

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

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

Participant in Auction No. 61 and Licensee of
Various Authorizations in the Wireless Radio Services

Applicant for Modification of Various
Authorizations in the Wireless Radio
Services

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

Applicant with ENCANA OIL AND GAS (USA), INC.;
DUQUESNE LIGHT COMPANY;
DCP MIDSTREAM, LP;
JACKSON COUNTY RURAL MEMBERSHIP
ELECTRIC COOPERATIVE;
PUGET SOUND ENERGY, INC.;
ENBRIDGE ENERGY COMPANY, INC.;
INTERSTATE POWER AND LIGHT COMPANY;
WISCONSIN POWER AND LIGHT COMPANY;
DIXIE ELECTRIC MEMBERSHIP CORP., INC.;
ATLAS PIPELINE—MID CONTINENT, LLC;
DENTON COUNTY ELECTRIC COOPERATIVE,
INC., d/b/a COSERV ELECTRIC; and
SOUTHERN CALIFORNIA REGIONAL RAIL
AUTHORITY

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

ENL-VSL PROPOSED FINDINGS OF FACT ON ISSUE G

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**INTRODUCTION AND
SUMMARY OF PROPOSED FINDINGS OF FACT**

Environmental LLC (“ENL”) and Verde Systems, LLC (“VSL”) (together “ENL-VSL”) hereby submit their proposed findings of fact on Issue G. ENL-VSL filed a Motion for Summary Decision on Issue G on October 20, 2014 (“SD Motion”), prior to the hearing on December 9-11, 2014. There was nothing that emerged from the hearing that would alter the essential facts as set forth in the SD Motion.¹

Also, while ENL-VSL presents this filing, it plans to respond to the findings of fact presented by Maritime and the Enforcement Bureau who, between them, have the burden of proof.² Thus, that ENL-VSL response will focus what is presented to meet that burden.

ULS is the official FCC database of all licensing matters, and should thus be used to find and verify the most full, up-to-date, and sound facts in this proceeding, as to those facts evidenced in ULS. Thus, ENL-VSL refers herein, in places, to relevant records in ULS.

Maritime has not operated any of the sixteen stations (the “16 stations”) for over seven years. Alleged lessees Pinnacle Wireless, Inc. (“Pinnacle”), Duquesne Light Company (“Duquesne”), Puget Sound Energy, Inc. (“Puget”) and Evergreen School District (“Evergreen”) have not operated any of the 16 stations either, only alleged fill-in stations associated with some of the 16 stations in vague time and vague means. Maritime has no cognizable plans to resume

¹ Whether always indicated (such as by the term “According to Maritime”) or not, some statements herein that repeat or summarize statements of Maritime (also called “MCLM”) in this proceeding are presented as Maritime presented them, but ENL-VSL does not admit to the truth of those herein or otherwise, other than as may be indicated in some case.

² The burden of proof in this Order to Show Cause hearing, especially where the Commission’s trial staff, the Enforcement Bureau, has taken up the case of the subject that has to respond to the Show-Cause issues, Maritime, is a serious question. In any case, that burden rests among these two. (In this regard, at the begging of the trial in December 2014, the Judge inquired of the Bureau as to its position of presenting the case for Maritime.)

operation at any of the 16 stations. (And as to Choctaw plans, it is not the licensee or a lessee of the 16 stations.) Apart from the fatal defects in the 16 stations and licenses involved, Maritime tried to and wants to be able keep trying to sell/lease the site-based license's spectrum in the 16 stations (for only the authorized stations' locations) as if it was geographic area licensed spectrum, which it is not.

Maritime acquired the 16 stations from Mobex in 2005. According to Maritime, by 2007 the market for services had declined to the point that Maritime decided to discontinue service on all 16 stations by no later than December 31, 2007. That is seven years before the hearing started that the 16 stations have been out of service.

While Maritime may have continued to maintain some equipment at some of the 16 stations' building sites after that date, Maritime discontinued any payments to site owners for rent, utilities and related costs as of August 1, 2011, the date it filed for bankruptcy. Thus, there could have been no resumption of operations, if that were even possible to begin with, at any of the 16 stations for over three years prior to the hearing. Any equipment that remains at any of the physical radio communication facility sites for the 16 stations is simply there because the site owner has not removed it and such inaction on the part of a site owner does not evidence operation and service to customers or amount to action on the part of Maritime to attempt to continue or restore service.

Maritime has no plan to restore service to two or more customers (as required by CMRS AMTS licenses) at any of the 16 stations and has not taken any concrete steps to do so. Maritime's plan is to sell the licenses to Choctaw. Choctaw has taken no steps to restore operations and service to customers and has no concrete plans to do so. Both Maritime and

Choctaw are only interested in selling the spectrum, not putting the 16 stations into service to customers.

The attempted sale and assignments to Choctaw (not approved by the FCC to date) is subject to certain pre-existing contracts that Maritime entered into with Pinnacle Wireless (“Pinnacle”), Duquesne Light (“Duquesne”), Puget Sound Energy (“Puget”) and Evergreen School District (“Evergreen”). The contracts do not require any of them to operate any of the 16 stations. They are not operating, have not operated and have no plans to operate any of the 16 stations.

Maritime pretends that these parties can operate fill-in stations, notwithstanding that none of the 16 stations are operating and providing service to two or more customers, and without any showing of the basis for a fill-in station otherwise, which is that it can only “fill-in” areas of bad coverage in the rule-defined and –calculated “service contour” of the licensed station: no fill-in stations are even valid in terms of their location and signals transmitted without this. Further, there are no valid FCC-accepted leases shown in ULS associated with these alleged fill-in stations and the associated licensed stations, but perhaps to a minor degree years ago (in response to the Maritime- Bureau findings of fact, ENL-VSL may further detail this from ULS records, but in any case, those records exist and are fundamental). Without a FCC accepted lease, the putative lessee has no authority to use the spectrum at all.

Even if there were some basis for the bizarre theory that lessees/purchasers can operate fill-in stations where there is no operating site-based, station, only six of the 16 stations are claimed to be “impacted” by fill-in operations. Maritime does not assert any fill-in operations under the license authority of the other ten stations.

WRV374 is a principal license that is in dispute because Maritime seeks to keep eight authorized station locations at populous East Coast locations. Maritime claims that Pinnacle is operating fill-in stations that “impact” six of the eight FCC-authorized locations on WRV374 (namely locations 14 (Seldon, NY), 15 (Verona, NJ), 16 (Allentown, PA), 18 (Valhalla, NY); 26 (Perrinville, NJ); and 33 (NYC, NY)). Maritime asserts it cannot operate these six stations because doing so would interfere with Pinnacle’s fill-in operations. Yet, Maritime admits that it leased only *some* of the frequencies to Pinnacle, and fails to explain why Maritime cannot operate the licensed stations on its retained frequencies, or why a licensee loses control of its own frequencies in a lease, where it has rights and duties to not cause or allow interference and those can easily be secured in the lease contract. This assertion is incredulous, is not shown in the subject lease contracts, and violates a core policy of the FCC and Congress regarding spectrum efficiency and reduction of radio interference.

Maritime and Pinnacle claim the alleged fill-in stations are being used to serve the New Jersey Sports and Exposition Authority (“NJSEA”, *i.e.*, the Meadowlands) and the New Jersey Turnpike Authority (“NJTA”) but neither of those entities testified. Meanwhile, the Commission’s Universal License System (“ULS”) shows that both NJSEA and NJTA have numerous licenses of their own and do not rely on Maritime’s AMTS spectrum. In addition, there is valid FCC-accepted lease from Maritime to Pinnacle or any of its alleged clients including NJSEA or the NJTA. ULS shows NJSEA has its own extensive collection of 220 MHz licensed frequencies among the pool set aside for government entities—for free. NJTA, on ULS, states that it has 800 MHz for its needs, and will not need any 220 MHz-range spectrum. ULS is the official FCC database of all licensing matters, and should thus be used to find the most full, up to date, and sound facts in this proceeding, as to those facts evidenced in ULS.

As to the remaining two locations on WRV374 (namely locations 35, Rehobeth, MA and 40, Hamden, CT), Maritime claims that those two stations are operating, but this is simply not credible because Maritime admitted that it stopped paying rent and utilities in August, 2011, and that it ceased all operations at all of its locations in December 2007 (see e.g. Maritime's "Report Per Order FCC 12M-36, filed August 6, 2012, at its second paragraph).

WHG750 is a license for a single location in Hookstown, Pennsylvania. Maritime and Duquesne both admit that Duquesne ceased operating alleged fill-in stations and that Duquesne is using other spectrum to accomplish meter reading. While the Duquesne witness claimed that one of the Duquesne stations corresponds to the Hookstown site, comparison of the Maritime - Duquesne contract that specifies the Duquesne sites with the coordinates for the Hookstown site on the WHG750 license shows that Duquesne never operated the licensed station. Furthermore, Maritime admitted it only leases half of its spectrum to Duquesne and offers no explanation for its failure to continue operating the station on its retained spectrum.

The remaining seven of the sixteen stations are licensed as KAE889 in the Pacific Northwest. Puget entered into contract to purchase and in the interim lease five of the stations from Maritime, but only because Puget holds the AMTS geographic service area spectrum and wishes to operate without having to protect the Maritime legacy, site-based license. Thus, the stations being operated by Puget are not fill-in stations. They are geographic license area stations being operated under Puget's own geographic area license. Puget in its interrogatory answers claimed that two of the Maritime site-based locations could give Puget some additional spectrum rights on the north and south borders of its AMTS geographic service area, but Puget did not testify at the hearing and Maritime made no attempt to substantiate the claim (Puget's geographic license area extends up to the Canada border (see Calls Sign WQMZ553).

The remaining two locations on KAE889 (namely locations 3(Camas, WA) and 13(Portland, OR)), are leased to Evergreen but Evergreen did not operate the stations, only alleged fill-in stations that Evergreen ceased using and replaced with other spectrum. Maritime claims it will reactivate the licensed sites but failed to show any concrete efforts to do so.

We note here, as is customary and proper, that there is a parallel proceeding underway that may result in findings of fact and actions relating to the 16 stations discussed herein: *Skybridge, Havens et al. v. Mobex, Maritime et al.* that originated in the USDC NJ, and is now before the US Circuit Court of Appeals for the Third Circuit, case 14-4043. The plaintiffs/appellants include ENL and VSL. This involves claims under the Sherman Act Section 1, and the Federal Communications Act Sections 201, 206-207, and 313, and related FCC rules including all of the rules that also apply with regard to the subject Issue G in this proceeding. If requested by the Presiding Judge, ENL-VSL will provide further information.

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ENL-VSL PROPOSED FINDINGS ON ISSUE G

Environmental LLC (“ENL”) and Verde Systems LLC (“VSL”)(together “ENL-VSL”), through their undersigned counsel, hereby respectfully submit their Proposed Findings of Fact on Issue G, and in support hereof respectfully show as follows:

I. APPLICABLE ORDERS AND LAW

At the conclusion of the December 9 to 11, 2014 hearing on Issue G the Presiding Judge ordered, “that both parties submit proposed findings and reply findings of fact, not of law. The arguments on the law will wait until after the conclusion of the second session.” Hearing Transcript, page 1702, line 23 to page 1703, line 3 (references to the transcript hereinafter are in the format P1702L23-P1703L3). The Presiding Judge issued Order FCC15M-9 on March 9, 2015, that adopts the official public transcript of the hearing on Issue G and sets April 8 at noon as the date for exchange of the Proposed Findings of Fact on Issue G.

