

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
MARITIME COMMUNICATIONS/LAND) EB Docket No. 11-71
MOBILE, LLC) File No. EB-09-IH-1751
) FRN: 0013587779
Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio) Application File Nos. 0004030479,
Services) 0004144435, 0004193028,
) 0004193328, 0004354053,
Applicant with ENCANA OIL AND GAS (USA),) 0004309872, 0004310060,
INC.; DUQUESNE LIGHT COMPANY; DCP) 0004314903, 0004315013,
MIDSTREAM, LP; JACKSON COUNTY) 0004430505, 0004417199,
RURAL MEMBERSHIP ELECTRIC) 0004419431, 0004422320,
COOPERATIVE; PUGET SOUND ENERGY,) 0004422329, 0004507921,
INC.; ENBRIDGE ENERGY COMPANY, INC.;) 0004153701, 0004526264,
INTERSTATE POWER AND LIGHT) 0004636537, and 0004604962
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)
Services)

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

SkyTel 11-71, 2.2.12 Filing-2^[*]

SkyTel’s Opposing Response to Maritime’s Current Document Production Plan
and General Support of the Enforcement Bureau’s Position as to Said Plan

The undersigned “SkyTel” entities submit as follows:

[*] This should be called “SkyTel 11-71, 2.10.12 Filing-2.” SkyTel hereby corrects, in addition, the following: the SkyTel two other filings of today should have in their titles (and use of the titles in the texts), “2.10.12” and not “2.2.12.”

Introduction. The information in this filing was submitted in this proceeding previously by email with hard copy also filed and served. (Statements in the original email texts of the below as to how the emails would be filed and served in hard copy are not included in the following re-presented text.) The instant filing is presented using double spaced text and other formatting not in said already-filed copy. SkyTel notes that before the Wireless Bureau, email to and from FCC staff is often used for interim and other decision requests and actions, without use of attached pleadings in formal format. In addition, section 1.49 includes:

§ [1.49](#) Specifications as to pleadings and documents.
* * * *

(e) Petitions, pleadings, and other documents associated with licensing matters in the Wireless Radio Services may be filed electronically in ULS. See § [22.6](#) for specifications.

However, Section 22.6 does not currently exist,¹ and thus, there are no specifications as to pleadings and documents associated with licensing matters in the Wireless Radio Services. The instant pleading is associated with licensing matters in the Wireless Radio Services. Thus, it does not appear, or is not clear, that this pleading must be resubmitted as is hereby presented.

Herein, “I” means the undersigned on behalf of the SkyTel entities.

¹ We reference:

From: Kathy Harris <Kathy.Harris@fcc.gov>
To: Warren Havens <warren.havens@sbcglobal.net>
Sent: Fri, April 8, 2011 1:58:36 PM
Subject: RE: Your VM message from yesterday

Mr. Havens – We have confirmed what you pointed out – that section 22.6 no longer exists. That rule set forth requirements for making certain filings in microfiche. Eventually, that cross-reference will be deleted....

Kathy Harris
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
202.418.0609

From: Warren Havens <warren.havens@sbcglobal.net>
To: 'Richard L. Sippel' <richard.sippel@fcc.gov>
Cc: 'Patricia Ducksworth' <Patricia.Ducksworth@fcc.gov>; 'Mary Gosse' <Mary.Gosse@fcc.gov>; 'Pamela Kane' <Pamela.Kane@fcc.gov>; "cole@fhhlaw.com" <cole@fhhlaw.com>; "wright@khlaw.com" <wright@khlaw.com>; "jsheldon@fr.com" <jsheldon@fr.com>; "rmiller@gardere.com" <rmiller@gardere.com>; "czdebski@eckertseamans.com" <czdebski@eckertseamans.com>; "feldman@fhhlaw.com" <feldman@fhhlaw.com>; "mjp@catalanoplache.com" <mjp@catalanoplache.com>; "ajc@catalanoplache.com" <ajc@catalanoplache.com>; "ESchwalb@eckertseamans.com" <ESchwalb@eckertseamans.com>; "GHull@eckertseamans.com" <GHull@eckertseamans.com>; "richards@khlaw.com" <richards@khlaw.com>; "jstobaugh@telesaurus.com" <jstobaugh@telesaurus.com>; 'Brian Carter' <Brian.Carter@fcc.gov>; Bob Keller <rjk@telcomlaw.com>
Sent: Friday, February 10, 2012 9:00 AM
Subject: SkyTel position re Maritime doc production, delays, etc. / Re: EB Docket No. 11-71 Maritime Communications/Land Mobile

To: the Secretary
Attn: Mr. Sippel

By the end of today, SkyTel will file a pleading in generally in support of the Enforcement Bureau and in Opposition to Maritime with regard to this topic (currently Ordered document production by Maritime). However, I attempt to provide below our essential points.

