIPPEL: She's done it before a lawyer. This is
5 Larry Allen's testimony. Why should you be asking this witness and
6 not Larry Allen?

7 MR. STENGER: I'd like to see if her testimony is
8 consistent with what he's saying.

9 JUDGE SIPPEL: Did you look at her testimony and compare
10 it with Allen's?

11 MR. STENGER: Well, I've looked at it and I've been going
12 over it for about an hour and --

13 JUDGE SIPPEL: Well, you're not doing it. There are two
14 different witnesses testifying on different subjects. If Mr. Allen
15 has -- if there's a contradiction in what she has testified to or
16 Mr. Allen testifies to, that's a different question, but you know
17 what? You don't have to cross-examine on that. All you got to do
18 is point that out in proposed findings.

19 When you point to inconsistencies, you want something.
20 I don't know what you're looking to get it straightened out for.
21 Let's go to lunch. Quarter past 12:00 and I'm exhausted. The
22 witness has been on the stand for 18 hours, or something like that,
23 so let's go have a good lunch. We'll come back at -- it's quarter
24 after 12:00, we'll come back at 1:30. Thank you. You're excused.

25 I would caution you, Ms. DePriest, do not talk to counsel

1 about your testimony. It's a tricky area. I just assume you don't
2 talk about your testimony, period. Thank you. Is that okay, Mr.
3 Stenger?

4 MR. STENGER: Yes, Your Honor.

5 JUDGE SIPPEL: Okay.

6 MR. STENGER: Are we allowed to sit here in the room if
7 we desire?

8 JUDGE SIPPEL: You can sit anywhere you want. Don't eat
9 here though. You can't eat here.

10 MR. STENGER: Understood.

11 MS. KANE: Your Honor, we have confidential sets of
12 documents in here that -- there are other rooms in which they could
13 -- either the witness room or maybe you could open up a hearing --

14 JUDGE SIPPEL: Yes, go into the witness room. That's
15 fine. I mean, until you sign that protective order, nobody's going
16 to want to have you around.

17 (Whereupon, the foregoing matter went off the record at
18 12:18 p.m. and went back on the record at 1:31 p.m.)

19 JUDGE SIPPEL: You understand that you're still under
20 oath.

21 THE WITNESS: I do understand.

22 JUDGE SIPPEL: Thank you. What's the decision, Mr.
23 Stenger? Ready to sign?

24 MR. STENGER: Well, Your Honor, I mean, my position
25 hasn't changed. The three contracts are public documents and

1 calling them confidential is just trying to delay and disrupt this
2 proceeding. There's no basis for that if I can go into PACER and
3 find the contracts in the public file of the bankruptcy proceeding.

4 The other thing is, Your Honor, my client is -- and it
5 would drive a wedge between me and my client, which is a small
6 business, for me to have information that I can't discuss with my
7 client. Now, my client will sign a modified agreement that will
8 say that he will keep this information confidential and will not
9 disclose it to third parties, but the pretext that this is somehow
10 business information that he is going to take advantage of, first
11 of all, these are old contracts.

12 What this spectrum sold for or leased or years ago, who
13 cares? Number two, the prices are all out in the marketplace. We
14 know exactly what these deals are. There's no big secret here.
15 And it's just obstructionism for no reason. But if you want to
16 have him sign a confidentiality agreement saying that he will not
17 disclose it to the public, but to say that he is going to use that
18 information to compete against Maritime and Choctaw, I think is
19 tenuous because of the outdatedness of these three contracts, the
20 fact that Maritime voluntarily bankruptcy, which is a proceeding in
21 which you open your books to everyone, and number two, there's
22 another whole proceeding in front of us where they may lose all of
23 these licenses anyway, and so what is he competing against?

24 I think it would cause more delay and disruption for me
25 to sign it than not. And again, I would ask Your Honor to give us

1 an opportunity. I mean, today's testimony is passing us by. By
2 tomorrow morning, we can submit a motion showing Your Honor with
3 copies of what is in PACER in the bankruptcy proceeding, that the
4 documents are there.

5 Anybody can open that account and look at those
6 documents, and we can do that overnight and give it to you tomorrow
7 morning, to try and to get a ruling in time for the testimony. And
8 again, I'm not asking for Mr. Plache's answers to interrogatories,
9 he can keep those, he says the same thing in his testimony, I'm
10 only talking about these three contracts, which are outdated public
11 documents.

12 In fact, one of them was filed in ULS, and you admitted
13 it as an exhibit, except for the price.

14 JUDGE SIPPEL: Well, okay, except for the price. You
15 know, the taller number of exhibits you want, the taller number of
16 frivolous or confidential documents you want, are three leases, and
17 that's all?

18 MR. STENGER: There's one lease, which is the Pinnacle
19 lease, that we've been talking about all morning, which I have
20 right here in front of me from the bankruptcy case, but I've been
21 repeatedly told I can't ask any questions about it because it's
22 confidential, and then there are two asset purchase agreements,
23 combination asset purchase agreements/leases, when they sold the
24 spectrum to Duquesne, they said, we're selling it to Duquesne, and
25 until the deal closes, you can lease it.

1 And when they sold it to Puget Sound, they said, we're
2 selling it to you, but until the deal closes, you can lease it. So
3 they're combination asset purchase agreements. I have all three of
4 them. Those are the only three documents that I'm asking. I asked
5 both parties if they would waive --

6 JUDGE SIPPEL: Wait a minute. Wait a minute. For three
7 witnesses, and that's the end of it forever? Those three documents
8 will satisfy you for all the witnesses that appear to testify now?

9 MR. STENGER: Yes.

10 JUDGE SIPPEL: Mr. Kirk?

11 MR. KIRK: Your Honor, these issues should have been
12 raised in the evidence admission session. I mean, it's
13 sandbagging. This is not new evidence. On the eve of the trial to
14 bring all of this stuff up, we don't know exactly what they're
15 looking at, whether they're the same documents, that's the reason
16 we have an evidence admission session, should have been addressed
17 then, it's too late now, in my view, for them to be raising this
18 issue.

19 MR. STENGER: Actually, I filed an whole motion on this,
20 Your Honor, a motion to --

21 JUDGE SIPPEL: Yes, you did that.

22 MR. STENGER: And Ms. Kane moved to strike it on the
23 grounds that it was, I don't know, premature, or something --

24 JUDGE SIPPEL: Highly obstructive.

25 MR. STENGER: -- that I had already agreed -- I don't

1 know what it was. In the evidence session, I've repeatedly
2 complained about this, and I've said that these are public
3 documents, and so I haven't waived this at all. I've brought this
4 up over and over again. I tried to cooperate with the other
5 parties.

6 JUDGE SIPPEL: Well, you understand that you withdrew the
7 motion.

8 MR. STENGER: Yes, I did, because I didn't want to be --
9 you know, what was going on then was a scheduling session and Ms.
10 Kane said it was disruptive, so I said, rather than -- I wanted to
11 keep the focus on the substantive issues in the case.

12 JUDGE SIPPEL: Okay. Let Ms. Kane reply now.

13 MS. KANE: All right. Well, with regard to the last
14 point, with regard to his motion regarding the protective order, I
15 think he's mischaracterized the Bureau's response. The Bureau
16 properly opposed that motion on the fact that it provided no
17 grounds for seeking reconsideration of the protective order. He
18 did not specifically raise with the court at that time that he
19 wanted to include additional documents.

20 And as Mr. Kirk stated earlier, each of these documents
21 that he's now trying to admit as evidence in this case are
22 documents that have been before the bankruptcy court, if in fact
23 that's even accurate, for quite some time. These are documents he
24 had ample opportunity to present at any period of time, certainly
25 during the time period that we were discussing what the direct case

1 documents are, the Bureau doesn't know what documents it is that
2 he's referring to, whether they even refer to the same documents or
3 are the same documents that are those that have been confidential.

4 We agree that it's sandbagging, and it's -- you know, we
5 are not only at the eve of trial, we are in the middle of the
6 trial. And there was ample opportunity for them to raise this at
7 any point in time, and instead, they've wasted the court's time and
8 the parties' time on motions that were completely irrelevant for
9 the last several weeks when they could have been raising
10 evidentiary issues to the extent they had it.

11 MR. STENGER: Actually, I never asked for reconsideration
12 of the protective order, Your Honor. What I said was that the
13 protective order was being misused and misapplied. Redacting an
14 entire contract and telling me that the entire contract is secret,
15 okay, when you have to put the name of the party into the FCC to
16 get approval, you have to specify what frequencies and locations
17 you're talking about, the other standard terms of the contract are
18 certainly not confidential, even Maritime themselves, when they
19 have gone any place other than here, has said that the only thing
20 confidential is the price.

21 And what I've said repeatedly is, redact the documents in
22 a reasonable fashion. Don't tell me that the entire document is
23 confidential. How can the party, the spectrum, and the site be
24 confidential when that information has to go into the FCC's ULS
25 system to even get approval?

1 JUDGE SIPPEL: And so then how does this possibly impact
2 you or your client if you sign-off to the protective order like
3 everybody else has? Why would that -- you're telling me the
4 reasons why not to give you the relief that you're asking for.

5 MR. STENGER: I'm sorry, Your Honor.

6 JUDGE SIPPEL: I'm saying, you're giving me reasons --

7 MR. STENGER: Because I won't be able to discuss these
8 contracts with my client.

9 MR. KELLER: Your Honor, nobody can. That's the same
10 restriction that applies on every client. I've got confidential
11 documents that I can't discuss with my client either.

12 JUDGE SIPPEL: Go ahead.

13 MR. STENGER: Mr. Havens will agree to keep the
14 information confidential.

15 JUDGE SIPPEL: You can't do that.

16 MS. KANE: Your Honor, no.

17 JUDGE SIPPEL: That destroys the whole purpose for a
18 confidential order. It doesn't work that way.

19 MR. STENGER: Then why can't I have these documents with
20 the price terms redacted just like it was filed in ULS? Why are
21 they redacting the entire document, Your Honor?

22 MS. KANE: Your Honor, if he had signed on to the
23 protective order, there are provisions in the protective order that
24 would have allowed him to review the document and challenge the
25 basis for the confidentiality, and certain processes by which if,

1 in fact, he was able to show a basis for why those documents should
2 not have been designated confidential in their entirety, that they
3 would have been redacted in part.

4 He has not signed on to the protective order and he still
5 refuses to sign on to the protective order, and now he wants to
6 introduce documents that he's obtained from some source that none
7 of us have seen, we can't verify the accuracy of where these
8 documents are originated, and this is out of time.

9 He's had multiple months to prepare for this hearing.
10 You set forth a pre-scheduling order as to when the documents were
11 supposed to be submitted to Your Honor. We had an evidence
12 admission session nearly six weeks ago. He didn't raise this then.
13 And now, while we're in the middle of testimony, we've got a
14 witness on the stand, is not the appropriate time to try and move
15 in additional documents.

16 MR. STENGER: I think the protective order --

17 JUDGE SIPPEL: Just a minute. I've heard from you, Mr.
18 Stenger. How about Mr. Plache?

19 MR. PLACHE: I don't have a lot of sympathy, given that
20 he put in the documents in these binders that have been designated
21 as highly confidential without even -- he knew he had them
22 inadvertently. I mistakenly served him and he didn't even pick up
23 the phone and call me. And I found out for the first time today
24 when I looked at them.

25 JUDGE SIPPEL: Are you willing to allow him to have the

1 document?

2 MR. PLACHE: Which one?

3 JUDGE SIPPEL: The one he's talking about.

4 MR. PLACHE: I don't know which one he's talking about.

5 JUDGE SIPPEL: Mr. Stenger, which document are you
6 talking about with respect to Ms. DePriest?

7 MR. STENGER: The three contracts, the Pinnacle lease,
8 the Duquesne contract, and the Puget Sound contract. And by the
9 way, the protective agreement, as I understand it, has two levels.
10 One is confidential and one is attorney's eyes only. Mr. Havens is
11 happy to sign, and I, are happy to sign the confidential, but the
12 attorney's eyes only would prevent me from communicating with Mr.
13 Havens about stale pricing information that will not be of any
14 competitive benefit to Mr. Havens' companies whatsoever.

15 JUDGE SIPPEL: That's what he's talking about, Mr.
16 Plache.

17 MR. PLACHE: Could I see it? There were five agreements.

18 MS. KANE: This is part of the problem, Your Honor. For
19 many of these agreements between these companies, there are
20 multiple versions, multiple years, we don't know which documents
21 he's referring to, and, you know, we're wasting everybody's time,
22 Your Honor. We've got a witness on the stand.

23 MR. STENGER: I'm fine to proceed with the witness. Your
24 Honor raised this issue.

25 JUDGE SIPPEL: We will proceed. We will proceed, but I

1 want you, as long as Mr. Plache's in the courtroom, have an
2 opportunity to talk to him about this, and if you can come out to
3 some kind of agreement. We have one document that's in the record
4 where you questioned her early this morning, where we just crossed
5 out the amounts of money.

6 There were two amounts of money, money for --

7 MR. STENGER: That was actually the Duquesne contract,
8 Your Honor.

9 JUDGE SIPPEL: Okay. What about --

10 MR. STENGER: Your Honor, I object to the Bureau
11 mischaracterizing the situation, saying that there are multiple
12 iterations of all these documents. There's one Duquesne contract,
13 there's one Puget Sound contract, there are several historical
14 leases with Pinnacle, but I only care about the current one, and I
15 specified, when I spoke to everyone this morning -- well, the
16 allegedly currently lease, I specified this morning that it is the
17 Bureau's Exhibit 53. The spectrum lease agreement between Pinnacle
18 and Maritime.

19 Yes, there's an old lease in here between Pinnacle and
20 Mobex. No, I'm not concerned about that at the moment. So I'm
21 only asking for three documents, not multiple iterations of
22 numerous contracts entered into over many years, just three
23 documents.

24 JUDGE SIPPEL: That's not the point. That's not the
25 point. The point is that, she doesn't know what iteration it's

1 going to -- if there are many iterations, or several iterations,
2 she is not going to know which it is if you show her. Okay. I'm
3 going to stick with my guns. I'm going to say, you have to sign
4 the order before you're going to get documents which have been
5 protected under the protective order, period.

6 Now, let's start back with the witness. And please have
7 the documents ready.

8 MR. STENGER: Yes, Ms. DePriest, if you could turn to the
9 EVH binder, Admitted Exhibits binder, Number 209, is a copy of the
10 license WHG750.

11 JUDGE SIPPEL: EVH Exhibit 209. What page?

12 MR. STENGER: Just the front page of it, Your Honor.
13 It's just a reference copy of the license.

14 JUDGE SIPPEL: I see it.

15 MR. STENGER: WHG750. Is this the license that's
16 involved in the Maritime contract with Duquesne?

17 THE WITNESS: I don't know it by number. I'm so sorry,
18 I don't know by number.

19 MR. STENGER: Well, in your testimony, if you refer back
20 to your testimony, in Paragraph 7 of your testimony, this is the
21 Enforcement Bureau Exhibit 1-D is your testimony.

22 THE WITNESS: Yes.

23 MR. STENGER: And Paragraph 7 says, "500 kilohertz of
24 Block B of call sign WHG750 is subject to an asset purchase
25 agreement and spectrum lease with Duquesne Power and Light." Is

1 that correct?

2 THE WITNESS: Yes.

3 MR. STENGER: Okay. Now, as you look at this license
4 that's in front of you here, there are two frequency bands listed.
5 Do you know which one of those is Block A and which one is Block B?

6 MS. KANE: Objection. Lack of foundation.

7 MR. STENGER: Well, she's the president of the company.

8 JUDGE SIPPEL: I'm going to overrule the objection. On
9 our exhibit lists, this is referred to as -- yes, it's called
10 Marine Coast Station Authorization. Marine. Is that supposed to
11 be -- well, that's what we have. I don't know if that's accurate
12 or not.

13 MR. STENGER: Yes, Your Honor.

14 JUDGE SIPPEL: Where does it say Marine Coast on your --
15 Mobex?

16 MR. STENGER: Are you looking at EVH Exhibit 209?

17 JUDGE SIPPEL: MC. It says, MC Coast Radio Service, MC
18 --

19 MR. STENGER: Coastal Group. The AMTS service is part of
20 that MC Coastal Group of licenses.

21 MS. KANE: Objection, Your Honor. Counsel is now
22 testifying.

23 MR. STENGER: I'm just trying to answer his question.

24 JUDGE SIPPEL: He's clarifying.

25 MR. STENGER: Let me make my question more simple. With

1 regard to the Paragraph 7 of your testimony, you say that you sold
2 500 kilohertz of Block B on call sign WHG750 to Duquesne Light.
3 Okay. After consummating that sale, would you still own any other
4 spectrum on that license?

5 MS. KANE: Objection to the extent it mischaracterizes
6 her written direct testimony.

7 JUDGE SIPPEL: I'm going to overrule the objection. I
8 want to move forward. Please answer if you can.

9 THE WITNESS: I don't know.

10 MR. STENGER: Is it correct that Block A has been
11 canceled and so there is only Block B on the license, is that
12 correct?

13 MS. KANE: Objection. Lack of foundation and outside the
14 scope of her written direct testimony.

15 JUDGE SIPPEL: Overruled. Wait for your answer.

16 THE WITNESS: In terms of technical understanding, I
17 don't know the difference between Block A and Block B, which ones
18 are the -- I mean, I know A were the geographic licenses and B were
19 the, you know, the licenses that we purchased from Mobex, so if
20 you're -- you know, I'm not sure I'm the one to answer that
21 question.

22 MR. STENGER: Your testimony says that 500 kilohertz of
23 Block B was sold to Duquesne, is 500 kilohertz, does that comprise
24 all of Block B or is there more kilohertz in Block B?

25 MS. KANE: Objection. Lack of foundation. She's already

1 testified she doesn't have specific knowledge.

2 JUDGE SIPPEL: It's cross-examination. There's leeway to
3 be granted here. Go ahead.

4 THE WITNESS: I don't know.

5 JUDGE SIPPEL: See, that's what we're stuck with. I wish
6 you'd be more pointed with your questions. You keep going back to
7 these documents and seeing how much the witness knows about the
8 document. You haven't even gotten over into the issue that we're
9 litigating here.

