

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

In the Matter of)
)
Maritime Communications/Land Mobile LLC) DA 10-556
and Southern California Regional Rail) WT Docket No. 10-83
Authority (“SCRAA”) Applications to Modify) File Nos. 0004153701, 0004144435
License and Assign Spectrum for (allegedly)) File No. 0002303355
Positive Train Control Use, and to Request) Call Sign: WQGF318
Waivers of Part 80 Rules)

To: Office of the Secretary Attn: Wireless Telecommunications Bureau

Initial Opposition to Motion for Conditional Grant¹

“Petitioners”² hereby file this initial Opposition (the “Initial Opp”) to the Southern California Regional Rail Authority (“SCRRA”) motion for conditional grant (the “Motion”) of the above-captioned applications (together the “Applications”), one Application of which seeks to modify (the “Modification”) the above-captioned license (the “License”) and the other that seeks to partition and assign to SCRAA (the “Assignment”) part of the License, along with associated rule waiver requests (the “Waivers”).

As discussed below, Motion is defective including due to lack of lawful and timely service, and thus, Petitioners have right to file a later full Opposition: completing or otherwise amending or superseding the substance of this Initial Opp.

Petitioners have pending a petition to deny the Applications including the Assignment (including the Waivers) (the “Petition to Deny” or the “Petition”) and also filed pleadings in the above captioned docket (the “Docket”) Initial Opposing both MCLM and SCRAA factual and legal assertions in the Docket and in the Applications.

The License was granted under the Form 601 application captioned above that is

¹ Any capitalized term not defined herein the meaning given in the Petition to Deny.

² Warren Havens (“Havens”), Environmental LLC (“ENL”), Verde Systems LLC (“VSL”), Intelligent Transportation & Monitoring Wireless LLC (“ITL”), Telesaurus Holdings GB LLC (“THL”) and Skybridge Spectrum Foundation (“Skybridge”) (together, the “Petitioners”).

currently under investigation by the FCC Enforcement Bureau under Section 308 of the Communications Act (the “Sec 308 Proceeding”) and subject to Petitioners’ pending Section 309 petition to deny proceeding, currently at the petition for reconsideration stage (the “Sec 309 Proceeding”) (said two proceedings together, the “308+309 Proceedings”).

This Initial Opp also responds in part (to a degree relevant to this pleading) to the PTC-220, LLC (“PTC”) letter filing dated October 29, 2010 and filed in WT Docket No. 10-83 on the same date (the “PTC Letter”). Petitioners may also respond separately to that filing. However, they note here that PTC-220, LLC did not serve a copy of its filing on Petitioners as required by FCC rules since the Applications are subject to a restricted proceeding (the Sec. 309 Proceeding) and the PTC Letter constitutes a “presentation” in that restricted proceeding, which is separate from the Docket proceeding, WT 10-83. The Bureau should sanction PTC-220, LLC and its counsel for its impermissible ex parte presentation and refer the matter to the FCC’s Office of General Counsel. Where the FCC tolerates with no sanction violations of ex parte rules, the rules have no meaning.

Introductory Matters and Summary

For the procedural-law and substantive-law reasons given herein and those already stated in the Petition, which are fully referenced and incorporated herein in Initial Opposition, the Motion should be dismissed or denied.

The Contents descriptive headings and subheadings of this pleading provide a full and clear summary. Further summary is provide immediately below.

It is clear that SCRAA, its affiliate PTC 220 (affiliate including in seeking the spectrum under the Assignment), and MCLM are attempting to baseless assertions of the need for the subject spectrum *and only that spectrum for public-safety*³ assertions that the record show do not

³ AMTS is not pubic safety spectrum. If SCRAA and PTC were in the category of public safety governmental bodies, service, and applications, it would be entitled to public safety

exist as represented, and for which these parties not only failed to demonstrate in any way, but concealed evidence they have that prove the misrepresentations. Petitioners have informed SCRAA and the FRA, as noted herein, that they will be soon filing litigation to obtain the unlawfully withheld underlying documents unlawfully withheld under Petitioners' federal FOIA and State of California analogous (California Public Records Act) laws. Petitioners also have litigation pending in the US Ninth Circuit against the FCC which is successful will or may result in revocation of the subject License.

