

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

In re	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71
	)	File No. EB-09-01-1751
Participation in Auction No. 61 and Licensee	)	FRN: 001358779
Of Various Authorizations in the Wireless	)	
Radio Services	)	
	)	
Applicant for Modification of Various	)	Application FNs 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028,
Applicant with ENCANA OIL AND GAS	)	0004193328, 0004354053,
(USA), INC.; DUQUESNE LIGHT	)	0004309872, 0004310060,
COPANY; DCP MIDSTREAM, LP;	)	0004314903, 0004315013,
JACKSON COUNTY RURAL,	)	0004430505, 0004417199,
MEMBERSHIP ELECTRIC	)	0004419431, 0004422320,
COOPERATIVE; PUGET SOUND	)	0004422329, 0004507921,
ENERGY, INC.; INTERSTATE	)	0004153701, 0004526264,
POWER AND LIGHT COMPANY;	)	0004636537, 0004604962.
WISCONSIN POWER AND LIGHT	)	
COMPANY; DIXIE ELECTRIC	)	
MEMBERSHIP CORPORATION, INC.;	)	
ATLAS PIPELINE – MID CONTINENT,	)	
LLC; DENTON COUNTRY ELECTRIC	)	
COOPERATIVE, INC., DBA COSERV	)	
ELECTRIC; AND SOUTHERN	)	
CALIFORNIA REGIONAL RAIL	)	
AUTHORITY	)	

To: Marlene H. Dorch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

Motion to Dismiss and in the Alternative Opposition To Motion for Summary Decision

The undersigned, Warren Havens, submits this Motion and Opposition. In SkyTel’s pending federal court case against Maritime,<sup>1</sup> Maritime recently objected in a filing with the court to attorney Jim Chen participation in this FCC Hearing. To protect SkyTel in that court case, I submit this pro se. I will document and explain the above and

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<sup>1</sup> Havens et al. v Mobex, Maritime, et al., case No. 11-993 in the US District Court District of New Jersey (the “MCLM Sherman Act Case”).

related matters in a filing in the near future.<sup>2</sup> However, to be sure this is timely filed, I submit this pleading at this time on a pro se basis.<sup>3</sup>

The Choctaw January 24, 2012 Motion for Summary Decision (the “Motion”) should be dismissed, or in the alternative denied for the following reasons.

1. The substantive reasons given in the Enforcement Bureau (EB) Opposition to the Motion.

2. The reasons given in the EB Request for Prehearing Conference filed January 31, 2013 as to why Choctaw is not a party in this Hearing, that were repeated by the EB in its Opposition to the Motion.

3. The Motion is effectively an impermissible late filed petition for reconsideration of the Commission HDO FCC 11-64.

4. Even if Choctaw is a proper party in the Hearing, it has no standing and interest to pursue relief, including by the Motion, for Maritime or Maritime licenses, or for any Maritime application in this Hearing since Chocktaw has not been granted by the

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<sup>2</sup> I am seeking additional information for this filing, including to what degree I may cite to information and actions in the MCLM Sherman Act Case for purposes of this filing: MCLM has asserted that information and documents must be under “attorney eyes only,” and other protections in that case. SkyTel counsel in that case disagrees, and are seeking determinations from the court. This is further discussed below.

<sup>3</sup> Judge Sippel has found that I can provide facts in this case and can also participate as a party pro se, as the Commission designated in the HDO FCC 11-64 if I had a different basis than SkyTel legal entities. The differences were decided by the FCC in past formal decisions, e.g., see the Appendix below. The differences were also explained by me in my filing in this Hearing dated 10-2-2012, dealing with FCC 12M-44. The Commission recognized the differences in naming each SkyTel entity and myself as individual parties in the HDO, FCC 11-64. Corporate law, under State law, requires that legal entities’ distinction be accepted (unless a sham entity is proven up). For all these reasons, my position was and remains that my party pro se rights were improperly challenged and denied, then in part reinstated conditionally. I do not waive by this instant filing any position I took in said filing on 10-2-2012 including as to reversible error.

