

1 What you are basically saying is that it is  
2 incomplete information?

3 MS. KANE: It is incomplete  
4 information. We have asked them to identify  
5 by production number. We were told there was  
6 no additional information. During this --

7 JUDGE SIPPEL: It's what I've got  
8 here. Is that --

9 MS. KANE: Correct, Your Honor.

10 JUDGE SIPPEL: -- the chart?

11 MS. KANE: It's actually the  
12 larger of the two charts. Table 2 contains  
13 the construction date information. And you  
14 will see that there are whole blanks in the  
15 table 2 chart of the construction information.

16 What we asked them to stipulate to  
17 is that there was no evidence of construction.  
18 And they refused to stipulate to that. So  
19 there is either --

20 JUDGE SIPPEL: Okay.

21 MS. KANE: -- evidence they should  
22 produce or there is no evidence and they

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1 should stipulate to that effect. That is the  
2 issue with construction. So we do still  
3 believe there is an outstanding issue as to  
4 whether there is any further evidence they  
5 need to produce in accordance with the  
6 construction question.

7 JUDGE SIPPEL: Okay. All right.  
8 Now, before we go any further -- don't worry,  
9 Mr. Havens. Don't worry.

10 This is clearly not going to work.  
11 I mean, this is just not going to work unless,  
12 you know -- well, we are going to have to go  
13 down, either go through each of the listed  
14 stations and get specific information as to  
15 what the status is -- I don't believe that's  
16 being done.

17 MS. KANE: Your Honor, we are  
18 prepared to do that today. We could provide  
19 you with the most recent chart that we  
20 obtained from Maritime, which was dated 3-19.  
21 We're happy to do that. It's the document --

22 JUDGE SIPPEL: Yes. I've got the

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1 3-19-2012 errata.

2 MS. KANE: Yes. That is the most  
3 current. The errata and additional  
4 information document is the most recent chart.

5 JUDGE SIPPEL: But there's nothing  
6 -- I'm going to say -- you say that you're  
7 looking for evidence as to fill in the blanks  
8 or you are willing to go with this? What are  
9 you looking for?

10 MS. KANE: What we are looking for  
11 is for them to confirm. We have asked for all  
12 of the evidence in support of construction.  
13 And, instead of providing that information,  
14 all they provided was the chart. And they  
15 have notably said that the rest of their  
16 information as to construction is based on  
17 information and belief.

18 We are well past the information  
19 and belief in this proceeding. You know, we  
20 are a year into discovery now. They should  
21 know whether they have evidence with regard to  
22 the other stations or not. And we have asked

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1           them to identify by production number the  
2           evidence that supports construction of any of  
3           these stations for which they have not  
4           identified dates in this chart. And they have  
5           said there is no such additional information.

6                    JUDGE SIPPEL: All right.

7                    MS. KANE: And so we asked them to  
8           stipulate to that effect. And they refused to  
9           do so.

10                   JUDGE SIPPEL: Well --

11                   MR. HAVENS: Can I please say  
12           something?

13                   JUDGE SIPPEL: Well, I'm talking  
14           to the attorneys who are here first. Now, Mr.  
15           Keller, do you have a response to that?

16                   MR. KELLER: Your Honor, what we  
17           provided, the page numbers we provided, in  
18           that chart that we're talking about and the  
19           dates we have are where we had documentation  
20           that would indicate the specific date of  
21           construction, which is one of the things the  
22           Commission was asking for.

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1           Beyond that, though, we have  
2           stated that the stations were timely  
3           constructed, even though we cannot at this  
4           point state the specific date. And the reason  
5           for that is quite simply that it -- some of  
6           these --

7                   JUDGE SIPPEL: Are what?

8                   MR. KELLER: The reason for that,  
9           the reason for an inability to stay at a  
10          specific point, you only get that it's done.  
11          Some of these stations were constructed as  
12          much as 20 years ago. The licenses were  
13          renewed multiple times. The licenses were  
14          assigned multiple times.

15                   I mean, at what point -- and the  
16          Commission has ruled on this issue in some  
17          cases. At some point, there has got to be an  
18          end to the game.

19                   So we basically said, you know, we  
20          find these stations after they had been  
21          assigned, after they had been renewed, and  
22          after this issue had been litigated. And so

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1 we believe that it was constructed.

