

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: Marlene H. Dortch, Office of the Secretary
Attn: the Commission

FILED/ACCEPTED

JUN - 2 2011

Federal Communications Commission
Office of the Secretary

Consolidated Opposition to Petitions for Reconsideration

The undersigned parties ("SkyTel") submit this consolidated opposition to: (1) a petition for reconsideration (the "Atlas Recon" or "A-Recon") filed by Atlas Pipeline Mid-Continent, LLC, DCP Midstream, LP, Denton County Electric Cooperative, Inc. db/a CoServ Electric, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Interstate Power & Light Company, Jackson County Rural Electric Membership Cooperative, and Wisconsin Power and Light Company (collectively, "Parties") and (2) a petition for reconsideration (the "D-Recon") filed by Duquesne Light Company ("Duquesne")

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(together the two petitions for reconsideration, the "Petitions" or the "Recons") (together the Parties and Duquesne, the "Petitioning Parties") of the Commission's Order to Show Cause and Hearing Designation Order (the "OSC" or "HDO").¹

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2. The Enforcement Bureau's Opposition.
3. SkyTel reserves rights to further address the Petitions, and related.

1. The Petition is not permitted: dismissal and sanctions

Section 1.106 "Petitions for reconsideration," provides in pertinent part:

(a)(1) Petitions requesting reconsideration of a final Commission action will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained....

The Petitions must be dismissed since the Petitions does not related to an adverse ruling with respect to the Petitioning Parties participation in the hearing proceeding, indeed, they were designated as participant Parties in the Order to Show Cause and elected to participate as Parties by filing Notices of Appearance.

In this regard, Commission has explained: "... orders to show cause are, by their very nature, interlocutory. They are nothing other than a lawful attempt by the Bureau to facilitate the Commission's ability to issue a decision on the merits...." *In the Matter of MCI, MO&O*, FCC 89-344, 5 FCC Rcd 216; 1990 FCC LEXIS 124; 67 Rel. January 9, 1990.

The Commission has further explained this rule, as applied to the Petition, in *In the*

¹ *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, FCC 11-64, released April 19, 2011, 76 FR 30154.

Matter of TIME SALES, INC. MO&O, FCC 74-1371, 49 F.C.C.2d 1403; 1974 FCC LEXIS 2026,
Rel. December 18, 1974 (emphasis added):

1. The Commission has before it for consideration (1) a petition for reconsideration of an Order to Show Cause (FCC 74-869, released August 9, 1974; filed by Time Sales, Inc., The Commission also has before it a motion for stay filed by SkyTel on October 1, 1974, requesting that further proceedings be stayed pending disposition of the petition for reconsideration....

* * * *

6. Since this case is presently in an interlocutory posture, the petition for reconsideration must be dismissed. Petitions for reconsideration are governed by Section 1.106 of our Rules. Section 1.106(a)(1) limits petitions for reconsideration of Commission actions to final actions, and further provides that a petition for reconsideration of an order designating a case for hearing will be entertained only if, and insofar as, the petition relates to an adverse ruling with respect to a petitioner's participation in the proceeding. Section 1.106(a)(1) expressly states that petitions for reconsideration of other interlocutory actions will not be entertained. Petitioner's request for reconsideration of our Order to Show Cause does not involve a final Commission action, nor does it involve an adverse ruling with respect to their participation in the proceeding.

* * * *

9. Accordingly,... the Petition for Reconsideration ... IS DISMISSED; and that the Motion for Stay... IS DISMISSED as moot.

For the same reasons the Commission gave in the above decision, it should dismiss the instant Petitions.

Given that the rule is clear on this matter, the Petitioning Parties appear to have filed the Petitions for abusive purposes such as for delay, which should be sanctioned including under rule section 1.52.

2. The Enforcement Bureau's Opposition

SkyTel agree with the principal arguments in the Enforcement Bureau ("EB") Opposition to the Petitions, and references and incorporates them herein.

