

2.

Defendants admit the allegations contained in paragraphs 1 through 7 of plaintiff's complaint.

3.

As to paragraphs 8 and 9, defendants assert that the Agreement speaks for itself and that plaintiff has alleged only some of the parties' responsibilities under the Agreement. As to paragraph 9, defendants further allege that plaintiff was responsible for systems services, including system engineering, network interconnection, system administration, network control and technical knowledge pursuant to other agreements executed by the parties, as contemplated by the Agreement. Accordingly, defendants deny the allegations contained in paragraph 9 of plaintiff's complaint.

4.

Defendants deny the allegations contained in paragraphs 10 and 11 of plaintiff's complaint.

5.

Defendants admit the allegations contained in paragraph 12 of plaintiff's complaint.

6.

Defendants admit and deny the allegations contained in paragraph 13 of plaintiff's complaint as they were admitted and denied above.

7.

Defendants admit the allegations contained in paragraphs 14 through 16 of plaintiff's complaint.

8.

Defendants admit that Mobex has not made lease payments since February 2003 and that plaintiff has demanded that Mobex purchase the equipment which is the subject of those leases. Defendants deny the remaining allegations contained in paragraph 17 of plaintiff's complaint.

9.

As to paragraph 18 of plaintiff's complaint, defendants admit that Mobex has not purchased the equipment which is the subject of the Initial Facility Leases. It denies the remaining

10.

Defendants deny the allegations contained in paragraph 19 of plaintiff's complaint.

11.

Defendants admit the allegations contained in paragraph 20 of plaintiff's complaint.

12.

Defendants admit and deny the allegations contained in paragraph 21 of plaintiff's complaint as they were admitted and denied above.

13.

Defendants admit that Mobex did not make lease payments after February 2003, it denies the remaining allegations contained in paragraph 22 of plaintiff's complaint.

14.

Defendants deny the allegations contained paragraph 23 of plaintiff's complaint

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

15.

Plaintiff has failed to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Anticipatory Repudiation)**

16.

Plaintiff anticipatorily repudiated the Market Representative Agreement ("Agreement") and the Initial Facility Leases, thereby releasing defendants from further performance thereunder.

**THIRD AFFIRMATIVE DEFENSE**

**(Waiver/Estoppel)**

17.

Plaintiff has waived, or is estopped from asserting, the claims plead in the complaint by its own conduct, as outlined below.

**FOURTH AFFIRMATIVE DEFENSE/FIRST COUNTERCLAIM**

**(Breach of Contract)**

18.

The Agreement required plaintiff to meet minimum performance standards for subscriber growth and profit.

19.

Plaintiff breached the Agreement by failing to meet those minimum performance standards.

20.

Plaintiff's breach of the Agreement was a material breach, excusing defendants from further performance thereunder.

21.

As a result of plaintiff's breach of the Agreement, plaintiff suffered damages in an amount to be proven at trial.

**FIFTH AFFIRMATIVE DEFENSE/SECOND COUNTERCLAIM**

**(Breach of the Covenant of Good Faith and Fair Dealing)**

22.

At the time that they entered into the Agreement and the Leases, the plaintiffs and defendants had a reasonable expectation that there would be a short time period in which the system would not be ready for use by customers while it was being constructed and while the parties verified and tested the system to be sure that it had adequate capability and coverage.

23.

Plaintiff sold the service and loaded customers on to the system before the time agreed to by the parties, resulting in some customer dissatisfaction.

24.

Plaintiff's loading of customers on the system prematurely was a breach of the covenant of good faith and fair dealing inherent in the Agreement.

25.

Following plaintiff's premature loading of customers on to the system, plaintiff ceased loading customers onto the system altogether and refused to commence loading

customers onto the system even after the system was fully technologically capable of serving those customers.

26.

Plaintiff's refusal to sell the services outlined in the Agreement and to load customers onto the system was a breach of the covenant of good faith and fair dealing inherent in the Agreement.