SkyTel requests that the ALJ review said forthcoming SkyTel pleading prior to a decision on this matter, except if that decision is that Maritime bear the costs of the document production.

Among the points SkyTel will submit in said pleading are the following:

1. Maritime [*] is ***not*** in dire financial condition, as clearly shown in FCC and bankruptcy case records, by its elective expenditures.

It is spending more on attorney fees (payments and obligations-- in either case, actual costs ultimately to be extracted against FCC licenses, per Maritime's bankruptcy case disclosures) in this matter, than it would just copying and providing the documents, duly numbered.

Its attempt to shift cost is here is another delay tactic and smokescreen.

The documents it is now to produce, as its Interrogatories revealed, are not even the threshold, most critical ones: relating to initial license construction, coverage, and operation or lack thereof, as all documents shows to date, and the Maritime cover up also shows: said Interrogatory response asserted that Maritime did not keep these documents when it purchased

the licenses and stations from Mobex and Mobex then had the records destroyed-- so its story now goes.

But, no buyer would not keep the core records of what it was buying without which it could not defend those-- unless the assets were illicit, which is the case here. Also, after said records-destruction date, Maritime argued based on asserted details from the records before the FCC (e.g., in its attempt to get a \$1+ million refund from Universal Service Fund) and in court filings, and in Auction 61 asserting ahead of the auction that its site-based licenses were all valid, etc.

[*] Note: Maritime is the composite of (i) the owners and managers: John Reardon, who now claims 10% of the net proceeds of all licenses sales- which is far more than that of net equity; Donald and Sandra Depriest, and (ii) the creditors, which for the majority of the debt are creditors who stand to get the vast majority of the MCLM licensed spectrum (see the last hearing in this FCC case: this was explained by Maritime and commented on by the undersigned). It is not acting, however, as a bonafide legal entity in compliance with basic corporate formalities and external laws (e.g.. the real ownership and control is variously stated and changed before the FCC, and State of DE, as shown in records of this case; and the most essential FCC rules regarding the Maritime licenses are broken repeatedly- this is a sham entity).

The relevance of this note is that the Depriest and Reardon each, as shown in FCC and other public records, have made scores of millions of dollars personally, just in wireless businesses-- (e.g., Mobex sale to Nextel for over \$100 million, MCT Corp sale for over \$300 million, American telesasting sale to Sprint, sale by Depriest of cellular and radio license properties to various buyers, etc.) -- have ample financial resources to cover costs of their alleged non-sham entity Maritime.

- *The bankruptcy and pleas of dire economic straights are part of the artificial Second Thursday plan. If this fee shifting is permitted based on any such artificial plea, then Maritime will use that as part of that artificial Second Thursday escape attempt.*

2. Maritime artificially created its "bankruptcy" for "Second Thursday" escape from application of law in this Hearing-- otherwise, the creditors were not causing bankruptcy (in fact, they did not even all on the personal guarantees of Donald Depriest), and there were no other economic reasons.

If the Maritime FCC licenses are valid (as it represents and warrants in all of the sale agreements underlying all the Applications in this Hearing), then Maritime has no problems of any sort financially,

and if they are invalid, then Maritime cannot escape via Second Thursday- *it it not a free pass to keep and sell invalid licenses (only, in rare cases, to be relieved from a pending revocation hearing where, to begin with, there is a legitimate bankruptcy for economic reasons, not one where the management and owner wrongdoers and the creditors team up to launder illicit licenses.*

3. There is no FCC rule or APA rule, or FRCP that requires the agency, or the petitioners (SkyTel here) in a hearing on license revocations, sanction, etc. to bear the cost of the most basic production of documents that the defendant must produce for its defense, in the fact of existing clear evidence of its wrongdoing. Nor is there any equitable basis for that.

It is the duty of the licensee and applicants to submit required initial, or later, information to the FCC to get and keep licenses-- at its cost. There should be no exception here.

4. SkyTel, in pursuing the case against Maritime that lead to this Hearing, has already incurred costs in the hundreds of thousand of dollar, and (including the Maritime bankruptcy

used for its artificial "Second Thursday" escape attempt) these costs per time are accelerating. This is for the benefit of enforcement of FCC rules.

It inequitable and prejudicial for SkyTel to have to pay any part of Maritime's simple obligation to turn over fundamental relevant records for its defense of the most basic FCC law obligations for a licensee-- did it comply with the threshold construction, coverage, and operation requirements.

