

MAY 26 2011

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)
MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC) FCC 11-64
Participant in Auction 61 and Licensee of Various)
Authorizations in the Wireless Radio Services) EB Docket No. 11-71
) File No. EB-09-IH-1751
) FRN: 0013587779
) Application File No.
) 0002303355
) Application for Modification of Various Authorizations in the
) Wireless Radio Services)
) Applicant with ENCANA OIL AND GAS (USA), INC.;)
DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP;) Application File Nos.
JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC) 0004030479, 0004144435,
COOPERATIVE; PUGET SOUND ENERGY, INC.; ENBRIDGE) 0004193028, 0004193328,
ENERGY COMPANY, INC.; INTERSTATE POWER AND LIGHT) 0004354053, 0004309872,
COMPANY; WISCONSIN POWER AND LIGHT COMPANY;) 0004310060, 0004314903,
DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.; ATLAS) 0004315013, 0004430505,
PIPELINE -- MID CONTINENT, LLC; DENTON COUNTY) 0004417199, 0004419431,
ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC;) 0004422320, 0004422329,
AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY) 0004507921, 0004153701,
) 0004526264, 0004636537
) For Commission Consent to the Assignment of Various)
) Authorizations in the Wireless Radio Services)
) and 0004604962
))
))

To: Marlene H. Dortch, Office of the Secretary
Attn: The Commission (*copy only*)
Attn: Hon. Richard L. Sippel, Administrative Law Judge, Office of Administrative Law Judges

Opposition to Showing Pursuant to Footnote 7[1]
(Initial Opposition)
(replacing Opposition of the same name filed earlier on the same date: "First Filing")
And Errata to First Filing

The undersigned parties (the "Petitioners") submit this initial opposition to the Maritime Communications/ Land Mobile LLC ("MCLM" or "Maritime") motion or showing pursuant to Footnote 7 that was filed in this docket (apparently on or about May 12, 2011) with the FCC (the "M-Motion" or "MCLM Motion").[2] [Footnotes appear on a subsequent page.]

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List A B C D E

Applicable FCC Part 1 rules allow this pleading to be filed under the 20 applications on the OSC Caption, including the subject Application. However, other rules along with the OSC indicate that this pleading may need to be filed, or also filed, in paper form with the Secretary. Petitioners intend to file this pleading as amended, or a replacement pleading of the same name, on ULS by the end of this day. Due the Petitioners situation with the Nossaman law firm, created by the conflict they identify and due to the SCRAA's Los Angeles County declining to provide a conflict waiver, Petitioners have been without counsel and are also time constrained in submitting this filing. They apologize for any inconvenience causes but these events outside their control.

While this Opposition is to the M-Motion, since it supports the SCRRRA motion and since the M-Motion suggests that MCLM has some independent expertise or factual awareness of the accuracy of the facts asserts in the SCRAA Motion, we discuss here defects in the SCRRRA asserted facts. But also, MCLM shows nothing as to its indicated expertise or awareness of the matters it supports.

I. Procedural Defects

The M-Motion should be summarily dismissed for the following reasons:

(1) The M-Motion showing fails to meet the explicit requirements of Footnote 7 of the *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, 76 FR 30154 (the "OSC"), which defined "Parties" as Maritime Communications/ Land Mobile LLC ("MCLM" or "Maritime") and SCRAA (defined above, also called "Metrolink") as goes on to state that "we will, upon a showing by the Parties, consider whether, and if so, under what terms and conditions, the public interest would be served by allowing the Metrolink application to be removed from the ambit of this Hearing Designation Order." However, the Parties did not file the M-Motion, only MCLM filed it, thus, the M-Motion fails to comply with this threshold requirement.[3]

(2) The above-cited footnote conflicts with FCC law and the OSC itself. When a matter is set for a hearing, including in this case the subject Application (MCLM assignment to SCRAA captioned in the OSC) (the "Application"), the matter is before the assigned Administrative Law Judge and not the Commission itself or the Enforcement Bureau. The Footnote 7 statement cited above states that "we" (meaning the Commission that signed the OSC) will consider any such showing by the Parties, however, only the ALJ may consider any such showing or other motion on matters designated for a hearing before the ALJ. This paragraph thus states a procedure in conflict with the gist and character of the OSC and applicable rules. The ALJ has not issued any statement with the effect of said Footnote 7, nor was the M-Motion presented to "we" (the Commission) and it is not authorized under or in the form of a motion under Part 1, Subpart B rules.

(3) The M-Motion is defective for lack of an sworn statement (affidavit of declaration under penalty of perjury) as required for motions, or in this case an "showing" seeking relief under a motion. The M-Motion is a pleading in opposition to Petitioners motion to deny the Application and thus must contain said sworn statement under FCC rule § , as well as under 47 USC §309(d), and it also must contain said sworn statement under FCC rule § 1.229(d). After the matters being set for a OSC hearing after lengthy FCC investigation of MLM but also lengthy FCC review of the special docket for this Application, WT Docket No. 10-83, each of which rests in large part on facts submitted with representations by SCRAA and MCLM, and supporters of them including PTC 220 LLC, and challenges of all said essential factual representations by Petitioners (by Petitioners submitted documentary and other evidence), it is clear that there are contested facts at the core of the OSC and the subject Application. Since the M-Motion failed to provide the required sworn statement (and since MCLM and SCRAA did likewise in past pleadings in support of the Application-- this is a practice, in all cases by highly experienced counsel and parties in FCC matters), the M-Motion should be summarily denied.

[1] [A software problem is causing footnoted to not all be on the same page as the text with the footnote marker. That will be fixed in future filings.]

This is an “Initial Opposition,” for reasons stated herein. *This is filed by Petitioners without counsel for reasons described in attachments hereto and in an email exchange (of recent several days including today) between J. Stobaugh of Petitioners to the Administrative Law Judge and response by his clerk.* Other parties were copied on the exchange. In sum, the Nossaman law firm determined that it had a conflict in its representation of Petitioners due to being counsel to Los Angeles County which (as Petitioners understand from Nossaman) which involves SCRRA, and since this County’s counsel would not provide a conflict waiver. Petitioners do not independently understand or represent in this pleading as to these conflict issues, or what Nossaman discussed with this County on this matter.

[2] The instant M-Motion is defective and should be summarily rejected, and the OSC itself is defective, each for reasons shown herein. However, if the instant M-Motion is not summarily dismissed or if the OSC is not promptly made secondary to Petitioners' hearing rights under 47 USC §309(d), then Petitioner may later, including by substitute counsel (see below), file a amended or replacement Opposition to the M-Motion: Petitioners have rights to submit said later Opposition for reason given herein.

[3] Nor did the earlier filing of SCRRA for the same basic purpose (but not all same content) cure this defect, since it also was only by one of the Parties, and neither party consolidated their filings, or make clear what they were jointly asserting. It is not up to the adjudicator to cure these defects, or speculate as to what these parties did or did not actually jointly agree to and mean to submit. In addition, the MCLM filing was by an attorney that did not file a notice of appearance on behalf of MCLM, and indeed, he is not the attorney of record for MCLM in the investigation of MCLM described in the OSC that lead to the OSC.

