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

In re	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71 File No. EB-09-IH-1751 FRN: 0013587779
	)	
Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services	)	
	)	
Applicant for Modification of Various Authorizations in the Wireless Radio Services	)	
	)	
Applicant with **ENCANA OIL AND GAS (USA), INC.; DUQUESNE LIGHT COPANY; 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**	)	Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
	)	
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

OPPOSITION TO MOTION FOR PARTIAL SUMMARY DECISION

Pursuant to 47 C.F.R. § 1.251(b), Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC and Verde Systems, LLC (collectively "SkyTel-O")[1] by undersigned counsel, hereby file their Opposition to Maritime Communications/Land Mobile, LLC's ("Maritime") Motion for Partial Summary Decision ("Motion"). Maritime's Motion seeks a summary determination that authorizations listed in Exhibit 1 (referred to as the "Watercom Licenses"), attached to its Motion, initially issued to Waterway Communications System, Inc. ("Watercom") were constructed in compliance with Sections 1.955(c) and 80.49(a) of the Federal Communications Commission's ("FCC" or "Commission") rules. Maritime also seeks a partial summary decision with respect to the authorizations listed in its Exhibit 2. Maritime voluntarily submitted these so-called incumbent AMTS authorizations for cancellation or deletion as they are alleged to be entirely subsumed within geographic licenses held by Maritime ("Subsumed Licenses"). Therefore, Maritime claims that Issue G (whether Maritime timely constructed or operated any of its stations in defiance of Sections 1.955(c) or 80.49(a) of the FCC's rules) is therefore moot as to the Subsumed Incumbent Licenses.

For the reasons stated herein, SkyTel-O respectfully requests that the Judge deny the Motion.

I. FACTS

In the Matter of Applications of Waterway Communications System, Inc. For Renewal of Automated Maritime Telecommunications System Station Licenses WHG 700–WHG 703 and WHG 705–WHG 754,File Nos. 855083–855136, Memorandum Opinion and Order, 2 F.C.C.R.

[1] Undersigned counsel only represents Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC and Verde Systems, LLC (commonly referred to as the "SkyTel-O entities"). This filing is not made on behalf of Mr. Warren Havens or any entity other than the SkyTel-O entities. The undersigned only represents the SkyTel-O entities. This undersigned does not represent Mr. Havens or any other entities with which he is connected.

7317 (1987) ("Order") does not unequivocally conclude that the stations were timely constructed for multiple reasons.

- The Order was not a fact finding proceeding.
- The Order does not involve a review of Maritime evidence or even assertions of how Maritime met its construction obligations.
- The Order does not specifically find that the Watercom stations were lawfully constructed (e.g., providing the required coverage, interconnection and meeting requisite construction deadlines under FCC rules).
- Watercom's Licenses were not timely constructed in accordance with Sections 1.955(c) and 80.49(a).
- Maritime has not properly maintained records relating to the operation of its licensed stations.
- Maritime has failed to produce records that demonstrate its construction and operation in compliance with Commission rules.
- Maritime has concealed records relating to construction of the Watercom Licenses.
- The issue of whether the Watercom systems and component stations were timely constructed[2] is pending before the Wireless Bureau in two proceedings involving SkyTel entities and Maritime.

[2] Hererin, "timely construction" and "construction" means both timely and in accordance with the licenses' and rule requirements on technical matters and Interconnection (these AMTS systems were and still are all CMRS). Simply to "construct" something by the deadline is not timely construction. The principal technical requirement of all AMTS site based license construction was to meet the "continuity of coverage" requirement under rule §80.475(a) (1999).

- The Motion's supporting evidence, the declaration of Mr. Smith, states that the construction of the subject stations was not completed at the construction deadline, but decades later in years 2005-2006.[3]

Moreover, in the past, Maritime has affirmatively represented no documents exist that are responsive to the issue of whether stations to operate certain radio frequencies have been constructed or, if constructed, have been operated on a continuous basis. For example, in August 2011, Maritime filed its Opposition to Petition to Dismiss, Petition to Deny, or in the Alternative Section 1.41 Request, to a pleading, which had been filed earlier by Warren Havens, Verde Systems, LLC, Intelligent Transportation & Monitoring Wireless LLC; Telesaurus Holdings GB LLC, V2G LLC, and Skybridge Spectrum Foundation, with respect to File No. 0004738157. Maritime stated it had no need to obtain any documents related to those issues from Mobex (its predecessor in interest for the radio licenses) and, moreover, all of the old Mobex documents had been placed into storage and were "all destroyed years ago by the storage company" when Mobex ceased paying rent for document storage. *See* Maritime Opposition at 3, Exhibit I, Declaration of David Predmore, at No. 5 and attachments to July 30, 2012 Request of Warren Havens to Appear at Prehearing Conference by Telephone.