As shown below, the *US Supreme Court has made fully clear* that even in a far less serious case of licensee wrongdoing (misrepresentation, concealment of ownership and affiliates, and other violations)—including those under a Section 308 investigation, than that those already entirely clear in this case (including in the Sec. 308+309 Proceedings), said breaches disqualify the licensee and the result in forfeiting the license—regardless of whether any new license assignee or transferee is “innocent” and has valid and pressing uses in the public interest.

All FCC licenses are for public airwaves that must be used in the public interest: railroad are no exceptions, in fact, they are among the slowest of FCC licensees to adopt modern digital radio equipment and good new systems, and to seek in a sane timely manner the spectrum for that. SCRAA and PTC have a partnership for the PTC and related wireless programs for which SCRAA (in its own name only) pursues the Assignment: this is shown in the record before the FCC (and further in SCRAA internal documents, and some publications), but this is not clearly admitted to by SCRAA or PTC 220. There is lucrative federal grants that these entities seek, including the private for-profit railroads in PTC 220, by their unsupported demands for spectrum in the License: The recent Oct 29, 2010-dated PTC 220 filing in the Docket ramps up the tactics by informing the FCC that it has no case against MCLM (“any lingering concerns” it suggests,

spectrum. It is not so entitled. No railroad regulatory government body requires use of AMTS spectrum for PTC or any other railroad use.

can be later dealt with--as if all or most all should be considered resolved by the railroads assertions that “militate” grant—deaths of persons by railroads own past negligence that, with nothing connecting the dots, it says can only be solve in the SCRAA area by the MCLM spectrum. It is all smoke and mirrors.

What MCLM, SCRAA and PTC 220 are attempting here is misuse of a SCRAA train collision that kicked off the recent-years action to accelerate PTC to bamboozle the FCC into a premature and unwarranted exceptional action, the conditional grant, that if provided will not even be used—not in the way asserted (see below) and that will be challenged by administrative and court action. (Under Section 405 of the Communications Act, as parties, Petitioners would have a right to file a petition for reconsideration, but may instead file for review in a Circuit Court.)⁴

AMTS is not pubic safety spectrum. If SCRAA and PTC were in the category of public safety governmental bodies, service, and applications, it would be entitled to public safety spectrum. It is not so entitled. Railroads are responsible for lack of modern radio systems by their own failures, including for obtaining needed or useful spectrum. The NTIA and FCC each found that railroad have not even used well the spectrum obtained to date. It is absurd for SCRAA, MCLM, and PTC 220 to think that the FCC or any informed person would believe that unless SCRAA at this time gets 1 MHz of AMTS, and that solely form MCLM, it cannot advance systems to made its operations more safe, including by the narrow sub-set

⁴ Petitioners make clear that they diligently pursue proceedings before the FCC but will also file in court as needed. This fully applies to this matter. Parties are mistaken if they believe that since Petitioners file pro se before the FCC most of their pleadings, they do not have legal counsel advising on fundamental law and that are ready for needed court litigation. They have filed this year a number of such cases in the Ninth and DC Circuit Courts, on FCC licensing and rule-change issues, and in a US District Court against the FCC for unlawful FOIA denials, including with regard to documents in the Sec. 308 Proceeding (that case is file and will be served on the FCC in the near future). However, in this case, litigation should not be needed: evidence in the captioned proceedings easily support FCC action granting Petitioners’ position, including to revoke the subject License and to deny the Applications based upon said License.

of applications called PTC for which there is no government mandate to use AMTS spectrum.

PTC, as SCRAA and PTC 220 loosely describe it (but hiding its real status and nature) is a government reaction to their own unsafe railroad operations: it requires them to get their act together, not engage in more nonsense as they are doing here: avoiding the real facts and problems and making up false solutions for ulterior reasons. SCRAA only compounds that by violation of California Public Records Act (“CPRA”) as discussed below, to keep relevant documents out of the captioned proceedings, and to keep their real relation with others involved including PTC 220 and its constituent commercial railroad, out of these proceedings, since that will show that SCRAA does not need 1 MHz of spectrum for PTC but seeks it for its relations with PTC 220 and others.