10 MR. STENGER: Let me try and ask a more pointed question.

11 JUDGE SIPPEL: Let me ask a question first.

12 MR. STENGER: Oh, all right.

13 JUDGE SIPPEL: As the president of the company now,
14 you've established yourself as being cognizant, or at least being
15 responsible for certain important decisions that the company has to
16 make. In the context of your -- and what are the roles do you
17 serve, by the way? Is that your sole job, pre and present, at
18 Maritime? Is that all you do for them?

19 THE WITNESS: No, sir. I'm an Episcopal Priest.

20 JUDGE SIPPEL: You are that.

21 THE WITNESS: Full-time job. And what I do --

22 JUDGE SIPPEL: What else do you do?

23 THE WITNESS: Since 2005.

24 JUDGE SIPPEL: Why else do you do it? You don't practice
25 law.

1 THE WITNESS: No.

2 JUDGE SIPPEL: So you're an Episcopal Priest. Do you
3 have a parish?

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: Okay. And you're the pastor of that
6 parish?

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: And so you've got that. Do you live in a
9 parish home or --

10 THE WITNESS: No.

11 JUDGE SIPPEL: You live elsewhere.

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: All right. What other businesses or
14 professions are you engaged in?

15 THE WITNESS: In 2005 --

16 JUDGE SIPPEL: Today.

17 THE WITNESS: Okay. Well, today, no other. So, you
18 know, this undertaking was in 2005.

19 JUDGE SIPPEL: Right. I understand that. But I was
20 thinking in terms of your testimony today. For example, you were
21 assisted in the preparation of your testimonial exhibit.

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: Yes. So to that extent, did that
24 information bring you up to date or did you know that information
25 and someone was just putting it in the proper form for you?

1 THE WITNESS: Most of it is technical information that --

2 JUDGE SIPPEL: How you even known it before?

3 THE WITNESS: The details of the technical information,
4 I did not pay attention to. I trusted the engineers and John
5 Reardon to manage, you know, the frequencies and he would inform
6 me, you know, when we were selling, we're going to sell these
7 frequencies, these pair of frequencies, well, at least these pair
8 of frequencies or these, and he would say that, but in terms of
9 technically understanding, you know, the engineering aspects of it
10 or how that would be divided up, and how one frequency might be
11 split up, I'm technically illiterate.

12 JUDGE SIPPEL: All right. So how is the information in
13 your day-to-day operation as a president of an -- I'm assuming you
14 think of it as an ongoing business?

15 THE WITNESS: Actually, I do not, and have not.

16 JUDGE SIPPEL: Because it's in bankruptcy.

17 THE WITNESS: Since the 1st of August 2011, and we've
18 actually -- and so much of it has been tied-up in litigation since
19 2005 that I had to go back into full-time ministry. I had intended
20 to devote a lot more of the time beginning 2003, or actually,
21 beginning January 2004, to this, but when it became involved in
22 litigation, I haven't really been able to do that.

23 So we've had to rely on John Reardon and Tim Smith for
24 the technical aspects of it.

25 JUDGE SIPPEL: Well, Mr. Reardon and Mr. Smith, did they

1 have a -- and/or Mr. Smith, did they report to you as the president
2 of the company?

3 THE WITNESS: They did.

4 JUDGE SIPPEL: Do they, as a regular course of their
5 business, let's say, once a month, do you get briefed on what the
6 company is doing?

7 THE WITNESS: I get emails from John Reardon weekly about
8 anything that needs a renewal or discussing some addition to a
9 lease or something like that.

10 JUDGE SIPPEL: Where are those emails? Did anybody ever
11 ask for those emails in discovery?

12 MS. KANE: I believe, Your Honor, we did ask for those
13 emails, but many of -- I believe the timeframe that Mrs. DePriest
14 is testifying to predated the HDO because the HDO was issued just
15 two months before the company went into bankruptcy, and --

16 JUDGE SIPPEL: It was issued in 2011, but I can't
17 remember --

18 MS. KANE: The HDO was issued in April of 2011.

19 JUDGE SIPPEL: Yes.

20 MS. KANE: And I don't know if all of the emails existed
21 between Mrs. DePriest and John Reardon, so I don't know what was
22 actually produced to us, but I'm not sure that that is relevant to
23 the issues here, Your Honor.

24 JUDGE SIPPEL: Do you know if that information was asked
25 of the company, Mr. Keller?

1 MR. KELLER: I don't recall. I'm sure there were emails
2 produced. What specifically was requested in terms of emails, I
3 don't recall.

4 JUDGE SIPPEL: All right. Well, they were emailed to --
5 there were emails that hit Ms. Duquesne's -- Mrs. DePriest, that
6 hit Mrs. DePriest's desk. In other words, there were some in there
7 pertaining to her.

8 MR. KELLER: I couldn't say what they were about or not.

9 JUDGE SIPPEL: Okay. But you said that Mr. Reardon and
10 Mr. Smith kept in -- keeps, I should say, keeps in regular contact
11 with you in terms of what's going on with the business.

12 THE WITNESS: Mr. Smith, not since the bankruptcy,
13 really, and then --

14 JUDGE SIPPEL: Now, by that date, you mean it's the date
15 that you went into bankruptcy, or the day.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: And Mr. Reardon?

18 THE WITNESS: I hear from him when it's time to update or
19 negotiate a sale or a lease renewal, or something.

20 JUDGE SIPPEL: Are there other shareholders of the
21 companies, or of the -- let's say of Maritime. Are there other
22 shareholders of Maritime other than your husband and --

23 THE WITNESS: There was a 2.2 percent owner, who I think
24 has been bought out some time ago, Mr. Fred Goad (phonetic).

25 JUDGE SIPPEL: But nobody else?

1 THE WITNESS: No.

2 JUDGE SIPPEL: Well, I'm having difficulty understanding
3 how would you know whether or not these stations are functioning in
4 any way?

5 THE WITNESS: Well, I rely on John Reardon and Tim Smith.

6 JUDGE SIPPEL: Yes, but you should still have to know
7 what assets your company has as its president, I would think.

8 THE WITNESS: I have been detailed in our bankruptcy
9 proceeding, in the outline.

10 JUDGE SIPPEL: You do have them. That's a document that
11 was filed.

12 THE WITNESS: Yes. Those have been produced. Yes, sir.

13 JUDGE SIPPEL: Has anybody asked for discovery of those?

14 MS. KANE: Your Honor, the Bureau had access to the
15 bankruptcy pleadings and the assets of Maritime are outlined in
16 there.

17 JUDGE SIPPEL: Yes, but are they in here as an exhibit in
18 any place?

19 MS. KANE: They're not in the exhibits for this
20 proceeding, Your Honor, because there hasn't been any dispute as to
21 what licenses are in dispute or whether they're assets of Maritime.

22 JUDGE SIPPEL: Yes, but okay. Yes, we know the licenses
23 are assets, all right, but what about, have there been any
24 documents sought that would demonstrate that they are present and
25 that they have not been discontinued?

1 MS. KANE: Your Honor, I can't speak to all the documents
2 in the bankruptcy. What I can speak to are the documents that the
3 Bureau has obtained. They don't go into detail about the
4 operational status of each of these licenses. The information that
5 we have with regard to that has been presented to Your Honor as
6 part of our exhibits and part of the written direct testimony in
7 this case.

8 JUDGE SIPPEL: Well, was there ever any interrogatory
9 asked specifying what assets actually function at each of these
10 sites; each of these site licenses?

11 MS. KANE: There's been numerous interrogatories, Your
12 Honor, and all of them are part of the record in which the Bureau
13 has asked Maritime to identify the operational status of each of
14 the licenses at issue here today.

15 JUDGE SIPPEL: And have they been answered?

16 MS. KANE: Yes, Your Honor.

17 JUDGE SIPPEL: Well, then what --

18 MS. KANE: Otherwise we would have moved for a motion to
19 compel, which I believe we did very early in the case, so we've
20 gotten the responses to the questions that we've asked.

21 JUDGE SIPPEL: Then why isn't there some document to put
22 before the witness that reflects all this information? Is there
23 anything in the record of that?

24 MS. KANE: Your Honor, I'm sure there's plenty of
25 documents, but it's not my witness to cross-examine.

1 JUDGE SIPPEL: No, it's your witness -- yes, but you
2 should know about your witness. And again, you didn't know when
3 you were going to take this side anyway until you had -- you know,
4 looked at everything. That's not the point. The point is, is some
5 document like that around to put in front of this witness? We'd be
6 saving a heck of a lot of time.

7 MS. KANE: Your Honor, maybe this will help somewhat, but
8 Mrs. DePriest is here as a personal knowledge. She's not here as
9 a corporate witness, she's not here as a representative of
10 Maritime. This is not --

11 JUDGE SIPPEL: Really?

12 MS. KANE: No, this is not consistent with a Rule
13 30(b)(6) witness that you would have as a corporate representative.
14 She's here to testify about her personal knowledge. That's what
15 she has testified to.

16 MR. STENGER: I'm shocked at this statement. I mean, the
17 first sentence of the testimony says, "My name is Sandra DePriest.
18 I am president and sole director of Maritime Communications." I
19 thought I was questioning the president of Maritime Communications.

20 JUDGE SIPPEL: I'll concur with that. I thought the same
21 thing.

22 MS. KANE: Your Honor, she's here because she has
23 knowledge about Maritime, but she's not here to know the entirety
24 of information that would be known by a corporate witness for
25 Maritime. It's not the same as a Rule 30(b)(6) witness under the

1 federal rules of civil procedure where she would be obligated to
2 learn all of the information that had been presented by this
3 company.

4 She's here as a president of Maritime to present her
5 personal knowledge. That's what she's here to present.

6 JUDGE SIPPEL: Well, you're not saying this, you're not
7 saying that Maritime is not bound by the answers that this witness
8 gives.

9 MS. KANE: Correct.

10 JUDGE SIPPEL: Well, that's impossible.

11 MR. STENGER: She's the only witness --

12 JUDGE SIPPEL: Mr. Keller, can you shed some light on
13 this?

14 MR. KELLER: Well, I can't comment on the 30(b)(6) and
15 all that. I can say that, in reviewing the documents, or the
16 testimony in this case, the pre-filed testimony, this witness can
17 only testify to what she personally knows, what she personally
18 knows as the president of the company, as the president of any
19 company, is sort of a high-level overview. There are other
20 witnesses who will be testifying who have the specific more
21 detailed information on the day-to-day operations.

22 JUDGE SIPPEL: But did you not understand that when she
23 wrote testimony, which you assisted her in doing, that statement,
24 her testimony, written statement, on her own, was being offered on
25 behalf of her as the president of the company, and that the company

1 would be bound by what's in that testimony?

2 MR. KELLER: I thought it was being offered as a witness
3 for the Bureau in the presentation of its direct case, and it would
4 be facts, and I don't know that -- I don't know what you mean by,
5 bound by it. I mean, obviously, if there's some inconsistency
6 between her testimony and somebody else's testimony, it'll have to
7 be resolved. I'm not sure I understand.

8 JUDGE SIPPEL: I see. You're saying -- well, in the
9 capacity of her being president who observes certain things,
10 certain information came to her attention.

11 MR. KELLER: Right.

12 JUDGE SIPPEL: And you say it was only in the context of
13 her being privy to that information that her testimony is not
14 relevant to Maritime establishing --

15 MR. KELLER: No, no, no, what I'm saying is, it's not
16 unusual for a president or the top of the company to know every
17 little detail. She's here to testify to what she knows. A lot of
18 the stuff was, why don't you know this? Why don't you know that?
19 Well, there are other witnesses who will know those things.

20 JUDGE SIPPEL: I understand that. But she is testifying
21 in her capacity as president of Maritime.

22 MR. KELLER: Yes. Well, that's the basis for her
23 knowledge. Yes. That's the reason she knows these things. The
24 reason that's the first statement in her testimony, I presume, is
25 because that's the foundation for why she would even have this

1 personal knowledge.

2 JUDGE SIPPEL: So as an employee of the company, which is
3 what a president is, she would be -- she's both an employee and an
4 agent of the company, she's testifying as to -- her testimony binds
5 the company. Now, it doesn't mean to say the company -- she can't
6 say that I can't remember, or that kind of thing, doesn't mean I'm
7 establishing the fact that the company can't remember, but if she
8 says that, you know, the policy of the company is to do this, it's
9 to operate stations, I think that that confirms that the company is
10 out there operating stations, in some way, shape, or form.

11 MR. KELLER: I understand.

12 JUDGE SIPPEL: Do you agree with that?

13 MR. KELLER: Well, yes, we will certainly rely on -- when
14 I write my proposed findings I'm going to rely on all the
15 testimony. If this witness has testified to something about what
16 Maritime knows, what Maritime does, I'll certainly rely on that.
17 I won't contradict it unless there's something else that
18 contradicts it and we need to resolve the conflict.

19 JUDGE SIPPEL: I understand that. There seems to be a
20 quibble that I'm running on constantly that she's testifying -- she
21 can't testify on behalf of the -- she can't be testifying on behalf
22 of the company.

23 MR. KELLER: Well, I understood that to mean that she's
24 not here as a witness who's expected to know all the details of the
25 company.

1 JUDGE SIPPEL: I understand that. I didn't say that.

2 MS. KANE: Your Honor, I'm not sure that I meant to say
3 she can't bind the company through her testimony as an officer of
4 the company. Pursuant to the federal rules of civil procedure, if
5 that's what we were proceeding with today, then yes, she would be
6 binding the company with her statements. All we were saying is
7 that she's not being treated as a corporate witness, and therefore,
8 did not have the obligations pursuant to which to learn all the
9 information that the company may have as a whole beyond her
10 personal knowledge.

11 JUDGE SIPPEL: Well, you're not proffering her in that
12 capacity.

13 MS. KANE: Correct, Your Honor.

14 JUDGE SIPPEL: Which is a nuts-and-bolts witness. You're
15 not proffering her as I think that you were, but, you know, I don't
16 care whether it's under the federal rules of evidence or whether
17 it's under common law. I mean, an officer of a company, senior
18 officer of a company, generally, can bind the company, and that's
19 all I'm trying to establish here, that she's speaking on behalf of
20 the company.

21 There's not some other person that's going to come in and
22 say, no, I have more authority than she does. I'm the chairman and
23 she doesn't have the authority to bind the company, or that there's
24 some document, some business document, on file that says that she
25 can be president in name only and she's not going to bind the

1 company on it. This is business decisions.

2 MR. KELLER: I agree.

3 MS. KANE: I think we all agree, Your Honor.

4 MR. KELLER: But there may be a witness that comes and
5 says she knows more than --

6 JUDGE SIPPEL: Of course. If the company was engaged in
7 trucking, the mechanic that fixes the truck would know more about
8 the truck than she would know.

9 MR. STENGER: On that regard, Your Honor, I would just
10 point out that this is the only witness from Maritime.

11 JUDGE SIPPEL: Reardon isn't here?

12 MR. STENGER: Reardon works for Choctaw. He doesn't work
13 for Maritime and this Tim Smith guy works for the NRTC. He doesn't
14 work for Maritime either.

15 JUDGE SIPPEL: Yes, but he worked there --

16 MR. STENGER: A former employee. That's a different
17 time. Just pointing that out. This is the only current employee.

18 JUDGE SIPPEL: If Ms. Reardon was simply a priest, but
19 she had served as president of the company, we'd still want her to
20 testify.

21 MR. KELLER: Your Honor, it's already been testified to
22 this morning, and is otherwise clear in the documents too, John
23 Reardon and Tim Smith were employees of the company during most of
24 the operative times in question, were the two employees who were
25 most directly hands-on involved, and was also, since the bankruptcy

1 confirmation, there's been a management agreement between Choctaw
2 and Maritime, and under the auspices of that management agreement,
3 John Reardon, on a much reduced scale than before, performs many of
4 the same services and duties as he did as an employee of the
5 company.

6 JUDGE SIPPEL: All right. We will ask Mr. Smith and Mr.
7 Reardon what their -- they're both on the list, isn't that right?

8 MS. KANE: Yes, Your Honor.

9 JUDGE SIPPEL: While these reports came to you, whether
10 they were by email or whatnot, were you told that on such and such
11 a company of a site, doing them by stations, let's say, that, you
12 know, this company has ceased operations?

13 THE WITNESS: No, Your Honor, I was not given that
14 notification.

15 JUDGE SIPPEL: So do you know which of the company's
16 assets are currently in operation?

17 THE WITNESS: I do, based on reports. I mean, I
18 generally do. I generally do.

19 JUDGE SIPPEL: You generally do.

20 THE WITNESS: Generally do.

21 JUDGE SIPPEL: But if we ask you about a specific station
22 and exactly what the status of its operations were today, you would
23 have, at best, difficulty answering that question?

24 THE WITNESS: I would have to confer with notes and
25 conversations.

1 JUDGE SIPPEL: All right. Is it your -- well, what is
2 Maritime's intentions? What is its business plan as we sit here
3 today?

4 THE WITNESS: As we sit here today, because of the
5 bankruptcy, we have proposed to sell the stations to Choctaw as a
6 -- to acquire those stations, to then continue the marketing and
7 operation of the stations.

8 JUDGE SIPPEL: Oh, for them to continue the operations.

9 THE WITNESS: For them to continue the operation of the
10 stations under the Second Thursday Doctrine. That is the plan.
11 That was our plan. Now, if that is -- if the Second Thursday is
12 upheld, that would proceed, if it is denied, we would go through
13 the hearing, and if we prevailed at the hearing, which I would hope
14 that we would do, then we would, again, go back into the operation
15 of whatever we have.

16 JUDGE SIPPEL: So right now, as far as you're concerned,
17 Maritime really is not in operation.

18 THE WITNESS: The entity is a debtor-in-possession that
19 has contracted with Choctaw to operate.

20 JUDGE SIPPEL: But if you're a debtor-in-possession,
21 let's say, and you had a -- well, let's say you had a coal mine,
22 you might want to keep that coal mine operating while you were a
23 debtor-in-possession.

24 THE WITNESS: Absolutely.

25 JUDGE SIPPEL: That's going to cut back -- or else

1 somebody would be interested in coming in and buying you out or
2 doing something on behalf of who, or trainers and all that type of
3 things.

4 THE WITNESS: That's correct. We're trying to keep our
5 leases current and if someone wants a couple of extra channels
6 within that, we want to make sure they get those.

7 JUDGE SIPPEL: But are you aware of the situation that
8 there's a provision in the FCC rules that there's an automatic
9 cancellation if it turns out, if at any time, any of these stations
10 are not -- become inoperative and are not likely to become
11 operative again, you're aware of that standing.

