

Subject: Re: FOIA 2012-190
From: Warren Havens (warren.havens@sbcglobal.net)
To: Austin.Schlick@fcc.gov;
Cc: jstobaugh@telesaurus.com;
Date: Monday, May 7, 2012 9:01 PM

This copy of this email and its Attached Opposition and Motion is for filing in Docket 11-71.

(The Opposition and Motion caption includes this docket.)

 This also contains in the attachment errata changes that are shown.

Sorry
 Here is the right attachment.
 Signatures are by electronic filing.

A copy of this Docket 11-71 filing is the copy that is served to the persons on the Certificate of Services, below.

From: Warren Havens <warren.havens@sbcglobal.net>
To: Austin Schlick <Austin.Schlick@fcc.gov>
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Monday, May 7, 2012 8:59 PM
Subject: FOIA 2012-190

See attached Opposition and Motion

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

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

In the matter of Skybridge Spectrum Foundation (“SSF”) FOIA Request In the matter of Skybridge Spectrum Foundation Motion for Sanctions against attorney Bob Keller and Maritime Communications/ Land Mobile LLC (“MCLM”) (together, “K-MCLM”) in the hearing under FCC 11-64 (the “Hearing”)	FOIA Control No. 2012-190 FCC EB Docket 11--71
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Errata Copy[*]
Opposition and
Motion for Sanctions

This is a motion for sanctions under FCC rule section 1.52 (the “Motion”).¹ The Motion requests that Attorney Keller be barred from further representation of MCLM in (i) this FOIA proceeding captioned above and (ii) in the Hearing captioned above, and/ or other sanctions that the FCC finds appropriate under its “get tough” standard below.

SSF agrees with the FCC Decision at least as to the grant of the subject FOIA Request and those reasons for the grant that were stated,² and for reasons noted herein, the AppRev is frivolous and sanctionable.

¹ This Motion is also the basis of the SSF opposition, filed as of the date of this Motion, to the Application for Review (“AppRev”) filed by K-MCLM of the FCC decision to grant SSF’s FOIA request captioned (“Decision”) (a copy of which is attached to Exhibit 2 hereto). This Opposition is contained within this pleading.

² SSF strongly disagrees, however, that as a party to the Hearing, the FCC Enforcement Bureau (“EB”) does not have an obligation as representatives of the Commission, to satisfy obligations under the Administrative Procedures Act and related FCC regulation to timely provide the SSF (and other parties), the documents it obtained in the Hearing. See Exhibit 2 below in this regard. Thus, to the degree the FCC, including the EB take the legal position and practical course of conduct that the only way SSF (or any other party other than the EB) in this Hearing can obtain

[*] Errata additions are in blue text and boxes. Deletions in strikethrough.

The AppRev is just the latest in the sole business of K-MCLM--if one objectively reviews the record--which is to hide and destroy evidence, and otherwise obstruct justice and lawful competition, on the simple matters of fact and law described in FCC 11-64 (the “HDO”).

Given the background of the above proceedings, just indicated above, and the blatant ly frivolous nature of the AppRev, sanctions are clearly called for: the FCC should summarily deny the Application for Review and commence a sanctions proceeding under a grant of this Motion.³ Further, the FCC has both the authority and the obligation to release the CD to SSF, since it did not seek any protected confidential records, and for reasons indicated in Exhibit 2 hereto.⁴

See Exhibit 1 hereto: an email by SSF’s President to Mr. Keller. Mr. Keller did not respond, and K-MCLM maintains the AppRev. Thus, SSF submits this Motion.

SSF assert that Keller and MCLM (again, “K-MCLM”) are in willful violation of section 1.52 and should be sanctioned in accord with the Commissions “tough” intention and standard cited below. Section 1.52 provides in pertinent part (emphasis added):

§ 1.52 Subscription and verification.

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated.... The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that

evidence the Commission has in the relevant record of the Hearing, is it to seek it via an FOIA request, then SSF strongly disagrees. That does appear to be the position of the FCC and its representative, the EB: again, see Exhibit 2.

³ SSF requests that attorney Bob Keller be sanctioned for his course of conduct in the Hearing leading up to this AppRev, but also with regard to the AppRev. However, this Motion is submitted here, at this time, specifically addressing this FOIA matter since it serves as the basis of the above noted Opposition to the AppRev (which is due at this time).

