Exhibit 11: Skytel entities' petition to deny the SCRRA and MCLM assignment. This contains numerous reasons why grant of footnote 7 relief is not proper and why grant of the application is not in the public interest and other reasons for not granting it.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Maritime Communications/Land Mobile LLC	)	DA 10-556
and Southern California Regional Rail Author-	)	WT Docket No. 10-83
ity Applications to Modify License and Assign	)	File Nos. 0004153701, 0004144435
Spectrum for Positive Train Control Use, and	)	File No. 0002303355
Request Part 80 Waivers	)	Call Sign: WQGF318
	)	

To: Office of the Secretary Attn: Wireless Telecommunications Bureau

Petition to Deny,
and in the Alternative Section 1.41 Request

Warren Havens ("Havens"), Environmentel LLC ("ENL"), Verde Systems LLC ("VSL"), Intelligent Transportation & Monitoring Wireless LLC ("ITL"), Telesaurus Holdings GB LLC ("THL") and Skybridge Spectrum Foundation ("Skybridge") (together "Petitioners") hereby petition to deny (the "Petition") the above-captioned applications (together the "Applications"), one of which seeks to modify (the "Modification") the above-captioned license (the "License") and another that seeks to partition and assign (the "Assignment") part of the License, along with associated rule waiver requests (the "Waivers"), to Southern California Regional Rail Authority ("SCRRA").[1]

Based on demonstrated and compelling facts and relevant law, Petitioners request (i) that the Applications and Waivers be dismissed or denied due to inherent defects as well as defects in the License and disqualification of the licensee MCLM. SCRAA and PTC cannot lauder the defects or cure the disqualification, but could be liable for the attempt, and (ii) that the License be revoked or canceled and appropriate sanctions taken against MCLM including disqualification as Commission licensees for lack of character and fitness, for repeated willful misrepresentations and rule violations including, but not limited to, its actual control and ownership, its actual offi-

[1] Petitioners are filing this petition in accord with the above-captioned *Public Notice*, DA 10-556, released March 29, 2010.

cers and directors, its designated entity size (it has never qualified as a DE entity), undertaking unlawful transfers of control (including of the License), unlawful operation of AMTS licenses as PMRS (which means they have permanently discontinued AMTS service), and for maintaining stations that automatically terminated without specific Commission action for failure to meet the requirements of Section 80.475(a).

If for any reason the FCC does not process this Petition under Section 1.939, then Petitioners request that it be processed under Section 1.41, including for consideration of the facts and arguments herein for a more full and complete record and determination in the public interest, especially since they deal with the fundamental, required ownership and control disclosures, application certification statements and other fundamental FCC rules, and because it will be more efficient for FCC processes and the parties involved to address the facts and arguments raised herein now.

FCC instructed means of filing. For reasons shown in Appendix (i) below, Petitioners object to the requirement, that is not in accord with Section 1.939 that authorizes filing on ULS (but not on ECFS). To be also required to file the Petition and all its exhibits a second time on ECFS is objectionable since (i) it is not in accord with any FCC rule or authority we know of, other than the subject Public Notice (which is not a decision to make or amend or waive any rule) and (ii) it will take several additional hours of work away from the time needed by Petitioners to complete the research and text of this Petition by the deadline at the end of today. (The exhibits were prepared by Mr. Stobaugh, and already filed on ULS as Appendix (i) explains, by the middle of today the filing deadline, but he had to then leave for a family requirement for the rest of the day. The undersigned has to reconstruct the exhibits, or arrange, if it is even possible, for Mr. Stobaugh to return to work and leave off his family matter, to resubmit the exhibits on ECFS. In sum, the requirement is prejudicial and not in accord with rule.

FCC Prejudice in unequal decisions and application of law regarding filing-deadline exten-

sions. Petitioners reference and incorporate herein, and assert for purposes of this Petition and this proceeding on the Applications, their position and ending objection regarding their request that was denied to be granted any amount of additional time to complete and file this Petition. The communications with the FCC in this regard and the FCC's decision are reflected in emails that which were copied on the other parties, MCLM and SRCC, and thus need not be included herein again. The full record on this regard extends to the commencement of Petitioners license applications in AMTS and will be presented in an appropriate court case. Petitioners position, for this and related matters of demonstrated FCC prejudice against Petitions and unlawful rule waivers and boons to MCLM, are further discussed in other parts of this Petition.

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	Exhibits and Attachments Appendixes. As described in the text Exhibits A-D: Court documents from the court cases in court in the States of Mississippi and Tennessee cases that involve as defendant Donald DePriest, with notes and highlights (these are essentially the same as were filed with Petitioners Petition for Reconsideration based on New Facts against the MCLM Form 601 from Auction 61. Exhibits 1, 2, 4, 5, 6, 7, 9-11: These are essentially the same as were filed with Petitioners Supplement to Petition for Reconsideration on New Facts regarding the MCLM Form 601 from Auction 61. Exhibit 12: Various documents showing that John Reardon is the President and CEO of MCLM, contrary to the assertions that he is just an employee made by Sandra DePriest, who alleges to be the sole owner and controller of MCLM. Exhibit 13: An discussion of use of the term "officers" and the like in corporate law. Attachment B: This is a Supplement filed in Petitioners petition to deny proceeding regarding MCLM assignment of AMTS spectrum to the Big Rivers Electric Coop that included a technical radio-frequency analysis by Dr. Doug Reudink. Other Attachments and Exhibits. As described in the text.	Some are filed separately. Some are attached at the end.

(i) Introduction and Summary

In addition to the below summary, the table of contents itself summarizes well the content of this Petition.

Petitioners show herein that they have standing and interest to file the Petition and that the Petition contains many *prima facie* facts that show the Applications, and associated Waivers, must be dismissed or denied and the License canceled or revoked. The facts presented show the following regarding MCLM, most of which are cause for termination of the subject AMTS licenses, dismissal of the Applications, and disqualification of MCLM as a Commission licensee: (1) By the actions, assertions and admissions of its owners, MCLM does not exist as a valid legal entity under corporate law; (2) that MCLM has unlawfully pledged all of its AMTS licenses as collateral and therefore has affected an unlawful transfer of control; (3) that MCLM has failed to disclose since its start its actual control and ownership and that Donald DePriest is an owner and controller of MCLM and that this represents another unlawful transfer of control (thus making the Applications defective); (4) that the Waivers don't meet the standards of Section 1.925 for grant, that grant of them would be harmful to ENL and VSL as adjacent channel licensees, and that the Waivers essentially seek a rulemaking to change the AMTS service; (5) that the Applications have several incorrect and false certifications making them defective; (6) that MCLM failed to disclose numerous other controlling parties, including officers; (7) that Mobex and MCLM have unlawfully operated their AMTS stations as PMRS, which means their AMTS licenses were not providing CMRS AMTS service (AMTS is CMRS by nature), and thus have permanently discontinued, much like the Chicago station, for failure to operate as authorized (PMRS service was not permitted by Mobex's and MCLM's AMTS licenses and operation as such failed to meet the rule requirements for keeping and operating a CMRS AMTS license); (8) MCLM has failed to pay regulatory and other fees associated with their license operations to be reported on Form 499-A since they have illegally operated their AMTS licenses as PMRS; (9) that MCLM

has made repeated and willful misrepresentations, contradictory statements of fact and lacked candor before the FCC; and (10) that MCLM (along with Mobex) maintained and renewed a licensed incumbent stations that had ceased to operate or automatically terminated for failure to meet to coverage requirements of Sections 80.475(a), yet they never turned the station licenses back in for cancellation, but instead kept using it to block out competition at auction. Other new facts are that both the Wireless Telecommunications Bureau ("WTB") and Enforcement Bureau ("EB") have commenced investigations of MCLM and its affiliates based on the new and old facts presented by Petitioners and those investigations are ongoing and MCLM and its affiliates have provided additional information and responses in those investigations showing rule violations, misrepresentations and lack of candor. The Petition references and incorporates several pending proceedings that contain facts and arguments relevant to the Applications rather than reiterate them entirely herein for efficiency and convenience of the parties involved.

In addition, in this Petition, Petitioners provide facts, including ones obtained via FOIA requests, to show that the FCC has treated Petitioners with prejudice with respect to MCLM and its applications and licenses and violated its constitutional petition rights, including by carving it out of proceedings.

The totality of the facts presented requires that MCLM must be found to lack the required character and fitness to be a Commission licensee and it must be disqualified for repeated and willful misrepresentations, rule violations, lack of candor, and fraud. It and any parties that abet it in its efforts to launder the License are in violation of the US Criminal Code and appropriate sanctions should be taken. Its License must be revoked and the Applications dismissed or denied. At minimum, the facts herein are sufficient *prima facie* evidence requiring a hearing under Section 309 since they clearly call into question whether or not grant of the Applications and Waivers is in the public interest, and many are already the subject of the two ongoing FCC investigations of MCLM.

(ii) Character Examination, and Section 308 Investigation:

> The Commission acknowledges… that in the Uniform Policy the Commission itself concluded that Section 308(b) both gave it "the authority and imposed upon it the duty" to examine basic character qualifications "in evaluating applicants for radio facilities." * * * *
> We do, however, agree with NRBA and Citizens that some behavior may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license. [Underlining added.] [2]

For reasons shown herein, the Commission should do the above and has a duty to do so, after it completes thorough discovery and investigation of relevant facts, which it has not yet done. There are numerous non-FCC government sources identified by Petitioners as holding relevant facts and other parties from whom the FCC should subpoena this information (see e.g. the "3 Motions Email" defined below). Petitioners show herein that MCLM lacks the required character and fitness to be a Commission licensee and that it should be disqualified as a Commission licensee. This is supported by Commission precedent and policy, see Attachment 1 to the "Pinnacle Recon", as defined herein below, that contains the Commission's own rulings on disqualification of a licensee and revocation of licenses per its *Character Policy Statement*.

(iii) Standing and Interest

Petitioners show here that they have standing and interest to file the Petition and that they will be harmed by grant of the Applications, including because one of Petitioners has *Ashbacker* rights to the License, and that grant of the Applications is not in the public interest. VSL, ITL, ENL and SSF are direct competitors of MCLM per their AMTS license area holdings as evidenced by ULS. VSL and SSF hold B-block Pacific licenses that can compete directly with the

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[2] *In the Matter of Policy Regarding Character Qualifications....and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*. *Report, Order, and Policy Statement*, FCC 85 648. Released: January 14, 1986. This is included as Attachment (i) to the "Supplement to New Recon" described below.

License and that would be harmed, as discussed below, by grant of the Waivers.[3] ENL and ITL had the only legitimate and lawful high bids in Auction No. 61 for the Pacific A-Block geographic license represented by the License and thus have interest and standing to defend their rights to the subject spectrum, one of which, depending on the conclusion of the Auction No. 61 Proceedings noted below, should be the eventual licensee of the License. In addition, all of the aforementioned of Petitioners are direct competitors with MCLM in AMTS in other regions of the country where MCLM currently holds the other geographic license block or site-based incumbents. THL holds LMS licenses that may offer competitive services to those that MCLM can provide with the License.[4] MCLM has argued itself that this is sufficient for standing in a petition to deny it filed of certain Section 20.9(b) certifications of certain of Petitioners (see e.g. File No. 0003875427) and in MCLM's recent 11/6/09 petition to deny certain 220-222 MHz renewal applications and extension requests of certain of Petitioners (see e.g. File No. 0003223081).

Petitioners also have standing based on the criteria applied in US courts under Article II of the Constitution, **see** *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992) ("*Lujan*"),[5] not an artificially narrow standard that MCLM has suggested in the past that the FCC should apply (even if some FCC decisions may be interpreted to provide for such a narrow standard). Article III standing is obtained among other ways, where—as in the instant petition proceeding—unfair competition antitrust law violation claims are asserted (and until disproven or dismissed), even where the existence of an matter or action that offends or arguable offends said law is the sole basis for standing, and where the challenger asserting standing is among the parties entitled to protection

[3] See Call Signs WQCP816 and WQJW656 respectively.
[4] See Call Signs WPOJ921 and WPOJ922.

[5] Federal administrative proceeding standing criteria, as summarized in the APA, is derived from Article III standing. Regarding *Lujan*, a well known case on Article III standing, Justice Scalia, who wrote for the majority in *Lujan*, later asserted that even a plane ticket to the affected geographic areas would have been enough to satisfy the future injury requirement. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1982).

under said law (where, without said protection, injury in fact to the party asserting standing, and to the markets involved, is assumed, as it is under said antitrust law).[6] It is clear that, to the degree (as asserted here) the assignor and assignee and the Assignment and Modification Application do not comply with the rules, that Petitioners suffer competitive harm, and also that subject wireless markets are harmed:[7] noncompliance with rules that are the basis of fair competition is obviously particularly harmful.

This petition should also be considered for a more full and complete record in the public interest and because it will be more efficient for FCC processes and the parties involved to address the facts and arguments raised herein now rather than have to later rescind the grant of the Applications and any benefit received under it by MCLM due to decision in favor of Petitioners' pending proceedings before the FCC that involve the License and MCLM or in the Section 308 Proceeding, Section 309 Proceeding or Enforcement Proceeding (as described below). In addition, with respect to the facts presented here, it was MCLM who had an obligation under Sections 1.17, 1.65, 1.2105, 1.2110, and other rules to provide them to the FCC, not Petitioners, thus it is appropriate that the FCC accept this petition to consider these facts. In addition, even if the FCC were to find that Petitioners lack standing, this petition should be processed under Section 1.41, including for consideration of the facts and arguments herein for a more full and complete record and determination in the public interest, especially since they deal with the fundamental, required ownership and control disclosures, and other fundamental FCC auction rules, and because it will be more efficient for FCC processes and the parties involved for the reasons just stated above.

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[6] See, e.g., *Ross v. Bank of Am., N.A.*, No. 06-4755, 2008 WL 1836640 (2d Cir. Apr. 25, 2008).

[7] SSF as a nonprofit Foundation legally must and does solely serve public-interests and no private interests. It has standing on that basis: to pursue protection for the wireless markets involved.

Petitioners also have interest and standing due to reasons given in Sections 1, 1b, and 1c hereto. The FCC, by unlawfully denying and subverting essential petition rights and protections, and proceeding with licensing actions for the spectrum subject of that denial, creates special interest and standing in this matter. That includes not only Petitioners private rights and damages involved, but their right to defend the Communications Act and public interest involved, as they in fact are doing in this Petition and their pending petitions on MCMM spectrum and matters.

1a. FCC Prejudice and Deliberately Chilling Warning

Petitioners show here that the facts in the record show the FCC has indeed acted with prejudice toward them with respect to their petitions and filings against MCLM and the License and Applications.

First, the FCC would not grant Petitioners motion to extend the pleading cycle in the instant proceeding even though Petitioners provided reasons sufficient for grant, including, but not limited to the fact that Petitioners are attempting to obtain responses provided by MCLM and its affiliates to the Enforcement Bureau that contain information directly relevant to the Applications and License, including disclosure of MCLM's affiliates' gross revenues that should have been released publicly, as required by FCC rules, but that were filed confidentially by MCLM and its affiliates and not provided to Petitioners, even when Petitioners requested them from Bureau staff. And the FCC would not permit Petitioners any extension of time so that FCC staff could respond to Petitioners' pending FOIA request for those records. This has clearly limited Petitioners ability to file a more complete Petition in order to preserve their petition rights (filing items via Ex Parte does not afford the same rights as a petition under Section 309). The FCC, by withholding the information in the MCLM and Affiliates' responses that should have been released publicly almost 5 years ago in Auction No. 61, and not granting Petitioners' extension of

time has effectively limited and diminished Petitioners' constitutional petition rights under Section 309.

Second, the FCC has denied all of Petitioners' petitions and appeals against the License and MCLM application for Auction No. 61 stating that the petition had no *prima facie* evidence that called into question grant of the MCLM Form 601 in the public interest, yet it has commenced two investigations, one under Section 308 and one by the Enforcement Bureau, which upon cursory review, are based entirely on facts in Petitioners' petitions. Thus, the FCC has impermissibly carved Petitioners out of the proceedings and continues to deny them their rights under Section 309, apparently so that it can make decisions and take actions in private proceedings with MCLM. And when Petitioners continued to appeal in matters against MCLM, the FCC issued a warning to Petitioners that they may be sanctioned. [8]

These first two items are evidence of clear violations of Petitioners' constitutional rights to petition the government and to a fair hearing.

Third, the FCC has chosen to misconstrue its own rules, including Section 1.2105 (and the Commission's own rulemaking that said a decrease in bidding credit was disqualifying) and court precedent, in order to inexplicably grant the MCLM Auction No. 61 application and award it AMTS licenses including the License, even though Petitioners' *prima facie* facts showed MCLM had committed several rule violations, misrepresentations, and fraud (all of which have been further confirmed over the last 5 years in court cases involving Mr. DePriest, admissions to

[8] The threat of a warning did indeed aggrieve Petitioners. The baseless Bureau warning by itself caused damages because it threatened punitive measures if "Havens" and his companies continued to pursue their FCC petition and appeal rights Congress established, and their First Amendment rights under the Constitution. Petitioners had to consider whether or not to file further appeals because of the risk of sanctions. As the two ongoing FCC investigations into MCLM and its affiliates indicated herein show, Petitioners' petitions and appeals were not frivolous, but were fully sound. The Bureau's warning, granted at MCLM-Mobex's request, was meant to chill Petitioners' rights and attempts, scare them to cease, and signal to MCLM and Mobex that their nonsense would be protected. Indeed, MCLM, Mobex and other aligned merrily cited the warning. Just because a bad cop puts a gun to someone's head but doesn't pull the trigger does not mean harm was not done.

the FCC by MCLM, etc.). In doing so, the FCC has denied Petitioners' rights to those Licenses, since two of Petitioners, ENL and ITL, placed the only lawful, qualified high bids. As shown in Petitioners' pleadings in Auction No. 61, court precedents support that those licenses must be granted to one of Petitioners (see the discussion re: *Superior Oil* and *McKay* cases). The FCC has denied ENL and ITL their *Ashbacker* rights, and prevented them from obtaining what they lawfully won at auction almost 5 years ago. This has and continues to seriously damage ENL and ITL and Petitioners' business plans overall.

Fourth, the FCC continues to grant MCLM applications for the auction licenses and allow them to receive benefits from them including via leases and sales, while it continues to ignore Petitioners' facts and arguments that MCLM has committed fraud and repeated willful misrepresentations and violated the U.S. Criminal Code (most of Petitioners facts that are now being investigated by the Enforcement Bureau were presented back in 2005 and should have been investigated prior to granting MCLM the auction licenses).

Fifth, the FCC has failed to apply Section 80.475(a) to MCLM's incumbent AMTS licenses and instead argued that it deleted that rule (when it never did so following the Administrative Procedures Act),[9] then declined to retroactively apply it, even though termination under Section 80.475(a) occurred without specific Commission action, and thereby granted windfall, unrequested waivers to MCLM for its AMTS incumbent stations. In fact, the Bureau took the position that the Mobex/MCLM AMTS stations met the coverage and continuity of service requirements of Section 80.475(a) when in fact the FCC never conducted any studies and did not have sufficient information from Mobex/MCLM to ever perform such studies, and thus could not have determined if the stations had or had not met the requirements of Section 80.475(a).

[9] The Bureau has taken the position that the Commission lawfully deleted the coverage requirements of Section 80.475(a) when in fact there is no proof in the FCC record that such a deletion was intended, noticed, commented upon and done in accord with the APA.

Sixth, the FCC, as shown below, has redacted information from 19 pages of documents obtained under FOIA Control No. 2009-089 that was not subject to FOIA Exemption 4. These impermissible redactions concealed information that was supportive of Petitioners' challenges to MCLM and its licenses, including regarding auto-termination and permanent discontinuance for failure to provide AMTS CMRS service. The impermissible redactions actually reversed the meaning of the factual evidence to the advantage of Mobex/MCLM.

