PART 1
This has 2 parts.
- W. Havens

Subject: Re: FCC Orders 12M-48 and 49

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

To: Pamela.Kane@fcc.gov;

Cc: Brian.Carter@fcc.gov; rjk@telcomlaw.com; jstobaugh@telesaurus.com;

Date: Wednesday, November 7, 2012 4:48 AM

W. Havens' Note to this filing: My denied party status in this Hearing (contary to the HDO FCC 11-64, APA, FCC rules and equity) is described and documented in my "Errata Copy with Consolidated Appended Materials. Warren Havens Comments on FCC 12M-44" Oct 2, 2011. Still, as I explain on p. 4 of that filing, the instant public filing on ECFS is an attempt to assist the Judge.

Addition.

Your item 1 in your email below does not provide a proper understanding.
The June 7 document request item 1, that your below email item 1 refers to, is this:

> 1. All Documents that have been stored at Nation's Capital Archive Storage Systems, Inc., located at 14811 Farm Creek Drive, Woodbridge, Virginia, 22191, and that
> Skytel received or is to receive pursuant to a subpoena issued in Skybridge Spectrum
> Foundation; et al. v. Mobex Network Services, et al. (Civil Action No. 2:1 1-CV-000993).

In the document request, you defined "Documents" to be ".... in the possession, custody, or control of Maritime."

But not withstanding the conflict in that definition and that numbered request, SkyTel informed you that after said subpoena was issued and before it was satisfied to any degree, the bankruptcy court issued the document-preservation Order I describe below, which I had explained to the Judge and you at the time we sought and obtained that Order, which made moot the subpoena. SkyTel further informed you as to the other matters I describe below, so that you could obtain these NCACC-boxes and related records, under the legal powers you had to do so.

-W. Havens

From: Warren Havens <warren.havens@sbcglobal.net>
To: Pamela Kane <Pamela.Kane@fcc.gov>
Cc: Brian Carter <Brian.Carter@fcc.gov>; 'Bob Keller' <rjk@telcomlaw.com>; Jimmy Stobaugh <jstobaugh@telesaurus.com>; Warren Havens <warren.havens@sbcglobal.net>
Sent: Wednesday, November 7, 2012 2:39 AM
Subject: Re: FCC Orders 12M-48 and 49

Ms. Kane,

Introduction

I respond here to your email below.

I explained last week that I requested input on this by last Saturday due to my schedule this week, and so this would not be a last-minute action.

I have no further time at this point, to attempt a consolidated chart. I am working here, overtime, to contribute further to this matter.

I may directly submit a response to the Judge. That may be a copy of this email, and my past emails on this particular task (the subject line of this email).

In addition, I provide information below you can use, if you choose, as long as you do not edit it to change the meaning.
- If you use any of the below, you should attach a full copy of this email.
- Since I continue, below, from my previous email on this topic (the subject line of this email), you should also attach a copy of that preceding email, so that my entire position is given in tact.

Mr. Keller made no effort to communicate with me on this matter as the Judge instructed, despite attempts on my side. I also do not have from him any input he intends via you, the EB. He refused to do that under two "Glossary" Orders, and now in this task also.

The Judge did not instruct that Mr. Keller deal with EB, and I deal with EB, and then EB piece together in some way respective communications, or that EB serve as a mediator of the Havens-Keller positions. When a Judge orders multiple parties to confer and attempt a consolidated statement, that means each party communicates with the others directly.

Mr. Keller-MCLM simply chose, again, to not follow the Judge's instructions,not withstanding my several direct timely request to him to follow the instructions. That should be construed against him and MCLM. That is not practice of law as an "officer of the court" (here, and officer of the office of the ALJ), but obstruction.

I not in a position, at this late hour, be able to review whatever he may provide. I explained that previously. There has been more than sufficient time, without waiting to the last day.

I respond here as Warren Havens, an individual, but where I cases I report on a SkyTel matter.

"MCLM" and "Maritime" mean the same thing. "EB" means your Bureau.

Part I

You (EB) are prosecuting the case, since you have the case records. I have been cut out of access to a lot of of the case records (item alleged as confidential before the Hearing began by Maritime and others including: (i) in the Section 308 investigation indicated in the HDO, FCC 11-64: withheld from in long FOIA proceeding, which is still subject to a court case I intend to have filed in the time-limitation period that applies to denied FOIA requests, (ii) in the Hearing, various materials submitted by Maritime, Pinnacle and others under the Protective Order, or alleged to be under the PO alleged to have been executed, (iii) by delays in releasing, during this Hearing, the "CD" from Maritime, by Mr. Keller making a baseless argument that FOIA is undercut by the Hearing procedures, and by the EB providing to Mr. Keller an appeal right of as to release of the CD when he did not assert any difference with the EB that the CD had no confidential information [making any appeal baseless: since non-confidential information had to be released], (iv) Maritime lobbied the Judge for the Judge to deny my party status, which the Judge did. The EB took no position on this (after your first written position near the start of the Hearing, that the Judge should not take action to remove or restrict party rights of Warren Havens and SkyTel entities).

For the above and other reasons, I believe the EB* should provide responses from your records on the below matters, in sufficient substance to inform the court of the actual relevant history-- and not to provide the simple responses you outline below (or any similar ones) since that does not inform the Judge of the relevant history. I believe it is clear that the Judge wants to know: who did what, to get these NCASS-box records and related records into the Record of this Hearing: not only the records copies that may have been in the boxes, but the electronic scanned copies, the 8 boxes removed by Maritime (see the time period involved) and Mobex (see time

period involved), the computer copies of many and apparently most of these records that Mobex- MCLM must have, and records relating to the NCASS boxes that MCLM must have provided to its secured lenders and spectrum lessees including Pinnacle.