12 THE WITNESS: I'm aware that it's based upon our
13 intention and I do not intend to allow these stations to become
14 permanently inoperable.

15 JUDGE SIPPEL: Yes, are you a chief operating officer?

16 THE WITNESS: No, sir.

17 JUDGE SIPPEL: Who would the chief operating officer be?

18 THE WITNESS: That would have been -- the person in that
19 current role would have been John Reardon.

20 JUDGE SIPPEL: All right. But as president, wouldn't you
21 know, if I asked you the question, how you intend to go back into
22 business if you win this case? If you win everything in these
23 cases, how are you going to return to business? You're in
24 bankruptcy and what do you want to take to accomplish that, in
25 bankruptcy, as a going concern, as opposed to a -- well, how would

1 you characterize Maritime? Are you winding-up business or are you
2 an ongoing business?

3 THE WITNESS: The effect of the bankruptcy, as it stands,
4 is that we filed a application to transfer the assets of the
5 business, but that is pending, and it was approved by bankruptcy
6 court. The sale was approved by the bankruptcy court. We are
7 seeking approval at the FCC level to do that to benefit the
8 creditors.

9 JUDGE SIPPEL: Okay. Well, I won't go into detail on
10 that, but what is it that is out there as an asset? Is it an
11 ongoing company?

12 THE WITNESS: The company is still operating with pending
13 applications for transfer for the asset purchase agreements --

14 JUDGE SIPPEL: We know how that's frozen, because --

15 THE WITNESS: Exactly, and the leases, there are still
16 leases in operation that are identified here.

17 JUDGE SIPPEL: But what about the broadcasting
18 operations, if I can call it that term, for the AMTs? How is the
19 company dealing with respect to operating those station
20 allocations? Do you know what I'm saying? Are you attempting or
21 is it part of your job to oversee that these stations continue to
22 operate or have some kind of a plan for operating?

23 THE WITNESS: For those entities that are currently under
24 a contract or provision for sale, those, we're trying to keep those
25 operating, and to keep those facilities in business.

1 JUDGE SIPPEL: All right. So if you were president --
2 I'm just coming to you and say, you know, you're president, and I'm
3 interested in what you have there, can you just tell me about it?
4 Tell me what these properties are and how are they -- how do you
5 intend to operate these business? Are they in operations today,
6 for example?

7 Can you go down these licenses one-by-one and tell me
8 whether it's in operation today?

9 THE WITNESS: I could do it with the help of John Reardon
10 and Tim Smith.

11 JUDGE SIPPEL: Yes.

12 THE WITNESS: But not independently.

13 JUDGE SIPPEL: Okay. And why is that?

14 THE WITNESS: Because I know the generalities. I know
15 the areas where we have the geographic licenses and what the --
16 technically, as far as what would be available that would not
17 interfere with something that is currently operating or that would
18 meet the needs of this particular purchaser, or lessor, then, or
19 lessee, then I would need to get that technical information from
20 the people who know that.

21 JUDGE SIPPEL: Well, do you know what properties, if any,
22 that have permanently discontinued operation?

23 THE WITNESS: I know that many, over, like, 150-plus,
24 160-plus, of the incumbent licenses that were applied from Mobex,
25 network services have --

1 JUDGE SIPPEL: I know those.

2 THE WITNESS: -- been -- have lapsed or allowed to be
3 discontinued because we were not able to continue to operate those
4 or to build-out systems there because we were broke.

5 JUDGE SIPPEL: Okay. Now, what about these 16 licenses
6 that are now in issue? We understand that 150-some-odd of those
7 have gone back to their original mother, so to speak. I'm using
8 that term very colloquially. The 16 children that you have left,
9 which of those are operating so that they could -- in the sense
10 that they are permanently in operation? Which of those 16, that
11 would be sites, isn't that correct?

12 THE WITNESS: Yes or call signs.

13 JUDGE SIPPEL: Yes, call signs.

14 THE WITNESS: They may have multiple sites within them.

15 JUDGE SIPPEL: Multiple sites within them. Yes. So if
16 I'm talking to you about, over lunch, buying your company, can you
17 tell me which sites you have that are permanently in operation
18 because I want to make this business decision with you?

19 THE WITNESS: Well, the sites that we have that are
20 permanently in operation on these 16 are largely under lease or
21 contract.

22 JUDGE SIPPEL: All right. Whatever they are. The fact
23 is, what are they doing that leads you to conclude that you can
24 tell me that they're permanently in operation?

25 THE WITNESS: Well --

1 MR. ENGEL: Your Honor, if I may, you've got it
2 backwards. It's not that you have to show they're permanently in
3 operation, it's that they weren't permanently discontinued.

4 JUDGE SIPPEL: Well, I was going to start with
5 permanently in operation, then I'll go to the next one. Do you
6 know? Let's start currently, I'll sustain his objection, just that
7 are operating today. I'm having a business lunch with you.

8 THE WITNESS: The Pinnacle system is in New Jersey and
9 they are operating along corridors to provide --

10 JUDGE SIPPEL: Now, through --

11 THE WITNESS: I-35.

12 JUDGE SIPPEL: The Turnpike.

13 THE WITNESS: Yes, to provide communications among, you
14 know, whether it's emergency services or police, fire, those kinds
15 of services --

16 JUDGE SIPPEL: Yes, I know what you mean.

17 THE WITNESS: Communication services, so they're
18 currently operating there.

19 JUDGE SIPPEL: That's going on today.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: All right. By virtue of a lease that's
22 been -- so they're legally operating under Maritime's lease
23 agreement with them.

24 THE WITNESS: Yes.

25 JUDGE SIPPEL: Existing lease agreement with them.

1 MR. STENGER: Your Honor, we you please allow --

2 JUDGE SIPPEL: Do you have any questions about the
3 turnpike?

4 MR. STENGER: Your Honor, I believe that, you know, great
5 confusion is being caused here. Ms. Kane made an opening statement
6 this morning and she said that the Bureau's understanding, and the
7 foundation of where they are, is that none of these 16 stations are
8 operating; not a single one. However, she said the issue before
9 Your Honor is the intent of Maritime as to whether they may ever
10 put any of these 16 stations back into operation.

11 And one thing that is relevant to that is whether there
12 is any equipment left at any of these 16 stations.

13 JUDGE SIPPEL: Well, I'm going beyond equipment.

14 MR. STENGER: And what the witness just testified to is
15 that the eight locations that are on WRV374 in Newark and New
16 Jersey --

17 JUDGE SIPPEL: That's Pinnacle.

18 MR. STENGER: They are being operated by Pinnacle, and
19 the sworn testimony that's been submitted by every interrogatory,
20 every other witness up to this time, is that Pinnacle is not
21 operating a single one of those licensed facilities. Pinnacle is
22 operating a system of their own that has nothing to do with any of
23 the eight locations that are licensed to Maritime.

24 And Maritime's excuse for having its stations turned off
25 is that if it had its stations turned on, it would interfere with

1 the other stations that Pinnacle is operating. And so what the
2 witness has just testified to --

3 JUDGE SIPPEL: Okay.

4 MR. STENGER: -- is contrary to everything in the --

5 JUDGE SIPPEL: No, stop there. Stop there. Now, that's
6 Mr. Stenger's view of us going on up and down the turnpike. What's
7 your view of it? Do you see it his way or do you see it
8 differently?

9 THE WITNESS: Technically, I know that Pinnacle is
10 operating and I think they're using some fill-in sites for their
11 coverage.

12 JUDGE SIPPEL: That's their own idea, though, right?
13 That has nothing to do with what you did.

14 THE WITNESS: Well --

15 JUDGE SIPPEL: When I say you, I mean, the company.

16 THE WITNESS: -- it's within the contours of the lease,
17 so I feel like they're authorized to do that.

18 JUDGE SIPPEL: But you didn't sign any special agreement
19 to that effect. You just had a general lease agreement.

20 THE WITNESS: Agreement with them. Yes, sir.

21 JUDGE SIPPEL: So you think they're authorized to do
22 that.

23 THE WITNESS: Yes, Your Honor.

24 JUDGE SIPPEL: The fact that now -- okay, let me skip
25 back to -- are you talking about that? Now, wait a minute, are you

1 talking about that? Is that true what she says?

2 MR. STENGER: I have two questions for the witness based
3 on the testimony that she just gave.

4 JUDGE SIPPEL: Go for it. Go for it right now.

5 MR. STENGER: Number one is --

6 JUDGE SIPPEL: He's going to ask you a question now.

7 MR. STENGER: Okay. How do you know what the contours
8 are of the WRV374 license that you claim that Pinnacle is operating
9 within? How did you determine your contour?

10 MS. KANE: Objection, Your Honor. That calls for a legal
11 conclusion as to what constitutes a contour pursuant to the
12 Commission's rules for it.

13 JUDGE SIPPEL: Well, he asked, actually, two questions.
14 He put in the baloney and then he put --

15 (Laughter)

16 JUDGE SIPPEL: He's asked about -- let's take the first
17 part of his question, the baloney part, what do you know about the
18 contours that were part of that lease?

19 THE WITNESS: Specifically, where they fall, I don't have
20 any specific knowledge of that.

21 JUDGE SIPPEL: All right. There's your answer. She
22 doesn't know the contours off the top of her head.

23 MR. STENGER: Well, but she just testified, Your Honor,
24 that Pinnacle was operating within the contours of her license, so
25 how could she make that statement if she doesn't know what the

1 contours are?

2 JUDGE SIPPEL: Because she has a general knowledge that
3 justifies, in her mind, that conclusion.

4 MR. STENGER: All right. I guess my second --

5 JUDGE SIPPEL: So the question was, she doesn't know
6 chapter and verse, she doesn't know sites by, you know, dimensions,
7 by quadrants, or however you want to measure these things, I know
8 how you do it, but I can't remember it, as a president, as an
9 executive officer, that's basically what she should know. Don't
10 ask her the numbers, ask her what the company's doing.

11 So if she's saying -- well, you heard her. What's your
12 second question?

13 MR. STENGER: My second question is, do you have a
14 current authorization from the FCC that is in force that allows
15 Pinnacle to operate within the contours you described?

16 THE WITNESS: As far as I know, we do.

17 JUDGE SIPPEL: And what does that mean? What do you mean
18 by that?

19 THE WITNESS: Well, I have no reason to believe that they
20 do not. We have a lease with them, and as far as I know --

21 JUDGE SIPPEL: With them. It's not with the Commission.

22 THE WITNESS: With Pinnacle.

23 JUDGE SIPPEL: It's with Pinnacle.

24 THE WITNESS: Yes. And that those licenses have not been
25 discontinued, so that it's within the area of their operation, and

1 they're authorized to function.

2 JUDGE SIPPEL: All right. Let's try another analogy,
3 let's pretend that the Jersey Turnpike is a Christmas tree, right?

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: And you're the president of Maritime and
6 somebody asks you what is the status of your lease with Pinnacle.
7 And you'll say, well, let's go outside, it's night, and let's see
8 how many lights are on. And you go down and you look out over from
9 your mansion off the cliffs of the Hudson River, and you say, well,
10 all the lights are on. Is that scope of your knowledge with
11 respect to, by analogy now, the scope of what you know about these
12 leases and their operations? You just simply know that the lights
13 are lit.

14 THE WITNESS: No, Your Honor. I have relied upon Mr.
15 Reardon --

16 JUDGE SIPPEL: Yes, I know what you're relying upon, but
17 what you --

18 THE WITNESS: I have not physically visited the sites.

19 JUDGE SIPPEL: What you know is emailed.

20 THE WITNESS: Yes, Your Honor.

21 JUDGE SIPPEL: So if they had licensed -- if they had
22 fill-in stations to put a light up, let's say, you wouldn't know
23 that necessarily, would you?

24 THE WITNESS: Personally, no.

25 JUDGE SIPPEL: Okay. Do you want to follow-up on -- I

1 don't mean my Christmas tree analogy, but --

2 MR. STENGER: Well, I showed the witness the ULS lease
3 application this morning and she indicated that she had some
4 supervisory authority over Dennis Brown, the lawyer that signed it,
5 let me move on to --

6 JUDGE SIPPEL: Well, the point is, if you're going to
7 beat-up on her for each of these little subsections of each of
8 these fact patterns that are in these documents, you're going to
9 come up with the -- I don't see any future in doing this.

10 MR. STENGER: Understood, Your Honor. Let me try to move
11 on --

12 JUDGE SIPPEL: Move on in a different -- yes, try this a
13 different way.

14 MR. STENGER: Okay. With regard to WHG750, the license
15 that is mentioned in Paragraph 7 of your testimony, and the license
16 that you say is subject to an asset purchase agreement with
17 Duquesne, WHG750 is the license that you had in front of you
18 earlier, and that is mentioned in Paragraph 7 of your testimony, do
19 you see that?

20 THE WITNESS: Yes.

21 MR. STENGER: Okay. Is Maritime operating WHG750, and by
22 operating, I mean, do you have even one customer?

23 THE WITNESS: Duquesne Power and Light has a lease to
24 operate that, so Maritime is not specifically operating that.

25 MR. STENGER: When you say Duquesne Power and Light has

1 a lease to operate that, are you testifying that Duquesne is
2 operating the licensed facility on your license?

3 THE WITNESS: Yes.

4 MS. KANE: Objection to the extent it mischaracterizes
5 her previous testimony.

6 JUDGE SIPPEL: Well, I'm going to allow the question.

7 THE WITNESS: The --

8 JUDGE SIPPEL: Hold on a just a second. You can
9 redirect.

10 MS. KANE: I understand, Your Honor, but I just want to
11 make sure the record is clear. We've been floating all over the
12 place.

13 JUDGE SIPPEL: I know we have been, but --

14 MR. STENGER: Isn't a fact that Duquesne is not operating
15 the licensed station?

16 MS. KANE: Objection. Lacks foundation.

17 MR. STENGER: Isn't it a fact that Maritime is not
18 operating the licensed station?

19 JUDGE SIPPEL: Overruled. Answer the question, please.

20 THE WITNESS: Maritime is not actually operating it. It
21 is being operated, I believe, by Duquesne under the lease.

22 MR. STENGER: If you look at the license that you have in
23 front of you, WHG750, it has a location, Hookstown, Pennsylvania,
24 with coordinates, site coordinates, are you testifying that
25 Duquesne is operating a station at that licensed location?

1 MS. KANE: Objection. Lack of foundation.

2 JUDGE SIPPEL: No, he's got it right. Go ahead.

3 Overruled.

4 THE WITNESS: I don't specifically know the
5 technicalities of what Duquesne is doing or not.

6 MR. STENGER: If you are selling the license to Duquesne,
7 then you don't have any intent, Maritime does not have any intent,
8 to ever put this station back on the air itself, does it?

9 THE WITNESS: If this not sold or not approved, then we
10 would put it back on the air, or Choctaw would put it back on the
11 air.

12 MR. STENGER: But under this contract, your present
13 intention is to sell the license to Duquesne, is that correct?

14 THE WITNESS: That's correct.

15 JUDGE SIPPEL: We all know that.

16 MR. STENGER: Okay.

17 JUDGE SIPPEL: We know what we're here for.

18 MR. STENGER: Let's look at the other one, the KAE889.
19 Do you want to look at that license?

20 JUDGE SIPPEL: Are you going to ask the same line of
21 questions?

22 MR. STENGER: Yes. I'll just, without even referring to
23 it, KAE889, the stations that are in the Pacific Northwest, do you
24 have one customer on any of those stations?

25 MS. KANE: Objection. Lack of foundation and references

1 stations that are not at issue in this hearing.

2 JUDGE SIPPEL: KAE889 is not at issue?

3 MS. KANE: There are certain locations, Your Honor, of
4 KAE889 that have already been returned or are part of the
5 stipulation. Not all locations of KAE889 in the Pacific Northwest
6 --

7 MR. STENGER: I'm only asking about the locations that
8 are in this --

9 JUDGE SIPPEL: All right.

10 MS. KANE: And please direct Mr. Stenger to be more
11 specific in his questioning because they're very vague.

12 JUDGE SIPPEL: Well, you're right. Overruled, but you're
13 right with that instruction. Try and be a little bit more
14 specific, but you understand the context in which he's asking this
15 question. He's not asking you about stations or locations which
16 have already gone back to the Commission. He's asking about
17 whatever is left out there, and finish up your question again.

18 MR. STENGER: I can get more specific. With regard to
19 KAE889, Locations 3, 4, 13, 20, 30, 34, and 48, those seven
20 locations that are in dispute, does Maritime have a single customer
21 at any of those locations?

22 MS. KANE: Objection. Outside the scope of her direct
23 testimony.

24 JUDGE SIPPEL: Overruled.

25 THE WITNESS: I believe that Maritime or its lessee,

1 Puget Sound, has customers, except that we did receive information,
2 but never notification, through information here that Evergreen
3 School District was not going to operate its systems because of
4 this pending litigation, but if that is the case, that does not
5 mean that we would not resume that operation or that Choctaw would
6 not resume that operation, either through another entity or itself,
7 or if we get those, we would get those back, we would operate them
8 as well.

9 It's not our permanent intention to discontinue those.
10 I do know that Evergreen School District has notified someone, but
11 not me, or a representative of Maritime, that it is intending to
12 discontinue its operations.

13 MR. STENGER: Evergreen School District did not operate
14 -- the two locations that Evergreen School District was involved
15 in, Location 3 and 13, Evergreen did not operate either of those
16 licensed locations, did they?

17 MS. KANE: Objection. Lacks foundation.

18 JUDGE SIPPEL: Well, let's see if she knows.

19 THE WITNESS: I thought they did.

20 JUDGE SIPPEL: Do you know what a drop-in site is?

21 THE WITNESS: A fill-in site?

22 JUDGE SIPPEL: Fill-in site. Yes.

23 THE WITNESS: I do.

24 JUDGE SIPPEL: So if they're operating -- do you know if
25 they're operating on a fill-in site or sites?

1 THE WITNESS: I thought they were operating on these
2 sites.

3 JUDGE SIPPEL: These specified sites.

4 THE WITNESS: These specific sites.

5 JUDGE SIPPEL: All right. Well, let's assume for
6 purposes of discussion here that they're operating on fill-in sites
7 within the contours of what you own, but what is yours, if that
8 were the case, and if you were able to succeed in this case, or if
9 they stopped -- they terminated their business, and they revert it
10 back to you, would you be operating on those fill-in sites the way
11 that they were?

