

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

MARITIME COMMUNICATIONS/  
LAND MOBILE, LLC,

Debtor.

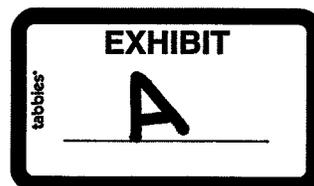
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CASE NO. 11-13463-DWH  
CHAPTER 11

**MOTION OF SKYTEL FOR AN ORDER DIRECTING THE  
(I) RULE 2004 EXAMINATION OF NATION’S CAPITAL ARCHIVES STORAGE  
SYSTEMS, (II) RELATED PRODUCTION, INSPECTION AND COPYING OF  
DOCUMENTS, AND (III) PRESERVATION OF CERTAIN DOCUMENTS IN THE  
INTERIM, AND REQUEST FOR EXPEDITED TELEPHONIC HEARING**

Warren Havens, Skybridge Spectrum Foundation, Verde Systems LLC (formerly called Telesaurus, VPC LLC), Environmental LLC (formerly called AMTS Consortium LLC), Intelligent Transportation & Monitoring LLC, and Telesaurus Holdings GB LLC (collectively, “SkyTel”)<sup>1</sup> move this Court to enter an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”) and other applicable law: (i) directing the oral examination of Nation’s Capital Archives Storage Systems (“NCASS”), through a designated representative or representatives, regarding, in general, the Debtor’s acts, conduct, property, leases, joint ventures, contracts, liabilities, financial condition, and/or other matters which affect or may affect the administration of the Debtor’s estate, the operation of any business by the Debtor, the source of any money or property acquired or to be acquired by the Debtor for purposes of formulating or consummating a plan, and any other matter relevant to the case or to formulation/consummation of a plan, and regarding, most specifically, the various documents discussed in this Motion and Exhibit D hereto, and any dealings between the Debtor, NCASS, or

<sup>1</sup> The SkyTel entities listed here are separate legal entities, all managed by Warren Havens, and for the purposes of this bankruptcy and in related proceedings before the Federal Communications Commission (“FCC”), pursue certain common interests.



others in connection with those documents (collectively, the "Examination Topics"); (ii) directing the inspection and copying -- by a bonded copier, at the expense of SkyTel,<sup>2</sup> and for the benefit of SkyTel and the bankruptcy estate -- of certain boxes of documents described below which are in the possession, custody, or control of NCASS (the "Boxed Documents"), (iii) directing the production by NCASS of certain other documents described below and in Exhibit D hereto that are related to the dealings between the Debtor, NCASS, or others in connection with, *inter alia*, the Boxed Documents, and (iv) directing that the Boxed Documents shall be preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until that bonded copier completes its work described herein. In support thereof, SkyTel respectfully states as follows:

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409. The relief requested herein is predicated on Bankruptcy Rule 2004 and Local Rule 2004-1, and other applicable law.
3. On August 1, 2011, the Debtor commenced the above-captioned bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
4. The Debtor is operating its businesses and managing its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.
5. SkyTel is a creditor and party-in-interest herein. *See e.g.* Claim No. 69; 11 U.S.C. § 1109.

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<sup>2</sup> If this proves valuable to the estate, then SkyTel may seek to recover some or all of the associated costs upon an appropriate further motion.

6. The Boxed Documents -- which are currently being stored in approximately 93 to 101 boxes at the Virginia facility of NCASS (*see Exhibit E*) -- directly relate to certain of the Debtor's alleged assets. More specifically, the Boxed Documents relate to the site-based FCC licenses, and related radio spectrum and radio equipment (collectively, the "Site-Based Licenses") that the Debtor allegedly purchased from Mobex Network Services, LLC ("Mobex") in or around 2005.

7. The Boxed Documents contain information highly relevant to, among other things, the issue of whether or not Mobex timely constructed and properly operated the Site-Based Licenses prior to the sale of its alleged assets to the Debtor. If Mobex did not do so in connection with some or all of the Site-Based Licenses, then those subject licenses purportedly sold to the Debtor automatically terminated by operation of law prior to the sale, and are not valid assets of the estate. In the case of such a finding, the Debtor may have valuable claims to assert against Mobex, as the seller of the licenses, for, among other possible things, breach of representations and warranties, fraud, rescission, and other remedies and associated damages that would benefit the estate.

8. Based on information and believe, the Boxed Documents also relate to a claim that was asserted by the Debtor, denied by the FCC, and currently subject to an appeal by the Debtor before the FCC,<sup>3</sup> for a refund of \$1,301,230.00 that the Debtor seeks for alleged past payments made by, but that allegedly did not have to be made by, its predecessor holder of the subject site-Based Licenses, Mobex, as a CMRS ("Commercial Mobile Radio Service") operator

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<sup>3</sup> This proceeding is described in: *In the Matter of ... Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, DA 10-1013, 25 FCC Rcd 7170; 2010 FCC LEXIS 3404; released June 4, 2010. See also FCC DA 08-1971, in which the refund amount sought is stated: f \$1,301,230. A copy in FCC records is at: <http://www.universalservice.org/res/documents/about/pdf/fcc-orders/2008-fcc-orders/DA-08-1971.pdf>.

of the subject licenses (the Debtor has alleged, *inter alia*, that these payments did not have to be made by Mobex because the business was actually conducted as a PMRS (“Private Mobile Radio Service”)). The Boxed Documents may contain “new” evidence in support of the refund claim, and, if that claim has merit, may thereby further benefit the estate. On the other hand, if the Boxed Documents demonstrate that the refund claim lacked a valid basis, then the Debtors claims against Mobex, discussed above, may increase to the benefit of the estate.<sup>4</sup>

9. It should be noted that there is an unresolved question regarding which entity, if any, has a current right to claim ownership of the Boxed Documents.