⁴ *SSF make clear hereby, as it has in the past, that it asserts that the FCC is the cause of delay, prejudice, and reversible error with respect to SSF (and other parties in the Hearing, other than MCLM and EB) by withholding core evidence that had to be publicly disclosed by MCLM and its affiliates under the applicable licensing rules, commencing at no latter than in the FCC investigation of them and continuing into this Hearing, and now involving this simple FOIA request—which was limited to documents that were not protected or confidential. Even K-MCLM does not allege the requested records are.*

he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section,... it may be stricken as sham and false, and the matter may proceed as though the document had not been filed. An attorney may be subjected to appropriate disciplinary action, pursuant to § 1.24, for a willful violation of this section or if scandalous or indecent matter is inserted.

The standard is-- "certificate," "to the best of his knowledge, information, and belief," there is "good ground" and not "interposed for delay." This is a high standard, not one such as: the attorney may have a possibly colorable case presented in the pleading, or the subject part of the pleading for purposes of section 1.52 analysis. Attorneys are trained in law, and in this case, Bob Keller many years. ~~Ms. Rasmussen has been practicing before the FCC for going on several decades, if only PSI representation is considered. She also is expert in all the areas of law involved in the subject renewal application, the Petition, and the related Opposition.~~

Indeed, this high standard and the important of its enforcement is emphasized by the Commission in: COMMISSION TAKING TOUGH MEASURES AGAINST FRIVOLOUS PLEADINGS, FCC 96-42, 11 FCC Rcd 3030; 1996 FCC LEXIS 668, February 9, 1996 Released (emphasis added):

By this Public Notice, the Federal Communications Commission reminds parties to our proceedings and their attorneys that our rules prohibit the filing of frivolous pleadings or pleadings filed for the purpose of delay in proceedings before the Commission or its staff. See e.g., 47 C.F.R. § 1.52. The Commission intends to fully utilize its authority to discourage and deter the filing of such pleadings and to impose appropriate sanctions where such pleadings are filed. A pleading may be deemed frivolous under 47 C.F.R. § 1.52 if there is no "good ground to support it" or it is "interposed for delay." See also Implementation of Cable Television Consumer Protection Act, 9 FCC Rcd 2642, 2657 (1993) (frivolous complaint is one "filed without any effort to ascertain or review the underlying facts" or "based on arguments that have been specifically rejected by the Commission. . . or [having] no plausible basis for relief"). In the past, the Commission generally has issued warnings against the future filing of such pleadings. See e.g., Western Communications, Inc., 59 FCC 2d 1441, 1456 n.21 (1976); Western Maine Cellular, Inc., 7 FCC Rcd 8648 (Mob. Svs. Div. 1992). [*2] However, all Bureaus and Offices are encouraged to fully utilize the Commission's sanctions powers, which include the authority to strike such pleadings pursuant to 47 C.F.R. § 1.52 or other applicable rules and to issue

forfeitures under 47 U.S.C. § 503 for violations of 47 C.F.R. § 1.52 or other applicable rules.

In addition, all Bureaus and Offices are encouraged to refer under seal incidents of attorneys who are found to have filed frivolous pleadings in violation of 47 C.F.R. § 1.52 to the Office of General Counsel pursuant to our decision in Opal Chadwell, 2 FCC Rcd 3458 (1987). See Order, 10 FCC Rcd 10330 (1995) (codifying the procedures concerning attorney misconduct previously announced in Opal Chadwell). The General Counsel will determine the appropriate action to be taken. Such action might include initiation of a proceeding under 47 C.F.R. § 1.24 (censure, suspension or disbarment of attorneys practicing before the Commission), referring the matter to the appropriate state bar, or consulting with the Department of Justice. See Opal Chadwell, 2 FCC Rcd at 3458.

Action by the Commission February 2, 1996, by Public Notice (FCC 96-42) by Chairman Hundt, Commissioners Quello, Barrett, Ness and Chong.

The AppRev is frivolous and sanctionable under above standards, for the following reasons. One need look no further than the “Questions Posed for Review” in the AppRev and before that, in the subject FOIA request, and pleadings prior to the AppRev:

1. The FOIA Request stated that it did not seek records that may be withheld as confidential and the like.
2. The FOIA Request stood alone, as do all FOIA requests, under FOIA law. Its grant is not dependent on whether SSF is a party in the Hearing or what SSF may do ^{not} do with records sought.
3. The AppRev and underlying MCLM position is not based on law, but on “questions posed” that, in effect, see ^k imposition of new law. The existing law is simple: the FOIA statutes and the FCC implementing regulations, and those cannot possibly be the basis for any denial of the subject FOIA Request since it excluded seeking any documents that could be withheld. (SSF had, via counsel, means to get any documents from MCLM in the Hearing that were designated by MCLM as under the protective order, but again, this has nothing to do with this FOIA Request.)

