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

In the Matter of	)	
	)	
Maritime Communications/Land Mobile LLC	)	File No. 0004507921
and Dixie Electric Membership Corporation,	)	Call Sign: WQGF316
Inc. Assignment of Authorization Application	)	
	)	

To: Office of the Secretary

Attn: Wireless Telecommunications Bureau

Reply to Opposition to Petition to Deny,
or in the Alternative Section 1.41 Request[1]/[2]
And Conditionally:
Supplement to Petition to Deny
and Request to Accept Supplement

Herein, Petitioners reply to the MCLM opposition (the "Opposition") in the above-captioned matter: all facts and arguments herein are responsive to the specific or general denials and allegations in the Opposition.

Since all the information and arguments in here are responsive to the Opposition, Petitioners do not believe they need to also state the matters of the following paragraph with the associated request leave to accept, but they present those out of an abundance of caution, if the FCC finds that necessary (in that "condition").

To the degree some facts provided herein (and related arguments) were not in the Petition: these support the same classes of information and arguments stated in the petition, and supplement those as well. This includes (i) newly obtained evidence with regard to John Reardon's recent public re-assertion (including to the government of a major US city) of his position as the CEO of MCLM (which Sandra Depriest has denied), (ii) information obtained

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[1] A copy of this reply will be filed under File No. 0002303355 and in WT Docket 10-83 since it contains relevant new facts and arguments of decisional significance to those proceedings. Petitioners also intend to supplement with a copy of this petition the other pending proceedings involving Petitioners' challenges to the MCLM AMTS incumbent and geographic licenses.

[2] The defined terms used herein have the same meaning they had in the Petition to Deny.

from testimony by John Reardon in a certain US District Court case, *Greene v. Mobex*, and (iii) based on said new information together with existing information in this case, the arguments presented herein as to the change of control in MCLM from what MCLM has asserted officially to the FCC, to Mobex, Mr. Reardon and the creditors of MCLM and the DePriests, and the suggestion to the FCC to investigate and get documents as to these matters and the actual control in MCLM at this time and since it commenced in FCC licensing.

If the FCC deems this a supplement to the Petition, then Petitioners request that the FCC accept the supplement on these bases: (i) it provides a more full and complete record for a more sound decision in this case and the underlying matters, in the public interest, (ii) MCLM should have but failed to disclose these new facts in this and past MCLM-Mobex licensing matters, including by Section 1.65 reports, and thus, MCLM cannot assert prejudice nor can the prospective assignee, if the FCC accepts this; and (iii) this new information as to the control, affiliates and affiliates' gross revenues are central to FCC licensing of MCLM and thus this information is especially important.

(i) Preliminary Matters

Petitioners note here that Dixie did not file any opposition to the Petition. Dixie did file a "Motion to Strike", but that is not an opposition filing to the Petition and Petitioners will address that motion separately.

The Opposition does not contain an affidavit from any person with direct, personal knowledge of the facts and arguments it asserts contrary to the Petition's facts and arguments regarding Mr. DePriest and his companies. As such, under Section 1.939(f), the Opposition is defective and any of its arguments in opposition to said facts and related arguments in the Petition must be ignored or dismissed. However, in an abundance of caution, Petitioners will respond herein to the Opposition's bald assertions to the contrary of said facts in case the FCC accepts them in spite of the requirements of Section 1.939(f). However, without the required

Donald DePriest affidavit, it appears that those portions of the MCLM Opposition are an unauthorized filing by Sandra DePriest. Many of the new facts presented in the Petition are regarding Donald DePriest. Thus, it appears that Donald DePriest cannot or will not provide an affidavit any longer since the facts speak for themselves and he does not want to provide an affidavit making bogus claims to the contrary and thereby commit further misrepresentations, fraud and perjury before the FCC.

However, Sandra DePriest's declaration, by saying that "the foregoing [Opposition] is true and correct", shows that she has intimate knowledge of Mr. DePriest's business and economic life, contrary to what she told the Wireless Bureau and Enforcement Bureau (e.g. in response to the Enforcement Bureau Letters she said that the FCC would have to ask her husband about certain matters relating to him and his companies, such as MCT Corp., because she did not know about his business affairs). Yet, throughout the Opposition, she is addressing and refuting facts regarding her husband and his companies. This shows that the DePriest's do not live "separate economic" or business lives as she has told the FCC in the Enforcement Proceeding or Auction 61 Proceeding. Her declaration shows that Sandra DePriest clearly must have known her husband owned and controlled several companies and that those companies had made substantial sums of money, yet she knowingly excluded them from MCLM's Auction No. 61 Form 601. In addition, given evidence in the Petition, including the Central Communications Network court case that contained a filing by MCLM with an affidavit by Mr. Reardon that Mr. Reardon is the President and CEO of MCLM, Mrs. DePriest, by her declaration in the Opposition, has perjured herself before the FCC yet again regarding Mr. Reardon never having been an officer of MCLM. This is clearly a case of fraud by MCLM and the DePriests. [3]

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[3] The Commission takes allegations of fraud on the Commission seriously and typically considers the merits of such allegations. *See, e.g., Richard Bott II,* 8 FCC Rcd. 4074 (1993) (finding "material questions of fact" relating to an allegation of fraud, and designating those questions for hearing). Moreover, evidence of fraud can serve as grounds to re-open an agency

The Opposition failed to refute the facts and arguments in the Petition and was evasive, lacked candor and misleading. MCLM and its counsel, Dennis Brown, who has a history before the FCC of such behavior[4], should be sanctioned, investigated and prosecuted under U.S. Criminal Code violations. Petitioners have shown clear facts and evidence of why the License is invalid and why MCLM lacks character and fitness and MCLM is generally denying all of those facts and evidence in its Opposition, therefore, Petitioners have a right to respond to those general denials herein.

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proceeding that otherwise would have been final (*e.g.*, beyond the statutory time limit for the filing of a petition for reconsideration). *See First Century Broadcasting* at ¶ 13, 100 F.C.C.2d 761 (1985) (citing Supreme Court, DC Circuit and FCC cases); *see also American Industrial Door* at ¶5, 16 F.C.C.R. 16300 (2001) ("Even when a proper petition for reconsideration is not filed, we will consider taking action on our own motion in cases where there is possible fraud on the Commission's processes.").

[4] See e.g. http://www.scribd.com/doc/23192936/FCC-Communications-Act-Sec-308-Decision-Licensee-Kay-Attorney-Dennis-Brown-Lack-Candor-License-Revocation-Fines

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1. Introduction and Summary

In this Reply, Petitioners show that the Opposition fails to refute the Petition's facts and arguments and that it is contradicted by the facts in the Petition and FCC records. Further, the Reply points out certain new facts in the Petition that were not addressed or refuted by MCLM. As such, the FCC must accept those new facts as uncontested and truthful. They further show that Sandra and Donald DePriest have committed perjury before the FCC. In addition, the Reply rebuts the Opposition's arguments that the Petition is frivolous or a strike pleading. It also shows the following: that MCLM has failed to operate its site-based licenses as CMRS and failed to report operations under it or pay required regulatory fees for it; that its site-based licenses have permanently discontinued and automatically terminated for failure to be operated as CMRS for over 6 years and per other evidence, including MCLM's recent admissions, before the FCC; that MCLM has taken contradictory positions regarding the role of John Reardon in MCLM and that all evidence actually indicates he is an officer contrary to MCLM's and Sandra DePriest's sworn responses to the Bureau's Section 308 letters and the EB Letters (thus, MCLM, Sandra DePriest and John Reardon are deliberately misrepresenting Mr. Reardon's position in MCLM, and MCLM and Sandra DePriest have committed perjury); that MCLM has and continues to lack candor and should be investigated and it, the DePriests and its legal counsel should be sanctioned and disqualified from ever holding an FCC license. At minimum, the Reply further shows why a hearing and investigation under Section 309(d) and (e) is required.