10. Indeed, while the Debtor has represented to the FCC and others that the Boxed Documents relate to the Site-Based Licenses it allegedly purchased from Mobex, the Debtor has also represented: (i) that it had no interest in retaining those Boxed Documents following the subject purchase; and (ii) that it (and Mobex) believed those Boxed Documents had been destroyed due to Mobex’s failure to pay outstanding storage fees.<sup>5</sup>

11. What is clear, however, is that the Boxed Documents are currently in the possession, custody, or control of NCASS.<sup>6</sup>

12. What is likewise clear is that SkyTel is entitled: (i) to examine NCASS to obtain information within the scope of Rule 2004(b), including information regarding the Boxed Documents, the other documents described in Exhibit D, and any dealings between the Debtor,

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<sup>4</sup> Martime’s purchase of the Site-Based Licenses from Mobex included all related assets, including this refund claim. This is reflected in various FCC documents, including footnote one of the FCC Order, DA 08-1971, the link to which is set forth in the preceding footnote.

<sup>5</sup> See e.g., Declaration of David Predmore (who was, along with John Reardon, a Mobex Officer), at ¶ 5, a copy of which is attached hereto as Exhibit A; see also Debtor’s Opposition to Petition to Dismiss in FCC proceeding, at p. 3, and copy of which is attached hereto (without exhibits) as Exhibit B. The purported belief of the Debtor and Mobex in this latter regard apparently continued until SkyTel was successful very recently in locating the Boxed Documents at NCASS. See Exhibit F hereto.

<sup>6</sup> This has been confirmed by NCASS in writing to SkyTel counsel. See Exhibit E. This has also been reported by FCC regulatory counsel for the Debtor, Robert Keller, to the FCC. See Exhibit F.

NCASS, or others (including Mobex) in connection therewith; (ii) to have a bonded copier inspect and copy the Boxed Documents at SkyTel's expense and for the benefit of SkyTel and the estate; (iii) to the production by NCASS of certain other documents (the "Other Documents") that are related to the dealings between the Debtor, NCASS, or others in connection with the Boxed Documents, and are described in Exhibit D hereto; and (iv) to have the Boxed Documents preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until that bonded copier completes its work described herein.

13. Rule 2004(a) provides that upon motion of any party in interest, the Court may order the examination of any entity. Bankruptcy Rule 2004(b) sets forth the permitted scope of the examination. It provides as follows:

(b) Scope of Examination. The examination of an entity under this rule . . . may relate only to the acts, conduct or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a . . . reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Fed. R. Bankr. P. 2004(b).

14. It is well established that the scope of discovery under Rule 2004 is broad. *In re Duratech Indus., Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999); *In re Lufkin*, 255 B.R. 204, 208 (Bankr. E.D. Tenn. 2000); *Bank One, Columbus, N.A., v. Hammond (In re Hammond)*, 140 B.R. 197, 201 (S.D. Ohio 1992). The broad range of discovery under Rule 2004 is not restricted by the narrow range of discovery of Fed. R. Civ. P. 26, and discovery may be had under the Federal Rules of Bankruptcy Procedure of matters which would not be discoverable under the Federal

Rules of Civil Procedure. *See Matter of Isis Foods, Inc.*, 33 B.R. 45, 46-47 (Bankr. W.D. Mo. 1983).

15. It is also well established that third parties are subject to Rule 2004 discovery, and that the attendance and production of documents for inspection and copying by such parties may be compelled under the rule. *See Fed. R. Bankr. Pro. 2004(a), (c)*.

16. In addition, this Court has the authority (both inherently and under 11 U.S.C. § 105) to direct that the Boxed Documents shall be preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until the bonded copier completes its work described herein.

17. In this regard, SkyTel anticipates that it can locate a bonded copier, expert in litigation document production copying, to complete the work, and that the work can be completed, within two (2) weeks of the entry of an Order on this Motion. Accordingly, SkyTel's request for the Boxed Documents to be temporarily preserved as set forth above should not prejudice or otherwise cause harm to any other party. This is especially true since, until SkyTel located the Boxed Documents recently, both Mobex and the Debtor claim they understood them to have been destroyed long ago (after apparent permanent abandonment), and thus had no expectation of finding or using them in this or any other case. Indeed, for the reasons given herein, the relief SkyTel seeks under this Motion will benefit the estate.

18. Based on the foregoing, SkyTel requests the Court to enter an order, substantially in the form attached hereto as Exhibit C: (a) directing NCASS to provide access to the Boxed Documents, **on or before May 31, 2012** or such other date as NCASS and SkyTel may agree, so that those Boxed Documents may be inspected and copied by a bonded copier at SkyTel's expense and for the benefit of SkyTel and the estate; (b) directing that an electronic copy of the

Boxed Documents be provided to SkyTel, the Debtor, and the Committee within two (2) business days of the bonded copier completing its copying work; (c) directing NCASS (through a designated representative or representatives) to appear and testify regarding the Examination Topics at a time and place agreeable to NCASS and SkyTel, but in no event later than ten (10) days after an electronic copy of the Boxed Documents has been provided to SkyTel, the Debtor, and the Committee, with the examination to continue from day to day until complete; (d) directing NCASS to produce the Other Documents, which are specifically identified in Exhibit D hereto, to SkyTel's undersigned counsel no later than five (5) days before the commencement of the aforementioned examination, or on such other date and at such other location as NCASS and SkyTel may agree; (e) directing that the Boxed Documents shall be preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until the bonded copier completes its copying work; and (f) granting such other and further relief as the Court deems just and proper.