The undersigned parties (the "Petitioners") submit this initial opposition to the Southern California Regional Rail Authority ("SCRRA") MCLM Showing Pursuant to Footnote 7 that was filed on May 9, 2011 with the FCC (the "M-Motion" or "MCLM Motion");

Petitioners present additional reasons that in large part involve other procedural defects in part V below.

- II -

First, DA 11-838 re "Spectrum Needs for the Implementation of the Positive Train Control..." that established WT Docket 11-79 (the "PTC Need Docket") makes clear that the MCLM and SCRRA "showings" motions under OCS Footnote 7 are defective and must be summarily dismissed. The Docket shows that the FCC Bureau charged with review of the Application directly in the restricted proceeding (created by Petitioners petition to deny) and the related contested public docket on the Application Docket NT Docket 10-83, find that SCRAA and MCLM (and their supporters including PTC 220 LLC, and the FRA at least by a generic letter of support with no details), fail to show the "need" subject of that DA and the PTC Need Docket. This is a FOURTH hearing that SCRAA and MCLM have gotten from the FCC, apparently influenced by ex parte presentation pressure from railroad interests including the major for-profit railroads in PTC 220 LLC:

(1) The first hearing is a hearing on the subject Application: a hearing on this, due to the contest by Petitioners, but even without a contest, the FCC would have to consider the public interest involved (that involved a l

(2) The second hearing is a hearing in Docket 10-83. That involved a large number of pleadings including factual exhibits by Petitioners as to the entirely clear lack of need by SCRRA for 1 MHz of anything, and no need for 220 MHz range spectrum either (apart from

other technical and other showing defects to support the Application laundering of the obviously defective MCLM spectrum, and the Application wavier requests).

(3) The third hearing is in the OSC. But the FCC Enforcement Bureau (“EB”), filed a trigger-happy almost immediate support of the SCRAA Motion to escape the OSC, not even waiting for Petitioners responsive filing. (Perhaps SCRRA- Los Angeles County informed EB that Petitioners’s attorneys for the OSC, the Nossaman law firm, withdrew: the EB accepted communications on matters of its investigation leading to the OSC from anyone, without copying the parties including Petitioners).

(4) The fourth hearing is the WT Docket 11-838, noted above.

And the fifth hearing that MCLM and SCRAA seek for the Application the undefined hearing they want under the M-Motion and Motion, supported by the EB. It is a fifth since it cannot be in alternative since even to get out of the fourth, they have to provide a “showing” and Petitioners can and do challenge it. What the fifth hearing will be, the FCC does not say in Footnote 7, except Petitioners assert is clear it will be outside of FCC rules, the Federal Communications Act (“FCA”), the Administrative Procedures Act (“APA”), and Circuit and US Supreme Court precedent (as cited by Petitioners in some of the 1-3 “hearing” proceedings just noted above).

This apparently endless series of hearings (if the FCC believes it can go that far, there appears to be no end to what it believes it has authority to do) to give MCLM and SCRRA a right to another chance to demonstrate the extraordinary need these two baldly assert for 1 MHz of 220 MHz range spectrum or the nation will face dire consequences (they basically assert)—a need so great that they can launder defective and fraudulently obtained spectrum, and spectrum which Petitions unquestionably placed with lawful winning high bid—could not be more

prejudicial to Petitioners basic rights under FCC rules (auction rules, and petition to deny and reconsideration rules), and more in violation of due process of law under the above cited authorities (FCC rules, FCA, APA and court precedent up to the US Supreme Court). Petitioners are forced to present their case over and over and over.... It is like the umpire in a ball game allowing a batter to strike out, then have another bat, then another, then another, but that is not baseball, it is a comedy. Similarly, the FCC has treated MCLM – and its principals, and now its assignees-- from day one as a special entity beyond the law. Petitioners intend to take that to court, as they often noted.

Behind this—with regard to the subject Application-- is the for-profit private railroads. SCRAA disclosures to Petitioners under the California Public Records Act and public documents also, show this, and the EB acceptance of ex parte presentations indicate they have listened to these corporation's demands, and also the Wireless Bureau, which kept setting up dockets for them and their proxies and collaborators including SCRAA to have successive chance to come up with a magic trick to prove a need that does not exist, or to catch the Havens entities off guard in one of the hearings, and then say there is no opposition.

The FCC handling of the MCLM matters, from day 1 before Auction 61, to this day, is fatally flawed, a core flaw of which is that the FCC adamantly refused to provide to Petitioners the 47 USC §309(d) hearing rights that obviously have under all twenty applications captioned in the OSC, and try to kill those rights by the consolidated hearing under the OSC and then gutting the OSC by the EB support of the escape from the OSC of the leader of the pack, SCRRRA, followed of course by all the other assignee applicants. The escape pleadings (the Motion, the M-Motion, the EB filing in support, and the predictable “me-too” filings by said other assignee-applicant) essentially and argue such extraordinary need that they have national security rights,

under a form of eminent domain, but their showings are nonsense, commencing since they do not start to show that private utilities, and commuter rail (SCRAA is really a proxy for PTC 220 LLC—some of the nations’ largest private for-profit companies, one with Warren Buffet largely in ownership) are public-safety entities or exceed the spectrum needs of public safety entities, but also since they shown nothing but assertions as to their alleged extraordinary needs, or any need at all to the subject particular spectrum. The record is clear: they seek the MCLM spectrum since (i) it is a fire sale of “stolen-bike” spectrum: these assignees allege they know nothing of the MCLM fraud and spectrum defects, but is it because they know that very well that they buy the illicit asset, and (ii) it allows spectrum-inefficient cheap system build out: they state that: this 220 MHz range, high power, AMTS spectrum (especially pumped up on the waiver steroids that SCRAA and others seek), covers further than higher spectrum and is cheaper to build and operate (less antenna sites, etc.)—that admits they have or have access to higher spectrum. The FCC knows that: the primary auction market and secondary markets (sale, lease, etc.) demonstrate it.

If these railroads and power utilities and pipeline operations need cheap-coverage (and fire-sale price) spectrum or the nation fail, or other such dire consequence, then why all of a sudden is this realized, and also why do other critical transport and infrastructure and services not also need this? The answer is that SCRAA and these other assignee-applicants have nothing to show when it comes down to it, but for the cost savings noted, which their pleadings directly reveal. Further, the FCC and NTIA did survey of Railroad and Utilities spectrum needs, and the conclusion was that they did not demonstrate need for more spectrum- and are using archaic spectrum-wasteful wireless tech and systems, and are not even using spectrum they obtained—for free—from the FCC. That is still a fact. It is well know that, for example, Railroads

obtained nationwide 900 MHz on the basis of a claim of a certain need, then never used the spectrum for that need, and not much at all. But they keep the spectrum. Railroads also have many VHF channels but are not well used due to failure to move to modern digital spectrum efficient systems. Utilities and pipeline and similar operations have not moved to spectrum efficient technology and systems either, voluntarily or via the FCC refarming requirement. UTC for utilizes have for decades asked Congress to pass law to give utilities more free spectrum but their need showings failed (nor do any major commercial companies need to hit up the tax payer and Congress for free anything).