*It is clear that MCLM ("Maritime") seeks to hide evidence before and during this Hearing, including these NCASS records (whether in the boxes or in computer file form, and all related records: MCLM stated that these records were of its site-based licenses: stations, equipment, site leases, etc.: see e,g. the Predmore Declaration). Thus, it is clear that the EB, not MCLM, can effectively address the relevant history to the Judge. Maritime has not fulfilled its obligations as to providing relevant evidence to date, and there is thus lack of reason to think that Maritime will provide to the Judge a relevant account at this time, in relation to the NCASS boxes.

Part II

As further discussed below, since both EB and MCLM failed to take actions to get these NCASS-boxes records into this Hearing, it is improper *(for this reason alone, but there are others also)* ***to make assumptions and seek summary judgment that the Watercom-origin station were "constructed" (as that term means under FCC rules and cases). That will compound final resolution, as further discussed below.***

EB did not seek the NCASS box records--(in original form, or recently scanned form, or the Mobex-MCLM computer files from which most of the records came, or any related documents such as the 8 missing boxes shown on the NCASS fax, noted again below)--from the parties that legal and actual possession and control of these: (1) John Reardon, MCLM and Mobex, and their agents including Mr. Keller, (2) NCASS, and (3) the clerk of the Mississippi bankruptcy court in the MCLM bankruptcy case. These records did relate, as MCLM itself explained, to its site based licenses and alleged stations - what it bought from Mobex, and that included the Watercom-origin licenses, stations, equipment, site-leases, etc.

MCLM had an obligation to produce these records but did not.

The EB document request to SkyTel did not require SkyTel to spend time and money to attempt to obtain legal rights to possess or control the NCASS box records. It asked for documents we owned or controlled. We were fully clear as to the below matters, and gave you (and the Judge) a copy of the bankruptcy court evidence (NCASS box records) preservation Order. That explained how SkyTel could pay a bonded copier to scan the physical documents then provide those to the court, but that prevented SkyTel access to the copies. Any access would have to be via a further court decision. That applies to SkyTel and to EB and others.

It is clear that if the EB or MCLM believe it had rights or duties in this Hearing to obtain the NCASS box records (or the same that are apparently in computer files of Mobex-MCLM) and use them in the Hearing, that EB or MCLM would have simply sought the records by legal process.

- (As for MCLM, it is clear that he had these documents in its control, not only on physical form, but in the computer forms in which these were originated, and otherwise stored. But under the MCLM story-- presented in this Hearing-- that it did not want these records of the licenses and station assets it bought from Mobex, but let Mobex put them in storage and act in a way to have them (MCLM thought, or pretended to think, were destroyed)-- MCLM still could have obtained the NCASS-boxes copies of these record simply by paying the $2000 (approx) back-due unpaid storage fees during the Hearing, at any time up the the time SkyTel got from the bankruptcy court the evidence-preservation order that prevented MCLM and Mobex (and others but NCASS and the bonded copier) from access to the records-- until the bonded copying was done and the record are secured with the bankruptcy court clerk.

- MCLM and EB have had a copy of this evidence preservation Order from the time it

was issued.
- MCLM and EB were aware of the completion of the bonded copier work under the Order.
- Under the Order, the NCASS boxes are back in the physical possession of NCASS, and the scanned copies are on a hard drive with the bankruptcy court clerk. At all times, the location(s) of these records were known to EB and MCLM.

Part III

Certain timing matters:

Again:
- MCLM and EB have had a copy of this evidence preservation Order from the time it was issued.
- MCLM and EB were aware of the completion of the bonded copier work under the Order.
- Under the Order, the NCASS boxes are back in the physical possession of NCASS, and the scanned copies are on a hard drive with the bankruptcy court clerk. At all times, the location(s) of these records were known to EB and MCLM.

SkyTel and I do not know when* we may have access to any of the NCASS-boxes scanned records. (But EB and MCLM have no basis to suggest that its failure to seek can be attributed to SkyTel.)

* However, it is my personal guess that within approximately 4 weeks of today, we will have reasonably progress and clarity on this question.

- Our attorney, Tendai Richards, in the NJ antitrust case** obtained permission by court order to review the records (provided to him on a hard drive) to find what is relevant to the NJ court action. Since there were several hundred thousand records,this was a major undertaking (not needed if MCLM-Mobex had not obstructed and withheld). My understanding is that this has been partially but not fully completed.

- This attorney has not yet taken action to have a court find that some of the records cannot be properly alleged as confidential under the protective order in this NJ court action: that is expected, but I do not know when that may be pursued.

When pursued, and to the degree the records are found as not-confidential, and/or may otherwise be provided to the EB in a further response to your document request to SkyTle (that does not conflict with any outstanding court order), then SkyTel will produce these to EB.

But again, EB did not act as I suggested to directly seek these records from the entities that had the legal possession and control over them. The evidence shows that MCLM acted at all times to hide these, pretend (falsely assert, knowing otherwise) they were destroyed, pretend they had no back up copies on computers or otherwise, pretend it did not in fact control these including by paying NCSAA for years the storage fees, etc.