19. While SkyTel would welcome NCASS's agreement to voluntarily produce documents and submit to the examination requested herein, SkyTel will, if required, serve subpoenas compelling the production and attendance consistent with the applicable rules. *See e.g.* Fed. R. Bankr. Pro. 2004(c) (providing that attendance of an entity for examination and for the production of documents may be compelled as provided for in Rule 9016 for the attendance of a witness at a hearing or trial).

20. **Because SkyTel needs to complete the discovery requested herein well prior to any deadline for objecting to the Debtor's pending proposed chapter 11 plan, SkyTel requests an expedited telephonic hearing on this Motion.**

21. In seeking the production of documents and the examination sought herein, SkyTel in no way waives its right to seek the further production of documents or additional examinations, under Rule 2004 or otherwise.

22. Other grounds to be asserted at any hearing hereon.

**WHEREFORE**, SkyTel respectfully requests that this Court enter an Order on the terms indicated herein. SkyTel further prays for general relief.

**THIS** the 24th day of May, 2012.

Respectfully submitted,

**WARREN HAVENS, SKYBRIDGE  
SPECTRUM FOUNDATION, VERDE  
SYSTEMS LLC, ENVIRONMENTAL LLC,  
INTELLIGENT TRANSPORTATION &  
MONITORING LLC, and TELESARUS  
HOLDINGS GB LLC**

By: /s/ William H. Leech

William H. Leech, MS Bar No. 1175  
Danny E. Ruhl, MS Bar No. 101576  
Two of Their Attorneys

OF COUNSEL:  
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P.O. Box 6020  
Ridgeland, MS 39158  
Telephone: (601) 856-7200  
Facsimile: (601) 856-7626  
bleech@cctb.com  
druhl@cctb.com

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing to be filed via the Court's Electronic Case Filing System, which caused a copy to be served on all counsel and parties of record who have consented to receive ECF notification, including the following:

Craig M. Geno, Esq.  
[cmgeno@cmgenolaw.com](mailto:cmgeno@cmgenolaw.com)

U.S. Trustee  
[USTPRegion05.AB.ECF@usdoj.gov](mailto:USTPRegion05.AB.ECF@usdoj.gov)  
[Sammye.S.Tharp@usdoj.gov](mailto:Sammye.S.Tharp@usdoj.gov)

I hereby further certify that I have this day caused the foregoing to be served on the following via U.S. Mail, postage prepaid, and via electronic mail:

Mark Bishoff  
Wilma Wu  
Nation's Capital Archives Storage Systems  
14811 Farm Creek Drive  
Woodbridge, VA 22191  
[wilma@nationscapitalarchives.net](mailto:wilma@nationscapitalarchives.net)

**THIS** the 24th day of May, 2012.

/s/ William H. Leech  
Of Counsel

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**MARITIME COMMUNICATIONS/  
LAND MOBILE, LLC,**

**Debtor.**

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**CASE NO. 11-13463-DWH**

**CHAPTER 11**

**ORDER ON  
MOTION OF SKYTEL FOR AN ORDER DIRECTING THE  
(I) RULE 2004 EXAMINATION OF NATION'S CAPITAL ARCHIVES STORAGE  
SYSTEMS, (II) RELATED PRODUCTION, INSPECTION AND COPYING OF  
DOCUMENTS, AND (III) PRESERVATION OF CERTAIN DOCUMENTS**

*THIS MATTER* came on for hearing before the Court on May 31, 2012, on the *Motion of SkyTel for an Order Directing the (I) Rule 2004 Examination of Nation's Capital Archives Storage Systems, (II) Related Production, Inspection, and Copying of Documents, and (III) Preservation of Certain Documents in the Interim* (the "Motion," Dkt. No. 469). The Court, having considered the Motion and the arguments of counsel in connection therewith, and having found that due notice has been given under the circumstances, finds that the Motion should be granted in part as set forth herein. Accordingly,

**IT IS, THEREFORE, ORDERED AND ADJUDGED that:**

1. The Motion shall be, and it hereby is, granted in part as set forth herein.
2. On or before June 8, 2012, or such other date as NCASS (as that term is defined in the Motion) and SkyTel may agree, NCASS shall provide a bonded copier -- to be selected by SkyTel -- with the Boxed Documents (as that term is defined in the Motion), so that the bonded copier may copy/scan those Boxed Documents at SkyTel's expense and for the purpose of preserving same on a CD in bates-stamped, electronic format.



3. Before the bonded copier is given access to the Boxed Documents, SkyTel shall pay to NCASS: (a) the past due storage fees incurred by NCASS in connection with those documents (which are less than \$3,000.00); and (b) the retrieval/refiling fees to be incurred by NCASS in connection with complying with the terms of this Order (which are less than \$800.00).

4. The Boxed Documents shall not be accessed or reviewed by any person or entity, other than NCASS and the bonded copier, until such time as the bonded copier completes its copying/scanning work under this Order.

5. The CD of the preserved, scanned, bates-stamped electronic document copies shall be retained by the bonded copier (or this Court if needed) until a privilege/confidentiality review process can be established by this Court upon, for example, an amended motion to be filed by SkyTel post-preservation and served on, *inter alia*, Mobex's New Jersey action counsel and NCASS (via Mr. Bishoff).