Mr. Predmore was an officer of Mobex and represented he was told by the storage company the documents would be destroyed. However, he did not state that he made any present effort to determine whether the documents actually had been destroyed. As facts show, he was wrong. The documents exist.

In Maritime's February 6, 2012, Response to Interrogatories in EB Docket No. 11-71, Maritime stated as follows with respect to Interrogatory 23:

[3] This fact alone justifies the denial of the Motion.

> After acquisition of the AMTS assets by Maritime, many of the corporate and operational records of Mobex were placed by Mobex's David Predmore in archives with Nation's Capital Archives & Storage Systems, in Virginia. Some records were also stored by Mobex with a firm called Iron Mountain at facilities in Indiana. It is Maritime's understanding that the documents were destroyed when the storage fees fell into arrears. It is possible that some of these documents might provide further details regarding some of the responses herein.

John Reardon filed a declaration in support of Maritime's Response to Interrogatories, and stated that he had assisted with the preparation of the interrogatories and reviewed them for correction, asserting the facts were true and correct to the best of his personal knowledge. Yet, he too failed to make a simple inquiry to the record custodian to verify the correctness of his representations to the Commission and the parties to this proceeding.

SkyTel-O, not believing these statements from Maritime took the initiative to contact the custodian of Maritime's records, Nation's Capital Archives & Storage Systems ("NCASS"), to confirm Maritime's statements.

- NCASS informed SkyTel-O 93 boxes of documents remain extant.
- SkyTel-O obtained a subpoena *duces tecum* for the documents

When confronted by the reality the documents were not destroyed, Maritime quickly backtracked and admitted that the "destroyed documents" do indeed exist; thus, wasting time and resources for all. On May 9, 2012, Maritime's counsel emailed Ms. Pamela Kane of Enforcement Bureau stating "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." In other words, documents responsive to discovery requests and relevant to this proceeding have always existed and could have and should have been produced earlier.

The record demonstrates Maritime made no reasonable effort to locate and produce documents responsive to discovery requests.[4] Further, Maritime and is predecessors in interest of these site-based system stations had an obligation they violated to maintain these station logs and records of construction and operation, under FCC rule §80.409. *See* 47 CFR § 80.409. It is incredulous to believe that a purchaser would not obtain and keep records of the assets it purchases. Thus, it is reasonable to conclude that Maritime does hold the records.[5]

Thus, it is likely that the documents will reveal facts germane to the issues underlying this proceeding. Documents further supporting the conclusion that material facts remain in dispute is likely. Maritime's blatant discovery violations justifies a finding that Maritime lacks credibility as to its factual assertions in this case, including in this Motion.

II. STANDARD OF REVIEW

Per 47 C.F.R. § 1.251(d),

> The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the proof, and to the need for cross-examination, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision.

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[4] Parties have an obligation to make a reasonable search for requested documents. *Race Tires America, Inc. v. Hoosier Racing Tire Corp*., No. 11-2316, *slip op.* (3d Cir. March 16, 2012). A party or its attorney must make a reasonable search before objecting to a request to produce documents as overly burdensome. *Carlucci v. Piper Aircraft Corp., Inc*., 775 F.2d 1440, 1448, n.4 (11th Cir. 1985)(upholding the imposition of financial sanctions on an attorney who failed to make any reasonable search for responsive documents).

[5] it has stated under oath to only be in storage facilities it, someone, could not retrieve, but has flagrantly withheld these in this proceeding, violating the most fundamental due-process obligations and prejudicing SkyTel and the Enforcement Bureau, and proper adjudication in this matter.