** The case is in discovery and expert-report phase. The attached report from Professor James Ming Chen summarizes SkyTel's position, in case you want that information. It is relevant since, as partially indicated herein (and shown in other documents in the case, on the US Courts PACER system), evidence discovery in the NJ case is also relevant in substantial part to this FCC Hearing.

Conflict in evidence and resultant decisions:

In addition, since (i) discovery is proceeding in the NJ action (and some documents and information produced by MCLM-Mobex and others is confidential at this time: I do not have access currently) with regard to the MCLM site based licenses, including which were lawfully constructed and kept in operation, and (ii) like discovery is in this Hearing -- there is a chance of conflict in evidence and conclusions based on

the evidence.

I have informed the EB (an this Hearing) of the NJ action and its character. The matter of the preceding paragraph has been apparent from the start of this Hearing to this day.

This is a further reason that the subject action to seek summary judgment is improper.

Quantity of documents:

- The bonded copier reported, at the end of the work scanning all of the documents in the subject NCASS boxes, that it scanned **221,041** pages. In addition, indexes were prepared. OSC was applied (for word searches). Some files were oversized and were also scanned. Some photos were take of the boxes and looking at contents.

- This ***does not include the 8 boxes removed by Mobex-MCLM, including in the period after MCLM bought the Mobex assets, and were payments to to NCASS for the storage (into at least year 2008) were from the MLMC office in Indiana. MCLM will not account for those removed boxes. I provide to EB the information form MCLM counsel on this, in communication with Danny Ruhl, SkyTel counsel in the Maritime bankruptcy action.***

Part IV

I provided to EB the following information in substantial written detail, during this Hearing:

I provided various substantial information as to the NCASS boxes: from the time these were located, to more recently (if the Judge seeks details, he can ask for those communications: you have those, and the whole case Record, as I note above).

This includes a number of suggestions that the EB take actions to directly access the Boxes or the scanned copies. EB of course has subpoena and other rights-- to get documents form a party that actually possesses and controls the documents.

- From your notes below, and from my recollections, the EB apparently took no action to directly access the Boxes of records, or the scanned copies that my companies paid for under the bankruptcy Court document-preservation Order (but, as I have explained to the EB, we have no access to the scanned documents per the Bankruptcy Court evidence-preservation Order: our Attorney has a Hard Drive with these on attorney-eyes-only basis, for a purposes in the NJ antitrust case involving Maritime).

You have a copy of the Premore Declaration submitted by MCLM as to the nature of the records in the boxes, making clear that they pertain to issue (g) in this Hearing, as to all of Mobex site based licenses, leases, equipment, etc. -- these included the ones Mobex obtained from Watercom.

You have other communications, from Mr. Keller, and from MCLM bankruptcy counsel Mr. Geno (to our counsel Mr. Ruhl), that further informs you that the NCASS box records are relevant to issue (g).

You have the fax from NCASS to SkyTel attorney Tendai Richards that list the NCASS boxes with titles of time of the boxes. You have other information that SkyTel lawfully obtained as to the boxes and their nature. This also shows the relevace to issue (g) without limitation as to records relevant to the Watercom-origin licenses, stations, equipment, leases, etc.

The only parties to act to preserve the NCASS box records, including as I informed you for purposes of this Hearing, are my companies. To my knowledge, the EB did not act to obtain these records from the party that had possession and control: that has

always been NCASA, and for a period of time, the bonded copier that, under the bankruptcy court document-preservation Order, had the boxes for a period of time to perform the electronic scanning. I informed you of this, gave you the name and ID of this bonded copier (close to Washington DC). Again, I suggested to EB that you take action to secure copies of the records for this Hearing, and to my knowledge and from your outline below, you have not done that.

There is ample evidence in this Hearing that the Watercom site-based licensed stations, that Mobex purchased and thereafter MCLM acquired, were not constructed (as that word means in relevant FCC rules and cases: see the Skytel-O Glossary filings in this Hearing, and various written communications from me and my office, to the EB).

Issue (g) is regarding termination, however it is not independent of the overall license-revocation nature of the HDO, FCC 11-64 and this Hearing. Revocation involves misrepresentation, lack of candor including withholding relevant information and other character issues: that surely extends to the long history of Mobex and MCLM to withhold the records of the construction and operation history and status of the site based licenses, and in this history, these NCASS boxes matter is one of the most serious withholding components.

Part V

It is improper to grant summary judgement for the reasons SkyTe-O parties have submitted and that I further explain above.

In addition, there is no practical benefit of that since EB is continuing to prosecute issue (g) regarding the MCLM site based licenses (and associated alleged stations) in this Hearing. To grant to MCLM a closure of this process, on the Watercom-origin licenses and stations, does not very much reduce actions that would continue anyway.

Grant of summary judgment would add another issue that SkyTel would likely challenge in an appeal of the final decision both as to issue (g) license-termination matters, and as to the deficient-character overarching issue in the HDO and Hearing.

Respectfully,

/s/
Warren Havens

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: 'Bob Keller' <rjk@telcomlaw.com>; "'warren.havens@sbcglobal.net'" <warren.havens@sbcglobal.net>; "'jstobaugh@telesaurus.com'" <jstobaugh@telesaurus.com>
Cc: Brian Carter <Brian.Carter@fcc.gov>
Sent: Tuesday, November 6, 2012 1:58 PM
Subject: FCC Orders 12M-48 and 49

We have reviewed the Presiding Judge's Orders and expect to take the following positions in the pleading to be filed on Thursday.