6. The other relief requested in the Motion is denied at this time, without prejudice to SkyTel's right to move the Court for such relief at a later date, via an amendment to the Motion or otherwise.

7. Notwithstanding the possible applicability of Fed. R. Bankr. Pro. 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over all matters arising from or relating to this Order or the Motion.

SO ORDERED this the 6<sup>th</sup> day of June, 2012.



David W. Houston, III  
United States Bankruptcy Judge

**APPROVED AS TO FORM:**

/s/ Craig M. Geno

Craig M. Geno, Esq.  
Counsel for Debtor

/s/ Derek F. Meek

Derek F. Meek, Esq.  
Counsel for the Official Unsecured  
Creditors Committee

**APPROVED AS TO FORM AND SUBMITTED TO THE COURT BY:**

/s/ William H. Leech

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Danny E. Ruhl, Esq.  
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Counsel for SkyTel

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

MARITIME COMMUNICATIONS/  
LAND MOBILE, LLC,

Debtor.

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CASE NO. 11-13463-DWH

CHAPTER 11

**MOTION FOR EXPEDITED TELEPHONIC STATUS CONFERENCE OR  
RECONVENED HEARING REGARDING NCASS PRESERVATION ORDER**

COME NOW Warren Havens, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Intelligent Transportation & Monitoring LLC, and Telesaurus Holdings GB LLC (collectively, “SkyTel”) and submit this *Motion for Expedited Telephonic Status Conference or Reconvened Hearing* (the “Motion”) *Regarding NCASS Preservation Order* (the “Preservation Order,” Dkt. #491). In support of the Motion, SkyTel states as follows:

1. On June 6, 2012, the Court entered the Preservation Order.
2. Pursuant to the Preservation Order, the physical documents which are the subject of the order (the “Boxed Documents”) and located at NCASS’s facilities, were to be preserved to electronic format and not accessed or reviewed by any person or entity (other than NCASS and the bonded copier) until such time as the bonded copier completes its preservation work.
3. On August 6, 2012, the District Court handling the New Jersey litigation, of which this Court is aware, entered a pretrial scheduling order (the “New Jersey Pretrial Order”) which provides, among other things, that Mobex shall provide certain supplemental discovery responses (including supplemental production of documents included among the physical Boxed Documents) by September 17, 2012 (or possibly September 14, 2012), and that plaintiffs to that litigation shall take whatever steps they deem appropriate to gain access (for Mobex) to the



physical Boxed Documents that are the subject of the Preservation Order so as to allow the supplemental production to proceed. See Exhibit A, pp. 1, 2.

4. The physical Boxed Documents have now been preserved to electronic format, the hard drive containing the electronically preserved documents has been deposited with the Court, and the physical documents are at the storage facilities of NCASS.

5. On September 7, 2012, SkyTel counsel in the New Jersey litigation advised Mobex counsel in the New Jersey litigation by e-mail that the electronic preservation of the Boxed Documents under the Preservation Order had been completed, and that there is therefore now no impediment to Mobex accessing and reviewing the physical Boxed Documents so as to comply with the New Jersey Pretrial Order. However, Mobex's counsel has responded by insisting that the Preservation Order somehow still prevents them from accessing the physical Boxed Documents, and, in any event, requesting SkyTel counsel to seek clarification/confirmation from this Court on that point. See Exhibit B.

6. Accordingly, SkyTel respectfully requests an expedited telephonic status conference or reconvened hearing on the Preservation Order, to include Mobex's New Jersey litigation counsel (who was served with a copy of this motion by e-mail), for purposes of obtaining confirmation that the Preservation Order is not an impediment to Mobex accessing and reviewing the physical Boxed Documents (as opposed to the electronically preserved version of those documents) so as to comply with the New Jersey Pretrial Order.

**WHEREFORE, PREMISES CONSIDERED,** Skytel respectfully requests this Court to hold an expedited telephonic status conference or reconvened hearing on the Preservation Order, to include Mobex's New Jersey litigation counsel, for purposes of obtaining confirmation that the Preservation Order is not an impediment to Mobex accessing and reviewing the physical

Boxed Documents (as opposed to the electronically preserved version of those documents) so as to comply with the New Jersey Pretrial Order. Skytel further prays for general relief.

**THIS** the 12th day of September, 2012.

Respectfully submitted,

**WARREN HAVENS, SKYBRIDGE  
SPECTRUM FOUNDATION, VERDE  
SYSTEMS LLC, ENVIRONMENTAL LLC,  
INTELLIGENT TRANSPORTATION &  
MONITORING LLC, and TELESORUS  
HOLDINGS GB LLC**

By: /s/ Danny E. Ruhl

William H. Leech, MS Bar No. 1175  
Danny E. Ruhl, MS Bar No. 101576  
Sarah Beth Wilson, MSB No. 103650  
Christopher H. Meredith, MSB No. 103656  
Their Attorneys

**OF COUNSEL:**  
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sbwilson@cctb.com  
cmeredith@cctb.com

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing to be filed via the Court's Electronic Case Filing System, which caused a copy to be served on all counsel and parties of record who have consented to receive ECF notification, including the following:

Craig M. Geno, Esq.  
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[Sammye.S.Tharp@usdoj.gov](mailto:Sammye.S.Tharp@usdoj.gov)

