

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Reconsideration of Denial of Request for Review by Maritime Communications/Land Mobile LLC on behalf of Mobex Network Services, LLC and Waterway Communications System, LLC)	WC Docket No. 06-122
)	
Maritime Communications/Land Mobile LLC's Form 601 Application and Amendment for Auction No. 61)	File No. 0002303355
)	
Public Notice)	DA 08-2707

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau¹
Attn: Chief, Wireline Competition Bureau

Reply Comments,
Request to Deny Petition for Reconsideration and
Request for Sanctions

The undersigned parties (“Commenters” or “Petitioners”) hereby file these reply comments to the Maritime Communications/Land Mobile LLC (“MCLM” or “Maritime”) comments (the “Comments”) in the above-captioned docket regarding its petition for reconsideration (“Recon”) of the Order of the Chief, Wireline Competition Bureau (“WCB”) denying MCLM’s Request for Review (the “Review Request”) of a decision of the Universal Service Administrator Company (“USAC”) (DA 08-971, released August 26, 2008) denying a MCLM Request for Refund (the “Refund Request”) submitted on behalf of its predecessors-in-

¹ Petitioners are listing the Wireless Telecommunication Bureau here since many of the facts revealed in this proceeding are relevant to the pending Auction No. 61 proceedings concerning File No. 0002303355. Therefore, the Wireless Bureau should be aware of these matters. In addition, Petitioners will be filing a copy of these reply comments under the just mentioned File No.

interest, Mobex Network Services, LLC (“Mobex”) and Waterway Communications Systems (“Watercom”).

In its comments MCLM supports its Recon and the facts and arguments it made that the USAC and Wireline Competition Bureau erred in denying the Review Request and Refund Request, and MCLM requests that the Recon be granted and that the FCC refund the Universal Service Fund (“USF”) payments that Mobex and Watercom made between 2001 and 2006 (the “Payments”). The Comments argue that the USF Payments should be refunded because Watercom provided a service that was not available to the general public and therefore should not be considered CMRS and subject to USF fees.

Initially, Petitioners agree with the reply comments being filed by Skybridge Spectrum Foundation and in addition provide the following in response as to why the MCLM Recon should be denied and further investigation and hearings commenced by the WCB and Wireless Telecommunications Bureau.

In addition, the FCC should accept and fully consider these Reply Comments and the facts and arguments they contain in the public interest to have a more complete and accurate record and since the FCC can always consider any new evidence brought to its attention at any time. In this case, the evidence completely supports the findings of the Order and requires denial of the Recon.

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1. Introduction and Summary

For reasons given herein, this filing seeks not only the denial of the Recon (and upholding of the denial of the Refund Request) but the imposition of sections. There is no question that no refund is due under law, applies especially to MCLM's and Mobex's past proclamations of their extensive broad CRMS public services nationwide: the proper question is what sanctions should be imposed, and what level of investition should be undertaken. For that purpose, we provide substantial summary information and exhibits here, and can provide additional information upon request or opportunity.

In this Summary by "MCLMs" we mean MCLM and all its predecessors in interest and any other entity they control or controlled.

The Reply Comments respond the Comments of MCLMs in this matter, both with regard to said Comments' specific allegations and arguments, and all that they imply, including that MCLMs are licensees in good standing, acting with required candor, and that somehow, the current MCLM has realized that its predecessors fundamentally erred in filing as a CMRS entity subject to the USF rules and fee-payment obligations. But in fact, as shown herein, the same persons acted then as now (and in both cases, well equipped with inside and outside FCC-law counsel and decades of experience in FCC license bases business), and MCLMs have an established pattern, their *sine qua non* in fact, of shell games (deliberate manipulation and fraud) with the FCC and their competitors that they continue with in this matter. They got and warehoused their licenses by rule-violating shell games, and now that they seek to exit AMTS (as shown below), they want to get money back for by just flipping, their past statements to the USFA made under certifications with new bald assertions that could not be more contrary to their own past proclamations to the FCC and their competitors.

Further, we note herein that the US District Court in New Jersey has under its jurisdiction a Complaint filed by Petitioners and Skybridge which, in part, complains of the lack of

compliance by MCLMs to submit required filings and fees to the USFA, along with other complaints as to their false allegations to the FCC and their competitors of AMTS station construction and operation. Discovery in that case and decisions by the court will, we expect, provide information relevant as to what extent MCLMs failed to file required forms and information, and submit required fees, or otherwise violated relevant USFC rules along with may other FCC rules subject of the Complaint.

Other summary information is provided in the table of contents by use of subsection headings that summarize in part the respective sections.

2. Effective Request to Withdraw Previous Filings, and MCLM Pattern of Violating and Evading FCC Rules

The Recon should be denied, to begin with, since the Refund Request was, in substance, (1) a request to withdraw and dismiss the subject USF filings and fee payments, however, MCLM did not provide good cause for withdrawing and dismissing those filings that Mobex and Watercom made under certifications as to accuracy. It is an established principal of law that when a party submits a required governmental filing, it cannot later change its position without demonstrating why it submitted an inaccurate filing in the first place, or (2) a request to deny those past filings, but the time for any such petition or request has expired.