1.b Fatally Tainted Overarching Proceeding
and Prejudice- Warrants Litigation

The overarching proceedings are the proceeding involving License and other MCLM licensing from Auction 61, and the background of MCLC, the Depriests as its owners, affiliates, predecessors, etc. This is discussed substantially herein.

Petitioners take the firm position, after years of participating in these proceeding, that the proceeding are fatally tainted by FCC staff prejudice, and unlawful and covert policy directly in violation of the Communications Act, FCC rules and other law. These matters are presented in other sections and exhibits.

In these circumstances, Petition have rights to sue in US District Court the parties and persons responsible in MCLM and the FCC. They do not need to obtain final FCC decisions and then be limited to appeals thereof on the limited basis of deferential Chrevron review of assumed good-faith expert agency adjudication. The United Stated Court of Appeals for the Second Circuit has found:

> This Court has recognized that "where resort to the agency would plainly be unavailing in light of its manifest opposition or because it has already evinced its 'special competence' in a manner hostile to petitioner, courts need not bow to the primary jurisdiction of the administrative body." *Bd. of Educ. of the City of New York v. Harris, 622 F.2d 599, 607 (2d Cir. 1979)….*
>
> Ellis could have, but did not …seek the FCC's interpretation or enforcement … oppose Tribune's petition … or …request…reconsideration or review …. Instead, Ellis brought this action directly in the district court …. On this record, Ellis is

> unable to show that the FCC was hostile to him …[and] that a direct appeal to the FCC would have been futile.

Ellis v. Tribune, 443 F.3d 71 (2006) ("*Ellis*"). Petitioners are making sure by their continued participation in this overarching proceeding, and in this component regarding the subject Applications, that they firmly satisfy the requirements of the second paragraph above. However, they assert that there is already ample evidence that they may proceed as described in the first paragraph above. Even an appeal to the DC Circuit Court of any component FCC decision in this overarching proceeding should be, under *Ellis*, stayed until the trial court has a legitimate hearing where the FCC will not or cannot.

1c. The Proceeding on these Applications is Fatally Flawed Including Due to Fundamental Violations of Due Process Under the Communications Act Regarding the Licenses at Issue

In other parts of this Petition and its appended materials, and referenced and incorporated materials previous filed in the preceding overarching proceedings (centered around the MCLM long form in Auction 61), Petitioners demonstrate the section 1c caption statement above. This includes but is not limited to the fact that, since year 2005 after Petitioners filed a petition to deny the MCLM long form in Auction 61 (actually, since they filed an objection with similar content prior to the auction, with regard to the MCLM short form in that auction), to this day, the FCC has repeatedly denied the relief under Section 309(d) and (e) of the Communications Act that Petitioners have in the most clear terms entirely satisfied—a formal hearing on the MCLM application for Auction 61.

This is entirely demonstrated by the Wireless Bureau and then the Enforcement Bureau letters of investigation directed to MCLM and its controllers, owners, and some of its affiliates: these FCC letters literally call into question the very question posed at the start of Section 309 which Petitioners' petition to deny (and following petitions for reconsideration) answered by

presenting the required prima facie facts establishing said question:[10] these FCC letters posed questions and fact drew entirely Petitioners' petitions, thus making entirely clear that the petitions should have been granted upon initial review.

Yet the FCC, instead, refuses to allow Petitioners formal hearing rights in which they can, more effectively than the FCC (and in any case, in accord with their rights) examine (using the services of their litigation counsel, now familiar with MCLM due to years of litigation in courts) MCLMs alleged sole owners and controllers, affiliates, various witnesses and experts, and otherwise engage in proper fact finding.

By denying those fundamental rights, and at the same time proceeding with accepting for filing, placement on special public notices, and otherwise accommodating ongoing licensing activity by MCLM, the FCC has created a bogus proceeding.

2. MCLM is a "Sham Corporation"
and its Actions are Legally Invalid
And it otherwise is in Default of Rights as an AMTS Licensee

MCLM is in default. MCLM has refused to follow the FCC Declaratory Ruling Orders (issued by Scot Stone of the FCC in years 2009 and 2010 to MCLM) with regard to Rule Section 80.385(b) that requires MCLM to provide to Petitioners, as co-channel geographic licenses, the actual technical parameters of MCLMs site-based (alleged valid and operating) stations. MCLM

[10] A "substantial" question for this purpose is a question which "arouses sufficient doubt on the point that further inquiry is called for." Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 393, 395 (D.C. Cir. 1985). In the subject case of the MCLM long form in Auction 61, not only did Petitioners' petitions raise such doubt, but the FCC acted on the doubt by the noted six letters of investigation and repeated the questions. It acted on it in a way to control the proceeding for its undisclosed purposes contrary to the requirements of the Communications Act—by conducting its own private investigation and excluding Petitioners from that (except to informally allow Petitioners an undefined opportunity to submit what they choose for purposes of the investigation), and denying the formal hearing called for in Section 309(d) in the circumstance. This is, in fact, how the FCC granted the MCLM licenses, including the one subject of the Applications—by conducting a secret private hearing with MCLM, in fact granting the essence of their waiver request but speciously suggesting it was not granted, and excluding – simply short-circuiting, Petitioners rights to fully participate in the proceedings on the licenses subject of their petition to deny.

repeatedly refused the written request Petitioners gave to MCLM for this core purpose of Congress and the FCC in moving from site-based to auctioned geographic licensing.

Since MCLM has elected to violate this rule and these two FCC Declaratory Ruling Orders, MCLM is in default and is not entitled to any licensing action, what to speak of selling any spectrum to an entity seeking waivers of the MCLM spectrum.

See in this regard, Appedix (iii).

Regarding the sham corporation issue. As shown by the facts presented in the text and exhibits, MCLM is a "sham corporation" and its actions before the FCC are abuse of process and legally invalid for essentially the same reasons the Commission found in the following decision (emphasis added):

> Examining Crouch's and TBN's conduct from 1987 to 1991 (the period during which TBF held the Miami license), the ALJ concluded that TBN and Crouch exercised de facto control over NMTV and that NMTV was therefore not "minority-controlled." Trinity Broad. of Fla., Inc., Initial Decision of Administrative Law Judge, 10 FCC Rcd 12020 (1995). The ALJ also ruled that "NMTV, Crouch and TBN abused the Commission's processes" not only by creating NMTV as a "sham corporation" to evade the multiple ownership regulation, but also by repeatedly concealing material facts from the Commission that would have demonstrated that TBN controlled NMTV--primarily Duff's employment relationship with TBN and the extensive interrelationship between TBN and NMTV. Id. at 12061 PP 329-30 & n.47. The ALJ concluded that Crouch's conduct in connection with TTI and TTI's representations in its low power applications also supported an abuse of process finding. Id. at 12060 PP 325-26. …. ALJ… finding that because of TBN's and Crouch's "willful" and "egregious" misconduct, TBF was unqualified to hold the Miami license. Id. at 12062 PP 331, 333.
> …. "The principals knew," the Commission concluded, "that, because of the relationship between NMTV and TBN, their claim of minority control was at best doubtful and at worst false." Id. at 13601 P 83. This "serious abuse of process with respect to NMTV's full power applications" warranted denying TBF's license renewal application. Id. at 13601 P 85, 13610 PP 100-01.

MCLM has engaged in all the rule violations and bad acts described above, but more clearly and extensively, and should be subject to the same result- denial of the subject application and license due to disqualification.

In attempt to escape the mounting evidence, MCLM owners have played games in their responses to the Commission and in the pleadings responding to Petitioners in the related Sections 308 and 309 Proceedings (described further below). A principal game is that the officers and other authorized representatives of MCLM are different things (they are not in law), and in any case they are whatever and who ever the MCLM owners want them to be at a given time—retroactively to fit the story they need to tell at a particular time. That is a sham operation.

In *Morrison v. Olson*, 487 U.S. 654 (1988), the US Supreme Court discusses the meaning of officer in context of United States government. The concepts of an "officer" have been the same since before the start of the nation and formulation of the Constitution, and from there, flow to the States and to corporate entities under State law. The concept is entirely simple and clear: there is an ultimate authority in a public or private corporate or legal entity that delegates by formal process authority to one or more levels of officers, various powers of an office to take acts for the legal entity that are binding on the entity.

For the natural persons that own and control the entity to turn around and announce to the outside parties that must rely their previously named "officers" are not in fact "officers," or that they were officers only in name but not in function, or that on any particular day there are no officers other than what the controllers retroactively assert, or that their named officers' acts have no consequence upon the entity (and persons with the control that authorized such "officers") – utterly destroys the meaning of the word "officer" and with that foundation of the legal entity to exist and re recongized apart from the control and whim of the controlling persons. For example, the United States Claims Court has held:

> On April 23, 1980, Mr. Powers had no authority to serve as contracting officer on plaintiff's contract. [18] See *Schoenbrod v. United States,* 410 F.2d 400, 404, 187 Ct. Cl. 627 (1969).
>
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>
> 18 ….Defendant's allusion to Mr. Powers' "implied authority" to serve as contracting officer is sheer sophistry…. ("contracting officer" means one who "by

> appointment in accordance with applicable regulations has the authority to enter into and administer contracts….
> ---
>
> Indeed, defendant seems tacitly to concede that Mr. Powers lacked actual authority, on April 23, 1980, to act as contracting officer on plaintiffs contract. It urges, rather, that "a retroactive delegation of authority," or a "ratification" of Mr. Powers' "assertion of authority," occurred, and that the termination for default should accordingly be upheld on one of these grounds. The notion is unsound.
>
> Contracting officers are authorized to act within the limits of the authority delegated to them, and are to be selected and designated as contracting officers before becoming eligible to act as such. 41 CFR §§ 1-1.402, 1-1.404 (1980). They are not to be designated retroactively, and after the fact. This is apparent from a fair reading of the applicable statute and procurement regulations pertaining to contracting officers, and it represents a fair and logical interpretation of the definition of "Contracting Officer" in plaintiff's contract. [19] The court cannot accept the government's retroactive delegation (or designation) argument.
> ---
> 19 Defendant's assertion that it knows nothing that "would prohibit a retroactive delegation of authority" turns the question on its head.
> ---
>
> Nor is defendant's ratification theory any more valid….Defendant cites no apposite authority for the proposition that ratification would be permissible here, nor has the court discovered any.

Timberland v. United States, 8 Cl. Ct. 653 (1985) (emphasis added). The above means not only does a person have to be an officer by documented delated authority prior to acting as an officer for any contract (the Applications are in effect contracts as well as additional legal certifications and acts), but someone cannot retroactively be made into an officer by the person with authority to delegate. The record of MCLM makes clear that MCLM does not exist as a legal entity since it has no officers that its owners and controllers, the Depriests, establish and stand by and that the Government including the FCC and other outside parties can rely upon. The DePriests' actual history asserts that MCLM can take, renounce, and amend, any action taken in its name. It is a sham puppet legal entity.

The US Court of Appeals for the Second Circuit discussed the meaning of "officers" in a legal entithy (emphasis added):

> …. *Colby v. Klune*, 178 F.2d 872 (2 Cir. 1949). In *Colby* we held that a corporate employee who did not hold the title of a corporate officer nevertheless could be an

> officer within the meaning of § 16(b) if he "perform[ed] important executive duties of such character that he would be likely, in discharging these duties, to obtain confidential information about the company's affairs that would aid him if he engaged in personal market transactions"….
>
> …. Here we must decide whether Crotty's title as a vice-president in and of itself brings him within the purview of § 16(b), whereas the issue in *Colby* was whether an employee's duties could bring him under § 16(b) even if he lacked a title as a corporate officer. We believe that the reasoning of *Colby* applies here. In *Colby* we held that "it is immaterial how [an employee's] functions are labelled or how defined in the by-laws, or that he does or does not act under the supervision of some other corporate representative". *Id.* In short, *Colby* established as the law of this Circuit that it is an employee's duties and responsibilities -- rather than his actual title -- that determine whether he is an officer within the purview of § 16(b). *See also SEC v. Aaron*, 605 F.2d 612, 616-17 (2 Cir. 1979), *vacated on other grounds*, 446 U.S. 680, 64 L. Ed. 2d 611, 100 S. Ct. 1945 (1980); *Ellerin v. Massachusetts Mutual Life Ins. Co.*, 270 F.2d 259, 265 (2 Cir. 1959); *Morales v. Holiday Inns, Inc.*, 366 F. Supp. 760, 762-63 (S.D.N.Y. 1973) (Gurfein, J.) (function rather than title controls under § 16(b)). … [11]

C.R.A Realty v. Crotty and United Artists Communications 878 F.2d 562; 1989 U.S. App. LEXIS 9231; Fed. Sec. L. Rep. (CCH) P94,483 (1989) (emphasis added). Likese, the DC Circuit Court found:

> …definition of an officer of a corporate violator as one responsibly connected with the corporate licensee….

Quinn v. Earl Butz, 510 F.2d 743 (1975) (emphasis added).

In the case of the Applications, John Reardon performed the "duties and responsibilies" of certifying and signing under oath to the FCC—"it is immaterial how [his]…functions are labelled or how defined in the by-laws," "it is [his] employee's duties and responsibilities—rather than his actual title—that deternies…he is an officer." If he certified and signed "as one responsibly connected with the corporate licensee," he necessarily had to do that as an officer, according to the above summarized legal authority.

However, Sandra Depriest, the alleged 100% owner and ulimately controller of MCLM

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[11] Similarly, the FCC noted in In the Matter of Amendment of Part 62, FCC 84-627 (1984) (emphasis added):

> Further, it is clear from the broad definition of "officer" as set forth in 47 C.F.R. § 62.2(a) that the requirement for § 212 authorization stems from the duties, and not the title, of the office

told the FCC under oath when questions exactly on this point, that John Reard was never and is not an officer of any kind in MCLM. Thus, the Applications are acts by someone who did not have the duty, responsibility and authority to certify and sign them, and they are thus defective, including under 47 USC Sections 308 and 309, 47 CFR Section 1.934, and the requirements of the Application forms and instructions for certification and signature.

The same holds for the contract between to the degree it was (as is the doucment shows) also based upon execution- signing by John Reardon. Since that contract is authorized, the Applications lack foundation since there is no legally binding assignment agreement by MCLM to SCRRA.

3. Defects of Applications Requiring Dismissal

Petitioners in this section point out some initial defects in the Applications. They also provide additional defects and facts and arguments as to why the Applications should be dismissed or denied in the other sections contained in the Petition.

a. The Applications are Unauthorized and Must be Summarily Dismissed

The Applications are unauthorized and must be summarily dismissed for three reasons. The reasons are summarily given in this Section but further provided in other sections and exhibits to this Petition.

1. The Applications were signed by John Reardon, but he is not an officer-- an authorized person to act for-- MCLM for two reasons noted below. Thus, the Applications are defective and must be summarily dismissed. See Exhibit 13 hereto regarding MCLM misuse of the word "officer" and related matters. In sum, MCLM is a Delaware domiciled legal entity. "Officer" used in corporate law including Delaware law, has a clearly established broad meaning as anyone delegated authority (from the ultimate controlling person or board, to a lower level) to act for and legally bind the legal entity. Sandra Depriest, who alleges to be the sole owner and controller of

MCLM, stated unequivocally that John Reardon has never been an officer in MCLM's responses in the "Enforcement Proceeding" and "Section 308 Proceeding" and "Section 309 Proceeding" (terms defined below in Reference and Incorporation section).[12] MCLM stated in its response in the Enforcement Proceeding at page 4: "John Reardon has never been an officer of Maritime."[13] This MCLM response was filed after the subject Applications. Thus, the Applications signed by John Reardon were not certified, signed and submitted by an "officer"- someone authorized to act for the legal entity MCLM.

2. In addition, the ownership disclosures are deliberately and demonstrably under FCC law, false. Sandra Depriest is only one of the co-controller of MCLM: her husband Donald Depriest is the other. This is demonstrated in the text included and referenced below. Since the ownership and control vests equally in Sandra and Donald Depriest (if not solely in Mr. Depriest), the Applications submitted are unauthorized and thus defective. There is no evidence anywhere of how the co-control is exercised in MCLM except (i) a series of contradictory statements by Sandra Depriest and Donald Depriest before the FCC and other governmental and court authorities, (ii) and even statements by each that they do not know what the other one is doing or knows about MCLM, and (iii) statements that they made a fundamental series of mistakes they cannot explain in their past acts of signing and filing government documents using the wrong dates and titles or they said do not mean what the titles mean in established law, in court testimony, in FCC sworn statements, etc., as to what their officer, director and other positions were, and (iv) use of signatures that have dramatically different script for the same person, and same script for different persons; and the like. Thus, since there is no identifiable control in MCLM,

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[12] However, keeping up with its habit of contradictory statements, MCLM has filed several applications and other documents with the FCC and received documents from the FCC listing Mr. Reardon as MCLM's President and/or Chief Executive Officer. See Exhibit 12 that contains documents, including FCC staff communications and applications, showing this (yellow text boxes have been added to help point out relevant information in the documents and can be quickly found visually when reviewing Exhibit 12).

[13] *Letter* from The Reverend Sandra DePriest to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 29, 2010 re: File No. EB-09-IH-1751.

MCLM cannot take any actions including authorizing any person to act for the entity (making someone an officer for all or some actions). In addition, as discussed below, per MCLM UCC filings, there are other unidentified controlling interest holders in MCLM and MCLM has undertaken unlawful transfers of control (pledging all of its assets, including all of its FCC license assets as collateral).

3. MCLM is a sham entity for reasons partly indicated in item 2 immediately above (and the section on that topic above), and further below, and cannot be recognized as an entity separate from the owners of its assets and liabilities. Thus, MCLM cannot take any legally valid action including in executing a contract with SRCC for purchase of the spectrum in the Assignment and co-submitting the Assignment before the FCC with SRCC or seeking to modify the License.

b. SRCC and its Agents Are Potentially Liable with MCLM for Violations of 18 United States Code

[This section was inadvertently placed here. It should be a stand-alone main section. Petitioners correct here by this comment in dark red.]

The fraud and other violations of law by the owners of MCLM assets are not merely violations of FCC law, but also of US criminal code, including 18 USC Sec. 1001, and extend to MCLM's attorney, and those who aid, abet, and benefit in these actions, including those in SCRRA whose actions are implicated. Applicable related code sections also make it a crime for officers and agent of the United States (and thus FCC staff) to participate in such fraud and violations. Applicable statutes include 18 USC Sections 1001, 2, 3, 4 and 18, set forth in Attachment A below. [14] State laws for similar purposes are also involved.

> 18 USC Section 1001. Statements or entries generally.
> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

[14] Other violations of law in the actions of MCLM, SCRRA and others that are apparent in the matters of and relating to the Applications but that are outside of FCC and US criminal law will be pursued in other forums with jurisdiction.

(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism ….