12 THE WITNESS: No, Your Honor. I think we would go back
13 to the central site of the coordinates.

14 JUDGE SIPPEL: Is there a plan for that? Is there a
15 business plan for that?

16 THE WITNESS: Well, we did not know one was necessary for
17 that particular point, but we --

18 JUDGE SIPPEL: No, for you and your Board of Directors.
19 That's all I'm asking. I'm not saying --

20 THE WITNESS: We do plan, if these licenses revert to
21 MCLM, to go back into operation.

22 JUDGE SIPPEL: But my question was one step further, back
23 into operation at --

24 THE WITNESS: At these specific sites.

25 JUDGE SIPPEL: -- the sites in which they're operating or

1 at the one in which was designated in the license?

2 THE WITNESS: At the designated license location.

3 JUDGE SIPPEL: That's your business plan. That's the
4 corporate policy.

5 THE WITNESS: Yes, Your Honor.

6 JUDGE SIPPEL: Where is it painted on the wall or
7 something like that?

8 THE WITNESS: We have not written a business plan with --

9 JUDGE SIPPEL: It's a contingency.

10 THE WITNESS: -- at this point, it's speculative.

11 JUDGE SIPPEL: It's a contingency plan.

12 THE WITNESS: Yes, Your Honor.

13 JUDGE SIPPEL: So where did you get this information that
14 you go back to the original site?

15 THE WITNESS: It's a practicality, to me, to go back to
16 that, because we would then offer that either for specific use,
17 for, you know, Smart Grid, or in that area, to someone that -- you
18 know, using that as a key location.

19 JUDGE SIPPEL: But supposing it was interfering in
20 somebody else's location, would you then operate it at the same
21 fill-in site they were? Let's say these -- because Puget Sound was
22 very successful in, engineering-wise, operating at a drop-in site,
23 or a fill-in site, but they were having trouble doing it from the
24 original site, would you do the same thing? Would you just use the
25 fill-in because you can't get a signal through, a competing signal,

1 at the original site?

2 THE WITNESS: If it makes engineering sense to do that.

3 JUDGE SIPPEL: Business sense. I'm talking about you as
4 the president.

5 THE WITNESS: Business sense as well.

6 JUDGE SIPPEL: You as the president.

7 THE WITNESS: Yes, Your Honor.

8 JUDGE SIPPEL: You'd be pushing your engineers and your
9 lawyers as well, let's find a way to do that?

10 THE WITNESS: Yes, Your Honor. I would seek counsel from
11 the lawyers and make sure that that's recommended, but if it's
12 recommended, I would certainly do that.

13 JUDGE SIPPEL: Well --

14 MR. STENGER: Your Honor --

15 JUDGE SIPPEL: You finish that up.

16 MR. STENGER: Ms. DePriest, I want to redirect your
17 attention, if I may, to the last sentence of Paragraph 8 of your
18 testimony, where you said, "Because Maritime intended to resume
19 commercial operation of Station KAE889, it maintained equipment at
20 the licensed locations that was capable of operation for as long as
21 Maritime was able" --

22 JUDGE SIPPEL: Financially.

23 MR. STENGER: -- "to financially do so." So I believe
24 you testified this morning, I'm sure Ms. Kane will say that I'm
25 mischaracterizing it, but didn't you testify this morning that you

1 lost all of the sites on KAE889?

2 THE WITNESS: I don't believe that's what the testimony
3 was. I think we still have these pending sites here that are
4 identified.

5 MR. STENGER: If you stop paying for the sites because
6 you were financially unable to do so, then didn't you lose all of
7 the licensed sites on KAE889?

8 MS. KANE: Objection. Asked and answered.

9 JUDGE SIPPEL: I'm going to allow it. Go on. Go through
10 it again.

11 MR. STENGER: When you --

12 JUDGE SIPPEL: Please don't interrupt because this is
13 important.

14 MR. STENGER: When you stopped paying for the sites, the
15 eight sites, I can read them again, I'm sorry, the seven locations
16 on KAE889 --

17 JUDGE SIPPEL: Don't read them again.

18 MR. STENGER: -- that are the subject of this hearing,
19 when you stopped paying for those sites, didn't you lose the right
20 to resume operation at those sites as you're now claiming you
21 intend to do?

22 THE WITNESS: I think the lessors of that real estate
23 would be more than happy to reactivate those licenses and to let us
24 resume operations and start paying our rent again; get caught up.

25 MR. STENGER: With regard to -- we talked about the

1 intentions, or the operations, of Evergreen, with regard to the
2 locations that you have the contract with Puget Sound Energy, those
3 five locations, which would be Numbers 4, 20, 30, 34, and 48, isn't
4 it true that Puget Sound Energy is not operating at any of those
5 licensed locations?

6 MS. KANE: Objection. Lack of foundation.

7 JUDGE SIPPEL: Overruled.

8 THE WITNESS: If it's operating within a contour and it's
9 covering that area, it seems to me that it is operating under the
10 lease.

11 JUDGE SIPPEL: Can I just jump in here a minute?

12 MR. STENGER: Yes, Your Honor.

13 JUDGE SIPPEL: Is that the advice you're receiving from,
14 you know, people who are reporting to you, from Mr. Reardon, Mr.
15 Smith, say, look, we're doing it right. We leased these things out
16 to these people and they're, let's say, in this case, Puget Sound
17 Energy, and they're operating within the contours. Does that
18 include a fill-in station?

19 THE WITNESS: Yes, Your Honor. It would include a fill-
20 in station.

21 JUDGE SIPPEL: So you are in agreement that that's okay
22 to do.

23 THE WITNESS: Yes, Your Honor.

24 JUDGE SIPPEL: Is that what you want to find out?

25 MR. STENGER: I don't recall what my question was. I

1 have another though, which is, do you know, as you sit here today,
2 whether you have FCC approval for Puget Sound Energy to be
3 operating under this lease agreement?

4 THE WITNESS: I believe the FCC accepted the leases by
5 not opposing them.

6 JUDGE SIPPEL: Well, he's asking if it has approval. I
7 don't think the FCC approves these things.

8 THE WITNESS: They do not.

9 MR. STENGER: Well, do you know if you have an accepted
10 lease?

11 THE WITNESS: I believe we do.

12 JUDGE SIPPEL: Have we defined what an accepted lease is
13 so she's knows what you're asking?

14 MR. STENGER: These are the terms that her counsel has
15 been using, Your Honor.

16 JUDGE SIPPEL: Well, do you know what they mean?

17 MR. STENGER: All I know is what is on these leases that
18 I -- these ULS pages that I submitted earlier, and maybe I should
19 just ask my --

20 JUDGE SIPPEL: Yes, I was going to say, if you don't know
21 what you're asking, I don't think she has to answer that question.
22 Try something else.

23 MR. STENGER: Well, on the lease applications, I suppose
24 they get acceptance from the Wireless Telecommunications Bureau to
25 operate.

1 JUDGE SIPPEL: You said you don't know what that means.

2 MR. STENGER: I don't know what she means by it, Your
3 Honor. Maybe I should make my --

4 JUDGE SIPPEL: I bet if she doesn't know what you mean,
5 I'm sure you're not going to know what she means when she answers
6 that question. When something gets filed at the FCC, do they write
7 a note back to you and say, I accept -- Mr. Havens.

8 MR. HAVENS: My company is involved in leases. When you
9 submit a lease to the FCC, the FCC will accept it and note that on
10 ULS. If they don't it, there is no note that it is accepted.

11 JUDGE SIPPEL: Is there a note that says it's accepted or
12 does it just appear on ULS?

13 MR. HAVENS: Well, ULS is the licensing database. That's
14 the official database.

15 JUDGE SIPPEL: Yes, but is the word accepted used?

16 MR. HAVENS: Yes.

17 MR. STENGER: Yes, Your Honor. That was on those pages
18 that we --

19 MR. HAVENS: And the pages that were on the exhibits we
20 produced with these leases that showed that there was one Maritime
21 lease to Pinnacle.

22 JUDGE SIPPEL: Well, so you should have known what you
23 meant when you said accepted in your question. Do you understand
24 this now?

25 THE WITNESS: I do.

1 JUDGE SIPPPEL: Okay. Thank you, Mr. Havens. You may
2 proceed, Mr. Stenger.

3 MR. STENGER: Were you involved in your company's
4 acquisition of a company called Critical RF?

5 THE WITNESS: I personally was not involved in the
6 negotiations.

7 MR. STENGER: Was Critical RF acquired at the time when
8 you were president of Maritime?

9 MS. KANE: Objection. Lacks foundation and outside the
10 scope of her direct testimony, and outside the scope of the
11 licenses for this hearing.

12 JUDGE SIPPPEL: Right. I'll sustain the objection for
13 now. What is it that you're referring to?

14 MR. STENGER: What was the business purpose for Maritime
15 to acquire Critical RF?

16 JUDGE SIPPPEL: Well, do you know they acquired it?

17 MS. KANE: Objection. Lack of foundation.

18 JUDGE SIPPPEL: Can you ask her whether they have
19 acquired.

20 MR. STENGER: Maritime acquired Critical RF, is that
21 correct? Made a subsidiary of Maritime?

22 THE WITNESS: That's correct.

23 MR. STENGER: What was the business purpose for doing
24 that?

25 THE WITNESS: To develop some voice-over-internet

1 technology.

2 MR. STENGER: Did Maritime ever use technology from
3 Critical RF to make it appear that Maritime's stations were serving
4 customers, when in fact, they were not really serving customers?

5 THE WITNESS: No, they did not.

6 JUDGE SIPPEL: Is that mentioned in her testimony some
7 place?

8 MR. ENGEL: Your Honor, if I may be heard.

9 JUDGE SIPPEL: Yes, sir.

10 MR. ENGEL: That question is an improper character
11 question. He's trying to get -- it's a backhanded way of accusing
12 the witness of doing something awful in a context that doesn't seem
13 to be relevant to whether these 16 stations have been in operation.
14 It's just an improper character under 404.

15 JUDGE SIPPEL: Well, I should have been more attune to
16 that.

17 MR. ENGEL: I'm happy that the witness has answered and
18 I don't mean to tag team with Ms. Kane --

19 JUDGE SIPPEL: No, she's doing fine.

20 MR. ENGEL: But may I just say, Your Honor, this feels
21 like a deposition now. It doesn't feel like cross-examine. We're
22 getting a lot of open-ended questions. It's been nearly four hours
23 since we've had anything meaningful in this discussion.

24 JUDGE SIPPEL: Well, we're finally getting down to
25 something, but you're correct.

1 MR. ENGEL: Your Honor, I would just ask the court for a
2 reasonable limit under cross-examination. Under 1.243, the court
3 has discretion to place reasonable limits on cross-examination.
4 We're just sort of leafing through the record here and we're not
5 drilling down.

6 We have discovery, then we have briefing, and then we
7 have the trial date, but we're sort of reopening the case now with
8 all this discussion of protective orders and these open-ended
9 questions. It's a deposition. It's not --

10 JUDGE SIPPEL: Well, you're right about that. What more
11 do you have to ask this witness?

12 MR. STENGER: My witness, Mr. Calabrese, who's appearing
13 later, has testimony on this point. I'm not going to be able to
14 recall Ms. DePriest, so I'm asking her now.

15 JUDGE SIPPEL: All right.

16 MR. STENGER: And her answer was no.

17 JUDGE SIPPEL: Well, you're finished with this witness.
18 That's all. We're finished. I'm going to excuse you as a witness
19 now.

20 MS. DEPRIEST: Thank you, Your Honor.

21 JUDGE SIPPEL: Let's get the next witness. This has been
22 ridiculous. This witness has been up here since about what time
23 this morning? Five after 10:00; quarter after 10:00?

24 MR. KELLER: Now that you've dismissed her.

25 JUDGE SIPPEL: She's gone unless somebody else calls her.

1 You don't want her do you? Do you want to --

2 MR. KELLER: No, Your Honor.

3 JUDGE SIPPEL: Do you want to ask her any questions?
4 This side of the table?

5 MR. PLACHE: I don't think so.

6 JUDGE SIPPEL: Please leave. Just leave, Ms. DePriest,
7 or stay here if you want.

8 MR. ENGEL: Just to clarify, it's a permanent excusal for
9 the witness, Your Honor?

10 JUDGE SIPPEL: Yes. She's gone. She's been here way too
11 long.

12 MR. ENGEL: A brief five-minute recess, then we'll have
13 Mr. Reardon ready.

14 JUDGE SIPPEL: There's no such thing as a brief five
15 minutes. We'll try and be back in ten minutes.

16 (Whereupon, the foregoing matter went off the record at
17 2:46 p.m. and went back on the record at 2:56 p.m.)

18 JUDGE SIPPEL: Do you have your next witness, Ms. Kane?

19 MS. KANE: Your Honor, yes, the Bureau would like to call
20 John Reardon to the stand.

21 JUDGE SIPPEL: Mr. Reardon, sir.

22 MR. REARDON: Yes, sir.

23 JUDGE SIPPEL: Please come forward.

24 MR. REARDON: Thank you, Your Honor.

25 JUDGE SIPPEL: And you're not a priest, you're not a man

1 of the cloth, right?

2 MR. REARDON: I am not.

3 JUDGE SIPPEL: Please raise your right hand.

4 WHEREUPON,

5 JOHN REARDON

6 was called as a witness by Counsel for the Government and, having
7 been first duly sworn, assumed the witness stand, was examined and
8 testified as follows:

9 JUDGE SIPPEL: Please be seated. Get yourself some of
10 that water and allow Ms. Kane to come forward.

11 MS. KANE: Thank you, Your Honor. Mr. Reardon, could you
12 state your full name for the record?

13 THE WITNESS: Yes. John Stuart Reardon.

14 DIRECT EXAMINATION

15 BY MS. KANE:

16 Q And who are you presently employed by?

17 A Choctaw Telecommunications, LLC.

18 Q Were you previously employed by Maritime?

19 A Yes, I was.

20 MS. KANE: Your Honor, may I approach the witness?

21 JUDGE SIPPEL: You may.

22 MS. KANE: Mr. Reardon, I'm going to hand you what's been
23 previously admitted as Enforcement Bureau Exhibit 1-A. I'm going
24 to hand you two different versions. One is a confidential version
25 and one is a redacted version. I would ask you to take a look at

1 both of those documents.

2 THE WITNESS: Thank you.

3 MS. KANE: Mr. Reardon, would you look at each of those
4 documents and turn to the last page of those documents?

5 THE WITNESS: Yes.

6 MS. KANE: And verify that that is your signature at the
7 end of those documents.

8 THE WITNESS: Yes, that is my signature.

9 MS. KANE: And if I could, Your Honor, approach the
10 witness and take out the confidential version of the documents for
11 the purposes of turning over the witness for cross-examination?

12 JUDGE SIPPEL: Please do.

13 MS. KANE: Thank you, Your Honor. Your Honor, we tender
14 Mr. Reardon for cross-examination.

15 JUDGE SIPPEL: Okay. Just a minute, Counsel. We have an
16 eight-page document here, some of which is redacted with the heavy
17 black ink, is that correct?

18 MS. KANE: Correct, Your Honor.

19 JUDGE SIPPEL: Is that what you have?

20 THE WITNESS: Yes, Your Honor.

21 MS. KANE: For clarification, Your Honor, it's on Page 6.

22 JUDGE SIPPEL: Page 6. Do you have that? Is that true,
23 Mr. Reardon? That's what you have?

24 THE WITNESS: Yes, Your Honor.

25 JUDGE SIPPEL: Paragraph 14? Okay. I see it. Okay.

1 That's fine. Mr. Stenger.

2 CROSS EXAMINATION

3 BY MR. STENGER:

4 Q Mr. Reardon, who prepared your testimony?

5 A Who prepared my testimony?

6 Q Yes.

7 A As I recall, I worked on this in accordance with counsel.

8 JUDGE SIPPEL: What counsel?

9 THE WITNESS: I can't remember if it was Bob Keller or
10 which law firm it was.

11 JUDGE SIPPEL: The lawyers just look all the same to you?
12 All right.

13 BY MR. STENGER:

14 Q Is Bob Keller the only attorney that you worked with in
15 preparing this?

16 A As I said, I'm not sure if I worked with other counsel in
17 preparing this. I just can't recall sitting here.

18 Q Did you work with any attorneys at the Enforcement
19 Bureau?

20 A Not to my recollection.

21 Q And do you know which attorneys reviewed your testimony
22 before you signed it?

23 A I don't.

24 Q Who did you talk to in preparing your testimony besides
25 attorneys?

1 A I don't believe that I talked to anyone else before
2 preparing this specific testimony.

3 Q You didn't talk to Tim Smith?

4 MS. KANE: Objection. Asked and answered.

5 JUDGE SIPPEL: I'll permit it. Go ahead.

6 THE WITNESS: Yes, Your Honor, I don't recall if I talked
7 to Tim Smith surrounding this preparation of this testimony or not.
8 I don't believe that I did.

9 BY MR. STENGER:

10 Q What about Sandra DePriest?

11 A Not to my recollection, no.

12 Q Did you talk with Sandra DePriest about her testimony?

13 A I don't understand the question.

14 Q Did you assist Sandra DePriest to prepare her testimony?

15 A Her testimony where?

16 Q In this proceeding. That would be -- I don't know if you
17 have the book still in front of you, in the first binder, the white
18 binder, is the EB, Enforcement Bureau Exhibits. Your testimony is
19 Exhibit A and her testimony is Exhibit B.

20 JUDGE SIPPEL: Okay. I just put the testimony of Sandra
21 DePriest, which is EB Exhibit 1-D, in front of the witness.

22 THE WITNESS: Sorry, can you ask your question again,
23 please?

24 MR. STENGER: Did you assist Sandra DePriest with
25 preparing her testimony for this proceeding?

1 JUDGE SIPPEL: Her written testimony.

2 MR. STENGER: Her written direct testimony.

3 THE WITNESS: Not that I recall, no.

4 MR. STENGER: And did you assist Tim Smith with preparing
5 his testimony?

6 JUDGE SIPPEL: What page is that on?

7 MR. STENGER: Tim Smith's testimony is Tab C.

8 JUDGE SIPPEL: 1-C. Testimony of Robert Timothy Smith.
9 EB Exhibit 1-C.

10 THE WITNESS: Thank you.

11 JUDGE SIPPEL: Wait a minute. You got it.

12 THE WITNESS: Thank you, Your Honor. I believe you asked
13 if I assisted Tim Smith with preparing his written testimony, which
14 is 1-C?