2. Certain New Facts in the Petition Not Addressed or Refuted

The Petition contained at Attachment 002, Attachment 006, Attachment 010, Attachment 011, Attachment 012 and Attachment 013 certain new facts that had either never previously been

presented to MCLM or addressed by MCLM since they were presented newly in the Petition. Those new facts included (1) the documents regarding Setzer and Capital Plus Partners; (2) the Spectrum Bridge Fair Market Valuation; (3) the Donald DePriest lawsuit against Peter Harmer; (4) an MCT Corp. private placement memorandum that showed Donald DePriest was MCT Corp.'s Chairman, majority owner, and controlling interest (as well as other new evidence regarding Mr. DePriest control and ownership in MCT Corp., including, but not limited to, email communication referencing his going to a meeting in Istanbul with Serkan regarding the sale of MCT Corp. (see e.g. Attachment 002 at pages 37-38, Serkan Okanden worked for Turkcell and was involved in the purchase of MCT Corp.)); (5) FCC decisions and other new evidence showing Mobex is indeed MCLM's predecessor in interest; and (6) several court documents filed in the Supreme Court of the State of Mississippi that showed, among other things the following: that Donald DePriest has tens of millions in debt and judgments against him; that Oliver Phillips must have some interest or control in MCLM based on the settlement between Mr. DePriest and Mr. Phillips since Mr. DePriest has little income and no assets of value; and that, per deposition testimony of Belinda Hudson, the Treasurer of MCLM and Communications Investments, Inc., the majority of Mr. DePriest's income goes to pay for and make payments on "assets" not in his name. The Petition argued that those "assets", based on the financial situation of Mr. DePriest and considering the other facts in the record (including that Mr. DePriest signed warrants and guarantees for millions in debt on behalf of MCLM, signed as its Manager, Director, etc.), must be the MCLM AMTS licenses, including the License.

The Opposition did not address several of these new facts and the Petition's related arguments, and it did not provide any clear evidence to refute any of the new facts other than bald assertion (and no affidavit from a person with personal knowledge). This means that MCLM has no facts to show that refute them. Therefore, the FCC should immediately take appropriate actions against MCLM since the new facts clearly show that Donald and Sandra

DePriest and MCLM have committed perjury in their responses in the Section 308 Proceeding and Enforcement Proceeding since they argued that Donald DePriest did not control MCT Corp., that Donald DePriest did not own, control or have interest in MCLM and that Mobex and Watercom were not predecessors in interest, etc.

Regarding the Opposition's failure to address the Petition's facts about MCT Corp., Mr. DePriest's lawsuit against Mr. Harmer, Capital Plus Partners and the Spectrum Bridge Fair Market Valuation, see Petitioners' responses regarding those items in the section 3 below.

3. Responses to Opposition's Arguments

Wherever the Opposition references MCLM's opposition arguments in other proceedings, Petitioners fully reference and incorporate herein their responses in those other proceedings.

In the Opposition in various places, instead of addressing the relevant evidence and documents presented to the arguments Petitioners made, MCLM addresses irrelevant parts of the evidence to avoid the actual points or avoids the evidence entirely. Whenever evidence is presented in any legal proceeding entire documents or entire sections of documents are presented to show the context, otherwise excerpts may be misleading. However, that obviously does not mean that the irrelevant portions provided to show the context and authenticity can be speciously construed as the meaning of the evidence where the meaning or point was clearly made. By addressing clearly irrelevant portions of evidence presented MCLM is revealing that it cannot refute the relevant evidence and arguments. It is also sanctionable behavior by an attorney at law because it is an attempt to mislead the legal authority in this case, the FCC. Therefore, there is no need for Petitioners to respond to MCLM's discussion of irrelevant parts of the evidence except to point out that it effectively admits to the relevant parts and arguments based on those.

The evidence in the record before the FCC and provided in the Petition shows that the FCC cannot rely on the representations of MCLM, its legal counsel or its alleged

owners/controllers, whoever they may be at any given time or what title they may or may not use. Despite the overwhelming evidence to the contrary, the Opposition continues to maintain that John Reardon is solely an "authorized employee" of MCLM and not an officer. That lacks candor and is misleading and should be punished. The Petition's facts clearly show that Sandra DePriest and MCLM have perjured themselves before the FCC when they told the FCC in their responses, under penalty of perjury, in the Section 309 Proceeding, Section 308 Proceeding and Enforcement Proceeding that Mr. Reardon has never been an officer of MCLM. The Petition showed that MCLM has told a Florida court (see Attachment 003 to Petition) that Mr. Reardon is its President and Officer. MCLM also misrepresented to the FCC that Sandra DePriest and Donald DePriest live "separate economic lives", as shown by the Petition's evidence from the Goad Case in which Donald DePriest admitted that his wife and him have joint tax returns. As shown by the Petition, these are just a couple of the blatant misrepresentations that MCLM has made to the FCC. Thus, based on the Petition's evidence, it is clear that the Reverand Sandra DePriest, Donald DePriest and MCLM have committed perjury and fraud upon the FCC and they should be prosecuted accordingly. Nothing they say at this point should be believed with respect to any of their licenses, applications, officers, operations, etc. Therefore, the FCC must grant the Petition and move to conduct a hearing and investigation under Section 309 (d) and (e) and for violations under the U.S. Criminal Code. The FCC should fully investigate all aspects of MCLM and request copies of all corporate documents including but not limited to contracts, incorporation documents, tax returns, site leases, equipment invoices, station logs, financial books and records, license lease agreements, affiliates' documents, records of all payments regarding MCLM debt and obligations (e.g. who is paying those or assuming those liabilities); all records of ownership of other businesses held by Sandra DePriest, MCLM and Donald DePriest, etc.

Regarding the Opposition's arguments about the MCT Corp. private placement

memorandum and Mr. DePriest being the "non-execuitve" Chairman of MCT Corp., MCLM is avoiding the context and full presentation of that matter. Petitioners have demonstrated in this proceeding (including herein—e.g. see above re: email communication and other) and in the referenced and incorporate materials a large number of documents that are credible evidence that Mr. DePriest was the controlling person in MCT. Corp., as well as the functioning Chairman. He did not use an actual business title of "non-executive Chairman". However, what has been demonstrated is that he was the functioning, controlling party and executive. Mr. DePriest, MCLM and Sandra DePriest have never denied the specific evidence presented which show the above.

Regarding the Opposition's arguments with respect to the Spectrum Bridge Fair Market Valuation, once again MCLM is avoiding the relevant facts and arguments presented in the Petition. MCLM is the successor in interest to Mobex and Watercom and assumed all of their liabilities for violating FCC and other law, otherwise it would be impermissible laundering. The FCC has made clear that laundering is not permissible including in AMTS (see Erie Canal Order). MCLM does not deny the analysis of its own broker, Spectrum Bridge, presented to its buyer, SCRRA, in order to get a higher price. Clearly, Spectrum Bridge with MCLM permission or acquiescence gave the explanation the Petition cited to convince SCRRA to pay a far higher price than it may have considering the price MCLM paid in the auction and the fact that MCLM was clearly in a distressed condition attempting a "fire sale". The distressed condition could not be more clear in FCC records, including the Enforcement Bureau Proceeding under Section 308. In addition, the relevance, as explained in the Petition and its referenced materials, is that MCLM used bogus site-based stations prior to the auctions to reduce competition by repeatedly asserting them to the FCC and potential competitors as fully valid stations with unbroken coverage along all of the U.S. coastlines and Mississippi River Waterway System and Great Lakes. Those were fraudulent assertions, in that many of those stations were never built and had automatically

terminated, many others were operated without authority since they were relocated or impermissibly modified, including antenna height increase, without FCC approval, and in all cases, no MCLM-Mobex AMTS system ever achieved the required continuity of service coverage to meet the construction-coverage requirement. These specific claims MCLM has never been able to refute with evidence. It is also clear that with expert legal counsel the preceding violations and anticompetitive activities were well understood by Dixie, because all of the above-noted facts are in the Petition and by reference to other pleadings filed under the subject License and the application that led to its grant.