This FCC handling, including multiple hearings or trial opportunities, could not be more prejudicial to Petitioners.

Initially Petitioners state, the *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 76 FR 30154* (the “OSC”) includes the assignment of authorization application between Maritime Communications/Land Mobile LLC (“MCLM”) and SCRRA, File No. 0004144435, and the associated modification application, File No. 0004153701 (together, the “Application”). Petitioners filed a petition to deny and reply of the Application.¹ Petitioners also filed comments, reply comments and additional filings (motions, supplements, oppositions) in the docket that the FCC opened regarding that application, WT Docket No. 10-83. Petitioners hereby reference and incorporate herein all of their pleadings and filings filed under the Application and in the WT Docket No. 10-83 because those pleadings and filings demonstrate that grant of the Application is not in the public interest, that Petitioners have a right to a hearing under 47 USC §309(d) and that all of the assertions by the M- Motion are

¹ See e.g. *Petition to Deny, and in the Alternative Section 1.41 Request*, filed by Environmental LLC et al. on April 28, 2010 regarding File Nos. 0004153701 and 0004144435.

misrepresentations and demonstrate lack of candor, as well as lacking showings in support of the MCLM assertions in the M-Motion including with regard to (i) the nature of Positive Train Control (“PTC”) (as if it is a technical standard at this point in time, and as if SCRRA has adopted a technical standard)²; (ii) that the Federal government requires SCRRA directly or indirectly to obtain the MCLM spectrum in the Application; (iii) that SCRRA has current financing, regulatory (non-FCC) and other essential steps assured or suitably progressed to support their assertions in the M-Motion that SCRRA has extraordinary public-safety requirements that supersede the purposes of the OSC, that supersede Petitioners’ rights to a hearing (which was effectively granted by the OSC of their petition to deny the MCLM Form 175 and Form 601 in Auction No. 61), and that supersede requirements of the Communications Act to provide such hearing under 47 USC §309(d) and related FCC rules.

In addition, the undersigned Parties reference and incorporate all of the fact and arguments in Attachments hereto, including Exhibits 2, 3 and 4 which demonstrate why this Initial Opposition cannot be deemed due at this time, including:

(1) Due to the prejudice shown in those attachments, and for other reasons shown including but not limited to:

(2) The Parties rights to hearings under their petitions to deny the MCLM Auction 61 long form application (captioned in the OSC) and the other applications captioned in the OSC, including the MCLM-SCRAA application, have been unlawfully withheld, and replace by an OSC hearing: that is not permitted under 47 USC §309(d) and associated FCC rules: that law clearly requires that the Section 309(d) hearings come first before any hearing under Section

² Where a PTC technical standard requires a certain quantity of spectrum, and requires use of 220 MHz range of spectrum; certain power levels, and other technical standards that would support the MCLM-SCRRA application including its waivers.

308, including this OSC, for procedural and practical reasons, which include, inter alia, that Petitioners have rights to proceed against the Applicant parties in each said application hearing, and only them, and not have to proceed on one hearing against all such Application parties on one hearing, and that there is no basis in said Section 309 hearings for a party, including SCRAA, to escape from the hearing as SCRAA and the Enforcement Bureau (and MCLM) allege with regard to Footnote 7 in the OSC (and the M-Motion alleges). Once a hearing under 309 is granted, or has to be granted (as in this case, as the OSC shows and prior thereto the Enforcement Bureau investigation of MCLM and affiliates showed, which lead to the OSC), it does not allow facile escape as is being pursued by the M-Motion, with questionable support by said Bureau.

Further, said Attachments and exhibits hereto also support the substance of this Opposition, in pertinent part.

- III -

MCLM and SCRAA, as is clear in the docket for its Application noted above, understand that PTC 220 LLC has 220 MHz spectrum it can use for its PTC, and that is it is the self proclaimed forerunner of PTC for PTC 220 LLC and other railroads. None of them show any specific need for any amount of spectrum or for 220 MHz range spectrum, thus, from all the evidence, the PTC 220 LLC spectrum is sufficient. Further, Petitioners offered to SCRAA and to FRA what, from all the public evidence, is more than sufficient spectrum including in 220 MHz range for its PTC and at no cost to SCRAA, but SCRAA, FRA showed no interest. See this link (the document was sent to SCRAA and FRA). <http://www.scribd.com/doc/54660826/SkyTel-Intelligent-Railroad-Wireless-Presentation-v1>

Again, above matters are presented in past pleadings. This is the fourth hearing or proceeding afforded to/ sought by MCLM (MCLM including with SCRRA) and SCRRA's overt and hidden supporters and real parties in interest in the Application, first on its Application, then the Docket, then the OSC hearing and now the escape MCLM-SCRRA attempt form the OSC into an undefined hearing beyond the boundaries of applicable law and ALJ or Commission authority.

- IV -

This section IV's footnotes are endnotes, due to a software glitch.

MCLM recently filed an opposition to a petition to deny filed by Petitioners against an MCLM assignment (the "MCLM Opposition").¹ In that MCLM Opposition, with a declaration by Sandra DePriest, MCLM is essentially saying that the findings of the OSC are myths and inaccurate. One of the principal findings of the OSC is that MCLM has repeatedly misrepresented and lacked candor—the OSC cites to facts, including ones that are redacted. In the MLCM Opposition it does not say why those facts are myths. To summarily characterize the facts in the OSC as myths, including facts that MCLM provided to the FCC, is an abuse of process and a further level of misrepresentation and lack of candor. This is related to the MCLM M-Motion because no matter what the facts are in a proceeding, MCLM will say whatever suits its needs. MCLM is saying that somehow it has independently determined that the SCRRA assertions and needs are accurate. Yet, the OSC has shown that MCLM's word cannot be relied upon. Therefore, the FCC cannot accept anything that MCLM says in its M-Motion as truthful, accurate or sincere.

MCLM filed a Notice of Appearance filed by Sandra DePriest and did not carve out the MCLM assignment application to SCRRA (the "Application"); however, soon thereafter,

MCLM filed the M-Motion that effectively repudiates the MCLM Notice of Appearance with regard to the Application. The MCLM Notice of Appearance affirmed that MCLM will appear in the captioned matter that included the Application, but the M-Motion clarifies that MCLM does not intend to appear and participate in the hearing regarding the Application. This should at least be considered lack of candor (Petitioners intend to file a separate motion on proceeding matter) appears to indicate lack of candor by MCLM regarding its participation in the hearing.