4. MCLM elected to provide the subject records to EB on a certain “CD.” At that time, these were Commission records that—anyone—could obtain under a FOIA request to the extent they were not subject to a FOIA withholding exemption. There is no FCC rule, nor would one be permitted under FOIA statutes, that restricts an FOIA request to parties that are not in an agency hearing where the sought documents are held by the Commission for (or including for) purposes of the Hearing. There is always some reasons that an agency obtains records, but FOIA is not concerned with why (in what proceeding or for what purpose) an agency has records, but is concerned with whether or not they may be released. Again, SSF specifically excluded from its FOIA Request documents that could not be released.

5. K-MCLM do no assert any reason why they have interest and standing to continue to try to block the records release, in their AppRev. They attempt^t to argue for the EB and Commission, contrary to its own^D decision. K-MCLM have no interest and standing, since SSF only seeks records that are not subject to any protection and FOIA withholding potential.

Conclusion

and Opposition

For reasons given above, the Motion^t should be promptly granted.

Respectfully submitted, May 7, 2012,

/s/ Warren Havens

[Submitted Electronically. Signature on File]

Warren C. Havens
President
Skybridge Spectrum Foundation

2649 Benvenue Ave, Berkeley, CA 94705

Phone: 510-841-2220

Fax: 510-740-3412

warren.havens@sbcglobal.net

jstobaugh@telesaurus.com

Subject: notice of motion for sanctions / Re: FOIA 2012-190

From: Warren Havens (warren.havens@sbcglobal.net)

To: rjk@telcomlaw.com;

Cc: Gary.Schonman@fcc.gov; Moris.Martinez@fcc.gov; Richard.Sippel@fcc.gov; 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; jstobaugh@telesaurus.com; rhj@commlawgroup.com; Brian.Carter@fcc.gov; Mary.Gosse@fcc.gov; Patricia.Ducksworth@fcc.gov;

Date: Monday, April 23, 2012 4:53 PM

Mr. Keller,

Your application for review filing, a copy of which you send with the below email, is frivolous and sanctionable including under Section 1.52 and 1.29.

This email is notice that if you do not withdraw the frivolous and sanctionable filing by the end of this week, then the FOIA requester, Skybridge Spectrum Foundation, which I represent, will pursue legal action against you and you individually, along with your client.

This will involve action outside (in addition to) FCC action as needed.

It is also objectionable for you to address FCC staff in this (or any other) FCC official matter by use of a first name.

Warren Havens
President
Skybridge Spectrum Foundation

From: Bob Keller <rjk@TelComLaw.com>
To: 'Gary Schonman' <Gary.Schonman@fcc.gov>
Cc: 'Moris Martinez' <Moris.Martinez@fcc.gov>; warren.havens@sbcglobal.net; Richard L. Sippel <Richard.Sippel@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; rhj@commlawgroup.com; 'Brian Carter' <Brian.Carter@fcc.gov>; Mary Gosse <Mary.Gosse@fcc.gov>; 'Patricia Ducksworth' <Patricia.Ducksworth@fcc.gov>
Sent: Monday, April 23, 2012 3:22 PM
Subject: RE: FOIA 2012-190

Gary,

Please find attached a courtesy electronic copy of an application for review in the referenced matter, directed to the Office of General Counsel, and filed today with the Office of the Secretary. Hard copies have been served by mail.

--

Bob Keller <rjk@telcomlaw.com>
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

From: Moris Martinez [mailto:Moris.Martinez@fcc.gov]
Sent: Wednesday, April 11, 2012 3:11 PM
To: 'warren.havens@sbcglobal.net'; 'rjk@telcomlaw.com'
Cc: Gary Schonman
Subject: FOIA 2012-190

Dear Messrs. Havens and Keller:

Attached is our response to the above-referenced FOIA request. If you have any questions, please contact Gary Schonman at 202-418-1795.