15 MR. STENGER: Yes.

16 THE WITNESS: I don't recall assisting Tim Smith with
17 this written testimony, no.

18 MR. STENGER: Did Larry Allen from Pinnacle Wireless
19 assist you with your testimony?

20 THE WITNESS: No.

21 MR. STENGER: And did you assist Larry Allen with his
22 testimony?

23 THE WITNESS: No, I did not.

24 MR. STENGER: And what records did you consult in
25 preparing your testimony?

1 THE WITNESS: You mean my written testimony?

2 MR. STENGER: Yes.

3 THE WITNESS: What records did I consult?

4 MR. STENGER: Yes.

5 THE WITNESS: Give me one second and let me look through
6 it and see if anything springs to mind.

7 JUDGE SIPPEL: Take your time.

8 THE WITNESS: Thank you. There's a lot in here.

9 JUDGE SIPPEL: I know.

10 THE WITNESS: Yes. This talks about a timeframe, I
11 believe I had to go back and look at, perhaps it was my deposition
12 in either this case or the New Jersey anti-trust litigation, to
13 remember when it was that I stopped working 100 percent for
14 Critical RF. And I think where I mentioned March 2009 may have
15 been in the deposition when Ms. Kane deposed me in this matter.

16 Here it says, "I spent approximately 90 percent of my
17 time in preparing this." I couldn't remember what timeframe that
18 was, if it was May or March, so I remember looking at that.

19 And I may have also consulted the Paragraph 11, the
20 Evergreen School District agreement, to get the dates in there,
21 because again, I couldn't remember, where it says, "Letter dated
22 July 22, 2008", you know, then it was later supplemented in 2009,
23 so I would have gone back and looked at those agreements.

24 So similarly, again, in Duquesne Light, I would have gone
25 back and looked at the -- in Paragraph 12, what was the date of the

1 asset purchase agreement with Duquesne Light. And again, with
2 Puget Sound Energy, the next paragraph, I would have needed to
3 consult the asset purchase agreement signed in May with them, just
4 because those dates don't jump to my mind.

5 I'm not sure everything was redacted from Number 14, but
6 there's a good chance that I would have looked in my personal file
7 for Pinnacle to see the dates listed in there just make sure I was
8 accurate. See if there's anything else. That's probably it. So
9 those would have been the things I would have consulted.

10 MR. STENGER: If you go to the very last page of your
11 testimony, well, the last page before the signature page, I'm
12 talking about Page 7, which is the balance of Paragraph 15, the
13 very last substantive sentence in your testimony. It says, "I have
14 been informed by third-party engineers who visited these sites that
15 Maritime has equipment at these locations that is transmitting
16 signals and is capable of providing service as soon as Maritime is
17 able to successfully lease or assign these locations."

18 Who are the third-party engineers that you're referring
19 to there?

20 MS. KANE: Objection. Vague.

21 JUDGE SIPPEL: See if he can answer it. Overruled.

22 THE WITNESS: Yes, Your Honor. There were two sites in
23 question in this paragraph. The first one is the Rehoboth,
24 Massachusetts site, which is WRV374-35, and that site was visited
25 by Bob Salvatore and his engineering staff. Bob runs a company in

1 Warwick, Rhode Island called Cyber Comm, C-Y-B-E-R, C-O-M-M.

2 I've known Bob for a number of years. Bob's been
3 instrumental in the two-way radio business. Bob sent some
4 engineers out to verify that the system works on the air and was
5 transmitting, as mentioned here in this paragraph. And the next
6 one was Hamden, Connecticut, WRV374-40, and that would have been
7 Bob Meister, E-I-S-T-E-R.

8 Bob is a radio frequency engineer, does some consulting
9 work, and again, he was retained to go out and look at the Hamden,
10 Connecticut site and make sure it was up and operating on the air.
11 So they were the third-party engineers that this paragraph refers
12 to.

13 BY MR. STENGER:

14 Q And when you say that you have been informed by them,
15 when was that?

16 A Well, let's see, I signed this in September of 2014, so
17 let's see, about every month I get a report from Bob Meister, who
18 will just send me an email and say, hey, you know, I've doubled-
19 checked and it's still on the air. So some time just prior to
20 signing this for the Hamden, Connecticut site.

21 And then similarly, for Bob Salvatore, it was probably
22 within, I would just guess, maybe 30 to 60 days prior to signing
23 this, when I had last heard from Bob Salvatore. I believe, yes,
24 he's engaged also in a charity fundraiser, to which I gave a little
25 bit of money a cause that he's involved in. I think I gave \$10, so

1 I called him and said it's a good cause during that conversation.

2 So that would have been some time in August of 2014.

3 Q And Site, let's see, Number 40, Hamden, Connecticut, is
4 that operating at the licensed location?

5 A I believe that that is in a location which is nearby the
6 licensed site, if I'm correct. There's WLIN, I believe it is,
7 which is the T.V. station, which has one tower, and then it's
8 either Clear Channel or Comcast which has the other nearby tower,
9 so I believe that this is at a location -- it's all been filed with
10 the FCC, but I believe that this site is maybe a few hundred yards
11 away from the licensed site.

12 Q So you're testifying that you're not operating from the
13 licensed site, is that correct? I'm just trying to understand what
14 you're saying. You're operating from a site that's several hundred
15 yards away from the licensed site.

16 JUDGE SIPPEL: No, he didn't say that. I heard him
17 pretty clearly though. Try it again. You're misquoting him.

18 MR. STENGER: When you say, this has all been filed with
19 the FCC, what do you mean?

20 THE WITNESS: The lease, the fact that the equipment is
21 at that particular set of coordinates, the fact that the other site
22 is nearby, the contour information, it's all been filed.

23 JUDGE SIPPEL: Nearby to what?

24 THE WITNESS: So there are two towers in Hamden,
25 Connecticut, Your Honor.

1 JUDGE SIPPEL: Yes, sir.

2 THE WITNESS: One is literally next to the other, and the
3 equipment -- well, Tim Smith will be here. He's the one that's
4 actually been to the site and helped install the equipment. He's
5 the engineer. I've never personally been to the sites, but as I
6 understand it, that's correct. Other than what I'm told by others
7 about how close they are, I don't know the, you know, coordinates
8 on a map. It's all Greek to me, so I don't know how close in
9 reality these are, but I believe that it's about 100 yards away.

10 JUDGE SIPPEL: Okay.

11 MR. STENGER: Okay. And when you say that the site is
12 operating, are you saying that you have at least one customer? Let
13 me withdraw the question. You stated that you work for Choctaw, is
14 that correct? You don't work -- Choctaw. You work for Choctaw
15 currently.

16 THE WITNESS: Well, my current employer is Choctaw
17 Telecommunications, LLC. I have a consulting or management
18 agreement from Choctaw to Maritime MCRN, as debtor-in-possession,
19 Maritime Communications Land/Mobile LLC is debtor-in-possession, so
20 I will perform services on behalf of Sandra DePriest and Maritime
21 as the debtor-in-possession from time to time.

22 But my employer, as I testified earlier, is currently
23 Choctaw Telecommunications, LLC.

24 MR. STENGER: When you say, perform services, are you
25 saying that you're, in effect, running Maritime Communications?

1 MS. KANE: Objection. Mischaracterizes his testimony.

2 JUDGE SIPPEL: Sustained.

3 MR. STENGER: Well, what are the services that you
4 perform?

5 THE WITNESS: Essentially, it's similar in a way to what
6 I was doing before the company filed Chapter 11 in terms of
7 assisting Sandra DePriest with the day-to-day management of certain
8 things. For example, if leases come due or if there's accounts
9 payable issue, for example, and if there are developments in FCC
10 rules or regulations that counsel tells me about, looking for new
11 technology, sort of keeping abreast of developments in the FCC and
12 communications world, and in particular, for example, with the
13 situation involving these two sites, 35 and 40, assisting by
14 helping to locate third-party engineers who can go to the site and
15 verify that the sites are still on the air and that transmission
16 equipment is in good repair, and perform inspections, for example.

17 So it's what I would call periodic work of that nature.

18 MR. STENGER: Specifically, what I was trying to find out
19 is, do your responsibilities encompass Maritime providing service
20 to customers?

21 MS. KANE: Objection. Vague.

22 JUDGE SIPPEL: See if he can understand it. Do you
23 understand that question?

24 THE WITNESS: Well, I think it's vague in the sense, Your
25 Honor, that in my view, I guess two things, there's no requirement

1 under the FCC rules that you be successful and have customers.
2 There'd be a lot of telecom companies that would be out of business
3 if you had to have customers. We can all endeavor to be
4 successful, but also in my view, a customer can include a lessee of
5 the spectrum.

6 So I'm not sure if Mr. Stenger is asking me if I assisted
7 with any lessees of the spectrum in their operations or if he's
8 referring to, perhaps, some subscribers who use the systems
9 directly, or some other definition of customer, like a buyer of the
10 spectrum.

11 MR. STENGER: I'm referring to subscribers who are
12 receiving service from these two locations that you said are
13 operating. Do your responsibilities put you in a position where
14 you would know whether Maritime has subscribers that are being
15 served from these two locations.

16 MS. KANE: I'm going to have the same objection, Your
17 Honor, that it's vague as to responsibilities for which company?

18 JUDGE SIPPEL: Well, he can answer that question. I'll
19 sustain the objection, but try and come at it a little bit
20 differently as to what, you know, specifically, he does with
21 respect to each type of company.

22 MR. STENGER: Does Maritime have subscribers at either of
23 these sites that are being served from either of these sites?

24 MS. KANE: Objection. Lack of foundation.

25 JUDGE SIPPEL: I'll permit the question. Go ahead.

1 THE WITNESS: Yes. Neither of these two sites currently
2 provides direct service to customers. In other words, the sites
3 are built so that they're capable of providing two-way radio
4 service, where, when Mr. Salvatore goes out, or Mr. Meister goes
5 out, or Tim Smith goes out to the sites with a two-way radio, they
6 can both talk and listen.

7 However, as I testified earlier, there's no FCC
8 requirement that I'm aware of that actually has that. In addition,
9 I have assisted MCLM in the past with trying to find lease
10 customers and buyers, including, most recently, submitting a
11 response to an RFP, Request for Proposal, from Metro North
12 Railroad, which operates a commuter railroad from New York up
13 through Connecticut, as well as the MBTA, which is the
14 Massachusetts Bay Transportation Authority, for positive train
15 control involving the Rehoboth site, as well as with Amtrak, which
16 operates the Northeast corridor line from D.C. up to Boston,
17 including going through these two sites.

18 So to the extent that there are no current "subscribers",
19 direct users, I'm aware of that. I've also been very involved with
20 attempting to get users, but we might not call them subscribers,
21 for these two sites. I would refer to them, perhaps, as lessees
22 or, you know, other types of terms for users.

23 I don't know if I answered the question. I don't know if

24 --

25 MR. STENGER: Railroads wouldn't use either of these

1 sites for positive train control, would they? Railroads would
2 never operate either of these two sites for positive train control,
3 would they?

4 MS. KANE: Objection. Lack of foundation.

5 MR. STENGER: Positive train control. I'll withdraw that
6 question. Positive train control involves small transmitters
7 located linearly along the railroad tracks, isn't that true?

8 MS. KANE: Objection. Counsel is testifying and lack of
9 foundation.

10 JUDGE SIPPEL: No, he's asking a question. Overruled.

11 THE WITNESS: Can you repeat the question?

12 MR. STENGER: Positive train control involves small
13 transmitters located linearly along the railroad right of way,
14 isn't that true?

15 THE WITNESS: That's not my understanding of positive
16 train control. I believe that it's a -- while the trains
17 themselves don't go any higher than 20 feet, because I think that's
18 what tunnels are built to, the radio on the train, the actual
19 transmitter itself needs to be higher so that it can cover a
20 topography.

21 So just to give an example, I believe that there would be
22 transmitters placed, not necessarily along the track, but at
23 locations which either the railroads or others own, because
24 remember, you have to build a lot of these transmitters throughout
25 the country, mandate, and that these transmitters would be aimed

1 down toward where the tracks would be, but if the transmitter's
2 placed too low, then you're going to have trees, and buildings, and
3 obstructions.

4 I'm not an engineer and I'm certainly not a positive
5 train control engineer, but it's not my understanding that these
6 would be on those sites. So that's different.

7 JUDGE SIPPEL: All right. So going back to your initial
8 testimony. So far, Mr. Stenger has you using subscribers in some
9 cases, is that correct? Not you, but that the stations serve some
10 subscribers.

11 THE WITNESS: Yes, so for example, as I understand it,
12 the Commission's rules are making sure that licensees deploy the
13 spectrum in the public interest, and at a number of these stations,
14 certainly 14 of them, and perhaps all 16, there have been efforts
15 made to find subscribers, lessees, buyers, what have you, and most
16 of them, those efforts have been very successful.

17 And for example, I think that Pinnacle has filed
18 paperwork to show that there are over 2000 radios using the system
19 just within the New Jersey footprint area, so the Greater New York,
20 New Jersey area. Similarly, we know about the Duquesne Light
21 situation where they built ten sites to use radios throughout the
22 Greater Pittsburgh area, in my hometown, and throughout Beaver
23 County and Pittsburgh.

24 We also know that in the Pacific Northwest, the utility
25 there, Puget Sound Energy, is building out its system and that it

1 needs the spectrum to continue to build a statewide radio system
2 there. And it's conducted tests, and in fact, they filed
3 information that said that they bumped into interference from the
4 existing incumbent sites while they're testing and building their
5 system, and would we mind redoing those systems while they're
6 building their system and waiting on approval for those licenses.

7 And then we know in Evergreen, in --

8 JUDGE SIPPEL: Were you able to do that?

9 THE WITNESS: Well, so what happened was -- yes and no.
10 What I mean is, we say that we can do it. In other words, Maritime
11 Communications had no authority to re-tune, but because we're in
12 Chapter 11, we didn't have the money to send engineers to those
13 five sites, so we requested that they actually do the re-tuning.
14 And that happened this summer, Your Honor, and that's also in the
15 record.

16 I've seen it in these exhibits where Jerry Sykora, S-Y-K-
17 O-R-A, who's the engineer for Puget Sound Energy, called me up and
18 said, hey, I understand you're acting on behalf of Maritime, can
19 you get approval from Maritime, please, to re-tune these, and can
20 you re-tune those? And we wrote him back and said, directed him
21 further to Sandra DePriest, you have our permission to re-tune
22 these to this channel at these sites, but you have to do it
23 yourself because we don't have the money to do it, so you have our
24 permission to do it, but we can't send an engineer to do it for
25 you.

1 And he complied and that's all in the record. So to
2 answer your question about subscribers, Your Honor, that's sort of
3 my -- I'm sorry. Go ahead. That's kind of my view of it.

4 JUDGE SIPPEL: All right. So you got subscribers then
5 you got positive train control. Is that being done at all with any
6 of your assets?

7 THE WITNESS: Yes, sir. So just by way of background,
8 Congress, in 2008, mandating positive train control on over 100,000
9 tracks, so --

10 JUDGE SIPPEL: I'm aware of that.

11 THE WITNESS: Okay. And so in Southern California, the
12 company, Maritime, entered into an asset purchase agreement with
13 the company known as Southern California Regional Rail Authority,
14 we call it Metrolink for short, that calls for Metrolink to buy
15 AMTS spectrum from Maritime Communications. It's all very public.
16 We buy all the spectrum everywhere from Santa Barbara.

17 MR. STENGER: Your Honor, this is totally outside the
18 scope of this hearing.

19 JUDGE SIPPEL: See, I thought you were asking these
20 questions.

21 MR. STENGER: No, but he's talking about positive train
22 control in Southern California using geographic license spectrum.
23 I'm talking about the 16 locations that are at issue in this
24 hearing.

25 JUDGE SIPPEL: All right. Let's take one of them.

1 MR. STENGER: I'm going to repeat my question again for
2 Mr. Reardon. Mr. Reardon, I want to repeat my question again.
3 You've said that Puget Sound Energy has subscribers, you've said
4 that Pinnacle Wireless has subscribers on spectrum that they're
5 leasing from you, but isn't it a fact that Maritime does not have
6 any subscribers on any of these 16 stations?

7 THE WITNESS: I think my testimony is being twisted a
8 little bit. What I said was, I said his definition of subscriber
9 is different than my definition of subscriber. I believe I said
10 that in terms of a direct user, where Maritime would lease air
11 time, or sell air time, kind of like you do with Verizon, that's a
12 lot different in my view. That's a different definition of
13 subscriber than someone who leases this spectrum and either builds
14 a system for internal communications, like a New Jersey Turnpike,
15 or Garden State Parkway, or Puget Sound Energy, so in my definition
16 of "subscriber" for the purposes in answering your question, Mr.
17 Stenger, I made a broader definition than perhaps you're trying to
18 ascribe to the word subscriber.

19 MR. STENGER: Pinnacle Wireless is not operating any of
20 the licensed sites on WRV374, are they?

21 MS. KANE: Objection. Lack of foundation.

22 JUDGE SIPPEL: I'll let him answer. Do you understand
23 the question?

24 THE WITNESS: I do. I do. So I'm not sure what the term
25 operating means. In other words, does operating mean that they

1 have to be transmitting from the exact site? Does operating mean
2 that they're using frequencies within that geography? I'm just not
3 sure what you mean by operating.

4 MR. STENGER: What I mean by operating is, operating at
5 the specific licensed locations on the WRV374 license. Is Pinnacle
6 operating at any of those specified locations?

7 THE WITNESS: So again, I'm a little confused about it
8 because, for example, let's use the Verona location, which might be
9 WRV374-18, maybe. I'm not sure if I have the sites in front of me.

10 MR. STENGER: Well, if you want to refer to the licenses,
11 they're in the binder that's labeled EVH Admitted Exhibits, and the
12 WRV license is in that binder as Exhibit 150.

13 JUDGE SIPPEL: Try this one here.

14 THE WITNESS: Oh, thank you. Okay. Thank you. Okay.
15 Here we go. You'd think I'd have these numbers memorized after all
16 this time, but okay. Yes. I had the wrong number. Verona is
17 WRV374-15. Yes. So for example, that site is Claridge House, and
18 Pinnacle, as I understand it, is using all the spectrum around that
19 site, however, they're not using a transmitter on the top of the
20 building where that site is licensed.