Accordingly, pursuant to the Judge’s orders, ENL-VSL hereby submit only proposed findings of fact and do not submit arguments on the law. ENL-VSL previously addressed the law in their SD Motion and the Trial Brief on Issue G filed on Nov. 25, 2014.

II. HEARING TESTIMONY

The hearing began with an opening statement from the Enforcement Bureau (“EB”) in which the EB stated, “As the record will reflect, there is no dispute that operations at each of these sixteen facilities have been discontinued.” [P1257:L18-19] The EB said that it intended to show that discontinuance was not permanent based on, “fill-in sites, affirmative steps taken to resume operations at the license locations, and the existence of equipment that is capable of

operations....” [P1258:L4-7] It is worth taking a moment to point out that the EB failed to prove the facts that it promised to prove in its opening statement.

As to fill-in operations, the testimony shows that the only current alleged fill-in stations are those of Pinnacle that allegedly “impact” six station locations on WRV374 ((namely authorized station locations 14 (Seldon, NY), 15 (Verona, NJ), 16 (Allentown, PA), 18 (Valhalla, NY); 26 (Perrinville, NJ); and 33 (NYC, NY)) (the last location being at the old World Trade Center that was destroyed on September 11, 2001). However, Maritime admits it only leases some spectrum to Pinnacle and fails to show that these authorized stations cannot be operated by Maritime without interfering with Pinnacle.

The evidence shows that Duquesne and Evergreen ceased operating alleged fill-in stations. Even when Duquesne was operating alleged fill-in stations, no reason is shown why Maritime could not have operated its licensed, station locations since Maritime retained half of the WHG750 spectrum. Puget is the geographic area licensee and therefore EB has no basis to characterize its geographic licensed stations as fill-in stations.

As to the EB’s further proffer that it would show that Maritime is taking affirmative steps to resume operations or that equipment remains that is capable of operation or is operating, the testimony does not support any of those claims. DePriest, Reardon and Smith all admitted that Maritime ceased to operate in 2007 and decided to try to sell or lease the spectrum. DePriest admits Maritime ceased paying site rents, utilities and related costs on August 1, 2011, when Maritime declared bankruptcy.

Reardon claimed that equipment is operating at station location 35, Rehobeth, MA and station location 40, Hamden, CT based on declarations from two engineers (EB Exh. 49 and 50) who allegedly visited the sites in August 2013, over a year before the hearing began, and that he

receives monthly emails from engineers that the sites are operating. None of this is credible given DePriest's testimony that rents and utilities stopped being paid in August, 2011 and Maritime's admissions that it ceased to operate all of its station locations in December 2007. No concrete plans were shown to restore service at any of the 16 stations. Thus, EB's theory on Issue G is simply not consistent with the facts as shown by a preponderance of the evidence.

A. **Sandra DePriest Testimony**

1. **DePriest Direct Written Testimony**

DePriest's written testimony is EB Exh. 1D. DePriest testified that Maritime acquired Mobex on Dec. 31, 2001. Para. 4. She further testified that the market for Maritime services rapidly deteriorated by 2007. Para. 5. She then admitted that due to the loss of customers, Maritime discontinued operations under all three of the licenses at issue herein on December 31, 2007. Para. 6 (WHG750), para. 8 (KAE889) and para. 10 (WRV374).

The fact that Maritime at some unspecified time in the past stopped maintaining equipment at any locations is stated twice in her testimony. She testifies that Maritime "maintained" equipment (note past tense) "for as long as Maritime was able to pay site leases, utilities and related expenses." Para. 6. And she testifies that Maritime maintained equipment (past tense again) "for as long as Maritime was able to financially do so." Para. 8. In these statements, she discusses WHG750 and KAE889, but she makes no exception for WRV374. We discuss her testimony as to each license.

WRV374 – DePriest admits that Maritime ceased providing service to customers on WRV374 at least in "late 2007." Para. 10. We note that this is seven years before the hearing in this case. She testified that Maritime leased "some of its frequencies" on WRV374 to Pinnacle. Para. 10. She claims that the Pinnacle lease "impacts" six of the eight station locations on WRV-374 ((namely station locations 14 (Seldon, NY), 15 (Verona, NJ), 16 (Allentown, PA), 18

(Valhalla, NY); 26 (Perrinville, NJ); and 33 (NYC, NY)). Para. 10. She does not claim that Pinnacle operates any of the station locations on WRV374. Para. 10. She does not claim that Pinnacle operates stations that qualify as “fill-in” stations. Para. 10. She offers no direct testimony that Pinnacle is operating any “fill-in” stations. Para. 10.

Although she testifies that the Pinnacle lease “impacts” six station locations on WRV374, she does not explain what she means by “impacts”. Para. 10. In particular, she does not reconcile the “impact” claim with her testimony that, “some of [the WRV374] frequencies” are under lease to Pinnacle. She does not explain why Maritime could not continue to operate WRV374, when Maritime has leased only “some of its frequencies” to Pinnacle. Para. 10.

DePriest claims that Maritime “maintained” equipment that was capable of operating “at many of these locations, including WRV374 (station locations 35 and 40).” Para. 10. Note that “maintained” is in the past tense. She only claims that Maritime maintained equipment after 2007 on two of the eight locations on WRV374. The reference to “many of these locations” refers to “the Passport system” and does not refer specifically to WRV374. Para. 10. Thus, she testified that Maritime ceased operating WRV374 stations in 2007 and thereafter “maintained” equipment at only two locations, 35 and 40, until some unspecified time when Maritime no longer maintained any equipment at any WRV374 locations because it became financially unable to do so.

WHG750 – DePriest admits that Maritime ceased providing service on WHG750 as of December 31, 2007 (seven years before the hearing). Para. 6. DePriest testifies that “500 kHz of Block B of call sign WHG750 is subject to an asset purchase agreement and spectrum lease with Duquesne....” Para. 7. This testimony is inconsistent with the license.

The AMTS spectrum generally consists of an A Block, which is two 500 kHz bands, 217.5 – 218.0 MHz and 219.5 – 220.0 MHz, and a B Block which also is two 500 kHz bands, 217.0 – 217.5 MHz and 219.0 – 219.5 MHz. Maritime forfeited the A Block on WHG750 and only retained the B Block. However, the Maritime license in ULS does not reflect this. The Maritime WHG750 license in ULS shows the 217 MHz portions of the A and B blocks. Specifically, it shows Maritime licensed on 217.0125-217.4875 (B Block spectrum) and 217.5125 – 217.9875 (A Block spectrum).

Nevertheless, taking her testimony at face value, Maritime leased 500 kHz of AMTS B-block spectrum to Duquesne and retained another 500 kHz. She fails to claim that Duquesne operates from the the station location. She fails to explain why Maritime does not use its remaining 500 kHz of AMTS B-block spectrum to operate from the station location. As shown later, Duquesne testified that Duquesne ceased using the leased spectrum by 2012. She fails to claim that Maritime has done anything to return the station to service in two years. In addition, ULS shows that Maritime did not file a lease application with Duquesne under WHG750 until March 8, 2010 and that listed the earliest possible commencement date of March 29, 2010 (See Application File No. 0004149128). Thus, the station under call sign WHG750 was not in operation from at least December 31, 2007 to March 29, 2010, per DePriest's and Maritime's own admissions and ULS records.

DePriest testifies that Maritime “maintained” WHG750 equipment “for as long as Maritime was able to pay site leases, utilities and related expenses.” Para. 6, 8. Thus, DePriest admits that Maritime no longer maintains equipment at the station location under WHG750. Her testimony is inconsistent with Reardon's claim that the site is operating.

KAE889 - DePriest admitted that Maritime ceased providing service to customers under the station locations on KAE889 as of December 31, 2007. Para. 8. She testified that one location on KAE889, station location 14, continued to operate until 2010. Para. 8. Location 14 is *not* one of the seven locations on KAE889 that are part of the Issue G hearing. This only serves to underscore that all seven of the relevant locations on KAE889 *did not* continue to operate and provide service to customers until 2010 and ceased, at minimum, operating in 2007.

DePriest testified that five of the seven locations on KAE889 are leased to Puget and the other two are leased to Evergreen. Para. 9. She does not testify that Puget or Evergreen operate any of the station locations on KAE889. She does not testify that either of them operate or operated “fill-in” stations. She does not acknowledge that Puget is the geographic area licensee. She admits that Evergreen notified Maritime that it ceased using the Maritime spectrum, but she says nothing about any effort by Maritime to restore service to customers. Para. 9.

2. **DePriest Cross-examination**

Cross-examination began with an attempt to clarify what DePriest meant in her written testimony stating that Maritime maintained equipment at the station locations until it was financially unable to do so and when that occurred. P1274L18-21; P1275L14-17; P1276L11-12. DePriest’s initial answer was, “I would not be the best person to answer that question.” P1276L15-16. She also stated: “I don’t have any reason to think that’s changed.” P1278L11. “I believe it’s possible that we do.” P1278L14. “I don’t know.” P1279L7. “I believe it is.” P1279L17. “No, I don’t [have any recollection].” P1280L5. She testified that she believes equipment exists at station locations 35, Rehobeth, MA and 40 Hamden, CT, based on being told this by Smith. P1280L11-17. However, she further testified, “That’s true. We did not financially support the sites or maintain the sites.” P1282L17-18.

The question then turned to when Maritime became financially unable to maintain the sites. P1282L19-20. She testified that, “as of the bankruptcy file date, which was August 1, 2011, we were no longer financially able to, you know, maintain the site.” P1282L22-24. Specifically as to the WRV374 license when asked if Maritime was able to financially maintain the sites on WRV374 she testified, “We didn’t....we could not make that payment as of August 1, 2011.” P1284L4-11. Specifically as to the WHG750 location, she testified, “that would have been as of August 1, 2011.” P1283L11-14.

She then testified that the site owners allowed Maritime to maintain its equipment at their sites even though she admitted that Maritime has not paid them since August 1, 2011. P1285L4-13. This fails to amount to an affirmative effort by Maritime to continue or restore service.

The question then turned to what DePriest meant in her written testimony when she claimed that six station locations on WRV374 (14-16, 18, 25 and 33) were “impacted” by the Pinnacle lease. P1285L21-24. She testified that all six station locations are included in the Pinnacle lease “along with 35 and 40.” P1286L11-14. This testimony is inconsistent with Maritime answers to interrogatories.

She was asked about Maritime’s Supplemental Answers filed Feb. 28, 2012, EB Exh. 83, page 8, which only identifies spectrum rights under WRV374 station locations 15 and 25 as being leased to Pinnacle. P1287L9-19; P1288L25-P1289L1-2, 6-7. EB objection prevented an answer. She was asked about Maritime’s Amended Answers filed on Mar. 1, 2012, EB Exh. 85, page 3, where Maritime swore that spectrum rights under WRV374 station locations 15 and 25 are leased to Pinnacle and no other station locations are listed as being leased to Pinnacle. P1290L12-19; P1291L1-3. EB objection prevented an answer. She was asked about Maritime’s Supplemental Response filed Aug. 9, 2012, a response to a specific direction from the Presiding

Judge to clarify Maritime's position on the facts and the law, which states that spectrum rights under station locations 15 and 25 are leased to Pinnacle and does not list any other station locations as being leased to Pinnacle. EB Exh. 89, page 2; P1291L19-24. EB objection prevented an answer. DePriest testified that she was not involved in preparing Maritime's sworn answers to interrogatories, even though she is the only Maritime witness and its alleged sole director and President. P1293L13-16.