The most recent Petitioners CPRA request to SCRAA was unlawfully denied by no response in the required period, but SCRAA knows Petitioners employs litigation as needed (it is clear in the record in the captioned proceedings, and Petitioners directly stated that to SCRAA and its legal counsel in California). The eventual release of these documents appears to be why PTC 220 filed in the Docket the above noted recent filing in support of the Motion where in so many words it revealed its interest in the spectrum in the Assignment: if it did not reveal that now, then it would look even worse to the FCC once Petitioners get those documents and use them in the captioned proceedings.

The Motion requested grant is not fully conditional: While the Motion purports to accept any result of the Sec. 308 Proceeding (ignoring the integrally related Sec. 309 Proceeding) and by that it makes an effort to appear that the relief granted is “initial” only and temporary, that is not what is being requested. SCRAA seeks, supported by its affiliate PTC 220, to have the issues finally decided in the conditional grant: p. 2 of the Motion: “a

prompt and decisive order by the Commission the specific merits of the Applications would serve the purpose of furthering the march down the road towards a final Order.” However, that misses the entire point of Petitioners’ Petition and the requirements of Section 309 of the Communications Act: a petition to deny deals with such merits, and those in fact deal with the character and fitness of the license assignor. See discussion below of the cited US Supreme Court case, for example. Further, SCRAA seeks to rush a decision since the in the Docket Petitioners have shown and are getting via their CPRA requests to SCRAA (including by litigation SCRAA makes necessary) that SCRAA is withholding from the FCC evidence in their possession as to their real purpose for seeking the 1 MHz of MCLM spectrum, their relation with PTC 220 and others, their due diligence to date that shows that their waiver request for higher power would cause adjacent-channel interference, their lack of conclusion as to technical and other issues to be resolved before final decision on the spectrum, etc. SCRAA seeks to foreclose that further information being considered by the FCC.

Futile and lack of standing. The Motion is futile since it seeks a grant, but then says it will not Close on the grant. It tells a story no business person including in government would believe: that it will spend major time and sums on its PTC “march” based on a conditional grant that it will not even close upon. Why? It can do that just fine right now. The motion is ineffective due to lack of standing. It seeks amended action on the Modification Application, but that is solely a MCLM application.

[The rest of this page is intentionally left blank.]

Contents

(Page numbers in left column.)

(i) Background and Controlling Law (See II.1 below.)

I. Procedural Defects

1. Lack of required service
2. Futility: SCRAA will not Close on the requested conditional grant, nor otherwise can act upon it for stated purposes
3. Lack of standing: SCRAA seeks, but has no standing to seek, to modify by the motion the MCLM modification application.
2. Defective- Avoids the Sec. 309 Proceeding and private party rights thereunder, including as effectively advanced by the Sec. 308 Proceeding
2. Impermissible major amendment
3. Impermissible, tardy supplemental Initial Opposition, with grant of leave
4. Ineffective motion for failure to file on ULS
5. Impermissible motion to the Wireless Bureau on an Enforcement Bureau matter
6. Defective MCLM affidavit
7. Employment of Impermissible PTC 220 Ex Parte Presentation
8. Unclean Hands of SCRAA and its affiliates, and of MCLM
9. SCRAA has no standing to file a motion of any kind regarding the Modification Application
10. Defective use of PTC 220 as agent to seek further relief under the Motion
11. SCRAA assertion of impermissible ex parte communication by FCC staff.

II. Substantive Defects

	1. Background and controlling US Supreme Court and Commission precedent, applied to the request in the Motion and to MCLM and all above-captioned Applications, dockets and matters. (<i>Moved to Part (i).</i>)
	2. Misrepresentations as to service, status of the Sec 308 Proceeding, purpose of the Assignment and PTC, and other matters
	3. The License, and MCLM's, fatal defects under investigation in the Sec 308+309 Proceedings Cannot be Laundered by SCRAA and MCLM via grant of the Motion, which is what is requested
	4. The Motion-- <i>which does seek certain final action</i> -- cannot be granted since it would (i) violate the jurisdiction of the Ninth Circuit Court of Appeals in a pending case, and (ii) disrupt process and violate the authority and Congressional mandate of the Commission under section 308 of the Communications Act to investigate to decide on the validity of the license and of MCLM licensee qualification, and (iii) directly violate controlling precedent from the US Supreme Court and the Commission, and (iv) violate

	Congressionally established private party rights of Petitioners including under Section 309, 405, and 402.
	5. The Motion Misrepresents the Status of the Sec 308+309 Proceedings, and of the Applications: They are Still in Evidence Gathering/ Submittal Stage Due To Unlawful Withholding and Misrepresentation of MCLM and SCRAA, and Seeks to Artificially Protect Those Wrongful Acts by Premature Grant of the Applications.
	6. SCRAA’s Affiliate, PTC 220, False Suggestions, Baseless Admonishments to the FCC Exhibits, in addition to lack of Candor; and PTC 220 fails to disclose the true status and nature of PTC, including needed spectrum.