Regarding the Opposition's arguments at page 4 concerning Mr. DePriest's suit against Mr. Harmer, the fact that MCLM is arguing here to defend Mr. DePriest demonstrates that Mr. DePriest has the control and ownership relation in MCLM that Petitioners are asserting. If Mr. DePriest had no relation with MCLM as Sandra DePriest alleges the only response to this point would be that it is irrelevant. Sandra DePriest claims she is the sole owner of MCLM, however, she is now speaking on behalf of Mr. DePriest's economic life. MCLM is effectively admitting that Mr. DePriest and his gross revenues should be attributed to MCLM (including the years relevan to Auction No. 61). Notably, MCLM is not denying the Petition's arguments that Mr. DePriest's ownership in MCLM is part of the basis of the $20 million suit against Mr. Harmer. The Opposition only argues that the Petition's assertions "overlooked" "other assets" of Mr. DePriest, and of those apparently the only noteworthy ones are Mr. DePriest's reputation and emotional peace. MCLM showed nothing at all to back its statements that Mr. DePriest's "reputation" and "emotional peace" have any value at all, especially given the distressed situation of MCLM and Mr. DePriest's other business activities shown in the documents in the public lawsuits against him, and the existing judgments against him and his own statements in the Goad Case that show he has minimal income (which goes to pay for assets not in his name).

In addition, Mr. DePriest's lawsuit against Mr. Harmer demonstrates an ulterior purpose

to its alleged defamation claim by giving no specifics of any action by Mr. Harmer that defamed Mr. DePriest and caused damages. When a complaint cannot give any specifics at all, but is filed against a person who has publicly submitted evidence to the FCC contrary to Mr. DePriest's testimony, it demonstrates the points the Petition made on this topic about trying to get Mr. Harmer to retract that evidence and testimony. If Mr. DePriest had any evidence of Mr. Harmer engaging in actual defamatory action (which means deliberately untrue statements to damage someone), he would have stated those in the Opposition.

The Opposition is misleading and lacks candor with regard to the WPV and Capital Plus Partners UCC filing. First, how is MCLM able to speak for WPV, when in the past MCLM has said it does not know anything about the affairs of WPV and to ask Donald DePriest. The Opposition contradicts those past positions.

The WPV and Capital Plus Partners UCC filing clearly shows that Capital Plus Partners has rights to WPV's receivables, income, contract rights, equipment (used for operations of its FCC licenses), etc. Under *Ellis Thompson* and *Intermountain* (see below discussion) are sufficient to afford Capital Plus Partners control in WPV. That UCC filing states [underlining added for emphasis]:

> All presently owned or hereafter acquired (a) accounts, (b) accounts receivable, (c) <u>contract rights</u>, (d) chattel paper, (e) instruments, *(f)* <u>inventory</u>, (g) <u>equipment</u>, (h) all the rights of an unpaid Seller with respect to any personal property that is the subject matter of an Account, including recision, replevin, claim and delivery, reclamations and stopping in transit, and the Seller's rights to any personal property recovered by such means, (i) <u>rights to any goods represented by any of the foregoing</u>, including repossessed goods, (j) reserves and credit balances arising hereunder, including Contingency Amounts and <u>proceeds of Advances not yet paid to Seller</u>, (k) <u>guarantees or collateral of any of the foregoing and any and all proceeds of any of the foregoing</u>.

Also, the Opposition does not expressly state that the WPV license was not used as collateral or that Capital Plus Partners does not have the right to acquire or exert control over the

license if it decides to do so. It only states that the documents don't indicate the license is collateral. However, the items listed above clearly give Capital Plus Partners rights to all of what WPV has, including "contract rights", which encompasses the WPV contract with Nextel and thus the subject license. Also, the term "inventory" most likely includes the WPV licenses since it does not appear that the business of WPV was to operate the licenses (MCLM and WPV have both said that WPV had no income to the FCC during relevant years of Auction 61), but solely to liquidate them as "inventory". The UCC mentions an attached "security agreement". The FCC should obtain a copy of that "security agreement" from Capital Plus Partners and WPV. In addition, Petitioners don't know the entire agreement between Capital Plus Partners and WPV and what other terms or conditions it may contain or that have been modified from the evidence presented in the Petition. The FCC should request copies of all such agreements and modifications. Petitioners will then request those via FOIA since they are relevant to the Petition and Section 309 Proceeding against MCLM. Once those documents are obtained by Petitioners under FOIA or otherwise, Petitioners reserve the right to supplement the instant proceeding with any relevant information therefrom.

Capital Plus Partners has rights to the receivables, inventory and other holdings of WPV, including the proceeds from the subject license. Under *Intermountain*, *Ellis Thompson*, etc., the key, overarching inquiry is whether the licensee has ceded control over its *license/authorization* - that is, the right to use the frequency assigned by the FCC to provide service/transmit communications - to another party.[5] *See*, *e.g.*, *Facilitating the Provision of Spectrum-Based*

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[5] See Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 06-52, released April 25, 2006, *21 FCC Rcd 4753, 71 FR 26245,* at footnote 46 that reads:

> In *Ellis Thompson*, the Commission identified the following factors used to determine control of a business: (1) use of facilities and equipment; (2) control of day-to-day operations; (3) control of policy decisions; (4) personnel responsibilities; (5) control of financial obligations; and (6) receipt of monies and profits. Application of Ellis Thompson Corporation, *Memorandum Opinion and Order and Hearing Designation Order*, 9 FCC Rcd 7138, 7138-7139 ¶ 9 (1994)

Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, 19 FCC Rcd. 19078, 19137 (2004) ("*Intermountain Microwave* decision . . . focuses on whether the licensee, as opposed to an unlicensed third party, exercises close working control over different aspects of the *operation of the station facilities that use the spectrum*") (emphasis added). *See also id*. at 19138 ("Under *Intermountain Microwave*, the [FCC] has interpreted Section 310(d) *de facto* control to require that the licensees exercise close working control of both the actual facilities/equipment operating the radiofrequency (RF) energy and the [business] decisions . . . regarding *use of the spectrum*.") (emphasis added).

As interpreted through a long line of subsequent cases, *Intermountain* establishes six factors that the FCC will consider in determining whether a licensee has maintained sufficient control of the operations of a license (see footnote above re: *Ellis Thompson* that lists these six factors, including "receipt of monies and profits".).

Clearly, Capital Plus Partners has rights to WPV's profits and receivables and as such, under *Ellis Thompson* and *Intermountain*, it has a level of control of WPV that had to be disclosed to the FCC, which was not.

In addition, it is well-established under corporate law that when a company is insolvent or approaching insolvency that the legal obligations of the management are to first serve the requirements of the outside debt holders, which effectively puts the management under the

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(citing the Commission's decision in *Intermountain Microwave*, Applications for Microwave Transfers to Teleprompter Approved with Warning, *Public Notice*, 12 FCC 2d 559 (1963) ("*Intermountain Microwave*") (1963)). *See also* Application of Baker Creek Communications, L.P. for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (Wireless Tel. Bur. 1998) (discussing in detail the factors constituting *de facto* control); Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277, 316-17 (1991).

control of the debt holders, rather than under the control of the equity interest holders. If that progresses to the point of bankruptcy, then of course, the bankruptcy trustee and Debtor-in-Possession become in control. See below further discussion of MCLM control, creditors and insolvency issues.

Donald DePriest has more debts than assets according to his responses in the Goad and Phillips cases and that he and his wife, Sandra DePriest, have joint tax returns and that they are essentially insolvent. When a controlling interest in an entity cannot pay its debts, then the debt holders are really in control of the entities. That is the position that the DePriests are in (see Donald DePriest's filings in the Phillips Case, the Goad case, and the judgments against Donald DePriest, including the State of Alabama's judgment, Capital Plus Partners', Phillips', etc., and the other creditors of MCLM (many of whom Donald DePriest gave personal guaranties)).

The Opposition admits that Capital Plus Partners has the rights to the proceeds from the WPV license sale to Nextel, which clearly means that Mr. DePriest, as sole owner of WPV, has sold his interest in the underlying license and related assignment transaction to Capital Plus Partners. Therefore, the pending WPV assignment application is now for the benefit of Capital Plus Partners and not WPV as stated in that application. WPV had to inform the FCC of this fact under Section 1.65. In addition, WPV and MCLM have both admitted that WPV is 100% owned and controlled by Mr. DePriest, and this is shown in FCC records. Mr. DePriest provided a personal guarantee for the loan from Capital Plus Partners to WPV. Thus, Capital Plus Partners has the power to go after and exert control over Mr. DePriest personally. Since Mr. DePriest is the controlling interest of WPV, this means that Capital Plus Partners has the power to exert control over WPV. It also means that since Mr. DePriest, as shown by the Petition, has control and ownership in MCLM, that Capital Plus Partners has the ability to exert control over MCLM. Mr. DePriest and WPV are inseparable. The FCC must pierce the corporate veil.