III. MARITIME'S MOTION IS PREMATURE AND DEFECTIVE AS DISCOVERY REMAINS ONGOING AND PROCEEDINGS ON THE SUBJECT CONSTRUCTION ISSUE ARE PENDING BEFORE THE WIRELESS BUREAU

Section 1.251(a) of the Commission's Rules and Regulations, 47 C.F.R. § 1.251(a), imposes a high burden on an applicant which seeks summary decision. Hence, the rule provides that the party filing the motion may not simply rely upon mere allegations or denials, but must affirmatively demonstrate by affidavit or by other materials, that there is no genuine issue of material fact for determination at the hearing. Section 1.251(a)(1), 47 C.F.R. § 1.251(a)(1).

As the moving party, Maritime has the burden of establishing that a favorable summary decision would be appropriate based on the pleadings and the papers submitted. *Summary Decision Procedures,* 34 F.C.C. 2d 485, 487-88 (1972). Maritime has not carried its burden and a summary decision would be inappropriate.

Maritime's Motion is premature in light of the ongoing discovery. It would be improper at this stage to grant the Motion given the pending discovery.[6] There can be no dispute that discovery will likely yield additional disputed facts necessitating a denial of the Motion. Therefore, a summary decision at this stage would impermissibly deprive the parties to this proceeding of the right to utilize the discovery process to discover facts that support the denial of the Motion. *Compare* treatment of summary judgment under the Federal Rules of Civil Procedure, Rule 56. "Summary judgment should not be granted where the non-moving party has not had the opportunity to discover information that is essential to his opposition." *Committee for the First Amendment v. Campbell,* 962 F.2d 1517, 1521-22 (10th Cir. 1992) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 n.5 (1986)). "The protection afforded by Rule 56(f) is … designed to safeguard against a premature or improvident grant of summary

[6] Both written and oral discovery is pending. Indeed, pursuant to the Judge's Order, discovery remains open until November 26, 2012. *See* FCC-12M-26, footnote 1, dated May 23, 2012.

judgment." *Pasternak v. Lear Petroleum Exploration, Inc.*, 790 F.2d 828, 833 (10th Cir. 1986) (quoting 10A Wright, Miller & Kane, Federal Practices and Procedure 2740 (1983); *see e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). Therefore, the Judge must deny the Motion as premature and permit further discovery to allow the parties to discover central facts.[7]

Importantly, the Hearing Designation Order ("HDO") identifies this as a fact-finding hearing, including with respect to Issue G. *See, Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing* (FCC 11- 64), 26 FCC Rcd 6520, 6547 ¶ 62(g) (2011).[8] As a result, the Judge must allow fact-finding to continue through the process of discovery before ruling on key issues.[9]

SkyTel-O challenged the "Watercom" systems and component stations subject of the instant motion before the Wireless Bureau, resulting in several Orders now pending on appeal. *See Memorandum Opinion and Order*, FCC 10-9, rel. January 14, 2010 (SkyTel entities timely filed a *Petition for Reconsideration Based on New Facts*, which remains pending); *Memorandum Opinion and Order*, FCC 10-30, rel. March 16, 2010 (SkyTel entities timely filed a *Petition for Reconsideration Based Upon New Facts & in the Alternative Section 1.41 Request*, the petition remains pending). Both of these *MO&O* decisions and the appeals involve, *inter alia*, the issue of whether the subject Watercom systems and component stations were timely constructed in accordance with requirements stated in the relevant rules (including continuity of

[7] In addition, Maritime's Motion should be viewed as defective given the fact it neglected to set forth a discernible statement of undisputed facts upon which it bases its Motion.

[8] As the Commission indicated in the HDO FCC 11-64, the SkyTel entities (therein called "Petitioners") submitted various and extensive petition pleadings challenging Maritime: these <u>included</u> what the HDO summarized as issue (g). It was because of these SkyTel petitions that issue (g) arose, and the Commission properly established a fact finding hearing on this issue. Maritime is seeking, by the instant Motion, to avoid this fact, and in effect is asking the judge to cut out this Commission determination. Maritime could have sought reconsideration before the Commission in this regard, but did not.