SkyTel strongly disagrees strongly to the Enforcement Bureau's comments and any arguments in the Opposition that (i) indicate that the SCRRRA application should be removed from the subject Order to Show Cause Hearing in the caption above, and find no evidence that this Bureau has understanding of Positive Train Control ("PTC") and the facts that there is no government mandate or other compelling reason for SCRRRA to obtain the subject 1 MHz of

AMTS spectrum from Maritime or anyone; and (i) that if the Maritime licenses are revoked that the spectrum in the licenses can be licensed to any party but the lawful high bidders in Auction 61, which are among the SkyTel constituent entities. The Enforcement Bureau does not handle spectrum licenses and is not in a position to argue as to how any re-licensing should take place, nor is there any provision in FCC rules or the Communications Act to allow creation of the sort of licenses this Bureau suggests, if the Maritime licenses are revoked. PTC has nothing to do with AMTS or any particular spectrum per se. The EB and the Commission suggestion that PTC needs AMTS could apply to any spectrum band. The fact is that the only reason SCRRRA or any railroad seeks 220 MHz range spectrum is solely since—before the Metrolink train crash that resulted on the Congressional action re PTC—for-profit private freight railroad companies bought a bunch of 220 MHz licenses for their general wireless plans, and then after said crash and Congressional action, these larger freight rail roads are pressuring the smaller metro rail roads to get on their bandwagon, for their private for profit interests—not for any public safety need.

3. SkyTel reserves rights to further address the Petitions, and related

SkyTel submits this Opposition in this Order to Show Cause Hearing action (the “Hearing”) without prejudice to its positions stated elsewhere in the matters captioned above including but not limited to: its objection positions noted below: (i) regarding the effective denial of its hearing rights under 47 USC §309(d) created by its meritorious petitions to deny the Maritime application (long form in Auction 61) first listed in the OSC caption, the Maritime site-based licenses described in the OSC, and the other applications captioned in the OSC, (ii) regarding its position stated in many past pleadings before the FCC, including in this OSC Hearing action, that SkyTel’s rights in said Section 309 hearing and in the OSC Hearing are severely and repeatedly prejudiced by the FCC Enforcement Bureau’s retaining documents and information of decisional importance, and not releasing them publicly or to SkyTel (even upon

SkyTel's FOIA request for said documents, submitted in year 2010, which request was summarily denied, then appealed without grant as of this date , (iii) regarding its other initial objections to the Hearing action, (iv) regarding its position that it equitably must be granted additional time to meet all actions permitted or required by rule or order in this Hearing action due to the unexpected withdrawal by its previous legal counsel, Nossaman LLP (described in recent filings by Nossaman and SkyTel in this Hearing action docket, and to be subject to an upcoming erratum and request for tolling and extension of time and other relief), and (v) due to redaction of documents and information shown in the OSC that are essential to the Hearing and to SkyTel's petitions to deny proceedings against all the above-captioned Applications. The same information was unlawfully denied by FCC outright full denial of SkyTel's FOIA request in year 2010 to obtain this information and information that was not even subject to any claim of confidentiality (or any other basis for withholding under FOIA law). The Hearing is fatally flawed for this reason alone and cannot lawfully proceed for this reason alone.

SkyTel intends (after it obtains substitute counsel: see above) to seek a ruling from the Administrative Law Judge in the Hearing action and/ or from another authority with jurisdiction, regarding SkyTel's position that the Hearing is improper, including or at least to the degree it proceeds (as it already has) prior to the disposition of SkyTel's petitions to deny indicated above.

For all the reasons given above, SkyTel asserts that this Opposition should not be deemed due as of the date hereof, and may be amended or replaced by a later Opposition filing.

Respectfully submitted,

June 2, 2011



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

Skybridge Spectrum Foundation
Environmental LLC
Intelligent Transportation & Monitoring Wireless LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
V2G LLC

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Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Consolidated Opposition to Petitions for Reconsideration 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

June 2, 2011

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing **Consolidated Opposition to Petitions for**

Reconsideration along with this executed Certificate of Service is being served this 2nd day of June 2011, via U.S. Mail, first class postage prepaid, upon the following:^{2/3}

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Robert J. Keller
Law Offices of Robert J. Keller, P.C.

² The mailed, served copy being placed into a USPS drop-box today may be after business hours, and therefore, not be processed by the USPS until the next business day.

³ A courtesy PDF copy of this Consolidated Opposition is also being provided via email to the parties.

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