The SCRRA Motion which the M-Motion effectively supports (including since the SCRRA Motion and M-Motion fail to comply with procedural requirements) says that “Despite its [SCRRA’s] best efforts to act promptly and effectively to maximize public safety, SCRRA has instead found itself an unwitting and unwilling captive to the much-delayed processing of these applications, and the subsequent issuance of the HDO” (SCRRA Motion at page 2). That statement lacks candor and rings hollow. SCRRA knew prior to filing the Application that there were petition proceedings by Petitioners going on (over 100 pleadings) against the MCLM AMTS licenses for over 5 years and that there was an FCC investigation proceeding commenced.² This is evidenced by many documents, including, but not limited to, (i) SCRRA’s contract with MCLM that specifically identifies Petitioners’ petitions as conditions, and (ii) SCRRA’s responses to Petitioners’ California Public Records Act (“CPRA”) requests that contain records that show that SCRRA was fully cognizant and informed of Petitioners’ petitions, facts and claims (some of those records obtained under CPRA are already presented in Petitioners’ pleadings and filings under the Application and in WT Docket No. 10-83) the FCC investigation, and of the facts cited to in the OSC regarding MCLM, (iii) the date of filing of the Application. Despite knowing of the serious issues concerning MCLM and its AMTS licenses, including a Section 308 investigation by the FCC, SCRRA still chose to enter into a contract

purchase agreement with MCLM to obtain MCLM's spectrum. SCRRA was represented by FCC legal counsel, Robert Gurss and Paul Feldman, at all times before and after signing its contract with MCLM. Thus, SCRRA's FCC legal counsel had to have made SCRRA fully aware of the fact that MCLM's AMTS licenses could be subject to an extensive, ongoing and time-consuming FCC administrative process, including a hearing.³ However, instead of pursuing other spectrum options, including contacting and negotiating with Petitioners who hold AMTS spectrum in California and 220-222 MHz spectrum (SCRRA never contacted Petitioners about acquiring or leasing their spectrum),⁴ SCRRA entered into its contract with MCLM. At no point has SCRRA attempted to get out of its contract with MCLM once it realized that the MCLM AMTS spectrum was going to be subject to an extensive FCC investigation and possible hearing. Also, SCRRA has not explained why it cannot get out of its contract agreement with MCLM and pursue other spectrum options. Thus, SCRRA cannot cry foul now and asked to be let out of a hearing process that it fully knew could occur and which it was willing to accept if it occurred when entering into its contract with MCLM. Petitioners' assert that SCRRA is now making false claims in its Motion (along with MCLM) and other filings before the FCC (as shown in Petitioners' petitions and filings against the Application and in the WT Docket 10-83) in order to unlawfully obtain government property; property to which Petitioners' have lawful rights and claims. Clearly, the Application should remain part of the OSC hearing proceeding or a Section 309 hearing since there are issues and facts to still be determined and discovered.

¹ See Maritime Communications/Land Mobile LLC *Opposition to Petition to Dismiss, Petition to Deny, or in the Alternative Section 1.41 Request*, filed May 10, 2011 regarding File No. 0004604962.

² Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau issued Letters to MCLM and its affiliates under Sections 308(b) and 403 of the Communications Act on August 18, 2009 investigating MCLM and its affiliates for compliance with FCC rules, including auction rules and §§1.17, 1.65, and seeking further information from MCLM and its affiliates. And the Enforcement Bureau's letters of investigation, File No.: EB-09-IH-1751,

were released February 26, 2010, which was prior to the Application being filed with the FCC on March 11, 2010.

3 Petitioners note here that SCRRA's FCC legal counsel, Robert Gurss, was previously legal counsel to MCLM's predecessor-in-interest, Mobex Network Services, LLC. Petitioners had filed petitions with similar claims against the Mobex Network Services, LLC AMTS licenses (including Mobex's (now MCLM's) site-based California licenses that MCLM has agreed it will turn back in for cancellation for SCRRA). Thus, SCRRA's legal counsel was fully aware of many of Petitioners' claims against the MCLM AMTS spectrum and had to have informed SCRRA fully of those claims prior to SCRRA entering into a contract with MCLM.

4 SCRRA could have also participated in FCC auctions to obtain spectrum. It has known about its need to provide PTC for some time and it should have had the foresight to apply for and enter FCC's auctions, apart from pursuing a market transaction. For example, Auction No. 87 contained several licenses covering the L.A. basin area.

[End preceding sequential foot / end notes.]

- V -

The Application is unauthorized and must be summarily dismissed for three reasons. This is priority over a hearing on the Application under the OSC. Proceeding in a hearing on the Application on the merits under the OSC is premature until the following matters are resolved, including (i) by these matters pending in Petitioners pleadings challenging the subject Application and challenging the MCLM long form in Auction 61 (each part of the OSC), and (ii) by discovery in and decisions sought in Petitioners in its court case against MCLM in the NJ US District Court (which includes "Does" defendants acting with MCLM in matters complained of, to be named after appropriate discovery) which includes some of the matters discussed in this section below. This case was cited in the past pleadings noted above many times, which are referenced and incorporated herein. A link to the complaint is here:

<http://www.scribd.com/doc/49192121/Skybridge-v-MCLM-PSI-USDC-NJ-2011-Amended-Complaint-Sc> .

The Application is unauthorized and must be summarily dismissed for three reasons. The reasons are summarily given in this Section but further discussed by Petitioners in their past pleadings including against the Application and in the WT Docket 10-83.

1. The Application signed by John Reardon is defective and void under §1.917 since MCLM did not have a "member who is an officer" sign them. MCLM has admitted this to the FCC. An LLC by law is deemed to be an unincorporated association. Sandra DePriest and MCLM have repeatedly stated to the FCC that John Reardon has never been an officer of MCLM (see below). Therefore, whether John Reardon used the title of an officer or of an "authorized employee" when signing any MCLM FCC application, it means that the Application, signed by John Reardon is legally void and defective under FCC rules and law and should be dismissed and cannot be decided upon by the Commission (facial defects of an application under §1.934 require dismissal).

Under §1.917, MCLM is not an individual, or a partnership, or a corporation, or an amateur radio service club. It is, as Petitioners asserted, an un-incorporated association. While by the process of elimination the above is clear, this is further shown as follows. Under §1.917, the only possible option that applies is (emphasis added): "(4) by a member who is an officer, if the applicant is an unincorporated association." MCLM is not a "corporation" as MCLM has suggested in the MCLM Opposition, since it is a Delaware LLC formed and operated, according to State of Delaware records, under the Delaware Limited Liability ["LLC"] Act, under which there are solely LLC entities in form and substance, distinct from "corporation" (incorporated) entities under the Delaware Corporation Code. There is no such thing as a Delaware Corporation that is a Delaware LLC, but all Delaware LLCs are *un-incorporated* associations of its members: a LLC is literally an *un- or not- incorporated* association of owner members since it is in no case a corporation. The Delaware LLC Act is under the Delaware Code, §§ 18.101 et seq. Under §18.101: "Member" means a person who is admitted to a limited liability company as a member as provided in § 18-301 of this title...." and may be a manager and officer, or delegate officers,

under §§ 18.401- 18.407. It is thus clear that a member may be an officer in a Delaware LLC, by standing arrangement of delegation for standing or special actions, including in each such case signing FCC license applications. However, there is no provision in the Delaware Corporation Code for any "member." Thus, a Delaware LLC can fit under §1.917 clause (4), but cannot possible fit under §1.917 clause (3) as MCLM suggests.³

At page 2 of The Reverend Sandra DePriest's 9/30/09 response to the Wireless Telecommunications Bureau 8/18/09 letters under Section 308 re: File Nos. 0002303355 et al., Sandra DePriest stated, "*At all times since the formation of MC/LM, I have been the sole officer and director of MC/LM.*" At page 2 of The Reverend Sandra DePriest's 3/29/10 response to the Enforcement Bureau investigation letter, File No. EB-09-IH-1751, Sandra DePriest stated [underling added for emphasis]:

At all times since the formation of Maritime, I have considered myself to be the sole elected officer and director of Maritime....There was no intent to deceive as I disclosed openly in my original LOI Responses to the FCC that John Reardon was the CEO, but he is not a President, Vice-President, Secretary or Treasurer....John Reardon was never authorized to use the title "President" and he has been instructed not to do so in the future.