[9] SkyTel-O informed Maritime that the Maritime-Mobex-Watercom records of "construction" and operations will soon be examined. This suggests that Maritime prematurely filed the instant action because it fears the facts that will be revealed during this review.

coverage, Interconnection, etc.). Moreover, this "construction" issue involves an interpretation of rules (including the rule on "continuity of coverage," §80.475(a) (1999) that the Commission and the Wireless Bureau may undertake, but which is not subject to adjudication in this Hearing.[10] The pending proceedings should preclude the grant of this Motion.[11]

IV. SUMMARY DECISION IS NOT WARRANTED BECAUSE THERE ARE GENUINE ISSUES AS TO MATERIAL FACTS

A. The Issue of Watercom's Construction is Subject to Appeal

Maritime attempts to paint the issue of construction of the Watercom Licenses as conclusively determined by a single FCC decision granting renewal of the Watercom Licenses.[12] That conclusion cannot be drawn. First, the cited order does not unequivocally conclude that the stations were timely constructed. In particular, the statement highlighted by Maritime in fact only identifies the construction requirement, but does not go so far as to conclude that Maritime met its construction responsibilities.[13] The Order does not involve a review of Maritime evidence or even assertions of how Maritime met its construction obligations. Nor did the Commission, in the Order, specifically find that the Watercom stations were lawfully constructed

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[10] *See* 47 C.F.R. § 0.151 compared with 47 C.F.R. § 0.131. Rule interpretation may be undertaken by the Wireless Telecommunications Bureau, 47 C.F.R. § 0.131 or the full Commission. Any rule interpretation, if needed, may be referred to the Chief of the Wireless Telecommunications Bureau for a ruling under 47 C.F.R. §1.2. *See, e.g., In the Matter of Motions for Declaratory Rulings, FCC 99-160*, 14 FCC Rcd 12752 [declaratory Ruling requests referred by the Office of General Counsel to the Wireless Telecommunications Bureau where the Bureau had the delegated authority, the questions concerned radio service rules, language terms and procedures, and no new or novel issues were involved]). In the two proceedings noted above, these matters including rule interpretations, are properly pending before the Wireless Bureau.

[11] This inappropriate timing of this Motion is further evidence that the Motion lacks candor in that it is a thinly veiled attempt to circumvent the pending proceedings.

[12] *In the Matter of Applications of Waterway Communications System, Inc. For Renewal of Automated Maritime Telecommunications System Station Licenses WHG 700–WHG 703 and WHG 705–WHG 754*,File Nos. 855083–855136, Memorandum Opinion and Order, 2 F.C.C.R. 7317 (1987).

[13] "Watercom <u>was required</u> to meet a schedule of construction, regularly kept us apprised of the status of construction and put the system into operation within the time we had allowed. So there can be no question of spectrum hoarding or other dereliction in its inauguration of service." *Memorandum Opinion and Order* (FCC 87-373), 2 FCC Rcd 7317 at ¶ 14 (1987) (emphasis added).

(e.g., providing the required coverage, interconnection and meeting requisite construction deadlines under FCC rules). The issue remains open for factual determination herein. [14]

Second, that Order is not binding upon SkyTel-O or this proceeding. SkyTel-O did not participate in the proceedings that led to the Order. As a result, as a non-party to the proceeding, SkyTel-O is not bound by res judicata and may "introduce only new or additional evidence not adduced in the…proceeding upon an appropriate showing that such evidence would be relevant and material to a resolution of those issues."[15] Maritime may, in turn, introduce rebuttal evidence, but only as to the new or additional evidence.[16]

Third, the timely construction of the system and Watercom's (and later Mobex Communications, Inc. ("Mobex"), which acquired Watercom in 2000, and now Maritime), however, is a disputed fact at issue in this case. The issue of whether an FCC License has been timely constructed is an issue of fact. SkyTel-O disputes that Watercom's Licenses were timely constructed in accordance with Sections 1.955(c) and 80.49(a).

Furthermore, as discussed more fully below, Maritime concealed records relating to the construction of the Watercom Licenses. These records have now been made available. As a result, new facts may be presented in the records that were not previously available to the

[14] A recent example of the FCC properly investigating the issue of whether a site-based AMTS station was constructed, long after the construction deadline and renewals, is the Wireless Bureau section 308 investigation commenced recently with regard to Call Sign WQA216 (Paging Systems Inc.'s alleged station in New York City). Such investigations are proper where information arises that calls into question whether or not a station (or a system of stations) was ever constructed. Likewise, the Commission properly decided to include issue (g) with regard to all of Maritime stie based stations based upon evidence presented by SkyTel in petitions. These petitions contained sufficient evidence to call into question whether these stations were timely and properly constructed, and kept in permanent operation.