FCC an assignment of any Maritime license, nor approval of taking control in any, nor is the Maritime recently filed assignment before the Wireless Bureau of its licenses to Choctaw in this Hearing. A party that lacks interest and Article III standing as to a FCC license has no right to pursue any relief for said license. E.g., see *SunCom Mobile & Data, Inc. v. FCC*, 87 F. 3d 1386.

At the time SunCom filed the requests, it had no 220 MHz licenses of its own but only "written expressions of interest from parties holding approximately [450 licenses]," ... SunCom represented to the Commission that it intended to obtain title to the network licenses "only after they are constructed ... and upon receipt of all applicable FCC approval."... These allegations fail to show the required "injury-in-fact," namely, "an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not "conjectural" or "hypothetical," ' " *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992) (citations omitted). \* \* \* \* Neither the Commission nor the intervenors challenged SunCom's Article III standing to petition for review of the Commission's decision.... Nevertheless, we are bound to conduct an independent inquiry on our own. "Standing, whether constitutional or prudential, is a jurisdictional issue which cannot be waived or conceded." *Animal Legal Defense Fund, Inc. v. Espy*, 29 F.3d 720, 723 n. 2 (D.C.Cir.1994) (citing *Animal Legal Defense Fund, Inc. v. Espy*, 23 F.3d 496, 498 (D.C.Cir.1994); *id.* at 504 (Williams, J. concurring in part and dissenting in part); *Mallick v. International Bhd. of Elec. Workers*, 749 F.2d 771, 773 n. 1 (D.C.Cir.1984))

As with SunCom, Choctaw has no licenses at issue here, only an action to "obtain ... the ... licenses... upon... FCC approval." Choctaw did not submit a request to intervene and become a party to act on behalf of Maritime under any theory. There is no basis for any such theory in any case, as FCC licensing records demonstrate. The Motion fails on this basis alone.

5. The evidence shows that Choctaw has obtained in writing, and is exercising before the FCC in this Hearing and before the Wireless Bureau unauthorized transfer of control and that disqualifies the actions involved, at the minimum. See the attached

Motion to Dismiss filed by Skytel Entities before the WB in this regard.<sup>\*</sup> We reference and incorporate herein the fact and arguments in said Motion.<sup>4</sup> This disqualifies the subject Petition, as well as all action by Choctaw in this Hearing.

6. The Motion rehashing<sup>es</sup> for the most part the pending Maritime motion for summary decision. However, Maritime has failed (and Choctaw has continued such failure, to the extent<sup>t</sup> it can act for Maritime in presenting and prosecuting the Motion) to produce hundreds of thousands of document pages that are in Maritime possession relevant to Issue (g) and demanded by the Enforcement Bureau in document requests: the so called “NCASS” 101 boxes of Mobex records that Maritime described as the extensive records of its site-based licenses including as to construction and operation.<sup>5</sup> These NCASS boxes are the subject of Exhibit <sup>2</sup> hereto, in which<sup>\*</sup> Maritime states:

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<sup>4</sup> This demonstrates or at minimum calls into serious question said transfer of control under the standards described in the Intermountain Microwave case. *Intermountain Microwave*, Pub. Notice, 12 F.C.C. 2d 559, 559 (1963). See also *Baker Creek Communications, L.P., Memorandum Opinion and Order*, 13 F.C.C.R. 18709, 18714 (1998). Under *Intermountain*, the standard involves, with regard to actions that control or affect the subject licenses: (1) Who controls daily operations? (2) Who is in charge of employment, supervision, and dismissal of personnel? (3) Who has unfettered use of all facilities and equipment? (4) Who is in charge of the payment of financing obligations, including expenses arising out of operating? (5) Who receives monies and profits from the operation of the facilities? (6) Who determines and carries out the policy decisions, including preparing and filing applications with the Commission? Applying these criteria to the Maritime- Choctaw Chapter 11 Plan and its actions before the FCC to date under the plan, results in the above-noted demonstration or serious question. *Intermountain* is discussed is a case with similarities to this Hearing concerning Maritime: *US ex rel. Taylor against Mario Gabelli*, 345 F. Supp. 2d 340; 2004.