Then at page 4, #5 of the 3/29/10 response she states: "*John Reardon has never been an officer of Maritime.*" More recently, MCLM has asserted in its oppositions to various of Petitioners' petitions to deny certain of their assignments that Mr. Reardon is only an "authorized employee" (See e.g. MCLM's Opposition filed re: File Nos. 0004417199 et al) and it only lists him as an "authorized employee", including on the Application. Thus, John Reardon is not a

³ Where statutes and regulations are clear, as in this case, there is no need for court interpretation. However, case law supports the clarity shown above. E.g, see *Pramco LLC v San Juan*, 435 F.3d 51 (First Circuit, 2006): "Limited liability companies are unincorporated entities." And in *Ferrell v. Express*, 591 F.3d 698 (Fourth Circuit, 2010): "Moreover... a limited liability company, if *not a corporation*, is an *unincorporated* association, employing "unincorporated" as the counterpart to "incorporated."

member who is an officer of MCLM. Of course, the evidence provided by Petitioners shows that Mr. Reardon is indeed an officer of MCLM and that MCLM is denying that now in order to avoid numerous FCC rule violations, including having to attribute Mobex as an affiliate, admit to false certifications and perjury and disqualification as a licensee and revocation of its licenses. Since FCC legal counsel represents MCLM and SCRRA, they clearly knew the Application had to be signed by an MCLM “member who is an officer”. Thus, they lacked candor in submitting the Application, and MCLM misrepresented and gave false certifications on the Application. In any case, this means that the Application is incurably defective and must be dismissed. Thus, there is no Application to remove from the OSC proceeding.

2. In addition, the ownership disclosures on the Application are deliberately and demonstrably, under FCC law, false. Sandra DePriest is only one of the co-controller of MCLM: her husband Donald Depriest is the other. The OSC and the Petitioners past pleadings, including against the Application, fully discuss this ownership disclosure issue, so Petitioners do not reiterate those facts here again.

3. MCLM is a sham entity for reasons partly indicated in item 2 immediately above (and elsewhere herein) and cannot be recognized as an entity separate from the owners of its assets and liabilities. Thus, MCLM cannot take any legally valid action including in executing a contract with SCRRA for purchase of the spectrum in the Application and co-submitting the Application before the FCC with Assignee. A sham legal entity (commonly called a “sham corporation” whether a corporation or other form of legal entity) is void under Delaware law (MCLM is an alleged valid LLC under Delaware law). The OSC essentially argues, supported by the described extensive facts, that MCLM is a sham entity, so if it is, then MCLM has no authority to file any M-Motion or to prosecute the processing of the Application, or to have filed a Notice of Appearance in this OSC hearing matter.

Sincerely,



Warren Havens, Individually and as President of the below listed entities

Skybridge Spectrum Foundation, FRN 0016374563

Environmental LLC, FRN 0011257086

Intelligent Transportation & Monitoring Wireless LLC, FRN 0012930582

Verde Systems LLC, FRN 0009561002

Telesaurus Holdings GB LLC, FRN 0005748660

V2G LLC, FRN 0019661297

Warren Havens, FRN 0003787694

2509 Stuart Street (principal office)

Berkeley, CA 94705

Ph: 510-841-2220

Fx: 510-740-3412

Exhibit 1 (or “attachment” 1)

This may be separately file, or attached to this Opposition out of order. This was responded to by the clear of the ALJ and copied to all parties, and Mr. Stobaugh will be, later today, responding to the response.

Subject: Re: Order to Show Cause, FCC 11-64, released April 19, 2011
Date: Tuesday, May 24, 2011 2:22:57 PM PT
From: Jimmy Stobaugh <jstobaugh@telesaurus.com>
To: richard.sippel@fcc.gov <richard.sippel@fcc.gov>
CC: Warren Havens <warren.havens@sbcglobal.net>, Jimmy <jstobaugh@telesaurus.com>
Priority: High

Contact Phone numbers are:

510-848-7797 or
510-841-2220

From: Jimmy <jstobaugh@telesaurus.com>
Date: Tue, 24 May 2011 14:18:51 -0700
To: <richard.sippel@fcc.gov>
Cc: Jimmy <jstobaugh@telesaurus.com>, Warren Havens <warren.havens@sbcglobal.net>
Subject: Re: Order to Show Cause, FCC 11-64, released April 19, 2011

To: Honorable Richard L. Sippel, Administrative Law Judge, FCC

Re: Order to Show Cause..., FCC 11-64, released April 19, 2011, re: Maritime Communications/Land Mobile LLC et al. (the "OSC")

Honorable Richard L. Sippel,

All the below-listed entities are parties to the OSC matter (the "Parties"). The Nossaman LLP law firm filed the Notice of Appearance for the Parties. In recent several days, firming up only today, Nossaman LLP informed the Parties that it has a conflict precluding it from continuing to advise or represent the Parties in the OSC matter. Nossaman LLP is counsel to Los Angeles County that is one of the governmental agencies under which Southern California Regional Railroad Authority ("SCRRA") operates. Nossaman may also represent SCRRA directly, however, Nossaman has not given the parties details other than it represents Los Angeles County. The Parties have commenced seeking substitute counsel, and once the Parties find appropriate counsel getting them up to speed regarding the various applications and other background of the OSC matter. That will take substantial time. The Parties intend to file a request to extend all of the due dates in the OSC matter for themselves and any scheduled proceeding matters including the June 15th hearing.

Also, Parties calculate that opposition(s) that the Parties may file regarding the SCRRA May 9th filing (a certain showing/motion under Footnote 7 of the OSC) appears to be due today. It will not be possible for any of the Parties to properly file such an opposition today given that Nossaman LLP suspended its service to the Parties regarding the OSC matter several weeks ago when it obtained a copy of the SCRRA Notice of Appearance. Nossaman LLP then undertook a conflict analysis with regard to the firm representing Los Angeles County (see above). Nossaman informed us that it would seek a waiver from Los Angeles County. As indicated above, only in the recent several days did Nossaman LLP give us its conclusion that it must cease services to the Parties with regard to the OSC matter.

Because of the due date today, we would appreciate it if you could give us a call (see below phone numbers), and provide information as to appropriate procedures given the above situation, including the apparent opposition due date of today.

I will also send a copy of this email to the fax number listed for you in the OSC matter.