2 Furthermore, we have provided  
3 information to the Bureau about the people  
4 with knowledge about the actual construction,  
5 the contractors who were actually involved in  
6 the construction. We provided that  
7 information to the Commission.

8 JUDGE SIPPEL: Well, yes, but Ms.  
9 Kane is just asking you to stipulate that that  
10 is all the information that there is.

11 MR. KELLER: I would have to go  
12 back and look at the exact wording. I'm not  
13 going to --

14 JUDGE SIPPEL: Well, of course,  
15 you will. Of course, you will.

16 MR. KELLER: And I am not  
17 stipulating that that is all the information  
18 there is. We may or may not be willing to  
19 stipulate that that is all the information we  
20 have.

21 JUDGE SIPPEL: Hold on just a  
22 second. What is the problem with the

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1 stipulation that you are referring to, Ms.  
2 Kane? What is the stipulation that you want?

3 MS. KANE: We asked them --  
4 essentially, I am looking at their answer to  
5 our response to interrogatories. I don't know  
6 if you have it, Your Honor. It's dated March  
7 13th, '12, in which they said they don't know  
8 the specific construction completion dates for  
9 the majority of the incumbent facilities but  
10 has stated on information, good faith, and  
11 belief that each of these facilities was  
12 timely constructed. That was in response to  
13 a request from us to identify all documents on  
14 which they're relying for the construction.

15 So if that is their answer and the  
16 only documents they have identified are those  
17 in the chart, we would like a stipulation from  
18 them that there is no additional evidence on  
19 which they intend to rely for construction.

20 JUDGE SIPPEL: Mr. Keller?

21 MR. KELLER: Your Honor, I think  
22 what we were responding to there was

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1 information regarding the specific date of  
2 construction. We have not been able to  
3 identify --

4 MS. KANE: I can read --

5 MR. KELLER: -- documents showing  
6 the specific date.

7 MS. KANE: I can read the  
8 interrogatory into the record, which is  
9 "Organizing your response by location and  
10 frequency of each site-based authorization,  
11 identify all documents on which Maritime is  
12 relying for its statement in response to joint  
13 interrogatory number 2 that construction of  
14 each of the listed facilities was completed  
15 within the applicable construction deadline,  
16 even where the exact dates are unknown."

17 And the response we received, as I  
18 read previously, is Maritime does not know the  
19 specific construction completion dates for the  
20 authority of the incumbent facilities but has  
21 stated on information and good faith belief  
22 that each of the facilities was timely

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1 constructed.

2 So what we have asked for is a  
3 stipulation that there is no additional  
4 evidence on which Maritime intends to rely for  
5 construction other than what is in table 2.  
6 We think that is a fair stipulation, Your  
7 Honor, either that or they should produce the  
8 information that we have requested.

9 MR. KELLER: Well, Your Honor,  
10 what we've stated there is that, first of all,  
11 we provided all the documentation that we had  
12 about the operation and status of the  
13 facilities. And it was organized by site.  
14 This is the famous 12 boxes of documents.

15 Some of those documents do provide  
16 some indication of the exact date of  
17 construction. And those documents we  
18 identified with the specific page numbers.

19 The rest of the documents may not  
20 indicate precisely the exact date of  
21 construction, but they certainly are evidence  
22 of construction. They are certainly evidence

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1 of the fact that a facility was operating and  
2 providing service. Now, obviously we can't  
3 nail down the exact date of construction  
4 necessarily, but there is some evidence there.

5 There is even evidence such as we  
6 produced evidence such as USAC filings.  
7 Presumably the theory is that Maritime never  
8 constructed facilities and lied about  
9 operating facilities but was willing in order  
10 to cover up that lie to pay tens of thousands  
11 of dollars to USAC in USAC fees.

12 We provided that information to  
13 show that there were obviously revenues  
14 generated by the stations that warranted USAC  
15 filings. That is evidence of construction and  
16 operation, even if I can't pull out a document  
17 that tells you the specific date.

18 Furthermore, now it turns out  
19 there may be documents that we do not have  
20 possession of. I'm sure that's going to come  
21 up in a little bit. These 100 boxes of  
22 documents, we don't know for sure what is in

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1 there, but we suspect it is possible that  
2 there is going to be some documents relative  
3 to this in there.