1. The Bureau requested access to these documents in its First Set of Requests for the Production of Documents to SkyTel. See Request No. 1.
2. The Bureau made this request on June 7, 2012.
3. Skytel has not produced to the Bureau the documents responsive to Request No. 1 in the Bureau's First Set of Requests for the Production of Documents to SkyTel.
4. Not applicable to the Bureau
5. The Bureau has no personal knowledge as to the subject matter of the documents.

6. The Bureau has no personal knowledge as to whether the documents are known or believed to relate to the issue of Watercom's station construction.
7. The Bureau has no personal knowledge as to whether there are documents yet to be reviewed, and if so, the approximate number of such documents and the estimated time needed to review
8. The Bureau maintains the position it took in its Response to Maritime's Motion for Summary Decision, filed on September 17, 2012, that the Watercom Order resolves the "construction" question of Issue (g) with respect to the Watercom Licenses. For this reason, the Bureau does not believe that the 93 boxes of documents are likely to raise material issues of relevant fact concerning the construction of the Watercom Licenses that should delay resolution of Maritime's Motion on this question.

We suggest organizing the pleading by numbered question and then have a spot for each party to include their statement. We will circulate a draft in the morning and will expect Maritime and SkyTel to fill in their sections no later than 4:00 eastern so we can circulate for review before COB tomorrow.

Because the Bureau does not file items electronically, our filing deadlines require that we have a decision on whether it will be a joint motion no later than 12:00 noon east coast time so we can plan accordingly.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington , D.C. 20554
202-418-2393

PART 2

Subject:	Re: 12M-49. / Re: Judge seeks joint report in FCC 12M-48, EB 11-71, "Maritime "Communications"
From:	Warren Havens (warren.havens@sbcglobal.net)
To:	rjk@telcomlaw.com; Pamela.Kane@fcc.gov;
Cc:	Brian.Carter@fcc.gov; jstobaugh@telesaurus.com; cole@fhhlaw.com; wright@khlaw.com; jsheldon@fr.com; rmiller@gardere.com; czdebski@eckertseamans.com; feldman@fhhlaw.com; mjp@catalanoplache.com; ajc@catalanoplache.com; richards@khlaw.com;
Date:	Thursday, November 1, 2012 8:12 AM

I Added to the below an email in the string (the Thursday, November 1, 2012 7:27 AM item).

From: Warren Havens <warren.havens@sbcglobal.net>
To: "rjk@telcomlaw.com" <rjk@telcomlaw.com>; 'Pamela Kane' <Pamela.Kane@fcc.gov>
Cc: 'Brian Carter' <Brian.Carter@fcc.gov>; 'Jimmy Stobaugh' <jstobaugh@telesaurus.com>; "cole@fhhlaw.com" <cole@fhhlaw.com>; "wright@khlaw.com" <wright@khlaw.com>; "jsheldon@fr.com" <jsheldon@fr.com>; "rmiller@gardere.com" <rmiller@gardere.com>; "czdebski@eckertseamans.com" <czdebski@eckertseamans.com>; "feldman@fhhlaw.com" <feldman@fhhlaw.com>; "mjp@catalanoplache.com" <mjp@catalanoplache.com>; "ajc@catalanoplache.com" <ajc@catalanoplache.com>; "richards@khlaw.com" <richards@khlaw.com>
Sent: Thursday, November 1, 2012 7:59 AM
Subject: Re: 12M-49. / Re: Judge seeks joint report in FCC 12M-48, EB 11-71, "Maritime "Communications"

Mr. Keller,

1. You do not have to guess at what I "appear[] [to] intend."
- And while you only guess at what I may file, you state that you are sure Maritime will disagree on each point, which of course is simply setting up a straw man.

The way to figure out what someone intends, when a Judge has three times ordered you to communicate with the party (first the Glossary in two Orders, and now this matter), is to follow the Order.
- Why do you not comply with these Orders?

2. I intend to address what the Judge requested.
- I have no problem not addressing matters you or EB believe is outside the Order, in joint report.* But that is not be practical by your schedule and your method to not deal jointly, which has been going on for months as I indicate above.

* If I address more than that, in your view, you can respond of course. Anyone can submit their information, interpretations, arguments, etc. on EFCS in this proceeding. By your lobbying, I was rejected as a Party and I make: but I can submit what I like on ECFS or to the Judge. It does not contravene law or the Judge's orders. It is of course up to him what to do with that.

3. You and Maritime should stop hiding evidence: that (as you write below) "contravenes the requirements in law and in the judge's ... outstanding orders."

4. In addition, the Judge did not call for you to involve parties in this but for EB and Havens-Skytel. Why did you add the other parties to this email, Mr. Keller?

(Also, for group email, the Judge Ordered to include past counsel for SkyTel, until certain events take place. I disagree, but you were the cause of that Order of the Judge and should follow it, it seems to me.)

- Warren Havens

From: Warren Havens <warren.havens@sbcglobal.net>
To: Pamela Kane <Pamela.Kane@fcc.gov>; Robert J. Keller <rjk@telcomlaw.com>
Cc: Brian Carter <Brian.Carter@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Thursday, November 1, 2012 7:27 AM
Subject: Re: 12M-49. / Re: Judge seeks joint report in FCC 12M-48, EB 11-71, "Maritime "Communications"

Ms. Kane,

Thank you. I understood the Gov closures and the depo prep. My point on ample time is that it has been many months for EB, and many years for Maritime.

On the issue of first-hand knowledge: that starts with attempts to get the knowledge, which is one of my points below.