21 Pinnacle had the rights to manage that rooftop. Pinnacle
22 took the equipment, as I understand it, off that rooftop and
23 deployed it in a lower cellular-type configuration when they built,
24 I guess it was, about 20 sites statewide, so when you ask, is
25 Pinnacle operating from that licensed location, I would say, yes,

1 they're operating frequency at that licensed location, as well as
2 a number of other locations, but they don't have a lease, to the
3 best of my knowledge, at the Claridge House, for example.

4 But still, they're meeting the public interest goal of
5 the FCC, which is to help the licensee, in this case, Maritime
6 Communications, to operate the spectrum in the public interest.

7 MR. STENGER: Take a look at your testimony, please,
8 Paragraph 12. Your first sentence says, "Maritime also
9 successfully marketed incumbent spectrum to 'Duquesne Light
10 Company'." Is Maritime marketing spectrum or is Maritime marketing
11 the licensed stations?

12 THE WITNESS: I don't understand the question.

13 MR. STENGER: Are you selling spectrum or are you selling
14 these licenses to buyers who are going to operate the licensed
15 stations or are you just selling spectrum to buyers?

16 THE WITNESS: Again, I'm not sure I understand -- I mean,
17 this says, "Maritime successfully marketed incumbent spectrum."
18 And then later it also says that Duquesne leases the spectrum as
19 well, so are you asking if it's a sale or lease? I'm not sure I
20 understand your question.

21 MR. STENGER: Well, what do you mean by the term,
22 incumbent spectrum?

23 THE WITNESS: Well, incumbent spectrum, as I understand
24 it, is the spectrum which was, in this case, issued by the FCC some
25 time in the mid-1980s to permanent operation along the waterways

1 within a contour that includes most of Beaver County, Pennsylvania.
2 It's WHG750, and as this statement indicates, I believe Duquesne
3 Light agreed to purchase and lease 500 kilohertz of the 1 megahertz
4 of the Block B, so not the entire amount of Block B spectrum, which
5 is 1 megahertz total.

6 MR. STENGER: So is Maritime operating on the other 500
7 kilohertz that they're not leasing to Duquesne?

8 THE WITNESS: Yes. That's my understanding. I went to
9 this site, I guess it was, in March of this year, and drove up to
10 the site, inspected the site, went into the shelter, saw the lights
11 turned on, saw everything posted that needed to be posted, saw that
12 the grass had been cut, so that's my understanding is that the
13 other 500 kilohertz remains operating at this location. Yes.

14 BY MR. STENGER:

15 Q And how many subscribers does Maritime have at that
16 location?

17 A Well, as my definition of subscriber would be that
18 Duquesne Light would be a subscriber as I think they have
19 testified.

20 Q No, they're on the other -- I hate to interrupt, but
21 they're on the other 500 kilohertz. I'm talking about the 500
22 kilohertz that you didn't sell or lease to Duquesne. You just
23 testified that that other 500 kilohertz is operating and I'm asking
24 you, on that 500 kilohertz, how many subscribers does Maritime
25 have?

1 A Yes, at this point, I'm not aware of any subscribers in
2 the sense of third parties who use that spectrum, however, there's
3 no reason why any of the towboats that currently still maintain the
4 radio in the wheelhouses of the towboats that are in resident in
5 Pittsburgh could not key-up and operate from that site on WHG750.

6 Q And is Duquesne operating from the licensed location on
7 WHG750?

8 A I think as Duquesne indicated, they have built ten sites
9 around that location within the contour of that 500 kilohertz, but
10 that site did not fit their needs for Smart Grid, so in fact, they
11 have deployed ten different sites. And as I understand it,
12 recently, they decided to take three of those ten sites and convert
13 them to 900 megahertz, so that currently, they're using seven sites
14 within the contour of WHG750, rather than the original ten that
15 they had constructed.

16 In addition, one of their sites, one of those seven, is
17 at Plumb, Pennsylvania, and part of the lease agreement called for
18 a directional antenna to make sure that that site did not exceed
19 the authorized contour of the incumbent locations. So it's
20 actually pointing West instead of omnidirectional.

21 JUDGE SIPPEL: Can I ask a question here?

22 THE WITNESS: Yes, Your Honor.

23 JUDGE SIPPEL: As to those specific sites that you
24 testified to, is the equipment -- is it at each site or has it been
25 moved to nearby sites in accordance with your broader description,

1 for example?

2 THE WITNESS: So if I start with Rehoboth, which was the
3 --

4 JUDGE SIPPEL: Well, just answer the question in general,
5 and then we'll go back down to specifics.

6 THE WITNESS: Okay. Well, so at most of the sites, the
7 equipment is actually still there. I can give the specifics if
8 that would be helpful, rather than generalized.

9 JUDGE SIPPEL: Sure.

10 THE WITNESS: Okay. So at Rehoboth, Massachusetts, where
11 Bob Salvatore went from Cyber Comm, his site equipment is all still
12 there. There's a lease in place. That's WRV374-35. At Location
13 40, which is Hamden, Connecticut, the equipment is all still there.
14 It's turned on. It's transmitting. That's where Bob Meister went.
15 That's WRV374-40, Hamden, Connecticut.

16 Selden, New York, WRV374, Site Number 14, Selden, that's
17 on Long Island, the equipment is there. It's transmitting. Tim
18 Smith will testify later that he visited that site recently and
19 confirmed that it's all up and working. WRV374, Site Number 18,
20 what we call Valhalla, that's Westchester Community College, just
21 north of New York, that's a Crown Castle site. Again, a lease is
22 in place. The equipment is there. It's operating. Tim Smith went
23 and verified all that.

24 Let's see, where else? Oh, WHG750, which is the one in
25 Pittsburgh that I just discussed, that is on the air. I personally

1 visited that site. It was up and working. The tower is owned by
2 Maritime Communications. There's no third party recently. That's
3 the one where half of that incumbent site has been leased to
4 Duquesne Light. I'm trying to think if I missed any that I talked
5 about so far.

6 The Verona site that I mentioned, WRV374-15, which is the
7 site that Pinnacle managed, where I testified they took the
8 equipment off the roof, and they're operating at a lower location,
9 that site equipment is not there, Your Honor, it's not on that
10 location, those frequencies are being operated.

11 WRV374-16, which is Allentown, as I understand it, that
12 equipment is there, but the utility has been disconnected because
13 it would interfere with the Pinnacle system, and that's a Crown
14 Castle site, and Tim Smith can testify that he's had conversations
15 with Crown Castle about the equipment, because at some point, they
16 wanted to remove it from the tower to make space for somebody else,
17 but that's a conversation he's had with them.

18 JUDGE SIPPEL: What's the status of it now?

19 THE WITNESS: You know, I'm not sure. I think because
20 we're worried that it would interfere with the Pinnacle system
21 because it's, you know, if you look at a map of Pinnacle system
22 it's, essentially, in 2008, when the latest lease agreement was
23 signed with Pinnacle, there's a bunch of contours on there that
24 guarantee Pinnacle protection, this site was included in that.

25 It's the same story with WRV374-33, which is the World

1 Trade Center site. Obviously, there's no equipment at the World
2 Trade Center, doesn't exist anymore. Most recently, there was
3 equipment at Trump Tower, which is midtown, which is operated by
4 Tom Crowley with North American Mobile Systems. There's a lease in
5 place as of Maritime filing Chapter 11, which was August of 2011.

6 I believe that since then, that equipment has probably
7 been disconnected for lack of payment, but Mr. Crowley stands
8 ready, willing, and able to plug it back together. However, that
9 is also a site that we believe if it operated at full strength,
10 would blow away the Pinnacle system.

11 Now, turning to the West, KAE889 sites, you know, I
12 missed one. I'm sorry. Perrineville was the last one in New
13 Jersey. That's the one that's been leased to Pinnacle. That's
14 WRV374-25. There's no equipment at that site. Similar story, it's
15 right in the middle of where I-280 and the New Jersey Turnpike
16 cross, I believe. Also, it is within proximity of lower Manhattan,
17 so it's been our view that that site is fully encompassed by the
18 Pinnacle operations.

19 And that site itself, Your Honor, is now a rock quarry,
20 and so --

21 JUDGE SIPPEL: What quarry?

22 THE WITNESS: Rock quarry. Yes. So there's not a tower
23 there anymore. Folks decided to dig up marble or whatever is
24 there. And so Tim Smith, around the 2010 timeframe, entered into
25 a lease agreement on behalf of Maritime with a nearby site, managed

1 by a company called Diamond, like a diamond ring, Diamond
2 Communications. And I believe the equipment was procured and
3 that's all ready to go, except, it's not currently on the air.

4 Now, let me turn to the West, with the KAE889 sites.
5 There are five sites which are being leased and sold to Puget Sound
6 Energy. That lease and purchase agreement was signed, I believe,
7 in 2009 or 2010 timeframe. It's in the record. But essentially,
8 Puget Sound Energy went to those five sites with Tim Smith and
9 verified that all five of those sites were on the air, operating
10 with equipment, and even more importantly, in my mind, Puget Sound
11 Energy also contracted to buy that equipment.

12 So not only is the equipment all at the sites, and the
13 site is operating, and there are leases in place, but Pinnacle is
14 buying that equipment at those sites, subject, of course, to prior
15 FCC approval.

16 JUDGE SIPPEL: Yes.

17 THE WITNESS: I testified earlier that in August of this
18 year I received a phone call from Puget Sound Energy. Did I say
19 Pinnacle? I meant Puget Sound.

20 JUDGE SIPPEL: You said Pinnacle.

21 THE WITNESS: Sorry. I meant Puget Sound. Excuse me.
22 So this is the West Coast, Pacific Northwest, KAE889, and there are
23 five call signs involved. And let me see if I can find them. It's
24 4, 20 -- okay. I believe it's 4, 20, maybe somebody can help me
25 with that. 4, 20, 46 maybe. Well --

1 MR. KELLER: May I, Your Honor?

2 JUDGE SIPPEL: Yes.

3 MR. KELLER: I'm not going to testify. I'm just going to
4 read the list of sites of KAE889 that are still in play; 4, 13 --

5 THE WITNESS: That's not. That's Evergreen.

6 MR. KELLER: 20.

7 THE WITNESS: Okay. So it's 4, 20.

8 MR. KELLER: 30.

9 THE WITNESS: 30.

10 MR. KELLER: 34.

11 THE WITNESS: 34.

12 MR. KELLER: 48.

13 THE WITNESS: And 48. And 3 and 13 are Evergreen. Okay.
14 So those five. 4, 20, whatever he said.

15 JUDGE SIPPEL: 34 and what?

16 THE WITNESS: Bob, can you give them to us again?

17 MR. STENGER: 4, 20, 30, 34, and 48.

18 MR. KELLER: You got it.

19 THE WITNESS: 30, 34, and 48. Okay. So I received a
20 phone call this summer from Jerry Sykora, the manager of the Puget
21 Sound Energy radio system, he said, you're interfering with us.
22 Can you re-tune it? I testified to that. So we believe those
23 sites, again, are on the air and they are, or soon will be, re-
24 tuned by the lessee, Puget Sound Energy, as part of their lease
25 agreement, and in authorization from Sandra DePriest to do that.

1 JUDGE SIPPEL: What does that mean when you re-tune
2 something?

3 THE WITNESS: Well, because the transmitter that's
4 operating is currently interfering with the system that they're
5 trying to build, because they purchased Mr. Havens' spectrum around
6 those donuts, in other words, we own the donut, and they're buying
7 the rural area from Mr. Havens, they already closed on that
8 transaction, apparently, but they still need to operate where we
9 own the spectrum, we being Maritime, so the City of Seattle, for
10 example, we're on Tiger Mountain that overlooks the city.

11 They're trying to build their system. They can't
12 complete their system without the MCLM spectrum. However, while
13 they're trying to go and get their system ready, they're bumping up
14 into interference from that existing system of Maritime. So to re-
15 tune it, they send an engineer out, an engineer actually goes into
16 the shelter of the location, a lot of these are on mountaintops,
17 and goes about the process of changing out the computer so that the
18 equipment transmits on a frequency that we agree that it can
19 transmit on.

20 And we worked with Tim Smith to come up with a list of
21 frequencies that they could re-tune it to, so we said, you can re-
22 tune to these channels. You know, so we gave them some specific
23 channels. That's about as much as I know. I'm not an engineer.
24 So anyways, that's what Jerry Sykora's going to do, if he hasn't
25 already done it.

1 And then there are two call signs left, and then I'll be
2 done, there's 3 and 13, KAE889-3, which is Livingston Peak, and 13,
3 which is Portland, Oregon, and those two sites were recently --
4 well, in 2009, a lease agreement was entered into with Evergreen
5 School District.

6 MR. STENGER: Your Honor, I'm sorry to interrupt, but I
7 mean, he filed his written direct testimony and now he's sort of
8 going on and on and on, and adding all kinds of testimony that was
9 supposed to be filed on September 16th, or whatever, and I'm
10 supposed to cross-examine him based on his written direct
11 testimony. Also, he's making all kinds of statements that are
12 confusing, that I'm not getting a chance to ask him.

13 I think he said at one point that Puget Sound Energy is
14 operating these licensed locations. That's not true, is it? Puget
15 Sound Energy isn't operating from any of these licenses.

16 THE WITNESS: Your Honor.

17 JUDGE SIPPEL: Wait just a second.

18 THE WITNESS: May I be heard, Your Honor?

19 JUDGE SIPPEL: Yes, please.

20 MR. ENGEL: By my count, this is the fourth time that
21 counsel has interrupted this witness answering a question. If the
22 questions were asked by Your Honor or they're open-ended questions
23 asked by counsel, they're stuck with the answer, Your Honor. The
24 problem is, he doesn't like the answer. This witness, this is
25 going to happen repeatedly, because this witness has detailed

1 information about the operations, or whatever we're calling them,
2 at these stations, Your Honor.

3 He's going to give detailed, responsible answers.
4 They're stuck with the answer if they don't form the question in
5 the right way. And they just cutoff the witness answering Your
6 Honor's question, Your Honor. That's inappropriate.

7 JUDGE SIPPEL: Well, that's true. I mean, everything you
8 say is true, but I'm going to just pick up where I was. I think
9 you were on the last one.

10 THE WITNESS: Last two, yes, which are the same lease
11 agreements.

12 JUDGE SIPPEL: You got Livingston.

13 THE WITNESS: Livingston Peak and Portland, Oregon.

14 JUDGE SIPPEL: Peak and then Portland, Oregon.

15 THE WITNESS: Yes, Your Honor.

16 JUDGE SIPPEL: Okay. So why don't you just repeat the
17 information that you had there.

18 THE WITNESS: Okay. So you had asked me, Your Honor, if
19 there's equipment at these sites.

20 JUDGE SIPPEL: Right.

21 THE WITNESS: And I'm almost done. So as I understand
22 it, under the lease agreement to Evergreen School District, a lease
23 agreement was prepaid from 2009 to 2013. Evergreen School District
24 operates six channels right in the middle of the contours of those
25 two sites. As I understand it, Evergreen School District has

1 decided to discontinue use of that spectrum, however, they have not
2 sent a lease termination notice to Maritime.

3 I confirmed with Sandra DePriest, they haven't sent one
4 to her directly, so we have a lease in place with the FCC to lease
5 that spectrum. However, to get to your question about the
6 equipment, the equipment is not operating from either one of these
7 two sites. I contacted the site owner, or manager, for one of the
8 sites, which is Day Wireless, who informed me that they believe
9 that the equipment is on top of the site still, on top of the
10 mountain.

11 For the other site, it has been removed for non-payment.
12 However, they would enter into a new lease with either Maritime or
13 Choctaw, as the licensee, at that point in time, to restore
14 operations if necessary, at one or both of those sites. So those
15 two sites are not on the air currently from those licensed
16 locations; 3 and 13.

17 JUDGE SIPPEL: Who removes it?

18 THE WITNESS: Who removes it? Well, that's a good
19 question. Because it's on a mountaintop in the West, it's, you
20 know, the big mountains, it's not easy to remove, and that's why a
21 lot of the times, the equipment will stay there, because it's more
22 expensive to go climb up a tower on top of a mountain and remove
23 it, so usually it's the site owner or manager.

24 If they're not paid and if they need that site, then they
25 would go and remove that equipment, and in this case, put it in

1 storage for the one site.

2 JUDGE SIPPEL: All right. So again, this is the lessee?

3 THE WITNESS: Yes. Okay. So the site owner in that
4 case.

5 JUDGE SIPPEL: Site owner.

6 THE WITNESS: Yes, Day Wireless. Yes. And his name is
7 Dane Ballew, B-A-L-L-E-W. In any event, that's the status of those
8 sites.

9 JUDGE SIPPEL: All right. Mr. Stenger.

10 MR. STENGER: I'm going to let Mr. Havens ask some
11 questions because he has more detailed information about these
12 sites than I do.

13 JUDGE SIPPEL: All right. You've got to take them one at
14 a time. Okay, Mr. Havens? As best you can.

15 MR. HAVENS: One what at a time? One question at a time
16 or one --

17 JUDGE SIPPEL: No, no, one site at a time.

18 MR. HAVENS: Well, I do have some broad questions.

19 JUDGE SIPPEL: Go ahead. We'll see how it goes.

20 MR. HAVENS: Mr. Reardon, when you talk about leases that
21 are part of your definition of customers, do you mean a contract
22 between Maritime and the lessee? Does that involve in what you
23 call a leasing? An agreement, a contract, to lease.

24 THE WITNESS: Yes. A lease agreement would be a written
25 contract to lease spectrum.

1 MR. HAVENS: Okay. My next question then, if Maritime
2 has a lease agreement and you are alleging that the lessee is
3 operating the spectrum, whether it's at the licensed station, which
4 I'll have some questions on, or using the spectrum some other way,
5 such as at a fill-in station, does Maritime and the lessee have to
6 file with the FCC an application describing the lease and seeking
7 FCC acceptance?

8 MS. KANE: Objection. Asks for a legal conclusion and
9 lack of foundation.

10 JUDGE SIPPEL: Well, he's a lawyer, but I think this
11 witness is clued-in enough that he can absorb his question and come
12 to an answer. Go ahead, sir.