Exhibits

(Separately filed.)

	001 Court documentation with John Reardon affidavit that he is President of MCLM.
	002 SCRAA motion service upon Petitioners: envelop showing private postmark, and marked with receipt date.
	1.0 Chart of certain facts relevant to the instant 11.9.2010 pleading.
	2.1 Petitioners' CPRA Request 1 to SCRAA.
	2.2 SCRRA responsive cover letter to Request 1, and certain responsive document (document on sale or lease of extra spectrum)
	3.1 Petitioners' CPRA Request 2 to SCRRA.
	3.2 SCRRA responsive cover letter to Request 2.
	4.0 Petitioners' email communications with SCRRA on unlawful withholding under CPRA, and intent to file court case,
	5.1 Petitioner Sykbridge FOIA Request to FRA.
	5.2 FRA response letter to FOIA Request.
	5.3 Petitioners' email on unlawful withholding and intent to file court case
	6.0 New pleadings and evidence in MCLM Sec. 308 and 309 proceedings, since last filed in SCRAA proceeding.
	7.0 Petitioners' Petition of Reconsideration of Auction 87 use of the defined <i>Ultra Vires</i> “Rule Change” that originated with FCC decision on the MCLM long form in Auction 61, based on Petitioners' case in the US Ninth Circuit Court of Appeal.

(i) Background and Controlling Law:

Background and controlling US Supreme Court and Commission precedent, applied to the request in the Motion and to MCLM and all above-captioned Applications, dockets and matters.

The SCRAA Motion is based on suggestions of special public interest that should override due process and decision making in pending proceedings--including the Section 308 investigation initiated by the FCC, not Petitioners-- that challenge the validity of the subject license and assignee-licensee qualifications to hold any license. This is contrary to well established controlling law, and it is thus frivolous and sanctionable.

The US Supreme Court has addressed and rejected this argument, including with regard to Section 308 investigations and revocation powers. In *FCC v. WOKO*, the Supreme Court found (emphasis added, text in brackets added): The holdings set forth below apply fully to this case (the facts in the Sec. 308+309 Proceedings and in proceedings on the Applications, and the request in the Motion): these holdings require denial of the Motion.

WOKO, Incorporated, for some years has operated a radio station at Albany, New York....The Federal Communications Commission refused to renew its license because of misrepresentations made to the Commission and its predecessor as to the ownership of the applicant's capital stock. Two hundred and forty shares, being twenty-four per cent of its outstanding capital stock, was owned by one Pickard and his family. For some twelve years they received all dividends paid on the stock and Pickard took an active interest in the Company's affairs. He also was a vice-president of the Columbia Broadcasting Company and had obtained the stock on the assurance that he would help to secure Columbia affiliation for Station WOKO, would furnish, without charge, Columbia engineers to construct the station at Albany, and would supply a grand piano and certain newspaper publicity.

The company, however, in reporting to the Federal Radio Commission and to the Federal Communications Commission the names of its stockholders as it was required to do for many years and in many applications, concealed the fact that the Pickards held this stock interest and represented that the shares were held by others. Its general manager appeared on behalf of the applicant at various hearings and furnished false testimony to both Commissions regarding the identity of the corporation stockholders and the shares held by each so as to conceal the Pickard holdings. The purpose of the concealment was to prevent the facts from becoming known to Pickard's Columbia colleagues.

The Court of Appeals for the District of Columbia reversed the Commission's decision denying renewal of the license, a majority for the various reasons that we will consider. The dissenting Chief Justice noted that he did "very heartily agree with the view that this is a hard case. The Commission's drastic order, terminating the life of the station, punishes the innocent equally with the guilty, and in its results is contrary to the Commission's action in several other comparable cases. But that the making of the order was within the discretion of the Commission, I think is reasonably clear." 153 F.2d 623, 633. We granted certiorari because of the importance of the issue to the administration of the [Communications] Act.