If you or Mr. Keller show me why I am not correct below, then we may reduce differences before the Judge. That is why I present the notes below well in advance.

W. Havens

From: Bob Keller <rjk@TelComLaw.com>
To: 'Pamela Kane' <Pamela.Kane@fcc.gov>; 'Warren Havens' <warren.havens@sbcglobal.net>
Cc: 'Brian Carter' <Brian.Carter@fcc.gov>; 'Jimmy Stobaugh' <jstobaugh@telesaurus.com>; cole@fhhlaw.com; wright@khlaw.com; jsheldon@fr.com; rmiller@gardere.com; czdebski@eckertseamans.com; feldman@fhhlaw.com; mjp@catalanoplache.com; ajc@catalanoplache.com; richards@khlaw.com
Sent: Thursday, November 1, 2012 7:20 AM
Subject: RE: 12M-49. / Re: Judge seeks joint report in FCC 12M-48, EB 11-71, "Maritime "Communications"

Insofar as the judge called for a joint report to the extent possible, my intention is to provide the Bureau with such factual information Maritime has that is responsive to the order, the suggestion being the Bureau could use that in compiling a joint report. This will be in the form of simple, straightforward, and purely factual answers (insofar as known to Maritime) to the 8 specific items enumerated in FCC 12M-48. We obviously do not expect the Bureau to endorse or concur in this, but merely to use it to use it to compile a joint report as to what has been represented to it. I will do my best to get this to the Bureau by Monday or Tuesday at the latest.

From the recent email traffic, it appears that the Havens parties intend to go beyond a purely factual report and are getting into interpretations, arguments, and allegations. This not only goes beyond the scope of what the order called for—being an argumentative presentation rather than a report—and it is also not something that can be accommodated in a joint filing, because there will be pointed disagreement between Havens and Maritime on virtually every point. To the extent it goes beyond mere factual reporting, moreover, it also contravenes the requirements in law and in the judge's other outstanding orders regarding proper legal representation. Maritime may feel compelled to address these assertions, but will do so in a separate filing.

--
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Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

From: Pamela Kane [mailto:Pamela.Kane@fcc.gov]
Sent: Thursday, November 01, 2012 9:13 AM
To: 'Warren Havens'; Robert J. Keller
Cc: Brian Carter; Jimmy Stobaugh
Subject: RE: 12M-49. / Re: Judge seeks joint report in FCC 12M-48, EB 11-71, "Maritime "Communications"

Mr. Havens: As I am sure you are aware, the Federal Government was shut down Monday and Tuesday of this week and we all just got back into the office yesterday. Prior to that, the Enforcement Bureau was preparing for depositions which were previously scheduled for this week and it is for this reason we asked for an extension from the Presiding Judge. We are in the process of reviewing the Skytel objection to the Partial Motion for Summary Decision and will be in touch shortly concerning our position on the matters set forth in the Presiding Judge's Orders. However, given the language of FCC Order 12M-49 requiring "first-hand knowledge" of whether the boxed documents probably raise material issues of relevant fact, I am not sure how much assistance the Bureau will be able to provide.

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

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Wednesday, October 31, 2012 11:14 PM
To: Robert J. Keller; Pamela Kane
Cc: Brian Carter; Jimmy Stobaugh
Subject: 12M-49. / Re: Judge seeks joint report in FCC 12M-48, EB 11-71, "Maritime "Communications"

Mr. Keller,
Ms. Kane,

Re 12M-49 of today, that modifies and adds to 12M-48 ("48-49").

1. I have not received any substantive response from either of you thus far. If you intend to communicate with me on this matter, I need to know by the end of this week (Saturday Noon PST at the latest) what that will be, due to my office's schedule.

2. I intend my email communications with you on this matter, including this email, to be exhibits in what SkyTel entities, or some of them, submit to the Judge on 48-49.

3. I intend to address the judge regarding both 48-49 and the broader issue the Judge expresses concern about, as far as I can tell: withheld or otherwise missing relevant documents as to issue (g) and the pending partial summary judgement re issue (g) (which SkyTel opposed): These are not only the NCASS boxes, but also (i) the 8 missing boxes that Maritime counsel states it has no information about (but they were removed by John Reardon, per NCASS), and (ii) many other Maritime-withheld and disclaimed documents shown in its discover actions and obligation-failures in the NJ litigation, Havens v Mobex, USDC, NJ (further noted below).

4. I and my companies are currently in respective status positions in this Hearing shown in my last communication to the Judge. E.g.--

- See filing by W. Havens with file named: "Errata copy with consolidation.FNL W. Havens Comments on FCC 12M-44.pdf".

- Re SkyTel-O entities: they are seeking but have not yet obtained new counsel (the judge previously ruled that they need counsel and the judge did not rule on my request submitted at the time Robert Jackson filed to withdraw and had that granted, with inaccuracies and omissions).

- However, since the Judge seeks input from SkyTel entities on the matters of 48-49, I plan to respond, *not waiving* the positions I have taken as to these status matters, including in the "Havens Comments on FCC 12M-44" that the Hearing is subject to reversible error, due to the Judge's acceptance of the Maritime (with Pinnacle)

repeated requests (from the start of the Hearing to the Judges last decision on the matter) (that in my view were baseless and seeking improper prejudicial action by the Judge) to restrict and remove Warren Havens and SkyTel entities in this Hearing.

5. I will respond separately from Maritime and FCC counsel, if you do not communicate directly, timely and efficiently with me. There has been ample time already.