Clearly, there is no meaning to filings before the FCC or other agency where a party can, years later, seek to reverse itself on the matters only it knew of when making the required filings. In addition, as with tax filings, any major amendment is often good cause for an audit, however, this is worse. In tax filings, one has to provide (if the longer form is used with schedules) a great deal of information to begin with, and also on amendments, but here, little information is required: the USF basically trusts that the filer both knows its rules and procedures, since it has a duty to do so as condition of its licenses and operations under them, and that it submits accurate information pursuant thereto. That places a higher duty upon the filer to be accurate.

The following demonstrates that MCLM, Mobex, and their controller Donald Depriest, with other FCC-licensed companies controlled or controls, regularly, in their major licensing actions, as in the instant USF action, state one thing to get economic advantage to the FCC, then later take an opposite position. Rather than reward that practice, in this case by a refund, the FCC should look at this whole pattern, impose severe fines, and disqualify MCLM, Mobex, Donald and Sandra Depriest, Jonh Reardon, Dennis Brown, Watercom and others involved from holding FCC licenses or acting before the FCC.

MCLM is controlled allegedly by Sandra Depriest, an attorney, but also co-controlled by her husband Donald Depriest (see the the FCC decision in the petition to deny proceeding regarding MCLM's Auction 61 long form). Donald DePriest is a Tennessee Valley Authority (“TVA”) Director appointed by President Bush and selected to write the new bylaws for TVA (based on reports in the press, due to his extensive business experience as shown in FCC records). Donald DePriest also controlled (and may still control) MariTel, Inc. (“Maritel”). Thus, Donald and Sandra DePriest are experts in law, including FCC law since they have for years controlled FCC licensee entities including MCLM and Maritel (and many before that: Bravo, Charisma, Golden Triangle, etc.). The following is a short list of actions before the FCC essential for valid licensing, licensee obligations, and required knowledge of core FCC rules and candor which Mr. Depriest and the two of his entities noted above (among many others) reversed themselves on before the FCC. The relevance to this USF proceeding is explained below.

1. Maritel entered the first VPC auction, won most of the licenses, and submitted its long form. Warren Havens (controller of Petitioners submitting this filing) also bid in that auction. Afterward, Maritel petitioned to deny all long forms including its own, and to rescind and rehold the auction but excluding Havens. To attempt this, as the FCC found, Mr. Depriest submitted nothing but speculation (which Havens showed was not correct) and cited no rules for its request, but suggested that a party not already an incumbent VPC station operator should not have been allowed into the auction since such party may be insincere, and other arguments that had no basis in and contradicted the relevant FCC rules and orders to allow any party to bid that met stated qualifications. In the decision denying that request, the FCC noted that it appeared Maritel, controlled by Mr. DePriest, filed the request, which had no chance of success, to delay its post-auction payment obligation, and gave Maritel-- thus Mr. DePriest-- a warning to not engage in such frivolous filings. To first file a long form and then petition against it is patently

absurd, and means that the certifications in the long form were false (among other violations, including abuse of process).

2. MCLM entered Auction No. 61, co-controlled as noted above, but only disclosing Sandra DePriest. Her husband, the person engaging in a career of FCC-license business, was withheld from disclosure to the FCC on the short form and the long form, along with dozens of his affiliates and their gross revenues, including American Nonwovens (now in tax default to the IRS: see State of Mississippi online UCC filings database) and Maritel, but many others also: MCLM eventually had to admit to the co-control by Mr. DePriest and a large number of affiliates. Due to a change in the short form's disclosed control, and the change in bidding credit level (bidder designated entity "size"), the participation by MCLM in that auction was clearly disqualified under FCC auction rules, and controlling DC Circuit Court cases. That matter is pending on appeal before the FCC, and will be appealed to court if needed, since the facts and law are entirely clear. (Petitioners were the qualified high bidders of the licenses that, thus far, have been awarded to MCLM. That occurred during the period of the Bush Administration and an FCC controlled effectively by that Administration. Mr. and Mrs. Depriest were major donors to the Republican Party, delegates to its conventions, and appointed by Mr. Bush to Directorship of the TVA. Nothing else accounts for this travesty of due process of law involved in that MCLM Auction No. 61 matter. Also, see the Congressional report on the FCC under Chairman Martin released December 2008 for the context: the environment at the FCC.) The point here, again, is that Donald Depriest, and entities he controls or co-controls, do not follow FCC rules, and they submit required FCC licensing and other filings that contain certified information, and later change that information when circumstances demand it, or when they otherwise find it to their liking. That of course is abuse of process.

3. Maritel, controlled by Donald Depriest, who also co-controls MCLM (see above) submitted in recent years an application for change of control. That is pending on appeal by

Petitioners. In that proceeding, the head Maritel officer took the position that the control passed from Donald DePriest to a new control group, but gave no evidence of the alleged previous control and that party's action to assign the control to the alleged new control group. In that proceeding, Donald Depriest denied that he was the controlling party in Maritel that passed the alleged control. Yet, in earlier FCC and other governmental filings, Mr. Depriest was shown as the controller of Maritel: Petitioners pointed that out in the Auction No. 61 proceeding noted above, since it was one of the affiliates of Mr. Depriest that had to be disclosed on the short form and long form, but that he denied to control or own at the time of Auction No. 61. At that time, Mr. Depriest denied that he was in control of Maritel and failed to list it and its revenues on his (MCLM's) short form or long form applications. However, during the noted transfer of control application, he took no action to oppose that application which stated that he in fact was the controller of Maritel prior to the grant of that application. Thus, he effectively admitted it. That means, as in the other examples above, he first told the FCC one thing to get what he wanted (in this case, an undeserved bidding credit and undeserved allowance into the auction, and resultant licenses) and later effectively admitted it was false (and if his past position was true, then the other interest holders and the officers in Maritel, and its legal counsel at the time, Russell Fox, were making false statements to the FCC).