We come to a consideration of the reasons which led the Court of Appeals to reverse the order of the Commission under the admonition that "review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious." 48 Stat. 1094, 47 U. S. C. § 402 (e).

The Act provides as to applications such as WOKO filed that "All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station . . . and such other information as it may require." It requires such statements to be under oath or affirmation. 48 Stat. 1085, 47 U. S. C. § 308 (b). It provides, too, that any station license may be revoked for false statements in the application. 48 Stat. 1086, 47 U. S. C. § 312 (a).

It is said that in this case the Commission failed to find that the concealment was of material facts or had influenced the Commission in making any decision, or that it would have acted differently had it known that the Pickards were the beneficial owners of the stock. We think this is beside the point. The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones. We do not think it is an answer to say that the deception was unnecessary and served no purpose. If the applicant had forthrightly refused to supply the information on the ground that it was not material, we should expect the Commission would have rejected the application and would have been sustained in so doing. If we would hold it not unlawful, arbitrary or capricious to require the information before granting a renewal, it seems difficult to say that it is unlawful, arbitrary or capricious to refuse a renewal where true information is withheld and false information is substituted.

We are told that stockholders owning slightly more than 50 per cent of the stock are not found to have had any part in or knowledge of the concealment or deception of the Commission. This may be a very proper consideration for the Commission in determining just and appropriate action. But as matter of law, the fact that there are innocent stockholders can not immunize the corporation from the consequences of such deception. If officers of the corporation by such mismanagement waste its assets, presumably the State law affords adequate remedies against the wrongdoers. But in this as in other matters, stockholders

entrust their interests to their chosen officers and often suffer for their dereliction. Consequences of such acts cannot be escaped by a corporation merely because not all of its stockholders participated.

Respondent complains that the present case constitutes a departure from the course which the Commission has taken in dealing with misstatements and applications in other cases. Much is made in argument of the fact that deceptions of this character have not been uncommon and it is claimed that they have not been dealt with so severely as in this case. *Cf. Navarro Broadcasting Association*, 8 F. C. C. 198. But the very fact that temporizing and compromising with deception seemed not to discourage it, may have led the Commission to the drastic measures here taken to preserve the integrity of its own system of reports....

It also is contended that this order inflicts a penalty, that the motive is punishment and that since the Commission is given no powers to penalize persons, its order must fall. We think it unnecessary to indulge in the exposition of what a penalty is. It is enough to decide this case to know what a penalty is not. A denial of an application for a license because of the insufficiency or deliberate falsity of the information lawfully required to be furnished is not a penal measure. It may hurt and it may cause loss, but it is not made illegal, arbitrary or capricious by that fact.

Lastly, and more importantly, the Court of Appeals suggested that in order to justify refusal to renew, the Commission should have made findings with respect to the quality of the station's service in the past and its equipment for good service in the future. Evidence of the station's adequate service was introduced at the hearing. The Commission on the other hand insists that in administering the Act it must rely upon the reports of licensees. It points out that this concealment was not caused by slight inadvertence nor was it an isolated instance, but that [*229] the Station carried on the course of deception for approximately twelve years. It says that in deciding whether the proposed operations would serve public interest, convenience or necessity, consideration must be given to the character, background and training of all parties having an interest in the proposed license, and that it cannot be required to exercise the discretion vested in it to entrust the responsibilities of a licensee to an applicant guilty of a systematic course of deception.

[***LEdHR2] [2] [HN4] We cannot say that the Commission is required as a matter of law to grant a license on a deliberately false application even if the falsity were not of this duration and character, nor can we say that refusal to renew the license is arbitrary and capricious under such circumstances. It may very well be that this Station has established such a standard of public service that the Commission would be justified in considering that its deception was not a matter that affected its qualifications to serve the public. But [HN5] it is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license. And the fact that we might not have made the same determination on the same facts does not warrant a substitution of judicial for administrative discretion since Congress has confided the problem to the

latter. We agree [***209] that this is a hard case, but we cannot agree that it should be allowed to make bad law.

FCC v. WOKO. 329 U.S. 223; 67 S. Ct. 213; 91 L. Ed. 204; 1946 U.S. LEXIS 3147 (1946).