Regarding the John Reardon issue, see the below discussion and also Attachment 1 hereto

which contains additional evidence showing that Mr. Reardon is not just an "authorized employee" but that he is the Chief Executive Officer of MCLM. Also, the Petition's facts and arguments speak for themselves and nothing in the Opposition effectively refutes those. It is notable however that MCLM continues to tell the Enforcement Bureau and Wireless Telecommunications Bureau in their investigations that John Reardon is not an officer of MCLM and that he is only an "authorized employee", yet before a Florida Court (see Attachment 003) and in numerous MCLM FCC licensing applications filed by MCLM over several years and in contract agreements attached to some of those applications, and in a May 25, 2006 letter to the acting Chief of the Wireless Bureau asking for the FCC to process MCLM's Form 601 for Auction No. 61 (see the 2010 Supplement, in particular the Email and attachments filed June 8, 2010 that discuss this and footnote 8 of Order, DA 06-2368), John Reardon has signed as President and Chief Executive Officer of MCLM. Also, see the 19 Pages obtained by SSF under FOIA Control No. 2009-089 that contains a letter John Reardon wrote to Jeffrey A. Mitchell, Associate General Counsel of the FCC's Office of General Counsel on MCLM letterhead and signed it as MCLM's President, and a letter in those same 19 Pages from W.B. Erwin at the USAC that copies Mr. Reardon as President of MCLM. Apparently, MCLM believes that the FCC and Petitioners will actually fall for their preposterous "Emperor has new clothes" argument regarding Mr. Reardon's role in MCLM (as well as for their other arguments regarding a Manager, Director, and Treasurer not meaning what those titles signify in business and law). MCLM and its legal counsel should be sanctioned for such repeated and willful misrepresentations and lack of candor (as previously, MCLM's counsel, Dennis Brown, has a history before the FCC of such lack of candor).

By the Opposition's arguments, MCLM and Mr. Brown are essentially saying that if an entity gets away with misrepresentations and fraud for long enough than it is too late to punish

them for those when finally discovered and that MCLM deserves finality.[6] The Opposition's arguments that the Petition is only meant to delay MCLM's Application or scare away MCLM's customer are completely unfounded. The Petition stated clearly why Petitioners have interest and standing to file. If the Petition's facts and arguments affect Dixie or other parties involved with MCLM, then that merely indicates they have merit and those parties have legitimate concerns.

The Opposition's arguments suggest that the matters raised by the Petition are closed, but that is not accurate as evidenced by Petitioners' pending pleadings and also the FCC's own investigations under Section 308 and by the Enforcement Bureau. In fact, Petitioners continue to find more and more evidence that further shows MCLM has committed misrepresentations, fraud and perjury and is violating numerous FCC rules. Petitioners are not the ones withholding relevant information as the Opposition suggests, it is MCLM and its officers and affiliates that are withholding relevant information. In addition, Petitioners showed in the Petition that SSF has an pending appeal to obtain more records that MCLM submitted to the FCC that are of decisional significance to the Section 309 Proceeding, Section 308 Proceeding and Enforcement Bureau investigation (see SSF's pending appeal of FOIA Control No. 2010-379). Once SSF obtains that information and provides it to the rest of Petitioners and publishes it publicly (information that Petitioners should have been provided by the FCC already, but that was impermissibly withheld from them in violation of their constitutional petition rights and in violation of the public interest), Petitioners will have additional evidence and arguments to add to the proceeding regarding MCLM fraud, misrepresentations, perjury, criminal activity, etc.

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[6] For example, MCLM has deliberately maintained a false Form 601, File No. 0002303355. MCLM has belatedly admitted to over 30 affiliates, but at no time, as required under Section 1.65 and other FCC rules, has it amended its Form 601 to include those affiliates (e.g. Mobex, MCT Corp., Bioventures). Clearly what MCLM is trying to do is argue that everything they have done is fine, contrary to the evidence, so that they can get and close deals and then use that money to satisfy debt obligations of Donald DePriest and MCLM and generally gain benefit from ill begotten government property.

The Petition clearly showed that Petitioners have standing for various reasons to file the Petition including under *Lujan*. The Opposition does not attempt to refute those showings, but only makes bald assertions. The Petition clearly showed that either ITL or ENL have rights to the License and are harmed if the Application is granted. Also, the Petitioners have standing for all of the additional reasons given in their recent Petition to Deny filed December 22, 2010 regarding File Nos. 0004417199, 0004419431, 0004422320, and 0004422329 (Petitioners hereby reference and incorporate herein all of that petition's standing arguments not already contained in the Petition—see the Section (iii) on "Standing and Interest" in that December 22nd petition).

The Petition is not a strike pleading for all the clear facts and sound arguments it gave and nothing in the Opposition refutes those facts and arguments or shows them to be frivolous or irrelevant to the Application and License and MCLM, as a FCC licensee. In fact, the FCC, itself, has seen fit to commence two separate investigations of MCLM based on many of the facts presented in the Petition, see the Section 308 Proceeding and the Enforcement Proceeding. As explained in the Petition, the facts and matters being investigated by the FCC are relevant to the License, Application and MCLM as a FCC licensee.

Regarding the non-tax debt owed, MCLM does not address the Petition's facts and arguments on this issue, but only makes a bald assertion to the contrary when in fact the FCC's own records show that it failed to file Forms 499-A for certain years, that on Forms 499-A filed it failed to report several jurisdictions in which it alleges to operate AMTS stations, and that MCLM has told the WCB, for purposes of a refund, that it is providing PMRS service and thus not subject to USF fees, when in fact its AMTS incumbents licenses are CMRS and they are required to pay USF and other regulatory fees for them. Thus, MCLM has hundreds of operating AMTS CMRS incumbent stations for which it is not paying any USF fees because its position is that they have been operating as PMRS, yet the FCC rules don't say that a CMRS licensee can

elect to not pay USF and other regulatory fees just because the licensee decides to assert that its authorized CMRS service is actually PMRS. Thus, for its site-based licenses alone MCLM owes money for USF and other regulatory fees. MCLM has not been filing Form 499-A for and reporting income from its site-based operations. MCLM has always maintained it has been operating and providing service with its site-based licenses, yet it is not reporting that and paying fees. This alone is *prima facie* evidence calling into question grant of the Application since if MCLM is not filing the Form 499-A for those licenses and paying any fees, then there is a serious question of whether or not MCLM is actually operating those licenses and whether or not it has permanently discontinued them and, thus, is unlawfully maintaining and warehousing them contrary to FCC rules. Further, the Petition provided ample evidence that the MCLM's site-based licenses are defective and must be cancelled because (1) the original assignment application between Mobex and MCLM is defective since it failed to disclose MCLM's actual control and ownership (e.g. Donald DePriest is a controller and owner) and (2) those licenses, by MCLM's own admissions and arguments to the FCC, have been operated impermissibly outside of their authorized service as PMRS for over 6 years and thus automatically terminated without specific Commission for permanent discontinuance and for illegal operation without a license (an AMTS licensee must operate its AMTS license as AMTS, otherwise, it is not operating AMTS and is not meeting the requirements for keeping and maintaining the license and has given up it authorized rights to the spectrum).

In addition, MCLM had an obligation to disclose non-tax debt it owed and it is cheating the FCC by not submitting the proper filings to show the debt it owes, namely timely and accurate Forms 499-A. The WCB Proceedings and the FOIA Control No. 2009-089 show that MCLM failed to file Forms 499-A for certain years and that it has not reported and paid USF fees for years since it has maintained that its AMTS licenses have been operated as PMRS, when they are only authorized for CMRS.