13 THE WITNESS: Thanks, Your Honor. I haven't practiced
14 law since 1997, but that's okay.

15 JUDGE SIPPEL: A lot of us haven't.

16 THE WITNESS: Yes. As I understand it, normally, in the
17 contract, whether it's an asset purchase agreement that
18 contemplates a lease, or just an outright separate lease, within
19 some period of time, counsel for MCLM and counsel for the lessor
20 will get together and file a lease notice with the FCC, whether
21 that's happened in every instance or whether, you know, there's
22 been a lapse of time because of circumstances or not, you know,
23 it's possible, but as I understand it, when you enter into a lease,
24 you're supposed to file that lease application.

25 And then, I believe, it's within about 21 days, you have

1 to wait, and then you can begin to, as a lessee, operate on that
2 spectrum.

3 JUDGE SIPPEL: You get to wait until you receive
4 information from the Commission, is that right?

5 THE WITNESS: Well, I don't think you need FCC -- again,
6 I'm not --

7 JUDGE SIPPEL: I'm not asking for approval, that has been
8 accepted at the FCC.

9 THE WITNESS: I'm not even sure of that. What I've been
10 told by FCC counsel for Maritime is that you file the lease
11 application, and then 21 days from that is when you, as the lessee,
12 can begin to use the frequencies.

13 JUDGE SIPPEL: All right.

14 MR. ENGEL: Your Honor, may I be heard?

15 JUDGE SIPPEL: Yes.

16 MR. ENGEL: My understanding of the rules of the road
17 that were circulated to the parties were that there would be no
18 double-teaming of a witness. Counsel for EVH has expressed that
19 Mr. Havens would ask factual questions. This last question, I just
20 don't want to go down this road, Your Honor, because this last
21 question was a legal question and counsel could have asked that
22 question. There's nothing unique about that question or with the
23 follow-up to that question that would fall only to Mr. Havens.

24 Mr. Havens has a unique factual input he'd like to engage
25 in, of course, that's Your Honor's decision, but if they're just

1 general questions about the natures of the FCC licensing system,
2 and the law, or this case that Mr. Stenger couldn't have asked, I
3 don't understand how that's not double-teaming, Your Honor.

4 JUDGE SIPPEL: Well, it's not double-teaming. Mr. Havens
5 just said he's got a few questions on background and I'm letting
6 him do it.

7 MR. HAVENS: Thank you.

8 JUDGE SIPPEL: Can you hear me okay? I guess you can.

9 MR. HAVENS: I can.

10 JUDGE SIPPEL: You can.

11 MR. HAVENS: Yes.

12 JUDGE SIPPEL: All right. So let's keep moving. Let's
13 keep moving. You don't have many questions like this, do you?

14 MR. HAVENS: Not many.

15 JUDGE SIPPEL: All right.

16 MR. HAVENS: I have some specific ones.

17 JUDGE SIPPEL: Let's go to those.

18 MR. HAVENS: Yes, okay. The next question, and I'm not
19 asking, Mr. Reardon, for your legal conclusion, I'm simply asking
20 for knowledge you have.

21 JUDGE SIPPEL: It's mixed question of law and fact and
22 this man is a lawyer. He's had legal training.

23 MR. HAVENS: Okay.

24 JUDGE SIPPEL: He knows how to answer your question if
25 your question is fair and clear.

1 MR. HAVENS: Okay. Mr. Reardon, you testified that
2 lessees can operate the spectrum under leases between Maritime and
3 the lessee that may not be at the licensed station if it's within
4 the contours of the licensed station. I'm not sure that was
5 exactly your testimony, but is that, generally, correct in your
6 view?

7 MS. KANE: Objection to the extent it mischaracterizes
8 his testimony.

9 MR. HAVENS: Can I rephrase then?

10 JUDGE SIPPEL: No, just let him answer the question
11 because time is killing us here. Do you understand the question?

12 THE WITNESS: I think I understand what he's trying to
13 get at, and there are two types of leases which Maritime has
14 entered into. One is a lease that involves geographic spectrum.
15 So for example, we talked earlier about --

16 MR. HAVENS: We're only talking about 16 stations.

17 THE WITNESS: I understand. And the other one, and so in
18 some cases, you will have an overlap where some of the incumbent
19 space has geographic. I think in Mr. Havens' question, I think
20 what he's asking is, when you lease an incumbent station, what are
21 you leasing? If that's a correct characterization of -- and as I
22 understand it, what's being leased is the area -- the frequencies
23 that are covered by the contour of that licensed location.

24 So for example --

25 JUDGE SIPPEL: I thought that was site-specific?

1 THE WITNESS: Yes. See. It's confusing, isn't it?

2 JUDGE SIPPEL: No, it's not confusing if you don't jump
3 around. Site-specific is site-specific. Geographic is a more
4 rural area than site-specific.

5 THE WITNESS: Right. So a lease of an incumbent, or
6 site-specific, license.

7 JUDGE SIPPEL: That's what we're talking about.

8 THE WITNESS: Yes, exactly. But I think your question --

9 JUDGE SIPPEL: Just stop there. Go ahead, Mr. Havens.

10 MR. HAVENS: Okay. Thank you. I understand your answer.
11 Well, no. Next question is, can you explain, in your view, whether
12 it's a legal opinion or some other opinion or view, how does
13 Maritime determine and how does the lessee determine what are these
14 contours or service contours? Is it on the license? Is it in an
15 FCC order? Do you apply to the FCC to get approval of a contour?

16 JUDGE SIPPEL: All right. That's enough. Let's go.

17 MS. KANE: Objection. Compound.

18 JUDGE SIPPEL: It is compound, but this witness knows
19 what we're talking about. Go ahead.

20 THE WITNESS: Yes, Your Honor, so Maritime
21 Communications, for many years, has engaged Tim Smith.

22 JUDGE SIPPEL: Yes, but can you answer his question,
23 specifically?

24 THE WITNESS: I can. I think.

25 JUDGE SIPPEL: Answer his question and then explain it.

1 THE WITNESS: Yes, so Tim Smith's an engineer and Tim
2 Smith has a RadioSoft computer program where he can put in various
3 information about the contours and the site information, and the
4 transmitter power, the things that I don't understand or know how
5 to do, and then he can generate a map.

6 In addition to Tim Smith, many others can do this. Mr.
7 Havens can do it. Maritime has a spectrum broker known as Spectrum
8 Bridge, which engaged -- and so there have been maps that have been
9 prepared.

10 JUDGE SIPPEL: Just get to an answer.

11 THE WITNESS: And so that's how the contours are
12 developed. That's how when you have somebody that wants to lease
13 from you, you know where your spectrum covers. It's developing
14 that map based upon the engineer and the information.

15 JUDGE SIPPEL: Go ahead, Mr. Havens. I think I know
16 where you're going. Go ahead.

17 MR. HAVENS: Thank you.

18 JUDGE SIPPEL: Let's try to pin this down and get out of
19 here.

20 MR. HAVENS: Okay. What are the ingredients, or the
21 technical components, that are used, and if you don't know, we'll
22 ask Tim Smith, to determine the contours, and what evidence does
23 Maritime have to have of these ingredients, such as the actual
24 transmitter, measurement of the power, antenna, antenna cable, and
25 all the different components which have been described by Scott

1 Stone of the FCC as the components to determine the service
2 contour.

3 MS. KANE: Objection.

4 MR. HAVENS: Do you know what the components are?

5 MS. KANE: Objection. Compound. Putting facts into the
6 record that are not part of this case.

7 JUDGE SIPPEL: He's not testifying. He's asking a
8 question.

9 MS. KANE: Well, he's talking about testimony or
10 information that he's received from somebody who is not being
11 called as a witness in this case. And --

12 MR. HAVENS: I'll restate the question.

13 JUDGE SIPPEL: Scott Stone of the FCC.

14 MS. KANE: He is an FCC Wireless Bureau employee, Your
15 Honor.

16 MR. HAVENS: I can restate the question. I'll withdraw
17 the question and restate it more simply.

18 JUDGE SIPPEL: Go ahead, please.

19 MR. HAVENS: Can you describe, what are the technical
20 components which Tim Smith can put in his computer, or you said I
21 could put in my computer, to determine the service contour of the
22 MCLM 16 site-based stations we're at this hearing about?

23 THE WITNESS: No.

24 JUDGE SIPPEL: Who can do it?

25 THE WITNESS: Tim Smith can do it.

1 JUDGE SIPPEL: Okay. Stop. Can we go into specifics
2 now?

3 MR. HAVENS: I have one more question, in general.

4 JUDGE SIPPEL: Go ahead. Let's have it.

5 MR. HAVENS: Am I correct that -- is it your view that
6 the MCLM, or Maritime AMTS site-based stations, they have CMRS --
7 they're CMRS by regulatory status?

8 MS. KANE: Objection to the extent it's calling for a
9 legal conclusion.

10 MR. HAVENS: I'm asking his view.

11 MR. KELLER: It's irrelevant.

12 MR. HAVENS: It's not -- if you let me finish the
13 question.

14 JUDGE SIPPEL: You can show us relevance, can't you, Mr.
15 Havens? Show us relevance.

16 MR. HAVENS: Okay. The relevance is that the lessees,
17 and I'll lead to this question, my understanding, the lessees are
18 using the Maritime spectrum only for PMRS, private mobile radio
19 service, and there's a specific FCC rule, 20.9(b), in which an
20 applicant or licensee can seek and obtain approval of the FCC to
21 use AMTS spectrum for PMRS.

22 JUDGE SIPPEL: Now you're getting too -- you're finally
23 getting too narrow. I haven't seen this approach in any of the --
24 for the two years I've been on this case, and I don't believe --

25 MR. HAVENS: It has been in my filings, Your Honor.

1 JUDGE SIPPEL: Well, I'm sure it's someplace in there.
2 And I don't see the relevance of it. I'm going to move on. I'm
3 going to let you go through the specific sites and specific
4 questions, Mr. Havens.

5 MR. HAVENS: Okay. I'll move on.

6 JUDGE SIPPEL: It's getting late.

7 MR. HAVENS: It's definitely apparent because that's a
8 fundamental requirement of the Communications Act.

9 JUDGE SIPPEL: Objection is overruled, but it's in the
10 record. Your objection is noted.

11 MR. HAVENS: On the specific stations that you gave
12 numbers for, let's do WRV374.

13 JUDGE SIPPEL: What geographic site is that? What
14 geographic place is that? Give me a city.

15 MR. HAVENS: Okay. If you take Selden.

16 JUDGE SIPPEL: Selden. Okay. Selden.

17 MR. HAVENS: Do you know whether Maritime or at what
18 point during the history of Maritime's holding that license, that
19 Maritime has had any FCC acceptance of a lease or did I
20 misunderstand that there is no lease regarding -- oh, Selden is
21 involved with Pinnacle Wireless, is that correct? The lease with
22 Pinnacle?

23 THE WITNESS: As I understand Selden, Selden is on Long
24 Island, and I believe that Pinnacle has proffered information that
25 says that improper operation of Selden could cause interference to

1 its system. I also understand, as I testified earlier, that when
2 Tim Smith, who will be here, I guess, tomorrow --

3 MR. HAVENS: I didn't ask a question yet. I was just
4 asking whether the Pinnacle site -- whether the Selden site was
5 under a lease with Pinnacle.

6 THE WITNESS: I'm not sure, sitting here without a copy
7 of the Pinnacle agreement to tell if that's covered or not.

8 MR. HAVENS: Well, is the Verona site under lease with
9 Pinnacle or do you know if any of these sites are under lease with
10 Pinnacle?

11 THE WITNESS: To the best of my recollection, the Verona
12 site is under lease to Pinnacle, I believe the Allentown site is
13 under lease to Pinnacle, I believe the Perrineville site is under
14 lease to Pinnacle, and I believe the World Trade Center site,
15 Number 33, so that's 33, is under least to Pinnacle, and I believe
16 that the lease in question is the 2008 lease, which sort of
17 combines the New Jersey Turnpike and the New Jersey Sports, and
18 independent, what we call the Meadowlands, into one composite
19 agreement.

20 JUDGE SIPPEL: What number is that?

21 THE WITNESS: I'm sorry?

22 JUDGE SIPPEL: You give a number of that, what you said
23 World Trade Center?

24 THE WITNESS: Oh, it's 33.

25 JUDGE SIPPEL: Okay.

1 THE WITNESS: I think 33, 25, 16, and 15. I could have
2 missed one.

3 MR. HAVENS: Do you know whether or not Maritime and
4 Pinnacle submitted to the FCC an application for notification and
5 acceptance of the lease between Maritime and Pinnacle for the
6 stations you've just mentioned?

7 THE WITNESS: Yes, I believe that they did, and I think
8 what happened was, there was some confusion because as I reviewed
9 it in preparation for today, I see that there's a statement on the
10 back where the Universal License Service System of the FCC wouldn't
11 allow the counsel to file all the channels, and perhaps all of the
12 sites, and so perhaps, originally, it was Site 16 and 33, and then
13 later they tried to amend it to --

14 MR. HAVENS: If I could -- it's a simple question. I'm
15 trying to go quickly.

16 JUDGE SIPPEL: Yes, I'm trying to get to the bottom of
17 this thing. I'm really only interested in two questions. Does he
18 know where equipment is and does he know what the plans for that
19 particular site are?

20 MR. HAVENS: Well, then if you --

21 JUDGE SIPPEL: Is it permanent --

22 MR. HAVENS: Judge, I'm going to follow whatever you say,
23 but if you won't let me ask a question I believe is relevant, I'd
24 like to put an objection on the record at this point.

25 MR. MCLAUGHLIN: Your Honor, I object to this line of

1 questioning. It sure looks like he's trying to bring in a
2 character issue here.

3 JUDGE SIPPEL: Wait a minute. We know what it's about.
4 It's the second leg of the construction/intentions to continue
5 operations.

6 MR. HAVENS: Yes.

7 JUDGE SIPPEL: It's the second leg of that.

8 MR. HAVENS: I know.

9 JUDGE SIPPEL: But you're not asking any questions about
10 that.

11 MR. HAVENS: If you --

12 JUDGE SIPPEL: What are the intentions and what can he
13 point to to show that that's the intentions of --

14 MR. HAVENS: I'm asking for actual evidence that they
15 have authority from the FCC for Pinnacle to operate at all under a
16 lease. And if he doesn't know --

17 JUDGE SIPPEL: That's way beyond the scope of this case.
18 It's way beyond the scope of this case. There are certain
19 categories of information that --

20 MR. HAVENS: It's the --

21 JUDGE SIPPEL: Ms. Kane started out by saying that this
22 -- I'm not sure which of the cases were that you cited this for,
23 but that the Commission said it's a case-by-case decision as to
24 whether or not operations are intended to be continued.

25 MR. HAVENS: Yes.

1 JUDGE SIPPEL: And that's what we're looking for. We're
2 looking for that case-by-case. What characteristics, what is there
3 about those stations that lends you to believe, and you're trying
4 to go back to the creation of it and everything like that. That's
5 too much.

6 MR. HAVENS: No, I'm talking about their testimony that
7 through the lessees --

8 JUDGE SIPPEL: If the testimony's in the record, then you
9 can use that.

10 MR. HAVENS: I am.

11 JUDGE SIPPEL: All right. That's fine.

12 MR. HAVENS: Thank you.

13 JUDGE SIPPEL: But not the questions. You can use that
14 in findings.

15 MR. PLACHE: Your Honor, could I be heard?

16 JUDGE SIPPEL: Yes, please do.

17 MR. PLACHE: Please, I'd like to object to this whole
18 line of questioning, because what he's trying to do is raise
19 questions about whether Pinnacle is operating unlawfully. He's not
20 trying to elicit evidence as to whether Pinnacle is operating or
21 not. He's trying to show that Pinnacle's operations are unlawful
22 and Pinnacle is not on trial here.

23 And so I don't want this to continue.

24 JUDGE SIPPEL: I'm sustaining the objection. I'm going
25 to sustain that objection because we're not getting what we want to

1 get at. I don't know what I can do to get this point across.

2 MR. HAVENS: Let me then understand, that when the
3 testimony Mr. Reardon and others talking about leasing to Pinnacle,
4 your ruling is that I cannot ask questions with Mr. Stenger about
5 whether or not the lease application has been submitted and
6 accepted by the FCC? Is that the rule?

7 JUDGE SIPPEL: That exactly is the ruling here.

8 MR. HAVENS: All right. Then I'll move on. I just want
9 my objection in the record and I'll move on.

10 JUDGE SIPPEL: You can --

11 MR. ENGEL: Your Honor, can I be heard?

12 JUDGE SIPPEL: Let's keep going. How much longer you got
13 to go? Time is -- well, it's 4 o'clock now. That's supposed to be
14 our break time, but we got a witness on the stand and I don't want
15 to bring him back tomorrow morning.

16 MR. HAVENS: Yes. Okay. Thank you. Mr. Reardon, am I
17 correct, or could you give your view, on where can a lessee place
18 a fill-in station? What is the determination? Can they put a
19 fill-in station 100 miles from a licensed station; 5 miles; up to
20 the Canadian border? How does Maritime determine that?

21 MS. KANE: Objection, Your Honor. Compound and seeks a
22 legal conclusion as an expert --

23 JUDGE SIPPEL: I'm going to sustain the objection. That
24 doesn't get to the point. It doesn't get to the point. It does
25 not get to the point. Let me take a try at this. Do you know what

1 plans -- what is the business plan of Maritime? And let's assume
2 that they don't lose the licenses through the bankruptcy. Let's
3 assume that, for some reason, that Mr. Kirk's client does not
4 accept these licenses and something breaks down on that part of the
5 deal, and they revert back to you, or revert back to Maritime.
6 Let's just take that category.

7 Is there any kind of a broad business plan about how
8 they're going to keep this thing going?

9 MR. KIRK: Your Honor, if I may?

10 JUDGE SIPPEL: Yes, sir.

11 MR. KIRK: This gets into confidential information about
12 business plans. There's a competitor sitting in the room; Mr.
13 Havens. If the witness wants to proceed and you want to look into
14 this, I would just want to caution to talk in generalities, not
15 specifics, or we should clear the room of Mr. Havens.

16 JUDGE SIPPEL: No, I'm talking about -- right now I'm
17 talking about generalities. It's either whether or not Choctaw or
18 Maritime, these licenses revert back to them because you're
19 successful in this litigation. What plans do you have to
20 permanently -- what plans do you have to not permanently
21 discontinue this stuff?