**THIS** the 12th day of September, 2012.

/s/ Danny E. Ruhl  
Of Counsel

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

_____	:	
WARREN HAVENS,	:	
	:	Civil Action No. 11-993(KSH)
	:	
Plaintiff,	:	
	:	
v.	:	<b>ORDER ON INFORMAL</b>
	:	<b>APPLICATION &amp; FIFTH AMENDED</b>
	:	<b><u>PRETRIAL SCHEDULING ORDER</u></b>
	:	
MOBEX NETWORK SERVICES, et al.,	:	
	:	
Defendant	:	
_____	:	

This matter having come before the court by way of letters dated July 23, 2012, regarding the plaintiff's request to extend the deadline to file motions to amend the pleadings and to address other deadlines and to address disputes concerning defendant Paging Systems responses to the Plaintiff's Request for the Production of Documents Nos. 1, 2, 3, 4, 10, 11, 12, 13, and 53 and its responses to Category 9 of ECF No. 84; and the Court having conducted a telephone conference on the record on August 3, 2012; and the Court having considered the submission, the representations of the parties, the record of proceedings and the governing law; and for the reasons discussed on the record on August 3, 2012;

**IT IS ON THIS** 3rd day of August, 2012

**ORDERED** that the request to extend the deadline to file motions to amend pleadings and join parties, to complete fact discovery, to complete expert discovery, and for plaintiff to identify its expert is granted as set forth herein;

**IT IS FURTHER ORDERED** that the defendants' request that the Court set a schedule to file motions for summary judgment is granted as set forth herein;

**IT IS FURTHER ORDERED** that the request to set a deadline that MOBEX provide its supplemental responses to interrogatories and document demands three weeks after its inspection of the documents that are the subject of the Bankruptcy Court's Order, is denied and said responses shall be provided no later than ~~September 17, 2012~~. Plaintiffs shall take whatever steps they deem appropriate to gain access to the documents that are subject of the Bankruptcy Court Order and MOBEX shall identify a representative who may be deposed about the documents;

**IT IS FURTHER ORDERED** that based upon the representation that the plaintiff has



not withheld documents that were the subject of the defendants' document demands based upon the assertion of the attorney client and/or work product rule, then the need for a privilege log pursuant to L. Civ. R. 34.1 is moot at this time. If a party comes into possession, custody or control of a document that was the subject of a document demand but is being withheld based upon a privilege or the work product rule, then the party shall produce privilege log that complies with L. Civ. 34.1, no later than 72 hours after the party learns of the document;

**IT IS FURTHER ORDERED** that, with respect to Defendant Mobex's Interrogatories 2, 6, 11, 12, 15 and 16, no action will be taken on Mobex's objection to the sufficiency of plaintiffs' supplemental response based upon the representation that the parties had not conferred before seeking court-intervention concerning the sufficiency of plaintiffs' supplemental responses other than to remind the plaintiffs of their obligation to fully comply with the July 3, 2012 Order, including specifically identifying the actions Mobex allegedly engaged in. Defendant Mobex may conduct a deposition of a representative of the plaintiffs to obtain information sought in these interrogatories;

**IT IS FURTHER ORDERED** that, with respect to Plaintiffs' Document Demands Nos. 1, 2, 3, 4, 10, 11, 12, 13, and 53, the defendants shall produce the documents filed with the FCC, such as Forms 601 Schedule K and G, that contain information that is responsive to the information that these demands seek and shall populate a chart that provides the responses to Category 9 of ECF No. 84 based upon the information from those documents;

**IT IS FURTHER ORDERED that:**

1. MOBEX shall ensure the documents in storage is preserved and relevant nonprivileged documents are available for inspection.
2. The discovery served by MOBEX and served upon MOBEX shall be responded no later than **deadline passed on June 20, 2012**. MOBEX shall provide supplemental responses based upon the documents in the possession of Nation's Capital Archives no later than **September 14, 2012**.
3. The discovery served upon MCLM shall be responded no later than **deadline passed on June 10, 2012**;
4. MCLM may serve interrogatories and document demands no later than **deadline passed on May 10, 2012**, which shall be responded to no later than **deadline passed on June 20, 2012**;
5. MCLM shall provide its Rule 26 disclosures and responses to interrogatories and document demands no later than **deadline passed on June 20, 2012**.
6. All documents shall be produced no later than **deadline passed on June 19, 2012**; and
7. The request to extend the deadline to raise discovery disputes is granted and all

discovery disputes submitted in accordance with the requirements of Paragraph 9 no later than  
deadline passed on June 27, 2012 at noon;

**IT IS FURTHER ORDERED THAT:**

**I. COURT DATES**

1. There shall be a telephone status conference before the Undersigned on **October 2, 2012 at 2:30 p.m.** Plaintiff shall initiate the telephone call.
2. a. There will be a settlement conference before the Undersigned on **TO BE SET.**
  - b. Trial counsel and clients with full settlement authority are required to appear at the conference and they shall confirm their availability to appear on the date of the conference by filing a letter no later than **TO BE SET.** Absent exceptional, unforeseen personal circumstances, the confirmed settlement conference will not be adjourned.
  - c. If the trial counsel and client with full settlement authority do not appear, the settlement conference may be cancelled or rescheduled and the noncompliant party and/or attorney may be sanctioned, which may include an assessment of the costs and expenses incurred by those parties who appeared as directed.
3. A final pretrial conference shall be conducted pursuant to Fed. R. Civ. P. 16(d) on **November 19, 2012 at 1:00 p.m.** The Final Pretrial Conference will occur even if there are dispositive motions pending. The Court will adjourn the Final Pretrial conference only if the requesting party makes a compelling showing that manifest injustice would otherwise result absent adjournment.