[15] *RKO General, Inc*., Order, 46 FCC 2d 246, 249 (1974).

[16] *Id*. at para. 6.

Commission when it ruled in the above matter. Thus, that matter is ripe for reconsideration, and should not be held to have any dispositive effect on the instant action.[17]

B. New Evidence Previously Concealed by Maritime Renders Facts in Dispute

All public coast station and system licensees must maintain records regarding the operation of each licensed station. *See* 47 C.F.R. § 80.409. The records must be made available to the Commission for inspection upon request. *Id*. Maritime, thus, was obligated to maintain station records and logs, in good order, at its place of business or system control point, for ready access to the FCC, including during all times of claims against the licensee or systems. Maritime has never sought a waiver of this requirement. Despite repeated demands, Maritime has failed to produce records that demonstrate its construction and operation in compliance with Commission rules. When the Watercom Licenses were assigned to Maritime in 2005, Maritime did not seek access to, or in any case did not obtain and maintain, the station logs and records that Mobex was required to keep per FCC rules. Instead, the records were put into storage at NCASS. Maritime made no request for copies of the records to maintain at its stations or in its offices. Inexplicably, on the record (before the Commission) Maritime has stated that it does not have any records relating to the Watercom Licenses transferred from Mobex.[18] Despite claims that no records exist, the records have now been made available for inspection at the storage facility. *See* Declaration of attorney Danny Ruhl attached hereto.

Because the records have been hidden to date, SkyTel-O has been unable to review them in order to determine whether it disputes the facts therein which allegedly demonstrate that the Watercom Licenses were timely constructed. It would be premature and improper to determine

[17] Where a licensee has concealed material facts, the FCC is authorized to reopen a hearing. *See, e.g., RKO Gen., Inc. v. F.C.C.*, 670 F.2d 215, 231 (D.C. Cir. 1981).

[18] *See* Predmore Declaration, attached to July 30, 2012 Request of Warren Havens to Appear at Prehearing Conference by Telephone.

that no factual controversy exists without affording SkyTel-O and this tribunal the opportunity to review the records to determine whether they raise a controversy. Moreover, Maritime's lack of candor must call into question all of its assertions of fact.

C. Maritime's Supportive "Evidence" is Insufficient to Demonstrate a Lack of Factual Controversy

Maritime included with its Motion the Declaration of Robert T. Smith, an engineer who began his career with Watercom in 1987 and is currently employed by Maritime. *See* Exhibit 3 to Motion for Partial Summary Judgment. Mr. Smith claims that when he began his employment with Watercom, the Watercom Stations were constructed and in operation. *See Id*. at para. 4. This evidence is insufficient to conclusively demonstrate construction. Mr. Smith references no records, no facts and no other evidence to support his conclusory assertion that the stations were constructed at the time he commenced his employment with Watercom in 1987. Moreover, the extent of construction in 1987 is not at issue. Compliance with FCC rules requires construction at the construction deadline. *See* 47 C.F.R. § 80.49(a). Furthermore, the Smith Declaration must fail under the FCC's rules. Affidavits supporting summary decision must be made on the basis of personal knowledge. 47 C.F.R. § 1.251 (c). Mr. Smith's declaration does not rely entirely upon personal knowledge. Instead, he makes claims based upon secondhand "knowledge" that he "learned" from third parties. Mr. Smith's lack of personal knowledge cannot support a summary decision.