In addition, Citing WOKO, the Commission has found in another closely analogous case, that a request and its arguments as SCRAA submit here must be rejected: *In re Applications of Harry Wallerstein*. 1 F.C.C.2d 91; 1965 FCC LEXIS 390; 5 Rad. Reg. 2d (P & F) 811. July 28, 1965 (“*Wallerstein*”): By the Commission (emphasis added, some footnotes in original deleted):

4...the findings which are long and tortuous. The exceptors have challenged ...that he [Wallerstein, an alleged innocent receiver, the temporary assignee]...is entitled to renewal of the license despite wrongdoing, if any occurred, by others from whom he derived his license.... [W]e are asked to consider to consider the blameless character of the proposed [final] transferee, Arthur Powell Williams, and the benefits to the public to be derived from continuing the operation of an existing station under his aegis.

* * * *

6....in WOKO, n3/...the Supreme Court stated:

n3/ *WOKO v. FCC*, 329 U.S. 223 at 228, 91 L. Ed. 204, 67 Sup. Ct. 213 (1946).

It also is contended that this order inflicts a penalty, that the motive is punishment and that since the Commission is given no powers to penalize persons, its order must fall. We think it unnecessary to indulge in the exposition of what a penalty is. It is enough to decide this case to know what a penalty is not. A denial of an application for a license because of the insufficiency or deliberate falsity of the information lawfully required to be furnished is not a penal measure. It may hurt and it may cause loss, but it is not made illegal, arbitrary, or capricious by that fact.

While the consequences to innocent persons may be unfortunate, it is a fate common to many who associate themselves in business enterprises with persons who are lacking in the affirmative qualifications necessary to be a broadcast licensee. Conversely, persons found unfit to be licensees should not be allowed to continue to hold their licenses by associating themselves with persons whose conduct may be above reproach.

7. While the initial decision sets forth at length many erroneous filings, failures to file, and late filings, and our examination of the the whole record ... the almost incredibly lax manner in which the affairs of the business entities involved were conducted, outstanding and willful in our opinion (and we so conclude) was the concealment of the ownership interest.... The argument advanced by exceptors that the acquisition of the stock interest by KBLI, Inc., was executory, that no one really knew who owned the stock, etc., and thus that the Commission was not informed of the transfer is belied (see findings 95-103 of the initial decision) by the fact that reports and documents filed with the Securities and Exchange

Commission quite clearly stated that the stock in issue was owned by KBLI, Inc., while reports being filed contemporaneously with this Commission made no mention of this fact. The Commission's rules make ample provision for (indeed require) the reporting of executory contracts, beneficial ownerships, and other interests. Had the reporting officials endeavored to keep the Commission apprised of the true state of the licensee's ownership situation, there would have been little difficulty in so doing. We cannot escape the conclusion (initial decision, finding 72) that because Hughes believed that the Commission would not approve a transfer of control to Kbli, i/nc. (although such transfer had in fact already occurred), a policy of deliberate concealment of the KBLI, Inc., interest was initiated and maintained.

* * * *

10. The apparently blameless character of the proposed ultimate transferee of control of Nevada Broadcasters' Fund, Inc., and, in turn, Television Co. of America, Inc; is likewise irrelevant to the disposition of this proceeding once we have arrived at an adverse determination concerning the application for license renewal. If there is a failure to renew the license of KSHO-TV, Wallerstein will have no license to assign. n5/ ... The qualifications of Mr. Williams as a prospective broadcast licensee (and nothing adverse to him appears on our record) are not, however, a reason for bypassing the orderly processes of license renewal.

n5. *Jefferson Radio Company, Inc. v. FCC* (C.A.D.C. 1964) U.S. App D.C. , 340 F. 2d 781, 2 R.R. 2d 2090.

II. Procedural Defects

1. Lack of required service

2. Futility: SCRAA will not Close on the requested conditional grant, nor otherwise can act upon it for stated purposes

3. Lack of standing: SCRAA seeks, but has no standing to seek, to modify by the motion the MCLM modification application.