**II. DISCOVERY AND MOTION PRACTICE**

4. a. MOBEX shall provide its Fed. R. Civ. P. 26 disclosures on or before **deadline passed on May 10, 2012**
- b. MCLM shall provide its Fed. R. Civ. P. 26 disclosures on or before **deadline passed on May 18, 2012, except as set forth above.**
- c. No later than **deadline passed on February 21, 2012**, the parties shall submit a proposed discovery confidentiality order and certification as required by Local Civ. R. 5.3.<sup>1</sup>
5. Discovery necessary to engage in meaningful settlement discussions: some discovery

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<sup>1</sup>If a party seeks to file under seal information submitted in connection with a request for non-discovery relief, then the party shall: (1) consult Local Civ. R. 5.3 and (2) contact the Chambers of the Undersigned for instructions regarding the format for presenting such a motion.

6. The party groups may serve interrogatories limited to 25 single questions including subparts and requests for production of documents on or before **deadline passed on February 21, 2012**, which shall be responded to no later than **March 21, 2012** except as set forth on page 1.

7. Absent agreement of counsel or order of the Court, the number of depositions to be taken by each side shall not exceed 10. No objections to questions posed at depositions shall be made other than as to lack of foundation, form or privilege. See Fed. R. Civ. P. 32(d) (3) (A). No instruction not to answer shall be given unless a privilege is implicated. The depositions shall be completed no later than **September 30, 2012**.

8. Fact discovery is to remain open through **September 30, 2012**. No discovery is to be issued or engaged in beyond that date, except upon application and for good cause shown.

9. Counsel shall confer in a good faith attempt to informally resolve any and all discovery disputes before seeking the Court's intervention. Should such informal effort fail to resolve the dispute, the matter shall be brought to the Court's attention in the first instance via a joint letter that sets forth: (a) the request or issue, (b) the response; (c) efforts to resolve the dispute; (d) why the complaining party believes the information is relevant and why the responding party's response continues to be deficient; and (e) why the responding party believes the response is sufficient. No further submissions regarding the dispute may be submitted without leave of Court. If necessary, the Court will thereafter schedule a telephone conference to resolve the dispute.

No discovery motion or motion for sanctions for failure to provide discovery shall be filed before utilizing the procedures set forth in these paragraphs without prior leave of Court.

Any unresolved discovery disputes (other than those that arise during depositions) must be brought before the Court no later than **deadline passed on July 23, 2012 at noon**. The Court will not entertain applications concerning discovery matters, informally or otherwise, after this date. If an unresolved dispute arises at a deposition, then the parties shall contact the Chambers of the Undersigned for assistance during the deposition. If a party does not present an unresolved dispute arising at a deposition during the deposition, then the right to seek court-intervention shall be deemed waived.

10. Any consent order or motion to amend pleadings or parties shall be filed no later than **August 15, 2012 at 12:00 p.m.**

11. a. Any motion for summary judgment shall be filed no later than **October 12, 2012**. Any response shall be submitted no later than **October 22, 2012** and the reply shall be submitted no later than **October 29, 2012**. The return date shall be **November 5, 2012** before the Hon. Katharine S. Hayden. Her Honor's Chambers will notify the parties if oral argument will be required; and

b. The following protocol shall apply:

a. Each motion for summary judgment shall be supported by a separate, short, and concise statement of material facts, set forth in numbered paragraphs, as to which the moving party

contends there is no genuine issue of material fact to be tried. Each fact asserted in the statement shall be supported by a record citation. A "record citation" is a citation to a specific page or paragraph of identified record material supporting the assertion.

b. Each response in opposition shall be accompanied by a separate, short, and concise statement of material facts. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation. The opposing statement may contain in a separate section additional facts, set forth in separate numbered paragraphs and supported by a record citation.

c. In the event a party seeks to submit a reply, the party shall file a formal request for permission to do so within the time period provided by Local Rule, attaching the proposed reply. Accompanying the proposed reply shall be a separate, short, and concise statement of material facts which shall be limited to any additional facts submitted by the opposing party. The reply statement shall admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts, and unless a fact is admitted, shall support each denial or qualification by a record citation.

d. Facts contained in a supporting or opposing statement of material facts, if supported by record citations, shall be deemed admitted unless properly controverted. The Court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The Court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

e. Local Rules governing electronic filing and length, font-size, and format of moving, opposing and reply briefs shall continue to apply as appropriate. Parties shall provide the Court with two hard copies of all submissions by delivering same to the Clerk's Office, Attention Judge Katharine Hayden.

### III. EXPERTS

12. a. No later than August 15, 2012, the parties shall identify their affirmative experts and the subjects about which they will opine.

b. All affirmative expert reports shall be delivered by September 17, 2012.

13. All responding expert reports shall be delivered by October 17, 2012.

14. a. All expert reports are to be in the form and content as required by Fed. R. Civ. P. 26(a) (2)(B). No expert shall testify at trial as to any opinions or base those opinions on facts not substantially disclosed in the experts report.

b. All expert depositions shall be completed by October 31, 2012.

### IV. FINAL PRETRIAL CONFERENCE

15. A final pretrial conference shall be conducted pursuant to Fed. R. Civ. P. 16(d) on **November 19, 2012 at 1:00 p.m.** The Final Pretrial Conference will occur even if there are dispositive motions pending. The Court will adjourn the Final Pretrial conference only if the requesting party makes a compelling showing that manifest injustice would otherwise result absent adjournment.

