

Subject: Re: EB Docket No. 11-71

Date: Wednesday, May 9, 2012 10:08:58 AM PT

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

To: Pamela Kane <Pamela.Kane@fcc.gov>, 'rjk@telcomlaw.com' <rjk@telcomlaw.com>

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Ms. Kane and Mr. Keller,

Since you two used email for this topic, and it involves and mentions SkyTel (called "Havens")[*], I am responding in email.

["Applicants" counsel: I comment on "Applicants" below.]

I present this on pro se basis in this Hearing. Herein, by "SkyTel," I mean the parties in this Hearing that I am representing on a pro se basis. (If called for, Mr. Jackson, for the other SkyTel entities, will address these matters in his own filing.)

A copy of this, in PDF, will be filed in the docket by my office (today or tomorrow). That will have the attachments I note below, and possibly other related ones that will be self explanatory. This will also be served by standard procedure.

1. The subpoena was served by attorneys for Plaintiffs in the noted NJ case and not by Havens.[*]

I do not act pro se in that case, of course. (I am not an esquire.)

2. The NJ case is described generally in the attached decision of the court, on plaintiffs' Sherman Act 1 claim. I have in this Hearing explained this NJ case previously.

3. The documents to be obtained by the subpoena, and others obtained in the NJ case, will of course be made available in this Hearing.

I will consult with our NJ and DC-area attorneys in this regard, and we will coordinate with the Enforcement Bureau and Maritime counsel, with regard to inspection, designation of relevant items, "bates" numbering, etc.

4. Based on information *already before the FCC*, I comment briefly here on the the third paragraph below from Mr. Keller to Ms.. Kane ("Bob" to "Pam"):

I insert numbers in brackets for the comments:

[i] [ii] [iii] - Overall comments on below quoted matter are given below, after comments on [1] to [5].

[1] " Maritime had previously been advised by Mr. David Predmore, a former Mobex officer, that these documents were destroyed a few years back when Mobex ceased making payments for the storage facility.

[2] "As I understand it, Mr. Predmore was advised by NCA that the files would be destroyed if Mobex failed to pay the required fees.

[3] "Mobex, which had been dissolved sometime in 2006, did not pay the fees, never retrieved the files,

[4] "and Mr. Predmore therefore assumed the documents had been destroyed as he had been advised.

[5] "I learned yesterday afternoon, however, that NCA apparently has 93 boxes of files that are responsive to the

Havens subpoena."

[1] [2] The Predmore declaration (under filing under oath by Maritime) and associated documents, is attached hereto (in the docket filing/ served copy of this email string).

Maritime bought the Mobex AMTS licenses and station assets, as it told the FCC, and got FCC approval of (over formal objections of SkyTel).

- This is also explained in statements by Maritime in its bankruptcy proceeding. Those are on PACER.

Maritime, as buyer, also acquired the rights to the documentary proof of what it bought from Mobex.

- It is frivolous to suggest that they Buyer of FCC licenses and station assets, did not exercise that right to be sure that it knew that it was buying legitimate assets in compliance with FCC law.

John Reardon was CEO of Mobex, the Seller and along with the sale to Maritime, became CEO of Maritime.

Mr. Reardon, and not Mr. Predmore, was in charge of these records for both seller and buyer.

These records were assets of the buyer, since without them, there was no evidence of the sold assets-- FCC licenses and licensed stations (or alleged stations).

Further, in the NJ case, counsel for defendants Maritime and Mobex, in a required disclosure, stated that Mobex was merged into Maritime.

[3] Mobex Network Services, and its parent Mobex Communications (together "Mobex"), continued operations long after these records were placed in storage.

- That is shown, for example, in FCC licensing records (activity even as of last year), and in a bankruptcy case of a dba of Mobex, called Skedacs.

- Mobex also is active in the NJ litigation, represented by counsel.

[4] "Assum[ing]" is not permitted in a legal proceeding where documents to be produced are under the control of a party.

- Maritime had rights to these records. It was under a legal obligation in the WTB proceedings (noted above), and in this Hearing under 11-71, to produce relevant documents under its control.

- It can not in good faith assert assumptions of this kind, as an excuse.

Further, Maritime could have dispelled its asserted "assumption" with a simple phone call to the storage company, to obtain its official policy (if it did not already know it).

- Again, John Reardon was CEO of Mobex when the records were placed in storage, and the CEO of Maritime.

- The storage company does not "destroy" records, in such a case. I understand that it will state to anyone its policy which is public.

- Under the subpoena, the storage company will be testifying on these matters, including relevant communications.