4 And we believe that if there are  
5 and if they are anything like the documents we  
6 have, that that may include some of this, that  
7 documentation. But we won't know until we get  
8 a chance to see those documents. And they've  
9 just been discovered.

10 JUDGE SIPPEL: Well, this is not  
11 getting us anywhere. What I'm going to do is  
12 you say you've got some --

13 MR. HAVENS: Can I please address  
14 this?

15 JUDGE SIPPEL: Not yet. You say  
16 you've got proposed stipulations? Is that  
17 what you're saying.

18 MR. KELLER: Yes.

19 JUDGE SIPPEL: You don't pay  
20 stock, but you are going to distribute?

21 MR. KELLER: Yes.

22 JUDGE SIPPEL: Okay.

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1 MS. KANE: Your Honor, we have  
2 already seen the stipulations that I think he  
3 is going to propose. And we couldn't agree to  
4 them in the way that they were phrased.

5 JUDGE SIPPEL: All right. Well,  
6 here is what I want you to do.

7 MS. KANE: We finally ended up  
8 here.

9 JUDGE SIPPEL: Here is what I want  
10 you to do. I want you to go at it one more  
11 time about what you can stipulate to and what  
12 you can't stipulate to.

13 And as to what you can't stipulate  
14 to, I want it specifically cited or recorded  
15 to what it is that you can't station by  
16 station and why because I don't know. I  
17 really don't know. I know the gist of what is  
18 going on, but I really don't know what's going  
19 on.

20 Is there a list of all of these  
21 stations around? There should be a status  
22 report as to each of those stations.

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1                   And you've got a designation "U"  
2                   for unknown. Well what is unknown about it?  
3                   You don't know the date of the construction?  
4                   You don't have a document for this? You don't  
5                   have a -- you don't even know if it comes out  
6                   that you don't know when.

7                   I don't know. I can't figure from  
8                   the reports that I'm getting or from the  
9                   information I'm getting. I just don't know  
10                  enough. Some day there's going to have to be  
11                  proof of it or, you know, there's not going to  
12                  be -- well, there's a whole range of options.

13                  I'm suspicious. I think that  
14                  somewhere in the annals of law, there is some  
15                  kind of a proposition that if one party to a  
16                  dispute has all the information -- okay? --  
17                  there comes a point in a hearing when that  
18                  party is going to have to 'fess up as to what  
19                  it has. In other words, it's the shifting of  
20                  the burden of proof to the party that has the  
21                  proof that can prove it. This burden does not  
22                  always stay with the plaintiff who is being

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1 compelled with information which can't simply  
2 be obtained, for whatever reason.

3 So I'm talking very broadly,  
4 obviously. But I'm going to look into that.  
5 You know, I've got some interim help. And I  
6 should have introduced. This is Denise  
7 Villarreal. And you will get her name on the  
8 notification that she is to be included in  
9 your services. Anything that comes to me  
10 comes to her.

11 I am going to give you -- and I am  
12 going to try it one more time. In the  
13 meantime, I am going to try to come up with a  
14 proposition. And you all might be thinking  
15 about something for that proposition because  
16 I have a strong feeling it is out there.

17 Do you know what my point is? You  
18 can't possibly pull every one of these  
19 stations because you have no access to the  
20 information. You don't have a clue.

21 MS. KANE: That's been our point  
22 all along, Your Honor.

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1                   JUDGE SIPPEL: Well, the owner of  
2 the station has a clue or should have a clue.  
3 And it will never come to be ultimately  
4 resolved until somebody is put to the test for  
5 proving it.

6                   You can't prove it. You can't  
7 prove it or you won't prove it or you have got  
8 some defense as to why, but there is no reason  
9 why you have to sit there moot while Ms. Kane  
10 flounders around because she is not getting  
11 the information on ownership. That's  
12 ludicrous.

13                   There has to be some  
14 responsibility that a station owns -- people  
15 who are assigned licenses have some  
16 responsibility knowing what the hell they have  
17 and where it is. I can't believe that there  
18 is no duty to do that.

19                   MR. KELLER: We have no problem  
20 with what we have and where it is, Your Honor.  
21 The --

22                   JUDGE SIPPEL: If you don't have

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1 any problem, then fine. Put it on the record.  
2 And I'll make the decision.