She testified that station locations 14 through 16, 18, 25, and 33 are leased to Pinnacle. P1295L16. She was asked about Maritime's Response to Interrogatories dated Aug. 4, 2012, which states that those six station locations are "subject to and/or impacted by" the Pinnacle lease. EB Exh. 96, page 9. She was asked which locations are subject to the lease and which are impacted. EB objections prevented an answer.

EB assisted DePriest to prepare her testimony. P1271L6-8. The testimony made a vague claim that the Pinnacle lease "impacts" six of the eight station locations on WRV374, yet EB objections prevented answers to clarify the meaning of her vague testimony, prepared with EB's assistance.

DePriest was then asked if the Pinnacle lease approval is in effect or has expired and she testified, "I don't know." P1306L18-25. Thus, it is not established by her testimony that any lease is in fact in effect with Pinnacle. She was asked whether Maritime leased all of the WRV374 spectrum to Pinnacle or only some of it. P1308L8-10. The EB objections prevented answers. P1308L8-P1311L10.

The questioning then turned to WHG750. P1328L8-10. When asked if this license was the subject of the contract with Duquesne she responded, "I don't know it by number." P1328L17. EB objections prevented an answer to the simple questions whether this license is

the subject of a contract with Duquesne and whether whether Maritime is selling all of the WHG750 spectrum to Duquesne. P1328-1331.

There was then a lengthy discussion in which the EB attempted to claim that DePriest was not testifying on behalf of Maritime, but ultimately the EB conceded that, “yes, she would be binding the company with her statements.” P1342L5-6. This concession came too late because the EB objections had already prevented ENL-VSL from getting answers to important questions, as set forth above.

The Presiding Judge then sought to determine what plan Maritime has for returning the stations to service. P1345L1-3. DePriest candidly admitted that Maritime has no plan to return the stations to the air, the only plan is to sell to Choctaw. P1345L4-19. As to WRV374, she admitted that Pinnacle is not operating the Maritime stations, only fill-in stations. P1352L9-11. After claiming that Pinnacle is operating fill-in stations, she admitted she doesn’t have, “any specific knowledge” as to whether the Pinnacle stations are within the contours of the Maritime license, WRV374. P1353L7-20. As to WHG750, she admitted that Maritime is not operating, P1357L20-21, and when asked if Duquesne was operating from the station location or fill-in stations she testified that she doesn’t know. P1358L4-5. As to KAE889, she testified that Maritime is not operating the station locations but has agreements with Puget and Evergreen. P1359L25-1360L12. She testified that she knew that Evergreen had discontinued operations and, “that does not mean that we would not resume that operation or that Choctaw would not resume that operation....” P1360L4-7.

When asked again by the Presiding Judge whether Maritime has a plan to resume operations, P1361L14-15, she testified, “We have not written a business plan with –at this point, it’s speculative.” P1362L8-10. She speculated that the site owners, “would be more than happy

to reactivate those licenses and to let us resume operations and start paying rent again; get caught up.” P1364L22-24. This is mere speculation and not an effort or even a plan to restore service.

B. John Reardon Testimony

1. Reardon Direct Written Testimony

Reardon’s direct written testimony is EB Exh. 1A. Maritime acquired the AMTS licenses of Mobex on Dec. 30, 2005. Para. 4. The market for the services rapidly deteriorated. Para. 6-7. Unlike DePriest, Reardon fails to disclose that Maritime ceased commercial operations on Dec. 31, 2007. Para. 6-7. Reardon fails to admit that Maritime stopped paying rent, utilities and related costs on its tower sites on August 1, 2011, as DePriest testified on cross-examination. Para. 6-7.

Reardon testified that in March 2008, Maritime decided to sell or lease the spectrum to third parties. Para. 9. Thereafter, Maritime only made efforts to sell or lease spectrum and did not make any efforts to return the stations to service. Paras. 10 -15. Maritime entered into various deals to sell or lease its AMTS site-based spectrum, none of which involve any commitment by any buyer or lessee to restore operation of any of the stations. Paras. 10-15.

With regard to WRV374, Reardon testified that Maritime entered into an agreement to lease spectrum rights under WRV374 to Pinnacle. Para. 14. Reardon fails to identify which of the eight station locations on WRV374 had their spectrum leased. Para. 14. Reardon fails to disclose that the lease does not provide for Pinnacle to operate any of the stations on WRV374 and that Pinnacle does not operate any of the stations. Para. 14. The fact that only some of the frequencies under the authority of KAE889 were leased to Pinnacle is stated in DePriest’s testimony, (DePriest Testimony, EB Exh. 1D, para. 10) and in ULS lease filings made by Maritime and Pinnacle (ULS, Call Sign KAE889, lease applications). Reardon fails to explain

why Maritime did not continue to operate the WRV374 stations with frequencies retained by Maritime. Para. 14.

With regard to WRV374 stations 35(Rehobeth, MA) and 40 (Hamden, CT), Reardon testifies that he has “been informed by third party engineers” that Maritime has equipment at these stations that is transmitting. Para. 15. He fails to identify the engineers or specify a point in time when he was so informed. Para. 15.

With regard to WHG750, Reardon testifies that Maritime agreed to sell and in the interim lease “500 KHz of Block B of call sign WHG750” to Duquesne. Para. 12. Reardon fails to explain why Maritime could not continue to operate the station using the other 500 kHz of AMTS Block B spectrum that Maritime retained. Para. 12. Reardon testifies that Duquesne “was using the leased spectrum” at the time he left Maritime, without stationing when he left Maritime, and without disclosing when Duquesne ceased using the spectrum. Para. 12.

With regard to KAE889, Reardon testifies that Maritime leased spectrum to Evergreen under call sign KAE889. Para. 11. Reardon fails to identify which of the seven stations on KAE889 were leased to Evergreen. Para. 11. Reardon fails to admit that the lease did not require Evergreen to operate any of the stations. Para. 11.

Reardon further testifies that Maritime entered into an agreement to sell and in the interim lease KAE889 spectrum to Puget. Para. 13. Reardon fails to identify which of the seven station on KAE889 are being sold to Puget. Para. 13. He fails to explain that Puget is the geographic area license holder and agreed to purchase the Maritime stations to avoid having to protect the co-channel Maritime stations. Para. 13.

2. Reardon Cross-examination

Reardon did not work with the EB in preparing his written testimony, notwithstanding that his testimony was included in EB's Direct Case. P1374L20. Reardon was asked about his testimony in para. 15 of written case that he was informed by third party engineers that WRV374 stations 35(Rehobeth, MA) and 40 (Hamden, CT) are operating. P1378L10-17. He testified that Bob Salvatore of Cybercom told him that station location 35 is on the air and that that Bob Meister told him that station location 40 is on the air. P1378L22-1380L2. He testified that every month he gets emails from them that the stations are on the air. P1379L16-20. He admitted that Maritime is not operating at the station location 40 but claims it is operating nearby. P1380L5-11. He testified that, "I've never personally been to the sites" and "It's all Greek to me." P1381L5-8. He admitted that Maritime does not serve subscribers at station locations 35 and 40. P1384L1-2.

On the second day of the hearing, he was further questioned about these stations and testified that the engineering reports that he relied on are the reports filed by EB as Exh. 49 and 50. P1456L7-10; P1457L6. These reports are from Aug. 23 and Sept. 10, 2013. EB Exh. 49-50. Reardon reiterated that he gets emails from Meister every month that say, "its still working, still on the air, that sort of thing." P1457L7-12.

Reardon was asked whether Pinnacle is operating any of the other stations on WRV374 besides station locations 35 and 40. TR1389L19-20. Reardon claimed not to know what counsel meant by operating the stations. P1389L24-P1390L1-3. He then used station location 18 (Verona, NJ) as an example and claimed that Pinnacle was using spectrum "around the site." P1390L18-19. He admitted that Pinnacle doesn't have a tower site lease for station location 18, but claimed that Pinnacle is "meeting the public interest goal of the FCC, which is to help the

licensee, in this case, Maritime Communications, to operate the spectrum in the public interest.” P1391L1-6.

He testified that, “at most of the sites [on WRV374] the [Maritime] equipment is actually still there.” P1394L6-7. He testified that the Maritime equipment is transmitting at station locations 14 (Selden, NY) and 18 (Valhalla, NY). P1394L16-23. He testified that the Maritime equipment no longer is present at station locations 18 (Verona), 16 (Allentown); 33 (World Trade Center) and 25 (Perrineville). P1395L6-1396L14. His claims are inconsistent with DePriest’s testimony that Maritime ceased paying site rents, utilities and related expenses on August 1, 2011, as discussed above.

Reardon admitted that Pinnacle does not operate the stations on WRV374 and that Pinnacle operates only alleged fill-in stations. P1478L18-21 (“JUDGE SIPPEL: All right, stop right there. Are they, are these fill-in sites? These would be fill-in sites? THE WITNESS: They would be fill-in sites, yes. JUDGE SIPPEL: Thank you. That’s all I want to hear.”); P1480L15-18 (“Is Pinnacle operating, actually operating any of the other licensed stations of Maritime under WRV374? THE WITNESS: No.”); P1498L19-21 (“THE WITNESS: I feel like I know with some certainty that, that they’re not operating transmitters at the license sites, which are high up.”)

Reardon testified that Pinnacle does not operate from the station locations because, “you want to go lower down, instead of being high, you want to go lower down so that you can reuse the frequencies...if you’re high and you have a high power it goes too far to be able to reuse it...” P1500L8-14. Reardon testified that Maritime can not operate from the station location because doing so would cause interference to Pinnacle. P1502L8-P1502L3.

With regard to WHG750, he testified that Maritime is selling/leasing 500 Mhz of AMTS Block B spectrum to Duquesne, “so not the entire amount of Block B spectrum, which is 1 megahertz total.” P1392L1-5. He testified that he personally visited the WHG750 site in March, 2014, and that Maritime is operating on its 500 KHz of retained spectrum. P1392L8-13. As noted, DePriest testified that Maritime ceased paying site rents, utilities and related costs on August 1, 2011.

With regard to KAE889 he testified that five stations are being sold and in the interim leased to Puget. P1397L4-6. He testified that those stations were on the air “in 2009 or 2010 timeframe.” P1397L6-7. This is not inconsistent with DePriest’s testimony that Maritime ceased paying site rents, utilities and related costs on August 1, 2011. However, he further testified that, “the site is operating, and there are leases in place...” which is a claim as to the present that is inconsistent with DePriest’s testimony. P1397L12-15. As to the remaining two stations on KAE889 that are leased to Evergreen (station locations 3 and 13), he testified that Day Wireless told him that Maritime equipment is still at one site but has been removed from the other site for non-payment. P1402L3-16.

C. Tim Smith Testimony

Smith is a former employee of Maritime, so we discuss Smith’s testimony next, even though EB called Allen of Pinnacle before Smith.

1. Smith Direct Written Testimony

Smith testified that Maritime acquired WRV374 and WHG750 from Mobex in 2005. Para. 3 and 5. He does not state when Maritime acquired KAE889. Para. 4. Smith testified that the market for Maritime services declined in 2006-07 and Maritime decided to “repurpose the spectrum” by trying to sell or lease it. Para. 6.

With regard to WRV374, Smith admits that Maritime ceased providing service in “late 2007” (para. 5 and 8). He states that “certain of the licensed locations were leased to Pinnacle” without identifying which specific sites were leased to Pinnacle. Para. 8. He testifies that when Maritime acquired WRV374 from Mobex in 2005, six of the WRV374 locations were operating “Locations 14, 15, 16, 18, 25, and 33”. Para. 8. He does not testify that locations 35, Rehobeth, MA and 40, Hamden, CT, were operating, even as long ago as 2005.