4. There are other brief accounts given below of Donald Depriest and entities he controlled or controls, including MCLM and Mobex saying one thing to the FCC to get what was possible at the time, then taking another position later when by that they could profit.

5. Neither MCLM or Mobex have ever filed with the FCC, using the required form and substance (Form 601) or any reasonable substitute, reports of actual construction of any of its AMTS stations. Instead, years ago, MCLM's predecessors-in-interest filed simple letter prior to a construction deadline stating that it would be commencing testing to commence service. Thereafter, in the noted 2004 AMTS construction audit, Mobex admitted a large number of those

stations were never constructed by the deadline, even ones that were subsequently renewed as valid operating stations. The point here is that Mobex and its predecessors clearly misled the FCC and its competitors about the most fundamental fact of construction versus unlawful squatting on spectrum to keep it away from competitors. If anything, parties who are found to have engaged in those unlawful practices should be charged more for those actions by some appropriate sanction, than companies that had lawfully built and operated and submitted the required fees to USF, but in any case, the facts noted above demonstrate why Mobex and its predecessors-in-interest do not have character and fitness to be AMTS licensees, what to speak of getting a refund of any past fees, instead they should be assessed major financial sanctions along with license revocation.

That is the clear pattern involved here, that should be considered in this matter. In this matter, the filings made by Mobex and Watercom to USF and associated fees paid must be considered the least that they owed, given this pattern, but also since only the licensee can know what is due: These USF filings do not involve (other than in special cases) proof of operations, revenues, and proper calculations, nor audits, nor proof of what sort of CMRS or PMRS operations were in fact conducted in the relevant period. Rather, the FCC and USAC relies on the licensee to know the relevant rules and filing procedures and submit accurate filings. As shown below, Mobex and Watercom were, by their own repeated statements to the FCC, major wireless operators providing exactly the sort of wide, broad CMRS services MCLM now states they did not provide. And FCC records show that they alleged to have built, and then renewed and maintained in operation, AMTS stations in a large percentage of the major US markets, and at all times (again as FCC records show) acting under a CEO (John Reardon) and legal counsel (Dennis Brown) that are expert attorneys in FCC law, and with additional expertise in FCC law and business in Donald Depriest and Sandra Depriest, as noted above.

The past filings, under certifications by these major CMRS operators and their officers and counsel very well versed in FCC law and business, must be taken as accurate in any case.

The above demonstrates an abusive pattern that Donald DePriest, the entities he controls or co-controls, including most recently MCLM and Mobex have engaged in before the FCC, supported by Dennis Brown, allegedly an attorney at law holding a valid license. (But see Attachment 1 hereto regarding the FCC finding that Mr. Brown engaged in abuse of process before the FCC. He has in fact, in support of the above short list of other abuse of process, and false license applications, regularly engaged in actions that are grounds for revocation of a license to practice law and banning before the FCC.)

3. Order was Correct and Public Interest Not Served By Reversal

As shown herein, the MCLM Recon and Refund Request are desperate, meritless attempts at getting money back from the government that was properly paid and collected in the first place. The Order by the WCB was correct in its findings. AMTS is CMRS by rule. Also, as shown herein, Mobex and Watercom operated their AMTS stations as CMRS in the relevant years. For the reasons given in response to the Comments, it is not in the public interest to refund the Payments.

4. Comments Only Mention Watercom

The Comments only refer to the Watercom system when trying to make their case about their AMTS service not being available to the general public and therefore not being CMRS, even though the Refund Request is for both Mobex and Watercom. There is no mention of the Mobex systems or arguments that they were not CMRS. As shown below, MCLM, Mobex and Watercom have stated before the FCC and in the public domain that they were providing CMRS services and that their service was not limited to a small restricted class of users (also see the Exhibits hereto), but that they were offering service to the maritime and land mobile public including dump trucks, para-transit vehicles, taxis, boats, tugboats, yachts, etc. The FCC should

see the Recon and Refund Request for what they are: misrepresentations to get the Payments refunded.

5. MCLM Contradictory Representations to the FCC re: Mobex and Watercom Being Predecessors-in-Interest--Investigation and Hearing Required