2. Defective- Avoids the Sec. 309 Proceeding and private party rights thereunder, including as effectively advanced by the Sec. 308 Proceeding

2. Impermissible major amendment
3. Impermissible, tardy supplemental Initial Opposition, with grant of leave
4. Ineffective motion for failure to file on ULS
5. Impermissible motion to the Wireless Bureau on an Enforcement Bureau matter
6. Defective MCLM affidavit
7. Employment of Impermissible PTC 220 Ex Parte Presentation
8. Unclean Hands of SCRAA and its affiliates, and of MCLM
9. SCRAA has no standing to file a motion of any kind regarding the Modification Application
10. Defective use of PTC 220 as agent to seek further relief under the Motion
11. SCRAA assertion of impermissible ex parte communication by FCC staff.

II. Substantive Defects

1. Background and controlling US Supreme Court and Commission precedent, applied to the request in the Motion and to MCLM and all above-captioned Applications, dockets and matters.
2. Misrepresentations as to service, status of the Sec 308 Proceeding, purpose of the Assignment and PTC, and other matters

3. The License, and MCLM's, fatal defects under investigation in the Sec 308+309 Proceedings Cannot be Laundered by SCRAA and MCLM via grant of the Motion, which is what is requested

4. The Motion--which does seek certain final action-- cannot be granted since it would (i) violate the jurisdiction of the Ninth Circuit Court of Appeals in a pending case, and (ii) disrupt process and violate the authority and Congressional mandate of the Commission under section 308 of the Communications Act to investigate to decide on the validity of the license and of MCLM licensee qualification, and (iii) directly violate controlling precedent from the US Supreme Court and the Commission, and (iv) violate Congressionally established private party rights of Petitioners including under Section 309, 405, and 402.

5. The Motion Misrepresents the Status of the Sec 308+309 Proceedings, and of the Applications: They are Still in Evidence Gathering/ Submittal Stage Due To Unlawful Withholding and Misrepresentation of MCLM and SCRAA, and Seeks to Artificially Protect Those Wrongful Acts by Premature Grant of the Applications.

6. SCRAA's Affiliate, PTC 220, False Suggestions, Baseless Admonishments to the FCC Exhibits, in addition to lack of Candor; and PTC 220 fails to disclose the true status and nature of PTC, including needed spectrum.

Sandra DePriest's Statement at Exhibit A

Petitioners respond as follows to the Exhibit A to the Motion that contains a statement by the Reverend Sandra DePriest. Petitioners note here that Sandra DePriest did not swear to this statement under penalty of perjury, probably due to the following facts. According to various court filings, MCLM's own filings before the FCC, the Petition and its facts, numerous other filings before the FCC by Petitioners including in the Section 308 proceeding and pending Section 309 proceeding regarding the MCLM Form 601 in Auction No. 61, and most recently, as shown by Attachment 001 hereto (which contains a court filing by MCLM that includes a sworn affidavit by John Reardon as support), the Reverend Sandra DePriest is not the President of MCLM as indicated on the statement, rather John Reardon is and MCLM and the Reverend DePriest know this and continues to misrepresent it to the FCC. Exhibit A is just further evidence that Sandra DePriest has perjured herself to the FCC in response to the Bureau's and Enforcement Bureau's letters of inquiry and investigation under Section 308. The FCC should investigate SCRRA and its attorneys to see if they are aiding and abetting MCLM in this ongoing misrepresentation about Mr. Reardon never having been an officer of MCLM (see Sandra DePriest's responses to the Bureau and Enforcement Bureau letters under Section 308), especially since Mr. Reardon signed the contract with SCRRA as the Chief Executive Officer of MCLM.

Petitioners also reference and incorporate herein all of their facts and arguments in their petition to deny and its exhibits and attachments regarding File No. 0004354053 that were filed in WT Docket No. 10-83 on October 13, 2010 that are new to this proceeding. That petition to deny File No. 0004354053 contains numerous new facts that have been obtained since filing of the Petition and include numerous court filings by Donald DePriest and MCLM that show Donald DePriest controls and owns MCLM, that MCT Corp. is an affiliate of MCLM, that there

are other undisclosed officers and interest holders in MCLM, that the majority of Mr. DePriest's income, per deposition testimony of Belinda Hudson, the Secretary and Treasurer of MCLM and Communications Investments, Inc., goes to pay for assets not in his name (which Petitioners have shown can only be the licenses of MCLM, including the License), that MCLM has illegally used its FCC licenses as collateral, etc. Many of these new facts further confirm that Sandra DePriest is not the sole controlling party in MCLM and may not even be a controlling party in MCLM, but that her husband to obtain a bidding credit at auction used her as a front.