18 USC Section 1002. Possession of false papers to defraud United States.
Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined under this title or imprisoned not more than five years, or both

18 USC Section 2. Principals.
(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 USC Section 3. Accessory after the fact.
Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

18 USC Section 4. Misprision of felony.
Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

18 USC Section 1018. Official certificates or writings.
Whoever, being a *public officer* or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.

c. False and Incorrect Certifications Require Dismissal

The Applications contain false and incorrect certifications that require their dismissal. The Assignment answer to the Basic Qualification question at item 100 and the Modification answer to Basic Qualification question at item 49 are incorrect. MCLM's predecessor-in-interest, Mobex, had licenses terminated in the FCC's 2004 AMTS "audits" and more recently MCLM had its incumbent Chicago station revoked per *Memorandum Opinion and Order*, FCC 10-39, released March 16, 2010. Also, the assignor certification statement # 3 is incorrect on the Assignment and assignor certification statement #8 on the Modification are incorrect because, as shown in the WCB Proceeding (term is defined below in Reference and Incorporation section) and elsewhere, MCLM has failed to file Form 499-A and pay required regulatory fees for its AMTS CMRS incumbent stations (MCLM admits to operating its incumbent stations unlawfully as PMRS. Its AMTS licenses are CMRS and thus required filing of USF and other regulatory fees quarterly and annually). Thus, it is in default and delinquent on non-tax money owed to the FCC. MCLM owes vast amounts in regards to Universal Service Fund fees for its operation of AMTS CMRS stations nationwide for over a decade, where MCLM has admitted in the last year to having failed to submit full and accurate filings disclosing those commercial operations, on which fees must be paid annually, and to having operated unlawfully those stations as PMRS and not paying the required CMRS fees (MCLM's licenses are CMRS). MCLM has also, in FCC records, failed to submit required waiver applications for most of its AMTS licensed stations which waivers were clearly needed to be accepted as constructed and not auto-terminated when MCLM failed to meet the required continuity of coverage requirements, as described below. Each such waiver application, that was required, had to be paid for. MCLM also failed to timely pay sums due in Auction No. 61, and MCLM-Mobex failed to pay fees for large numbers of waiver applications for construction deadline extensions for site-based AMTS licenses nationwide.

Further, as shown herein, since MCLM did not qualify for any bidding credit, even assuming that this was not disqualifying (which it is), the MCLM is delinquent on paying Auction No.

61 sums to the FCC. In addition, the Modification's certification statement at 5 is false since MCLM does not have a current and accurate Form 602 on file with the FCC. MCLM's Form 602 fails to list Donald DePriest, who is clearly a controlling interest under FCC rules per the facts presented herein and MCLM's own admissions to the FCC.

d. Unjust Enrichment

Per Petitioners' facts herein and in the pending Section 309 proceeding in Auction No. 61, MCLM did not qualify for any bidding credit in Auction No. 61 when attributing its affiliates' gross revenues. Even if one ignores the facts and that the FCC's rules, including Section 1.2105, require disqualification of MCLM for any change in bidder size and bidding credit level, the Assignment cannot be granted, apart from all of the other reasons given herein for its dismissal or denial, until the correct unjust enrichment amount is determined and paid. However, notably, MCLM has still not, after almost 5 years, fully disclosed all of its affiliates and their gross revenues on its Auction No. 61 application as required by FCC rules (stating or listing affiliates and gross revenues in pleadings or in confidentially filed documents does not meet the requirements of the FCC's rules and the FCC has not waived those rules and MCLM has not asked for them to be waived). All affiliates and gross revenues are required to be listed publicly on the Forms 175 and 601. MCLM has failed to do so. Instead, it has confidentially filed gross revenue information for its affiliates with the FCC (see its response to the Enforcement Bureau in which it refuses to provide this information to Petitioners—e.g. for MCT Corp. and others). That is not permitted and the FCC should not allow it any longer or it risks harming Petitioners even more (Petitioners cannot employ their full petition rights under Section 309 if publicly required information is not disclosed to them by the FCC and MCLM). Petitioners have already been prejudiced by MCLM's actions and the FCC's inaction to require accurate and public disclosure of all of MCLM's affiliates and gross revenues on its Forms 175 and 601. More importantly, it is impossible for Petitioners or the public to effectively petition the Applications without this informa-

tion that is supposed to be made public. Without this information, Petitioners cannot determine per the MCLM auction application if MCLM qualified for any bidding credit at all (although per Petitioners' facts it is obvious that MCLM did not qualify for any) and thus effectively petition the Applications, including, but not limited to, whether or not the correct unjust enrichment payment will be made for the Assignment if granted. Also, it means that the FCC cannot effectively determine this amount either (the FCC cannot keep this information private, so any calculation made on such privately kept information is defective). Therefore, the Assignment cannot be granted until this information is publicly released and Petitioners have time to supplement the Petition (which the FCC must accept since the FCC should have granted Petitioners' motion to extend the pleading cycle to allow Petitioners' to obtain this information and timely present it in the Petition, rather than to have to file a supplement).

4. Laundering, SCRRA Knowledge of Facts & Related

The Applications are another attempt by MCLM to launder its License and the existing incumbent license KAE889, both of which are defective for reasons given herein (if the Assignment is finalized then the contract between SCRRA and MCLM calls for the KAE889 stations in the partitioned area of the License to be turned back in, thereby attempting to hide the defects of KAE889). The License is clearly defective per Petitioners' facts and arguments in the "Section 309 Proceeding" (term is defined below in Reference and Incorporation section) and the incumbent license, KAE889, is also defective per Petitioners' facts and arguments in the "Site-Based Proceedings" and "Related Proceedings" (terms are defined below in Reference and Incorporation section). This is not the first time that MCLM, including its predecessor-in-interest, has attempted to launder defective FCC licenses.

MCLM and SCRRA should not be able to launder the License of its defects shown in the Section 309 Proceeding or MCLM to gain benefit from the License in light of the clear evidence

of fraud and misrepresentations in the Section 309 Proceeding that require its disqualification and revocation of the License. SCRRA should not be supporting MCLM in its laundering efforts for the License and KAE889, especially considering that SCRRA has to have done substantial due diligence and be familiar with the facts in the Section 309 Proceeding, the Section 308 Proceeding and the current Enforcement Bureau investigation. Thus, the Applications should be dismissed or at minimum held in abeyance until the Section 309 Proceeding is finalized by the FCC or court.

This is also not the first time that counsel for SCRRA, Robert Gurss, has been involved in matters regarding AMTS licenses. In fact, Petitioners note here that prior to AMTS Auction No. 57, Mr. Gurss, made a filing before the FCC on behalf of his client Mobex Communications, Inc. stating how encumbered the Pacific Coast was by Mobex's 49 stations, and that Auction No. 57 should be postponed so that potential bidders could more fully understand the level of encumbrance.[15] However, it was shown by the AMTS 2004 "audits" shortly thereafter that most of those Mobex incumbent stations that Mr. Gurss wanted potential auction applicants and the public to be able to take notice of were in fact never constructed even though Mobex had told the FCC they were constructed and had renewed them.[16]

It is impossible to believe that SCRRA is not aware of the pending Section 308 and 309 Proceedings and other pending proceedings against the MCLM Licenses described herein (the facts under investigation in the Section 308 proceeding stem from the Section 309 proceeding) including since since it is in contract with MCLM and must have various representations, war-

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[15] See *Comments of Mobex Communications, Inc.* filed by Mobex Communications, Inc. on April 23, 2004 regarding DA 04-954 at footnote 3.

[16] Also, prior to the first AMTS auction, the FCC asked for comments on what should be done with AMTS. Certain of Petitioners filed comments suggesting that it be set-aside or reserved for public safety and critical infrastructure entities and needs. Mr. Gurss, on behalf of his client at the time, opposed that suggestion. The FCC ultimately proceeded to auction that spectrum. However, now public safety and critical infrastructure entities, like SCRRA, seek to obtain AMTS for exactly the type of purposes that Petitioners initially suggested AMTS be reserved for and that Mr. Gurss opposed as counsel.

ranties, and information that directly or indirectly provide information sought in said proceeding. Selling and buying "hot bikes" (stolen goods) is not a legitimate trade or business, as MCLM is engaging in and SCRRA and its counselors seek to profit from: Petitioners have submitted hundreds of pages of documentary evidence to the FCC of this (principally in their challenge to MCLM in Auction 61): it is a sound analogy.

As Petitioners also noted in their comments in that Section 308 Proceeding, they have court cases pending against MCLM and Mobex Network Services LLC ("Mobex")-- (MCLM's predecessor in interest that made millions of dollars in gross revenues, per its statements to the USFA- *but not an affiliate MCLM admitted to in Auction 61, even to this day*)-- and "Does One to One Hundred." Those Does include parties conspiring with MCLM to launder AMTS spectrum to which Petitioners have a rightful claim. That includes SCRRA who must be aware of the false and criminal claims of MCLM to said AMTS spectrum since any due diligence by SCRRA for the License would have included review of the pending Auction No. 61 Proceedings and Petitioners' petitions and appeals in those and other proceedings against MCLM and the License, all of which are publicly available on ULS and noted in various FCC Orders. For various reasons, including since the FCC hardly ever holds any hearings under Section 309 of the Communications Act even where the evidence in a Section 309(d) petition to deny clearly warrants it, and since the Act provides savings clauses for anti-trust and tort actions, as well as private rights of action under Sections 206, 207, and 401(b) Petitioners sued MCLM, Mobex, and Does, and that is relevant to the FCC since the facts to be obtained in discovery and certain decisions sought must be considered by the FCC in licensing actions, including as to the subject Applications.[17]

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[17] MCLM argued to the courts that it cannot be touched in the court as to any fraud, tort, anti-trust violation, contract interference, etc. since only the FCC may deal with issues that touch

While before the courts (see preceding footnote), MCLM asserts it cannot be held in any way accountable, and that only the FCC can hold any hearing as to anything dealing with a FCC license or licensee, before the FCC, the *sine qua non* of MCLM is to not only to evade even basic required disclosures, but to provide conflicting and false information to get, warehouse and sell off spectrum and in the mean time block and damage lawful competition. SCRRA seeks to buy into and benefit from that—and to hurry it up.[18]

For these and other reasons explained in this Petition, the FCC should add SCRRA to the Section 308 Proceeding and Enforcement Proceeding and request any and all information it has regarding MCLM and any agreements it has with MCLM, including who negotiated the sale for MCLM and what it was told about the roles of Donald DePriest, John Reardon and others in MCLM.

5. MCLM and SCRRA Contract:
Impermissible Lease of Incumbent License, KAE889 & Other Related

The contract between MCLM and SCRRA at Section 8.4 and Schedule 2.1 show as an encumbrance on the License a lease that MCLM has with Eagle Communications, Inc. for the incumbent license, call sign KAE889. However, ULS has no record of a lease between MCLM and Eagle Communications, Inc. This lease had to have been reported to the FCC. Therefore, MCLM is impermissibly leasing is AMTS KAE889 license, and who knows what other AMTS licenses, without submitting the required application to the FCC. Without filing the required application, there is no way for the FCC to know whether or not Eagle Communications, Inc. has

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upon a FCC license or licensee. That sort of entire or filed preemption is not what Congress meant under Section 332 of the Communications Act.

[18] As Sandra Depriest suggested to the FCC upon Petitioners' initial comments on her and her husband's responses to the Section 308 letters: hurry up before the Petitioners find and present more evidence against them, and also excuse their admitted violations and further lack of disclosures, contradictions, and nonsensical explanations as to when a "manager" is not really manager, and an "officer" is not really an officer, and so forth. They got away with that for a few decades.

control of the KAE889 license or not and whether or not Eagle Communications, Inc. was an affiliate of MCLM's that had to be disclosed in Auction No. 61 (the auction in which the License was acquired). Although not directly related to the Applications, this evidence further supports Petitioners' facts and arguments that MCLM does not abide by FCC rules and processes, violates fundamental rules and required disclosures, and ultimately does not have the character and fitness to be a Commission licensee.

In addition, MCLM, who has always claimed (along with its predecessor-in-interest, Mobex) to be operating KAE889 along the entire Pacific Coast for over the last 15 years and providing critical maritime and land mobile service to numerous end users, for which it also requested increased interference protection in the AMTS rulemaking because of the need to maintain its alleged continuity of service, has not explained in the Applications, and particularly the Assignment, how it proposes to relocate or notify those end users of the termination of its services, including to those marine vessels that it allegedly serves that depend on its continuity of service along the entire Pacific Coast to maintain radio communications (Los Angeles is one of the largest and principal ports and marine traffic areas along the Pacific Coast). This could be, as Petitioners have always shown with facts, that MCLM has never actually provided any real maritime or other service with its KAE889 license and that MCLM, along with Mobex, has warehoused the spectrum in order to keep away competition (including at auction for the License).

MCLM cannot turn back in KAE889 stations until Petitioners' challenges are finalized with respect to those incumbent stations. Petitioners have shown that those are bogus incumbent stations and have already terminated for failure to meet the requirements of Section 80.475(a) and for permanent discontinuance by operating them for years unlawfully as PMRS as evidenced by the "WCB Proceeding" (term defined below in Reference and Incorporation section) and MCLM's failure to file and pay regulatory fees associated with Form 499-A (their AMTS is CMRS and had to be operated as CMRS in order to meet the requirements for being AMTS and

keeping the licenses, otherwise they should have turned in their AMTS licenses—an FCC license is not authority to provide whatever service, including outside of the FCC's rules, that a licensee wishes to provide to make profit or to attempt to avoid regulatory payments.).

6. The Waiver Requests Fail to Meet Requirements of Section 1.925:
The Applications with Waivers are Rulemaking in Disguise,
And if Taken as Waivers, Fail the Threshold
and Other Purposes and Requirements of Part 80 and Part 1 Rules

A number of SCRRA's waiver requests of technical matters will affect adjacent and co-channel licensees. As elsewhere mentioned herein, not only did SCRRA reject any communications with us to solve or mitigate differences, but it had an obligation to do so under these rules that require VSL's and ENL's consent. SCRRA cannot use a waiver request to avoid wholesale the fundamental reason for the rule to seek and attempt to get consent.

This is further demonstrated in Section 80.70(a) that requires the same-channel public coast, including AMTS, licensees to minimize interference between themselves and even to consider a time-sharing arrangement when their stations are separated by less than 241 Km. That rule then states that the Commission may order an agreement if the licensees do not voluntarily agree. That Section 80.70 rule is the overarching fundamental rule on public coast station interference matters, and cooperation among licensees. It could not be more clear that both SCRRA and MCLM wholesale reject the spirit and letter of that rule including in the matter of this Application. SRCCA not only make no attempt to comply with the purpose of this rule by contacting Petitioners (who have AMTS adjacent- channel spectrum in the core area involved, and have co-channel spectrum in the border areas), but SCCCA rejected the attempts by Petitioners to discuss matters of cooperation of any sort.

That is the pattern of all licensing applications by MCLM. MCLM establishes this clearly by refusing to follow the FCC lawful declaratory ruling orders (issued by Scot Stone of the FCC in years 2009 and 2010 to MCLM) with regard to Rule Section 80.385(b) that requires

MCLM to provide to Petitioners, as co-channel geographic licenses, the actual technical parameters of MCLMs site-based (alleged valid and operating) stations. MCLM repeatedly refused the written request Petitioners gave to MCLM for this core purpose of Congress and the FCC in moving from site-based to auctioned geographic licensing: without MCLM compliance with this rule and these two FCC Declaratory Ruling Orders, MCLM is not entitled to any licensing action, what to speak of selling any spectrum to an entity seeking waivers of the MCLM spectrum.

When looking at the SCRRA waivers and that they want to use half of the whole band on receive for much higher height and power and that they don't want to do maritime, it is clear that SCRRA is reinventing the entire AMTS service. SCRRA is effectively seeking changes appropriate for a rulemaking. Waivers should not be granted to entirely change the intent and purpose of AMTS. SCRRA could have participated in the AMTS rulemaking, but did not and cannot show why it did not participate earlier. SCRRA can now submit a request for rulemaking to the FCC if it wants to change the AMTS rules. It is apparent from the Waivers that SCRRA has no interest in providing maritime service since it is seeking waivers of all maritime rules for a narrow railroad application.

SCRRA's attempt to reinvent the AMTS service is against a core spectrum policy of Congress and the FCC for more spectrum efficiency and cooperation among radio services in the same bands in particular regions. Among other places this was articulated in the Spectrum Task Force report headed by Dr. Paul Kolodzy, which Petitioners supported in various comments. To further demonstrate this, the SCCRA "Metrolink" system only requires radio coverage along their rail corridors and not along the remaining vast areas of Southern California in this partitioned license application. That limited coverage cannot possibly support the wholesale conversion of this radio service, with rules developed over several decades, into a new service for SCCRA's very limited, proprietary, non-standards based technology and corridor applications.

Further, as shown in information publicly available on PTC (see, e.g., reports presented to the Federal Railroad Administration:), it is not clear that PTC as currently planned is cost justified, or that the public should foot the bill as SCRRA and other public agencies argue to Federal Railroad Administration.

The Applications do not demonstrate the cost-benefits of PTC to the public in any way, and do not commence to show a compelling public interest case for PTC, let along PTC build upon the break-up of the AMTS radio service for its intended critical purposes in an critical part of the nation.

The Assignment and Waivers demonstrate a seriously wasteful approach to spectrum utilization, cooperation with affected licensees, and consideration of several decades of FCC rule development. Each rule SCRRA is seeking to waive was justified by the FCC once or several times in long proceedings. SCRRA has made no attempt here to demonstrate why the rationale behind the rules they seek to waive should not be applied in this case.

The Waivers with respect to Section 80.123 should not be granted. Section 80.123(b) regarding providing priority to maritime and Section 80.123(g) protection to maritime should not be waived. FCC has already determined that cannot be waived and stated that in the AMTS rulemaking in PR Docket 92-257, in responding to inquiries by Petitioners and in its most recent *Report and Order* allowing AMTS to provide PLMR service.[19] There is no reason that this priority to maritime should be deleted for the railroads and the railroads fail to make a good showing why it should be waived including in one of the largest port areas of the U.S. By signing their contract, MCLM has given up any of its obligations to meet those requirements.

Because they have not met the waiver standards and their waiver requests are at odds with previous FCC determinations on applications that requested waivers of the same rules, the waiv-

[19] *Report and Order*, FCC 07-87, released May 10, 2007. *22 FCC Rcd 8971, 72 FR 31192*. (See e.g. Section B. starting at paragraph 13)

ers must be denied. Since the application is dependent upon grant of the waivers, therefore the Application must be denied for that reason alone.

The FCC has rejected several times waiver requests asking for waiver to allow a licensee to operate base station equipment certified under Part 90 including by Petitioners. It should do the same here.

Regarding waivers of Section 80.123(e) and Section 80.215(h)(5)(i): SCRRA cannot assert that a railroad on flat land that should be using spectrum efficient radio systems should not be well under the power limits specified in Section 80.123(e). Likewise, for the same reason the requirements of Section 80.215(h)(5)(i) should not be waived. SCRRA is proposing to utilize a less spectrum efficient system in a major metropolitan market, when it should be more spectrum efficient.

Regarding waiver of Section 80.385(a)(2), Petitioners' reference and incorporate here all of their arguments from their pleadings in the following pending proceeding (lead filing listed here only, but Petitioners reference and incorporate all of their filings including their Reply and subsequent supplement filed December 16, 2009): *Petition to Deny* filed by Environmentel LLC et al. on April 8, 2009 re: File No. 0003767487. (the "BREC Proceeding").

Petitioners are attaching here as support Attachment B that contains a copy of their supplement in the BREC Proceeding which contains an engineering analysis by Dr. Douglas Reudink showing that an increase in adjacent or co-channel power levels would be harmful. For the same reasons given in the BREC Proceeding that are applicable to the Waivers, the Waivers should be denied.

