

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

In the Matter of	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	EB Docket No. 11-71
<b>MOBILE, LLC</b>	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various	)	
Authorizations in the Wireless Radio Services	)	
Applicant for Modification of Various Authorizations	)	
in the Wireless Radio Services;	)	
	)	
Applicant with ENCANA OIL AND GAS (USA), INC.;	)	Application File Nos.
DUQUESNE LIGHT COMPANY; DCP	)	0004030479, 0004144435,
MIDSTREAM, LP; JACKSON COUNTY RURAL	)	0004193028, 0004193328,
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET	)	0004354053, 0004309872,
SOUND ENERGY, INC.; ENBRIDGE ENERGY	)	0004310060, 0004314903,
COMPANY, INC.; INTERSTATE POWER AND	)	0004315013, 0004430505,
LIGHT COMPANY; WISCONSIN POWER AND	)	0004417199, 0004419431,
LIGHT COMPANY; DIXIE ELECTRIC	)	0004422320, 0004422329,
MEMBERSHIP CORPORATION, INC.; ATLAS	)	0004507921, 0004153701,
PIPELINE—MID CONTINENT, LLC; DENTON	)	0004526264, 0004636537,
COUNTY ELECTRIC COOPERATIVE, INC., DBA	)	and 0004604962
COSERV ELECTRIC; AND SOUTHERN	)	
CALIFORNIA REGIONAL RAIL AUTHORITY	)	
	)	
For Commission Consent to the Assignment of Various	)	
Authorizations in the Wireless Radio Services	)	

**MARITIME’S MOTION TO STRIKE THE UNAUTHORIZED *PRO SE* PLEADING  
OF WARREN HAVENS OR, IN THE ALTERNATIVE, OPPOSITION THERETO**

Maritime Communications/Land Mobile, LLC (“Maritime”) hereby respectfully moves the Presiding Judge to strike the *Motion to Dismiss and in the Alternative Opposition to Petition for Stay* (“*Motion*”) dated February 1, 2013, and submitted on behalf of SkyTel.<sup>1</sup>

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<sup>1</sup> “Skytel” collectively refers to refers to Warren Havens, V2G, LLC, Telesaurus Holdings GB, Verde Systems, Intelligent Transportation & Monitoring Wireless, Environmental, LLC and Skybridge Spectrum Foundation.

The *Motion* was filed, *pro se*, by “Warren Havens Individually and for the SkyTel legal entities. *Motion* at p. 4. This was in direct violation of the Presiding Judge’s prior orders in this proceeding and an utter contradiction of representations made by SkyTel legal counsel at the prehearing conference.

After months of repeatedly and arrogantly ignoring the Presiding Judge’s directives that the so-called “Sky-Tel” parties (including Mr. Havens) obtain licensed legal counsel in this proceeding, it appeared that counsel for all of the parties had finally been engaged. Prof. James Chen, via speakerphone, appeared on behalf of SkyTel at the November 20, 2012, prehearing conference. Mr. Chen stated that he was doing so “on behalf of Mr. Havens and SkyTel Entities.” Tr. Vol. 7 at p. 826. The Presiding Judge sought and received clarification that, going forward, Mr. Havens and the SkyTel entities would be represented by Mr. Chen.

JUDGE SIPPEL:           And you'll be representing Mr. Havens  
and his companies from here on out?

MR. CHEN:                Yes, we have so agreed.

JUDGE SIPPEL:           Okay, well, you know, forgive me for  
asking that question, but we sort of  
have a track record here.

MR. CHEN:                We understand. And I want to make sure  
that Mr. Havens is represented by counsel  
in these proceedings henceforth. I do  
understand that that is something you  
would like to see and I agree with it ...

JUDGE SIPPEL:           Well, I think that I'm only following the  
law I mean, it's not a preference on my  
part ...

*Id.* at pp. 826-827. Significantly, Mr. Havens was also present via speakerphone, participated in the prehearing conference, and offered no objection to or clarification of these statements. Apart from filing a formal notice of appearance and his telephonic participation in only part of the November 20, 2012, prehearing conference, Mr. Chen has not been heard from since.

