[Petitioners include this to show that MCLC continues to have John Reardon act its CEO and use that title in doing business with outside parties with regard to the MCLM FCC AMTS licenses: see last page.]

Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163
214/749-3278

December 30, 2010

VIA CMRRR

Skybridge Spectrum Foundation
Attention: Warren Haven
2509 Stuart Street
Berkley, CA 94705

Re: Public Information Request – Our File #7888

Dear Mr. Havens:

This letter is in response to a request for public information that Dallas Area Rapid Transit (hereinafter referred to as "DART") received on December 17, 2010. In that request, you requested:

"Full and complete copies of all documents, responses and information that Dallas Area Rapid Transit ("DART" has in its possession or control, in written and electronic form including all attached or appended materials (delivered to the requestor in their original forms) ("DOCUMENTS") that pertain to the following:

- **DART plans, actions and procurement solicitations with regard to Positive Train Control ("PTC"), and regarding any FCC-licensed radio spectrum for use by DART whether or not it involves PTC. This includes, but is not limited to, all records related to DART's inquiry and solicitation for a proposal from Warren Havens and his companies for radio spectrum."**

DART believes that certain information you have requested is excepted from required public disclosure under the Public Information Act. Therefore, we have requested a decision from the Open Records Division of the Office of the Attorney General. A copy of that request for a decision is enclosed with this letter.

Should you have any questions or concerns, please feel free to contact me at (214) 749-3049 or by email at handerson-nelson@dart.org.

Sincerely,

Halfreda Anderson Nelson
Senior Assistant General Counsel, JG
Dallas Area Rapid Transit

HAN/lra

Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163
214/749-3278

December 30, 2010

VIA FedEx OVERNIGHT
and VIA FACSIMILE (512) 463-2092

The Honorable Greg Abbott
Attorney General
Supreme Court Building
209 W. 14th Street, 6th Floor
Austin, Texas 78701

Attention: Public Information Act Division: DART ORR 7888

Dear Attorney General Greg Abbott:

On December 17, 2010, Dallas Area Rapid Transit (hereinafter referred to as "DART") received a request for information under the Public Information Act Title 5, Chapter 552, of the Texas Government Code (hereinafter referred to as "the Act") from Mr. Warren Havens. ***(A copy of the request is enclosed herewith as Attachment "A").***

Mr. Havens requested the following information:

"Full and complete copies of all documents, responses and information that Dallas Area Rapid Transit ("DART") has in its possession or control, in written and electronic form, including all attached or appended materials (delivered to Requester in their original forms)("DOCUMENTS")that pertain to the following:

DART plans, actions and procurement solicitations with regard to Positive Train Control ("PTC"), and regarding any FCC-licensed radio spectrum for use by DART whether or not it involves PTC. This includes, but is not limited to, all records related to DART's inquiry and solicitation for a proposal from Warren Havens and his companies for radio spectrum."

On December 22, 2010, DART requested the requester clarify part of his request. ***(See, Attachment "B").*** To date, DART has not received a response from the requester. DART now seeks your decision on whether the following responsive documents submitted should be withheld from the requester pursuant to Sections 552.104, 552.105, 552.131(b), 552.107 and Rule 503 of the Texas Rules of Evidence. ***(Copies of the documents are enclosed as Attachments "C"; "D" and "E").*** DART asserts that third party proprietary interest may be implicated if the responsive documents to this request are released. DART informed the companies pursuant to the Texas Public Information Act. ***(See, Attachment "F").*** DART also asserts this request for a decision is timely. ***(Attachment "G").***

SECTION 552.104: Information Relating to Competition or Bidding

Section 552.104 of the Texas Public Information Act states in part that information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder. DART asserts ***Attachment "C"*** contains DART solicitation for Positive Train Control (PTC) Consultant Services and bid proposals from The DART solicitation for PTC Consultant Services has not been awarded by DART. DART asserts that since the solicitation has not been awarded the release of ***Attachment "C"*** would give an unfair advantage to the bidders because it discloses the proposals prior to award. DART respectfully requests ***Attachment "C"*** be withheld from release under Section 552.104.

DART asserts that ***Attachments "D" and "E"*** contain DART's communication regarding an offer by to sell radio frequency to DART for use in the implementation of PTC. DART asserts that disclosure of the content of these communications would give an advantage to competitors of which might seek to disrupt the ongoing discussions and negotiations. DART respectfully requests that ***Attachments "D" and "E"*** be withheld from release under Section 552.104.

SECTION 552.105: Information Relating to Location or Price of Property

Section 552.105 of the Government code excepts from required public disclosure information relating to the location of real or personal property for a public purpose prior to public announcement of the project; or appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property."

DART asserts ***Attachments "D" and "E"*** contains information concerning the right to use radio frequency which can be compared to personal property. DART further asserts that information relating to purchase price of radio frequency that is being negotiated by and DART for public purpose prior to an award of a contract to should not be released pursuant to Section 552.105. Therefore, DART requests that information contained in ***Attachments "D" and "E"*** regarding the purchase price of radio frequency be withheld.