Petitioners point out here that in 2007 the FCC already decided in the AMTS rulemaking against allowing any increase in AMTS power limits because it would result in interference to "co- or *adjacent* channel services" … "and *adjacent* channel interference." In addition to applying to base station transmitters, the FCC's decision also applies to ship transmitters (mobile

units). There is no reason for the FCC to conclude otherwise at this time. See, *In the Matter of MARITEL, INC. and MOBEX NETWORK SERVICES, LLC; Petitions for Rule Making to Amend the Commission's Rules to Provide Additional Flexibility for AMTS and VHF Public Coast Station Licensees*, WT Docket No. 04-257; RM-10743, *REPORT AND ORDER***,** FCC 07-87, *22 FCC Rcd 8971*; 2007 FCC LEXIS 3765, May 9, 2007 Released; Adopted May 10, 2007 (Underlining added) that reads:

> * * * * *
> 24. Havens additionally requests clarification that, under Section 80.215(h) of the Rules, n106 [*8986] "if, for a particular station, a licensee may use the stated 1000 watts ERP [effective radiated power] under the conditions stated that allow for it, then the licensee may achieve this 1000 watts ERP by any combination of power into the antenna and antenna gain." n107 As we understand Havens' request, he seeks a clarification that would in effect allow AMTS licensees to operate without limitation as to transmitter power, as measured at the input terminals to the station antenna, provided that the ERP does not exceed the one thousand watt maximum specified in Section 80.215(h)(1). n108 However, such operation could in fact violate Section 80.215(h)(5) of the Rules, n109 which limits AMTS transmitter power, as measured at the input terminals to the antenna, to fifty watts or less. n110 We therefore decline to provide the requested clarification.
>
> n110 See Warren C. Havens, Order, 18 FCC Rcd 26509 (2003) (Havens Forbearance Petition Order) (denying Havens' petition for forbearance from the power limit in Section 80.215(h)(5)). Havens filed a petition for reconsideration of the Havens Forbearance Petition Order on January 20, 2004. As our discussion supra underscores, we remain unpersuaded that AMTS licensees should be relieved of the Section 80.215(h)(5) transmitter power limit, whether through forbearance, "clarification," or otherwise. In particular, we find nothing in the petition for reconsideration of the Havens Forbearance Petition Order that would undermine the Commission's conclusion that Havens' petition for forbearance contained "no engineering information establishing that [the Commission] could forbear from applying the power limitation in section 80.215(h)(5) without it resulting in interference to other AMTS stations, or to other co- or adjacent channel services." See Havens Forbearance Petition Order, 18 FCC Rcd at 26510 P 4. We continue to believe that the fifty watt transmitter power limit in Section 80.215(h) is essential to protect AMTS and other stations from such co-channel and adjacent channel interference, notwithstanding the independent one thousand watt ERP limit in Section 80.215(h)(1). We therefore deny Havens' petition for reconsideration of the Havens Forbearance Petition Order.

The undersigned is the "Havens" referenced above. He had particular purposes in asking the above (for particular planned stations and equipment being sought) but it was denied. The

FCC should not grant to MCLM and SCRRA relief denied to Havens.

SCRRA wants to transmit adjacent to our receive channels at higher power (Petitioners note here that they have previously shown the FCC in filings that the Paging Systems, Inc. stations have auto-terminated for failure to meet the requirements of Section 80.475(a) and the spectrum automatically reverted to VSL without specific Commission action. Petitioners will be filing a motion soon to recognize that auto-termination.) The same reasons for denying grant of the BREC Proceeding waivers apply in this proceeding.

Regarding the requested waiver of Section 80.475(c), SCRRA is starting from a premise that it will get waiver of the maritime priority and other maritime requirements of the AMTS rules, and that is not in the public interest nor has SCRRA come close to demonstrating waiver standards for that starting premise. Therefore, SCRRA should not be granted a waiver of this rule section. Section 80.475(c) is appropriate because SCRRA should be required to follow the rules and provide priority to maritime and provide services in emergency and distress situations to maritime.

Regarding waiver of Section 80.479(c), it should not be granted. VSL will be an affected licensee under Section 80.479(c) for several reasons: (1) under SCRRA's proposal they will use their receive spectrum for transmit adjacent to VSL's receive spectrum with regard to base stations and the same with regard to VSL's mobile stations. As Petitioners have elsewhere explained herein that will cause adjacent channel interference, particularly where Petitioners are planning spectrum efficient systems with relatively lower power and higher orders of modulation where SCRRA is seeking higher power than the current rules allow and to use that adjacent to VSL's base and mobile receive. (2) SCRRA says it is going to comply with the border signal strength, however, they cannot do that if the are going to use the base station receive frequencies to transmit since the rules do not contemplate that and no reading of the rules would allow at the geographic border base station receive frequencies to be used at power levels anywhere close to

the base station transmit frequencies. This is relevant to Petitioners including to ENL that has a contract with Tom Kurian for the A-block mountain spectrum on SCRRA's eastern border. ENL has shown to the FCC that it consummated that transaction and that matter is on appeal. In addition, Petitioners have a court case pending against MCLM for, among other things, interfering with ENL's contract to purchase the A-block Mountain license to the east of the subject Application. [20]/[21] Both VSL, for being in the same geographic area as SCRRA with its B-block license, and ENL for holding the B block mountain license and having rights under contract to the A block mountain license, which has been consummated under law, are adversely affected by any grant of waiver Section 80.479(a). (3) VSL and ENL have no intent to grant permission, therefore, waiver of this rule section needs to be denied.

7. Section 20.9(b) Certifications

The Modification Application and SCRRA Section 20.9(b) certification should be dismissed or denied for the reasons given herein including that the License should be revoked and MCLM disqualified as a Commission licensee. Also, both should be denied based on MCLM's own petitions to deny against certain of Petitioners' Section 20.9(b) modification applications,

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[20] See Complaint in *Skybridge Spectrum Foundation, et al. v. Mobex Network Services LLC, et al.,* Case No: 08-CV-03094-KSH-PS, in the US District Court for the District of New Jersey. The case is pending, on hold waiting for disposition of another case to be submitted in the next five weeks to the US Supreme Court: *Havens v. Mobex*. Copy of initial filing in the Supreme Court is attached to the "Assignment Recon" (term is defined below in the Reference and Incorporation section). *This is useful to illustrate the problems caused by the FCC failure to enforce its own rules: this breeds unlawful actions by Mobex, MCLM and the like both before the FCC to get and squat on spectrum unlawfully, and then to use that in the market unlawfully—and in both cases, to outrageously assert that neither the FCC nor the courts nor harmed competitors have any business exposing and remedying its unlawful acts.* When legal authorities abandon and subvert the law, this is the entirely predictable result. Petitioners also not here that they have pending Petitions for Declaratory Rulings filed at the FCC that are related to this New Jersey Court case and their California Court case on appeal to the Supreme Court (Petitioners' Petition for Certiorari is due soon). Copies of these Petitions for Declaratory Rulings can be obtained from ULS under File No. 0002303355—they were filed on October 20, 2009 along with exhibits in two parts.

[21] In addition, Spectrum Bridge aided MCLM in interfering with the contract with Mr. Kurian, including by publishing that they were selling that mountain A-block license.

otherwise, MCLM is effectively admitting that its challenges to Petitioners' Section 20.9(b) applications are frivolous and solely intended to delay and harm certain of Petitioners.[22] MCLM's petition has been pending for almost a year now and delayed grant of certain of Petitioners' Section 20.9(b) applications. It is insincere for MCLM to continue to petition Petitioners' Section 20.9(b) applications while it also submits Section 20.9(b) applications, but fails to apply its arguments to its own applications. At footnote 2 of the MCLM petition to deny, MCLM argues:

> Rule 80.385(a) defines AMTS as "an integrated and interconnected maritime communications system," 47 C.F.R. 80.385(a). While a person might rebut the presumption of CMRS status by demonstrating the absence of any one of the three CMRS elements, see, 47 C.F.R. 20.1(a), Rule Section 80.385(a) does not allow Verde not to be interconnected.

It is immensely ironic that MCLM cites to Section 80.385(a) and that it does not permit a license to not be interconnected when MCLM, as shown herein, has not been operating its own AMTS incumbent stations as CMRS for years, rather it has been operating them as PMRS without ever obtaining FCC permission to do so (see e.g. the "WCB Proceeding", defined below in the Reference and Incorporation Section). The FCC should revoke MCLM's incumbent AMTS licenses based on Section 80.385(a) and other applicable FCC Rules, and based on MCLM's own statements that show a clear understanding of the FCC's rule requirements for their licenses to be interconnected. This is relevant to the instant proceeding because it further shows that MCLM lacks candor, that it knowingly violates FCC Rules and that it lacks the character and fitness to be a Commission licensee. It also shows that it will say or file anything in order to harm Petitioners, limit competition and keep licenses that have been permanently discontinued.

8. Reference and Incorporation

Petitioners hereby reference and incorporate all the facts and arguments in their filings in the following proceedings (the "Related Proceedings") rather than reiterate them here again (only

[22] Petition to Deny filed by Maritime Communications/Land Mobile LLC on July 31, 2009 regarding File Nos. 0003875412 and 0003875418.

the lead filing is listed for each below for convenience, but Petitioners hereby reference and incorporate all filings they have made in the Related Proceedings) and also the MCLM, Wireless Properties of Virginia, Inc. and Maritel Inc. responses in the Section 308 Proceeding and Enforcement Proceeding noted below (the "MCLM and Affiliates Responses"). It is more efficient for the parties to the instant proceeding if Petitioners reference and incorporate their filings in the below proceedings since then the parties do not have to restructure or read and review and comment differently on facts and arguments that are already in filings before the FCC. (NOTE: the mixed alpha and numeric labeling system below was used in past filings and is maintained here for consistency, given that the same parties and FCC staff are involved.)

(a) Supplement to Petition for Reconsideration Based on New Facts filed by Intelligent Transportation & Monitoring Wireless LLC et al., dated March 9, 2010 and filed March 10, 2010 under File No. 0002303355 on ULS. ("Supplement to New Recon")—*and all Petitioners' filings on this File No. after that date* (the "Additional Filings")

(b) Letter and its attachments from Warren Havens to the Enforcement Bureau filed on March 13, 2010 under File No. 000230355 on ULS (the "EB Letter")

(c) Enforcement Bureau Letters of Investigation re: File No. EB-09-IH-1751 dated February 26, 2010 and addressed to MCLM, Sandra DePriest, Donald DePRiest, Maritel, and Wireless Properties of Virginia, Inc. (the "Enforcement Proceeding")

(d) Warren Havens email to FCC Commissioners re: the MCLM Opposition for Motion for Extension of Time to Reply dated March 16, 2010 (the "Commissioners Email"). To be filed on ULS under File No. 0002303355.

(e) Warren Havens email to FCC Wireless Telecommunications Bureau and Enforcement Bureau staff in charge of the Section 308 investigation and Enforcement Bureau investigation of MCLM dated April 14, 2010 that contains 3 Motions to the FCC (the "3 Motions Email"). Filed on ULS under File No. 0002303355.

(f) *Petition for Reconsideration or in the Alternative Section 1.41 Request*, filed by Environmentel LLC et al. on March 19, 2010 re: leases to Pinnacle Wireless and Evergreen School District, File Nos. 0003909446 and 0004014426. Errata Copy. (the "Leases Recon")

(g) *Petition for Reconsideration Based on New Facts*, filed by Environmentel LLC et al. on April 15, 2010 re: *Memorandum Opinion and Order*, FCC 10-39, released March 16, 2010, and various FCC-license applications involving MCLM (the "Assignment Recon")

(h) *Petition for Reconsideration, or in the Alternative Section 1.41 Request*, filed by Environmentel LLC et al. on April 23, 2010 re: an MCLM lease to Pinnacle Wireless, File No. 0004136453, and Call Sign WQGF315 (the "Pinnacle Recon")

(1) See Letters dated 8/18/09 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Maritime Communications/Land Mobile LLC and Dennis Brown, MariTel, Inc. and Russell Fox, and Donald DePriest and Wireless Properties of Virginia, Inc. re: File Nos. 0002303355, 0003463998, et al. (the "3 Letters" or the "Section 308 Proceeding").

(2) *Petition for Reconsideration Based on New Facts*, filed by Environmentel LLC et al. on 9/14/09 re: File No. 0002303355, DA 07-1196. (the "New Recon")

(3) *Application for Review*, filed 4/9/07, filed by Petitioners, except for Telesaurus Holdings GB LLC (THL), regarding *Order on Reconsideration*, DA 07-1196 and File No. 0002303355 in Auction No. 61 (Errata version filed). (the "61 ApRev"). See also the recent supplement filed in this proceeding by Petitioners (THL and the rest of Petitioners filed separate supplements, however, THL's supplement only references and incorporates the others supplement). (the "Supplement")

(4) *Petition for Reconsideration*, filed 4/9/07, by Telesaurus Holdings GB LLC regarding *Order on Reconsideration*, DA 07-1196 and File No. 0002303355 in Auction No. 61 (the "61 Recon").

((2), (3) and (4) together, the "Auction No. 61 Proceedings" or the "Section 309 Proceeding")

(5) Application for Review, filed 11/19/07, by Petitioners regarding *Order on Reconsideration*, DA 07-4345, and assignment of authorization application File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759, 0002633764, 0002633769, 0002635143 (assignment from Maritel, Inc. and its subsidiaries (together "Maritel") to Motorola) (the "Assignment ApRev")

(6) *Petition to Deny and Petition for Reconsideration*, submitted by Telesaurus VPC LLC et al. (Petitioners) on 7/18/08, re: transfer of control applications, File Nos. 0003463998, 0003470447, 0003470497, 0003470527, 0003470576, 0003470583, 0003470593, 0003470602, 0003470608, 0003470613 (the "Transfers Proceeding")

(7) *Petition to Deny,* submitted by Telesaurus VPC LLC et al. (Petitioenrs) on 8/27/08, re: *de facto* transfer lease applications, File Nos. 0003516654, 0003516656, 0003534598, 0003534602, 0003534763, 0003534766, 0003534767, 0003534768, 0003535087 (the "Leases Proceeding")

((5), (6) and (7) together the "Maritel Proceedings")

(8) Reply Comments, Request to Deny Petition for Reconsideration and Request for Sanctions, filed by Telesaurus VPC LLC et al on 1/29/09 in WC Docket No. 06-122 and under File No. 0002303355, regarding a petition for reconsideration filed by MCLM of a Wireline Competition Bureau Order.

(9) Reply Comments and Request to Deny Petition for Reconsideration, filed by Skybridge Spectrum Foundation on 1/29/09 in WC Docket No. 06-122 and under File No. 0002303355, regarding a petition for reconsideration filed by MCLM of a Wireline Competition Bureau Order.

(10) Notice to Supplement or File New Petitions for Reconsideration Based on New Facts, filed by Petitioners on 9/25/08 under File No. 000230355 et al.

((8), (9) and (10) together, the "WCB Proceedings")

(11) Application for Review: "In the Matter of Mobex Network Services, LLC to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Station in Various Locations in the United States; To Transfer Control of AMTS Licenses; To Assign AMTS Licenses", filed by Petitioners, except THL, re: Order on Reconsideration, DA 07-148, re: File Nos. 0001370847, 0001370848, 0001370850, 0001600664, 0001768691, 0001885281, 0002197542

(12) Petition for Reconsideration: "In the Matter of Mobex Network Services, LLC to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Station in Various Locations in the United States; To Transfer Control of AMTS Licenses; To Assign AMTS Licenses" filed by THL re: Order on Reconsideration, DA 07-148, re: File Nos. 0001370847, 0001370848, 0001370850, 0001600664, 0001768691, 0001885281, 0002197542

(13) Application for Review: "In the Matter of Renewal Applications of Mobex Network Services, LLC for Automated Maritime Telecommunications Systems", of Order on Reconsideration, DA 05-2492, re: File Nos. 0001082495-0001082548

(14) Petition for Reconsideration: "In the Matter of Renewal Applications of Mobex Network Services, LLC for Automated Maritime Telecommunications Systems" of Order on Reconsideration, DA 05-2492, re: File Nos. 0001082495-0001082548

(15) Application for Review: "In the Matter of Mobex Network Services, LLC Applications to Modify AMTS Licenses" of *Order*, DA 07-294, re: File Nos. 0001438800, 0001439011

(16) Petition for Reconsideration: "In the Matter of Mobex Network Services, LLC Applications for Renewal of AMTS Licenses; Application to Modify AMTS License of *Order*, DA 07-294, re: File Nos. 0002363519, 0002363520, 0002363521, 0001438800

((11) thru (16) together, the "Site-Based Proceedings")

((a)-(h) and (1) thru (16) together, the "Related Proceedings")

First, Petitioners intend to file additional new facts and information that they have discovered regarding MCLM, including per the MCLM and Affiliates Responses,[23] in the Section 308

[23] Petitioners received heavily redacted MCLM and Affiliates Responses to the Enforcement Proceeding. Warren Havens sent an email to Mr. Scot Stone, Mr. Jeffrey Tobias, and Mr. Brian Carter on 4/13/10 asking that Petitioners be provided complete, unredacted copies of the MCLM and Affiliates Responses to the Enforcement Proceeding. Petitioners did not get a response to that request. They therefore filed a FOIA request asking for all records filed in the MCLM and Affiliates Responses, FOIA Control No. 2010-379. Petitioners are prejudiced until they get a complete copy of those MCLM and Affiliates Responses to the Section 308 Proceeding and Enforcement Proceeding, so they are filing what they can at this time (as explained herein the FCC also denied Petitioners' request to extend the pleading cycle in the subject proceeding based in part on receiving complete MCLM and Affiliates Responses via their FOIA request. However, Petitioners reserve the right to supplement their Petition in the subject proceeding with any addi-

Proceeding and Section 309 Proceeding and Enforcement Proceeding. Those additional new facts include further evidence of MCLM rule violations, deliberate misrepresentations, lack of candor and fraud and should be considered in the instant proceeding and are hereby referenced and incorporated without further filing by Petitioners in the instant proceeding.

In addition, the MCLM and Affiliates Responses in the Section 308 Proceeding include admissions by MCLM that it failed to disclose over 20 additional affiliates and their revenues including that it failed to list millions in additional attributable gross revenues (at least what MCLM alleges at this time, however, Petitioners have shown that there is much more attributable gross revenue, and in any case, the FCC can no longer rely on MCLM's representations and should proceed to request tax returns and accounting from each of the affiliates and the IRS—that is if the FCC does not find there is already sufficient information to disqualify MCLM as a licensee) and that Mr. DePriest has been listed on the Communications Investments, Inc. (the controlling entity in MCLM) State of Mississippi annual corporate reports as its Director from 2005-present, meaning that Donald DePriest has had control of MCLM since it began (all of those annual reports were filed and signed under oath and certified as truthful, including by Sandra DePriest—see Mississippi business records for Communications Investments, Inc. at https://business.sos.state.ms.us/corp/soskb/csearch.asp). Further, MCLM admits in its 9/30/09 response to the Section 308 Proceeding (the "MCLM Response") that Mr. DePriest is a director of MCT Corp., but then fails to list MCT Corp. as an affiliate and provide its gross revenues and in the MCLM and Affiliates Responses to the Enforcement Proceeding MCLM did not provide gross revenue information to Petitioners (Petitioners showed in the Section 309 Proceeding that MCT Corp. was an affiliate, which MCLM now admits, and that it had tens of millions in revenues).

Also, the MCLM Response provides an "Incumbency Certificate for Maritime Communi-

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tional new facts they may discover once they obtain a complete copy of the MCLM and Affiliates Responses to both the Section 308 Proceeding and Enforcement Proceeding.

cations/Land Mobile, LLC".[24] This documents shows that MCLM has pledged all of its assets, which include primarily, if not entirely, its AMTS licenses, in return for a $4 million credit facility and that apparently there are promissory notes and loan agreements related to this credit facility. However, FCC licenses cannot be used as collateral for a loan and by doing so and pledging all assets to support the loan makes Pinnacle National Bank a controlling interests holder in the AMTS licenses and an affiliate of MCLM under FCC rules, which means there was an unlawful transfer of control (it was never reported to the FCC). Also, MCLM failed to provide any of the agreements with Pinnacle National Bank to the FCC in the Auction No. 61 Proceedings or the Section 308 Proceeding and did not provide a copy to Petitioners in the Enforcement Proceeding. Further, the Donald DePriest and Wireless Properties of Virginia, Inc. ("WPV") 9/30/09 response in the Section 308 Proceeding asserts that Mr. DePriest was reduced to less than majority control and ownership in Maritel in the 2003-2004 timeframe, yet Mr. DePriest never filed a transfer of control application with the FCC as would have been required if that were true. Contrary to this, the Maritel response in the Section 308 Proceeding asserts that Mr. DePriest still did control Maritel. The FCC must resolve this conflict; however, if Mr. DePriest and WPV's position is true, then it means that Mr. DePriest never filed the required transfer of control application with the FCC for several years (lacked candor, hid and misrepresented facts) and that the actions of Maritel from that point forward are not effective since the actual ownership and control were not known by the FCC.