With regard to WHG750, Smith testifies that Maritime ceased providing service on Dec. 31, 2007. Para. 3. He states that WHG750 has been under lease to Duquesne since 2010. Para. 9. This testimony admits there was a gap of two years between the time Maritime ceased service in 2007 and the time Maritime leased spectrum to Duquesne in 2010. Para. 3.

With regard to KAE889, Smith states that Maritime provided service on KAE889 on Dec. 31, 2012 (except for location 14 that he says ceased to operate in 2010). This testimony is inconsistent with DePriest’s testimony that Maritime ceased service on Dec. 31, 2007, as discussed above. He testifies that Maritime leased five of the seven KAE889 locations to Puget in March 2010. Para. 10. He testified that Maritime leased locations 3 and 13 on KAE889 to Evergreen in 2008 which is consistent with DePriest’s testimony that Maritime ceased operations at the end of 2007.

2. Smith Cross-Examination

Smith ceased working for Maritime in December, 2012, then worked at Choctaw until May, 2013. P1538L13-21. With regard to WRV374, Smith testified that he did not negotiate the lease with Pinnacle. P1550L7-11. Smith admitted that the Pinnacle fill-in stations must operate within the actual operating contours of a licensed station. P1556L13-15; P1572L22-25;

P1575L14-17. Smith admitted that the actual operating parameters may be less than the maximum permitted parameters specified on the license. P1556L21-P1557L2.

He testified that there are forty 12.5 kHz channels on the Maritime WRV374 license. P1562L9-11. He admitted that since Maritime is only leasing some of the WRV374 channels to Pinnacle, then Maritime could operate on the other channels retained by Maritime without causing interference to Pinnacle. P1563L5-14.

Smith testified that Pinnacle is only operating fill-in stations and is not operating any of the WRV374 licensed station locations. P1576L8-17. He testified that Maritime was not operating the licensed sites because of potential interference to the Pinnacle fill-in stations. P1576L18-P1577L5.

With regard to WHG750, Smith said he was the one at Maritime who decided to stop operating WHG750 in December, 2007, because, “we didn’t have any customers left.” P1543L8-13.

With regard to KAE889, Smith testified that Maritime stopped providing service on Dec. 31, 2012. P1546L6-10. However, Smith also testified that Maritime did not operate five KAE889 stations once Maritime entered into a lease with Puget. P1549L25-P1550L3. He testified that the Puget lease began in March, 2010. EB Exh. 1C, para. 10. Mr. Keller, Maritime counsel, stated that Smith’s testimony that the KAE889 stations operated until December, 2012, was erroneous and that the correct date when Maritime ceased operations on KAE889 is December, 2007. P1580L10-13; P1581L4-5. Mr. Keller also stated that the Maritime stations were never operating once Puget began leasing the frequencies in 2010. P1584L17-20. The testimony as corrected shows there was a two year gap between the termination of service at the

end of 2007 and the lease to Puget in 2010, EB objections prevented further answers. P1585L3-17.

D. Laurence Allen Testimony

1. Allen Written Direct Testimony

Allen testified as a Director at Pinnacle, the lessee of Maritime WRV374 spectrum. EB Exh. 1G, para. 1. Allen testified that Pinnacle operates 18 “fill-in sites” that serve NJTA and one “fill-in site” that serves NJSEA. Para. 1. Allen admits that, “Pinnacle’s networks for the NJSEA and NJTA do not operate and have never operated, from the locations listed on the WRV374 license.” EB Exh. 1G, para. 2. His testimony further confirms that WRV374, locations 14, 15, 16, 18, 25 and 33, are not in operation. Para. 2-3.

Allen explains that fill-in locations, “allow for better coverage, more efficient spectrum utilization and reuse.” Para. 3. However, Allen omits to explain that technological advancements in the use of cellular type systems are the reason that the Commission transitioned the AMTS band to geographic area licensing and that WRV374 is a legacy site-based license. Para. 3.

Allen claims that operating the WRV374 locations would interfere with Pinnacle’s so-called fill-in stations. Para. 3. However, Allen fails to address the fact that Maritime only leases some channel pairs to Pinnacle and retains other channel pairs. Allen fails to explain why Maritime could not operate its retained channel pairs without interfering with Pinnacle. Para. 3.

The balance of Allen’s testimony claims that if Pinnacle loses the right to use Maritime spectrum, this will cause a loss of service to NJSEA and NJTA. Para. 4 – 8. However, Pinnacle as a wireless service provider must be familiar with the FCC ULS database. Public information in ULS shows that NJSEA has its own 220 MHz licenses. Therefore, Allen’s claim that NJSEA 220 MHz facilities would need to be replaced if Pinnacle lost the use of Maritime spectrum

(which is at 217-219 MHz not 220 MHz) is incomplete. Para. 8. Likewise, ULS shows that New Jersey has a statewide collection of 800 MHz licenses that it is using to build its own network. Thus, Allen's testimony is incomplete that loss of the Maritime spectrum would adversely impact the NJTA.

2. **Allen Cross-examination**

Allen testified that when he prepared his written testimony he did not do any research in ULS and was not aware whether NJSEA has its own 220 MHz licenses. P1519L3-8. His attorney Mr. Plache and the EB objected and prevented answers as to whether NJSEA is relying on its own licenses and does not need Maritime spectrum. His attorney admitted that NJSEA at least one 220 MHz licenses stationing, "I don't think having one license means you can't need another licenses." P1522L19-21. Allen testified that he did not know whether Pinnacle has a contract with the NJSEA. P1525L23-25. He also testified he has not seen a contract between Pinnacle and Maritime. P1531L16-18.

Allen testified that the Pinnacle system that serves the NJTA "is built of 18 fill in sites." P1523L22-23. He further testified, "We're servicing the fill in sites, not the actual license site." P1526L24-25. Allen testified that fill-in locations allow for better coverage and more efficient spectrum utilization than using the licensed sites. P1533L20-25. He further testified that the licensed sites could not be operated by Maritime without interfering with the Pinnacle fill-in sites. P1534L17-20.

He admitted that when he prepared his written testimony he did not do any research in ULS and was not aware whether the State of New Jersey has its own 800 MHz licenses. P1524L2-5. EB objections prevented answers as to his knowledge of the ULS filings showing

that New Jersey is building its own state-wide radio network using its 800 MHz licenses.

P1524L10-14.

E. **Lee Pilar Testimony**

1. **Pilar Written Testimony**

Pilar testified as Senior Communications Engineer at Duquesne, the contract purchaser and lessee of Maritime WHG750 spectrum. EB Exh. 1E, para. 1. He testified that Duquesne entered into an agreement with Maritime “for 500 kHz of the 1 MHz of the B block spectrum in the 217 MHz and 219 MHz bands licensed under call sign WHG750.” Para. 4. Pilar does not explain the inconsistency between his testimony that Duquesne leases 500 KHz of the 1 MHz B Block spectrum in the 217 and 219 bands with what is shown on the Maritime license, namely 500 MHz in the 217 B Block and 500 MHz in the 217 A Block. Para. 4.

Pilar testified that Duquesne constructed facilities that began operating “as early as May 2010.” Para. 5. Since DePriest testified that Maritime ceased operations on Dec. 31, 2007, there was a two year gap of no operations. Pilar lists 10 sites where Duquesne operated. Para. 5. None of these sites correspond with the single licensed location on WHG750 as shown by comparison of the license with the Duquesne – MCLM contract, discussed below.

Pilar testifies that Duquesne turned off the Maritime spectrum and replaced it with 900 MHz spectrum in February, 2012 at three sites, namely Mt. Washington, Clinton and Valley. Para. 6. The remaining seven sites were taken off Maritime spectrum in September, 2012. Para. 6. Thus, his testimony admits all the sites have been off the air for more than two years before the hearing began. Pilar testifies that “all of the equipment necessary to operate pursuant to the 217-219 MHz coverage of call sign WHG750 remains in place.” Para. 7. However, the WHG750 license does not include 219 MHz spectrum and all of the Duquesne sites are fill-in sites, not the licensed site.

2. **Pilar Cross-examination**

Pilar was asked about his written testimony referring to the need of utilities to communicate with mobile units, municipalities, police and fire and whether Duquesne in fact used Maritime spectrum for those purposes. P.1662L1-10. He indicated that Duquesne used the spectrum for SCADA (supervisory control and data acquisition) and thereby admitted Duquesne did not use the spectrum for those other purposes. P1662L11-19.

Pilar testified that he had never seen the Maritime WHG750 license until shown it at the hearing. P1664L21-22. When asked if Duquesne operated from the licensed site in Hookstown, Pennsylvania, he testified that, "Hookstown is what we call Shipping Port tower." P1667L3-4. However, the Maritime/Duquesne contract, Exhibit A, lists the coordinates of the Shipping Port tower as Lat 40-37-01N/Long 80-26-22W, whereas the WHG750 licensed shows the Hookstown site coordinates at Lat 40-35-10.2N/80-24-57.2W.

EB objections prevented an answer as to whether the ten Duquesne sites are fill-in sites. P1668L22-P1669L9. Pilar testified that Reardon told him that he could operate in Beaver and Allegheny Counties. P1669L20-L1671L8. Since geographic area spectrum is licensed by county borders, his testimony shows that Reardon marketed the WHG750 spectrum to Duquesne as if it was geographic area spectrum.

EB objections prevented an answer to the question as to why there would be a county border service contour for a site-based license. P1683L10-14. Pilar testified that he asked his legal department for a copy of the WHG750 license, was told it was coming but never got it. P1685L7-10. When asked if he knew the difference between an AMTS geographic license and an AMTS site-based license, Pilar testified, "I think I do but I'm not sure." P1687L3-10.

F. **Puget Interrogatory Answers**

Puget did not testify at the hearing. However, Puget filed answers to interrogatories from the EB (EB Exh. 65 and 66). Puget admits that its private land mobile radio system (“PLMRS”) was constructed using geographic service area licenses that ENL and Skybridge Spectrum Foundation (“Skybridge”) sold to PSE in 2010. EB Exh. 65 at 5. PSE states, “PSE has constructed a wide-area private land mobile communications network that PSE uses for internal communications among its employees and contractors....” EB Exh. 65 at 5. PSE states, “All of the base station transmitter sites used in PSE’s land mobile network are within the license area boundaries of the geographic AMTS licenses (Call signs WQMZ553 and WQMZ554) that PSE acquired in 2010 from [ENL and Skybridge] through license partitioning and disaggregation in FCC File Nos. 0004258631 and 0004258642, respectively.” EB Exh. 65 at 6.

The Puget PLMRS system uses modern technology that is based on low power, low site transceivers, “PSE’s current network design is based on use of transmitter sites operating at relatively low power (generally less than 20 watts ERP) and low antenna sites, both to improve frequency reuse and to minimize the potential for interference to reception of broadcast signals on television channels 10 and 13....” EB Exh. 65 at 6.

Puget identifies five of the locations on KAE889 as being a “Licensed Facility” that PSE was concerned it would have to protect, “A number of PSE’s transmitter sites operating under its geographic licenses also fall within, or have signal contours that overlap, the signal contour of the Licensed Facility.” EB Exh. 65 at 6. In PSE’s answers to interrogatories, the term Licensed Facility is defined to as locations 4, 20, 30, 34 and 48 on KAE889. EB Exh. 65 at 5.