<sup>5</sup> Skytel has submitted in this Hearing evidence of these Boxes, their location, the list of them from the NCASS records-storage facility management, the description by Maritime legal counsel that it believed these had records relevant to issue (g) but that it alleged to have no copies of said records, and its assertion that it did not know where the 8 boxes that NCASS staff reported s removed (many of which were after Maritime took control of the site based licenses from Mobex, and was paying the NCASS storage fees, and where the authorized person with access was the CEO of Maritime, John Reardon).

<sup>\*</sup> This attachment, Exhibit 1, is referenced and incorporated herein: ~~See it is~~ Exhibit 1 to Skytel's Opposition to Choctaw's motion for stay filed recently.

17. Maritime: Maritime lacks the funds to hire a third-party expert to assist counsel in reviewing the NCASS documents, or to reproduce copies of them. Maritime will, however, attempt to arrange for John Reardon to gain access to the documents and will advise the Bureau and the ALJ if this occurs. In the meantime, Maritime has no objection to the Bureau being granted access to the NCASS documents, and will instruct its New Jersey counsel to cooperate with the Bureau to arrange for that.

The above statement and commitment from Maritime was false or in any case has been breached<sup>d</sup> by Maritime. This involves approximately 220,000 pages of evidence, at least substantial percentages of which do relate directly to issue (g), as can be determined by a review of the list of files prepared in the Maritime<sup>(MCLM)</sup>/Sherman Act Case, which Maritime and Skytel have and which Maritime has a duty to produce in this Hearing.

First, Maritime has had legal counsel active at all times, aggressively, in the Maritime Sherman Act Case, and in this FCC Hearing, and in the Maritime bankruptcy case, and for its various ongoing actions before the Wireless Bureau. That Maritime can do that belies that it is not able to review the NCASS documents, and in any case, failure to perform in a legal action is not a defense.

More importantly, Maritime has possessed a full copy of the NCASS documents, in electronic OCR readable/ searachable form, for months: it obtained a copy in the Maritime Sherman Act Case. But instead of doing what it promised in this Hearing, quoted above (and otherwise), Maritime has repeatedly frustrated SkyTel's counsel's attempt to get these NCASS documents to the Enforcement Bureau and Judge in this Hearing, by asserting in that court Case that all of these NCASS documents, including the ones relevant to issue (g) must be kept only for use in that Case under attorney eyes only, but without showing good cause therefore. Skytel counsel has this matter pending before the judge in this court Case, including asserting properly that documents are not

confidential or privileged as Maritime asserts in that Case. Indeed, the fundamental information of an AMTS licensees construction and operation of public CMRS licenses and stations cannot be confidential or privileged (and details in some documents, or possibly some documents, that have any such information, can be handled under appropriate protective arrangements: but that is not the Maritime position in said court Case).

Maritime and its current proxy, or alleged proxy, Choctaw (and Choctaw if it has any other basis to act in this Hearing) cannot have it both ways: to fail to perform its discovery obligations and frustrate SkyTel in attempts to get into this Hearing this essential factual evidence, but at the same time to seek summary decision on its asserted, narrow, set of facts. This is lack of candor and sanctionable.

In addition, Skytel, in an attempt to satisfy its ongoing obligations under the EB's document demand to Skytel, and for its own interests in this Hearing, is active in seeking to provide additional relevant evidence that has been produced by parties, and scores of third parties, in the Maritime Shearman Act Case; however, these attempts are also, thus far, frustrated by actions of Maritime in that court Case. Again, as with the NCASS documents, this includes large numbers of documents directly relevant to issue (g) (construction and operation). Skytel is attempting to resolve the encumbrances caused by Maritime to be able to provide this further evidence.

If the Judge orders SkyTel to use further efforts in the above matter, Skytel will comply to the best of its ability, and believes such an order may help it to get <sup>the</sup> needed relief in that court Case.