Sincerely,

Jimmy Stobaugh, GM

For Warren Havens, Individually and President of the following entities:

Skybridge Spectrum Foundation

Environmentel LLC

Intelligent Transportation & Monitoring Wireless LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

V2G LLC

Cc: Warren Havens

Exhibit 2

From: Warren Havens <warren.havens@sbcglobal.net>
To: Michael Connelly <Michael.Connelly@fcc.gov>; "d.c.brown@att.net" <d.c.brown@att.net>
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>; Scot Stone <Scot.Stone@fcc.gov>; Richard Arsenault <Richard.Arsenault@fcc.gov>; Jeff Tobias <Jeff.Tobias@fcc.gov>; Pamela Kane <Pamela.Kane@fcc.gov>; Gary Schonman <gary.schonman@fcc.gov>; Jason Smith <jsmith@maritelusa.com>; feldman <feldman@fhhlaw.com>; Brian Carter <brian.carter@fcc.gov>
Sent: Friday, May 20, 2011 12:17 PM
Subject: Re: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

Mr. Connelly,

1. Upon initial review, a question I have is:

- Why this 2010 FOIA request, now over a year from the request, is being processed at this time (the part of the processing indicated in the two letters). In FOIA statutes and legislative intent, the "freedom of information" idea had a time element and resulted in statutes with timing.

2. Also, upon a quick look

(see: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0503/FCC-11-69A1.pdf), FOIA 2010-379 was responded to (essentially denied) and was appealed.

- What is the procedural rules and rationale for opening back up this FOIA request matter, and if that is permissible, does that not have to be by grant of, or in relation to, the appeal?

3. I copy here two FCC attorneys in the EB (Enforcement Bureau) since they are involved in the OSC FCC 11-64 and hearing thereunder, and the MCLM matters described in the OSC (including my companies petitions challenging MCLM long form in Auction 61, and the resultant EB investigation, leading to the OCS), and since our FOIA 2010-379 request was for records relevant to these matters, and which, I assert, are required by my companies for participation in these matters under legal rights, including in the hearing under the OSC.

- Thus, I assert we have been and remain prejudiced by denial of this information. I expect to take that position before the ALJ in the OSC hearing.

- I assert the same re our MariTEL related FOIA, subject of your email and letter of yesterday with substantially the same majority content as the two letters you attached to your email below: I thus cc Mr. Smith here for this purpose.

- The information we sought in said FOIA requests clearly was, or certainly principally constituted, information that MCLM and affiliates had to have accurately provided in its public FCC licensing applications, as well as their violations of FCC rules or actions that may be violations, which are also public. It is clear that documents that contain such information but also contain other parts that may be withheld under an FOIA exemption, cannot be fully withheld, and that assertions on inability to segregate cannot be asserted unless that is actually the case: but the subject sought documents were ones under active investigation by FCC, to find relevant details, and the FCC could easily segregate, if that was needed.

4. In sum, we cannot understand what the FCC is doing in this FOIA matter, in terms of relevant rules and procedure, and why.

- What I do know is that it has been an exceedingly long time since my companies filed clearly meritorious (as in made clear in FCC 11-64, and in the petitions themselves) petitions to challenge the MCLM license applications including its long form in Auction 61 about six years ago. To this day, we are denied the hearing under 47 USC §309(d) we have a right to. Instead, the FCC by the OSC has set up a different hearing process, and one in which the FCC EB now supports MCLM and SCRRRA in being dismissed from the hearing (after they just stated they will participate in it), which the other captioned Applications predictably have joined in by similar requests. As to those others: I make no presentation here, but that statement of fact in FCC records. (If the FCC has any ex parte concerns, I will be happy to go over a pile of them related to captioned parties in the OCS, to start with, before OGC. But I am careful on my side.) I copy counsel to SCRAA, Mr. Feldman however. (He can copy Mr. Gurs as co-counsel to SCRAA and past or current counsel to MCLM-Mobex; or Mr Brown as MCLM-Mobex counsel may do that.)

Respectfully,
Warren Havens

From: Warren Havens <warren.havens@sbcglobal.net>
To: Michael Connelly <Michael.Connelly@fcc.gov>; "d.c.brown@att.net" <d.c.brown@att.net>
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>; Scot Stone <Scot.Stone@fcc.gov>; Richard Arsenault <Richard.Arsenault@fcc.gov>; Jeff Tobias <Jeff.Tobias@fcc.gov>
Sent: Thursday, May 19, 2011 12:18 PM
Subject: Re: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

Received. Thank you.

W. Havens

President

Skybridge Spectrum Foundation

ATLIS Wireless LLC

V2G LLC

Environmental LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

Berkeley California

www.scribd.com/warren_havens/shelf

510 841 2220 x 30
510 848 7797 -direct

From: Michael Connelly <Michael.Connelly@fcc.gov>
To: d.c.brown@att.net
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>; Warren Havens <warren.havens@sbcglobal.net>; Scot Stone <Scot.Stone@fcc.gov>; Michael Connelly <Michael.Connelly@fcc.gov>; Richard Arsenault <Richard.Arsenault@fcc.gov>; Jeff Tobias <Jeff.Tobias@fcc.gov>
Sent: Thursday, May 19, 2011 11:55 AM
Subject: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

Mr. Brown:

Attached please find PDFs of two letters being sent to you, pursuant to a Freedom of Information Act request filed by Skybridge Spectrum Foundation (Warren Havens); please note that the date by which to respond is May 31, 2011.

Thank you -

<<WPV 461d3 ltr.pdf>> <<MCLM 461d3 ltr.pdf>>

Michael E. Connelly
Attorney Advisor, Wireless/Mobility
(202) 418-0132

*** Non-Public: For Internal Use Only ***

Exhibit 3

From: Warren Havens <warren.havens@sbcglobal.net>
To: Pamela Kane <Pamela.Kane@fcc.gov>
Cc: Gary Schonman <gary.schonman@fcc.gov>; Brian Carter <brian.carter@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Friday, May 20, 2011 9:15 AM
Subject: Re: telephone call request for friday, today

Items added below to the discussion request list.

- W. Havens

Further regarding the position of EB- SCRAA- MCLM (to allow SCRAA out of the hearing):

4. Firth Amendment taking violation, in that it would be the FCC unlawful taking, since my companies were the rightful high bidders of the subject spectrum in Auction 61. Etc. It is an form of eminent domain but without procedure and showing required under lawful eminent domain taking (including obvious lack of fair market value situation, and procedure, and clear failure to show the sole-solution need, etc.-- and FCC is not the authority to handle eminent domain taking).

5. FCC (WTB, apparently with EB, and up to Commission level also apparently) has sat on my companies clearly meritorious (as the OSC shows) petition to deny the MCLM long form in Auction 61-- 6 years, and it has not been granted. The OSC effectively granted, and clearly showed the need for grant, of the petition. My companies do not have to file another petition to deny or motion to have it decided (at its current reconsideration stage).

- If our petition to deny was granted, as it lawfully had to be, we have a right to a hearing on that long form, and others are not parties by MCLM.