SECTION 552.131: Economic Development Information

Section 552.131 (b) states in part that unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021. DART asserts that ***Attachments "C", "D" and "E"*** contains documents revealing negotiations to purchase radio frequency and DART. The documents also contain financial and incentive information being offered to The documents in the attachments represent incentives being negotiated between DART's business prospect regarding radio frequency purchase and PTC Consultant Services. DART asserts that this type of information should be withheld

pursuant to Section 552.131(b) as the business prospects have not reached an agreement with DART.

SECTION 552.107 AND TEXAS RULES OF EVIDENCE 503: Attorney-Client Privilege

Section 552.107(1) of the Act, protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See,* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *ID.* At 7. Second, that the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. *See,* Tex. R. Evid. 503(b)(1). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See,* Tex. R. Evid. 503(b)(1)(A), (B), (C), (D), (E). Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503 (b)(1), meaning it was " not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503 (a)(5). TEX. R. EVID. 503(b)(1).

A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503 (a)(5). Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client.

In applying the above Section and Rule to this matter, ***Attachment "D"*** contains Attorney Client that should be withheld pursuant to Section 552.107 and the Texas Rules of Evidence 503.[1] The documents in ***Attachment "D"*** are correspondence between myself, DART Outside Counsel Liz Sachs and Katherine Patsas and DART employees. The correspondence contains from DART Outside Counsel that are Attorney Client Privileged Communication. All communications within ***Attachment "D"*** are negotiations regarding an offer by to sell radio frequency to DART for use in the implementation of Positive Train Control. These negotiations which are contained in the provide legal advice by myself and DART Outside Counsel to DART

[1] *For purposes of Attorney Client Privilege Communication **Attachment "D"** is representative sample of Attorney Client emails.*

employees.[2] DART also asserts ***Attachment "D"*** contains my . about the offer from that are Attorney Client Privileged Communication. This type of communication should be withheld pursuant to Section 552.107 and Rule 503 of the Texas Rules of Evidence.

The legal advice in the form of
provided by myself and DART Outside Counsel Liz Sachs and Katherine Patsas to DART employees were not disclosed to any other person other than the employees in which the communication was intended to be given to in rendering legal advice. DART asserts the documents were provided in furtherance of rendering professional legal advice regarding the offer by Therefore, DART requests that ***Attachment "D"*** be withheld pursuant to Section 552.107 and Rule 503 of the Texas Rules of Evidence.

Should you have any questions, concerns or require additional information regarding this matter, please do not hesitate to contact Halfreda Anderson-Nelson at 214-749-3049.

Sincerely,

Shirley Thomas

Shirley Thomas
Senior Assistant General Counsel
Signing on Behalf of
Hyattye Simmons
General Counsel

ST/han

cc: Warren Havens
President
Skybridge Spectrum Foundation
2509 Stuart Street
Berkeley, CA 94705
(w/o attachments)

Albert Scala, Principal
Stantec Consulting Services, Inc.
1700 Pacific Avenue, Suite 2340
Dallas, TX 75201
(w/o attachments)

George V. Dorshimer, President
LTK Engineering Services
100 West Butler Avenue
Ambler, PA 190002-5703
(w/o attachments)

[2] *See, Attachment "H" as DART employee bios and DART Outside Counsel bios.*

John Reardon-CEO
Maritime Communications/Land Mobile LLC
218 N. Lee Street
Suite 318
Alexandria, VA 22315
(w/o attachments)

Petitioners note: Knowing he was dealing wtih legal counsel to a government agency, DART, for puroposes of obtaining a legal opinon from the Texas Attorney General, Mr. Reardon used the title of CEO of MCLM.

Petitioners note: As Petitioners have shown in their pleadings before the FCC, including in the instant case, MCLM's Sandra Depriest (the alleged sole owner and controller) has repeated provided false information to the FCC that John Reardon, who has always been the chief officer in Mobex, was never authorized to be any officer in MCLM and that he has been barred from any officer position: that allegd bar of Mr. Reardon was stated to the FCC well before the above date. The fact is that Mr. Reardon has always been one of the, and by title and action the principal, officers in MCLM. This makes Mobex an affiliate of MCLM (on this basis alone, not including the basis that Mobex was unquestionably the precedessor in interest of MCLM and an affiliate on that basis). This, by itself, is fraud on the FCC, and disqualifying false certifications under and violation of FCC auction rules on requied short- and long-form disclosures in Auction 61. Attributing the gross revenues of Mobex to MCLM also disqualifies MCLM in Auction 61 on that basis also.

CERTIFIED MAIL™

7179100016420163 9010

Rapid Transit
0163
5266-0163

Skybridge Spectrum Foundation
Attention: Warren Haven
2509 Stuart Street
Berkley, CA 94705

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