6. Maritime and EB have known of the NCASS boxes of documents and their clear relevance to this Hearing for many months. Maritime has known this from before the Hearing began including as shown in its filings with the Wireless Bureau opposing filings of SkyTel as to WRV374. I have explained these matters to each of you in the past, as you know.

7. Neither Maritime nor the EB have taken action to directly obtain access to these NCASS boxes. Only SkyTel has (via its counsel, not by myself or any Skytel staff). EB issued document demands to SkyTel, and SkyTel responded, including as to these NCASS boxes, explaining the evidence preservation Order on these boxes issued by the court in the Maritime bankruptcy case. SkyTel noted (as a matter of law) that EB can seek the NCASS boxes directly if it had interest in these, and that SkyTel would cooperate (within relevant law) but SkyTel is bound by this Court Order as to the bankruptcy case. The FCC is a party in the bankruptcy case.

8. Maritime and EB were free to seek these NCASS boxes before that bankruptcy court preservation Order, or to act during and after the proceeding on this court Order, to directly obtain access to these NCASS boxes.

9. The records in these NCASS boxes relevant to this 11-71 Hearing are of the Mobex licenses and alleged station and business that Maritime bought to commence Maritime and position it for the AMTS auctions, and to get financing: these all are at issue in this FCC Hearing and the Maritime bankruptcy. Maritime itself identified the character of these records in the filing it made before the Wireless Bureau. Maritime later, in the bankruptcy hearing, wrote SkyTel counsel that it did not understand the relevance of these NCASS boxes records to Maritimes licenses, stations, etc. (assets and liabilities and other matters of relevance in the bankruptcy, and also in the FCC Hearing) and required SkyTel counsel to show to Maritime its own statements to the Wireless Bureau as to the key relevance of these records. That is further bad faith.

10. These records of the Maritime purchase of Mobex licenses and other assets --(and apparently the entire business: Maritime counsel as previously stated that Mobex merged into Maritime, and publicly Maritime continued in some public actions under the Mobex name, even recently)--,subject of the NCASS boxes, were part of the purchase (documents needed to demonstrate and maintain assets are integral parts of the assets).

- These records are also under FCC rule §80.409. I have explained SkyTel and my view on that to you previously.

- Maritime nevertheless alleges to have no interest, possession, or control of these after its purchase, and that it is not "privy" to the boxes contents.

- Yet it paid NCASS storage fees for a long time thereafter, to keep these boxes in storage. And Maritime removed some of these boxes, and indicated above and shown, e.g., in the attachment hereto. At the time of the removal of the many of these boxes, according to Mobex in the NJ litigation, Mobex had become defunct. Maritime stated the same to the Wireless Bureau in opposition to SkyTel regarding WRV374. Thus, the removal could only have been by Maritime (if a person considers Martime to be legitimately distinct from Mobex).

Maritime abandoned the NCASS boxes, reflected in its statements in this FCC Hearing, and it is bankruptcy case, and in Havens et al. v Mobex, Maritime et al. in the USDC

NJ (pending antitrust case). SkyTel alone has paid for the preservation of these records.

11a. The electronic scanning and preservation of all of these NCASS boxes[*] was completed by SkyTel in accord with the preservation Order.

- SkyTel also paid NCASS the fees that Maritime-Mobex owed for storage fees for years that were unpaid, and without which NCASS would not proceed under the preservation Order (and may have had rights to destroy the records).

- Under a further court Order, in the above noted NJ litigation, a hard drive with all of the preserved records (one of two such drives with all of these records, both paid for only by SkyTel) was sent to SkyTel's attorney in the NJ litigation noted above, to review for relevance to to that case.

- It was the obligation of Maritime and Mobex in that litigation to produce the relevant documents (these, and others) but they failed to do so, but for some documents Maritime previously produced in the FCC Hearing (the "CD") and other documents, far short of its obligations. Matters related to this "CD are further discussed in sec. 14 below.

[*] Again, there are 8 boxes stored by Mobex removed later by Mobex and Maritime (sometimes called MCLM): some were removed after MCLM purchased the Mobex's licenses and assets, documented in these records. Again, however, Maritime alleges to have no knowledge of the removed evidence. (See attachment hereto: fax from NCASS to Tendai Richards, an attorney for SkyTel in the NJ case noted above.)

11b. In addition, as you know, Maritime alleges to have records relevant to this FCC Hearing stored at a facility operated by Iron Mountain. Maritime will not identify and produce those, either, as far as I understand from our counsel in the Maritime legal cases (FCC Hearing, bankruptcy and NJ case).

12. In the NJ case, SkyTel entities (plaintiffs) have outstanding subpoenas for documents issued to many of the Maritime- alleged AMTS stations' antenna-site owners and managers. Maritime sought to quash these. The judge denied the motion as to these documents. Maritime sought to even quash production of documents in the NJ case that Maritime has already produced in the FCC Hearing including on the "CD."

SkyTel also has depositions coming up soon, in November as currently scheduled, in this NJ litigation including of John Reardon and others that will include issues as to the documents discussed above, and Maritime alleged valid.

13. The history and ongoing campaign by Maritime and Mobex, in blocking access to essential information as to the validity and actions under its FCC licenses, is central to 48-49, and this FCC Hearing, I believe. This is also at issue in the NJ antitrust litigation. The attached legal memo from Profession James Ming Chen discusses this. I may submit this to the Judge for his consideration of this history and ongoing activity by Maritime and Mobex, with the other expert statements cited in this Chen memo.