Thank you

Moris Martinez
Enforcement Bureau
Investigations and Hearings Division



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Investigations & Hearings Division
445 12th Street, S.W., Room 4-C330
Washington, DC 20554

April 11, 2012

Via email to warren.havens@sbcglobal.net
Warren Havens, President
Skybridge Spectrum Foundation
2509 Stuart Street
Berkeley, CA 94705

Via email to rjk@telcomlaw.com
Robert J. Keller, Esq.
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033

Re: Freedom of Information Act Request
FOIA Control No. 2012-190

Dear Messrs. Havens and Keller:

This letter responds to the above-referenced request submitted under the Freedom of Information Act ("FOIA") by Skybridge Spectrum Foundation ("Skybridge"). Therein, Skybridge seeks a copy of a Compact Disc ("CD") containing electronically-scanned documents that was submitted by Maritime Communications/Land Mobile, LLC ("Maritime") to the Commission's Enforcement Bureau on February 17, 2012, pursuant to an Order of the Presiding Judge in EB Docket No. 11-71.¹

Pursuant to Section 0.461(d)(3) of the Commission's Rules, this office, by letter, dated February 23, 2012, transmitted a copy of the subject FOIA request to Maritime for comment. Thereafter, on March 5, 2012, Maritime submitted a letter opposing release of the CD to Skybridge,² and, on March 15, 2012, Skybridge replied with arguments to the contrary.³ Based on the information submitted by Maritime and Skybridge as well as our own independent review of the materials contained on the CD, we hereby grant the FOIA request.

¹ See *Maritime Communications/Land Mobile, LLC*, Order, FCC 12M-11 (ALJ, rel. Feb. 16, 2012). Both Maritime and Skybridge are parties in EB Docket No. 11-71.

² See Letter from Robert J. Keller, Esq., Counsel for Maritime, to Gary Schonman, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 5, 2012 ("Maritime Response").

³ See Letter from Warren Havens, President of Skybridge, to Gary Schonman, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 15, 2012 ("Skybridge Reply").

Maritime maintains that the CD should be withheld because: (a) the undisclosed real party in interest behind the subject FOIA request is Warren Havens who is using Skybridge, a purported non-profit entity, to avoid paying FOIA processing fees;⁴ (b) Skybridge's use of the FOIA in this instance is "contrary to the express order of the presiding judge with jurisdiction over the hearing case [in EB Docket No. 11-71];"⁵ (c) the materials sought are Enforcement Bureau, not Commission, records;⁶ and (d) the Enforcement Bureau lacks the delegated authority to act on FOIA requests.⁷ Skybridge counters that: (a) Maritime has failed to rely on any FOIA exemption as a basis for withholding the materials from release;⁸ (b) Section 1.325(b) of the Commission's Rules specifies that parties in hearing cases seeking copies of Commission records must proceed under the FOIA;⁹ (c) Skybridge's request for a fee waiver is irrelevant to whether the subject CD should be released;¹⁰ and (d) there is nothing in the FOIA or the Commission's rules that categorically exempts from release records that are in the control of the Enforcement Bureau.¹¹

Under the FOIA and the FCC's implementing rules, records that are not routinely available to the public will be released upon request unless they contain information that is exempt under the FOIA from mandatory disclosure. Section 552(b) of the FOIA, 5 U.S.C. § 552(b) contains nine categories of records that are exempt from disclosure. Maritime, however, does not claim that *any* of them is applicable here. Indeed, it does not refer to any FOIA exemptions whatsoever in its Response. For example, Maritime does not assert that any documents on the CD contain trade secrets or commercial or financial information which would support a claim of confidentiality.¹² This is significant because the exemptions provide the legal basis under the FOIA upon which records may be withheld. Instead, Maritime interposes arguments that are without merit. In this regard, we agree with Skybridge that the matter of whether it is entitled to a fee waiver is irrelevant in this instance to the question of whether the CD should be released, particularly given our determination below that Skybridge's request for a fee waiver is moot. Additionally, we agree with Skybridge that Section 1.325(b) of the Commission's Rules, 47 C.F.R. § 1.325(b), authorizes parties to avail themselves of the FOIA when seeking production of documents from the Commission in hearing cases. Finally, as the custodian of the records in question, the Enforcement Bureau has the authority to rule on the subject FOIA request. See Section 0.461(d)(2), 47 C.F.R. § 0.461(d)(2), which specifies that the

⁴ Maritime Response at p. 1.

⁵ Maritime Response at p. 2.

⁶ Id.

⁷ Id.

⁸ Skybridge Reply at p. 1.

⁹ Skybridge Reply at p. 2.