In Auction No. 61 proceedings concerning its Form 601, captioned above, MCLM maintained before the Wireless Bureau that Mobex and Watercom were not predecessors-in-interest and therefore did not have to disclose them on its Forms 175 or 601 and attribute their gross revenues that, per the evidence in the instant proceeding (amount of USF payments made by them), would have disqualified them from any bidding credit in Auction No. 61 and would have disqualified them from Auction No. 61.² However, now before the Wireline Competition Bureau, MCLM is taking the opposite position: that Mobex and Watercom are indeed predecessors-in-interest and that MCLM has the authority to request a refund of USF payments made by these two entities going back to 2001. MCLM cannot have it both ways: Mobex and Watercom are not predecessors-in-interest before the Wireless Telecommunications Bureau and for purposes of Section 1.2110 and other auction rules, but they are predecessors-in-interest for purposes of getting a refund of the Payments. MCLM is clearly misrepresenting its relationship with Mobex and Watercom to either the Wireless Bureau or the WCB. Whatever the case, the FCC must conduct a thorough investigation and hold a hearing to ascertain the facts and allow public participation, and MCLM and its attorneys should be sanctioned for such bald misrepresentations and appropriate actions should be taken by the FCC. Per FCC precedents, misrepresentations and lack of candor show a lack of character and fitness to be a licensee and are basis for license revocation and disqualification as a licensee. This is not the first time that

² The misrepresentations by MCLM in this regard continue to damage those of Petitioners that bid in Auction No. 61 and had the highest lawful bids on the licenses that MCLM won. The longer that the FCC fails to take action against MCLM's misdeeds, the larger Petitioners' damages are growing.

MCLM has misrepresented matters before the FCC. Petitioners have shown with facts throughout the Auction No. 61 proceedings (see all pleadings filed under the Form 601 application captioned above) concerning the MCLM Forms 175 and 601 that MCLM misrepresented its ownership, control, affiliates, gross revenues and business size for qualifying for bidding credits, etc. This proceeding continues to reveal a pattern of misrepresentation and lack of candor by MCLM (e.g. do whatever it takes) in order to get what it wants: get a bidding credit it was not qualified for, get licenses it should not have been allowed to bid for, conceal ownership, control and affiliates, get refunds of USF payments, etc., even if it means taking contrary positions before two different FCC bureaus (probably with the hope that one bureau will not talk with the other one).

In addition, MCLM failed to update its pending Form 601, captioned above, per Sections 1.17 and 1.65 with the admission that Mobex and Watercom are indeed predecessors-in-interest, which contradicts its prior statements in Auction No. 61 proceedings that they were not predecessors-in-interest and therefore their gross revenues for relevant years did not have to be attributed to MCLM for purposes of determining designated entity status for bidding credits that MCLM obtained. To date MCLM has not disclosed Mobex or Watercom as affiliates on that Form 601 or disclosed their gross revenues, which the FCC rules require for predecessors-in-interest. The MCLM Form 175 and Form 601 were filed in 2005 and it is now 2009. As noted herein, this is further proof of the lack of candor of MCLM and its violation of key FCC rules; MCLM failed to disclose all of its affiliates initially in Auction No. 61, still has not disclosed all of them and now admits to Mobex and Watercom being affiliates but has not disclosed them, all in an attempt to get bidding credit it was not entitled to receive and maintain licenses it was not the lawful high bidder for.

Therefore, since MCLM has not corrected its statements in Auction No. 61 proceedings, the WCB cannot accept MCLM's contradictory, bald assertions that Mobex and Watercom are

indeed predecessors-in-interest and that due to this MCLM has the right to request a refund of the Payments on their behalf (MCLM's assertion can only mean that it holds all rights and acts as controller and owner of all Mobex and Watercom filings and rights thereunder since the date it acquired both of them). A proper hearing and investigation must take place to arrive at the truth of this matter. In the meantime, although Petitioners believe there is sufficient evidence given herein to dismiss or deny the Recon outright, at minimum the Recon should be held in abeyance, until a proper hearing and investigation are concluded.

6. Exhibits: Evidence that MCLM, Mobex and Watercom
Were Alleging to Provide and Operate CMRS Stations with
Service Available to the General Maritime and Land Mobile Public

The Exhibits attached hereto (see in particular Exhibits 1 and 2) contain documents that clearly contradict the position that MCLM is taking in the instant proceeding to try and justify refund of the Payments. These documents include filings before the FCC by Mobex and Watercom and articles with public statements by those companies regarding the CMRS services they were providing to multiple users and the general public for maritime and land mobile use. These clearly show that MCLM is creating a story now to get refund of the Payments.

In its comments prior to Auction No. 57,³ Mobex Communications, Inc., the controlling interest holder of Mobex, stated the following [underlining added for emphasis]:

Mobex is the nation's largest licensee of Automated Maritime Telecommunications Services (AMTS) channels, providing a wide variety of commercial mobile radio services to both maritime and land-based customers. Mobex operates AMTS systems along most of the nation's major inland waterways and major portions of the Gulf of Mexico, Atlantic and Pacific coasts. In addition to Mobex licenses, the Commission has issued numerous other licenses for AMTS operations; a review of the Commission's Universal Licensing System database indicates that more than one hundred (100) AMTS licenses are active in the 217-218/219-220 frequencies. However, the number of licenses substantially understates

³ See *Comments of Mobex Communications, Inc.*, submitted by Mobex Communications, Inc. on April 23, 2004, regarding DA 04-954, requesting a delay to Auction No. 57 so that potential bidders could more fully understand the encumbrance of the AMTS service by AMTS site-based incumbents. (copy attached hereto in Exhibit 1)

the actual penetration of incumbent systems throughout the nation. Each license may represent dozens of sites, spanning hundreds of miles and creating an expansive authorized service area of incumbent AMTS licensees. (pages 1-2)