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14. As to this "CD" (continued from par. 11a above): I comment here based upon my opening note above that I believe the Judge seek the status of the NCASS boxes based on his concern that relevant records be brought into this Hearing case, which of course they should. That raises the issue of why some have not been bought into the Hearing, why others are not even disclosed, or are only indicated by Maritime, and also the obstruction and delays by Maritime, including as to this CD. Using FOIA in a FCC Hearing is specifically prescribed in FCC Hearing rules, as SkyTel stated in this FOIA proceeding.

This "CD" matter also ramified into other issues of relevance to this Maritime Hearing-- including the Maritime deficiencies in producing relevant documents. I summarize some of these below.

Maritime obstructed, using baseless arguments, the FCC from releasing a copy to a SkyTel entity, Skybridge, under a legitimate FOIA request. The EB cause months of delay in inviting Maritime to appeal a non-appealable FOIA decision to release the CD which had no confidential or otherwise FOIA exempt records --

As the Commission found in FCC 12-113 (emphasis added)(some footnotes in original deleted):

> ...Further, MCLM's AFR does not claim that the CD contains exempt material Instead, MCLM argues that EB's grant of the FOIA Request is invalid because its effect is to contravene the ALJ's authority to control discovery in the enforcement proceeding.17Because MCLM does not claim that the material that would be released under FOIA is confidential, MCLM's AFR is beyond the scope of appeals authorized by section 0.461(i) and is dismissed.
>
> 6. Separate and independent from our dismissal, we note that, if we were to reach the merits, we would deny the AFR. Contrary to MCLM's view, Skybridge's rights under the FOIA are wholly independent of whatever discovery rights it may have. As EB noted in its decision, a FOIA request may be denied only if a FOIA exemption applies, and none applies here.18
>
> 7. We will also deny Skybridge's Motion to the extent it seeks more than dismissal of the AFR. Skybridge asserts that MCLM's AFR violates 47 C.F.R. § 1.52, which requires persons who file pleadings to believe in good faith that there are good grounds to support the pleading.19 Skybridge contends that MCLM's AFR is frivolous and that MCLM and its counsel should therefore be barred from participation in the FOIA proceeding and the enforcement proceeding. We disagree. While MCLM's AFR is not compliant with the rules, we do not find the pleading frivolous or abusive, particularly in light of EB's apparent invitation to file the AFR.
>
> ---
>
> 19 *See Warren C. Havens*, 27 FCC Rcd 2756, 2759 ¶ 10 (2012) (Section 1.52 directly authorizes sanctions for filing frivolous pleadings against attorneys and at least by implication justifies sanctions against non-attorneys.).

The Martime (MCLM) position *was* frivolous by the *substance* of FCC 12-113, while not by its disconnected conclusion. The Commission found that the EB "apparently" [what, it cannot tell?] "invited" a pleading that the Commission found clearly improper- and dismissed, since as SkyTel argued first to the EB then to the OCF in this simple matter, FOIA is not undercut by a FCC Hearing, and Skybridge has no less rights than any US citizen to use FOIA just since it is a party in a FCC Hearing. That means the Commission found the EB "invitation" to be baseless, and in my view frivolous. The EB of course has access to the OGC, but here no counsel here was even needed. It is baseless to think that any federal agency hearing undermines rights under FOIA for a party that a nonparty (any citizen) has.

This footnote 19 is relevant in this Hearing: It involves the series of "Havens Sanction" orders that pop up in this Hearing when Maritime, Pinnale and the Judge want to attempt to avoid relevant facts and law that SkyTel entities submit. However, that is contrary to the substance of this Havens Sanction proceeding, the Commission conclusion in it (that it applies only to a few Havens applications and only to Havens individually). But the substance of this Havens Sanction proceeding shows why the FCC must, in this Maritime Hearing, apply rule 80.475(a)(1999). In brief:

(1) The Hearing began with Maritime (and all other parties but for SkyTel and EB) jumping on this Havens "sanction" order (rather, the previous one to the one cited in

FN 19.)

(2) In the sanctions order in FN 19, the Commission backtracked on a lot of its first sanction order, and in this FN19, the Commission shrunk further to the position that "at least by implication" a non-attorney may be sanctioned under §1.52. But "implied" rules are not Constitutional to apply. In DA 12-1376, the Commission via delegation to the Wireless Bureau shrank further to end up with the same position it rejected earlier when I argued it: that a pleading the FCC believes is repetitive and defective can simply be dismissed: the government did not have to violate APA and concoct a sanction under a rule that does not allow it (that, at best the Commission now weakly suggests, is "at least by implication").

- This proceeding from which the sanctions order arose if about site-based AMTS licenses of W. Havens, and the FCC applying harshly (at best) rule §80.475(a)(1999) to all Havens site-based AMTS applications, what the FCC NEVER applied to Maritime and its predecessors, even thought the W Bureau in an Order applying this rule to Havens that if Havens showed that the rule is not being applied to others, then the rule would be applied. I did just that, for a decade, and to this day neither the Wireless Bureau or EB will apply the law as required under the Fifth Amendment equal protection and due process requirements.

- 80.475(a) (1999) requirement for continuity of coverage was the sine qua non of AMTS- the reason it was established. This rule applies to issue (g) in this Hearing.

- Martime's position that it did not to get from Mobex the records of what it purchased, and let Mobex put them in storage at NCASS (they already were, but this is part of the Maritime story)(and apparently some with Iron Mountain, at some point) is related to its failure to comply with this foundational rule of AMTS, 80.475(a)(1999), and other failures (and, the record suggests, various misrepresentation, lack of candor and other violations).