In an apparent effort to justify the improper *pro se* filing, SkyTel states: “Maritime recently objected in a filing with the [U.S. District Court of the District of New Jersey] to attorney Jim Chen participation in this FCC Hearing. To protect SkyTel in that court case, I submit this *pro se.*” *Motion* at p. 1. The premise of that statement is an out-and-out misrepresentation. Maritime made no such objection. Rather, Maritime simply mentioned that Mr. Chen, who was being offered as an expert witness in the New Jersey proceeding, was also serving as FCC counsel to SkyTel. This was not an objection, as SkyTel falsely claims, but merely an accurate statement of a fact relevant evaluating the impartiality of Mr. Chen's opinions.<sup>2</sup> Even if Maritime had objected to Mr. Chen as an expert in the New Jersey case, moreover, that would not constitute an objection to his participation in this FCC hearing. The New Jersey court has no jurisdiction over the FCC proceedings and would not entertain any objection to Mr. Chen's FCC representation of SkyTel.

SkyTel also attempts to justify the improper *pro se* filing by recounting the Presiding Judge's prior statements that Mr. Havens could offer factual information in the case. *Motion* at p. 2 n.2. But rather than facts, the *Motion* presents legal conclusions, albeit incorrect ones, such as whether there has been a transfer of control, the propriety of Second Thursday relief, the legal effects of invoking such relief, etc.

Accordingly, the *Motion* should be stricken as improper and dismissed without further consideration. If SkyTel wished to be heard on the request for stay it should have made a proper and timely filing through legal counsel of record.

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<sup>2</sup> Skytel certainly must understand this concept, as it was the basis for SkyTel's objection to Maritime's designation of its FCC counsel as an expert witness in the confirmation hearing in the bankruptcy proceeding.

Without waiving the foregoing, Maritime notes in the alternative that the arguments advanced in the *Motion* are legally inaccurate and entirely misplaced. In the *Motion* and in the attachments thereto, SkyTel argues, *inter alia*: (a) that the reorganization plan approved by the Bankruptcy Court constitutes an unauthorized transfer of control of the authorizations from Maritime to Choctaw Telecommunications, LLC and Choctaw Holdings (“Chocaw”); (b) that Sandra DePriest, by invoking Second Thursday relief and waiving any right to share in any of the proceeds from the sale of licenses, has admitted that Maritime is basically unqualified, and (c) that a licensee must make an admission of guilt in order to receive Second Thursday relief. Each of these is easily countered.

Neither the plan of reorganization itself nor the court order confirming it constitute a transfer of control. It is abundantly clear from the face of the plan that it contemplates assignment of the licenses only pursuant to prior FCC consent, and the effectiveness of the plan is indeed conditioned on such regulatory approval. This is echoed in the confirmation order which expressly provides that “Choctaw and Holdings shall each use their best efforts to obtain the FCC Licenses from Maritime and to obtain approval from the FCC for the same.” *In re Maritime Communications/Land Mobile, LLC* (Case No. 11-13463; Bankr. N.D. Miss.), *Order Confirming Plan of Reorganization* (Jan. 11, 2012) (“*Confirmation Order*”) at p. 8. It was further “ORDERED, ADJUDGED AND DECREED ... that ... the Court is not attempting ... to superimpose [its] rulings or judgments on the FCC [and that] the Court's rulings and orders herein are contingent on what the FCC ultimately decides regarding the subject FCC licenses and the Debtor's rights to hold and/or transfer same.” *Confirmation Order* at pp. 11-12.

Second, the assertion that Sandra DePriest and Maritime have admitted to a lack of qualifications simply because they have invoked Second Thursday and waived any claim to share in the proceeds is absurd on its face. The question of basic qualifications was designated by the Commission and it is a question on which Maritime has a statutory right to an evidentiary hearing. 47 U.S.C. §§ 309(e) and 312(c). Second Thursday relief, if granted, negates the need for the evidentiary hearing because the accused party no longer holds the subject licenses. When Second Thursday relief is granted, the basic qualifications issue is not resolved, but rather becomes moot. “The unresolved issues regarding ... basic character qualifications may be revisited in the event that [the accused licensee] seeks in the future to become a Commission licensee.” Order of Termination (FCC 11M-17; June 28, 2011) at p. 2 (Richard L. Sippel, Chief Administrative Law Judge).

This also lays to rest SkyTel’s erroneous contention that the alleged wrongdoers must admit guilt as a condition of Second Thursday relief. SkyTel cites no authority for this absurd position, nor can it. There is no such authority because this is flatly wrong. As discussed in the preceding paragraph, the outstanding basic qualifications issue is not resolved by Second Thursday relief, neither by adjudication nor by admission.

WHEREFORE, it is requested that the *Motion* be stricken as an improper and unlawful *pro se* pleading and dismissed without further consideration, or in the alternative, that it be denied on its merits.

Respectfully submitted on February 6, 2013,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of February, 2013, I caused copies of the foregoing document to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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