

1 Honor as quickly as possible.

2 MS. KANE: Your Honor, we just
3 want to clarify that Mr. Havens is intending
4 to participate in whatever filing you've asked
5 for from us by the December 5th, which is the
6 proposed definitions.

7 I am slightly concerned, you know,
8 I understand that it's probably a very good
9 thing that Mr. Havens now has counsel, but we
10 can't continue to delay these things because
11 he's been delaying getting counsel. I mean,
12 there have been several times when Your Honor
13 has asked everybody to do something by a
14 certain date, or there have been rules in
15 place to do something by a certain date and
16 Mr. Havens has not complied with that. In
17 particular are the order from last, I can
18 remember which number it was, 52 or 54 that
19 asked for a joint status report on the issue
20 of the 93 boxes, Maritime and the Bureau
21 provided you with a status report and Mr.
22 Havens did not. So I just want to make sure

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1 that --

2 MR. HAVENS: I disagree that I did
3 not do that.

4 MR. PLACHE: I'd like to second
5 Ms. Kane's concerns about this. This inquiry
6 cannot inform the glossary if we don't have it
7 by next Wednesday, you know.

8 JUDGE SIPPEL: Well, you know, you
9 give me what you can as best you can. We're
10 going to keep moving forward because I just
11 want you to have the opportunity to get your
12 position presented clearly. It's probably
13 actually, we could go back and weed through
14 your previous filings, but this would be a big
15 help. I don't intend it to delay what has to
16 be done with that glossary. But again, I
17 don't want the glossary to be, I'm sorry, the
18 glossary is not the tail wagging, you know,
19 controlling the dog or something, whatever
20 that phrase is.

21 MR. CHEN: We very much appreciate
22 the opportunity --

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1 JUDGE SIPPEL: Well yes, here's
2 another point. Well here's another point.
3 Thank you, that's good, Mr. Chen. But, you
4 know, we're trying to get a summary, a partial
5 summary decision decided here. And that's one
6 of the problems with this term -- this
7 exercise by the way.

8 MS. KANE: Of constructed, Your
9 Honor?

10 JUDGE SIPPEL: Isn't constructed
11 part of the partial summary? It's not?

12 MS. KANE: Well, it is part of the
13 partial summary, but the partial summary
14 judgement was, if I recall correctly, was
15 based on really more of a legal determination
16 rather than what factually constitutes
17 construction because it has to do with whether
18 or not the Watercom order is a deciding -- you
19 know, is the decisional order in this regard.
20 And both Maritime and the Bureau agree that
21 the Watercom order, which was a Commission
22 level order from the Commission, identify

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1 these very stations, the Watercom stations,
2 and said these stations were constructed.

3 And so I understand the concern
4 about having a definition of constructed for
5 the purposes of a summary decision motion, but
6 this particular summary decision motion is
7 only directed to whether or not that order
8 should be given legal weight. And both
9 Maritime and the Bureau agree that that order
10 should be given weight, giving the fact that
11 it was a Commission level order.

12 JUDGE SIPPEL: All right, well
13 again, I don't want to go over this umpteen
14 times. The record will be what it is. But
15 that's, we're going to have to move, you know,
16 I'm going to have to move forward on that
17 motion. I'm trying to get some help in the
18 process but I'll just do what we have to do.
19 That's all I can say right now. I mean,
20 there's nothing more I can do.

21 But certainly calling people --
22 you know, accusing people of doing something,

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1 you know, three or four months ago is not
2 helping anything, it really is not helping
3 anything. So let's cool it in that respect,
4 let's move forward. We also have the boxes
5 question. That's the last item on my list.

6 MR. KELLER: Your Honor?

7 JUDGE SIPPEL: Ninety-three boxes,
8 it started off as 101. What happened to the,
9 whatever that would be, ten, that would be
10 eight missing?

11 MR. KELLER: Yes, let me --

12 MR. HAVENS: I guess I should be
13 glad to address that. I've been the party
14 getting the boxes, but I'll only speak, Your
15 Honor, when you would like me to.

16 JUDGE SIPPEL: Well thank you.
17 Okay, let me see if we can get an answer here
18 as to what my first question, it's just an
19 accounting question. Is eight --

20 MR. HAVENS: Yes, I could address
21 that.

22 JUDGE SIPPEL: Okay, go ahead, go

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1 ahead.