(3) The Judge in 12M-44, par. 12 and FN 19, improperly cites this Havens-sanction line of decisions. It is proper since the Commission stated that the Commission decision is only regarding the specific AMTS site-based applications involved, and only to Havens (not legal entities he manages: the SkyTel legal entities). The initial Havens-Saction Order, FCC 11-116 includes:

> [T]he proposed restrictions described in this order apply [only] to the specific license application proceedings noted above... to the extent we find in the future that Havens (or any person or entity acting on behalf of Havens) has violated rule 1.52 in other proceedings before the FCC, we may impose a similar prior approval sanction related to such pleading....

Thus, both Maritime and the Judge have improperly used this Havens-Sanctions proceeding (series of Orders) contrary to the actual Commission finding and limitations, which have tainted this FCC Hearing and prejudiced Warren Havens and the legally distinct SkyTel legal entities.

Further, before citing a decision, here the Havens-Sanctions proceeding decisions, the party or Judge should know the matter cited, and the status of the case, and note it. In this case, I am appealing all aspects of the Sanctions Orders and the underling substance, which is the FCC abuse of due process, equal protection, free speech and petition rights: this directly relates to Maritime and matters in this FCC Hearing. I appealed this to the DC Circuit already, and (as I expected and requested OCG to agree to, to no avail, before I filed this case), the court dismissed the appear as premature, but with clarification that my appeal of the sanctions order preserved my right of appeal (where, under the sanctions order, I had no remaining rights to appeal before the FCC, only a right to request permission to further address the agency).

Also, this whole line of Havens Sanctions orders is abusive by the FCC and specious,

under a simple review of the pivotal facts in the record: Hogan & Hartson filed late a petition for reconsideration that was also under Section 1.41. The FCC rejected it as late, but appealed that, and that and later appeals were found frivolous even where the substance was new and relevant, due to that one alleged-late filing. But section 1.41 has no time bar, and is meant for filings with relevant substance but that are not timely filings under petition for recon rules. The FCC all the time decides on such filings under 1.41- but here, not for Havens-- since I brought up an issue of FCC malfeasance for years, in blatant unequal application of this most fundamental rule on AMTS site-based licenses, 80.475(a) (1999)-- not at issue in this Maritime FCC Hearing.

Sincerely

/s/
Warren Havens

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Wednesday, October 24, 2012 10:05 PM
To: Robert J. Keller
Cc: Pamela Kane ; Brian Carter; Jimmy Stobaugh
Subject: Judge seeks joint report in FCC 12M-48, EB 11-71, "Maritime "Communications"

Mr. Keller,

Order 12M-48 requests a joint report.

On some basis (not here addressing party or counsel status), SkyTel entities will seek to respond to this Order.

Since you have made clear that you and MCLM will not communicate with me* (even where the Judge has Ordered that twice regarding the Glossary undertaking), I suggest that you provide to Ms. Kane your response and that I then attempt to coordinate SkyTel input with her, to provide or attempt a joint report.

* Likewise, your co-counsel Craig Geno informed parties in the MCLM bankruptcy case (shown in a hearing transcript) that it will not consider SkyTel's plan to settle matters relating to all FCC issues and proceedings-- including this Hearing in docket 11-71, if the FCC also found a common basis to do so.

Sincerely,
Warren Havens

----- Forwarded Message -----
From: Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>
To: Albert J. Catalano <ajc@catalanoplache.com>; Brian Carter <Brian.Carter@fcc.gov>; Charles A. Zdebski <czdebski@eckertseamans.com>; Eric Schwalb <eschwalb@eckertseamans.com>; Gary Schonman <Gary.Schonman@fcc.gov>; Harry Cole <cole@fhhlaw.com>; Howard Liberman <Howard.Liberman@dbr.com>; Jack Richards <richards@khlaw.com>; Jeffery Sheldon <jsheldon@fr.com>; Jimmy Stobaugh <jstobaugh@telesaurus.com>; Kurt DeSoto <kdesoto@wileyrein.com>; Laura Phillips <Laura.Phillips@dbr.com>; Matthew Plache <mjp@catalanoplache.com>; Pamela Kane <Pamela.Kane@fcc.gov>; Patricia Paoletta <tpaoletta@wiltshiregrannis.com>; Patrick McFadden <Patrick.McFadden@dbr.com>; Paul Feldman <feldman@fhhlaw.com>; "rhj@commlawgroup.com" <rhj@commlawgroup.com>; "rjk@telcomlaw.com" <rjk@telcomlaw.com>; Robert Guruss <gurss@fhhlaw.com>; Robert Miller <rmiller@gardere.com>; Tamir Damari <tdamari@nossaman.com>; Terry Cavanaugh <Terry.Cavanaugh@fcc.gov>; "warren.havens@sbcglobal.net"

<warren.havens@sbcglobal.net>; Wes Wright <wright@khlaw.com>
Cc: Richard Sippel <Richard.Sippel@fcc.gov>; Austin Randazzo <Austin.Randazzo@fcc.gov>; Mary Gosse <Mary.Gosse@fcc.gov>
Sent: Wednesday, October 24, 2012 12:26 PM
Subject: FCC 12M-48 (Maritime Communications) EB 11-71

FYI

Pat Ducksworth
FCC
Office of Adminstrative Law Judges
202-418-2243