Puget sought to avoid having to protect Maritime’s site-based authorizations, “Because of PSE’s need to build and operate stations in the vicinity of the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], PSE entered into an Asset Purchase Agreement and a related

Spectrum Manager Lease Agreement with Maritime in May 2010.” EB Exh. 65 at 6. PSE admits it does not operate any of the licensed sites, “PSE’s current network design does not require operation of base station facilities at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], but PSE has not ruled out the possibility of installing transmitting equipment at the Licensed Facility if necessary to improve coverage to certain areas, as a back-up transmitter site for disaster recovery or emergency coverage...or for some other purpose.” EB Exh. 65 at 6. The latter claim is irrelevant because Puget, as the geographic area licensee, can place transmitters anywhere within its service territory, “to improve coverage...as a back-up...or for some other purpose.” Puget admits that, “PSE has taken no steps, and has no definite plans, to operate transmitters on AMTS frequencies at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889].” EB Exh. 65 at 7.

Puget claims it could use two of the KAE889 locations to extend coverage area beyond the PSE geographic license territory, according to a “Note 2” that PSE attaches to its discussions of locations 4 and 20. EB Exh. 65 at 5 and 7. This claim underscores that Puget has no conceivable use for three of the five Maritime locations, 30, 34 and 48.

Puget admits that as the geographic license holder it could continue to operate its PLMRS system without any of the Maritime site-based authorizations:

All of PSE’s so-called Fill-in Sites operate within the geographic area of PSE’s geographic AMTS licenses (Call Signs WQMZ553 and WQMZ554). As the holder of the geographic licenses PSE would continue to have authority, by virtue of its geographic AMTS licenses, to operate at the so-called Fill-in sites even if the Site-based authorizations were terminated.

EB Exh. 66 at 7. Puget claims that it could use Maritime site-based authorizations at “the northernmost and southernmost portions of PSE’s service area” because, “PSE’s signal contours extend across the boundaries of its geographic license areas but within the authorized contours of the Licensed Facilities [*i.e.*, locations 4 and 20].” EB Exh.

66 at 7. However, Puget admits it is a US utility that serves customers in a “service territory in the Puget Sound area of western Washington”, *i.e.*, the US, and not Canada. EB Exh. 66 at 3. Puget further admits that it could adjust its operations to confine them to its geographic service area. EB Ex. 66 at 8. Moreover, the Commission’s files show that PSE has other licensed spectrum in other frequency ranges that PSE can use. *E.g.*, *Puget Sound Energy, Inc.*, 27 FCC Rcd 7010, DA 12-958 (June 19, 2012)(referencing thirty-two PLMR stations, and ...twelve narrowband PLMR stations for which it is licensed).

G. Testimony of Patrick Trammel

Patrick Trammel submitted written testimony and appeared at the hearing on behalf of Choctaw. This testimony is irrelevant at this stage of the proceedings. The Commission denied the Maritime *Second Thursday* petition, and therefore Maritime’s plan to sell the licenses to Choctaw, and any plans of Choctaw as to what it would do with the licenses are barred by the Commission’s decision. In order to consummate the plan to sell to Choctaw without *Second Thursday* relief, Maritime would need to survive phase two of this hearing. Given the evidence and tentative conclusions set forth in the HDO, that would appear unlikely.

In any case, Choctaw would take the licenses subject to the existing contracts with Pinnacle, Duquesne, Puget and Evergreen already discussed above. Those contracts do not provide for restoration of service on any of the sixteen stations and rely entirely upon Maritime’s theory that it can sell or lease site-based licenses solely for fill-in stations without any actual licensed stations.

Choctaw claims that it will pursue other sales or leases of spectrum are purely speculative. Choctaw fails to identify any specific potential buyers or lessees, other than Pinnacle, Duquesne, Puget and Evergreen, with the possible addition of Amtrak. Allegations

concerning positive train control (“PTC”) fail to establish that site-based licenses, as opposed to geographic area licenses, would have any practical use for PTC.

III. MARITIME CONTRACTS WITH PINNACLE, DUQUESNE AND PUGET

Maritime admitted that it discontinued operating the sixteen stations in December, 2007, and that it ceased paying any tower rent and electric charges in August, 2011, as shown in the above review of the testimony. Maritime relies upon alleged fill-in stations operated by Pinnacle, Duquesne, Puget and Evergreen as its excuse for discontinuance of operation of the sixteen stations.

Any such alleged fill-in operations are pursuant to contracts between Maritime and those parties. Therefore, the contracts are an important test of Maritime’s allegations. Yet Maritime refused to make the contracts public. Accordingly, ENL-VSL in these public findings cannot make reference to any of those confidential contracts.

However, a Bench Brief filed in ECFS on December 10, 2014, includes copies of Pinnacle, Duquesne and Puget contracts from the public files of the Maritime bankruptcy proceeding. No party has challenged that these contracts are public on Pacer and no party has moved to strike these contracts from the public record in this case. Therefore, these contracts are part of the public record in this case as it now stands. ENL-VSL make no statement as to whether these contracts are the same as the contracts filed by the Bureau. That is a matter solely for the Presiding Judge to determine *in camera*.

Nor do ENL-VSL make any statements herein as to price terms in the contracts or any other confidential business terms. The sole reference to the public contracts from Pacer is to the site location information that shows that Pinnacle and Duquesne did not contract to operate any of the sixteen stations and Puget is precluded from operating the stations.

A. **Pinnacle Lease**

The Bench Brief attaches a copy of a Pinnacle-MCLM Spectrum Lease Agreement entered into on December 15, 2008 (“Pinnacle Lease”) from Pacer. Exhibit A thereto is the list of nineteen locations where Pinnacle contracted to operate Pinnacle stations. A reference copy of the WRV374 license from ULS is EVH Ex. 150. In addition, the WRV374 license is readily accessible in ULS by license search by call-sign.

Comparison of the Pinnacle station list from Exhibit A to the Pinnacle Lease with the WRB374 license, and specifically the eight license locations at issue herein (namely locations 14, 15, 16, 18, 25, 33, 35 and 40), shows that none of the nineteen Pinnacle stations correspond with any of the eight licensed Maritime stations.

Thus, the documentary evidence is that none of the eight licensed Maritime stations are being operated by Pinnacle. While Maritime and Pinnacle characterize the nineteen Pinnacle stations as fill-in, neither of them established at the hearing or otherwise that the nineteen Pinnacle stations operate within the actual service contours of any of the eight Maritime licensed stations as of the date of the freeze.

B. **Duquesne Contract**

The Bench Brief attaches a copy of a Duquesne-MCLM Asset Purchase Agreement entered into on February 18, 2010 (“Duquesne Contract”) from Pacer. The Duquesne Contract, Exhibit A, provides a list of ten locations where Duquesne is to operate its stations. The list is on the last page of the document.

The list of ten stations that Duquesne contracted to operate can be compared with the licensed station location on the Maritime WHG750 license, a copy of which was provided as EVH Ex. 139, and also is available in ULS. For convenience, the one location on that license is Hookstown, PA, Lat 40-35-10.2N/Long 080-24-57.2W. Comparison of that location

information with Exhibit A to the Duquesne Contract shows that none of the ten stations that Duquesne contracted to operate correspond with the licensed location.

While Maritime and Duquesne characterize the Duquesne former stations as fill-in, neither of them established at the hearing or otherwise that the Duquesne stations were operated within the actual service contours of a Maritime station at Hookstown as of the date of the freeze.

C. Puget Contract

The Bench Brief attaches a copy of a Puget-MCLM Asset Purchase Agreement (“Puget APA”) and Spectrum Manager Lease Agreement, both entered into on May 20, 2010 (“Puget Lease”) from Pacer. The Puget APA, Exhibit B, Map of Territory provides that Maritime is selling to Puget five of the seven licensed locations on KAE889 (namely locations 4, 20, 30, 34 and 48). The Puget APA further provides that Maritime is selling Puget any equipment at those sites and assigning to Puget any rights to use those sites (Puget APA, Art. II.d.). Therefore, Maritime retains no right to operate and no equipment at any of those five licensed sites. Puget does not and will not operate those five licensed sites because Puget holds the geographic area license, as Puget admitted in its answers to interrogatories, discussed above. Therefore, it is obvious from the contract that those five sites are permanently abandoned because Maritime has sold all rights to them and Puget does not and will not use them.

IV. LICENSE AND LEASE INFORMATION IN ULS, AND OTHER

Licensing information in ULS is part of the official records of the Commission and is binding on Maritime and the EB. Accordingly, this information must be taken into account in rendering a decision on Issue G, notwithstanding that objections prevented most questions at the hearing about the ULS public information.

Evidence in WRV374 renewal application

MCLM filed a renewal application for this license WRV374 (the "Application") that contains stations at issue here (the "WRV374 stations") in 2001, after release that year of the HDO, FCC 11-64, which included Issue G. Skytel parties including ENL-VSL filed a petition to deny this Application, and MCLM filed an Opposition thereto. In the Opposition, MCLM categorically asserted as facts, under oath, (a) that these WRV374 stations were constructed, operated and valid, etc. and attached a Declaration from David Predmore (the inside counsel and an officer of Mobex) in support of these assertions, and (b) that these records it alleged existed, under its ownership rights and control, on this construction and operation were *destroyed*. The full Commission instructed MCLM in FCC 11-64 of its duty to keep its license applications up to date under rule § 1.65. MCLM did not update, correct or otherwise modify this WRV374 Application as to the items (a) and (b) above. Proposed findings of fact involving the above are:

1. MCLM caused or permitted the WRV374 stations' records to be destroyed regarding alleged construction, operation, and validity.
2. To the extent in this issue G hearing and trial in docket 11-71, MCLM and/or the Enforcement Bureau present evidence of any kind contrary to '1' above, the contradictions themselves present critical facts to the fact finder to weigh.

Reference copies of WRV374, WHG750 and KAE889 Licenses

ENL-VSL supplied reference copies of the three Issue G licenses as admitted hearing exhibits, namely, WRV374, EVH Exh. 150; WHG750, EVH Exh. 139, and KAE889, EVH Exh. 89. Of necessity, these license reference copies were printed from ULS prior to the hearing. ENL-VSL respectfully note that current copies of the licenses are readily accessible to the Presiding Judge and his staff in ULS under the License Search function by Call Sign. .

NJSEA 220 MHz licenses

With regard to the NJSEA, the ULS system shows that NJSEA holds the following 220 MHz licenses: WQDS589, WQET700, KDX707, KZA706, WNWF722, WPBS238, WPCE403, WPFQ273, WPLX616, WPSP220, WQDS589, and WQET700. As noted at the hearing and in ENL-VSL's SD Motion and Trial Brief, this readily accessible public information in ULS shows that NJSEA has its own 220 MHz licenses and does not need Maritime spectrum.

NJTA 800 MHz licenses

With regard to NJTA, the ULS system shows that the State of New Jersey holds the following 800 MHz licenses: WSB622, WSB623, WSB624, WSB625 and WSB626. The license files for these call signs contain an August 14, 2014, letter to the Commission explaining that New Jersey is constructing a "Statewide 800 MHz Trunked Radio System" using its own 800 MHz licenses. As noted at the hearing and in ENL-VSL's SD Motion and Trial Brief, these licenses and letter show that NJTA does not need Maritime spectrum.

