

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

In the Matter of	)	
	)	WT Docket No. 10-83
Applications of	)	
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC	)	FCC File No. 0004153701
	)	
and	)	
	)	
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	)	FCC File No. 0004144435
	)	
	)	

To: Marlene H. Dortch, Secretary  
Attention: Chief, Wireless Telecommunications Bureau

**MOTION FOR CONDITIONAL GRANT**

Southern California Regional Rail Authority (“SCRRA”), by its attorneys, respectfully requests that the Commission take prompt action to grant the above-captioned applications (“Applications”). While SCRRA would prefer an unconditional grant of the above Applications, if necessary SCRRA is willing to accept an initial grant of the Applications which is explicitly subject to the subsequent result of the pending Enforcement Bureau inquiry regarding Maritime Communications/Land Mobile, LLC (“MCLM”) (hereinafter, “Initial Conditional Grant”). In support hereof, SCRRA shows the following.

In its assignment application filed over seven months ago (on March 11, 2010), SCRRA explained that time was of the essence in the Commission’s consideration of the Applications. A substantial amount of time will be required for system engineering and design, ordering and installation of equipment, testing, and ultimate operating deployment of a successful Positive Train Control (PTC) system in the six county Southern California area.

Congress has mandated that this system be operational by 2015, but SCRRA has publicly committed to the citizens of Southern California that in order to maximize the public safety benefits of PTC, it would do all that it could to make the PTC system operational by 2012. As shown in the Applications, it would be in the public interest for the Commission to grant the applications promptly. However, it is SCRRA's understanding that the Wireless Telecommunications Bureau's ("WTB") processing of the Applications has been halted in order to allow the Enforcement Bureau to complete an investigation of allegations regarding MCLM. If this is the case, and if WTB has separately concluded that based solely on their own merits, grant of the Applications would serve the public interest, then SCRRA would be willing to accept an Initial Conditional Grant of the Applications.

An Initial Conditional Grant would not be a final Order, and SCRRA would not close on the underlying transaction based on such a Grant. However, a prompt and decisive order by the Commission on the specific merits of the Applications would serve the purpose of furthering the march down the road towards a final Order. Thereby, SCRRA would be that much closer to meeting its commitment to the people of California, and fulfilling a Congressional mandate.

There is ample precedent to support SCRRA's request. The Commission has a history of granting applications subject to later remedial action if necessary. For example, in denying a Warren Havens' (Havens) petition for reconsideration of its deferral of consideration of certain issues against MCLM, the Commission explained that "the Commission retains authority to take appropriate remedial action in the event that MC/LM is disqualified as a licensee." Mobex Network Services, LLC, 25 FCC Rcd 3390, 3394 (FCC 10-39, Released March 16, 2010), *recon. pending*. This most recent precedent illustrates the principle under which SCRRA requests prompt action here.

Similarly, in recognizing that a Havens lawsuit could be pending indefinitely, the Wireless Telecommunications Bureau (WTB) had no difficulty acting on an MCLM application without waiting for the court to act. The WTB explained that it declined “to defer processing of the MC/LM application indefinitely during the pendency of the court case,” Maritime Communications/Land Mobile, LLC, 21 FCC Rcd 8794,8799 (2006), *aff’d*, 22 FCC Rcd 4780 (WTB, 2007), *recon. and review pending*.<sup>1</sup>

The Commission has, in fact, a clear history of making an initial decision in one matter subject to a later outcome of another matter, particularly when the public interest required that action be taken sooner rather than later. For example, in Duchossois Communications Co. of Maryland, Inc., 10 FCC Rcd 6688, 6694 (1995), the Commission affirmed the Mass Media Bureau’s grant of an assignment application “without prejudice to whatever action, if any, the Mass Media Bureau’s Enforcement Bureau deems necessary....” And, in Telephone and Data Systems, Inc., 9 FCC Rcd 938, 958 (1994), the Commission noted that “the Bureau has been conditioning all grants to TDS, or any of its subsidiaries, of licenses for new facilities, and consent to acquire facilities by assignment or transfer, upon final resolution of [certain character issues regarding the licensee]. Any further grants to these entities will also be conditioned on the outcome of this proceeding.”

The assignor in the present Applications, MCLM, has given its consent to the Initial Conditional Grant of the applications, as set forth in Exhibit A attached hereto. MCLM explains in its letter that it stands ready to pay any required “unjust enrichment” fee related to the fact that

---

<sup>1</sup> While an application for review and petition for reconsideration of this 2006 Order still remain pending, the Wireless Telecommunications Bureau was nevertheless willing to take the action described on page 2 *supra*, in the Mobex Network Services Order.

SCRRA is not a small business, and that it will abide by any condition imposed on MCLM or the license at a later date by the Enforcement Bureau.

In sum, as shown in the Applications, it is clearly in the public interest for SCRRA to obtain the spectrum at issue, and use it to provide PTC. It is also clear that the public safety benefits of providing PTC to the people of Southern California should not be indefinitely delayed. Accordingly, SCRRA requests prompt action on the Applications, and if necessary, an initial grant of the Applications which is explicitly subject to the subsequent result of the pending Enforcement Bureau inquiry regarding MCLM.

SOUTHERN CALIFORNIA  
REGIONAL RAIL AUTHORITY

By: 

Robert M. Gurss  
Paul J. Feldman

Its Attorneys

Fletcher Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> St. 11<sup>th</sup> Fl.  
Arlington, VA 22209  
Phone: (703)812-0400  
[feldman@fhhlaw.com](mailto:feldman@fhhlaw.com)

October 25, 2010

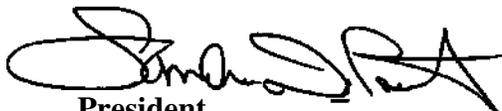
**EXHIBIT A**

**To Whom it May Concern:**

**Maritime Communications/Land Mobile, LLC ("MCLM") hereby attests to its willingness to accept an initial grant of the proposed modification of the license for station WQGF318 and an initial grant of consent to assignment to Southern California Regional Rail Authority (SCRRA) which is explicitly subject to the subsequent result of the pending Enforcement Bureau inquiry regarding MCLM ("Initial Conditional Grant"). MCLM has read a draft of SCRRA's Motion for Conditional Grant, and MCLM agrees with the points raised by SCRRA therein.**

**MCLM also stands ready to pay the "unjust enrichment" amount due for the sale to SCRRA, and to abide by any condition imposed on MCLM or the license at a later date by the Enforcement Bureau.**

**Sincerely,  
Sandra M. DePriest**

  
**President**

**CERTIFICATE OF SERVICE**

I, Joan George, hereby certify that on this 25<sup>th</sup> day of October, 2010, I served a copy of the foregoing Motion for Conditional Grant on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid, and by e-mail, where indicated:

Warren C. Havens  
2649 Benvenue Avenue, #2-6  
Berkeley, California 94704

Dennis C. Brown, Esq.  
8124 Cooke Court, Suite 201  
Manassas, Virginia 20109-7406

\*Jeff Tobias, Special Counsel, Mobility Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

\*Lloyd Coward  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

  
Joan George

\* Also served by e-mail