These Related Proceedings are relevant to the instant proceeding for the obvious reasons discussed in each and include, but are not limited to, the clear facts and arguments that MCLM

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[24] That certificate states:

> "(1) a $4,000,000.00 non-revolving credit facility from Pinnacle National Bank to the LLC; and (2) the execution of all documents required by Pinnacle National Bank to evidence, secure and document said credit facility, including without limitation, a promissory note, security agreements pledging all the assets of the LLC to secure said credit facility, a loan agreement, and all other documents required by Lender in connection with said credit facility."

and Donald DePriest ("DePriest"), its co-controller (and actual controller as shown by Petitioners' in the Auction No. 61 Proceedings including by control of Communications Investments, Inc. per State of Mississippi records and per his role as Manager and Director of MCLM as shown in court cases involving Mr. DePriest and MCLM—see e.g. New Recon at Sections 4, 5 and 6, pages 18-31, and Exhibits A-D hereto) committed unauthorized transfers of control in MCLM and its AMTS licenses, and lack the required character and fitness to be Commission licensees, including, but not limited to, that they have lacked candor, made deliberate misrepresentations, false certifications and statements, failed to disclose affiliates, failed to disclose gross revenues for affiliates, failed to disclose ownership and control of affiliates and FCC regulated entities, failed to disclose all directors and officers (see e.g. New Recon facts and discussion regarding Mr. DePriest and Ms. Belinda Hudson, and Exhibits A-D hereto) sought a bidding credit MCLM was not entitled to receive, failed to disclose bidding agreements and other contractual relationships, etc. in the Auction No. 61 proceedings regarding MCLM's participation in Auction No. 61 and its application (both Form 175 and Form 601). The New Recon also shows that MCLM's site-based AMTS licenses automatically terminated for failure to meet the requirements of Section 80.475(a) in effect at the time of the construction deadline for those licenses and that MCLM, and its predecessor-in-interest Mobex, has never turned those back in for cancellation as required by FCC rules (see e.g. New Recon at Section 4 and Section 10 and pages 20, 22 and 37-38).

The Supplement, noted above, is yet another example of DePriest's failure to be truthful in FCC proceedings. It reveals among other things that DePriest has always misrepresented in the Auction No. 61 proceeding that he never controlled Maritel, which has been shown to be false in the Maritel Proceedings in which DePriest admits he does control Maritel.

The Auction No. 61 Proceedings, the Section 308 Proceeding, the Enforcement Proceeding, the Maritel Proceedings and the new facts shown here reveal MCLM misrepresentations of

facts and lack of candor about its control, ownership, officers, directors, affiliates and their gross revenues that are relevant to the instant proceeding. It is now overwhelmingly obvious that MCLM should have been disqualified from Auction No. 61 and that it should not hold any of its AMTS licenses because it deliberately failed to accurately disclose its ownership and control and to list all of its affiliates, and it lacks the required character and fitness. More importantly, MCLM's failure to disclose Mr. DePriest as a controller and owner makes the Applications defective due to an unlawful transfer of control in MCLM.

The newly revealed facts given in the WCB Proceedings are relevant to the instant proceeding because MCLM's misrepresentation of facts and lack of candor in Auction No. 61, in the AMTS service in general and the proceeding against the MCLM 601 are relevant to this proceeding because they further show that MCLM does not have the character and fitness to be a Commission licensee and that its AMTS licenses were operated as PMRS and thus did not meet the requirements for AMTS and thus for keeping the licenses. The WCB Proceedings reveal that MCLM has been misrepresenting that it is operating CMRS AMTS site-based stations (which must be operated as CMRS unless a waiver was granted, and it was not to MCLM or its predecessor Mobex) since MCLM itself argues that it and its predecessor-in-interest , Mobex, did and does not provide CMRS service but only PMRS service and thus should be entitled to a refund of its predecessors-in-interest's, Mobex and Watercom, USF fees including during a period of time, 2005-2006, when MCLM clearly had ownership of the Mobex licenses. However, at no point did MCLM tell the FCC during the subject years of the WCB Proceeding that it was operating as a PMRS provider (providing service to a very restricted group of users) with its CMRS AMTS licenses, and at no point did MCLM turn back in its AMTS site-based licenses for cancellation for failure to operate them as CMRS, which means it permanently discontinued its AMTS service and operated an illegal, unauthorized service.

The facts in the WCB Proceedings clearly show fraud (or sustained repeated gross negli-

gence at the very least that must be taken as fraud, as shown in case law) by MCLM in order to obtain a bidding credit it was not entitled to receive and to avoid Commission rules and disqualification from Auction No. 61 and to avoid cancellation of its site-based AMTS for failure to operate them as CMRS. Further, the Related Proceedings show that MCLM failed to disclose its controlling interests and ownership and therefore the assignment of authorization of the licenses from Mobex to MCLM was therefore defective, including for KAE889 which is part of the SCRRA and MCLM contract, and must now be rescinded and thus MCLM does not actually hold KAE889 and should not hold the License. MCLM had to lists its actual ownership and control in the Applications, but it did not.

As the Supplement noted, an NRTC Update (Exhibit 7 to Supplement) states at pages 4 and 5:

> In addition, through an agreement NRTC has negotiated with MCLM LLC of Jeffersonville, IN, members also could configure systems on the adjacent 217-220 MHz band.
>
> Just before the end of 2006, the Federal Communications Commission (FCC) granted MCLM regional licenses in the 217-220 MHz band for all parts of the United States except the Mountain region.[25] (The company is continuing efforts to obtain a license for that region.) Earlier this month, the FCC issued call letters for those frequencies, clearing the way for NRTC offer access to members.
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> "This gives us a ton of channels for Tait deployment," said Todd Ellis, NRTC's manager, Wireless Systems. "We're ready to move forward with channel leasing for this new spectrum, and have a member lease prepared. Average use fees will be $50 per channel per site per month, with better pricing for more channels and longer leasing terms."

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[25] That is a deliberately false and actionable statement by NRTC to engage in unfair competition in AMTS license based business. It is clear in FCC records which licenses were granted to MCLM in Auction 61 and which were not. MCLM was not granted not only the Mountain AMTS license in Auction 61, but also the Northeast, Southeast, Northwest, Hawaii, or Alaska AMTS licenses. Just as NRTC is hiding the truth here, it conspired with NRTC to hide the truth of its affiliation with MCLM in Auction 61. Further, its "continuing efforts" noted above is by actionable tortuous interference with one of Petitioners' contract to acquire that license from Thomas Kurian which in fact was Closed and reported as consummated to the FCC. The FCC has unlawfully rejected, to date, said consummation.

As noted in Related Proceedings, MCLM and NRTC: (1) first disclosed a bidding agreement in their Form 175; (2) then denied an agreement (see e.g. MCLM's "Response to Section 1.41 Request" filed 8/22/05 and the attached 8/18/05 Jack Harvey Declaration—see e.g. page 2, point 7 of the declaration where Mr. Harvey states, "…the Proposed MOU was never executed by either NRTC or MCLM."); (3) then subsequently contradicted this denial and acknowledged a signed agreement, thus making Mr. Harvey's declaration false and perjury, (see e.g. MCLM Opposition to Petition to Deny filed 11/18/05 at footnote 2: "NRTC and MC/LM entered into a memorandum of understanding for the possible lease of spectrum use to NRTC, an arrangement of vendor and vendee….The memorandum of understanding expired by its own terms without a final agreement during the course of the auction…." [an agreement cannot expire if it is not a signed agreement; otherwise it never existed in the first place]); (4) then at the Form 601 stage denied an agreement, did not disclose any on its Form 601 and did not more fully describe the allegedly terminated prior existing agreement as required by Section 1.2107; (5) per the NRTC Update, NRTC is declaring and marketing under an agreement with MCLM to use its AMTS channels; (6) and per the purchase agreement between MCLM and BREC, NRTC is noted as an "Encumbrance" in the contract.

It is not credible under any reasonable standard (for a petition to deny under 47 USC §309 standards for prima facie evidence sufficient to call into question the accuracy of Applicant essential statements, and of grant in the public interest) that MCLM had an agreement with NRTC that it knew was disclosable on the Form 175 and did in fact disclose, then later didn't have an agreement at all, and then did have an agreement, then didn't have an agreement, and then finally had an agreement once the auction licenses were granted: the critical threshold stage was the Form 175: and the noted Agreement with NRTC, *that is in fact now being played out*, was then disclosed. From all the evidence, it must be concluded—*at minimum for purposes of a hearing under 47 USC §309(d) and (e)*-- that MCLM and NRTC have always had an agreement

and that they merely denied its existence (did not disclose and describe it) on the Form 601, contrary to prior statements in the Form 175 and pleadings, to avoid further scrutiny of the agreement by the FCC and Petitioners and to avoid attribution of NRTC's gross revenues and thus disqualification from any bidding credit at all, and from the entire action since any change in designated entity "size" (discount level) causes disqualification under clear FCC rules and Orders. Again, at minimum, this type of *prima facie* evidence along with that already presented in this proceeding requires a fact finding hearing. As noted above, MCLM does have an agreement with NRTC shown the Related Proceedings. However, it appears that MCLM and NRTC have not notified the FCC of this agreement or provided a copy of it to their application for Auction No. 61 or supplied it via any other method to the FCC: it is thus presented here.

These facts regarding MCLM and NRTC are evidence of violation of FCC rules, lack of candor, and lack of character and fitness by MCLM. It is important that the FCC consider the entire history of MCLM before it when deciding on the Applications because there is obviously a pattern of contradictory statements and lack of candor that becomes apparent.

9. "New" Relevant Facts[26]

With respect to the relevant, new facts presented herein, it was Mobex and MCLM who had an obligation under Sections 1.17, 1.65, 1.2105, 1.2110, 1.2111, 1.2112 and other rules to provide them to the FCC, not Petitioners, thus it is appropriate that the FCC accept this petition to consider the new facts. Many of the new facts were only recently discovered or obtained by Petitioners, and many additional new facts, as noted below, will be obtained once the FCC provides MCLM's and its affiliates' complete responses to the EB's investigation letters. Clearly,

[26] These facts are not new to the instant proceeding, but since they are recently discovered and new to several of the referenced and incorporated proceedings, Petitioners will refer to them herein as new facts. Many of the new facts in this Petition, as stated above, are being provided via reference and incorporation of Petitioners' pleadings in other proceedings that are already before the FCC. As discussed above, that is the most efficient method for providing those new facts for all parties to the instant proceeding. In addition to the discussion above, Petitioners provide here a list and brief discussion and summary of the new facts.

consideration of the new facts is in the public interest and will create a more complete and accurate record. Also, the new facts are *prima facie* evidence of decisional significance and if the FCC had known them at the time of making its decisions, then it may have decided differently. Further, the FCC can at any time consider and address new facts on its own authority. It should do so here.

The facts regarding unlawful transfers of control and failure to disclose Donald DePriest as a controller and owner of MCLM, as well as other persons, are clearly relevant to the instant proceeding since control and ownership are fundamental licensee matters under FCC and cannot be restricted to one proceeding. It would be incorrect per FCC rules, including Sections 1.2111 and 1.2112, for the FCC to restrict facts dealing with these type of issues to the Auction No. 61 proceeding, when licensee control and ownership issues are relevant to all license-related applications filed with the FCC, including assignments, renewals and modifications. At all times, for any application the FCC must know who actually controls and owns a licensee.

In addition, evidence of fraud is not time barred and should always be considered. *See e.g. Butterfield v. FCC*, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956) ("Butterfield"). Petitioners may raise the noted new facts in this Petition for the reasons given in *Butterfield v. FCC*.[27] Also see:

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[27] Where DC Circuit Court held:

> ….In these circumstances nothing in the language of sections 310(b) and 405 deprived the Commission of power to receive the new evidence and to reconsider or redecide the case….
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> Delay in seeking reopening of the record is a factor to be weighed in the exercise of the Commission's discretion. Here, however, it was excusable. The only reason the appellants' effort to reopen was not made earlier in the proceedings was that the new events which occasioned it were kept secret by WJR for several months. Such a circumstance would have called for reopening the record even under the dissenting opinion in Enterprise. That opinion pointed out that 'there was no concealment', because the successful applicant had disclosed the option agreement a few days before the argument of the petition for rehearing. Our dissenting brother added, however, that 'had it withheld the information until after the (denial of the petition for rehearing) notwithstanding the execution of the agreement (earlier), a very different situation might well be said to have arisen. That is this case.

(i) *Re Beacon Broadcasting Corporation,* FCC FCC96-66 (adopted 2/21/96): reconsideration is appropriate where petitioner shows either material error or omission in original order, or raises additional facts not known or not existing until after petitioner's last opportunity to present such matters, and (ii) *Re Armond J. Rolle* (1971) 31 FCC2d 533: proceedings will be remanded and reopened by newly discovered evidence relied on by petitioner that could not with due diligence have been known at time of hearing, and if proven true, is substantially likely to affect outcome of proceeding. These also apply in to the instant case.

Regarding the information obtained under the below-noted FOIA requests to the FCC, FOIA Control No. 2007-177 and FOIA Control No. 2007-178, this was information that the FCC knew and had at all times and should have made public when issuing its decisions. However, the FCC did not do so, but instead made decisions contrary to these FOIA-obtained facts from its records. This is further support of Petitioners' arguments of FCC prejudice. Therefore, Petitioners should not be prevented from presenting the new facts from the two FOIA requests now since the FCC had the responsibility to make decisions in its orders based on its actual record and rules. When its own records, obtained through FOIA, show that the findings in its orders (which argued as if the FCC had determined that the Mobex incumbent AMTS licenses had met the requirements of Section 80.475(a), or that the coverage and continuity of service requirements of Section 80.475(a) had been lawfully removed per the APA, when in actuality neither had been done) are not based on the FCC's record and rules, but apparently created for the sole purpose of disposing of a petition, then Petitioners must be able to present those facts as evidence of preju-

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> …. Moreover, appellants should be readmitted to the contest, even if that would serve to prolong it. The new evidence here goes to the foundation of the Commission's decision, so that refusal to reopen the record deprives appellants of their rights as competing applicants….
>
> …. The Commission will conduct further hearings on the question of differences between WJR's original and modified proposals and will reconsider its grant to WJR in the light of the differences thus disclosed

Butterfield v. FCC, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956). *Underlining added. Footnotes deleted*

dice and to support their petition and its arguments. Otherwise, a government agency could merely use bald assertions of fact to deny a petition without ever having to worry about being confronted with the actual facts obtained via FOIA. A list of certain of the new facts, in addition to those listed above, follows:

New Facts 1. MCLM does not exist as a legal entity under corporate law. This is shown clearly in the subject Sections 309 and 308 proceedings (re MCLM Auction 61 long form): MCLM is a sham entity based on assertion and admissions to date (see the MCLM and Affiliates Responses to the Section 308 Proceeding, Enforcement Proceeding and their filings in the Section 309 Proceeding) by persons alleging to be owners and controllers of MCLM, including Sandra and Donald DePriest, there is under law no valid MCLM entity. Regarding persons named or acting as officers of MCLM and acting in its behalf, the DePriests label, remove labels, change meanings, contradict themselves, and so forth-- there is in fact no formal legal entity, but the DePriests use MCLM as a puppet sham entity for their personal false claims and actions before State agencies, the FCC, competitors, third-parties in contract, etc. This is effectively a change in control because the only controlling parties that can be considered under law are the individuals and not the sham corporate entity.

It is now clear that this the core issue in these all proceedings involving MCLM. Petitioners will pursue this issue in court-- either in existing or new litigation against these persons and this sham entity. It is a matter of state corporate law, torts and antitrust law. The substantive law and determination is not under FCC jurisdiction. Of course, the FCC itself can pursue these matters (corporate-shell sham and related) in court, including under 47 USC Sec. 401.

In relation to said court action, Petitioners may at an appropriate early point, request that the FCC hold in abeyance the instant proceeding because the determination by the Court could be decisive on issues in this proceeding including false applications in the name of a sham entity, false statements of control, etc.

New Facts 2. Mobex used all of its FCC AMTS licenses as collateral (see Exhibit 5 hereto and the New Recon and the Supplement to New Recon and its Exhibit 5 that contains copies of UCC filings by Mobex in which it uses its licenses, all proceed therefrom and all of its assets as collateral), which besides being unlawful, means there was an unauthorized transfer of control since using the licenses as collateral encumbered them and meant the creditor/secured party had the power to control and to obtain Mobex's AMTS licenses if Mobex defaulted or did not meet the conditions for the loan(s) it took. Mobex never disclosed this unlawful transfer of control to the FCC or in its assignment application to MCLM and MCLM never disclosed this fact too. Thus, the subject assignment application from Mobex to MCLM was defective for failure to accurately disclose control in the subject licenses and that means there is no KAE889 license, wich is listed as an encumbrance in the SCRRA and MCLM contract.[28] In the MCLM Opposition[29] to Petitioners' Supplement to New Recon, MCLM, using the same legal counsel as Mobex, admits that Mobex used its incumbent AMTS license assets as collateral when it states at page 3:

> Havens correctly observed that Mobex Network Services, LLC pledged its station licenses as collateral, see page 3 of Havens' Response-prelim. Havens neglected to note, however, that those security interests have terminated, as has Mobex, itself. While Mobex arguably should not have pledged its licenses, the action was harmless and there is nothing to be gained by taking any action concerning that matter. This issue is moot: Mobex sold its licenses, paid its debts, and was dissolved years ago.

MCLM and its counsel apparently believe that if a licensee is not caught in time or does not admit to taking an unlawful action, then it may get away with it. That is incorrect. The FCC can still take appropriate action against Mobex's unlawful use of the licenses and unlawful transfer of control by revoking the incumbent licenses as it did in the Kay Order proceeding and sanctioning the individuals who operated Mobex at the time per its Form 602 on file then. MCLM's response however does show its disregard for FCC rules. Combined with the fact that MCLM

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[28] The FCC has revoked licenses of FCC-licensed entities for unlawful transfer of control. E.g. *Memorandum Opinion & Order*, FCC 10-55, released April 12, 2010 (the "Kay Order").

[29] See *Opposition* by MCLM, March 29, 2010 re: DA 07-1196 and File No. 0002303355.

never admitted this evidence to the FCC (it has the same legal counsel and Mr. Reardon was President of Mobex), this is further support that MCLM lacks candor and the character and fitness to be a Commission licensee.

New Facts 3. This disregard for FCC rules and law not surprisingly appears to have carried over from Mobex to MCLM (as noted above, MCLM has the same legal counsel as Mobex and hired John Reardon, who was the President of Mobex). MCLM has also unlawfully used its AMTS licenses as collateral (see e.g. Exhibit 5 hereto and also Exhibit 5 of the Supplement to New Recon) and therefore also affected an unlawful transfer of control for which it should have its licenses revoked as in the Kay Order proceeding. In 2005 MCLM provided as collateral all of its assets, including the contract rights it had to the subject Mobex licenses that were assigned per the subject assignement application, to Pinnacle National Bank in exchange for a loan/credit facility.