¹⁰ Skybridge Reply at p. 3.

¹¹ Id.

¹² See 5 U.S.C. § 552(b)(4).

Messrs. Havens and Keller
April 11, 2012
Page 3 of 3

bureau or office where the subject records are located is the entity empowered to act on a FOIA request for those records.

Although Maritime did not produce the CD with a claim of confidentiality as to all or any part of the contents of the CD, we independently reviewed the materials on the CD to determine, whether any FOIA exemption is applicable, particularly Exemption 4 relating to commercially sensitive information that could adversely affect Maritime's competitive posture. We conclude that no FOIA exemption is applicable in this instance.

Accordingly, we hereby grant Skybridge's FOIA request. If Maritime believes our treatment of this FOIA request is in error, it may file an application for review of this action with the FCC's Office of General Counsel within 10 days of the date of this letter. 47 C.F.R. § 0.461(i). We intend to produce the subject CD, including all of its contents, to Skybridge if no such application for review is timely filed.

We are required by the FOIA, 5 U.S.C. § 552(a)(4)(A)(i), and Section 0.470(a) of the Commission's rules, 47 C.F.R. § 0.470(a), to charge FOIA requesters fees for processing their FOIA requests. The cost associated with processing this request is less than \$15.00 and therefore *de minimis*.¹³ Consequently, no charge will be assessed with regard to this FOIA request, and Skybridge's request for a fee waiver is dismissed as moot.

If Skybridge believes this to be a denial of its request, it may file an application for review with the FCC's Office of General Counsel within 30 days of the date of this letter. 47 C.F.R. §§ 0.461(j) and 1.115.

If you have any questions, please contact the undersigned at 202-418-1795.

Sincerely,



Gary Schonman
Special Counsel
Investigations & Hearings Division
Enforcement Bureau

¹³ We note that in the ordinary course a fee would have been assessed for review of the subject documents. However, the Enforcement Bureau undertook its review of the CD in its capacity as a party in EB Docket No. 11-71 and did not conduct a separate review for the purposes of the instant FOIA request.

Subject: Re: MCLM CD

From: Warren Havens (warren.havens@sbcglobal.net)

To: Pamela.Kane@fcc.gov; Brian.Carter@fcc.gov;

Cc: rhj@commlawgroup.com; jstobaugh@telesaurus.com;

Date: Friday, May 4, 2012 2:55 PM

[This in included here in this Errata copy, but it is several times referenced in the original copy also. This pre-existed the Opposition and Motion. Its non-inclusion in the original filing was by error.]

I will determine a course to seek an appeal, unless I change the view I expressed on the applicable law, which you did not respond to.

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: 'Warren Havens' <warren.havens@sbcglobal.net>; Brian Carter <Brian.Carter@fcc.gov>
Cc: Robert Jackson <rhj@commlawgroup.com>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Friday, May 4, 2012 2:11 PM
Subject: RE: MCLM CD

Mr. Havens: I have now explained to you on several occasions that consistent with the Commission's rules, the Enforcement Bureau cannot simply hand over documents in its possession. This shall be the last communication we will provide on this issue.

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 04, 2012 5:05 PM
To: Pamela Kane; Brian Carter
Cc: Robert Jackson ; Jimmy Stobaugh
Subject: Re: MCLM CD

I request the CD also under the following. Will you provide it under the following?

5 USC § 556. **Hearings; presiding employees;** powers and duties; burden of proof; evidence; record as basis of decision.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: 'Warren Havens' <warren.havens@sbcglobal.net>; Brian Carter <Brian.Carter@fcc.gov>
Cc: Robert Jackson <rhj@commlawgroup.com>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Friday, May 4, 2012 1:37 PM
Subject: RE: MCLM CD

Mr. Havens:

With regard to the Maritime CD, we have already explained to you previously, and now to Mr. Jackson, that the Enforcement Bureau cannot simply hand over documents in its possession. See 47 C.F.R. 1.325. You can proceed under the FOIA process as set forth in our rules or seek relief from Maritime or the Presiding Judge to obtain these documents.

To the extent the Enforcement Bureau believes you or your companies, as parties to this action, may have relevant information – which you have recently suggested you do – we can and likely will seek this information in the form of interrogatories and document requests pursuant to 47 C.F.R. §§ 1.323 and 1.325. Should we do so, you are obligated to respond.