2 MR. HAVENS: Yes, when we first
3 went to the storage company, NCASS, they sent
4 to our attorney in our New Jersey case, a fax
5 that contained the list of the boxes. There
6 were 101 boxes on the list. The chart
7 describes eight boxes were removed at
8 different dates. I don't have it in front of
9 me, but I believe over half of them were
10 removed after Maritime bought the Mobex
11 Stations.

12 We subsequently asked our counsel
13 in the Maritime bankruptcy case, a firm in
14 Mississippi, to inquire of Maritime's counsel
15 about what happened to those eight boxes. And
16 the response we obtained, which we have given
17 to Enforcement Bureau, Maritime does not know
18 what happened to those eight boxes.

19 But to this date, we don't know
20 where they are or what is in them. We have
21 heard from Maritime that they have additional
22 records to the records in these 101 boxes that

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1 are in a storage facility called Iron
2 Mountain. But we have not yet had any
3 responses from Maritime in our inquiries in
4 our New Jersey action or other inquiries as to
5 what are in the boxes of Maritime records at
6 Iron Mountain.

7 JUDGE SIPPEL: Well I'll ask you a
8 question here and maybe Mr. Keller knows, or
9 he was addressing it. They were started out
10 with 101, now there's 93 boxes that are talked
11 about as discovery. What happened to the
12 eight? Are you going to address that, Mr.
13 Keller?

14 MR. KELLER: Oh, well, I've got to
15 address more than just that because, let me
16 just back up and give you some background so
17 that you have it.

18 JUDGE SIPPEL: Thank you.

19 MR. KELLER: First of all, these
20 boxes are not and never have been in the
21 custody of Maritime. They are not Maritime
22 boxes, they are not Maritime records. They

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1 are not even records that belong to Mobex
2 Network Services, which is the original site-
3 based licensee from whom Maritime acquired the
4 licenses.

5 They were rather, documents of
6 Mobex Communications, Inc., which was a parent
7 company that had numerous subsidiaries, one of
8 which was Mobex Network Services, the AMTS
9 licensee. So that's for starters. These are
10 not documents that Maritime had possession of
11 or custody of.

12 Secondly, it was Maritime's
13 understanding and belief prior to the time
14 that Mr. Havens got a response to the
15 subpoena, that whatever documents had at one
16 time been put into the archives by Mobex
17 Communications, Inc., had been destroyed
18 because the fees were not paid, you know, in
19 other words fees weren't maintained when Mobex
20 went out of business. It turns out now that
21 that's not the case. And so that's how the
22 101 boxes that he's referring to, and I put

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1 before you, Your Honor, and I gave a copy to
2 the Bureau and later I can provide copies to
3 the other parties, the document to which Mr.
4 Havens is referring. I believe this was filed
5 at least once if not multiple times as the
6 attachments to one of his filings with Your
7 Honor.

8 JUDGE SIPPEL: This is called
9 Nations Capital Archives, dated May 22, 2012.

10 MR. KELLER: Yes, this is the fax
11 to which portion of which to he's referring.
12 This is apparently the fax that came from
13 Nations Capital Archives to Mr. Havens's New
14 Jersey attorney. And what it includes among
15 other things, is the actual agreement between
16 Mobex Communications, Inc. and National
17 Capital Archives, which was entered into back
18 in July of 2000 and the, you know, the rates
19 and all that sort of thing.

20 But then also, if you go into
21 about, according to the fax header, Page 9, or
22 excuse me, Page 11, there's the index that is

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1 being referred to that lists out the various
2 documents. And if you'll see over to the
3 right hand column, like on Page 11, there's a
4 date which I understand to mean a date when
5 documents were removed from storage and
6 apparently never returned. And there are
7 similar dates listed on the right hand side.
8 And one of them was '06, a couple of them were
9 '04, some more '06s on the next page. So
10 that's where, I mean, I don't know where the
11 boxes are but that's the answer to, so that's
12 the accounting issue for example right now
13 between the 101 versus the 90-whatever it is.

14 Now, as I've stated, these are not
15 Maritime documents. Maritime never have
16 custody of these documents. They were put
17 into storage by Mobex Communications, Inc.
18 Neither Maritime nor any of its principals has
19 any knowledge or recollection about who
20 removed these documents or why. I believe
21 we've stated in some prior pleading that Mr.
22 Reardon does recall that there may have been

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1 some kind of a tax audit going on with some of
2 the former Mobex entities at the time, around
3 that 2006 time frame, but he doesn't have any
4 specific recollection and he certainly never
5 personally removed the documents, so we quite
6 frankly don't know. Now based, since then,
7 here's my understanding --

8 JUDGE SIPPEL: These are as to the
9 eight boxes?

10 MR. KELLER: No, this is to the
11 hundred and, nobody knows where the eight
12 boxes are. I mean as I said, they were,
13 according to the National Capital Archives
14 records, two of the boxes were removed in
15 January of '06.