WRV374 Lease History

With regard to WRV374, a ULS Application Search by Call Sign shows the following lease applications. A lease application for Pinnacle filed on May 11, 2009, in file no. 0003834198, is Inactive. A lease application for Pinnacle filed on Nov. 2, 2009, in file no. 0004014426, was accepted, but expired on May 30, 2011, according to the Dates tab. A lease application for Pinnacle filed on Feb. 22, 2010, in file no. 0004131898, is Inactive. Accordingly, ULS shows no active lease in effect for WRV374, directly contrary to testimony from Maritime and Pinnacle that Maritime is leasing WRV374 spectrum to Pinnacle.

WHG750 Lease History

With regard to WHG750, a ULS Application Search by Call Sign shows the following lease applications. A lease application for Duquesne filed on Mar. 5, 2010, in file no.

0004149128, is shown as Inactive. A lease amendment filed on Mar. 8, 2010, in the same file no., is shown as pending, with an expiration date of Dec. 12, 2012, according to the Dates tab. Accordingly, ULS shows no active lease for WHG750, which is consistent with Duquesne's testimony that Duquesne discontinued any use of Maritime spectrum over two years ago.

KAE889 Lease History

With regard to KAE889, a ULS Application Search by Call Sign shows the following lease applications. A lease application for Evergreen filed on July 23, 2009, in file no. 0003909446, was accepted and expired on Sept. 9, 2014, according to the Dates tab. This is consistent with Maritime testimony that Evergreen notified Maritime that Evergreen ceased using any Maritime spectrum in September, 2014. A lease application for Evergreen filed on Oct. 23, 2014, in file no. 0006512461, is shown as Pending. Accordingly, there is no accepted lease in effect for Evergreen for KAE889 spectrum.

A lease application for Puget filed on June 29, 2010, in file no. 0004299952, and a lease amendment filed on June 29, 2010, in the same file no., are shown as Inactive. A lease amendment for Puget filed on July 7, 2010, in file no. 0004299952, is shown as Pending, with an expiration date of Sept. 7, 2014, according to the Dates tab. A lease application for Puget filed on Sept. 5, 2014, in file no. 0006446692, and a lease amendment filed on Dec. 2, 2014, in the same file no., are shown as Pending. Accordingly, there is no accepted lease in effect for Puget for KAE889.

Other

In addition to evidence and lack of evidence discussed above (including as to lack of FCC accepted lease authority):

There is no testimony or evidence regarding the 16 stations and the four licenses that contain them meeting the “continuity of service” requirements of rule 80.475(a) which remained in effect and applied to all site-based AMTS licenses and component stations up to and well after their construction deadlines. This was the primary reason for the FCC’s creation of the AMTS radio service, a fact stated in the seminal orders and many other orders.

There is no direct or cogent evidence of any authorized service contour for any of the 16 stations. That is the basis of any authorized transmissions from the stations, and any permissible fill-in stations (if the licensed station were valid and in operation).

There is no evidence of any of the 16 stations meeting the CMRS Interconnect requirements that applies to all AMTS public coast stations (which are CMRS) under rule §20.9(a)(5), or of Maritime obtaining any PMRS authority by application and grant under §20.9(b).

There is no evidence of MCLM seeking and obtaining service discontinuance or impairment authority under rule §80.471 which applies where there is lack of interconnection and thus where the service is not CMRS.

There is no evidence Maritime updated, as required under rule §1.65, its pending renewal applications for the stations with any of the evidence it asserted as material in this issue-G hearing that would be relevant to its request and case for grant of the renewal applications by the Wireless Bureau. (Issue G does not involve grant or denial of those renewal applications.) The lack of presentation of that evidence is a fact the Presiding Judge may consider.

V. **FINDINGS OF FACT**

The Presiding Judge heard testimony from three Maritime-related witnesses. DePriest is the president and sole director of Maritime. EB Exh. 1D, para. 1 (para. references are to the

witnesses direct written testimony). EB argued that DePriest was not testifying on behalf of Maritime, but ultimately the EB conceded that, “yes, she would be binding the company with her statements.” P1342L5-6. She is the only current Maritime employee that appeared at the hearing. Reardon is a former Maritime employee who now works for Choctaw and consults for Maritime and Smith ceased working for Maritime in December, 2012, then worked at Choctaw until May, 2013. P1538L13-21.

The Presiding Judge also heard testimony from Pinnacle witness Allen regarding WRV374 and Duquesne witness Pilar regarding WHG750. Puget did not testify but its answers to interrogatories supply information regarding KAE889. Evergreen’s testimony was stricken regarding KAE889 but there is ample evidence from DePriest, Reardon and Smith regarding Evergreen’s use of KAE889 which ceased prior to the hearing.

The evidence shows as follows. Maritime acquired the 16 stations from Mobex in 2005. From 2005 to 2007 the market for site-based AMTS services declined and Maritime lost all its customers. Maritime discontinued operation of all 16 stations as of December 31, 2007. Maritime decided to try to sell or lease the spectrum. Maritime was able to lease spectrum to Pinnacle and Evergreen and to sell and in the interim lease spectrum to Duquesne and Puget. Despite revenue from these transactions, Maritime declared bankruptcy on August 1, 2011. Maritime ceased paying all site rents and utilities on August 1, 2011.

Any equipment that remains at any of the sites is simply there because the site owner has not bothered to remove it and does not provide any evidence of intent to resume operations. Reardon’s testimony that certain sites are operating is not credible because operation requires electricity and DePriest testified that Maritime ceased paying utilities in 2011. Her testimony is binding on Maritime.

None of the contracting parties, Pinnacle, Duquesne, Puget and Evergreen operate any of the licensed stations nor have they ever licensed any of the licensed stations. They have operated only what Maritime claims to be fill-in stations. The only fill-in stations that still operate are those of Pinnacle, which allegedly fall within the contours of five of the WRV374 licensed sites. Duquesne and Evergreen no longer operate fill-in sites. Duquesne ceased operating fill-in sites over two years before the hearing began. Puget does not operate fill-in sites. Puget is the geographic area license holder and operates under its geographic license.

Maritime has no cognizable efforts or plans to resume operation of any of the licensed sites. Maritime simply seeks permission to sell or lease the spectrum as if it were geographic area license spectrum, which it is not. Therefore, it must be concluded by a preponderance of the evidence that Maritime has permanently discontinued operation of all sixteen stations under Issue G.

Based upon the testimony, the relevant contracts and the public information in ULS, the Presiding Judge should conclude that a preponderance of the evidence supports the following findings of fact with regard to the permanent discontinuance of all sixteen stations

1. Maritime acquired the 16 stations from Mobex on Dec. 31, 2005.

DePriest testified that Maritime acquired Mobex on Dec. 31, 2005. EB Exh. 1D, para. 4. Reardon testified that Maritime acquired the AMTS licenses of Mobex on Dec. 30, 2005. EB Exh. 1A, para. 4. Smith testified that Maritime acquired WRV374 and WHG750 from Mobex in 2005. EB Exh. 1C, para. 3 and 5. He does not state when Maritime acquired KAE889. EB Exh. 1C, para. 4.

2. Maritime lost all of its customers between 2005 and 2007.

DePriest testified that the market for Maritime services rapidly deteriorated by 2007. EB Exh. 1D, para. 5. Reardon says the market for the services rapidly deteriorated. EB Exh. 1A, para. 6-7. Smith testified that the market for Maritime services declined in 2006-07 and Maritime decided to “repurpose the spectrum” by trying to sell or lease it. EB Exh. 1C, para. 6.

3. Maritime ceased commercial operations on December 31, 2007.

DePriest testified that due to the loss of customers, Maritime discontinued operations under all three of the licenses at issue herein on December 31, 2007. EB Exh. 1D, para. 6 (WHG750), para. 8 (KAE889) and para. 10 (WRV374). Smith confirms that Maritime ceased operations on December 31, 2007. EB Exh. 1C, para.

4. In 2008 Maritime decided to sell or lease the spectrum.

Reardon testifies that in March 2008, Maritime decided to sell or lease the spectrum to third parties. EB Exh. 1A, para. 9. Thereafter, Maritime only made efforts to sell or lease spectrum and did not make any efforts to return the stations to service. EB Exh. 1A, para. 10 - 15. Maritime entered into various deals to sell or lease spectrum, none of which involved any commitment by any buyer or lessee to restore operation of any of the stations. EB Exh. 1A, para. 10-15.

5. Maritime stopped paying rent, utilities and related expenses for the stations on August 11, 2011.

DePriest testified that Maritime “maintained” equipment (note past tense) “for as long as Maritime was able to pay site leases, utilities and related expenses.” EB Exh. 1D, para. 6. And she testified that Maritime maintained equipment (past tense again) “for as long as Maritime was able to financially do so.” EB Exh. 1D, para. 8. When asked on cross-examination for the date of discontinuance of all payments, DePriest testified that, “as of the bankruptcy file date, which

was August 1, 2011, we were no longer financially able to, you know, maintain the site.” P1282L22-24.

The Presiding Judge should make the following specific findings with regard to each license.

WRV374

6. As to the WRV374 license, Maritime ceased providing service by December 31, 2007, and ceased maintaining the licensed stations by August 1, 2011.

DePriest admits that Maritime ceased providing service on WRV374 in “late 2007.” EB Exh. 1D, para. 10. She further testified that Maritime was unable to financially maintain its licensed sites as of August 11, 2011, “We didn’t...we could not make that payment as of August 1, 2011.” P1284L4-11.

DePriest claims that Maritime “maintained” equipment that was capable of operating “at many of these locations, including WRV374 (Locations 35 and 40).” EB Exh. 1D, para. 10. Since she uses the past tense, this is not inconsistent with the equipment no longer being maintained as of August 1, 2011.

She testified that she believes equipment exists at locations 35, Rehobeth, MA and 40 Hamden, CT, based on being told this by Smith. P1280L11-17. When asked how she could claim that Maritime maintains equipment at licensed sites, given her written testimony that Maritime ran out of money and stopped paying rent and utilities at the licensed sites in August, 201 (P1282L7-12), DePriest testified, “That’s true. We did not financially support the sites or maintain the sites.” P1282L17-18. She then testified that the site owners allowed Maritime to maintain its equipment at their sites even though she admitted that Maritime has not paid them

since August 1, 2011. P1285L4-13. Any such remnants of equipment do not provide evidence that Maritime is doing anything to maintain the stations.

Reardon claimed that some of the sites on WRV374 are operating or that Maritime equipment is still there that is capable of operating. With regard to WRV374 sites 35(Rehobeth, MA) and 40 (Hamden, CT), Reardon testifies that he has “been informed by third party engineers” that Maritime has equipment at these sites that is transmitting. EB Exh. 1A, para. 15. He testified that Bob Salvatore of Cybercom told him that site 35 is on the air and that that Bob Meister told him that site 40 is on the air. P1378L22-1380L2. He testified that every month he gets emails from them that the sites are on the air. P1379L16-20. He admitted that Maritime is not operating at the licensed site 40 but claims it is operating nearby. P1380L5-11. He testified that, “I’ve never personally been to the sites” and “It’s all Greek to me.” P1381L5-8. He admitted that Maritime does not serve subscribers at sites 35 and 40. P1384L1-2. He testified that the engineering reports that he relied on are the reports filed by EB as Exh. 49 and 50. P1456L7-10; P1457L6. These reports are from Aug. 23 and Sept. 10, 2013. EB Exh. 49-50. Reardon testified that he gets emails from Meister every month that say, “it’s still working, still on the air, that sort of thing.” P1457L7-12.