As we explained to you last week, and to Mr. Jackson previously, if you have materials you believe are relevant and which you believe the Enforcement Bureau should have, nothing is preventing you from simply providing those materials to us.

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 04, 2012 3:59 PM
To: Pamela Kane; Brian Carter
Cc: Robert Jackson ; Jimmy Stobaugh
Subject: MCLM CD

Ms. Kane, Mr. Carter,

While I cc Mr. Jackson (sine he represents companies I serve as President), the below is from me as a pro se party, and a pro se representative of other companies I manage.

As a pro se party and representative of other parties (indicated above) in the FCC hearing on MCLM, reflected in FCC docket 11-71, I intend to make again a request to your Enforcement Bureau (EB) of a copy of the CD produced by Maritime with supposedly responsive documents to the EB (EB- SkyTel) joint discovery. I understand that nothing on that CD is marked as highly confidential for attorney eyes only in this hearing: See your Bureau's response to the FOIA request I submitted.

In this regard, see rules and statute below and my comments with them.[*]

Question

(1) If I make such a request, will EB fulfill it?

If I do not hear back from you by this coming Monday on this email, I will proceed without a response, since this issue is time sensitive.

Respectfully, I object to the withholding of this CD to date.
I also understand you declined a request of today by Mr. Jackson for some of the SkyTel entities I serve.

- - - - -

Additional Questions (not as time sensitive as the above question):

Further on this topic of § 1.935 and this hearing:

(2) If EB were to seek documents from me and companies I represent (such as those we get in discovery in other legal proceedings, as Mr. Jackson and I indicated are being obtained), does EB have to follow the procedures in 1.325

below, or would you be permitted seek and obtain those other than by 1.935 procedures?

(3) I assume you believe that I may (at my option) provide to EB relevant materials that EB does not request under 1.325 (since that has been going on for a long time), but if I am mistaken, please advise. I also assume that EB does not believe that I must (under any legal requirement, or any election that if not made would prejudice party rights) submit any such relevant materials to the EB, but if I am mistaken, please advise

Thank you,
Warren Havens

[*] Emphasis added below.

47 CFR § 1.203 The record.

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. Where any decision rests on official notice of a material fact not appearing in the record, any party shall on timely request be afforded an opportunity to show the contrary.

5 USC § 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

Under the above, it appears that the CD must be made available, as I request (and requested previously).

I believe that the below reg should not be read in conflict with the above reg and its associated statute, including due to the principal that if a law can be read in accord with another law, but also in conflict, then it should be read in accord. In that regard;

In the below reg, "except the Commission" should not apply to a request to EB as a party. The EB cannot be both the "Commission" and "[a] party to a Commission proceeding" in this reg.

Also, the above provides that "papers... filed in the proceeding... shall be made available to the parties" - but, below, if a party may not request the EB as a party-- Commission trial staff-- to get docs it has obtained for the Commission (relevant to the hearing), then §556 can be frustrated.

Further, §556 cannot mean that the Commission will allow its trial staff party access to relevant documents, and only at a later date make them available to the other parties. That would prejudice the other parties.

Moreover, it seems to me, the Commission acts through its trial staff in a formal hearing, which would mean EB as the trial staff implements §556.

Thus, it seems to me that EB must ("shall") make the CD available, upon request or otherwise.

47 CFR § 1.325 Discovery and production of documents and things for inspection, copying, or photographing.

(a) A party to a Commission proceeding may request any other party except the Commission to produce and permit inspection and copying or photographing, by or on behalf of the requesting party, of any designated documents, papers,

Also, see: In re Applications of RKO GENERAL, INC., FCC 84-78, 97 F.C.C.2d 423; 1984 FCC LEXIS 2891; 55 Rad. Reg. 2d (P & F) 1179 (1984):

... we begin with the proposition that all documents that are relevant to the hearing issues and reasonably calculated to lead to the discovery of admissible evidence are to be produced. 47 C.F.R. § 1.325(a) (1983).

Sincerely,
W. Havens

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2012, I caused copies of the foregoing pleading to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

Bob Keller
PO Bo 33428 Farragut Station
Washington DC 20033-0428

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554

Pamela A. Kane, Esquire
Brian Carter, Esquire
Enforcement Bureau
Federal Communications Commission
445 Twelfth Street NW – Room 4-C330
Washington DC 20554

Robert H. Jackson, Esquire
Marashlian & Donahue, LLC
1420 Spring Hill Road – Suite 401
McLean, VA 22102

Jack Richards, Esquire
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