7. The Motion is premature since the Judge has not yet decided upon the Glossary of essential terms underlying Issue (g) (and the parties various related requests), and Choctaw has done nothing to concede to terms proposed by any party to the Glossary undertaking; nor has it sought relief from this threshold issue ~~being determined so that it Motion may processed.~~

8. The Motion is premature since the FCC has not decided upon the FOIA requests of Skybridge Spectrum Foundation, by its President Warren Havens, for documents submitted in this Hearing under the Protective Order. That is currently pending before the Office of General Counsel under an application for review by Skybridge. Skybridge used FOIA as specifically permitted in the FCC formal hearing rules, and strenuously disagrees that records of the sort asked for and produced can be, in any substantial part, under any FOIA withholding exemption including exemption 7, and has briefed its position. This FOIA case must be resolved prior to any action under any motion for summary decision, Skytel entities assert, including since this is a public proceeding and but for very narrow exceptions, evidence of construction and operation of AMTS CMRS stations cannot be confidential, privileged, or otherwise exempt from FOIA disclosure which places the evidence into the public domain. Skybridge plans to appeal any final denial of this FOIA request to a US District Court for de novo review and determination, if the final ruling denies release of evidence of that nature, or otherwise unlawfully withholds the requested documents.

Respectfully submitted,

/s/

Warren Havens  
Individually and for SkyTel legal entities  
(previously defined in this case)

2509 Stuart Street  
Berkeley CA 94705  
510 841 2220, 848 7797

Dated: February 7, 2013

## Appendix

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From MO&O, FCC 10-54, April 16, 2010. Emphasis and items in brackets added, footnotes in original deleted.

The [AMTS] Consortium [now called Environmental LLC] and Telesaurus [VPC LLC] [now called Verde Systems LLC] short-form applications both identified Warren C. Havens as the controlling interest but indicated that these entities had different ownership structures..... Mobex had not submitted an upfront payment, as required.... On September 15, 2004, the Division issued an Order denying Mobex's requests. \* \* \* \* The Division also took note of the reasons Telesaurus and Consortium had given for both participating in Auction 57, namely that the two entities have separate business plans and separate funds and accounting, which allows for different sources of capital, and that they would need to seek and obtain Commission approval before a license transfer or assignment could be completed between them after the auction. The Division indicated that there could be a variety of legitimate reasons for commonly controlled entities to participate in an auction, including the implementation of different business plans, financing requirements, marketing needs, and the avoidance of transactional costs in the secondary market.<sup>23</sup> .... Finally, the Division rejected Mobex's argument that Mr. Havens's interest in two separate applications provided an informational advantage relative to other bidders.

The short forms and long forms, and ownership reports, of the LLCs noted above, and the other SkyTel entities, all show the differences. Corporate law guarantees that different legal entities be treated distinctly, and that is not subject to the FCC inquiry and investigation, including demands of internal confidential information and showings, nor has the FCC ever required that. In any case, the above shows that MCLM's predecessor attempted and lost at trying to convince the FCC, in this AMTS auction proceeding, to deem that Warren Havens and LLCs he managed (above, two of the SkyTel LLCs) should be deemed the same.

Declaration

I declare under penalty of perjury that the facts in the preceding pleading attributed to my knowledge are true and correct.

/s/

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Warren Havens

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FILED/ACCEPTED  
NOV 8 . 2012  
Federal Communications Commission  
Office of the Secretary