He testified that, “at most of the sites [on WRV374] the [Maritime] equipment is actually still there.” P1394L6-7. He testified that the Maritime equipment is transmitting at sites 14 (Seldon) and 18 (Valhalla). P1394L16-23. He testified that the Maritime equipment no longer is present at sites 18 (Verona), 16 (Allentown); 33 (WTC) and 25 (Perrineville). P1395L6-1396L14.

Smith admits that Maritime ceased providing service on WRV374 in “late 2007”. EB Exh. 1C, para. 5 and 8. He testifies that when Maritime acquired WRV374 from Mobex in 2005,

six of the WRV374 locations were operating “Locations 14, 15, 16, 18, 25, and 33”. EB Exh. 1C, para. 8. He does not testify that locations 35, Rehobeth, MA and 40, Hamden, CT were operating in 2005.

The preponderance of the evidence is that Maritime is not operating or maintaining any of the WRV374 licensed locations and has not been since August 1, 2011, at the latest. Reardon’s testimony that Maritime is operating or capable of operating any of the WRV374 sites is not credible given DePriest’s admission that Maritime ceased paying rent, utilities and related costs on August 1, 2011.

7. The WRV374 licensed sites are not being operated or maintained by Pinnacle.

Comparison of the Pinnacle lease with the WRV374 locations shows that none of the Pinnacle locations correspond to any of the WRV374 licensed locations, as discussed in the contract section above.

DePriest claims that the Pinnacle lease “impacts” six of the eight locations on WRV-374 ((namely locations 14 (Seldon, NY), 15 (Verona, NJ), 16 (Allentown, PA), 18 (Valhalla, NY); 26 (Perrinville, NJ); and 33 (NYC, NY)). EB Exh. 1D, para. 10. She does not claim that Pinnacle operates any of the licensed locations on WRV374. EB Exh. 1D, para. 10.

When asked what DePriest meant in her written testimony when she claimed that six sites on WRV374 (14-16, 18, 25 and 33) were “impacted” by the Pinnacle lease (P1285L21-24), she testified that all six sites are included in the Pinnacle lease “along with 35 and 40.” P1286L11-14. She later testified that locations 14 through 16, 18, 25, and 33 are leased to Pinnacle. P1295L16. However, Maritime’s Response to Interrogatories dated Aug. 4, 2012, states that those six locations are “subject to and/or impacted by” the Pinnacle lease. EB Exh 96, page 9.

Maritime's Supplemental Answers filed Feb. 28, 2012, EB Exh. 83, page 8, only identifies WRV374 locations 15 and 25 as being leased to Pinnacle. P1287L9-19; P1288L25-P1289L1-2, 6-7. Maritime's Amended Answers filed on Mar. 1, 2012, EB Exh. 85, page 3, states that WRV374 locations 15 and 25 are leased to Pinnacle and no other sites are listed as being lease to Pinnacle. P1290L12-19; P1291L1-3. Maritime's Supplemental Response filed Aug. 9, 2012, a response to a specific direction from the Presiding Judge to clarify Maritime's position on the facts and the law, EB Exh. 89, page 2, again states that locations 15 and 25 are leased to Pinnacle, and did not list any other sites as being leased to Pinnacle. EB Exh. 89, page 2. DePriest testified she did not prepare Maritime's sworn answers to interrogatories, even though she is the only Maritime witness and its sole director and President. P1293L13-16.

Given that several responses to interrogatories filed under oath by Maritime state that only two locations (15 and 25) are leased to Pinnacle, the Presiding Judge should find that only those two locations are leased and the others are merely, allegedly "impacted". Exh. 83, page 8; EB Exh. 85, page 3; EB Exh. 89, page 2.

Reardon also fails to identify which of the eight site locations on WRV374 were leased or allegedly impacted by the lease. EB Exh. 1A, para. 14. When asked whether Pinnacle is operating any of those sites, Reardon used site 18 (Verona) as an example and claimed that Pinnacle was using spectrum "around the site." P1390L18-19. He admitted that Pinnacle doesn't have a tower site lease for site 18, but claimed that Pinnacle using the spectrum without operating at the licensed site is "meeting the public interest goal of the FCC, which is to help the licensee, in this case, Maritime Communications, to operate the spectrum in the public interest." P1391L1-6.

Reardon admitted that Pinnacle does not operate the licensed sites on WRV374, that Pinnacle operates fill-in sites. P1478L18-21 (“JUDGE SIPPEL: All right, stop right there. Are they, are these fill-in sites? These would be fill-in sites? THE WITNESS: They would be fill-in sites, yes. JUDGE SIPPEL: Thank you. That’s all I want to hear.”); P1480L15-18 (“Is Pinnacle operating, actually operating any of the other licensed stations of Maritime under WRV374? THE WITNESS: No.”); P1498L19-21 (“THE WITNESS: I feel like I know with some certainty that, that they’re not operating transmitters at the license sites, which are high up.”)

Reardon testified that Pinnacle does not operate from the licensed sites because, “you want to go lower down, instead of being high, you want to go lower down so that you can reuse the frequencies...if you’re high and you have a high power it goes too far to be able to reuse it...” P1500L8-14. Reardon testified that Maritime could not operate from the licensed sites because doing so would cause interference to Pinnacle. P1502L8-P1502L3.

Smith testifies with regard to WRV374 that “certain of the licensed locations were leased to Pinnacle,” without identifying which specific sites were leased to Pinnacle. EB Exh. 1C, para. 8. Smith testified that he did not negotiate the lease with Pinnacle. P1550L7-11. Smith testified that Pinnacle is only operating fill-in stations and is not operating any of the WRV374 licensed station locations. P1576L8-17. He also testified that Maritime is not operating the licensed sites because of potential interference to the Pinnacle fill-in stations. P1576L18-P1577L5.

Allen testified as a Director at Pinnacle the lessee of Maritime WRV374 spectrum. EB Exh. 1G, para. 1. Allen admits that, “Pinnacle’s networks for the NJSEA and NJTA do not operate and have never operated, from the locations listed on the WRV374 license.” EB Exh. 1G, para. 2. Allen testified that the Pinnacle system that serves the NJTA “is built of 18 fill in sites.” P1523L22-23. He further testified, “We’re servicing the fill in sites, not the actual

license site.” P1526L24-25. Allen testified that fill-in locations allow for better coverage and more efficient spectrum utilization than using the licensed sites. P1533L20-25. He further testified that the licensed sites could not be operated by Maritime without interfering with the Pinnacle fill-in sites. P1534L17-20. This testimony further confirms the admissions of DePriest, Reardon and Smith that Maritime stations licensed as WRV374, locations 14, 15, 16, 18, 25 and 33 are not being operated by Pinnacle.

8. Pinnacle’s sites were not shown to qualify as fill-in sites for WRV374.

DePriest was then asked if the Pinnacle lease approval is in effect or has expired and she testified, “I don’t know.” P1306L18-25. ULS shows that there is no current lease in effect.

Smith admitted that the Pinnacle fill-in stations must operate within the actual operating contours of a licensed station. P1556L13-15; P1572L22-25; P1575L14-17. Smith admitted that the actual operating parameters may be less than the maximum permitted parameters specified on the license. P1556L21-P1557L2.

Allen testified that Pinnacle operates 18 “fill-in sites” that serve NJTA and one “fill-in site” that serves NJSEA. EB Exh. G, para. 1. Allen explains that fill-in locations, “allow for better coverage, more efficient spectrum utilization and reuse.” EB Exh. G, para. 3. However, he fails to offer any testimony to demonstrate that Pinnacle is operating stations that qualify as fill-in stations.

9. Pinnacle’s operations do not prevent Maritime from operating WRV374.

DePriest testified that Maritime leased “some of its frequencies” on WRV374 to Pinnacle. EB Exh. 1D, para. 10. Although DePriest testifies that the Pinnacle lease “impacts” six locations on WRV374, she does not explain what she means by “impacts”. EB Exh. 1D, para. 10. In particular, she does not reconcile the “impact” claim with her testimony that, “some

of [the WRV374] frequencies” are under lease to Pinnacle. She does not explain why Maritime could not continue to operate WRV374, notwithstanding the lease to Pinnacle, when Maritime has leased only “some of its frequencies” to Pinnacle. EB Exh. 1D, para. 10. Reardon also fails to explain why Maritime did not continue to operate the WRV374 licensed sites with frequencies retained by Maritime. EB Exh. 1A, para. 14.

Smith testified that there are forty 12.5 kHz channels on the Maritime WRV374 license. P1562L9-11. He admitted that since Maritime is only leasing some of the WRV374 channels to Pinnacle, then Maritime could operate on the other channels retained by Maritime without causing interference to Pinnacle. P1563L5-14.

10. Maritime’s WRV374 spectrum is not essential to NJSEA and NJTA.

Allen claims that if Pinnacle loses the right to use Maritime spectrum, this will cause a loss of service to NJSEA and NJTA. EB Exh. G, para. 4 – 8. Public information in ULS shows that NJSEA has its own 220 MHz licenses. Therefore, Allen’s claim that NJSEA 220 MHz facilities would need to be replaced if Pinnacle lost the use of Maritime spectrum (which is at 217 MHz not 220 MHz) is incomplete. EB Exh. G, para. 8. *See* ULS database information on NJSEA, licensee.

Allen testified that when he prepared his written testimony he did not do any research in ULS and was not aware whether NJSEA has its own 220 MHz licenses. P1519L3-8. His attorney admitted that NJSEA at least one 220 MHz licenses stationg, “I don’t think having one license means you can’t need another licenses.” P1522L19-21. Allen testified that he did not know whether Pinnacle has a contract with the NJSEA. P1525L23-25. He also testified he has not seen a contract between Pinnacle and Maritime. P1531L16-18.

Allen also admitted that when he prepared his written testimony he did not do any research in ULS and was not aware whether the State of New Jersey has its own 800 MHz licenses. P1524L2-5. ULS also shows that New Jersey has a statewide collection of 800 MHz licenses that it is using to build its own network. *See* ULS database information on State of New Jersey 800 MHz licenses, including correspond with the Commission concerning the status of construction of New Jersey statewide radio network. Therefore, NJTA authority also does not need to use Maritime spectrum.

WHG750

11. As to the WHG750 license, Maritime ceased providing service by December 31, 2007, and ceased maintaining the licensed stations by August 1, 2011.

DePriest admitted that Maritime ceased providing service on WHG750 as of December 31, 2007. EB Exh. 1D, para. 6. DePriest testifies that Maritime “maintained” WHG750 equipment “for as long as Maritime was able to pay site leases, utilities and related expenses.” EB Exh. 1D, para. 6. When asked when Maritime became unable to maintain the WHG750 location, DePriest testified, “that would have been as of August 1, 2011.” P1283L11-14.

With regard to WHG750, Smith testifies that Maritime ceased providing service on Dec. 31, 2007. EB Exh. 1C, para. 3. With regard to WHG750, Smith said he was the one at Maritime who decided to stop operating WHG750 in December, 2007, because, “we didn’t have any customers left.” P1543L8-13.

12. The sale and lease of part of the WHG750 spectrum to Duquesne did not prevent Maritime from continuing to operate the station.

DePriest testifies that “500 kHz of Block B of call sign WHG750 is subject to an asset purchase agreement and spectrum lease with Duquesne....” EB Exh. 1D, para. 7.

Reardon testifies that Maritime agreed to sell and in the interim lease “500 KHz of Block B of call sign WHG750” to Duquesne. EB Exh. 1A, para. 12. Reardon further testified that Maritime is selling/leasing 500 Mhz of Block B to Duquesne, “so not the entire amount of Block B spectrum, which is 1 megahertz total.” P1392L1-5.