Thus, prior to Auction No. 57, when Mobex was trying to scare away potential bidders, it stated that it was a CMRS provider of a “wide variety of CMRS services” to “maritime and land-based customers” over much of the U.S. and that the incumbents created an “expansive authorized service area.” At that time, there were only two other incumbents: Paging Systems and Warren Havens. Paging Systems alleged to hold valid licenses covering fewer, but identical areas as those of Mobex and Warren Havens only held licenses covering some smaller, inland mountain areas. By the above, Mobex was essentially telling potential bidders: Stay away; we are a successful, CMRS provider making money on AMTS licenses that cover most of the U.S. and the majority of the metropolitan markets. However, now before the WCB and USAC, MCLM is attempting to portray Mobex and Watercom as small maritime-only operators offering service to such a restricted group over such a restricted area that they should not have been classified as CMRS. Either Mobex was lying back in 2004 to the FCC and the public, or the current efforts by MCLM are a sham and MCLM and its attorneys should be sanctioned for such frivolous and deceitful behavior. The above-noted comments themselves show that Mobex and the persons who currently work for MCLM, John Reardon and Dennis Brown, who both worked for Mobex at the time (Mr. Reardon as CEO and Mr. Brown as counsel), have a history of misrepresenting the truth to the FCC. This is witnessed by footnote 3 of the above-noted Mobex comments in which Mobex stated, “...FCC station KAE889 authorizing Mobex to provide incumbent service using 49 different locations along the entire Pacific coast of the continental United States.” Subsequent to this statement, Mobex, as stated elsewhere herein, admitted in the 2004 AMTS audits that it had actually not constructed about 20 of these 49 stations, even though it had renewed them and previously reported them as constructed.

The documents provided at Exhibit 1 and 2 (additional filings before the FCC and public articles and statements, etc.) provide further similar evidence to the above that Mobex and Watercom were providing CMRS services, were marketing and offering service to the general public, were telling the media and general public that they were going to compete with other CMRS providers using their AMTS, and that their licenses covered the majority of the principal metropolitan markets in the U.S. (also, see for example in the Mobex and Watercom ex parte filings in Commission records for PR Docket No. 92-257 the large overlapping service contours they depicted covering up and down the coasts, Mississippi, Gulf Coast, Great Lakes, etc.). The FCC rules did not restrict Watercom and Mobex from offering service the general public for land mobile and maritime service and the evidence in the Exhibits shows that they were indeed offering service to the general land mobile and maritime public users and installing new equipment to provide such. They admit to offering service to towboats and barges, yachts, and other marine vessels and do not refer to any instance in which they were restricted to serving only one private company.

7. Additional Reasons to Deny Recon

Contrary to the position of MCLM in this matter, its arguments that Mobex and Watercom were effectively not CMRS subject to the Payments it made fail. Petitioners give various reasons why in this filing. Some key reasons are as follows:

(1) MCLM has not demonstrated in this proceeding what AMTS stations it built and operated, what customers it had and did not have, what service was interconnected and not interconnected, what quantity of customers and services it had. It simply baldly asserts that its services were not of sufficient quantity and character to be subject to the payments it in fact made, which it now seeks refunded. Without any showing of its bald assertion, that assertion must be entirely rejected. Further evidence is given below of MCLM and its predecessors never even filing reports of construction. Clearly it does not want to disclose the true nature of its

operations. In the Court case cited in the Skybridge Spectrum Foundation reply comments, indicated herein, we intend to conduct discovery on the true nature of its operations.

(2) MCLM's predecessors-in-interest submitted the fees it now seeks to have refunded. Its predecessor-in-interest was active for years in AMTS and was headed by John Reardon as the senior officer and Dennis Brown as its FCC-expert attorney. After MCLM acquired Mobex and its assets, those same two persons, each attorneys, have continued in the same positions in MCLM. MCLM has not explained why those two expert attorneys in FCC law first had Mobex submit the subject payments, fully knowing (or having the obligation to know) the relevant Universal Service Fund law, and yet now take a different position. They are effectively arguing against themselves. The first position must be assumed to be accurate including since they do not at this time cite any rules to the contrary. They strain to construe language in Orders differently now then they must have first concluded when submitting the fees. The fact is now that MCLM seeks to get out of the AMTS business, and that the controlling party, Donald DePriest, has had in recent years many court proceedings filed against him and IRS tax liens against his corporation American Nonwovens. Those of course are no basis under law for a change in position, even if they are motive behind the attempted refund.

(3) AMTS is defined as CMRS in FCC rules part 20. If they wanted to opt out of CMRS, they could have filed a waiver request, such as was filed by and granted to Northeast Utilities Service Company (many similar requests were granted to entities acquiring VPC Public Coast spectrum, for example the states of South Dakota, Virginia and Montana, as well as Pacificorp, an electric utility). Had they opted out of CMRS and provided only certain limited private services and documented those in this proceeding (as to quantity, character, etc.), they may have had a plausible case for a refund, but they did not do that. No one prevented MCLM or Mobex or Watercom at any time from changing the regulatory status of their AMTS stations by such a waiver request.