- By the device now underway, EB with MCLM and SCRAA, with all the other MCLM assignees in lock step also (they filed pleadings to get out of the hearing, like SCRAA's), can escape with the MCLM licenses free of the hearing my companies have a right to. If our hearing is granted later, the licenses we challenge will be gone. That is against the Communications Act Section 309(d) and APA, and court precedents.

- Further, this escape position of EB-MCLM-SCRAA is a way to gut the hearing by escaping discovery. The assignees-applicants captioned in the OSC do not want to face discovery: this is a neat trick to get out of that. I know special motions may be filed in the hearing re non-party entities, but that imposes major hurdles: if they are so eminently great as to escape the requirements of Communications Act and FCC rules, and be immune to them, they of course will argue they cannot be touched in discovery.

Further, EB has kept secret the information it got from MCLM and affiliates to meet the requirements of truthful disclosures in public FCC license applications my companies

challenged. It did this even after we file a proper FOIA request. Redaction can of course be used for any part of documents submitted that are, in fact, subject to proper FOIA withholding-- but the parts that have this required truthful information, or shows violations of FCC rules, cannot be withheld.

- How the bleep can we participate in the OSC hearing when this information is withheld: we are prejudiced.

From: Warren Havens <warren.havens@sbcglobal.net>
To: Pamela Kane <Pamela.Kane@fcc.gov>
Cc: Gary Schonman <gary.schonman@fcc.gov>; Brian Carter <brian.carter@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Friday, May 20, 2011 12:28 AM
Subject: Re: telephone call request for friday, today

some questions/ issues, among others:

1. We will be seeking time to extend date for the pre-hearing conference, and for request for admissions and any other current dates by rule, primarily due to the need to get replacement counsel (see my first email below), and due to the recent filings special motions and related pleading. We will probably request 3-4 weeks.

- We request your consent.

If you can show us why we are in error on the below, we welcome that.

In any case, we seek to discuss these matters and hear your positions, including since that may at least narrow issues we contest before the ALJ, and in possible appeals in the agency and court.

2. Who represents the Commission and its OCS if your Bureau supports motions of MCLM-SCRRA to get out of the hearing, when the OSC named them as parties, and they first filed notices to participate in the hearing, the filed motions to get out?

- The Commission could have, but did not, do what MCLM-SCRAA-EB now suggest. My companies will support the OSC- Commission. MCLM-SCRRA are just rehashing what they stated in their assignment application, in response to my companies petition to deny it, and in the public docket on that assignment app- nothing new: the Commission had all that when deciding the OSC.

- EB support of MCLM-SCRRA in this, without at least noting the history of this and my companies strong opposition (demonstrating that SCRRA's position is false and misleading-- There if clearly NO federal or other mandate or technical compelling reason to use 1 MHz of anything for PTC or use 200 MHz range spectrum, etc. There is clearly no PTC technical standard. It is clear that the majority of US rail do agree that PTC as now conceived, is even suited to meet its safety goals: these are all in major easy to find public documents, including by major rail/ transit associations and before government entities.).

- Also, fyi, below is a link of a presentation offer from my companies to US metro rail roads, including directly made to SCRRA. No response from any. They do NOT want honest, clean

AMTS spectrum even at zero cost. There are reasons, increasingly apparent.

- We know PTC from the inside, and from public documents. SCRAA seeks the full 1-MHz A-Block AMTS in Southern California at the behest of PTC 220 LLC: Union Pacific, et al since those folks have tracks and other leverage over SCRAA and various have close relations. The freight rail folks are using the public metro rail entities to try to get more spectrum than they need, to let freight use it, and freight has the leverage over them for that. SCRAA is trying to pull a fast one over on the FCC, for the big freight folks, and MCLM was the right partner in crime for this (it is criminal), and has a hot-bike sale price.

- My companies do not see how, at this stage, anyone dealing with this at the FCC cannot see the facts involved, and make like SCRAA has a special eminent-domain type of right trumping the Communications Act and FCC rules and controlling DC Circuit case precedents-- all clearly in this matter before the FCC.

- This is an illegal laundry operation, not an exercise in public interest licensing. We are alarmed that EB is supporting this.

- We are taking our cases of importance to the US Supreme Court if needed: two in the last year. At this time, we include this case.

3. We would like to find your how EB believes it can support licensing of SCRAA in this way--

- It is not by auction: my companies were the lawful high bidders, there is no question of that. Circuit Court precedents hold that a government license auction must go to the lawful high bidder after disqualified bidders are eliminated.

- It is not in accord with Communications Act (including 309(j) and related FCC rules).

- It is not valid eminent domain (that is a complex process under State law, and also required fair market price: by definition, that excludes price by a seller that was selling an asset it stole, as in MCLM case, even if the buyer did not of that, but SCRAA did, before and after the OSC).

Sincerely,
Warren Havens

From: Warren Havens <warren.havens@sbcglobal.net>

To: Pamela Kane <Pamela.Kane@fcc.gov>

Cc: Gary Schonman <gary.schonman@fcc.gov>; Brian Carter <brian.carter@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>

Sent: Thursday, May 19, 2011 11:30 PM

Subject: telephone call request for friday, today

Can we have a phone call on Friday morning Pacific time?

I would like to discuss a few matters in the MCLM OSC hearing matter.

On my side will be me and Mr. Stobaugh. But not an attorney: In that regard, the Nossaman law firm appears to not be able to advise or represent my firm in this matter, since SCRAA is a

client (or Los Angeles that is related to SCRAA is a client) of that firm, and it believes a conflict causes it to withdraw. I expect that to be stated in this matter soon by an appropriate filing or two.

Thank you,
Warren Havens

President

Skybridge Spectrum Foundation

ATLIS Wireless LLC

V2G LLC

Environmental LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

Berkeley California

www.scribd.com/warren_havens/shelf

510 841 2220 x 30
510 848 7797 -direct

Exhibit 4

From: Warren Havens <warren.havens@sbcglobal.net>
To: Pamela Kane <Pamela.Kane@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Cc: Gary Schonman <Gary.Schonman@fcc.gov>; Brian Carter <Brian.Carter@fcc.gov>
Sent: Tuesday, May 24, 2011 2:36 PM
Subject: Re: telephone call request for friday, today

I raised a question as to what your Bureau's position is on the document matter noted below. I understand now, after several tries, that you will not answer that. We will proceed to file our FOIA request and refer to our attempt to get the documents from your Bureau outside a FOIA request, and to obtain a response to my question below.

As for the other matters, I will or new counsel (once obtained) will let you know. You are taking a clearly adverse position to my companies and in our view, to the Commission in the OSC (on assumption the Commission meant what the OSC states on the surface). Thus, I have to use caution in what I discuss with you.

Warren Havens

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: Warren Havens <warren.havens@sbcglobal.net>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Cc: Gary Schonman <Gary.Schonman@fcc.gov>; Brian Carter <Brian.Carter@fcc.gov>
Sent: Tuesday, May 24, 2011 1:37 PM
Subject: RE: telephone call request for friday, today

Mr. Havens: As I stated below, we would be happy to discuss your concerns during our call.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Tuesday, May 24, 2011 4:11 PM
To: Pamela Kane; Jimmy Stobaugh
Cc: Gary Schonman; Brian Carter
Subject: Re: telephone call request for friday, today

I am sorry you cannot respond.