16. Not later than 20 working days before the pretrial conference, the parties shall exchange copies of all proposed trial exhibits. Each exhibit shall be pre-marked with an exhibit number conforming to the party's exhibit list.

17. All counsel are directed to assemble at the office of Plaintiff's counsel not later than **ten (10) days** before the pretrial conference to prepare the proposed Joint Final Pretrial Order in the form and content required by the Court. Plaintiff's counsel shall prepare the Joint Pretrial Order and shall submit it to all other counsel for approval and execution.

18. With respect to non-jury trials, each party shall submit to the District Judge and to opposing counsel proposed Findings of Fact and Conclusions of Law, trial briefs and any hypothetical questions to be put to an expert witness on direct examination.

19. The original joint proposed final pretrial order shall be delivered to the CHAMBERS of the Undersigned no later than **November 13, 2012 at 3:00 p.m.** All counsel are responsible for the timely submission of the Order.

20. The Court expects to engage in meaningful settlement discussions at the final pretrial conference. Therefore, trial counsel who actually has full settlement authority must attend the conference and clients or other persons with full settlement authority must be available by telephone.

#### V. MISCELLANEOUS

21. The Court may from time to time schedule conferences as may be required, either sua sponte or at the request of a party.

22. Since all dates set forth herein are established with the assistance and knowledge of counsel, there will be no extensions except for good cause shown and by leave of Court, even with consent of all counsel. Any request to extend any deadline or to adjourn a court event shall be made no later than three days before the scheduled date and shall reflect: (1) the good cause the requesting party believes supports the extension or adjournment and (2) whether or not all parties consent to the request. Absent unforeseen emergent circumstances, the Court will not entertain requests to extend deadlines that have passed as of the date of the request. Absent unforeseen emergent circumstances, the Court will not entertain requests to extend deadlines that have passed as of the date of the request.

23. A copy of every pleading, document or written communication with the Court shall be served on all other parties to the action. Any such communication which does not recite or contain a certification of such service may be disregarded by the Court.

24. Absent permission from Chambers, communications to the Court by facsimile will not be accepted. All communications to the Court shall be in writing or by telephone conference.

25. **FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY  
RESULT IN SANCTIONS.**

s/Patty Shwartz  
**UNITED STATES MAGISTRATE JUDGE**



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**From:** Christine Gurry [mailto:CGurry@trafletfabian.com]  
**Sent:** Friday, September 07, 2012 5:22 PM  
**To:** Richards, R.N. Tendai; Friedman, Kenneth; Robert Mauriello  
**Cc:** Jacobs, Robert M.; Stephen Traflet  
**Subject:** RE: Skybridge v. Mobex, et al

Tendai,

I understand that creation of the CD has had the desired effect of "preserving" the documents, but if the bankruptcy court's only objective was, as your counterpart in Mississippi suggests, preserving the documents, then the confidentiality/privilege review process referenced in the order was never necessary. Necessary or not, however, the reference is there and has not been modified by any subsequent order, so as far as I'm concerned, the provisions of Paragraph 5 are still operative. I would appreciate it if, as you've offered, you would contact plaintiffs' counsel in Mississippi and have them obtain some sort of confirmation that I am free to access the documents in Washington without further action from the bankruptcy court.

Additionally, I'd like some clarification regarding the purposes for which the CD is to be used in the Mississippi action. It seems uncontested at this point that these documents are Mobex's. Thus, counsel for Mobex should be the only ones to review the documents. Your statement that "the bankruptcy court is now only focused on the documents preserved on the CD" worries me that some independent review of the CD is going to take place in the Mississippi action that will result in conflicts with any determinations that this office may make with regard to privilege. Please have plaintiffs' Mississippi counsel clarify that point as well.

Thank you.

Christine

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Christine M. Gurry, Esq.

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**From:** Richards, R.N. Tendai [mailto:TRICHARDS@winnebanta.com]  
**Sent:** Friday, September 07, 2012 4:37 PM  
**To:** Christine Gurry; Friedman, Kenneth; Robert Mauriello  
**Cc:** Jacobs, Robert M.; Stephen Traflet  
**Subject:** RE: Skybridge v. Mobex, et al

Christine,

My earlier email did not contain my interpretation of the Bankruptcy Court's Order. What I was told by an attorney who was at the oral argument on the motion that resulted in the order I sent to you earlier today, was that the concern was to preserve the documents that were being held by NCASS. Once the documents were preserved, the bankruptcy court's

only ongoing issue was to create a procedure whereby the preserved documents on the CD would be reviewed for privilege and confidentiality. The concern that documents themselves would go missing was no longer an issue because they are now preserved on a CD created by a bonded copier and held by that copier or by the court (I understand the copier took the second option and sent it to the court). As such, you are free to review the boxed documents – since MCLM's stated position is that they remain Mobex's property. I believe the idea regarding the "create a vehicle whereby the preserved documents would be reviewed for privilege and confidentiality" was originally raised by counsel for MCLM and I understand that idea has evolved into some kind of in camera review, since MCLM has taken the position that they are not the owners of those documents even though they purchased the licenses to which they previously represented to the FCC that they relate.

The action regarding the documents that the bankruptcy court ordered occur prior to any inspection by anyone was preservation, however, if you need confirmation from that court, I suggest you contact MCLM's counsel in Mississippi. Alternatively, I can contact plaintiffs' Mississippi counsel and request that he obtain same. I am merely passing on the fact that the preservation has been completed, that the boxes are back at NCASS and that I was told that the bankruptcy court is now only focused on the documents preserved on the CD. In short, I am told that the "boxed documents" are available for inspection by Mobex counsel in connection with the NJ litigation and as contemplated by paragraphs 4 and 5 of the bankruptcy court's prior order.