Also, "Schedule 4.5(d) Encumbrances" to the purchase agreement in the BREC Proceeding also lists Pinnacle Bank, N.A., Nashville, TN and Section 6.4 indicates that Pinnacle Bank has some sort of encumbrance or lien against the MCLM licenses that will be taken care of by MCLM at closing (also see above discussion of this). Since the MCLM and BREC purchase agreement also deals with the purchase of MCLM licenses, it can only be assumed, as stated above, that MCLM has used its licenses and possibly all of its FCC licenses, as collateral for a loan.

These new facts are directly relevant to the subject proceeding and control in MCLM and the License. As stated above, MCLM pledged all of its assets, which include its AMTS licenses (and the License), in return for a $4 million credit facility (that money was then used towards Auction No. 61—so, MCLM unlawfully used AMTS licenses to obtain funds to bid and purchase licenses in Auction No. 61). That UCC has not been terminated and thus means that all of MCLM's licenses, including the License, continue to be collateral for that loan. Exhibit 5

hereto and Exhibit 5 to the Supplement to New Recon also contains other UCC filings by MCLM that state the collateral as, "All of Debtor's assets, wherever located, and whether now owned or hereafter acquired, including all proceeds of same." This necessarily includes all of its FCC licenses since they are clearly part of "All of Debtor's assets" and "now owned or hereafter acquired" (i.e. incumbent licenses, geographic licenses and any licenses to be obtained). As stated above, FCC licenses cannot be used as collateral for a loan and by doing so and pledging all assets and proceeds to support the loan makes Pinnacle National Bank and the other creditors controlling interest holders in the License (and all of MCLM's FCC licenses) and MCLM and also affiliates of MCLM under FCC rules. Therefore, there was an unlawful transfer of control: never reported to and approved by the FCC. As noted above, MCLM has not provided to Petitioners copies of any of the agreements between it and Pinnacle National Bank or the other creditors. In the MCLM Opposition to the Supplement to New Recon at page 3, MCLM states,

> MCLM has not expressly pledged its licenses as collateral. MCLM recognizes that it should have been more detailed in its statement of the collateral but no harm has come from the phrasing of the collateral.

This statement lacks candor. (See the section below on Dennis Brown's history). MCLM's UCC filings are clear that all of MCLM's assets are collateral. By the above, MCLM does not state that its licenses *are not* being used as collateral—or that those holding it *are not affiliates*-- just that they are not "expressly" listed on the UCC filing. One can assume from the UCCs that "All of Debtor's Assets" means all of MCLM's licenses are included. Since MCLM can not clearly come out and state that its licenses are not being used as collateral, and since Petitioners have shown that they are, it must be assumed that MCLM's FCC licenses are backing debt and as such the creditors do have control over MCLM and its FCC licenses, are affiliates, and that MCLM has violated fundamental FCC rules on disclosures, approval, candor, truthfulness, DE bidder qualifications, etc.

New Facts 4. In addition to what is stated above, MCLM failed to disclose its actual control and ownership including that Donald DePriest is an owner and controller of MCLM (see e.g. the Section 309 Proceeding, the New Recon's facts from MS and TN court cases, and Exhibits A-D hereto) represents another unlawful transfer of control (thus making the subject assignment application of licenses from Mobex to MCLM defective). Since the Applications are clearly defective for having failed to list Donald DePriest as a controller and owner in MCLM, as well as other persons (e.g. Belinda Hudson, various creditors, etc.) and since MCLM failed to report the above-noted unlawful transfers of control, then they must be dismissed and the License and all other MCLM licenses revoked from MCLM. Since, as the MCLM Opposition to the Supplement to New Recon at page 3 noted, "Mobex sold its licenses, paid its debts, and was dissolved years ago", the MCLM AMTS incumbent licenses should just be canceled including because there is no entity into which the licenses need be returned (and even if Mobex still existed, the licenses should still be canceled because Mobex got paid for them already and for all the other reasons given herein) and the spectrum allowed to revert to the geographic licenses.

New Facts 5. The Related Proceedings show that MCLM failed to disclose numerous other controlling parties and officers including Belinda Hudson, John Reardon, and others (see e.g. the New Recon and its documentation including Mississippi and Tennessee court case documents (see e.g. Exhibits A-D hereto) involving Mr. DePriest and MCLM that show Mr. DePriest is the Manager and Director of MCLM, Belinda Hudson is the Treasurer; the 3 Motions Email, Exhibit 1 to the Supplement to New Recon, and Exhibit 12 hereto that show Mr. Reardon is President and Chief Executive Officer). This is further evidence requiring disqualification of MCLM and dismissal of the Applications.

New Facts 6. These involve the New Recon, Supplement to New Recon (and the Supplement to New Recon's Exhibit 1)[30] and the WCB Poceeding, as well as other referenced and incorporated proceedings, contain facts (mainly admissions by Mobex and MCLM) that show Mobex and MCLM have unlawfully operated their AMTS stations as PMRS and that their stations have not been interconnected. AMTS is CMRS and it is required to be interconnected. Mobex's and MCLM's AMTS licenses were not authorized for PMRS. By operating their AMTS licenses as PMRS for several years, Mobex and MCLM have not been offering AMTS service and thus their incumbent licenses must be deemed permanently discontinued. In addition, this means that Mobex and MCLM have been operating illegally (outside of their authorization) and the FCC should take appropriate sanctions.

New Facts 7. Likewise, the facts in the proceedings noted in (6) above, show that Mobex and MCLM have failed to pay regulatory and other fees associated with reporting their license operations on Form 499-A since they have illegally operated their AMTS licenses as PMRS and not filed Forms 499-A reporting all of their operations and gross revenues. Therefore, Mobex and MCLM are in default on debt owed to the FCC.

New Facts 8. All of the Related Proceedings show ample evidence that MCLM and Mobex have made repeated and willful misrepresentations, contradictory statements, and lacked candor before the FCC. It is not in the public interest to grant the Applications to a party that behaves in such a way. Under its *Character Policy Statement*, the FCC should find that MCLM (and Mobex) lack the character and fitness to be Commission licensees.[31]

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[30] The Supplement to New Recon's Exhibit 1 contains 19 pages that SSF obtained under FOIA request. The FCC made certain redactions to the information, however, some of the redacted information was still legible and shows that Mobex (and now MCLM) has not had interconnect and has not been charging USF fees as required of CMRS entities for several years. SSF is appealing the FCC's response and asking for an unredacted copy of the 19 pages as well as other documents that were withheld.

[31] See e.g. (1) *Applications of PCS 2000, L.P.*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703 (1997) at ¶ 47. (2) *See also* 47 C.F.R. § 1.17. (3) *See, e.g., Radio Carrollton*,

New Facts 9. The FCC's *Memorandum Opinion and Order*, FCC 10-39, released March 16, 2010, finding of permanent discontinuance of the MCLM Chicago station shows that both Mobex and MCLM maintained and renewed a licensed station that had ceased to operate, yet they never turned the station license back in for cancellation, but instead kept using it to block out competition for the Great Lakes A-block licenses in both AMTS auctions (Chicago is the principle Great Lakes market), and illegally operated a fill-in station. In addition, since the Chicago station has been terminated, then that means there is a break in the continuity of service for the MCLM Great Lakes license and therefore it must be terminated and cannot be assigned or renewed (see new fact below that shows the coverage and continuity of service requirements of Section 80.475(a) were never properly deleted by the Commission under the APA and thus remain effective). This is additional support that MCLM lacks candor (its representations cannot be relied upon) and is not qualified to be a Commission licensee, which is relevant to the Applications.

New Facts 10. Both the Wireless Telecommunications Bureau ("WTB") and Enforcement Bureau ("EB") have commenced investigations of MCLM and its affiliates based on the new and old facts presented by Petitioners and those investigations are ongoing and MCLM and its affiliates have provided additional information and responses in those investigations showing rule violations, misrepresentations and lack of candor. These two investigations are proof that Petitioners facts and arguments have merit and that they must be considered here including with respect to unlawful transfers of control and lack of character and fitness to be a Commission licensee.

New Facts 11. The following new facts support Petitioners arguments regarding FCC prejudice and failure to enforce its rules. They also show that MCLM has failed to follow fun-

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Memorandum Opinion and Order, 69 F.C.C.2d 1139 (1978) at ¶¶ 11,17; (4) *Sea Island*, 60 F.C.C.2d at 157; (5) *RKO General, Inc.*, Decision, 78 F.C.C.2d 1 (1980), *aff'd*, 670 F.2d 215 (D.C. Cir. 1981)

damental FCC rules, failed to provide to Petitioners its actual AMTS incumbent license station operating parameters, which suggests that it is warehousing spectrum, and failed to turn back in auto-terminated licenses for cancellation. Had Havens and other Petitioners known these facts at the time of Auction No. 57 they would have raised additional funds and bid for the A-block spectrum too, or would have done so in Auction No. 61. MCLM, along with Mobex, obviously kept its bogus AMTS incumbent stations to block out competition at Auction No. 61 in order to obtain the License at a lower cost than it otherwise would have had to bid had it been a lawful, qualified bidder in the first place. All of this is relevant to the Applications and supports the Petition's arguments that MCLM lacks candor and does not have the character and fitness to be a Commission licensee.

In 2007, ITL submitted a FOIA request, FOIA Control No. 2007-177, to the FCC asking for all records and documentation of any engineering studies the FCC had conducted to determine if AMTS incumbent licensees had met the requirements of Section 80.475(a) in construction and operation.[32] The FCC responded to the FOIA 2007-177 in a letter.[33] The Letter reveals

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[32] In part, ITL stated in its request:

> All records in written (paper or electronic form) that pertain to: (1) all FCC "engineering" (defined below [*]) that was used to consider or determine coverage and other technical requirements stated in FCC Rule Section 80.475(a) in the form of said rule set forth below and any predecessor or successor form of said rule that applies to site-based AMTS (the "Rule"), for any license application or license matter (any original, renewal, amendment, assignment or other licensing application, or any challenge or complaint regarding any such application or any granted license, or any other licensing related matter) …
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> [*] "Engineering" definition: (1) any determination of any sort by any means--including by use of manual or computer aided mathematical calculations, and including by use of computer generated depictions or descriptions of estimated radio-signal propagation contours or levels-employed to consider or determine "continuity of coverage" "proposing to serve" "technical characteristics," "proposing to locate," "engineering study" or any other matter of a technical nature in the "Rule" defined above.

[33] See *Letter* from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Intelligent Transportation and Warren Havens dated April 3, 2007, regarding FOIA Control No. 2007-177 (the "Letter").

that the Bureau never conducted any engineering studies to determine if Mobex (or now MCLM) had met the coverage and continuity of service requirements of Section 80.475(a) sufficient for renewal of the subject licenses at the time of submission of the renewal applications for its licenses and all prior renewal applications for its licenses.[34] Apparently, the Bureau must have relied on the representations of Mobex (and previously Regionet or Fred Daniels) that they were meeting the coverage and continuity of service requirements of Section 80.475(a). The FCC has recently reiterated that Section 80.475(a) was in effect at the time of the construction deadline for AMTS incumbent licenses and that continuity of service had to be met by them in their operations (until, as the FCC argues, Section 80.475(a) was changed, which it was not as discussed below). See the Letter of April 8, 2009 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunicaitons Bureau to Dennis Brown, counsel for Maritime Communications/Land Mobile LLC, DA 09-793, *24 FCC Rcd 4135*, at footnote 7 (the "MCLM Ruling").[35]

The MCLM Ruling also stated that meeting of the continuity and coverage requirements of Section 80.475(a) had to be per the actual station operating parameters as constructed, not on theoretical station parameters in applications. This is entirely reasonable and consistent with

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[34] Numerous FCC Orders are clear that Section 80.475(a) required continuity of service and overlapping coverage and could not be licensed for single-site stations see for example: (1) *First Report and Order*, FCC 91-18, Gen Docket No. 88-372, RM-5712, released January 25, 1991, 68 RR 2d 1046, 6 FCC Rcd 437, 1991 FCC LEXIS 368 (the "Nationwide Order"); (2) *Order on Reconsideration*, DA 99-211, Released January 21, 1999, *14 FCC Rcd 1050*, regarding Fred Daniel d/b/a Orion Telecom (Orion) applications seeking AMTS spectrum at various inland locations; and (3) *Memorandum Opinion and Order*, DA 98-1368, released July 9, 1998, *13 FCC Rcd 17474* (the "Great Lakes Order").

[35] It states (underlining added):

> It is our understanding that MC/LM is concerned that, unless Section 80.385(b) is interpreted as requested, there exists the potential for a geographic AMTS licensee to interpose a station between two of the incumbent's stations. The Commission has concluded, however, that such a scenario will not occur if <u>the incumbent licensee constructed its system in compliance with the then-existing requirement to maintain continuity of service, *see* 47 C.F.R. § 80.475(a) (1999)</u>. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391, 22401 ¶¶ 23-24 (2003).

other FCC radio services and is clearly in the public interest since licenses are meant to provide actual service to the public and not theoretical service.[36]

However, MCLM, Mobex and Watercom have never provided to the FCC (nor to Petitioners, after their written demands) their actual station operating parameters as of their AMTS incumbent station licenses' construction deadlines and they have never shown with radio engineering studies using their actual station operating technical parameters at the time of construction that they met the requirements of Section 80.475(a) for their licenses (and they have never provided such a real-life showing using a 38 dBu service contour as the rules currently specify or any other service contour that would provide actual service). The FCC could not assume what the actual station operating parameters were as of the original construction deadline for each of the Mobex/MCLM AMTS incumbent station licenses.[37]

Thus, the FCC simply had no basis whatsoever for determining that the subject licenses had met the requirements of Section 80.475(a) and that any renewal applications for those licenses were acceptable for grant and that the licenses had not already automatically terminated without specific Commission action for failure to meet coverage and continuity of service. The Bureau never confirmed in renewing the Mobex/MCLM licenses that they had fulfilled this most fundamental FCC rule for obtaining and maintaining an AMTS license, Section 80.475(a)—the *sine qua non* rule of AMTS. This also means that the FCC had no sound basis for denying Peti-

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[36] The MCLM Ruling stated (underling added):

> …AMTS geographic licensee's obligation to provide co-channel interference protection to an incumbent site-based station to be <u>based on the site-based station's actual operating parameters</u>….When it adopted those rules, <u>the Commission expressly stated that the 38 dBu contours of incumbent licensees were to be calculated on the basis of actual operating parameters, rather than maximum permissible operating parameters</u>….Commission noted that <u>providing protection</u> to incumbents <u>based on their theoretical maximum</u> operating facilities, <u>rather than on their actual operating facilities</u>, would be <u>spectrally inefficient and disserve the public interest</u>.

[37] The FCC's 2004 "audits" did not request any information on the Licenses, although the FCC could have requested actual station parameters for those stations too.

tioners' petitions and appeals in proceedings against those licenses since it already had sufficient information in its own internal records to show that renewal of the subject licenses was not in the public interest, or at minimum further information on the stations' actual operating parameters and engineering studies were still needed. Thus, all of the FCC's Orders up to this point in those proceedings are defective and must be overturned. Further, Mobex/MCLM had ample time to provide documentation of actual station parameters along with engineering showings of coverage and continuity of service, but they never have (They have at most only provided theoretical studies using a non-FCC accepted radio service contour based on their license application parameters, but not actual construction parameters [e.g. actual antenna type, azimuth and tilt, transmitter type, power level, height, cabling, etc.—all that would be needed to determine an actual service contour], which is what is required since those show real, actual service that is the purpose and intent of the AMTS radio service).

The MCLM Ruling stated that actual station operating parameters must be provided to the geographic licensees, which includes Petitioners; however, after several requests over several years, MCLM and Mobex have both refused to provide such details to Petitioners. This can only mean that they do not have record of what, if anything was constructed, or do not want to provide what they do have because it never met the requirements of Section 80.475(a) and means that their AMTS incumbent station licenses auto-terminated without specific Commission action at the original construction deadlines. Once Petitioners get the actual station parameters from MCLM, whether via Court action or FCC action, Petitioners plan to (and the FCC should, on its own) run the coverage studies under the applicable rule, to verify gaps (again, already shown with sufficient evidence to require a hearing under 47 USC 309(d)), and then revoke the subject licenses, and/or other AMTS licenses of MCLM (and formerly Mobex). Unlike in the 2004 in-

cumbent AMTS station "audit,"[38] this time the FCC should require proof of construction and of the actual station details, including but not limited to site leases, local-government approvals, equipment purchases, installation reports, test and operational reports, CMRS customer proof (although, as discussed herein, MCLM and Mobex have admitted to only be operating unlawfully as PMRS for the last several years at minimum), interconnection proof, station schematics and pictures, insurance-coverage statements of the alleged stations, etc.

In other proceedings before the FCC regarding the AMTS licenses of MCLM (and formerly Mobex), Petitioners have shown in engineering studies (see e.g. studies performed by Ralph Haller in the assignment of authorization proceedings between Mobex and MCLM and Mobex and Clarity and in the AMTS rulemaking) that the Mobex/MCLM AMTS incumbent station licenses had gaps between them and did not meet the requirements of Section 80.475(a), which means they auto-terminated without specific Commission action and have reverted to the geographic licensees.

At minimum, these new facts are sufficient *prima facie* evidence showing a fundamental error in the FCC's Orders in those proceedings requiring that they be overturned. They show that the FCC could not under the AMTS rules, including Section 80.475(a), grant the Mobex renewal applications that have been submitted for the licenses, and that a hearing and investigation must be held, and that the FCC must conduct the necessary engineering studies with actual station parameters at the time of the original construction deadlines for the subject licenses to determine if Section 80.475(a) was complied with at all times or if the subject licenses have auto-terminated without specific Commission action because in case of auto-termination the subject spectrum has automatically reverted to the geographic licensees and is now their property. Failure to do this continues to damage Petitioners, who among them are the geographic licensees for

[38] The responses <u>under oath</u> in that audit <u>were false</u> since it was entirely clear to the responders, who each had radio engineers, that the stations reported as constructed were not: they failed to meet the threshold construction requirement which was overlapping continuity of coverage.

the areas of the MCLM licenses, including the License (as argued by Petitioners with numerous facts and law MCLM should be disqualified from Auction No. 61 and the A-block spectrum granted to either ENL or ITL, and VSL is already the owner of the B-block spectrum).