16 JUDGE SIPPEL: Can you designate
17 where on that list is --

18 MR. KELLER: If you look at the
19 fax header, it's Page 11 of that document I
20 handed you.

21 JUDGE SIPPEL: Yes, I am. I have
22 it right here.

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1 MR. KELLER: You see near the
2 right hand column, 1-27-06 listed twice?

3 JUDGE SIPPEL: I see 1-27 listed
4 twice.

5 MR. KELLER: All right, so if you
6 follow across, that refers to one of the
7 boxes.

8 JUDGE SIPPEL: Okay, I can follow
9 it.

10 MR. KELLER: It says D and L, I
11 think it says D and L, which I guess would be
12 the accounting firm. Is that right?

13 MR. REARDON: I know D and L, sir,
14 was Donaldson and Levassor, that was a
15 business in Fort Wayne, Indiana.

16 JUDGE SIPPEL: Okay.

17 MR. REARDON: And if I may, just
18 amplify what Mr. Keller said, my memory is
19 that sometime around 2006, there was an audit
20 of the tax returns for Indiana for Mobex
21 Communications, Inc. and it's Indiana-based
22 subsidiaries. Deloitte and Touche was the

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1 auditor for Mobex Communications, Inc.
2 Deloitte and Touche assisted Dave Predmore,
3 who was the remaining Mobex Communications,
4 Inc. employee in responding to the audit for
5 the state of Indiana. And so those boxes
6 could have been removed in the January '06
7 time frame to respond to the audit.

8 And by the way, just to finish
9 that thought, the audit found that the tax
10 returns filed by Deloitte were properly filed
11 and there was no subsequent payment due. But
12 I speculate that that could be why some boxes
13 were removed, because they appear to related
14 to Indiana, non-AMTS Indiana operations.

15 JUDGE SIPPEL: Okay, but that's
16 pure speculation though.

17 MR. REARDON: It's pure
18 speculation.

19 MR. HAVENS: I would like to note
20 that on the fax that Mr. Keller talks about,
21 that contains the storage agreement, it
22 explains that two persons are authorized for

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1 Mobex. And one is Mr. Reardon, the other is
2 Mr. Predmore. Mr. Predmore is currently
3 employed outside Virginia. He is the person
4 that wrote the declaration that Mr. Keller is
5 speaking about, which was submitted to the
6 Wireless Bureau, in which Maritime, not Mobex,
7 in which Maritime took the position that it,
8 when it bought the Mobex licenses and
9 stations, it did not want the records of what
10 it was buying, but it left them with Mobex.
11 Mobex put them in storage. It believed the
12 records were destroyed, and did not have any
13 further pleading in subsequent communications,
14 did not have any backup to those records, did
15 not have any computer records, and did not
16 maintain the records as required under FCC
17 Rule 80.409.

18 So in terms of the remote boxes,
19 the only persons that were authorized under
20 the storage agreement are Mr. Reardon and Mr.
21 Predmore. So one of them should know as to
22 the details of the removed boxes.

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1 JUDGE SIPPEL: All right. So, I'm
2 sorry, the ones you've been pointing to on the
3 first page of DNL and CMI?

4 MR. REARDON: Well, Your Honor,
5 CMI was a business in Indianapolis, Indiana
6 that was purchased by Mobex Communications,
7 Inc. It operated 800 megahertz radio licenses
8 and was a Motorola Sales and Services Shop.
9 DNL was in Fort Wayne, Indiana, which is a 800
10 megahertz operator and an Ericsson two-way
11 radio shop. Again, neither one related to
12 AMTS.