22 THE WITNESS: Yes, Your Honor. Thank you.

23 JUDGE SIPPEL: What specific things are being done to
24 assure that?

25 THE WITNESS: Yes, so --

1 MR. KIRK: Your Honor, if I may. If you're getting into
2 specifics, and the witness is certainly capable of getting into
3 specifics, I would just ask that folks that have not signed the
4 protective order clear the room. He can answer your question, Your
5 Honor, but just given that it's confidential information regarding
6 the business plan and the intent of Maritime and Choctaw, that
7 information should not be disclosed to a direct competitor.

8 JUDGE SIPPEL: And he knows the answer to my question.

9 MR. KIRK: He does.

10 MR. ENGEL: He's correct, Your Honor.

11 MS. KANE: He's correct, Your Honor.

12 JUDGE SIPPEL: Well, no signing, no asking.

13 MS. KANE: Your Honor, the Bureau does believe that, to
14 the extent that Your Honor is seeking this information and it would
15 be helpful to have the record be complete, that Mr. Reardon should
16 be allowed to answer the question if he has the answer to that
17 information, but that Mr. Stenger and Mr. Havens, and counsel for
18 Pinnacle, in-house counsel for Pinnacle, who have not signed on to
19 the protective order, should be excused from the room so that we
20 may hear the answer and it may be part of the official record.

21 MR. KIRK: Or they can sign the protective order, as
22 you've indicated, Your Honor.

23 JUDGE SIPPEL: We have extra copies.

24 MS. KANE: Mr. Havens, regardless of whether or not he'd
25 be willing to sign the protective order, pursuant to the terms of

1 the protective order that was agreed to by all parties in this
2 case, including counsel for Mr. Havens at the time, Mr. Havens is
3 not to have access to confidential information.

4 MR. STENGER: Your Honor, again --

5 MS. KANE: At a minimum he should be, if we're going to
6 allow this testimony to proceed, and we believe that it would be
7 helpful to the record to have that testimony on the record --

8 MR. KIRK: As does Choctaw.

9 MS. KANE: -- then Mr. Havens and Mr. Stenger should be
10 excused from the room.

11 MR. STENGER: Your Honor --

12 JUDGE SIPPEL: As does the Commission. I'm going to tell
13 you right now, I either clear the room today, which I don't want to
14 do, or we can come back tomorrow.

15 MR. STENGER: Your Honor, the --

16 JUDGE SIPPEL: I'll give you time to talk about signing
17 the darn thing.

18 MR. STENGER: May I just respond to what's been said up
19 to this point?

20 JUDGE SIPPEL: You certainly may.

21 MR. STENGER: The company is in bankruptcy. It has a
22 bankruptcy plan that's been approved by the court. It cannot do
23 any other business plan besides the approved plan. The approved
24 plan is not confidential. Your Honor can go on PACER, anybody can
25 go on PACER, and read the plan. There's nothing confidential about

1 it.

2 The plan has nothing to do with putting any of these 16
3 stations back into serving subscribers. It only has to do with
4 selling the spectrum.

5 JUDGE SIPPEL: That's a bankruptcy issue. We got a
6 bankruptcy court in front of a bankruptcy judge. I'm trying to get
7 down what the FCC requires for a showing.

8 MR. STENGER: Their plan is to never put these stations
9 back into service and sell the spectrum.

10 MS. KANE: Your Honor, he's testifying and he's
11 testifying about a document that's not even in the record.

12 JUDGE SIPPEL: Yes. What are you doing that for?

13 MR. STENGER: I'm just trying to say that there's nothing
14 confidential about it. There's nothing that he could possibly
15 testify --

16 JUDGE SIPPEL: Why don't you sign the agreement then you
17 won't have any problem if you don't think it's confidential? But
18 boy, if you violate that order, you're going to be in trouble.
19 What's wrong with that?

20 MR. HAVENS: Are you asking me?

21 JUDGE SIPPEL: Anybody.

22 MR. HAVENS: Well, I'll answer the question if you're
23 asking me.

24 JUDGE SIPPEL: Sure. Go ahead.

25 MR. HAVENS: I agree to confidentiality. I happen not to

1 be an attorney, but I agree to keep it confidential.

2 JUDGE SIPPEL: Then let your attorney sign the agreement.

3 MR. HAVENS: He can sign it as long as he is on a
4 confidential level and I am too, then we can talk about it.

5 MS. KANE: Your Honor, pursuant to the terms of the
6 agreement that were negotiated more than three years ago, by all of
7 the counsel to the parties in this case, including those who are
8 not here, and including counsel for Mr. Havens and his companies at
9 the time, Mr. Havens is not entitled to see confidential
10 information.

11 Although this has not come into the record, there have
12 been numerous instances where the parties have been concerned that
13 Mr. Havens has made confidential information public previously.

14 MR. HAVENS: Oh, come on.

15 MS. KANE: For those reasons, it was negotiated among the
16 parties, and his counsel at the time, that he would not have access
17 to confidential information.

18 MR. HAVENS: You're talking about character.

19 JUDGE SIPPEL: I didn't want to go down this road.

20 MR. KIRK: Your Honor, if I can just mention one thing.

21 JUDGE SIPPEL: Hold off, Mr. Havens. Go ahead, Mr. Kirk.

22 MR. KIRK: Mr. Havens keeps indicating that he's willing
23 to sign the protective order.

24 JUDGE SIPPEL: He's not going to sign. His counsel is
25 going to sign.

1 MR. HAVENS: On a confidential level, not attorney's eyes
2 only.

3 MR. KIRK: We have discussed previously, and he indicated
4 that controls the companies at issue here, he's a direct
5 competitor.

6 JUDGE SIPPEL: I hear you.

7 MR. KIRK: How he can say with control on these
8 companies, I'm going to keep the information confidential, is
9 beyond me.

10 MR. KELLER: I also want to make one other point, Your
11 Honor.

12 JUDGE SIPPEL: You're right, Mr. Kirk. Go ahead.

13 MR. KELLER: Mr. Havens and Mr. Stenger, before, are
14 trying to make a distinction between confidential and highly
15 confidential. That is a distinction in the protective order, but
16 the only difference would be that confidential as opposed to highly
17 confidential documents, could be provided to in-house licensed
18 counsel. I think I've got that correct.

19 MS. KANE: That is correct.

20 MR. KELLER: so even if Mr. Havens signed this, he's
21 thinking that he would get access to the confidential, but not the
22 highly confidential, but no, under the terms of the agreement, he
23 personally would not get access to any of it.

24 MR. HAVENS: I think that's your interpretation. I
25 disagree with Ms. Kane.

1 JUDGE SIPPEL: All right. Let's hold it right here.
2 It's 10 after 4:00, and according to my housekeeping rules, we
3 leave at 4:00. Would it be terribly inconvenient for you to come
4 back tomorrow a.m. to testify?

5 THE WITNESS: Absolutely. I'll be here.

6 JUDGE SIPPEL: Okay. You said you're going to be here.
7 And you got to be here anyway.

8 MS. KANE: Your Honor, I hate to be contrary, but there's
9 a question pending before the witness.

10 JUDGE SIPPEL: Well, that's fine.

11 MS. KANE: If we suspend this --

12 JUDGE SIPPEL: I'm sure the reporter has it down, and you
13 know what it was so that we can repeat it first thing in the
14 morning.

15 MS. KANE: Okay, Your Honor. Thank you.

16 JUDGE SIPPEL: And, you know, we got things to do
17 upstairs with this question, and hopefully, Mr. Havens will
18 convince his lawyer that he should sign that agreement. Mr.
19 Havens, you are not going to be beneficiary of any of this. You
20 are barred from receiving any of this information. If you
21 previously got it some other way, that's very best -- the facts are
22 where they lie, but I'm not going to go forward based on an
23 assumption that everything's been waived so you should have it
24 anyway. I don't buy that at all.

25 There's too much -- I've given up too much and the system

1 gives up too much when you do that. We're in recess until 10
2 o'clock tomorrow morning. You certainly can consult with counsel
3 for legal advice, but don't talk to him about how to tamper or
4 modify any of your testimony.

5 THE WITNESS: Okay.

6 JUDGE SIPPEL: Do you understand that?

7 THE WITNESS: Yes, Your Honor.

8 JUDGE SIPPEL: We want you as a clean witness tomorrow
9 morning.

10 THE WITNESS: Okay.

11 JUDGE SIPPEL: And I don't mean to say you got to take a
12 shower tonight. I mean, you know, we want you fresh and eager to
13 go, and not having your mind confused by what other people say.

14 MR. HAVENS: Your Honor?

15 JUDGE SIPPEL: Yes, sir.

16 MR. HAVENS: One quick thing.

17 JUDGE SIPPEL: Yes, Mr. Havens.

18 MR. HAVENS: All right. I want to recall whether or not
19 you will permit Mr. Stenger to submit tomorrow morning, a motion of
20 some kind with regard to the matters asserted under the protective
21 order?

22 JUDGE SIPPEL: Well, I respond to that is, he can do it
23 if he wants, but I'm not going to have time. Then we have to have
24 -- you know, I'm not going to take time. I'm not going to stop
25 this case for people to go back to their office and brief things.

1 If Mr. Stenger wants to, that's fine, but -- and he can have it
2 written, he can hand it out if he has time, but I'm not going to
3 stop to decide that issue on the basis of those pages.

4 I'm hoping I can get it resolved --

5 MR. HAVENS: But it would be moot then, wouldn't it?

6 JUDGE SIPPEL: Well, it wouldn't be moot. Nothing's moot
7 in this case until its end.

8 MR. HAVENS: Okay. All right. Well, thank you. I
9 appreciate that.

10 JUDGE SIPPEL: But I just wish to heck he could come
11 around to signing that thing. It's going to make life so much
12 easier for everybody.

13 MR. HAVENS: Well, but if Mr. Stenger did sign that, am
14 I correct that the documents we already have that Mr. Stenger has
15 identified on PACER, that are public on PACER, we could only use
16 those in this hearing in any way if he signs the protective order?

17 JUDGE SIPPEL: Whatever information you have received
18 outside the protective order, that protective order doesn't reach,
19 for whatever reason, there's nothing I can do to put the toothpaste
20 back in the tube.

21 MR. HAVENS: But does that mean we can use those
22 documents for questioning the witnesses?

23 JUDGE SIPPEL: No, I'm not going to do that.

24 MR. HAVENS: Okay.

25 JUDGE SIPPEL: Until he signs the agreement and you're

1 going to be excluded from participating in that information.

2 MR. HAVENS: But if I have it already.

3 JUDGE SIPPEL: That's interesting. That's the only
4 reason it's interesting. The rules are what they are. I'm going
5 to apply the rules as they're meant to be applied. There's no way
6 that you can go through every single variation of the what ifs in
7 this kind of a case like this with the way you operate because I'm
8 not criticizing you, but you're right in the middle of the
9 business.

10 MR. HAVENS: But the simple question I meant to ask, that
11 if I have documents off PACER that are public, anyone can get them
12 anytime, and if Mr. Stenger signs the protective order, and he gets
13 a copy of the same thing --

14 JUDGE SIPPEL: That's what we're going to talk about.

15 MR. HAVENS: Okay.

16 JUDGE SIPPEL: And anybody that wants to give me a five-
17 page or less bench brief on this tomorrow morning, I'll be glad to
18 receive it.

19 MR. HAVENS: Thank you.

20 JUDGE SIPPEL: Because that's what I'm thinking. And
21 when I say, on this, I mean, you know, the issue being, what
22 happens if somebody comes up with PACER documents that are the same
23 thing as that are being protected, but again, it comes up in
24 another form, another vendor, and questions of labor, and all that
25 kind of stuff.

1 MS. KANE: Your Honor --

2 JUDGE SIPPEL: Do you understand that, Mr. Plache?

3 MR. PLACHE: I understand it.

4 MS. KANE: We would take the same position though, Your
5 Honor, that we took earlier, which is that, to the extent any of
6 these documents were publicly available, they have access to them
7 well in anticipation of the time that you have scheduled for them
8 to put in their direct case, and then provided them additional
9 opportunity to identify their exhibits for their direct case, which
10 was more than six weeks ago, and they haven't raised any of these
11 issues until now.

12 Now they want to put documents in front of the parties as
13 a surprise, it's prejudicial to the Bureau and to the other
14 parties.

15 JUDGE SIPPEL: It shouldn't be a surprise if these
16 documents that he has access to he got through PACER, they tie-in,
17 I gather, with the bankruptcy. Yes, sir.

18 MR. PLACHE: Your Honor, there are actually two documents
19 in their exhibits that they got access to because I served Mr.
20 Stenger thinking, incorrectly, that he was covered by this order.

21 JUDGE SIPPEL: I understand.

22 MR. PLACHE: I would like those documents removed from
23 their exhibits.

24 JUDGE SIPPEL: We're going to --

25 MR. PLACHE: And he's already shared them with Mr.

1 Havens.

2 JUDGE SIPPEL: Well, I mean --

3 MR. HAVENS: That's not what I'm talking about.

4 MR. PLACHE: I know it's not what you're talking about.
5 It's what I'm talking about.

6 MR. HAVENS: Well, but is that --

7 MR. STENGER: Sir, I don't recall sharing anything with
8 Mr. Havens. I think you should check your records to make sure
9 that you're not the one who sent those documents to Mr. Havens,
10 because I don't recall --

11 MS. KANE: No, he didn't, Your Honor. The certificate of
12 service from those documents only included Mr. Stenger. Mr.
13 Stenger --

14 JUDGE SIPPEL: Oh, I see what you're saying.

15 MS. KANE: -- pretty late, put those documents into a
16 public documents of admitted exhibits, and they're now here before
17 Your Honor as admitted documents as part of the public record.
18 They have, plainly, identified on the top as confidential and/or
19 highly confidential, and Mr. Stenger was remiss in not removing
20 those from the public record.

21 Even if he's not subject to the protective order, that
22 should have called to his attention some fact that he obtained
23 confidential information inappropriately. He should not have put
24 them in the public record.

25 JUDGE SIPPEL: All right. Get that document out of your

1 loose leaf binder and any other copy you have it and give it to Mr.
2 Randazzo.

3 MR. STENGER: Yes, Your Honor.

4 JUDGE SIPPEL: Don't show it to your client at all. I
5 don't care if he says he accidentally saw it or any of that kind of
6 nonsense. Let's deal with that right now. Get it out of your
7 binder and get it --

8 MR. STENGER: Which two documents are those, Your Honor?

9 MS. KANE: Your Honor, those are EVH Exhibit Number 428
10 and 429, which are currently part of the exhibits that are before
11 Your Honor as part of the public record for EVH's exhibits. We
12 would ask, Your Honor, that they be removed as exhibits from EVH's
13 exhibits.

14 JUDGE SIPPEL: That's what I'm trying to do.

15 MS. KANE: Thank you, Your Honor.

16 MR. PLACHE: And these are not available on PACER.

17 MR. STENGER: Yes, but they have the same information
18 that's in your written testimony.

19 JUDGE SIPPEL: EVH number what?

20 MS. KANE: EVH Number 428 and 429.

21 JUDGE SIPPEL: They're at the end?

22 MR. KIRK: And, Your Honor, if I may again, to the PACER
23 point, that was six weeks ago as everyone's moving forward with the
24 hearing. It's patently unfair to all of a sudden say, hey, look at
25 what we're able to discover. Let's reopen everything. Let's re-

1 evaluate what documents we can put in.

2 JUDGE SIPPEL: But is that bankruptcy evidence?

3 MR. KIRK: I'm not sure where they've gotten these from,
4 Your Honor.

5 MR. STENGER: Your Honor, the two documents that he's
6 talking about are answers to interrogatories --

7 JUDGE SIPPEL: 428 and 429?

8 MR. STENGER: Yes, I believe so. And just as they've
9 used their answers to interrogatories to prepare the other
10 witnesses' testimony, it's apparent that they used those answers to
11 prepare Pinnacle's testimony, so I don't care. If he wants the
12 exhibits back, he can have them, because everything he says is said
13 in his direct written testimony.

14 So I mean, I don't know how he's claiming that his
15 answers to interrogatories are confidential when his direct written
16 testimony, as public, says the same thing. But if he wants them
17 back, I'm happy to give them to him.

18 MS. KANE: Your Honor, he just testified as to the
19 content of highly confidential information. I just don't
20 understand --

21 MR. STENGER: It's not highly confidential.

22 MS. KANE: He just told you what he understood the
23 content of the highly confidential interrogatory --

24 MR. STENGER: There's nothing highly confidential --

25 JUDGE SIPPEL: He didn't tell me --

1 MS. KANE: He did. He just told you that the content of
2 what was in Pinnacle's responses to its interrogatories, which it
3 designated highly confidential at the time --

4 JUDGE SIPPEL: It's in something else.

5 MS. KANE: It's in something else. In order for him to
6 do that, he just revealed what the content was of this information.

7 JUDGE SIPPEL: Well, this is --

8 MS. KANE: I mean, this is our concern about having Mr.
9 Havens subject to the protective order.

10 JUDGE SIPPEL: That's why I want a break and I want
11 everybody to have time to reflect on this a little bit, cool off,
12 let the witness get away from this nonsense, and we'll come back
13 and revisit it tomorrow, but get those documents out of your
14 binder. That's all I'm telling you and let's not say another word
15 about it. Don't paraphrase what's in them. I'm sorry, Mr. Kirk?

16 MR. KIRK: It's just a simple question, procedurally, is
17 it all right if we leave our materials here rather than pulling
18 everything out, seeing that we'll be back tomorrow morning?

19 JUDGE SIPPEL: I don't know if the cleaning people signed
20 the protective order.

21 MR. ENGEL: The courtroom note said it would be locked,
22 but I will check with Mr. Randazzo.

23 JUDGE SIPPEL: It will be locked, but you leave these at
24 your own risk. That's all I can say. I've never seen anything of
25 a document nature disappear from the courtroom, but if you leave a

1 computer, or iPad, or something, that's a different story. That's
2 your own -- you're at risk about this, but that's what our policy
3 is, is to lock the courtroom and --

4 MR. PLACHE: Nothing on the floor?

5 JUDGE SIPPEL: Yes, we expect that you have -- well, the
6 cleaners aren't even supposed to do anything to pick any papers up
7 off the floor, but keep them up on your table, close them if you
8 can, and we'll just come in tomorrow morning at 10 o'clock and make
9 believe this didn't happen. Okay. We're in recess. Thank you
10 very much.

11 (Whereupon, the hearing in the above-entitled matter was
12 concluded at 4:23 p.m.)

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