When citizens and companies have an obligation on a debt and it is there obligation to know that debt and state it and pay it, then they still have that debt whether or not they are informed of it by the Federal agency. However, the MCLM position is that it does not have to report any debts it knows it owes or that it has avoided paying by not filing correct Forms 499-A, but that the FCC must catch it not reporting operations or filing Forms 499-A and then inform MCLM of any obligations there under. That is absurd and clearly warrants further investigation by the FCC into MCLM's non-tax debt owed since the Petition also already provided ample evidence to indicate MCLM, with hundreds of operating AMTS stations around the country, has not been paying taxes and other regulatory fees per Form 499-A (e.g. MCLM's undisclosed, late assertion in the WCB Proceedings that Mobex did not operate interconnected, CMRS AMTS stations, but some other type of PMRS service, which was illegal).

Regarding delinquency on Auction No. 61 debt, as shown in the Petition, MCLM was delinquent in payment of Auction No. 61 sums since it knew all along, per the facts in the Auction No. 61 Proceedings and the Section 308 Proceeding and Enforcement Proceeding, that it did not qualify for the bidding credit level that it had applied for in Auction No. 61. MCLM deliberately failed to disclose over 30+ affiliates and their gross revenues in its Form 175 and Form 601 and Mr. DePriest as a co-controller (as a spouse and as the Petition shows the actual controller, Manager and Director of MCLM) and to disclose John Reardon as an officer and disclose his numerous affiliates and their gross revenues (e.g. Mobex Communications, Inc. and its various subsidiaries including Mobex Network Services LLC). At all times, MCLM had FCC legal counsel, its alleged sole owner, Sandra DePriest, is an attorney and has managed FCC licensees with her husband, MCLM's co-controller (or actual sole controller), Donald DePriest, who has owned and controlled other FCC licensees, including MariTel, Inc. that participated in FCC auctions; and MCLM's CEO and President, John Reardon, who was one of MCLM's authorized bidders in Auction No. 61, is also an FCC-practice attorney and managed Mobex

Communications Inc. and its subsidiaries, most of which were FCC licensees. Thus, there is no way that MCLM did not know it had to list Donald DePriest and his affiliates and John Reardon and his affiliates and that those affiliates' gross revenues clearly disqualified it from its applied for bidding credit amount (just Mr. DePriest's affiliates alone disqualify MCLM).

Contrary to the Opposition's arguments regarding past revoked licenses, MCLM has asserted in the WCB Proceeding that it is taking over the assets of Mobex and is stepping in the place of Mobex regarding Mobex's past licensing activities before the FCC including for refunds of any fees paid to USAC for USF by Mobex. Since MCLM is seeking to benefit form Mobex's past licensing activities, it is also subject to past Mobex liabilities. In addition, the FCC has determined that the liabilities of a license or licensee cannot be laundered or removed by an assignment (see *Order*, DA 04-4051, released December 28, 2004. *19 FCC Rcd 24939).*

It is established in law that you cannot acquire assets of this kind without the associated liabilities because those liabilities cannot be remedied simply by monetary payments to parties injured by the liabilities. The remedy or relief is the invalidation of the asset itself. That is the meaning of not being able to launder defects in licenses by an assignment. One cannot get rid of the defect/liability by the assignment. It stays with the license.

In addition, the Mobex-MCLM Chicago station of KPB531 had a modification application, which MCLM continued to uphold and still does before the FCC (for Sears Tower) that was denied by the FCC when it found the Chicago station that it was seeking to modify was permanently discontinued. However, at no time has MCLM updated the Application under Section 1.65 to disclose this denial of its modification application or the termination of its Chicago station license.

Regarding the Opposition's assertion that Petitioners have not had their constitutional petition rights chilled, the Petition gave ample evidence and the Opposition does not refute the Petition's showing. Petitioners refer to their appeals in the Auction No. 61 Proceedings that

clearly show the FCC conducted a private proceeding without Petitioners in order to grant the MCLM Auction No. 61 Form 601 that resulted in grant of the License. In that proceeding, the FCC in their order denying Petitioner's original petition to deny said that they would deal with the Sandra DePriest and husband affiliation in separate proceeding, even though Petitioners' raised the issue and facts in their petition to deny. Then MCLM filed a major amendment under Section 1.2105, bidder status and control, for its Form 601 and then the FCC issued an order granting that major amendment and deciding upon facts raised by Petitioner's petition to deny, but not allowing Petitioners' to participate at the petition to deny stage. The FCC could not deny Petitioners' petition to deny and then proceed to allow filing of the MCLM amendment and grant it. However, now the FCC is investigating MCLM based on the facts in Petitioners' original petition to deny that was denied by the Bureau. The private arrangement between MCLM and FCC staff resulted in the denial of Petitioners' petition to deny, but on the very same basis that was the essence of that petition to deny regarding change in bidder size due to undisclosed affiliates and undisclosed control (a spouse who was co-controller), the FCC and MCLM arranged that MCLM would submit an "amendment" to speciously get around those fatal defects. The fact that an "amendment" had to be submitted and granted shows that the denial of Petitioners' petition to deny was deliberately unlawful. The same decisional facts were involved. If Petitioners' petition to deny had insufficient facts to call into question the grant of the MCLM Form 601 application and thus for the petition to be granted and a formal hearing required, then there would have been no need for the amendment, as a devious remedy for the fatal defects. In addition, Section 1.2105 and the Commission's rulemaking creating it clearly describe change in bidder size (designated entity bidder discount level) and/or change in control as an impermissible major amendment after the deadline for the Form 175. Both of those things happened, which is why the devious amendment arrangement was made between FCC staff and MCLM. However, at minimum, waivers would have been required to get around those clear impermissible major

changes stated in Section 1.2105. In fact, MCLM submitted a waiver request essentially admitting the defects and seeking relief since the alleged sole controller, Sandra DePriest, was an alleged minister of a church and a woman, but with no good cause shown for its rule violations. In addition, MCLM continued to falsely assert that a large numbers of affiliates, and their gross revenues, were not affiliates and not attributable. After that time, MCLM has admitted that its previous sworn statements were incorrect in the two ongoing FCC investigations: Section 308 Proceeding and the Enforcement Proceeding. To this day, MCLM has not amended its Form 175 or Form 601 and disclosed its affiliates and attributable gross revenues or its actual controlling interests. It's initial amendment failed to do that. Further, the FCC, as noted above, has denied Petitioners' FOIA request under FOIA Control No. 2010-379, which in part, requested gross revenue information submitted by MCLM that was supposed to be stated publicly and given to Petitioners. Thus, the FCC has blocked Petitioners' access to relevant information of decisional significance to the Section 309 Proceeding, much of which should be public anyway by rule, and thereby continues to deny Petitioners' their constitutional petition rights and to continue to unfairly hold a private proceeding with MCLM (as noted above, all auction applications, except apparently MCLM, had to comply with FCC auction rules and fully disclose their affiliates and their gross revenues. Yet, MCLM has admitted to numerous affiliates and additional gross revenues, and none of these appear on its Form 175 or Form 601 for Auction No 61).[7]

Regarding the MCLM assertions on the Opposition's page 8, last paragraph:

(1) None of the companies on the service list complained to Petitioners in any way, thus, it

[7] This includes requiring MCLM to disclose John Reardon and his affiliates and their gross revenues on the MCLM Form 175 and Form 601 applications. As evidenced by the FCC Order, DA 06-2368, and the MCLM May 25, 2006 Letter to Catherine Seidel, Acting Bureau Chief, WTB, the FCC has known that Mr. Reardon was President (an officer) of MCLM and that his affiliates and their gross revenues had to have been listed per FCC rules since 2006, but never required MCLM to do so. Attachment 003 of the Petition is further evidence that Reardon, by MCLM's own statement to a Florida Court and Mr. Reardon's own affidavit to that court, is MCLM's President and CEO.

must be accepted that they desire or do not object to being served;

(2) All parties served were either (i) directly involved in the subject case, or (ii) based on FCC filings or information provided to Petitioners, were involved in dealings with MCLM that were challenged by Petitioners before the FCC in the instant case and/or in cases with pleadings referenced and incorporated in the instant-case pleadings, and thus, were properly served, or (iii) MariTEL which is served in accord with the matters in the FCC Enforcement Bureau's "Section 308" proceeding that investigates MCLM and its affiliates including MariTEL including as to some inter-related matters;

(3) Petitioners' service to those on the list not directly a party to the matter was in accordance with advice of FCC staff attorneys who consulted with the FCC Office of General Counsel: in brief, if a pleading references some other case by Petitioners adverse to some entity, even if the reference did not expand upon said other case, said pleading should be served on said other entity, and in this regard,

(4) All Petitioners claims are fully supported by facts and law, including as to violations of the US criminal code by MCLM false statements to the FCC, and in fact they are presenting these matter to appropriate US inspector and prosecutor offices;

(5) MCLM does not cite any FCC authority in support of its general allegations in this paragraph, or contrary to the preceding four points; and MCLM gives no proof of *current* customers (Petitioners provide service based on records of past actions and behavior, and non party served has indicated to Petitioners that the service is moot at this time or otherwise not desired). (In addition, selling FCC licenses to someone does not make them a "customer" unless the subject business is warehousing and selling off radio spectrum.)

