

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

In the Matter of)
)
MARITIME COMMUNICATIONS/)
LAND MOBILE, LLC)
)
Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio)
Service)
)
Applicant for Modification of Various)
Authorizations in the Wireless Radio Services)
)
Applicant with **ENCANA OIL AND GAS**)
(USA), INC.; DUQUESNE LIGHT)
COMPANY; DCP MIDSTREAM, LP;)
JACKSON COUNTY RURAL)
MEMBERSHIP ELECTRIC)
COOPERATIVE; PUGET SOUND)
ENERGY, INC.; ENBRIDGE ENERGY)
COMPANY, INC.; INTERSTATE POWER)
AND LIGHT COMPANY; WISCONSIN)
POWER AND LIGHT COMPANY; DIXIE)
ELECTRIC MEMBERSHIP)
CORPORATION, INC.; ATLAS)
PIPELINE-MID CONTINENT, LLC;)
DENTON COUNTY ELECTRIC)
COOPERATIVE, INC., DBA COSERV)
ELECTRIC; AND SOUTHERN)
CALIFORNIA REGIONAL RAIL)
AUTHORITY)
)
For Commission Consent to the Assignment of)
Various Authorizations in the Wireless Radio)
Service)

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos.
0004030479, 0004144435, 0004193028,
0004193328, 0004354053, 0004309872,
0004310060, 0004314903, 0004315013,
0004430505, 0004417199, 0004419431,
0004422320, 0004422329, 0004507921,
0004153701, 0004526264, 0004636537,
and 0004604962

To: Marlene H. Dortch, Secretary

Attention: The Honorable Richard L. Sippel, Chief Administrative Law Judge

OPPOSITION TO SKYTEL'S MOTION TO ENLARGE ISSUES

Spectrum Bridge, Inc., (“SBI”) hereby opposes the Opposition to the Motion to Enlarge Issues filed by Warren C. Havens, Skybridge Spectrum Foundation and other companies managed by Mr. Havens, jointly referred to as “SkyTel”.¹

The Commission’s *Hearing Designation Order (HDO)* began a proceeding “to determine whether Maritime Communications/Land Mobile, LLC (“MCLM”) is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of the applications to which MCLM is a party should be denied.”² SkyTel’s *Motion to Enlarge Issues* should be denied because SBI is not a party to any of MCLM’s applications pending before the Commission.

Section 1.229 of the Commission’s Rules shows that motions to enlarge are appropriate when the addition of issues or parties allows the presiding judge “to inquire into allegations that an applicant made misrepresentations to the Commission or engaged in other misconduct during the application process.”³ MCLM was formed and bid on licenses in Auction 61 in 2005 and the application process following that auction took place over the course of 2005-2006.⁴ SBI, established in March 2007, was not operating during the application process at issue and

¹ Mr. Havens filed his *Motion to Enlarge Issues* individually and as President of Skybridge Spectrum Foundation, Environmental LLC, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, V2G LLC, collectively “SkyTel”. See *Motion to Enlarge Issues* at 11.

² *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing*, at para. 1, EB Docket No. 11-71, FCC 11-64, rel. April 19, 2011, 76 Fed. Reg. 30154 (“HDO”).

³ See 47 C.F.R. §1.229(f) (2011).

⁴ See *Order to Show Cause* at paras. 4-5, 55-57.

therefore can have no information relevant to misrepresentations or “misconduct during the application process.”

SBI operates an on-line secondary market for spectrum, consistent with the Commission’s secondary market policies.⁵ That MCLM chose to list its spectrum with SBI in October 2008 has nothing to do with the central question of whether MCLM is qualified to be an FCC licensee, nor with MCLM’s conduct relative to the August 2005 auction or ensuing application process.

Section 1.229(c) implies that a motion to enlarge issues may be appropriate when new facts are discovered. MCLM listed its spectrum with SBI in October 2008, well before the Commission began its investigation of MCLM in 2009. The fact that it did so was publicly announced by SBI and MCLM.⁶ Moreover, Mr. Havens himself has put that on the FCC record.⁷ It is not a new fact.

If Judge Sipple grants SkyTel’s *Motion*, he will be adding to the burden on Commission resources, and to the burden on existing parties, to no probative effect. Section 1.313 of the Commission’s Rules counsels in favor of the presiding officer taking actions for the “efficient and expeditious conduct of the proceeding” and “to protect any party or deponent from

⁵ See Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 83 (“The FCC’s policies and rules permit a variety of secondary market transactions: license transfers and assignments, partitioning and disaggregation of licenses, and spectrum leasing.”) (rel. Mar. 16, 2010), *available at* <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

⁶ See http://www.spectrumbridge.com/ourcompany/pressreleases/08-08-06/MCLM_Lists_Entire_Spectrum_Portfolio_on_Spectrum_Bridge_s_Exchange.aspx

⁷ See, e.g., *Motion to Enlarge Issues* at 7.

annoyance, [and] expense”.⁸ Granting SkyTel’s *Motion to Enlarge Issues* to add SBI as a party would add to the expense of the existing parties, the potential assignees with whom MCLM has contracted to assign or transfer its spectrum, with no countervailing public interest benefit, since the fact that MCLM listed its spectrum with SBI in 2008 is known, and has nothing to do with any misrepresentations to the Commission. In addition, Section 1.243 of the Commission’s Rules, which describes the powers of the presiding administrative law judge, does not include the power to overrule the Commission’s decision, as set forth in the *HDO*, as to which entities should or should not be parties.⁹

For the above reasons, Judge Sippel should deny SkyTel’s *Motion to Enlarge Issues*, including its request to add Spectrum Bridge, Inc. as a party.

Respectfully submitted,

/s/ Peter Stanforth

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Dated: June 20, 2011

⁸ See 47 C.F.R. §1.313 (2011).

⁹ Section 1.106(a)(1) of the Commission’s Rules expressly provides for immediate reconsideration of a designation order’s failure to include a person that wants to be a party, but otherwise forbids interlocutory petitions for reconsideration of a hearing designation order. By seeking to add persons, including SBI, as parties against their will, the Havens Parties are prosecuting a *de facto* petition for interlocutory reconsideration of the *HDO*. The presiding judge simply does not have delegated authority to reconsider the full Commission’s decision in the *HDO* as to which persons shall or shall not be parties. If the Havens Parties want, they are entitled to raise SBI’s absence as a party *after* the conclusion of the hearing and the issuance of an initial decision by the presiding judge.