In re	)	
	)	
<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	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with <b>ENCANA OIL AND GAS (USA),</b>	)	0004314903, 0004315013, 0004430505,
<b>INC.; DUQUESNE LIGHT COMPANY; DCP</b>	)	0004417199, 0004419431, 0004422320,
<b>MIDSTREAM, LP; JACKSON COUNTY</b>	)	0004422329, 0004507921, 0004153701,
<b>RURAL MEMBERSHIP ELECTRIC</b>	)	0004526264, 0004636537,
<b>COOPERATIVE; PUGET SOUND ENERGY,</b>	)	and 0004604962
<b>INC.; ENBRIDGE ENERGY COMPANY,</b>	)	
<b>INC.; INTERSTATE POWER AND LIGHT</b>	)	
<b>COMPANY; WISCONSIN POWER AND</b>	)	
<b>LIGHT COMPANY; DIXIE ELECTRIC</b>	)	
<b>MEMBERSHIP CORPORATION, INC.;</b>	)	
<b>ATLAS PIPELINE – MID CONTINENT, LLC;</b>	)	
<b>DENTON COUNTY ELECTRIC</b>	)	
<b>COOPERATIVE, INC., DBA COSERV</b>	)	
<b>ELECTRIC; AND SOUTHERN CALIFORNIA</b>	)	
<b>REGIONAL RAIL AUTHORITY</b>	)	

To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU’S AND MARITIME’S**  
**JOINT STATUS REPORT IN RESPONSE TO ORDERS FCC 12M-48 AND 12M-49**

1. The Presiding Judge issued Order FCC 12M-48 in response to Skytel’s<sup>1</sup>

Opposition to the Motion for Partial Summary Decision filed by Maritime

<sup>1</sup> SkyTel refers to Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC and Verde Systems, LLC.

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Communications/Land Mobile, LLC (Maritime) on August 31, 2012.<sup>2</sup> As the Presiding Judge noted in this Order, in its Opposition, SkyTel suggested that the issues raised by Maritime's Motion were not ripe for summary decision without further discovery of 93 boxes of documents.<sup>3</sup> Accordingly, the Presiding Judge requested that "each party with knowledge provide a status report with respect to the above-mentioned documents, and specifically report: (1) which litigants requested access to these documents; (2) the date when such requests were made; (3) whether litigants are in receipt of the requested documents; (4) the dates when such documents were obtained; (5) the subject matter of the documents; (6) whether any of the documents are known or believed to relate to the issue of Watercom's station construction (state which and give reasons); (7) whether there are documents yet to be reviewed; and (8) any additional information regarding the documents that litigants believe will be useful in determining whether the documents raise a material issue of fact."<sup>4</sup>

2. On October 31, 2012, the Presiding Judge released Order FCC 12M-49 in which he not only extended the filing deadline for the Status Report from November 1, 2012 until November 8, 2012, but also clarified that the parties should "state whether, based on first-hand knowledge, some of the 'box documents' probably raise material issues of fact."<sup>5</sup> As the Presiding Judge noted, "[m]ere speculation will not suffice."<sup>6</sup> The Presiding Judge further ordered that the Status Report "be filed jointly by two or more parties, if feasible and practical."<sup>7</sup>

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<sup>2</sup> See Maritime's Motion for Partial Summary Decision (Motion), filed August 31, 2012.

<sup>3</sup> See Order FCC 12M-48 (ALJ, rel. Oct. 24, 2012) at 1.

<sup>4</sup> Id. at 3.

<sup>5</sup> See Order FCC 12M-49 (ALJ, rel. Oct. 31, 2012) at 1.

<sup>6</sup> Id.

<sup>7</sup> Id. at 2.

3. Pursuant to the Presiding Judge's directions in Orders FCC 12M-48 and 12M-49, the Enforcement Bureau (Bureau) and Maritime jointly file this Status Report in response to these Orders. Maritime, by its respective counsel, represents that it has read this Joint Status Report in Response To Orders FCC 12M-48 and 12M-49 and has authorized the undersigned counsel for the Bureau to file this document on Maritime's behalf.

**Question 1: Which Litigants Requested Access To These Documents**

4. **The Bureau**: The Bureau requested access to the 93 boxes of documents in its First Set of Requests for the Production of Documents to SkyTel at Request Number 1, filed on June 7, 2012. Specifically, this Request reads as follows: 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. 2:11-CV-000993).<sup>8</sup> The Bureau requested these documents from Skytel after the May 22, 2012 prehearing conference during which Mr. Havens agreed to provide these documents to the Bureau and the Presiding Judge instructed the Bureau to send Mr. Havens a request for these documents in writing.<sup>9</sup>

5. **Maritime**: Maritime has sought access to the documents in connection with both the Mississippi bankruptcy case and the New Jersey antitrust litigation.