Regards,

Tendai

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**From:** Christine Gurry [mailto:CGurry@trafletfabian.com]  
**Sent:** Friday, September 07, 2012 3:23 PM  
**To:** Richards, R.N. Tendai; Friedman, Kenneth; Robert Mauriello  
**Cc:** Jacobs, Robert M.; Stephen Traflet  
**Subject:** RE: Skybridge v. Mobex, et al

Tendai:

I must respectfully disagree with your stated interpretation of the order. Admittedly, my office was not included in the oral argument of the motion. However, it is precisely for that reason that I can proceed only on the basis of the language of the order, which, to me, is quite clear. Frankly, the interpretation you propose makes no sense. If the intention of the bankruptcy court was for Mobex to commence its review of the documents once the bonded copier was finished, then there would be no need for a privilege/confidentiality review procedure. To whom other than Mobex could such a procedure apply? Who else but Mobex and its counsel can review the documents for privilege? Are you suggesting that some other party is planning to undertake an independent review of the CD for privilege and confidentiality? If so, I am asking to be placed on notice of that intent right now because Mobex will strongly oppose it.

Furthermore, I believe Ken and Rob will agree that every representation that Plaintiffs have made to Judge Schwartz during our conference calls indicated a belief on your part that the bankruptcy court had to act before the documents could be touched. Otherwise, the lengthy discussions that we had on how to initiate some

movement on the part of the bankruptcy court were merely academic.

My position remains the same. Mobex will not review the documents until it is told that it can by the bankruptcy court. Mobex will not run the risk of violating a court order.

Christine

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Christine M. Gurry, Esq.

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**From:** Richards, R.N. Tendai [mailto:TRICHARDS@winnebanta.com]  
**Sent:** Friday, September 07, 2012 12:00 PM  
**To:** Christine Gurry; Friedman, Kenneth; Robert Mauriello  
**Cc:** Jacobs, Robert M.; Stephen Traflet  
**Subject:** RE: Skybridge v. Mobex, et al

Christine,

I appreciate your stated concern. I have spoken with my client's bankruptcy counsel in Mississippi and have reviewed the bankruptcy order (which is attached). Please review paragraph 4: "The Boxed Documents shall not be accessed or reviewed by any person or entity, other

than NCASS and the bonded copier, until such time as the bonded copier completes its copying/scanning work under this Order." (emphasis added). The confidentiality and privilege procedure applies to review of the CD containing the preserved documents, not the boxed documents itself (see paragraph 5 of the attached order) and I am told that the

bankruptcy judge fully expected NJ counsel to arrange to review the boxed documents immediately following the completion of the preservation process.

Regards,

Tendai

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**From:** Christine Gurry [mailto:CGurry@trafletfabian.com]  
**Sent:** Friday, September 07, 2012 10:55 AM  
**To:** Richards, R.N. Tendai; Friedman, Kenneth; Robert Mauriello  
**Cc:** Jacobs, Robert M.; Stephen Traflet  
**Subject:** RE: Skybridge v. Mobex, et al

Tendai:

Thank you for the status report.

I must take issue with your statement that now "there is no impediment to Mobex' counsel's review of the documents at issue." The bankruptcy court's preservation order of June 6, 2012 provides: "The CD of the preserved, scanned, bates-stamped electronic document copies shall be retained by the bonded copier (or this Court if needed) until a privilege/confidentiality review process can be established by this Court upon, for example, an amended motion to be filed by SkyTel post-preservation and served on, inter alia, Mobex's New Jersey action counsel and NCASS (via Mr. Bishoff)." (Emphasis added.) As I read the order, it is now your obligation to notify the bankruptcy court that the bonded copier has completed its work and that the bankruptcy court can proceed to establish a confidentiality/privilege review process. Under the terms of the order, I can't touch those documents until the bankruptcy court's review process is in place. The preservation order exists because of the actions taken by you and your client, and I am not about to violate it by proceeding with a review that does not comply with its express mandate.

Thank you.

Christine

~~~~~  
Christine M. Gurry, Esq.

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**From:** Richards, R.N. Tendai [mailto:TRICHARDS@winnebanta.com]  
**Sent:** Friday, September 07, 2012 10:25 AM  
**To:** Christine Gurry; Friedman, Kenneth; Robert Mauriello  
**Cc:** Jacobs, Robert M.  
**Subject:** Skybridge v. Mobex, et al

Counsel,

Allow this email to confirm that the copying of the 93 boxes of documents held by the NCASS storage facility in Virginia was completed yesterday and the boxes returned to the facility this morning. I understand that the storage facility records indicated a total of 101 boxes, but that eight of them were removed either by Mobex representatives or MCLM representatives – as noted on the records from NCASS that I previously forwarded to you. In short, there is no impediment to Mobex' counsel's review of the documents at issue, so I ask that the review occur, with relevant and responsive documents produced and privilege log created for all documents withheld – keeping in mind Judge Shwartz' comments regarding the applicability of the existing confidentiality order and the deadline set forth in the latest pretrial scheduling order.

Regards,

Tendai Richards



**Tendai Richards, Esq.**

**Winne, Banta, Hetherington, Basralian & Kahn, P.C. | visit us at WinneBanta.com**

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