(4) The FCC determined in rulemaking resulting in the major current AMTS rules promulgated for the purpose of the AMTS auctions and in the auction public notices that AMTS is a CMRS service, competitive with other CMRS. The FCC used the same auction procedures, and the same fundamental rules on protection of incumbents, automatic reversion of incumbent spectrum found invalid or revoked or terminated to the geographic licensee, partition and disaggregation, and other rules common to CMRS-auction services. The FCC has made clear that even after geographic licensing the site-based licenses remain valid, protected in certain ways and still classed as CMRS. In fact, in the Auction Nos. 57 and 61 “auction procedures” public notices, the FCC emphasized the significant extent of site-based licenses that Mobex asserted were still valid. Mobex itself filed a request to postpone Auction No. 57 so that parties who may bid in the auction could study the extensive nature of its site-based licenses before entering the auction (see Exhibit 1). As indicated below, the FCC eventually conducted a construction audit of Mobex’s alleged stations. MCLM and its predecessors have been the most active parties in AMTS licensing from the origin of AMTS service, always arguing that it is a major CMRS service. AMTS has in fact been classed as CMRS, and those entities in fact never attempted by waiver or otherwise to limit the service in any way or change their licenses in full or part to PMRS of the nature that would not be subject to USF fees.

(5) Mobex and Watercom could have, before or at the time of the submitting the subject fees (or in any case after deciding to get out of the AMTS business as indicated herein), filed a request for declaratory ruling under section 1.2 of Commission rules to find what they now argue—the reasons why they should not be considered subject to USF payments. However, they did not do that. Had they done that, they would have had to submit evidence of the quantity and character of their service. Had they submitted a bald assertion as they are in this case, it would not have been granted.

This proceeding also raises the questions of why they are not requesting a refund for payments made prior to 2001 or subsequent to 2006 if Watercom is still maintaining its operations as MCLM alleges (Mobex obtained its AMTS licenses in 2000 and its predecessors-in-interest, Watercom, Regionet and Orion, obtained their AMTS in the 80s and 90s).

After years of filings by MCLM and its predecessors-in-interest (Mobex, Regionet, Watercom, Orion) arguing to the FCC and in various press releases to the public that with their AMTS in most major U.S. cities, they were a major new CMRS competitor. In press releases Mobex noted that there were gaps in coverage between the stations built for asserted maritime coverage when used for land mobile and that with time they would have to fill-in the gaps for the land mobile service; in all those past FCC filings and press releases (see documents at Exhibits 1 and 2), the predecessors of MCLM consistently asserted that with the quantity of spectrum they held and their background in 900 MHz SMR, they would be a major competitor in CMRS land mobile services. In past filings by Petitioners challenging MCLM and its predecessor-in-interest, Petitioners referred to and/or attached copies of their relevant past filings and press releases indicated above, and they can also be found by Google searches.

MCLM and its predecessors have failed to show that they are not indiscriminately serving a specific class and in their filings before the FCC they have never restricted their services to a specific class but have said they are serving the general maritime public and land mobile community. Per public information, Mobex was making its AMTS service available to the general public available through dealers in Florida, New York and Chicago. Mobex and Watercom were not restricted to serving only waterway customers and could have provided service with other equipment available (Motorola passport, MPT1327, etc.).

8. MCLM Offering all its AMTS Spectrum for Sale Now

It should be noted now that MCLM has all of its AMTS spectrum listed for sale with Spectrum Bridge, Inc. (www.spectrumbridge.com) (also, see

www.spectrumbridge.com/pdf/SpectrumBridge_MCLM-Release.pdf). First MCLM asserted in its application to acquire the Mobex site-based AMTS that it was a new operator that would continue AMTS service, and in acquiring AMTS in Auction No. 61 (by violating many FCC rules, as Petitioners have demonstrated in pending FCC challenge pleadings) MCLM further asserted that they were a bona fide operator of AMTS services. However, with no evidence in the public record at all of any actions by MCLM to operate the site-based stations acquired from their predecessors-in-interest or spectrum obtained in Auction No. 61, MCLM has instead listed all of the spectrum for sale. The sale is through an operation that suggests that a buyer can sign up online and secure spectrum, like a new invention. However, that process cannot avoid FCC rules and procedures for spectrum assignments. Apart from that inconsistency, that listing of all its AMTS spectrum for sale suggests the reason behind its request for refund. It simply wants to get out of the AMTS business, which according to public records it never operated in the first place, and recoup as much money as it can. Any actual AMTS operator, with the quantity of spectrum for years that it has asserted for years to the FCC is in legitimate operation, would have resulted in a greater income than it reported to the Universal Service Administration Company, and in any case, places MCLM and its predecessor-in-interest squarely subject to the payment obligations which it at least partly fulfilled by submitting the payments it now seeks to have refunded.

It is evident here from information presented that without justification under rules and with only bald assertions as to the nature of their service, MCLM and its predecessors seek a refund of fees they had an obligation to pay since they now seek to get out of AMTS service altogether. They appear to think that they have no downside to attempt to get an unjustified refund now due to their decision to sell off AMTS licenses and get out of the business. Whatever their motive, they fail to give any evidence of their asserted service or to cite rules to support their argument.

9. FCC Must Publicly Release all Relevant Information Disclosed by MCLM to FCC

Petitioners and the public cannot effectively comment on Recon without evidence MCLM submitted to FCC of its operations (information provided by Mobex including John Reardon)⁴ since otherwise public is relying on MCLM's bald-assertions about its operations and services. Therefore, the FCC must release to the public the information that MCLM has provided to the FCC regarding this proceeding. Petitioners believe that this information should have been released by the FCC prior to request comments since it is relevant to the proceeding without which parties cannot fully analyze and comment on the matter.