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<sup>8</sup> See Enforcement Bureau's First Set of Requests for the Production of Documents to SkyTel at Request Number 1, filed on June 7, 2012.

<sup>9</sup> See, e.g., Transcript of May 22, 2012 Prehearing Conference at pp. 651, 654-55.

## **Question 2: The Date When Such Requests Were Made**

6. **The Bureau**: The Bureau requested these 93 boxes of documents on June 7, 2012.

7. **Maritime**: Maritime's counsel is awaiting information from counsel in the other proceedings as to the date of any formal request for access, but it is believed that there have been various informal discussions (and possibly pleadings) in both proceedings at various times regarding the documents.

## **Question 3: Whether Litigants Are In Receipt Of The Requested Documents**

8. **The Bureau**: The Bureau has not received the requested 93 boxes of documents.

9. **Maritime**: Maritime's counsel in the New Jersey proceeding recently obtained access to the documents in the form of a hard drive and/or scanned electronic copies. See further information in paragraph 11, below.

## **Question 4: The Dates When Such Documents Were Obtained**

10. **The Bureau**: The Bureau has not obtained the requested 93 boxes of documents.

11. **Maritime**: Maritime's counsel in the New Jersey antitrust case obtained access to the disk on or about October 1, 2012, pursuant to a September 26, 2012, order of the U.S. Magistrate Judge in that proceeding (Civil Action No. 11-93, Doc 114). That order further provides that "counsel ... may not share any information [from the disk] with their clients absent agreement of all counsel in this case or order of the court." *Id.*

## **Question 5: The Subject Matter Of The Documents**

12. **The Bureau**: The Bureau has no personal knowledge as to the subject matter of the requested 93 boxes of documents.

13. **Maritime**: It is Maritime's belief that any extant documents regarding construction of the Watercom stations are among the files maintained in Clarksville, Indiana, and were included in the "12 Boxes" production dated February 17, 2012. Although he has not had access to the NCASS documents themselves, Mr. Reardon has reviewed a directory listing of the documents on the disk. Based on this limited information, it appears that two of the boxes apparently contain documents related to Watercom matters. Without access to the actual documents, it is not possible to know to what extent, if any, they relate to construction of the Watercom facilities, as opposed to financial and other matters.

**Question 6: Whether Any Of The Documents Are Known Or Believed To Relate To The Issue Of Watercom's Station Construction (State Which And Give Reasons)**

14. **The Bureau**: The Bureau has no personal knowledge as to whether the documents are known or are believed to relate to the issue of Watercom's station construction.

15. **Maritime**: Regardless of what is or is not in the NCASS documents, they are not relevant to the pending motion for partial summary decision. That motion addresses only two categories of licenses: (a) those that are subsumed within Maritime's geographic authority, and (b) the Watercom stations, as defined in the motion (i.e., all of the call signs beginning with "WHG," except WHG693). The former have been or are being cancelled, Maritime has stipulated that they are deemed terminated, and Issue (g) is therefore moot as to those licenses. As to the Watercom stations, the pending motion addresses only the "construction" portion of Issue G, a matter that was already definitively ruled on by the Commission in 1987, as discussed in the motion. The NCASS documents therefore are not relevant to and provide no basis for delaying action on the pending motion for summary decision.

### **Question 7: Whether There Are Documents Yet To Be Reviewed**

16. **The Bureau:** The Bureau understands that there are a total of 93 boxes of documents at the storage facility. The Bureau has no personal knowledge as to whether these boxes contain documents that pertain to the Watercom licenses – the only licenses at issue in Maritime’s Motion to which Maritime and the Bureau had not previously stipulated. Accordingly, 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. However, as discussed in further detail in response to Question 8, the Bureau does not believe that any documents in the 93 boxes that relate to the Watercom Licenses are likely to raise material issues of relevant fact concerning the construction of the Watercom Licenses.