Petitioners also show here, contrary to the FCC's assertions otherwise, that Section 80.475(a) was never lawfully changed under the Administrative Procedures Act ("APA") to remove the continuity of service requirement.[39] Per the 80.475(a) Letter, the FCC could provide no evidence that the deletion of the coverage and continuity of service requirements of Section 80.475(a) was done properly under the APA. At no time during the AMTS rulemaking did the FCC give proper notice and allow for a comment period regarding deletion of the coverage and continuity of service requirements of Section 80.475(a). For the Bureau and Commission to assert that they did this, when the clear evidence in their own records shows they did not, could not be more clearly unlawful: Nothing at the FCC has meaning when it misuses uses its power in this way against the public interest and law-abiding licensees to deceptively grant boons to private entities it, especially ones who so regularly and blatantly violate its rules. It is stunning abuse. [40]

New Facts 12. As shown in pleadings referenced above with 2010 dates (including re FN 0003909446) and as discussed above, MCLM Applications have false certifications regarding no default on delinquency as to certain Federal debts. Those are false since MCLM owes vast amounts in regards to Universal Service Fund fees for its operation of AMTS CMRS stations

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[39] See *Letter* from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Skybridge Spectrum Foundation and Warren Havens dated April 3, 2007, regarding FOIA Control No. 2007-178. Per that response, the FCC could provide no evidence that the deletion of the coverage and continuity of service requirements of Section 80.475(a) was done properly under the APA. Petitioners are appealing that. (the "80.475(a) Letter")

[40] Petitioners appreciate and support FCC goals and the hard work of all at the FCC they have dealt with. On the other hand, arguing to defend the law is in the public interest: Congress gave license applicants and holders petition rights under 47 USC 309 and 405 including to assist FCC staff in legal compliance, even or especially when the latter do not always find time or inclination to pursue it, for obvious reasons that the former have motivation and market information.

nationwide for over a decade. MCLM admitted in the last year to having failed to submit full and accurate filings disclosing those commercial operations, on which fees must be paid annually. (ii) MCLM also, in FCC records, failed to submit required waiver applications for most of its AMTS licensed stations which waivers were clearly needed to be accepted as constructed ion and not auto-terminated when MCLMS failed to meet the required continuity of coverage requirements, as described below. Each such waiver application, that was required, had to be paid for. (iii) MCLM also failed to timely pay sums due in Auction 61 (for unlawfully obtained bidding credits, thus underpayment made long after due under law) (late payment cannot cure disqualification, but by MCLM's position, it could). (iv) MCLM-Mobex failed to pay fees for large numbers of waiver applications for construction deadline extensions for site-based AMTS licenses nationwide. (v) MCLM applications contain a false Basic Qualification since MCLM-Mobex has had AMTS licenses revoked in the 2004 FCC AMTS construction audit, others revoked in Chicago and on the Erie Canal, and AMTS station applications denied including for parts of the Great Lakes.

10. MCLM Admission in NJ Court Case and other evidence re: Mobex as affiliate

The MCLM Rule 7.1 Disclosure Statement filed in Civil Action No. 08-CV-03094-KSH-PS in the United State District Court, District of New Jersey. This is damning new evidence: MCLM has been caught "red-handed" again misrepresenting its actual affiliates and attributable gross revenues. It, along with the WCB proceeding, WC Docket No. 06-122, and the New Recon and Supplement to New Recon reveal that MCLM knowingly misrepresented facts to the WTB and Commission in Auction No. 61 when MCLM stated in its Opposition to Petition to Deny in that proceeding that Mobex was not a predecessor-in-interest and therefore its gross revenues were not attributable. Instead, in a Court of law and before the WCB, MCLM has finally admitted that Mobex was indeed a predecessor-in-interest to MCLM and in fact "merged"

into MCLM (Petitioners have always maintained in the Auction No. 61 proceeding re: the MCLM 601 that Mobex, per FCC rules, was always to be considered a predecessor-in-interest and its gross revenues attributable regardless of this new additional evidence). In addition, the Supplement to the New Recon, shows additional new evidence that Mobex was MCLM's affiliate and that it deliberately failed to disclose them as such.

As shown in WC Docket No. 06-122 and the WCB pending proceeding regarding *Order*, DA 08-971, released August 26, 2008, and in MCLM's own Request for Review filed with the WCB, Mobex paid USF fees from 2001-2006 (including during the relevant disclosable years for Auction No. 61—2002, 2003 and 2004) of $1,301,230. This amount of USF fees signifies that MCLM had attributable gross revenues from Mobex that along with its other gross revenues from affiliates it knows would have prevented it from qualifying from any bidding credit in Auction No. 61 (the USF fees represent only a fraction of a company's gross revenues, thus Mobex's attributable gross revenues would have had to have been several millions of dollars per year, which MCLM knew would have kept it from any bidding credit and so it misrepresented the facts to the FCC). Therefore, MCLM committed fraud and false certifications by lying on its Form 175 and Form 601 in order to obtain the bidding credit for which it knew it never qualified. The Commission cannot overlook these fraudulent actions and must revoke MCLM's FCC licenses, including the License.

MCLM has always been represented by FCC legal counsel, its alleged owner is an attorney and its co-controller, Donald DePriest, is experienced as an owner and controller of other FCC licensees, including Maritel that participated in several FCC auctions; therefore, they knew what they were doing when not disclosing control, affiliates (including those of Mr. DePriest), revenues of affiliates, etc.

11. Past and Ongoing Violation of Section 80.385(b), FCC rules, and Anticompetitive Actions

Another new fact is that MCLM is in violation of Section 80.385(b) and the *MCLM Ruling*. Petitioners have made written demands on MCLM for its actual incumbent station operating parameters, which the FCC has declared, without any appeal by MCLM, that MCLM must provide to Petitioners (discussed above), but MCLM has refused to provide this information.[41] That is among issues Petitioners have pending in New Jersey court including under 47 USC Section 401(b). It could not be more clearly anticompetitive and against US antitrust law to withhold such information from Petitioners. Among Mobex and MCLM, they have for years and continue to conspire to violate U.S. antitrust law including by restraining and blocking Petitioners' rightful access to the AMTS spectrum they bought at auctions. See 47 USC Section 313 which provides that a court that finds a licensee has violated antitrust law will lose its license(s) and may order the FCC not to issue further licenses. That is a matter for U.S. District Court as the statute explains, not the FCC, but Petitioners point it out here as evidence of further rule violation and lack of character and fitness.

12. Hearing Required On Some Issues, But Petition Grant Under Admitted Facts and Clear Rules Required

Petitioners refer to Exhibit 6 of their 7/9/08 Supplement filed under File No. 0002303355. That Exhibit 6 contains an article on the 5th Amendment to the Constitution. The 5th Amendment requires a hearing, according to US Supreme Court, in administrative proceedings, at least at some stage in the proceeding. In accord, 47 USC 309 requires a formal hearing it if a petition to deny presents the called-for *prima facie* evidence. The Administrative Procedure Act also requires it. The facts presented above, especially combined with facts in the Related Proceedings, are compellingly sufficient for said hearing.

[41] Petitioners' most recent demand to MCLM for these station details was made this past week (See demand filed on 4/23/10 on ULS under File No. 0002303355). Petitioners have affored MCLM until the end of this week to provide the details since it is information that MCLM should have readily available in its records and since Petitioners have already requested this information on numerous previous occasions over the years.

However, the facts presented here, especially combined with facts in the herein referenced and incorporated pleadings clearly demonstrate that MCLM lacks character and fitness to be a Commission licensee for repeated, deliberate misrepresentations and fraud, and thus it licenses should be revoked and the Applications dismissed or denied.

13. *Ashbacker* Rights

As shown in the Auction No. 61 Proceedings, two of Petitioners have *Ashbacker* rights to the spectrum subject of the License and they are making clear here that they have pending challenges to the License and that if successful at the Commission or Court, then as the only lawful high bidders in Auction No. 61 then one of them would be entitled to the spectrum of the License since MCLM should be disqualified and the License revoked for the reasons given herein. In this regard, as previously agued to the FCC (with such arguments pending on appeal): ENL and ITL effectively submitted a competing application for the License and between ENL and ITL they were the high qualified bidders for all the AMTS licenses awarded to MCLM in Auction 61 if the clear applicable rules on qualification / disqualification are applied based on the admitted and otherwise proven facts. Thus, they have rights under the well know US Supreme Court case, *Ashbacker* pertaining to competition FCC license applications.

14. FOIA Requests

SSF has a FOIA request (FOIA Control No. 2009-089) regarding MCLM's and Mobex's Form 499-A filings that is on appeal and a pending request to the FCC to provide unredacted 19 pages of documents and other documents requested. They also have a pending FOIA request (FOIA Control No. 2010- 379) to obtain all records filed by MCLM and its affiliates in response to the Enforcement Bureau Letters since the copies of the responses that Petitioners were provided by MCLM and its affiliates were heavily redacted and withheld a majority of the information submitted to the FCC (e.g. MCLM and WPV withheld all exhibits filed with their responses, which contained the principle documents responsive to the Enforcement Bureau's investigation.

Obviously, the intentionally withheld information, as stated above, contains relevant facts and information that will have an effect on the Applications, including relating to MCLM's actual ownership and control, its affiliates, revenues and its bidder size (qualification for the License originally and also for unjust enrichment purposes of the Applications, etc.). Petitioners have pending before various state agencies FOIA requests involving contracts and documents to and from MCLM and SCRRA and other entities that may further demonstrate who Sandra DePriest authorizes to take officer action for MCLM. Petitioners' reserve the right to supplement this proceeding with any relevant new facts they may receive from those SSF FOIA requests and other FOIA matters.

15. MCLM Offering all its AMTS Spectrum for Sale Now

It should be noted now that MCLM has its entire AMTS spectrum listed for sale with Spectrum Bridge, Inc. (see www.**spectrum**bridge.com/pdf/**Spectrum**Bridge_**MCLM**-Release.pdf*)*. First MCLM asserted in its application to acquire the Mobex site-based AMTS that it was a new operator that would continue AMTS service, and in acquiring AMTS in Auction No. 61 (by violating many FCC rules, as Petitioners have demonstrated in pending FCC proceedings) MCLM further asserted that they were a bona fide operator of AMTS services. However, with no evidence in the public record at all of any actions by MCLM to operate the site-based stations acquired from their predecessors-in-interest or spectrum obtained in Auction No. 61, MCLM has instead listed all of the spectrum for sale. The sale is through an operation, Spectrum Bridge, that suggests that a buyer can sign up online and secure spectrum, like a new invention. However, that process cannot avoid FCC rules and procedures for spectrum assignments. In fact, per the SCRRA and MCLM contract, Spectrum Bridge appears to have been the broker for this deal and is entitled to a fee (see the contract at Schedule 4.6). Apart from that inconsistency, that listing of all its AMTS spectrum for sale suggests the reason behind its request for refund in the WCB Proceedings. It simply wants to get out of the AMTS business, which

according to public records it never operated in the first place (see e.g. failure to pay USF fees for all states it operates in per its Forms 499-A, lack of State business registration and tax filings, etc. noted in Auction No. 61 Proceedings and other of the Related Proceedings), and recoup as much money as it can.[42]

16. Sanctions Against MCLM-Mobex Counsel

MCLM-Mobex counsel, Dennis Brown, clearly should be sanctioned in light of the record since there is no way that he could not have been unaware of the facts regarding MCLM's and Mobex's history of violations presented herein and since he has a history of this, e.g. http://www.scribd.com/doc/23192936/FCC-Communications-Act-Sec-308-Decision-Licensee-Kay-Attorney-Dennis-Brown-Lack-Candor-License-Revocation-Fines).

[42] Any actual AMTS operator, with the quantity of spectrum that it has asserted for years to the FCC is in legitimate operation would have resulted in a greater income than it reported to the USAC. This evidence is further indication that MCLM has not been operating CMRS AMTS stations as it has represented to the FCC for years and is further evidence of it warehousing spectrum, both of which are sufficient cause for a hearing and ultimately revocation of its licenses for failure to operate as CMRS according to the FCC's rules and for lacking candor and misrepresenting to the FCC its actual operations and intent.

17. Conclusion

For the reasons given, the relief requested herein should be granted. To be clear, Petitioners object to, and tend to litigate, the FCC proceeding with these Applications and any MCLM licensing actions in any form, for reasons stated above, including that the FCC has created a bogus background proceeding that lead to the unlawful grant and to date maintenance of the MCLM licenses including the one subject of the Applications, the unlawful and deliberate denial of Petitioners most basic petition rights and in this case, rights to a formal hearing, and since MCLM has demonstrated clearly to the FCC that is it a sham corporation. Nothing could be more distant proper action by a federal agency charged with acting to guide, protect, and administer the public interest, convenience and necessity, and to create a law-based sequitable level playing field in which healthy competition can take place. Petitioners have been warned (with threats of adverse action) by both FCC staff and certain professional advisors who know the FCC from the inside, to not challenge the FCC's undefined almost limitless discretion in the Communications Act, but in the circumstances, that is not a proper course Petitioners as corporate citizens and licensees.

Petitioners actions in wireless in the public interest are in part reflected in the first Appendix hereto.

Respectfully,

Environmentel LLC (formerly known as AMTS Consortium LLC), by

[Filed electronically. Signature on file.]
Warren Havens
President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by

[Filed electronically. Signature on file.]
Warren Havens
President

Intelligent Transportation & Monitoring Wireless LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Telesaurus Holdings GB LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Skybridge Spectrum Foundation, by

[Filed electronically. Signature on file.]
Warren Havens
President

Warren Havens, an Individual

[Filed electronically. Signature on file.]
Warren Havens

Each of Petitioners:

2649 Benvenue Ave., Suites 2-6
Berkeley, CA 94704
Ph: 510-841-2220
Fx: 510-740-3412

Date: April 28, 2010

Exhibits and Attachments

All Exhibits and Attachments are being filed separately from the text of the Petition on ULS and ECFS. This is being done in part due to file size limitations of ULS and ECFS.

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing Petition to Deny, or in the Alternative Section 1.41 Request, including all attachments, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically. Signature on File.]

Warren Havens

April 28, 2010

----- Forwarded Message ----
From: Warren C. Havens <warrenhavens@mac.com>
To: Jeff Tobias <Jeff.Tobias@fcc.gov>
Cc: jstobaugh@telesaurus.com; Lloyd Coward <Lloyd.Coward@fcc.gov>
Sent: Wed, April 28, 2010 2:02:42 PM
Subject: Re: Procedural question on filing today. re MCLM-SCRRA, DA 10-556, WT Docket No. 10-83, File Nos. 0004153701

Mr. Tobias,

We just discussed by phone the below.

I understand from you:
- that we do need to file the petition, and all exhibits, on ECFS and these do not have to be filed on ULS.
- but that if some of the exhibits (which I explained are already filed on ULS in association with the subject Applications-- and by Mr. Stobaugh from his location and computer, where he is gone for the rest of the day for a certain personal requirement) are filed on ULS only, you believe those would be acceptable for purposes of the filing,
- but that if possible, we should file those exhibits (and any additional ones not yet filed on ULS) on ECFS.

My notes below on rules requiring petitoins to deny on ULS reflect the following: it does not authorize filings on ECFS, and it does allow them on ULS. Thus, the subject PN is contrary to the rule, from all I can tell.