10. Conclusion

For the reasons given, the Comments fail to show how the Order erred and that the Recon should be granted. Instead, the Recon should be denied, a hearing and investigation held, and appropriate sanctions taken against MCLM and its attorneys for continued misrepresentations and lack of candor.

⁴ Supplemental Information provided by John Reardon, President of MCLM LLC, on August 14, 2006 in response to the USAC's request of June 30, 2006 related to the Demand for Refund letter/document submitted by Dennis C. Brown, dated May 8, 2006, on behalf of Watercom and Mobex to the USAC.

Respectfully,

AMTS Consortium LLC, by

[Filed electronically. Signature on file.]

Warren Havens

President

Telesaurus VPC LLC, by

[Filed electronically. Signature on file.]

Warren Havens

President

Telesaurus Holdings GB LLC, by

[Filed electronically. Signature on file.]

Warren Havens

President

Intelligent Transportation & Monitoring Wireless LLC, by

[Filed electronically. Signature on file.]

Warren Havens

President

Warren Havens, an Individual

[Filed electronically. Signature on file.]

Warren Havens

Each Petitioner:

2649 Benvenue Ave., Suites 2-6

Berkeley, CA 94704

Ph: 510-841-2220

Fx: 510-841-2226

Date: January 29, 2009

Attachment 1: Dennis Brown's Character

Excerpts from: DECISION, In the Matter of JAMES A. KAY, JR. Licensee of One Hundred Fifty Two Part 90 Licenses in the Los Angeles, California Area, WT Docket No. 94-147, FCC 01-341, Released January 25, 2002.

Underlining in this Arial typeface added.

This exhibit, and the Decision from which it is derived, squarely support the above various claims by the Petitioners including:

- (i) that rules must be followed,
- (ii) that licensees and their counsel must be candid in communications with the Commission regarding compliance with rules, and must not adopt means that are, as cited below, "inadequate, evasive, and contrived to avoid full and candid disclosure to the Commission," "a studied effort to avoid producing any information," "accompanied by deception, representations . . . false and misleading," "not forthcoming about stations." "deliberately withheld material information," "nonresponsiveness . . .of a continuous nature," "lacked candor. . . lack of candor may warrant revocation," and the like,
- (iii) that sanctions including revocation of licenses should be imposed in the case of such behavior as appropriate penalties and as needed precedents to have others follow the rules and not engage in such misleading communications, and
- (iv) that Dennis Brown has in the past—in this Decision—been a chief architect of such misleading communications of the same sort that manifestly pervades MCLM's behavior and communications subject of this proceeding, including (a) lack of candor in representing the CMRS operations of Mobex and Watercom, (b) taking contradictory positions before different FCC Bureaus regarding Mobex and Watercom being predecessors-in-interest (c) misrepresenting facts regarding Mobex and Watercom (d) making frivolous filings that waste the Commission's time and resources— This behavior must be sanctioned, both for MCLM and regarding Mr. Brown, including under §1.24.

By the Commission

. . . We find that Kay failed to respond to Commission inquiries and filed a pleading that lacked candor. We will therefore revoke Kay's stations in the 800 MHz band and assess a forfeiture of \$10,000 against Kay. . . .

2. On December 13, 1994, the Commission designated this proceeding for hearing to determine whether Kay, a licensee of land mobile radio facilities under Part 90 of the

Commission's rules, has complied with those rules and whether he possesses the character qualifications to remain a Commission licensee. James A. Kay, Jr., 10 FCC Rcd 2062 (1994), modified, 11 FCC Rcd 5324 (1996). Kay was ordered to show cause why his licenses should not be revoked or cancelled, why he should not be ordered to cease and desist from certain violations of the Communications Act, and why an order for forfeiture should not issue. . . .

16. Kay's then attorney, Dennis C. Brown, a partner at Brown & Schwaninger, responded on February 16, 1994. . . .

23. The Bureau thereupon, on May 20, 1994, responded to Brown's April 7, 1994, letters. The Bureau characterized Brown's April 7 letter as "inadequate, evasive, and contrived to avoid full and candid disclosure to the Commission." WTB Exh. 6 at 1. The Bureau called it "a studied effort to avoid producing any information." Id.; ID at ¶ 28. . . .

27. The Bureau termed Brown's answer to item (6) "ludicrous" and "frivolous." Id. at 1-2. . . .

33. The Bureau sent Brown a responsive letter on June 10, 1994. The Bureau labeled Kay's response "woefully inadequate" and threatened that it "places Mr. Kay in jeopardy of Commission sanctions which include revocation of licenses, monetary forfeiture, or both." WTB Exh. 12 at 1. . . .

34. . . . Brown requested that Kay's disclosure The Bureau refusedThe Bureau characterized Brown's requests as "dilatory tactics" that exposed Kay to the threat of revocation. ID at ¶ 49; WTB Exh. 14 at 1. . . .