[5] *Mr. Keller could have "learned" of these boxes with a simple phone call, at any time in this Hearing involving the discovery obligations of his client Maritime.*

- *Maritime has an obligation to respond to interrogatory and document demands with regard to information and records under its control, and due diligence.*

- *These records in storage were under its control, and their status was easy to confirm by a simple phone call.*

[i] SkyTel legal counsel have advised the storage company of the legal obligations to not allow tampering or potential tampering with these boxes of records-- (including access by any party, including Maritime and Mobex)-- of records until the subpoena obligations are completed, including to allow inspection and copying.

[ii] Mr. Keller remarks at to: *"advised," "understand," "assumed" "advised," "learned" -- These facts always appear to be up in the air for Mr. Keller an his client.*

This has gone on with Maritime and its predecessors for *decades*.

However, these-- including the boxes at this storage company-- have been under the control of Keller-Maritime, and under their legal obligation to produce.

Maritime- Keller responded to discovery in this Hearing about this matter (the alleged destroyed documents), under oath (and under FCC rule §1.52). That is after another filing by Maritime, also under oath, before the WTB on this matter.

For decades, Maritime and its predecessors have not shown the FCC, informal proceedings, any evidence of timely construction of the subject AMTS site based licenses, or of meeting the coverage requirement (the substance of "construction"), or of required operations following required construction-coverage. These records in storage relate to these issues, according to past statements of Mobex and MCLM.

[iii] These matters are in formal proceedings before the Wireless Bureau. The pleadings are on the same Call Signs that are subject to Issue '(g)' in this Hearing, e.g., WRV374 (Maritime site-based AMTS license for areas along Atlantic Coast).

These notes, herein, touch upon matters already presented in depth to the FCC, *as Keller-Maritime fully knows*.

Also, SkyTel has informed Ms. Kane's office of these matters even before this Hearing began.

This is not a hearing under 47 USC 309(d), but should be.

- SkyTel had petitions to deny under that statute (eventually resulting in an Application for Review, still pending) that were effectively granted by FCC 11-64 (that HDO began this Hearing) but the HDO did not grant the petitions to deny, as called for under applicable law and precedent.
- This appears to be the basis of this Hearing being conducted as if there is not already a long, substantial record in these matters to use as a foundation.
- This involves, inter alia, these boxes in storage, and much other evidence on issues in the HDO.

[The Applicants in this Hearing also are involved with the Maritime site-based stations (thus, these records in storage): by lease, purchase, due diligence, etc. The Applicants have not responded to the SkyTel discovery demands. They suggest to Mr. Sippel that they have nothing to do with the site-based licenses and discovery, but that is incorrect.]

Skytel reserves all rights as to these objectionable matters, in part noted herein.

Respectfully,

Warren Havens

[*] Footnote:

"Havens" is code by Keller-Maritime: Apparently to deflect their own shortcomings, they suggest that SkyTel entities are a personal matter by an individual, and not up to the standard of the esquires, trained in law and practicing as *officers of the court- and the Commission*. When in more trouble, they address Commission staff by first name, such as here.

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Sent: Wednesday, May 9, 2012 6:26 AM

Subject: RE: EB Docket No. 11-71

Thank you, Bob.

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

From: Bob Keller [mailto:rjk@TelComLaw.com]

Sent: Wednesday, May 09, 2012 9:21 AM

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Subject: EB Docket No. 11-71

Pam:

I am using email as the most expeditious way to advise you and the other parties of something that came to the attention of Maritime only yesterday afternoon.

I am advised that, in connection with the New Jersey litigation—*Skybridge Spectrum Foundation et al. vs. Mobex Network Services LLC*, Civ. Action No. 11-993 (DCNJ)—Havens recently served a subpoena on Nations Capital Archive Storage Systems, Inc. (“NCA”) seeking all records stored on behalf of Mobex. Maritime was not aware of the subpoena before today because Havens apparently failed to serve a copy on the parties to the NJ proceeding. Maritime learned of it from NJ counsel for Mobex who learned of it when he was contacted by NCA about the subpoena.

Maritime had previously been advised by Mr. David Predmore, a former Mobex officer, that these documents were destroyed a few years back when Mobex ceased making payments for the storage facility. As I understand it, Mr. Predmore was advised by NCA that the files would be destroyed if Mobex failed to pay the required fees. Mobex, which had been dissolved sometime in 2006, did not pay the fees, never retrieved the files, and Mr. Predmore therefore assumed the documents had been destroyed as he had been advised. I learned yesterday afternoon, however, that NCA apparently has 93 boxes of files that are responsive to the Havens subpoena.

A substantial portion if not the majority of the documents may be in no way related to the matter in issue in EB Docket No. 11-71, but it is also possible and indeed likely that some portion of the documents may be relevant. Maritime is not now and never has been the custodian of these documents. Maritime is not in privity with NCA and does not have direct access to the documents.

It is unclear at this time whether Maritime will eventually gain access to the documents in connection with the New Jersey litigation. I will keep the Bureau and the parties to this proceeding advised of any future developments in that regard.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th 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:

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/s/

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