17. **Maritime:** Maritime lacks the funds to hire a third-party expert to assist counsel in reviewing the NCASS documents, or to reproduce copies of them. Maritime will, however, attempt to arrange for John Reardon to gain access to the documents and will advise the Bureau and the ALJ if this occurs. In the meantime, Maritime has no objection to the Bureau being granted access to the NCASS documents, and will instruct its New Jersey counsel to cooperate with the Bureau to arrange for that.

### **Question 8: Any Additional Information Regarding The Documents That Litigants Believe Will Be Useful In Determining Whether The Documents Raise A Material Issue Of Fact**

18. **The Bureau:** The Bureau maintains the position it took in its Response to Maritime’s Motion for Summary Decision (Response), filed on September 17, 2012.<sup>10</sup> Therein, the Bureau acknowledged that the Commission’s *Waterway Communications System, Inc., Memorandum Opinion and Order* (FCC 87-373), 2 FCC Rcd 7317 (1987) (Watercom Order), resolves the “construction” question of Issue (g) with respect to the Watercom Licenses.

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<sup>10</sup> See Response at 4-5.

Specifically, part of Issue (g) of the HDO requires that the Presiding Judge determine whether Maritime’s site-based facilities were constructed within two years of their grant, as required by Section 80.49(a)(3) of the Commission’s rules.<sup>11</sup> The Watercom Order stated that “Watercom was required to meet a schedule of construction ... and put the system into operation within the time we had allowed.”<sup>12</sup> The Commission further noted that “there can be no question of spectrum hoarding or other dereliction in [Watercom’s] inauguration of service.”<sup>13</sup> Accordingly, the Bureau agreed with Maritime that there is no genuine issue of material fact for determination at the hearing as to whether the Watercom Licenses were timely constructed in accordance with Section 80.49(a) of the Commission’s rules and that summary judgment should be granted on this question.

19. In addition, the Bureau has reviewed many of the documents concerning the Watercom Licenses that Maritime produced earlier this year. Accordingly, the Bureau does not believe that any documents in the 93 boxes that relate to the Watercom Licenses 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.

20. The Bureau notes, as it did in its Response, that the Watercom Order does not address the second part of Issue (g) – *i.e.*, whether operations of the Watercom Licenses have been discontinued and, if so, whether such discontinuance is permanent pursuant to Section 1.955(a) of the Commission’s rules. Thus, even if the Presiding Judge were to grant summary judgment on the “construction” question of Issue (g) with respect to the Watercom Licenses, the

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<sup>11</sup> See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (HDO) at ¶ 62(g).

<sup>12</sup> Watercom Order at ¶ 16.

<sup>13</sup> *Id.*

“operations” question of Issue (g) would still need to be determined at hearing with respect to these authorizations. However, the Bureau does not foresee that documents contained in the 93 boxes, which the Bureau understands pre-date Maritime’s acquisition of these stations, are likely to raise material issues of relevant fact concerning the operation of the Watercom Licenses.

21. **Maritime:** Maritime has no further information to offer that, in its view, is appropriate for inclusion in this joint status report. Maritime reserves the right, however, to separately respond to any statements, allegations, assertions, accusations, etc., provided directly by the Havens parties.

Respectfully submitted,  
P. Michele Ellison  
Chief, Enforcement Bureau

  
\_\_\_\_\_  
Pamela S. Kane  
Deputy Chief  
Investigations and Hearings Division  
Enforcement Bureau

Brian J. Carter  
Attorney  
Investigations and Hearings Division  
Enforcement Bureau

Federal Communications Commission  
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Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

November 8, 2012

## **CERTIFICATE OF SERVICE**

Tamika Parker, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 8th day of November, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S AND MARITIME'S JOINT STATUS REPORT IN RESPONSE TO ORDERS FCC 12M-48 AND 12M-49" to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554 (by hand, courtesy copy)

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I, the undersigned, certify that on February 7, 2013, I caused a true copy of the foregoing filing in FCC docket 11-71 to be served by USPS first class mail (with courtesy email copies, using emails of record) to:

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