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1.939
(b) Filing of petitions. Petitions to deny and related pleadings may be
filed electronically via ULS. Manually filed petitions to deny must be
filed with the Office of the Secretary, 445 12th Street, SW.,
Washington, DC 20554.
```

Thank you for your time on this.

Warren Havens

From: Warren Havens <warren.havens@sbcglobal.net>
To: Jeff Tobias <Jeff.Tobias@fcc.gov>
Cc: jstobaugh@telesaurus.com; Lloyd Coward <Lloyd.Coward@fcc.gov>; warrenhavens@mac.com
Sent: Wed, April 28, 2010 1:44:40 PM
Subject: Re: Procedural question on filing today. re MCLM-SCRRA, DA 10-556, WT Docket No. 10-83, File Nos. 0004153701

It is my understanding that by rule a petition to deny has to be filed on ULS.
The one we are drafting has many exhibits, some already uploaded on ULS.
We do not want to be required, if the requirement is not authorized, to submit a filing twice.
Also, if submitted twice, the FCC and the other parties will get two copies-- and have to check for possible differences.
I have never heard of, in any agency or court in a legal proceeding, a requirement to submit a filing in two locations or manner.

Thus, can you provide any authority under FCC rule as to why, in this case, a Petition to deny MUST be filed on ULS and how, if so filed, that will be associated with the subject Application. I can see that the FCC decision makers (whoever that ultimately is on this at various times) may reject a filing of a petition to deny that is not on ULS directly on the subject Application it challenges. I can also see how such decision makers could raise a criticism of filing a petition to deny on ECFS, regardless of indications in a PN that could be done.

If there is no FCC rule authority on the above, then I have concern that a rule waiver is needed to submit the noted petition to deny on ECFS.

The FCC has, fairly often, taken with regard to pleadings my companies file, positions that are entirely technical as to rejecting them, or parts of them, that do not strictly comply with asserted rule requirements (in the circumstances, I reject those determinations for sound reasons, but that is not an issue here-- the issue is that the FCC can be highly black and white on technical filing requirements.)

In that regard, this PN creates a "catch 22."
a. It gives directions that have to be followed, or risk rejection (since it from the FCC, and even the Bureau Chief commented on it indirectly, by denying my request for more time to file),
b. Yet it gives instructions that do not comply with rules as to requirements to file a petition to deny.
c. Having to do both, is as far as I can tell, not according to law either.

In my experience with the subject greater proceedings in which this one takes place, I have good cause for particular concern about this matter.

- Warren Havens

From: Warren Havens <warren.havens@sbcglobal.net>
To: Jeff Tobias <Jeff.Tobias@fcc.gov>
Cc: jstobaugh@telesaurus.com; Lloyd Coward <Lloyd.Coward@fcc.gov>
Sent: Wed, April 28, 2010 1:03:56 PM
Subject: Re: Procedural question on filing today. re MCLM-SCRRA, DA 10-556, WT Docket No. 10-83, File Nos. 0004153701

Thank you.

From: Jeff Tobias <Jeff.Tobias@fcc.gov>
To: Warren Havens <warren.havens@sbcglobal.net>
Cc: jstobaugh@telesaurus.com; Lloyd Coward <Lloyd.Coward@fcc.gov>
Sent: Wed, April 28, 2010 10:25:31 AM
Subject: RE: Procedural question on filing today. re MCLM-SCRRA, DA 10-556, WT Docket No. 10-83, File Nos. 0004153701

Mr. Havens,

I don't believe that there would be any problem if you choose to file what I assume will be a petition to deny in ULS *in addition to* filing it in ECFS, but I think the language of the Public Notice does require that it be filed in ECFS. So I think your options are to file only in ECFS or in both ECFS and ULS. The ULS filing would not be rejected as unauthorized. If you have a concern that the ECFS filing deadline may be earlier than the ULS deadline, my understanding is that you can file in ECFS until midnight of the filing deadline date.

Jeffrey Tobias
Federal Communications Commission
Wireless Telecommunications Bureau
Mobility Division
(202) 418-1617

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Wednesday, April 28, 2010 12:52 PM
To: Jeff Tobias
Cc: Scot Stone; jstobaugh@telesaurus.com
Subject: Procedural question on filing today. re MCLM-SCRRA, DA 10-556, WT Docket No. 10-83, File Nos. 0004153701

Mr. Tobias,

Regarding: In the Matter of Maritime Communications/Land Mobile LLC and Southern California Regional Rail Authority Applications to Modify License and Assign Spectrum for Positive Train Control Use, and Request Part 80 Waivers, DA 10-556, WT Docket No. 10-83, File Nos. 0004153701, 0004144435, File No. 0002303355, Call Sign: WQGF318 --

As you know, petitions to deny and comments filings are due today in the this matter. In this regard --

(1) Can you please advise if, for certain, a petition to deny can be filed on ULS under the File Nos. by the end of today, up until Midnight Eastern time?
- I ask since my office noted to me that the Public Notice does not mention electronic filing of the petition via ULS, but only mentions filing comments via ECFS and petitions and comments in paper format via courier or hand delivery. One interpretation of this *special* PN is that only filings it explicitly authorizes are authorized.

(2) If filings on ULS are not permitted, or not permitted until the end of today, Midnight Eastern, can you please refer me to the authority for that?

Thank you,

Warren Havens
President
Skybridge Spectrum Foundation
Environmentel LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC
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510 841 2220 x 30
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ATLIS Wireless LLC
V2G LLC
Verde Systems LLC
Environmentel LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC

Berkeley, California
Warren Havens, President
James Stobaugh, General Manager

Partial list, effective March 15, 2010, of SCRIBD online publications on STEER and C-HALO*
* Smart Transport, Energy and Environment Radio systems, and Cooperative High Accuracy Location

Click blue titles links to go to the publication.

(Sky-Tel) Proposed US High Accuracy Location Infrastructure: Cost-Benefit Study Outline, UC Berkeley

A 2010 University of California-Berkeley group cost-benefit study on Cooperative High Accuracy Location (C-HALO) with tightly integrated dedicated wireless communications, for nationwide smart transportation systems in the United States, with extensions to other domains: A next generation nationwide location infrastructure. The study is sponsored as public-interest research by unrestricted grants and grant pledges from Skybridge Spectrum Foundation and related LLCs that hold FCC licenses for nationwide smart transport, energy, and environment, including free core services (those most needed for safety and transport efficiency). The study follows on past work by the same University group and Skybridge in these areas.

(Sky-Tel) Nov 2008. 20-Year Projection of Economic Benefits of High Resolution Positioning Services, For Australia. Allen Group

(Sky-Tel republished and noted)* 2008 study of the economic benefits of high accuracy location or positioning in Australia, projections through year 2030, assuming the implementation of planned, or 'organic' widespread nationwide GNSS augmented systems, such as by use of N-RTK. The benefits are estimated for only three economic sectors: agriculture, mining, and civil engineering and construction. Those benefits estimated to be in the range of .1.1 to 1.2% of GDP by 2030. Based on this study, Sky-Tel roughly estimates that if C-HALO (very wide area, cooperative high accuracy location for transportation and all other sectors)* is implemented, the GDP increase would be in the range of 10%, and certainly a substantial multiple of 1.1 to 2.1 %, and that should apply to the US as well as Australia. This would equate to about $14 trillion in increase over that time period, for reasons indicated in margin notes in this study. - - - - - * This document is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). See other Scribd articles on Sky-Tel STEER and C-HALO (e.g., Google "Skybridge C-HALO STEER"). STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users.

(Sky-Tel) Skybridge - Telesaurus Plan: Nationwide High Accuracy Location Based Intelligent Transportation (2008)

2008 Summary of the Telesaurus LLCs- Skybridge Spectrum Foundation plan for nationwide Intelligent Transportation Systems based upon high accuracy (sub-meter) location (HALO) and guidance of vehicles, along and across lances, using terrestrial and space (GPS-GNSS) multilateration and other forms of location determination, along with tightly integrated dedicated two-way and one-way radio communications, and dynamic GIS, as from ESRI. The plan was submitted at the 2007 ITS World Congress in Beijing, the FCC, NTIA and other entities and fora. The core safety and efficiency services will be at no cost to government agencies and the general public. Telesaurus and Skybridge are developing the technical components and deployment concepts with assistance of transportation-, wireless-

, and other experts at the University of California, Berkeley, and other entities. More recent work includes support of smart transportation as integrated with smart or intelligent transportation, as in V2G (vehicle to grid) enabled by said HALO+tight wireless. Smart transportation and energy systems will in large part merge, and they each and especially together need the planned dedicated radio location and communication networks.

(Sky-Tel) High Accuracy Location (HALO) for Intelligent Transport & Infrastructure, and GPS backup

2009 presentation regarding planned nationwide High Accuracy Location (for vehicles, etc.) to augment and backup GPS, to the US Office of Position Navigation & Timing (that coordinates GPS among Federal agencies and is liaison with private sector) by W. Havens of Skybridge Spectrum Foundation (that holds FCC mLMS licenses with Telesaurus Holdings) and Prof. Raja Sengupta of University of California Berkeley, also with Prof. Kannan Ramchandran. The same presentation was made to other public agencies, and associations involving wireless communication and public safety.

(Sky-Tel) Skybridge-Telesaurus 2009 Overview of High Accuracy Location- HALO- to US DOT RITA

2009 presentation to US DOT RITA by Warren Havens for Skybridge Spectrum Foundation (with support by Telesaurus LLCs, and in association with Prof. Raja Sengupta at University of California Berkeley, of nationwide High Accuracy Location (HALO) as the foundation for advanced Intelligent Transportation Systems, provide sub-meter accuracy guidance of vehicles along and across lanes to greatly reduce accidents, congestion, pollution, etc.

(Sky-Tel) Smart Transport, Energy & Envrionment Radio - STEER, presentation to Caltrans, 2009

2009 presentation of STEER- Smart Transport, Energy & Environment Radio systems by Warren Havens of Skybridge Spectrum Foundation (with support of Telesaurus LLCs, and Prof. Raja Sengupta and others of University of California Berkeley) to Caltrans. STEER is a proposed nationwide dedicated radio service for purposes noted above. It includes HALO- High Accuracy Location, and core services at no cost to end users (like GPS).

(Sky-Tel) C-HALO Justified in 2008 Federal Radio Navigation Plan- Excepts

Excerpts from the US 2008 Federal Radionavigation Plan, selected and annotated to show its support of Sky-Tel's planned C-HALO. Sky-Tel is Skybridge Spectrum Foundation and Telesaurus LLCs. They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). See other Scribd articles on Sky-Tel STEER and C-HALO (e.g., Google "Skybridge C-HALO STEER"). STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users.

(Sky-Tel) Re Existing & Planned N-RTK Networks US & Worldwide

Dec 2009 compilation by Sky-Tel* of extensive materials describing major existing and planned Network RTK (N-RTK) networks in the US, Europe, Japan, New Zealand and Dubai (as examples). N-RTK provides high accuracy location over very wide areas, cost effectively. It's growth worldwide is dramatic, but it is not yet used for wide-area Intelligent Transport since N-RTK GNSS augmentation must be further augmented to provide needed accuracy and reliability in area of GNSS satellite blockage and RF multipath. Sky-Tel plans "C-HALO" for that. / Sky-Tel is Skybridge Spectrum Foundation and the Telesaurus LLCs of Berkeley California. They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). / Google other Scribd articles on Sky-Tel STEER and C-HALO. STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users.

(Sky-Tel) US Leader in GNSS- PNT, International Comparisons

Nov-Dec 2009 survey in GNSS showing US still the leader in international GNSS and PNT (position, navigation and timing). Comments by Sky-Tel on why C-HALO in the US will help maintain that lead. / Sky-Tel is Skybridge Spectrum Foundation and Telesaurus LLCs of Berkeley, California. They hold 200

and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). See other Scribd articles on Sky-Tel STEER and C-HALO (e.g., Google "Skybridge C-HALO STEER"). / STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users.

(Sky-Tel) Smart Railroads- 200 Wide Band+ High Accuracy Location, By Federal Railroad Admin, 2008

2008 presentation by the Federal Railroad Administration of developments for smart or intelligent railroads based in large part on advanced wireless communications using 200 MHz radio spectrum, additional spectrum for wider band wireless, high accuracy location by enhanced GPS, etc. This parallels similar developments in intelligent or smart highways, electric grid, airports, and other core infrastructure, and for smart environment (wide scale environmental monitoring and protection). Skybridge Spectrum Founcation, Telesaurus and related LLCs focus on wireless for these Smart Transport, Energy, and Environment Radio systems, with core service to be free to government agencies and the general public.

(Sky-Tel) Daimler Benz- Precise Mapping & Location for Smart Transport, Lane-based ITS, Etc.

"The Potential of Precision Maps in Intelligent Vehicles," by Christopher K. H. Wilson, Seth Rogers, Shawn Weisenburger, of Daimler Benz research. Apparently published in late 1990s or 200* early. Discussed the value, some methods, and high probability of near-future high-accuracy road digital mapping and maps, and vehicle positioning on the maps, for critical roadway safety and a convenience applications. Discusses vehicle-to-vehicle methods, and vehicle-to-roadside methods as well, to supplement GPS and INS. One of a small number of research papers on high-accuracy location and mapping for public road transportation applications. Important that Daimler Benz, the world's leading high-end automobile maker, did this research, since as the article reflects, the high-end vehicle market segment (along with some government, trucking and other vehicle segments) will logically be first adopters. This document is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO).

(Sky-Tel) Trimble-APCO Request for RTK Spectrum in US in VHF Range for Critical Government and Private Uses

[Sky-Tel]* 2001 request by Trimble and APCO (American Association of Public Safety Communications Officials) to the FCC to allocate approx. 1/2 MHz of spectrum in high band VHF range for RTK (real time kinematic GPS- GNSS augmentation), and describing governmental and private sector safety-of-life and other critical applications of RTK. Since 2001, RTK has evolved to Network RTK (N-RTK) for increased coverage, accuracy, and cost effectiveness, and RTK and N-RTK have grown by some order of magnitude. / Sky-Tel plans to provide the needed 200 MHz VHF and 900 MHz UFH spectrum for N-RTK nationwide in the US. / * This document is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). Google other Scribd articles on Sky-Tel STEER and C-HALO. STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users.

[Sky-Tel] RTK Extend. Navcom Starfire Satcom GNSS Augmentation Extends RTK When Lacks Coverage

[Sky-Tel]* 2007 Navcom (J. Deere) white paper on use of its "StarFire" satellite based [GNSS] augmentation system (SBAS), with decimeter accuracy, noted for its topic of extending Network RTK accuracy (or close to its accuracy) temporarily in periods and places of no RTK wireless coverage. Also, StarFire maintains its accuracy for about 20 minutes if its satcom coverage is interrupted. These functions are important for Sky-Tel planned nationwide high accuracy location infrastructure and service. (Somewhat similar functions may be achieved using other SBAS. The differences will be separately discussed.) * This document is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US

for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO).

(Sky-Tel) 2009.Importance of N-RTK, Wireless for Location Services, And Radio Location Augmentation of GNSS- by Trimble CEO

(Sky-Tel)* 2009, Trimble CEO on the growth and importance of N-RTK, wireless for location services, and radio location (e.g., multilateration pseudolites) for GNSS augmentation in the International GNSS-based location industry. - - - - - * This document is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). See other Scribd articles on Sky-Tel STEER and C-HALO (e.g., Google "Skybridge C-HALO STEER"). STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users.

(Sky-Tel) 2006 mRTK Research by Nokia-- Mass-market Mobile RTK, With Sky-Tel Cover Memo

(Sky-Tel).* 2006 article by Nokia researchers on mobile RTK or mRTK, a form of network- or N-RTK. One value of this article is to indicate the importance of upcoming high-accuracy location in the broader wireless industry. Sky-Tel believes that a better idea than mRTK, which uses compromises deemed needed for commercial wireless, is the N-RTK-based C-HALO that Sky-Tel plans, which will be available for commercial (and some private) wireless operators and terminal makers without charge, for the defined critical functions. C-HALO will commence with mission-critical grade N-RTK, and expand from there as indicated in other Sky-Tel publications on Scribd. * This article is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). See other Scribd articles on Sky-Tel STEER and C-HALO (e.g., Google "Skybridge C-HALO STEER"). STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users.

(Sky-Tel) Introduction to Network RTK.6-2008

(Sky-Tel)* 2008 Introduction to Network RTK (N-RTK) by IAG Working Group 4.5.1: Network RTK (2003-2007). *This article is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). See other Scribd articles on Sky-Tel STEER and C-HALO (e.g., Google "Skybridge C-HALO STEER"). STEER and C-HALO core wireless location and communication services for public safety, traffic flow, and environmental monitoring and protection, and related smart energy, will be at no cost to end users. Note: Scribd does not display highlights and other emphases added by Sky-Tel, and to partly compensate, they instead use margin text notes and arrows.

(Sky-Tel) N-RTK GNSS- Global Amenity for High Accuracy Location

(Sky-Tel)* 2005 Article on N-RTK GNSS, as the new Global Amenity for High Accuracy Location.* This well-presented case in this article is even more compelling today. It explains the growth in N-RTK and the need for it to become a global amenity, as the principal needed augmentation of GNSS for increased accuracy and reliability. It also explains how N-RTK is founded on wireless communication recent-years advances, and why N-RTK needs wider wireless coverage than provided by commercial wirelesss, as Sky-Tel plans. *This article is noted and republished on Scribd by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). They hold 200 and 900 MHz FCC licenses nationwide in the US for Smart Transport, Energy and Environment Radio (STEER) systems including its component Cooperative High Accuracy Location (C-HALO). See other Scribd articles on Sky-Tel STEER and C-HALO (e.g., Google "Skybridge C-HALO STEER"). Note: Scribd does not display highlights and other emphases added by Sky-Tel, and to partly compensate, they instead use margin notes and arrows.

(Sky-Tel) Chip Scale Atomic Clocks, For GNSS Augmentation, C-HALO

Dec 2009 complied. Chip Scale Atomic Clocks (CSACs) with tightly integrated MEMS inertial measurement unit and SDR GPS-GNSS, for high accuracy PNT: position, navigation and timing. Compilation

for by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). Sky-Tel holds 200 and 900 MHz FCC licenses (CMRS and PMRS) nationwide in the US for C-HALO (Cooperative High Accuracy Location) and tightly integrated communications for Smart Transport, Energy, and Environment Radio (STEER) systems, with no-charge core services for highway safety and flow, better energy systems, and environmental monitoring and protection. Sky-Tel C-HALO will use GPS-GNSS with N-RTK as a first phase, followed by augmentation using multilateration pseudolites, INS, and other mobile location techniques. These materials based on CSACs show important advances being pursued in such augmentation.

(Sky-Tel) Multilateration- Aircraft & Ground Vehicles, Compilation, For C-HALO

Dec 2009 complied. Multilateration tracking for aircraft & ground vehicles. Compilation for by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel). Sky-Tel holds 200 and 900 MHz FCC licenses (CMRS and PMRS) nationwide in the US for C-HALO (Cooperative High Accuracy Location) and tightly integrated communications for Smart Transport, Energy, and Environment Radio (STEER) systems, with no-charge core services for highway safety and flow, better energy systems, and environmental monitoring and protection. Sky-Tel C-HALO will use GPS-GNSS with N-RTK as a first phase, followed by multilateration pseudolites, INS, and other mobile location techniques).

(Sky-Tel) Intuicom RTK Bridge Radio, 902-928 MHz, 2.4, CDMA-GSM, w Sky-Tel Cover Notes December 2009. This Intuicom product brochure is noted and republished by Skybridge Spectrum Foundation and Telesaurus LLCs (Sky-Tel) (Berkeley, California) (Sky-Tel). Sky-Tel holds 200 and 900 MHz FCC licenses (CMRS and PMRS) nationwide in the US for C-HALO (Cooperative High Accuracy Location) and tightly integrated communications for Smart Transport, Energy, and Environment Radio (STEER) systems, with no-charge core services for highway safety and flow, better energy systems, and environmental monitoring and protection. Sky-Tel C-HALO will use GPS-GNSS with N-RTK (and eventually also multilateration pseudolites, INS, and other mobile location techniques). The following Intuicom product (by Freewave) is an example of a Phase-1 of G1 product for use in Sky-Tel C-HALO: Under FCC rules Sky-Tel under its M-LMS 900 MHz licenses can use Part-90 power up to 30W ERP in PMRS M-LMS type-approved equipment, and can also use "unlicensed" equipment certified under Part 15 that operates in 902-928 MHz, both in its M-LMS subbands (904-909.75 MHz and 927.75-928 MHz) with no height restriction, and in the rest of 902-928 MHz on a Part-15 basis and under the "safe harbor" in FCC rule sec. 90.361. Thus, in existing radios such as this one from Intuicom (other vendors make somewhat similar radios), Sky-Tel may (1) use it as-is for a 1G radio for C-HALO: it comes with (a) 2-band unlicensed-band functionality: 900 MHz and 2.4 GHz, and (b) licensed-band CDMA/GSM functionality, or (2) use it with 'a' but swap out the 'b' for (c): a similar-power or higher-power PMRS licensed radio operating in its M-LMS subbands, or (3) use it with 'a' and 'b' and add 'c'.

(Sky-Tel) RTKLIB Open-Source Low-Cost RTK Receiver, Toyko Uni Maritime..

"RTKLIB." 2009 Summary. From Tokyo University of Marine Science and Technology. This is marked and republished by Skybridge Spectrum Foundation and Telesaurus LLCs (Berkeley, California) which hold 200 and 900 MHz FCC licenses nationwide in the US for C-HALO (Cooperative High Accuracy Location) and tightly integrated communications for Smart Transport, Energy, and Environment Radio (STEER) systems, with no-charge core services for for highway safety and flow, better energy systems, and environmental monitoring and protection. Japan has a nationwide N-RTK network. In the US, many States have existing or planned statewide or regional N-RTK networks. N-RTK receiver cost is an issue in more wide spread use, moving beyond surveying and other high-end, low-volume use, to more mass-market use such as in Intelligent Transport. The below development is thus important for the wider uses of N-RTK. In addition, Nokia and others are working on low-cost SDR based N-RTK for commercial smart phones. $30 to $300 / receiver price range given herein. In higher volumes, and given Moore's law, probably in lower end of that in reasonable time.

(Sky-Tel) Ubiquitous High Accuracy Location GNSS+ N-RTK+ Multilateration Pseudolites+ INS+ RFID, Etc.

2007 Article on Ubiquitous Positioning (UbiPos) or Cooperative High Accuracy Location (C-HALO) in GPS World, via integrated use of GNSS, N-RTK, Pseudolites, INS, RFI, etc. Discusses RTK Test Bed at the University of Nottingham, UK. Concludes: "Mobility, continuity, flexibility, and scalability are other important parameters for UbiPos and these can be achieved through the construction of next generation NRTK GNSS positioning infrastructure and wireless communications." Marked and presented by

Skybridge Spectrum Foundation and Telesaurus LLCs (Berkeley, California) which hold 200 and 900 MHz FCC licenses nationwide in the US for C-HALO (Cooperative High Accuracy Location) and tightly integrated communications for Smart Transport, Energy, and Environment Radio (STEER) systems, with no-charge core services for for highway safety and flow, better energy systems, and environmental monitoring and protection. Part of Sky-Tel C-HALO online library being created.

(Sky-Tel) Wireless Communication for N-RTK IAG-WG

2008 summary of wireless broadcast and two-way communications to support network RTK for mobile high accuracy location from IAG (International Association of Geodesy). Marked by Skybridge Spectrum Foundation and Telesaurus LLCs (Berkeley, California) which hold 200 and 900 MHz FCC licenses nationwide in the US for C-HALO (Cooperative High Accuracy Location) and tightly integrated communications for Smart Transport, Energy, and Environment Radio (STEER) systems, with no-charge core services for for highway safety and flow, better energy systems, and environmental monitoring and protection. Part of Sky-Tel C-HALO online library being created.

(Sky-Tel) Dangers & Shortfalls in Unaided GPS-GNSS--Wireless N-RTK Solutions of This for Intelligent Transport.

Feb 2009 Coordinates magazine, 2 articles, with comments by Skybridge- Telesaurus: (1) Dangers and shortfalls of unaided GPS, especially for high accuracy location and navigation, including for Intelligent Transportation Systems, and (2) Solution by N-RTK augmentation, for which mission-critical grade secure, private, dedicated, wide-area wireless is the foundation, as Skybridge Telesaurus plan with their 200 and 900 MHz FCC licenses nationwide in the US. See other articles on the above by Skybridge and Warren Havens on Scribd, including the University of California's 2010 "C-HALO" cost benefit study, for a nationwide cooperative high accuracy location infrastructure in the US.

Certificate of Service

I, Warren C. Havens, certify that I have, on this 28th day of April 2010, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Petition to Deny, or in the Alternative Section 1.41 Request, including all exhibits and attachments, unless otherwise noted,[43] to the following:[44]

Jeff Tobias, Mobility Divison, WTB
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Via email to: jeff.tobias@fcc.gov
(The Petition's text only)

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[43] Petitioners are serving a copy of the Petition's text only, excluding exhibits and attachments, to certain of the parties as noted on this Certificate of Service. A copy of the exhibits and attachments can be downloaded electronically from ULS or ECFS under the subject applications or subject WT Docket No., respectively.

[44] The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

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[Filed Electronically. Signature on File]

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Warren Havens