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: Warren Havens <warren.havens@sbcglobal.net>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Cc: Gary Schonman <Gary.Schonman@fcc.gov>; Brian Carter <Brian.Carter@fcc.gov>
Sent: Tuesday, May 24, 2011 12:52 PM
Subject: RE: telephone call request for friday, today

Mr. Havens: We will be happy to discuss any hearing-related matters during our call.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Tuesday, May 24, 2011 3:27 PM
To: Pamela Kane ; Jimmy Stobaugh
Cc: Gary Schonman; Brian Carter
Subject: Re: telephone call request for friday, today

We will do that once we can.

Will you respond to my question below?

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: Warren Havens <warren.havens@sbcglobal.net>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Cc: Gary Schonman <Gary.Schonman@fcc.gov>; Brian Carter <Brian.Carter@fcc.gov>
Sent: Tuesday, May 24, 2011 9:25 AM
Subject: RE: telephone call request for friday, today
Mr. Havens: Please let us know additional times at which you and Mr. Stobaugh may be available for this call. Thank you.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

*** Non-Public: For Internal Use Only ***

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Tuesday, May 24, 2011 11:47 AM
To: Pamela Kane ; Jimmy Stobaugh
Cc: Gary Schonman; Brian Carter
Subject: Re: telephone call request for friday, today

At this time, that day-time does not work for us.
In addition, we are focusing on finding new counsel for reasons previously indicated below.

Another matter we focus on is attempting to obtain documents we lawfully have a right to. We do not have to seek those only via discovery in the OSC in fact, we cannot proceed in the OSC without being prejudiced without the documents ahead of time.

I copied you on one curious FOIA matter last week, commenced by WTB (letters under signature of Scot Stone).

One current major question:

If we submit a FOIA request to the FCC for all documents (or portions thereof) provided to the FCC including your Bureau by all parties (except my companies and myself) submitted before and after the OSC on matters in the OSC (excluding what is on ULS and EFCS), will that be provided to the extent under possession or control of your Bureau? And, short of a FOIA request, will those documents be provided upon request.

Our position, as previously stated many times to the FCC including to your Bureau, is that said documentation is relevant and of decisional importance to the MCLM public licensing proceeding in the OSC caption, starting with the MCLM long form in Auction 61, and it thus cannot be deemed subject to any FOIA withholding exemption, and that withholding prejudices my companies and myself in those proceedings. We believe the same holds with regard to the OSC proceeding including our opposition to your Bureau's filing in support of the SCRAA request to (in short) be removed from the OSC, and the me-too request for by the other parties.

There is a lot hidden in these component OCS-captioned matters, some of which we have some evidence of. We want to find out out more.

This includes that we seek as much as we can as to communications to and from, on the one hand, parties listed in the OCS including SCRAA (and on their coat-tails, all the others), and on the other hand, your Bureau (and other parts of the FCC: it is not clear who did what on the OSC as seen from the surface, and as to what is hidden) including their currently expressed positions in the OSC proceeding to be removed from the OSC. Those obviously effectively seek to remove all MCLM licensed spectrum from the OSC since there are railroads everywhere in the nation that assert the same PTC position as SCRAA asserts in the OSC (and same for the other parties: there are utilities and gas and oil everywhere). SCRAA and other metro rail do not seek the MCLM spectrum as a good commercial and public interest transaction the assert. We have evidence, and we believe the FCC has evidence also and is keeping it hidden.

Also, after the period of time for filing reconsiderations of the OSC, or virtually at the deadline, the above developments took place (SCRAA, your Bureau, and the other parties filings as to

removal of parties from the OSC).

Sincerely,
Warren Havens

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: Jimmy Stobaugh <jstobaugh@telesaurus.com>
Cc: Gary Schonman <Gary.Schonman@fcc.gov>; Brian Carter <Brian.Carter@fcc.gov>;
Warren Havens <warren.havens@sbcglobal.net>
Sent: Tuesday, May 24, 2011 7:15 AM
Subject: RE: telephone call request for friday, today
We are available at 2:00 pm eastern time/ 11 am pacific. Please let us know what number we should call. Thank you.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: Jimmy Stobaugh [mailto:jstobaugh@telesaurus.com]
Sent: Friday, May 20, 2011 6:03 PM
To: Pamela Kane
Cc: Gary Schonman; Brian Carter; Warren Havens ; Jimmy
Subject: Re: telephone call request for friday, today

Ms. Kane,

Tuesday any time between 2-5pm EST (11-2pm PST) works for us. Please let us know your preference. If that does not work for you, then we can do any time between 12-5pm EST the next available day.

Sincerely,

Jimmy Stobaugh
Cc: Warren Havens

From: Pamela Kane <Pamela.Kane@fcc.gov>
Date: Fri, 20 May 2011 12:21:30 -0400
To: Warren Havens <warren.havens@sbcglobal.net>
Cc: Gary Schonman <Gary.Schonman@fcc.gov>, Brian Carter <Brian.Carter@fcc.gov>, Jimmy <jstobaugh@telesaurus.com>
Subject: RE: telephone call request for friday, today

Mr. Havens: We are available for a call at 1:30 eastern time (10:30 pacific time). Please let us know if that works for you and if so, the number we should call you at.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: Warren Havens [<mailto:warren.havens@sbcglobal.net>]
Sent: Friday, May 20, 2011 2:30 AM
To: Pamela Kane
Cc: Gary Schonman ; Brian Carter ; Jimmy Stobaugh
Subject: telephone call request for friday, today

Can we have a phone call on Friday morning Pacific time?
I would like to discuss a few matters in the MCLM OSC hearing matter.

On my side will be me and Mr. Stobaugh. But not an attorney: Inthat regard, the Nossaman law firm appears to not be able to advise or represent my firm in this matter, since SCRRRA is a client (or Los Angeles that is related to SCRAA is a client) of that firm, and it believes a conflict causes it to withdraw. I expect that to be stated in this matter soon by an appropriate filing or two.

Thank you,
Warren Havens

Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Opposition to Showing Pursuant to Footnote 7, including all Exhibits and Attachments, was prepared pursuant to my direction and control and that all the factual statements and representations of which I have direct knowledge contained herein are true and correct.



Warren C. Havens

May 24, 2011

CERTIFICATES OF SERVICE

I, the undersigned hereby certify that a copy of the foregoing OPPOSITION TO SHOWING PURSUANT TO FOOTNOTE 7, duly executed, along with this executed Certificate of Service, duly executed, is being served this 24th day of May, 2011, via U.S. Mail, first class postage prepaid, upon Chief of the FCC Enforcement Bureau, listed below, as a party in this hearing case, under ¶ 69 of the FCC *Order to Show Cause*, FCC 11-64 (April 19, 2011), as well as to each of the following potential parties in this hearing case, as identified and using the service information in ¶ 73 of FCC 11-64:

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