(6) Further, MCLM is in direct violation of the two FCC Orders in 2009 and 2010 regarding its obligations to give to Petitioners (as the co-channel geographic-licensees) the stations' technical details of its alleged-valid and always-operated Site-Based AMTS stations, under rule

section 80.385(b)(1), while it asserts in the market and to desired "customers" of its warehouse-liquidation "business" service and interference contours based on said stations' technical details: Petitioners have rights to inform all such "customers" as to these MCLM rule violations that undermine Petitioners' FCC rule-based rights, including by providing to them copies of the instant-case pleadings, and as to other MCLM actions that support revocation or termination of said MCLM Site-Based AMTS stations (see §80.385(c)), and its geographic spectrum obtained in Auction 61 to which Petitioners' have pending claims before the FCC, in order to protect said claims of Petitioners.

(7) With regard to some parties on the service list: in the instant case, and pleadings of cases referenced and incorporated in the instant case, Petitioners allege, for good cause given, unlawful acts, including attempts at laundering MCLM unlawful actions and license defects, against said parties. It is thus appropriate to serve them, for this reason also.

(8) Petitioners informed all parties that did not obtain the attachments and exhibits to the Petition that they were filed on ULS and could be obtained there under the subject Application. Therefore, they had access to the attachments and exhibits.

4. Mobex is a Predecessor-in-Interest of MCLM and It or Its Officers and Owners May Actually Be in Control of MCLM

As shown in the Petition at page 60, Attachment 003, the WCB Proceeding and elsewhere (see e.g. Exhibit 1 to the Jackson Reply), there is now ample evidence showing that Mobex is MCLM's predecessor-in-interest, apart from the MCLM filing in the New Jersey case. In fact, the additional evidence in the Petition showing that Mobex is MCLM's predecessor in interest only goes to support the Petition's arguments that the original MCLM New Jersey filing is actually accurate and was not an error as MCLM now attempts to argue. For MCLM and its counsel to continue to make the same argument in its Opposition regarding its filing in the New Jersey court (an argument it has made repeatedly in other oppositions), in spite of the ever-

growing mountain of evidence confirming that Mobex is its predecessor, including FCC determinations and MCLM admissions in Florida court, shows that MCLM is merely grasping at straws.

For example, Petitioners have shown that Mobex is MCLM's predecessor-in-interest, not just by their own admissions in the New Jersey Case, but also by FCC rule and other facts in the records including those provided in the New Recon and Supplement to New Recon, the Petition (see e.g. its Attachment 003 and others), and WCB Proceedings that show that Mobex is MCLM's predecessor-in-interest and affiliate and that it needed to be disclosed on the MCLM Auction No. 61 Form 175 and Form 601 (in the WCB Proceedings MCLM itself has told the FCC that it is Mobex's successor-in-interest; the flip side of a successor-in-interest is a predecessor-in-interest, the one necessarily implies the other, and the WCB has stated in Order, DA 10-1013 that Mobex is MCLM's predecessor). The Opposition fails to refute the clear facts in Petitioners' filings in those proceedings other than with bald assertion. Petitioners also note, that MCLM has contradicted itself before the FCC several times now in the Auction No. 61 Proceedings regarding its affiliates, attributable gross revenues, its control and ownership, its directors and officers, etc. As shown in the Petition, MCLM stated in a NJ court filing that Mobex was fully merged into MCLM (MCLM's attorney must have had review and approval of its client prior to filing that statement). Petitioners, upon seeing that statement, then referred to and cited to it in their FCC filings. After seeing Petitioners' FCC filings, MCLM then made a filing to attempt to retract that statement. However, just because MCLM is attempting to retract that statement does not mean it was not accurate and correct. That contradiction in statements is not something that MCLM can readily dismiss or correct with another filing, especially when the facts in the record support MCLM's original statement and Petitioners' arguments. The FCC may determine to investigate further, although there is clearly enough evidence in the record already showing that Mobex is a predecessor-in-interest and affiliate of MCLM under FCC rules

and precedents, including but not limited to the WCB Order noted above, the FCC past rulings regarding Mobex and Regionet and Watercom, that Mobex's President, John Reardon, is also, per records before the FCC, including in the Petition (see e.g. Attachment 003, New Recon, Supplement to New Recon, the 19 Pages of documents obtained by Skybridge Spectrum Foundation under FOIA Control No. 2009-089, the 2010 Supplement (that discussed the MCLM May 25, 2006 Letter to the FCC from Mr. Reardon as President and the FCC Order, DA 06-2368, that identifies said letter at Footnote 8)) and elsewhere, the President and Chief Executive Officer of MCLM.

Further, regarding the relationship between MCLM and Mobex, see Attachment 3 hereto and Petitioners' notes on it. These are relevant pages from the declarations by John Reardon in support of Mobex's motion and reply, as well as Plaintiff's addendum re: Michael Monier's deposition testimony (Mr. Monier was a principle owner of Mobex), in William J. Greene et al. v. Mobex Communications, Inc., et al., Case No. C01-3592 CRB, US District court Northern District of California, San Francisco Division. Mr. Reardon's declarations in that case show that Mobex was making considerable amounts of revenue, on average $1.2 million/month and that was expanding. Based on that, Mobex's income would have been even more in 2002 and years after. Mr. Reardon says in his declaration that he has determined Mobex's worth to be in the $160 million dollar range and that he is in expert in such matters, having sold spectrum to Nextel for $100 million that had originally been appraised by an appraiser at only approximately $30 million. This is further evidence why Mobex being an affiliate of MCLM is relevant to Auction No. 61 MCLM Form 601 since it shows significant gross revenues of Mobex that when attributed properly to MCLM would have disqualified MCLM from any bidding credit. They also show MCLM made false certifications on its Auction No. 61 Form 601 regarding its affiliates have little to no attributable gross revenues.

In addition, MCLM has not shown it had the money or backing to buy Mobex at or near the value that Mr. Reardon had determined for Mobex, $160 million, just a few years prior to MCLM acquiring Mobex. Thus, from this evidence, it appears that MCLM likely still owes Mobex and Mobex's officers and owners substantial sums of money and that Mobex may actually be the party in control of MCLM or have rights to control MCLM and to significant, including majority, ownership of MCLM. This appears to be why Mr. Reardon, in spite of Mrs. DePriest's recently repeated claims that Mr. Reardon has never been an officer of MCLM, continues to signs contracts and other documents for MCLM as its CEO and otherwise represent MCLM in leasing and selling MCLM's AMTS licenses to third parties. See for example, Attachment 1 hereto that is a Decemeber 2010 letter from Dallas Area Rapid Transit to the Texas Attorney General that copies Mr. Reardon as CEO of MCLM.

5. Control in MCLM: Evidence Shows Insolvency, Leading to Effective Control by Creditors (and That May Be Actual Control Rights, by Withheld Documentation)

Background

It is well settled under State law that directors and officers of a solvent company owe fiduciary duties to act with honesty, loyalty and good faith to the company's shareholders, since the shareholders are the owners of the company and its residual risk bearers. The duties of the management define the lawful control in the company: actions it can and cannot take under said settled State law. So long as the company remains solvent, the company's obligations to its creditors are governed simply by their contractual arrangement. However, when insolvency arises, said duties and lawful exercise of control change.