3 MS. KANE: Your Honor?

4 JUDGE SIPPEL: Ms. Kane can only  
5 put in what she got. I don't think you have  
6 any obligation to go looking under every rock  
7 for something that might or might not be  
8 there.

9 Yes, sir, Mr. Jackson?

10 MR. JACKSON: Your Honor, if I  
11 might, Mr. Keller briefly mentioned 100 boxes  
12 of documents. I would like to put a little  
13 information about that before the conference  
14 today.

15 The backup documents, every  
16 business has documents related to the  
17 business. Radio licensees have documents.  
18 And we were told, both in the bankruptcy court  
19 and I think in this proceeding, that a lot of  
20 this documentation does not exist.

21 The SkyTel entity's bankruptcy  
22 counsel made a few phone calls and discovered

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1       that there is a storage facility in  
2       Woodbridge, Virginia that has a number of  
3       boxes. And they are calling them 100 boxes  
4       because the number has changed. It has grown  
5       continuously.

6               Many of these contain documents  
7       that originally from Mobex entity that have  
8       materials related to issue G, perhaps  
9       construction, operation, and that our  
10      bankruptcy counsel is taking steps to copy and  
11      inventory those documents. And we would like  
12      to make them available for this hearing so  
13      that if there is evidence, the parties can  
14      decide things based on the evidence of this.

15              We are, of course, very frustrated  
16      that we have to spend the time and effort to  
17      find these when a simple phone call could have  
18      been made, "Do you still have these  
19      documents?" But that is another issue, Your  
20      Honor.

21              JUDGE SIPPEL:     Well, anything  
22      that's relevant at an appropriate time

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1 certainly can be offered as evidence. But I  
2 don't want this stuff, I don't want this  
3 information being piecemeal.

4 Right now I want something  
5 decisive done with respect to these unknowns.  
6 Either they can be known or they can't be  
7 known. And that's the end of the story. You  
8 can't go on indefinitely.

9 MR. HAVENS: May I --

10 JUDGE SIPPEL: Wait just a second.  
11 We are close to getting to you, Mr. Havens.

12 I am going to give you until  
13 whatever date I said, the 31st, to try one  
14 more crack at a stipulation. Now, you are  
15 both grownups. And I think that there could  
16 be some limit. There might not be every  
17 single thing, but there should be a good  
18 stipulation that you can put together. That's  
19 the whole -- and after that, as I said, I'm  
20 going to proceed. And we're going to set up  
21 the hearing dates at that time.

22 Now, we do have hearing dates

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1 today? We were going to do that today.

2 MS. KANE: Set up an actual  
3 hearing?

4 JUDGE SIPPEL: Well, a hearing  
5 schedule because you say you -- I mean, there  
6 certainly is a good cause to extend the close  
7 for discovery beyond the 26th of May.

8 MS. KANE: We hadn't thought about  
9 hearing dates, Your Honor, because we weren't  
10 --

11 JUDGE SIPPEL: There's the same  
12 thing that --

13 MS. KANE: -- sure where we would  
14 end up with a discovery deadline. We do have  
15 a proposal for an extension of discovery. And  
16 then we could propose a hearing schedule based  
17 on that, but we don't currently have a hearing  
18 schedule now. our hearing date was supposed  
19 to be in March.

20 JUDGE SIPPEL: I know. What is  
21 your next discovery deadline?

22 MS. KANE: We would propose four

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1 months from the date by which we get the  
2 discovery that we have asked for, so either in  
3 the form of a stipulation or that Your Honor  
4 order them to produce the discovery that we  
5 have been waiting for since February, which is  
6 the status of each of their stations. Are  
7 they placed in operation? If they haven't  
8 been placed in operation, are they not  
9 currently operating, when they went off the  
10 air, and why? These are all factors that are  
11 relevant to the --

12 MR. KELLER: Your Honor?

13 MS. KANE: -- legal issue of  
14 whether discontinuance is permanent.

15 JUDGE SIPPEL: All right.

16 MS. KANE: We're not arguing about  
17 the legal issue of permanent discontinuance,  
18 but we are entitled to the evidence and facts  
19 in order to make a case as to whether any such  
20 discontinuance if it exists is permanent. And  
21 that's the information we haven't been able to  
22 obtain from them.

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1 JUDGE SIPPEL: I know all about  
2 the information you haven't been able to  
3 obtain from them. I have heard that story so  
4 many times.