40. We find that Kay violated his obligations under 47 U.S.C. § 308(b) and 47 C.F.R. § 1.17. Licensees have an obligation to respond to Commission inquiries. See Fox Television Stations, Inc., 10 FCC Rcd 8452, 8508 ¶ 139 (1995). See also 47 C.F.R. § 1.17 ("The Commission or its representatives may, in writing, require . . . written statements of fact. . . . No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry . . . make any . . . willful material omission bearing on any matter within the jurisdiction of the Commission.")See also RKO General, Inc. v. FCC, 670 F.2d 215, 229 (D.C. Cir. 1981) ("As a licensing authority, the Commission is not expected to 'play procedural games with those who come before it in order to ascertain the truth' license applicants may not indulge in common-law pleading strategies of their own devise"). Moreover, the failure to provide information known to be relevant or a failure to respond based on a facially implausible theory may constitute lack of candor. Fox Television Stations, Inc., 10 FCC Rcd at 8508 ¶¶ 137.

41. Kay's responses to the Bureau's inquiries disclosed virtually none of the information requested. Equally unavailing is Kay's response that he was not required to maintain certain records, such as documentation of grant dates.

81. . . . Kay testified that he and his then attorney, Brown Kay's lawyer specifically advised him that the Management Agreement did not constitute an "interest." . . .

83. . . . The Bureau contends that the statement that Kay had no "interest" in Sobel's stations is plainly false in light of the financial claims he had under the Management Agreement and that Kay's attempts to reconcile the statement are unpersuasive. . . .

85. . . . In the Sobel decision, we affirmed the ALJ's determination that under the Management Agreement, Sobel transferred de facto control of his facilities to Kay without Commission authorization. . . .

94. In determining the sanction to be imposed against Sobel, we found that an unauthorized transfer of control accompanied by deception constituted disqualifying misconduct. Decision at ¶ 80. . . We therefore revoked or denied . . . those facilities on the 800 MHz band, the band on which the Management Agreement Stations operated.

95. We find that our conclusions regarding Sobel reflect adversely on Kay. The representations that we found false and misleading were made in a pleading filed by Kay. For the reasons discussed in the Sobel decision (Decision at ¶ 74), we reject Kay's argument that the case against him represents mere "quibbles" over the meaning of the words used. We do not believe that a reasonable reader could square the language used with the facts as fully disclosed. Moreover, Kay, like Sobel, understood the questionable nature of the claim that he had no "interest" in Sobel's stations and knew that the Commission would want to know the true relationship between Sobel and Kay.

97. Moreover, a finding that Kay deliberately intended to conceal his relationship with Sobel is consistent with other instances in the record indicating that Kay was not forthcoming about stations he managed. . . .

100. The record in this proceeding indicates that Kay has violated his obligations as a licensee. Under the 308(b) issue we found that Kay deliberately withheld material information from the Commission without justification in violation of 47 C.F.R. § 1.17. . . . Because Kay's nonresponsiveness was of a continuous nature, we adjust the forfeiture upwards to \$10,000. Id.

101. The record also shows that Kay's Motion to Enlarge, Change, or Delete Issues filed by Kay on January 12 and 25, 1995 lacked candor. . . lack of candor may warrant revocation . . . We **find** that the revocation of Kay's licenses for stations operating on this band will serve as a significant deterrent to future misconduct. Moreover, because we found that the control of Sobel's Management Agreement stations had been transferred to Kay and that Kay shared in the value of these stations, the revocation of these stations also serves to deter future misconduct by Kay as well as by Sobel. . . .

Exhibits 1-3

Due to their size and the file format of certain items the Exhibits are being electronically filed separately from these Reply Comments in the above-captioned WC Docket No. and under the above-captioned File No.

Declaration

I, Warren C. Havens, as President of Petitioners, hereby declare, under penalty of perjury, that the foregoing Reply Comments, including all Attachments and Exhibits, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

[Submitted Electronically. Signature on File.]

Warren C. Havens

Date: 29 January 2009

Certificate of Service

I, Warren C. Havens, certify that I have, on this 29th day of January 2009, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Reply Comments, including all Attachment and Exhibits, to the following:⁵

Erica Myers
Telecommunications Access Policy Division
Wireline Competition Bureau
Via e-mail to: Erica.Myers@fcc.gov

David Duarte
Telecommunications Access Policy Division
Wireline Competition Bureau
Via e-mail to: David.Duarte@fcc.gov.

FCC Office of Inspector General
Federal Communications Commission
(Via email to: kent.nilsson@fcc.gov ; jon.stover@fcc.gov)

Scot Stone, Deputy Chief, PSCID
Federal Communications Commission
(via email to: scot.stone@fcc.gov)

Best Copy and Printing, Inc.
Via email to: fcc@bcpiweb.com and fcc2@bcpiweb.com

Dennis Brown (legal counsel for Maritime and Mobex)
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406
(Via USPS mail, divided into several envelopes due to weight, and courtesy copy, not for purposes of service, via email to: d.c.brown@att.net)

Sandra DePriest and Donald DePriest
Care of Dennis Brown
206 North 8th Street
Columbus, MS 39701

National Rural Telecommunications Cooperative
Attn: Jack Harvey
2121 Cooperative Way
Herndon, VA 20171
Via email only to: jharvey@nrtc.org

⁵ The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

MariTel, Inc.
4635 Church Rd.
Suite 100
Cumming, GA 30028-4084
Attn: Jason Smith
Via email only to: jsmith@maritelusa.com

[Filed Electronically. Signature on File]

Warren Havens