13 And if I could just respond to
14 what Mr. Havens just said, he inaccurately
15 portrayed what Dave Predmore said in a
16 affidavit which was attached. Dave Predmore
17 was the last officer of Mobex Communications,
18 Inc. He left the employment of Mobex
19 Communications, Inc. in March of 2006. He
20 filed an affidavit, he's a Georgetown Law
21 School grad and a lawyer. He filed an
22 affidavit in which he said it's, to his

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1 knowledge, these boxes had been destroyed for
2 non-payment. They were Mobex Communications,
3 Inc. boxes, not Mobex Network Services boxes.
4 Mobex Network Services Company was the AMTS
5 licensee. Mobex Communications, Inc. operated
6 multiple other businesses such as CMI, DNL,
7 paging services, 800 megahertz licenses, we
8 had an engineering business in Indiana called
9 Mobex Managed Services Company. So these are
10 boxes that largely relate to operations in
11 places like Idaho, Texas, California, long
12 before there was ever an AMTS service in the
13 Mobex Communications, Inc. universe, if you
14 will.

15 MR. HAVENS: The affidavit and the
16 pleading actually stated very clearly that
17 these are the records of the Mobex AMTS
18 stations, leases, equipment, and operations.
19 And if there were other records then there
20 were. But the pleading in the Predmore
21 declaration stated these were the records of
22 the Mobex AMTS stations, leases, and

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1 operations and equipment. And that is also
2 reflected in the SCA --

3 JUDGE SIPPEL: Is that the fax?

4 MR. HAVENS: Well, it's stated in
5 the Maritime pleading itself and the
6 declaration of Predmore. We'd be happy to
7 brief that matter and show you the documents.

8 JUDGE SIPPEL: Now this is
9 overkill. I thought it was going to be an
10 easy question. Okay, so now we account, in a
11 general way, we know that what was 101 is now
12 down to 83.

13 MR. KELLER: Ninety-three.

14 MS. KANE: Ninety-three.

15 JUDGE SIPPEL: Oh, 93, I'm sorry.
16 Let me see where, we now have a printout that
17 Maritime has provided us?

18 MR. KELLER: Yes. These
19 documents, my understanding is, I'm not sure
20 I'm familiar with all the ins and outs of the
21 local litigations that are going on, but my
22 understanding is that the payments, interests,

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1 New Jersey attorney, and in the context of the
2 New Jersey proceeding, and/or the bankruptcy
3 proceeding, I'm not sure which, but at any
4 rate, had a bonded firm scan the documents.
5 And they were on a disc or a hard drive of
6 some kind.

7 There's an order from the New
8 Jersey court, I think it had to do with the
9 withdrawal of Mobex's counsel from the case,
10 providing a copy of that disc to the attorneys
11 in the case, but with the strict provision
12 that it would not be shared with their client
13 absent an agreement of all the parties or an
14 order of the court. So it's effectively a
15 protective order that prevents Mr. Reardon or
16 anybody else, you know, as a principal, from
17 seeing what's on that disc.

18 However, what Mr. Reardon did have
19 an opportunity to review was a directory
20 printout from that disc. And it was just,
21 because you'll see in this thing we've been
22 looking at, some of the boxes apparently were

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1 not labeled towards the end of the list and we
2 have no way, it would be pure speculation as
3 to what's in those boxes because they don't
4 have labels on them.

5 I don't know exactly what the firm
6 that Mr. Havens used did, I'm assuming they,
7 based on labels of the boxes and labels on the
8 files, came up with this directory. But there
9 was, in that whole big listing, there's a
10 listing of the directory of what's in the
11 boxes by title, and Mr. Reardon was able to go
12 through that. And based on what's stated
13 there, determine which ones may or may not
14 have something to do with AMTS.

15 We were specifically looking at it
16 in terms of Watercom because one of the issues
17 you've raised is what impact does it have on
18 the pending partial summary decision motion.
19 And that's why I stated in the sub-planning
20 that I made recently that based on this
21 review, it appears that only two of the boxes
22 have, two of the boxes may have some Watercom

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1 related documents, based on that, maybe
2 another eight or ten of the boxes have even
3 any kind of AMTS documents in them.

4 So we also stated, we have no
5 objection to the Bureau getting access to
6 these documents. I think it's probably going
7 to be a waste of time for somebody to look at
8 all the documents since most of the documents
9 clearly have no relation to Maritime, Mobex
10 Network Services, or AMTS at all. They had to
11 do with all kinds of other services.

12 MR. HAVENS: No but when we had
13 the --

14 JUDGE SIPPEL: Wait a minute, Mr.
15 Havens, he's not finished yet. Wait a minute,
16 I'll get you, I'll get to you.

17 MR. KELLER: So basically that's
18 where it stands. I mean, we don't have
19 control of these documents, they're subject to
20 a New Jersey protective order. They were
21 never in Maritime's custody, they're not
22 Maritime documents. And lastly I would say

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1 that, you know, we could argue until the cows
2 come home over an interpretation of what Mr.
3 Predmore said in his declaration. But the
4 fact of the matter is, Maritime, including Mr.
5 Predmore, until this subpoena was responded
6 to, had no idea the documents were even still
7 in existence.