Pilar testified as Senior Communications Engineer at Duquesne, the lessee of Maritime WHG750 spectrum. EB Exh. 1E, para. 1. He testified that Duquesne entered into an agreement with Maritime “for 500 kHz of the 1 MHz of the B block spectrum in the 217 MHz and 219 MHz bands licensed under call sign WHG750.” EB Exh. 1E, para. 4.

Reardon testified that he personally visited the WHG750 site in March, 2014, and that Maritime is operating on its 500 KHz of retained spectrum. P1392L8-13. As noted, DePriest testified that Maritime ceased paying site rents and electric utilities in August, 2011, so Reardon’s testimony is not credible.

13. WHG750 had no operations between 2007 and 2010.

DePriest and Smith testified that Maritime ceased operations on Dec. 31, 2007. Pilar testifies that Duquesne constructed facilities that began operating “as early as May 2010.” Para. 5. Therefore, there were no operations between 2007 and 2010.

14. Duquesne never operated the licensed WHG750 location.

Pilar lists 10 sites where Duquesne operated. EB Exh. 1E, para. 5. More specific information about the 10 sites is in the Duquesne contract and none of the sites correspond with the WHG750 licensed site, as shown in the contract section above. When asked if Duquesne operated from the licensed site in Hookstown, PA, he testified that, “Hookstown is what we call Shipping Port tower.” P1667L3-4. However, the Maritime/Duquesne contract, Exhibit A, lists the coordinates of the Shipping Port tower as Lat 40-37-01N/Long 80-26-22W, whereas the

WHG750 licensed site coordinates are Lat 40-35-10.2N/80-24-57.2W. Compare Duquesne contract publicly filed in bankruptcy with the WHG750 license publicly available in ULS.

15. Duquesne ceased using any WHG750 spectrum years ago.

Pilar testifies that Duquesne turned off the Maritime spectrum and replaced it with 900 MHz spectrum in February, 2012 at three sites, namely Mt. Washington, Clinton and Valley. EB Exh. 1E, para. 6. The remaining seven sites were taken off Maritime spectrum in September, 2012, not long after the first three sites and also more than two years prior to the hearing. EB Exh. 1E, para. 6. Therefore, he admits that the Mt. Washington site, which he claims that Duquesne wants for meter reading, has not been in operation on Maritime spectrum for more than two years before the hearing began in December, 2014. EB Exh. 1E, para. 6. Pilar testifies that “all of the equipment necessary to operate pursuant to the 217-219 MHz coverage of call sign WHG750 remains in place.” EB Exh. 1E, para. 7. However, the WHG750 license does not include 219 MHz spectrum, as shown in ULS.

16. Duquesne does not need and has not used WHG750 spectrum to communicate with mobile units, police or fire department radios.

Pilar testified about the need of utilities to communicate with mobile units, municipalities, police and fire, but when asked whether Duquesne in fact used Maritime spectrum for those purposes admitted Duquesne only used the spectrum for SCADA (supervisory control and data acquisition), *i.e.*, meter reading. P1662L11-19.

17. Duquesne’s sites were not shown to qualify as fill-in sites for WHG750.

Pilar testified that he had never seen the Maritime WHG750 license. P1664L21-22. Pilar testified that Reardon told him that he could operate in Beaver and Allegheny Counties, Pennsylvania. P1669L20-L1671L8. Pilar testified that he asked his legal department for a copy

of the license, was told it was coming but never got it. P1685L7-10. When asked if he knew the difference between an AMTS geographic license and an AMTS site-based license, Pilar testified, “I think I do but I’m not sure.” P1687L3-10. ULS shows no lease in effect for WHG750 as discussed in the ULS information summary above.

KAE889

18. Maritime ceased operating KAE889 as of December 31, 2007, and ceased paying site rents, utilities and related expenses as of August 1, 2011.

DePriest admitted that Maritime ceased providing service on KAE889 as of December 31, 2007. EB Exh. 1D, para. 8. She testified that one location on KAE889, location 14, continued to operate until 2010. EB Exh. 1D, para. 8. Location 14 is not one of the seven locations on KAE889 that are part of this Issue G hearing. Thus, DePriest’s testimony only serves to underscore that all seven of the relevant locations on KAE889 did not continue to operate until 2010 and ceased operating in 2007. EB Exh. 1D, para. 8.

DePriest testified that Maritime “maintained” equipment “for as long as Maritime was able to pay site leases, utilities and related expenses.” EB Exh. 1D, para. 8. At the hearing she admitted Maritime ceased all payments on August 11, 2011. P1282L22-24. As to the two sites on KAE889 that are leased to Evergreen (3 and 13), Reardon testified that Day Wireless told him that Maritime equipment is still at one site but has been removed from the other site for non-payment. P1402L3-16.

19. The KAE889 licensed stations were not operated by Puget.

DePriest testified that five of the seven locations on KAE889 are leased to Puget and the other two are leased to Evergreen. EB Exh. 1D, para. 9. She does not testify that Puget or Evergreen operate any of the licensed locations on KAE889.

With regard to KAE889, Reardon testified that five sites are being sold and in the interim leased to Puget. P1397L4-6. He testified that those sites were on the air “in 2009 or 2010 timeframe.” P1397L6-7. This is not inconsistent with DePriest’s testimony that Maritime ceased paying site rents and utilities in August, 2011. However, he further testified that, “the site is operating, and there are leases in place...” which is a claim as to the present that is inconsistent with DePriest’s testimony that Maritime stopped paying site fees in 2011. P1397L12-15.

Smith testified that Maritime stopped providing service on Dec. 31, 2012. P1546L6-10. However, Smith also testified that Maritime did not operate five KAE889 stations once Maritime entered into a lease with Puget. P1549L25-P1550L3. He testified that the Puget lease began in March, 2010. EB Exh. 1C, para. 10. His testimony that the KAE889 stations operated until 2012 is inconsistent with DePriest’s testimony that Maritime ceased operating in December, 2007, and ceased paying tower rents and utilities in August, 2011. Mr. Keller, Maritime counsel, stated that Smith’s testimony that the KAE889 stations operated until December, 2012, was erroneous and that the correct date when Maritime ceased operations on KAE889 is December, 2007. P1580L10-13; P1581L4-5. Mr. Keller also stated that the Maritime stations were never operating once Puget began leasing the frequencies in 2010. P1584L17-20.

Puget admits it does not operate any of the licensed sites, “PSE’s current network design does not require operation of base station facilities at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], but PSE has not ruled out the possibility of installing transmitting equipment at the Licensed Facility if necessary to improve coverage to certain areas, as a back-up transmitter site for disaster recovery or emergency coverage...or for some other purpose.” EB Exh. 65 at 6. Puget admits that, “PSE has taken no steps, and has no definite plans, to

operate transmitters on AMTS frequencies at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889].” EB Exh. 65 at 7.

20. Puget is not operating fill-in stations on KAE889 spectrum.

Puget admits that its private land mobile radio system (“PLMRS”) was constructed using geographic service area licenses that ENL and Skybridge sold to PSE in 2010. EB Exh. 65 at 5. Puget states, “PSE has constructed a wide-area private land mobile communications network that PSE uses for internal communications among its employees and contractors....” EB Exh. 65 at 5. PSE states, “All of the base station transmitter sites used in PSE’s land mobile network are within the license area boundaries of the geographic AMTS licenses (Call signs WQMZ553 and WQMZ554) that PSE acquired in 2010 from [ENL and Skybridge] through license partitioning and disaggregation in FCC File Nos. 0004258631 and 0004258642, respectively.” EB Exh. 65 at 6.

Puget entered into an agreement with Maritime only to be able to freely use its geographic area spectrum, “Because of PSE’s need to build and operate stations in the vicinity of the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], PSE entered into an Asset Purchase Agreement and a related Spectrum Manager Lease Agreement with Maritime in May 2010.” EB Exh. 65 at 6. Puget admits that PSE as the geographic license holder could continue to operate its PLMRS system without any of the Maritime site-based authorizations:

All of PSE’s so-called Fill-in Sites operate within the geographic area of PSE’s geographic AMTS licenses (Call Signs WQMZ553 and WQMZ554). As the holder of the geographic licenses PSE would continue to have authority, by virtue of its geographic AMTS licenses, to operate at the so-called Fill-in sites even if the Site-based authorizations were terminated.

EB Exh. 66 at 7.

21. Evergreen is not operating fill-in stations on KAE889.

DePriest admits that Evergreen notified Maritime that it ceased using the Maritime spectrum. EB Exh. 1D, para. 9. She testified that she knew that Evergreen had discontinued operations and, “that does not mean that we would not resume that operation or that Choctaw would not resume that operation....” P1360L4-7. However, she offered no testimony about any efforts to restore service. Reardon testified that he was told that Evergreen ceased service which caused him to check with Day Wireless who told him that Maritime equipment is still at one site but has been removed from the other site for non-payment. P1402L3-16.

22. As to all sixteen stations, Maritime has shown no concrete plans to resume operations.

The Presiding Judge asked DePriest what plan Maritime has for returning the stations to service. P1345L1-3. DePriest candidly admitted that Maritime has no plan to return the stations to the air, the only plan is to sell to Choctaw. P1345L4-19. She further testified, “We have not written a business plan with –at this point, it’s speculative.” P1362L8-10. She speculated that the site owners, “would be more than happy to reactivate those licenses and to let us resume operations and start paying rent again; get caught up.” P1364L22-24. This constitutes an admission that Maritime is not operating, is not paying rent, has had no specific discussions regarding resuming operations and is simply engaging in mere speculation as to what a hypothetical tower owner might do if Maritime did attempt to resume operations, which it has not.

Maritime’s purported sale to Choctaw would be subject to the existing contracts with Pinnacle, Duquesne and Puget which do not provide for restoration of service on any of the sixteen stations. Choctaw fails to identify any other specific potential buyers or lessees, with the possible addition of Amtrak. However, the allegations concerning positive train control (“PTC”)

fail to establish that site-based licenses, as opposed to geographic area licenses, would have any practical use for PTC.

23. As to all sixteen stations, Maritime has shown no evidence:

(1) of meeting the “continuity of service” requirement of §80.475(a) (2000),

(2) of having service contours for the licensed stations or any fill-in station,

(3) of meeting the CMRS Interconnection requirement under §20.9(a)(5) or obtaining and adhering to PMRS authority under §20.9(b),

(4) of obtaining authorization for station discontinuance or service impairment under §80.471 for the stations that do not have any demonstrated CMRS operations with the required Interconnection,

(5) of submitting under §1.65 or otherwise any updates or changes to its pending renewal applications regarding the 16 stations including the renewal application for WRV374 in which it stated that the records of all of the stations’ construction, operation and validity were destroyed, and³

(6) of Maritime obtaining FCC acceptance of leases at issue here, but to an extent show in ULS for some of the stations many years ago.⁴

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³ Maritime made this assertion of records destruction as to all of the licenses and stations it obtained from Mobex, not only those under WRV374. See discussion above on this topic: see §5 in the Predmore Declarataion discussed above, in ULS records of this license.

⁴ As noted above, the details are in ULS and ENL-VSL may present these in response to the Maritime and Bureau findings of fact filings.

CONCLUSION

Wherefore, for the foregoing reasons, ENL-VSL respectfully request that the Presiding Judge so find.

Respectfully submitted,

_____/s/
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April 8, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 8, 2015, a copy of the foregoing Proposed Findings has been mailed by first class United States mail to:

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