Evidence presented and referenced herein shows that MCLM and its alleged owners and controllers are insolvent. Thus, their creditors "become the enforcement agents" (see below) of said fiduciary duties and related control, and by such, the creditors have effective *de facto*

control in MCLM.[8]

MCLM is a Delaware domiciled LLC. Mobex, which "merged into MCLM,"[9] is also a Delaware domiciled company. When a Delaware company becomes insolvent, under Delaware law, management's duties shift to the company's creditors. *See, e.g., Geyer v. Ingersoll Publ'ns Comp.*, 621 A.2d 784, 787 (Del. Ch. 1992) ("When the insolvency exception does arise, it creates fiduciary duties for directors for the benefit of creditors."). See also, *Credit Lyonnais Bank Nederland, N.V. v. Pathe Communications Corp.*, No. 12150, 1991 Del. Ch. LEXIS 215, 108 (Del. Ch. Dec. 30, 1991) ("At least where a corporation is operating in the vicinity of insolvency, a board of directors is not merely the agent of the residue risk bearers, but owes its duty to the corporate enterprise.").

The Delaware Chancery Court (affirmed by the Delaware Supreme Court) explained:

> [I]nsolvency does not … turn directors into mere collection agents. Rather, the creditors become the enforcement agents of fiduciary duties because the corporation's wallet cannot handle the legal obligations owed…. In other words, the fiduciary duty tool is transferred to the creditors when the firm is insolvent in aid of the creditor's contract rights.
> * * * *
> If the firm is insolvent, its residual claimants are the creditors and it is for their benefit that the directors must now manage the firm. A purposeful fraudulent transfer to stockholders who are "out of the money" is obviously inconsistent with the best interest of the creditors, the firm's new residual claimants.

Trenwick Am. Litig. Trust v. Ernst & Young, LLP, 906 A.2d 168, 204, n.96 (Del. Ch. 2006), *aff'd*, 931 A.2d 438 (Del. 2007) (emphasis added).

The Delaware Supreme Court, in the following year, discussed this further in *North American Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007) (underling added, italics in original, some footnoted in original deleted):

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[8] Other evidence presented previously shows that MCLM was a sham company from its start. Herein, we also show evidence that MCLM was set up from the start with Mobex or its interest holders as the actual control, and that said actual control continues to this day.

[9] As the Petition showed, this is what MCLM told the New Jersey Court in a filing made in Petitioners' case in NJ against MCLM and others.

> NACEPF … and various affiliates … owned a significant percentage of FCC… "Instruction Television Fixed Service" … licenses.
> * * * *
> …. insolvency may be demonstrated by either showing (1) "a deficiency of assets below liabilities with no reasonable prospect that the business can be successfully continued in the face thereof," or (2) "an inability to meet maturing obligations as they fall due in the ordinary course of business." [19]/ ….
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> 19/ For that proposition, the Court of Chancery also relied upon *Production Res. Group v. NCT Group, Inc.*, 863 A.2d at 782 (quoting *Siple v. S & K Plumbing & Heating, Inc.*, 1982 Del. Ch. LEXIS 553, 1982 WL 8789, at *2).
> * * * *
> When a corporation is *insolvent*… its creditors take the place of the shareholders as the residual beneficiaries of any increase in value.
>
> Consequently, the creditors of an *insolvent* corporation have standing to maintain derivative claims against directors on behalf of the corporation for breaches of fiduciary duties. [38] The corporation's insolvency "makes the creditors the principal constituency injured by any fiduciary breaches that diminish the firm's value." [39] Therefore, equitable considerations give creditors standing to pursue derivative claims against the directors of an insolvent corporation. Individual creditors of an insolvent corporation have the same incentive to pursue valid derivative claims on its behalf that shareholders have when the corporation is solvent.

Petitioners have presented in this proceeding (including by reference and incorporation of pleadings [including their attachments] in other related proceedings, including in the "Section 308" proceeding by the FCC Enforcement Bureau, clear evidence that MCLM, a Delaware LLC, is insolvent under the Delaware Supreme Court's second test stated above (item '(2)'). This includes the following:

(i) MCLM is owned and controlled by Sandra DePriest with her husband Donald DePriest, according to their statements and admissions;

(ii) Mr. Depriest has stated in the Goad Case[10] that he and his wife file joint tax returns (have joint economic lives and business) and that he (thus, they) has minimal income and more debt than assets. He also says in his motion to stay Mr. Phillips' judgment against him and

[10] See Attachment 006 of the Petition that includes Mr. DePriest's response to Mr. Goad's interrogatories in the Goad v. DePriest case and also Mr. DePriest's motion to stay the Mr. Phillips judgment against him and Mr. Phillips response therefo in the Phillips v. Donald DePriest and MCLM case **(Note: Mr. Phillips and Mr. Goad are both suing Mr. DePriest and MCLM, not just Mr. DePriest).**

MCLM (note the case is against Mr. DePriest and MCLM) that he has minimal income and little to no assets since he has many debts to various parties (see pages 30-40 of Attachment 006).

(iii) Mr. DePriest and his wife have subjected MCLM to debt agreements, using MCLM licenses as collateral in amount in excess of $4-5 million,[11] and they have other personal debt in amounts in excess of $18 million;[12]

Considering the above, including the statements in the Goad and Phillips cases noted above, it is clear that MCLM and the other businesses and economic affairs of the DePriests are and for a long time have been insolvent. Thus, under the controlling Delaware law cited above "the creditors [have] become the enforcement agents" and "take the place of the shareholders as the …beneficiaries" in MCLM. The FCC recognizes in all cases that the ultimate control in legal-entity licensees resides in the owners, not in the day-to-day management. Under the above-noted Delaware law and MCLM circumstances, the real control resides now in the creditors since they "take the place of the shareholders" and "become the enforcement agents" over the day-to-day managers to control the licensee entity under their fiduciary duties (including to follow applicable law, including FCC law).

For the above reasons, and since many of the creditors of MCLM have unpaid and overdue debt into the millions of dollars and are experienced business persons or entities with financial capability, there is good cause to believe that some have taken action to secure by rights in MCLM to take over, or direct, the day-to-day, or "supermajority" major-action actions of MCLM, due to the above noted ultimate power they have over MCLM in its insolvent state.

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[11] See the Petition's discussion of these and Mrs. DePriests responses to the WTB Letters of Inquiry in 2009 and the EB Letters in 2010. They include a Pinnacle Bank loan, a loan from the "MC Group", and others. Petitioners have not even fully reviewed UCCs, etc. for additional sums that MCLM may have borrowed.

[12] See the Petition's discussion of these, but they include debts to Oliver Phillips of over $9 million, the State of Alabama over $2 million, the IRS around $1 million, Mr. Goad approx.. $200K, Pinnacle Bank $4 million, Fifth Third Bank over $550K, and others (See e.g. Attachment 006 of the Petition at its page 21 and Attachment 007 re: State of Alabama ADECA).

One of the or perhaps the main creditor in MCLM is Mobex for reasons noted above. But in any case (even not considering Mobex), there is ample documentary evidence of said insolvency and creditor debt.

For the above reasons, the FCC should investigate these creditor, insolvency and related ultimate control issues, for purposes of determining de facto control (and perhaps change of de jure control, depending on the what rights creditors have secured), as well as determining affiliation cased by arrangements with creditors and when those arose.