8 JUDGE SIPPEL: Has the Bureau seen
9 this? You know, I've got this, what is this
10 called, this printout?

11 MS. KANE: We've got the printout
12 that is about 70 something pages or so, 76
13 pages?

14 JUDGE SIPPEL: Yes, this was
15 recently provided by Mr. Keller.

16 MS. KANE: We just got this and
17 this is the first that we've heard that
18 approximately only eight or ten of these boxes
19 of documents even have relevant AMTS
20 documents.

21 MR. KELLER: It was in our
22 statement.

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1 MS. KANE: Well no, I think what
2 you identified was that they were two boxes
3 that were relevant to the Watercom license --

4 MR. KELLER: Oh, got you --

5 MS. KANE: -- I'm not sure that we
6 had an understanding of the 93. Only
7 potentially eight or ten had anything to do
8 with AMTS. There's two things, Maritime says
9 that it doesn't have an issue with the Bureau
10 seeing these documents. We understand from
11 Mr. Havens and some communication that we
12 received from Mr. Havens that we would have to
13 go to the New Jersey court and get permission
14 from the parties in the New Jersey court to
15 get access to these documents because there's
16 a protective order there.

17 I don't know if there's something
18 that Your Honor can do in terms of issuing an
19 order that says we're entitled to these
20 documents that may facilitate that, but
21 obviously I think what we would like to do, I
22 mean, for the Bureau to review 93 boxes of

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1 documents, we're talking hundreds and hundreds
2 of pages of documents, we're talking months of
3 time when we've got a Bureau staff of two who
4 are working on this case, to review those
5 kinds of volumes of documents.

6 If we are only talking about ten
7 boxes of documents, obviously that's much more
8 workable and something that we could complete
9 in the foreseeable future. What we would ask
10 Maritime to do is identify which of the boxes
11 contain AMTS documents, and that then we would
12 limit our request to the New Jersey court for
13 those documents, whatever those ten boxes are.
14 If they are in fact electronic, we would
15 prefer to receive them electronically, we
16 should just be able to get a copy of the hard
17 drive.

18 MR. HAVENS: And then --

19 JUDGE SIPPEL: Let her finish, let
20 Ms. --

21 MR. HAVENS: I'm trying to be
22 helpful here.

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1 JUDGE SIPPEL: I know, I know.

2 MR. HAVENS: The last ten minutes
3 I could have answered in ten seconds, but go
4 ahead.

5 JUDGE SIPPEL: Well go ahead, Mr.
6 Havens, ten seconds.

7 MR. HAVENS: Yes, look, okay, how
8 about 20? We had the boxes scan to OCR so
9 that anyone can search them by keywords,
10 whenever you want. And the only reason for
11 the protective order in New Jersey is because
12 Mobex and Maritime counsel that work together,
13 require and asserted that they needed a
14 protective order.

15 Now if they drop those assertions,
16 and what we've been told by Mobex counsel is
17 it considers the documents abandoned. And
18 Maritime says it doesn't mind the Bureau to
19 get the documents and so what I got from my
20 counsel in New Jersey is that Ms. Kane gives
21 them a letter of demand that the Bureau wants
22 the documents, and if Mr. Keller agrees, then

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1 I don't think there should be any problem with
2 the court, with that stipulation of all the
3 attorneys counsel removing the protective
4 order. And we will give the Bureau a copy of
5 the whole hard drive and they can search by
6 the words AMTS, Watercom, whatever they want.

7 JUDGE SIPPEL: Well, somebody's
8 going to have to get, you've taken it thus far
9 with your explanation, but the court is
10 ultimately going to have to rule on it. I
11 mean the Jersey court is ultimately going to
12 have to say up or down. Because with an
13 outstanding protective order, it would not be
14 wise to act --

15 MR. HAVENS: But, I tell you if I
16 may, Your Honor, I was just mentioning that
17 what my attorney in New Jersey proposed is
18 that if he gets a request from Enforcement
19 Bureau, or particularly if Maritime counsel
20 agrees and Mobex counsel already stated it
21 believes its position is the documents are
22 abandoned, then there is no party that is

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