Finally and perhaps most importantly, Mr. Smith asserts that the Watercom system station construction *was not completed until years 2005-2006* which is some decades past the construction deadline. Accepting this fact, *the construction is untimely resulting in automatic termination.*

V. THE ISSUE OF CONSTRUCTION IS NOT PROPER FOR SUMMARY DECISION BECAUSE THE DEFINITION OF "CONSTRUCTION" IS SUBJECT TO DISPUTE

Even assuming a lack of material factual issues in dispute, summary decision on the issue of construction of the Watercom Licenses is not appropriate because the meaning of the term "construction" remains subject to dispute. And, it would be premature at this time to ascribe a meaning to the term for a number of reasons. First, as explained above, the Motion is premature given the pending appeals - Petitions for Reconsideration based on new facts. Second, the Judge has yet to adopt specific terms to govern this proceeding. On August 7, 2012 Judge Sippel requested that Maritime file a glossary of terms relevant to this proceeding.[19] Maritime filed its glossary on August 16, 2012. Both the SkyTel-O entities and the FCC's Enforcement Bureau objected to the terms as construed by Maritime.[20] This clearly demonstrates that the term "construction" is subject to dispute. Because the core of Issue G is the timeliness of construction, the application of that term is critical to this matter. Moreover, Maritime's glossary departs from accepted definitions under FCC rules, and thus, its interpretation of the terms for purposes of a summary decision must not be accepted.

Third, the specific "construction" requirements for ATMS licensees are subject to appeal. For example, a pending Petition for Reconsideration challenges a Bureau finding that failure to provide continuity of service, as required under Section 80.475(a), would not result in automatic termination because, for site-based stations, continuity of service was not a coverage/construction requirement that could trigger automatic termination for failure to

[19] FCC 12M-39 (Rel. Aug. 7, 2012). The Glossary is actually a form of rule interpretation at best, or *ultra vires* rulemaking at worst. Interpretations under § 1.2 should be by the Commission or Wireless Bureau.
[20] *See* Enforcement Bureau's Objections to Maritime's First Draft Glossary, filed August 22, 2012; *see also* SkyTel-O's Objections to Maritime's First Draft Glossary, filed August 28, 2012.

comply.[21] That Petition disputes the Bureau's distinction between "construction" and "continuity of service," calling into question the specific benchmarks that must be met to comply with the construction requirements under Section 80.49(a).[22]

Moreover, as addressed in the referenced Petition, the Bureau has stringently applied a coverage requirement to the petitioner in other matters. The FCC cannot interpret its rules in one way with respect to one party and differently as to another party.[23] As a result, as noted in that matter, the FCC must apply a uniform "construction/coverage" requirement. Maritime cannot meet that standard in the instant cast as it has not provided continuity of coverage. As a result, as applied by the Commission, its system was not timely constructed.

VI. DELETION OR CANCELLATION DOES NOT RENDER ISSUE G MOOT WITH RESPECT TO SUBSUMED LICENSES

The instant hearing is not limited to technical rule violations. Instead, as the HDO shows, the character and fitness of Maritime to hold any license is at issue.[24] Site-based licenses are not exempt from this requirement. The Judge must consider ALL of Maritime's licenses, even the Subsumed Licenses because they are relevant to a determination of Maritime's character and fitness to hold FCC licenses. For example, a review of the Subsumed Licenses could reveal willful violation of Commission rules, lack of candor before the FCC, misrepresentations or other evidence discrediting Maritime's character and fitness to hold Commission licenses. As a

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[21] Order at para. 5.

[22] *See In the Matter of Paging Systems, Inc. and Maritime Communications/Land Mobile LLC,* Requests to Find Automatic Termination of Licenses, Call Signs KYW912, WHW826, WQA212, WQA216, WQA227, Petition for Reconsideration of July 16, 2012 Order.

[23] *Windsor v. United States*, 833 F. Supp. 2d 394, 400 (S.D.N.Y. 2012) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) ("Equal protection requires the government to treat all similarly situated persons alike.").

[24]*See Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing* (FCC 11- 64), 26 FCC Rcd 6520 (2011).

result, Issue G must be pursued with respect to all subject Licenses, even those that have been voluntarily submitted for cancellation or deletion by Maritime.

CONCLUSION

For the foregoing reasons, SkyTel-O respectfully requests that the Judge deny Maritime's Motion for Partial Summary Decision.

Respectfully submitted,

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DATED: September 17, 2012

CERTIFICATE OF SERVICE

I, Sherry Reese, herby certify that on this 17th day of September, 2012**,** a true copy of the Opposition to Motion for Partial Summary Decision was served upon the following in the delivery manner identified:

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