6. John Reardon, Again As MCLM Chief Officer: Conflict in MCLM as to Control, Opposition Ineffective

The Petition showed that Sandra Depriest alleged she had full control in MCLM and Mr. Reardon was never authorized to take officer actions (which, by legal definition and case law, include execution of contracts with outside parties) and would not be allowed to use any officer title, even. However, as shown in the Attachment 1 hereto, and its margin notes in dark red, Mr. Reardon continues to act as the CEO of MCLM. There is an apparent power struggle or other dispute in MCLM. [13]

Given the clear dispute, or at least directly contradictory assertions, of who is in authorized to take action in MCLM, including in the senior chief officer position, the subject

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[13] The FCC has more than ample evidence of this clear dispute in officer control of MCLM to invesigate these matters. In this regard: Mr. Reardon was the CEO of Mobex before and after it was sold to MCLM, coupled with MCLM's maintaining the AMTS site-base stations it took over from Mobex (maintaining them not lawfully by actual AMTS operating stations, but by not turning them in to the FCC or cancellation): The only reasons MCLM would do that, incurring site cost when it has no customers and income (shown in its USFA Forms 499A, lack of any public information on AMTS CMRS public services, etc.) in the parts of the US where it holds the same geographic AMTS spectrum as in these site-based stations, is that MCLM is worried that it will lose the geographic licenses, and then be left with only the site-based stations assigned to it by Mobex. Mr. Reardon, who arranged for his company Mobex to sell those station licenses to MCLM, may have rights to them in case MCLM loses the geographic spectrum, due to unlawful action of Sandra DePriest and Donald DePriest (if Mr. Reardon was not a part of that). This may be a reason for the officer dispute in MCLM.

Opposition cannot be taken as the lawful act of MCLM—no act of that company can be taken as lawful in this situation, including the subject Application.

7. John Reardon, Denied as Officer in MCLM:
Thus, the Application is Invalid

The Opposition did not refute the evidence in the Petition that the alleged sole controller of MCLM, Sandra DePriest, adamantly instructed the FCC that John Reardon was never an officer in MCLM. To say that he is only an "Authorized Employee" is to admit that he is an officer. The legal and industry definition of "officer" and its origin, mean nothing more or less than an employee of a legal entity authorized to take certain acts to bind the entity. That law was presented by Petitioners in their petition to deny the MCLM assignment of AMTS spectrum to the Southern California Railroad Administration which is among the past pleadings referenced and incorporated in the subject Petition. Since Ms. Depriest has denied that John Reardon is an officer in MCLM, he is not authorized as an employee to take any actions to bind MCLM including the subject Application.

The Application is thus not the act of MCLM and must be dismissed on this basis alone, and should be sanctioned.

Clearly, MCLM has reasons for all of its endless contradictory statements (lies) to the FCC, Petitions, and the market: one of them here is that MCLM does not want Mobex to be its affiliate for Auction 61 purposes, and if John Reardon is an officer in MCLM (as MCLM and other records show he was, before and after Auction 61), then Mobex, apart from other reasons, is MCLM's affiliate since John Reardon is the chief officer in Mobex (an officer of the Applicant in an auction, causes that persons affiliates to be the affiliates of the applicant). Also, if MCLM now admits to Mr. Reardon being an officer, as the evidence in the Petition shows he is, then it means that Sandra DePriest perjured herself yet again in the Section 308 Proceeding and

Enforcement Proceeding. Thus, MCLM is now attempting to call Reardon "only" an "authorized employee" which is simply the summary definition of an officer to start with.

Where the FCC uses both terms--"officer" and "authorized employee" -- together, that does not contravene the legal and industry meaning of "officer" but it obviously means that what counts in determining an officer is not the title but the function: substance over form. "President," "Secretary" and other common titles for officer positions are not the limits of who is an officer: any "authorized employee" that acts for the legal entity is an officer by said authority and function or act.

Thus, the Application is unauthorized since, despite use of the term "authorized employee," MCLM's alleged sole controller adamantly instructed the FCC that John Reardon has no officer authority in MCLM. At minimum, use of that term "authorized employee" in the fact of that denial, must be cause for a hearing under Section 309(d) of the Communications Act as to who, in fact, has taken any act for MCLM that is valid, and what the FCC should do with regard to acts found unauthorized and invalid. In fact, the larger issue is that MCLM has acted as a sham corporation or legal entity before the FCC (and other governmental entities, and private parties): the Reardon issue being just one prong of the sham that is abundantly clear.

8. Relevant Petition for Forbearance

Petitioners reference and incorporate herein their Petition for Forbearance filed with regard to MCLM (and Paging Systems, Inc.) on or about January 11, 2011.[14] A copy of the Petition for Forbearance may be obtained at the following two links:[15]

http://www.docstoc.com/docs/68525207/Petition-for-Forbearance_-Skybridge-et-al-Certain-Part-80-rules-___

[14] Petitioners are attempting to complete and file said Petition for Forbearance on Jan.11, 2011, but it may be filed soon thereafter.

[15] These links contain both the filed Petition for Forbearance, including its various attachments, and any subsequent related materials filed with the FCC.

http://www.scribd.com/doc/46369213/Petition-for-Forbearance-Skybridge-Et-Al-Certain-Part-80-Rules

The Petition for Forbearance contains relevant facts and arguments to the instant proceeding, including (1) MCLM's ongoing violation of FCC rule section 80.385(b)(1) and the two FCC orders regarding that rule, DA 09-793 and DA 10-664, that each instruct that said rule requires the site-based licensees to give Petitioners certain specific details of their alleged valid stations; and (2) various other FCC rule violations by MCLM.

9. Other

Lack of Required Waiver Per MCLM

In addition, contrary to the Opposition, the Application must be rejected because Dixie seeks AMTS exclusively for land communication purposes, which is contrary to assertion that MCLM has repeatedly made to the FCC in other pending license assignment application including to SCRRA and subsidiaries of Alliant Energy Corporation, in which assignor and assignee asset the need for waivers of various AMTS rules specific to maritime service, including to give priority under Section 80.123. Either those other applications were incorrect or the Application is defective for failing to seek said waivers. It is clear from a description of Dixie on its website that it is not a maritime communication or other maritime service provider.

AMTS Should be Maintained for Its Maritime Transportation Purposes

Wireless communications to points on electric and transmission lines and distribution facilities does not need to use low-range high power AMTS spectrum, which is needed for far more difficult land-mobile, wide area transportation systems that maintain priority to and also actually serve maritime transportation services. See also the discussion of the importance of maintaining the maritime purposes of AMTS in Petitioners' December 22, 2010 petition to deny noted above regarding an assignment between MCLM and subsidiaries of Alliant Energy

Corporation ("Alliant") and also the sections from Petitioners' related December 22, 2010 Motion to Dismiss of that same assignment between MCLM and Alliant.

AMTS Geographic Spectrum, as Licensed, Should not be Broken Up

See also Attachment 2 in regard to this section regarding maintaining the AMTS along the Gulf Coast Intracoastal water system and adjoining waterways. The FCC decided to license AMTS in extraordinarily large geographic areas per license specifically defined by US Coast Guard maritime transportation and service regions. That further shows, in addition to what is shown above, the critical importance of maintaining AMTS for the rule defined purposes, including for the nation's major maritime transportation corridors and services, and as noted above, comparable, critical major land transportation corridors and services. MCLM is attempting to split up what the FCC properly allocated in very wide area licenses by assigning relatively small portions of those to various entities. That is not in the public interest for reasons noted and it greatly decreases spectrum efficiency because each geographic license under Section 80.479 creates a no-man's land along its borders and where the spectrum cannot be used due to the neighboring co-channel licensee's rights. Even if they agree to spectrum sharing at the border, that has far less spectrum efficiency than could be achieved with wider geographic areas.

10. Conclusion

The relief requested in this proceeding by Petitioners should be granted.

[There are three Attachments to this Reply that are being filed separately via ULS. They are Attachment 1, Attachment 2 and Attachment 3 as noted in the text above.]

Respectfully,

Environmentel 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
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V2G LLC, by

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Warren Havens
President

Warren Havens, an Individual

[Filed electronically. Signature on file.]
Warren Havens

Each of Petitioners:
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Date: January 11, 2011

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing *Reply to Opposition to Petition to Deny, or in the Alternative Section 1.41 Request and Conditionally: Supplement to Petition to Deny and Request to Accept Supplement* 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

January 11, 2011

Certificate of Service

I, Warren C. Havens, certify that I have, on this 11th day of January 2011, 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 to Opposition to Petition to Deny, or in the Alternative Section 1.41 Request and Conditionally: Supplement to Petition to Deny and Request to Accept Supplement*, unless otherwise noted, to the following:[16]

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Federal Communications Commission
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Baton Rouge, LA 70895

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

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/s/ [Filed Electronically. Signature on File]

Warren Havens