Also, as stated in the Petition and in the referenced and incorporated pleadings noted above, MCLM is a sham legal entity that changes officer titles and their meanings as dictated by its needs in the moment, whether it be before a court of law or the FCC. The actual apparent controller based on facts in the Petition and the noted referenced and incorporated pleadings is Donald DePriest. Therefore, Sandra DePriest does not have the authority to make any statement on behalf of MCLM. As such, her statement is defective and should be ignored, except to the extent that it shows further intent to defraud the FCC.

In addition, an "Initial Conditional Grant" is not defined in FCC rules. All the Reverend DePriest appears to mean is that they want initial grant and still seek a final, full grant, which is to say they seek to short circuit a proper determination of facts and law under the pending Section 309 petition to deny proceeding that includes facts also before the FCC in the Section 308 Enforcement Bureau investigation and Section 309 petition to deny proceeding against MCLM's Form 601 from Auction No. 61 captioned above.

Further, an affidavit by a party to an assignment application is not by itself an amendment of the application and because MCLM is a party to the Applications, then any amendment to them needed to be filed on ULS by MCLM and SCRRA as a modification of the Applications and put on Public Notice.

Respectfully,

Environmental LLC (formerly known as AMTS Consortium LLC), by

[Filed electronically. Signature on file.]

Warren Havens
President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by

[Filed electronically. Signature on file.]

Warren Havens
President

Intelligent Transportation & Monitoring Wireless LLC, by

[Filed electronically. Signature on file.]

Warren Havens
President

Telesaurus Holdings GB LLC, by

[Filed electronically. Signature on file.]

Warren Havens
President

Skybridge Spectrum Foundation, by

[Filed electronically. Signature on file.]

Warren Havens
President

Warren Havens, an Individual

[Filed electronically. Signature on file.]

Warren Havens

Each of Petitioners:

2509 Stuart Street (new office)
Berkeley, CA 94705
Ph: 510-841-2220
Fx: 510-740-3412

Date: November 9, 2010

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the Initial Opposition to Motion for Conditional Grant, including all attachments, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically. Signature on File.]

Warren Havens

November 9, 2010

Certificate of Service

I, Warren C. Havens, certify that I have, on this 8th day of November 2010, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Initial Opposition to Motion for Conditional Grant, including all exhibits and attachments, unless otherwise noted, to the following:⁵

Jeff Tobias, Mobility Divison, WTB
Federal Communications Commission
Via email to: jeff.tobias@fcc.gov
(The Initial Opposition's text only)

Lloyd Coward, WTB
Federal Communications Commission
Via email to: Lloyd.coward@fcc.gov
(The Initial Opposition's text only)

Gary Schonman, Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
Via email to: gary.schonman@fcc.gov
(The Initial Opposition's text only)

Brian Carter
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
Via email to: brian.carter@fcc.gov
(The Initial Opposition's text only)

Dennis Brown (legal counsel for MCLM and Mobex)
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406

Fletcher Heald & Hildreth (Legal counsel to SCRRA)
Paul J Feldman
1300 N. 17th St. 11th Fl.
Arlington, VA 22209

Southern California Regional Rail Authority
ATTN Darrell Maxey
700 S. Flower St. Suite 2600
Los Angeles, CA 90017

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

Edwin F. Kemp
President
PTC-220, LLC
1400 Douglas Street, STOP 0640
Omaha, NE 68179

Southern California Regional Rail Authority
Board of Directors
700 S. Flower Street, 26th Floor
Los Angeles, CA 90017-4101
(The Initial Opposition's text only)

Russell Fox (legal counsel for MariTel, Inc.)
Mintz Levin
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(The Initial Opposition's text Only)

Jason Smith
MariTel, Inc.
4635 Church Rd., Suite 100
Cumming, GA 30028
(The Initial Opposition's text only)

Joseph D. Hersey, Jr.
U.S. National Committee Technical Advisor and,
Technical Advisory Group Administrator
United States Coast Guard
Commandant (CG-622)
Spectrum Management Division
2100 2nd Street, S.W.
Washington, DC 20593-0001
Via email only to: joe.hersey@uscg.mil
(The Initial Opposition's text only)

/s/ [Filed Electronically. Signature on File]

Warren Havens