5. SkyTel has a right under FCC hearing rules to obtain copies of documents the FCC has or may obtain, via FOIA requests. Skybridge Spectrum Foundation, a nonprofit entity and publisher of information on FCC workings, has a right to FOIA fee waivers. (The standard to prove up a nonprofit status is simple and Skybridge had done that before the FCC. E.g., the standard is described in FCC filing fee waiver rules and guidelines: that tracks State and IRS law: States and the IRS are the authorities on this, not the FCC. Skybridge publications regarding FCC matters, in fact, lead to sources of information that have substantially informed the investigations leading to this Hearing.) The point here is that Skybridge may obtain any documents that the FCC obtains via FOIA, and has rights to fee waivers, and may publish those-- all that is not confidential and sustained as such under FOIA exemptions: documents relevant to meeting basic public-license-filing disclosures, cannot be subject to FOIA withholding. This Hearing's "protective order" cannot be used to restrict documents and information of that must be released under FOIA. That has already been violated, and Skybridge has that on appeal at the FCC OGC and intends to take that to a USDC if needed. (Its first FOIA case against the FCC taken to court, led to the FCC turning over substantially the improperly withheld information: that was relevant to this Hearing.)

- - -

SkyTel rights are prejudiced in this Hearing by the accommodation of ongoing Maritime delays.

- Maritime has not complied with even the most basic discovery requests.
- Its interrogatory responses, if true, admit to deliberate spoilage (the records destruction noted above) of the most critical evidence contrary to requirements of the Communications Act, APA, and FRCP to maintain records (in this case all of the MCLM licenses were subject to formal challenge by SkyTel from day one- from the day MCLM first obtained the Site-based and then then Geographic licenses, and actually before those times).
 - Maritime now suggests it has boxes of relevant records to defend its Site Based licenses, but will not even provide copies, and spends more delaying and fooling with that in legal cost, then it would have simply doing that.
 - It has not shown any conceivable way to possibly get Second Thursday relief, as the last hearing further revealed, and its proposed plan would give to the creditors (who, again, are not a cause of bankruptcy, but have chosen not even to ask Mr. Depriest to pay them under his personal guarantees) the vast majority of the Maritime licensed spectrum for unjust enrichment that, they would then sell off (none of them are operators of wireless systems) for scores of multiple of their debt.
 - To get Second Thursday relief, the wrongdoers and the alleged innocent debt holders must be determined. And that may be challenged by SkyTel. It is not a simple exercise of Maritime assertions or FCC cursory review and determination. This requires the fact-finding proceeding on these issues that is already in this Hearing, yet this Hearing is stymied by Maritime. That should be rejected moving forward.

Respectfully,
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

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From: Bob Keller <rjk@telcomlaw.com>

To: 'Richard L. Sippel' <richard.sippel@fcc.gov>

Cc: 'Patricia Ducksworth' <Patricia.Ducksworth@fcc.gov>; 'Mary Gosse' <Mary.Gosse@fcc.gov>; 'Pamela Kane' <Pamela.Kane@fcc.gov>; cole@fhhlaw.com; wright@khlaw.com; jsheldon@fr.com; rmiller@gardere.com; czdebski@eckertseamans.com; feldman@fhhlaw.com; mjp@catalanoplache.com; ajc@catalanoplache.com; ESchwalb@eckertseamans.com; GHull@eckertseamans.com; richards@khlaw.com; warren.havens@sbcglobal.net; jstobaugh@telesaurus.com; 'Brian Carter' <Brian.Carter@fcc.gov>

Sent: Friday, February 10, 2012 7:33 AM

Subject: RE: EB Docket No. 11-71 Maritime Communications/Land Mobile

Please find attached courtesy electronic copies of two filings being made today.

--

Bob Keller <rjk@telcomlaw.com>

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

PO Box 33428, Washington DC 20033

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From: Pamela Kane [<mailto:Pamela.Kane@fcc.gov>]

Sent: Thursday, February 09, 2012 4:51 PM

To: 'cole@fhhlaw.com'; 'wright@khlaw.com'; 'jsheldon@fr.com'; 'rmiller@gardere.com'; 'czdebski@eckertseamans.com'; 'feldman@fhhlaw.com'; 'mjp@catalanoplache.com'; 'ajc@catalanoplache.com'; 'ESchwalb@eckertseamans.com'; 'GHull@eckertseamans.com'; 'richards@khlaw.com'; 'Bob Keller'; 'warren.havens@sbcglobal.net'; 'jstobaugh@telesaurus.com'

Cc: Brian Carter

Subject: EB Docket No. 11-71 Maritime Communications/Land Mobile

Enclosed please find a courtesy copy of a filing made today.

Pamela S. Kane

Deputy Chief -- Investigations & Hearings Division

Enforcement Bureau

Federal Communications Commission

445 12th Street, S.W.

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202-418-2393

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The preceding previously submitted SkyTel filing text, hereby resubmitted with double spaced text and other formatting, is hereby,

Respectfully Submitted,

February 10, 2012

Warren C. Havens, Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC, and Verde Systems, LLC, and V2G LLC
(together, "SkyTel"),



By: _____

Warren Havens

President of each of the

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Certificate of Service

I, Warren Havens, certify that I have, on this 10th day of February 2012, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing filing to the following:¹

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¹ The mailed 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.

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