5 What? Do you have any views on  
6 discovery at this point, the deadline?

7 MR. KELLER: I have a problem with  
8 lumping into discovery. And I also have a  
9 problem with it being keyed to making it the  
10 discovery that they think they're entitled to  
11 because --

12 JUDGE SIPPEL: All right. You  
13 have a problem with that. What would you  
14 suggest?

15 MR. KELLER: I would suggest a  
16 firm discovery deadline. And I also take  
17 issue with --

18 JUDGE SIPPEL: How much time do  
19 you think there should be left to --

20 MR. KELLER: I have no problem  
21 with four months or whatever, but here is --

22 JUDGE SIPPEL: What do you mean

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1 "whatever"? Come on.

2 MR. KELLER: First, I have an  
3 issue. We have answered the discovery. We  
4 have answered the information about the  
5 operational status of the facilities.

6 JUDGE SIPPEL: I know what your  
7 position is on that.

8 MR. KELLER: It's not my position.  
9 We have answered.

10 JUDGE SIPPEL: Look, I want to  
11 know when. Can you two agree to a discovery  
12 date? Obviously Ms. Kane is not going to  
13 agree, but you say four months.

14 MR. KELLER: Well, she said four  
15 months from when we -- obviously it's five  
16 months, but the key --

17 JUDGE SIPPEL: Are you finished  
18 with all of your discovery? Are you going to  
19 have any discovery?

20 MR. KELLER: I don't know if we  
21 are going to have any. We may or may not.

22 JUDGE SIPPEL: Okay. Well, that's

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1 good advice. Okay. I'm just writing it down  
2 as you tell me. Now let's say I'm going to  
3 give you that stipulation deadline of the  
4 31st.

5 And I want you to come in with  
6 stipulated dates, when the hearing, the date  
7 of the hearing, the date of proposed  
8 discovery, et cetera, et cetera. Exchange  
9 dates, dates of the conference prior to the  
10 admission session, all of that, all of that,  
11 all of that.

12 And if you have to report to me  
13 that that can't be achieved, I want to know a  
14 good reason why. And I'm just going to make  
15 the decision on out because I can't rely on  
16 the way you are handling this, the way this  
17 case is being handled. It's just gotten out  
18 of control.

19 Now, Mr. Havens?

20 MR. HAVENS: Yes, sir.

21 JUDGE SIPPEL: You're part of the  
22 problem. What do you have to say?

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1 MR. HAVENS: Thank you.

2 I just have to say a few things.

3 JUDGE SIPPEL: Not too many. Very  
4 quickly. Let's go. I've got your documents.

5 MR. HAVENS: Yes. Maritime has  
6 stated in their interrogatory responses that  
7 these boxes in the storage facility in  
8 Virginia have evidence regarding the  
9 construction and operation of these stations.  
10 By "these stations," it was issue G.

11 Maritime has stated in a discovery  
12 response signed by Mr. Keller that it believed  
13 these boxes were in storage. SkyTel has  
14 located the boxes. It is not a question that  
15 these boxes may or may not have evidence on  
16 issue G.

17 Maritime has stated in this  
18 hearing and also to the Wireless Bureau, also  
19 under oath there, that these are the boxes of  
20 the Mobex records of construction and  
21 operation of all the stations sold to MCLM, or  
22 Maritime. Therefore, these boxes are

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1 essential evidence regarding issue G.

2 JUDGE SIPPEL: Does the Bureau  
3 have those documents?

4 MS. KANE: No, we do not, Your  
5 Honor. We were told the exact same thing that  
6 Mr. Havens was told, which is that they had  
7 assumed that they had been destroyed.  
8 Apparently they never looked into whether they  
9 had been destroyed. And Mr. Havens understood  
10 the exercise in a related proceeding to  
11 determine that, in fact, these documents did  
12 exist.

13 And, you know, it would be the  
14 Bureau's position at this point that these  
15 documents are Mobex's documents that Maritime  
16 obtained at least control of through the fact  
17 that it is a successor corporation of Mobex  
18 and that, therefore, they should have access  
19 to these documents. And they should have been  
20 produced in this proceeding.

21 JUDGE SIPPEL: Why haven't those  
22 documents been produced?

**NEAL R. GROSS**

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