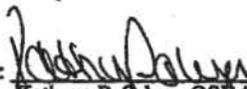
27.

As a result of plaintiff's breach of the covenant of good faith and fair dealing, defendants have been damaged in an amount to be proven at trial.

WHEREFORE, defendants pray for judgment in their favor, dismissing plaintiff's claims with prejudice, awarding defendants damages in an amount to be proven at trial, along with their attorneys fees and costs incurred herein, and such other relief as the court deems just and equitable.

DATED this 21 day of November, 2003.

FARLEIGH WADA & WITT PC

By: 

Kathryn P. Salyer, OSB #88301  
Attorneys for Defendants Mobex  
Communications, Inc., Mobex Network  
Services, LLC and Regionet Wireless  
Operations, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2003 I served the foregoing **DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS** on the following individual by facsimile and by mailing to said individual a true copy thereof, addressed to his last known regular address and deposited in the Post Office at Portland, Oregon:

Facsimile: 503-227-5028

Jan D. Sokol  
Stewart Sokol & Gray, LLC  
2300 SW First Avenue, Suite 200  
Portland, OR 97201

Dated: November 21, 2003.

FARLEIGH WADA & WITT PC

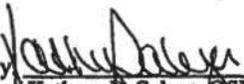
By   
Kathryn R. Salyer, OSB #88301  
Attorneys for Defendants Mobex  
Communications Inc., Mobex Network  
Services, LLC and Regionet Wireless  
Operations, LLC

Exhibit 1A: Document 3

**Jan D. Sokol, OSB #78087**  
E-mail: [jdsokol@lawssg.com](mailto:jdsokol@lawssg.com)  
**STEWART SOKOL & GRAY, LLC**  
2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
Telephone: (503) 221-0699  
Fax: (503) 227-5028

FILED '03 NOV 26 15 06 USDC ORP

**Attorneys for Plaintiff**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**DAY MANAGEMENT CORPORATION dba  
DAY WIRELESS SYSTEMS, an Oregon  
corporation,**

Case No. CV '03-1399 JE

Plaintiff,

v.

**REPLY TO COUNTERCLAIMS**

**MOBEX COMMUNICATIONS, INC., a  
Delaware corporation; MOBEX NETWORK  
SERVICES, LLC, fka Regionet Wireless  
Licenses, LLC, a Delaware limited liability  
company; REGIONET WIRELESS  
OPERATIONS, LLC, a Delaware limited  
liability company,**

Defendants.

For its Reply to defendants' counterclaims, Day Management Corporation, dba  
Day Wireless Systems ("Day Wireless") admits, denies and alleges as follows:

1. Admits the allegations in paragraph 18.

PAGE 1 - REPLY TO COUNTERCLAIMS

**STEWART SOKOL & GRAY LLC**  
ATTORNEYS AT LAW  
2300 SW FIRST AVENUE, SUITE 200  
PORTLAND, OREGON 97201-5047  
(503) 221-0699  
FAX (503) 227-5028

15

2. Denies the allegations in paragraphs 19, 20 and 21.
3. Denies the allegations in paragraph 22.
4. Admits that Day Wireless sold the service and loaded customers and that the customers were dissatisfied, but denies the remaining allegations in paragraph 23.
5. Denies the allegations in paragraph 24.
6. Admits that Day Wireless ceased loading customers because the system was never technologically capable of serving those customers, but denies the remaining allegations in paragraph 25.
7. Denies the allegations in paragraphs 26 and 27.

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

8. Defendants' counterclaims fail to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

(Fully Integrated Agreement)

9. The Market Representative Agreement ("Agreement") is a fully integrated agreement; therefore, the expectations of defendants at the time of the Agreement cannot vary the specific terms of that Agreement.

**THIRD AFFIRMATIVE DEFENSE**

(Anticipatory Repudiation)

10. Defendants anticipatorily repudiated the Agreement by failing to provide Day Wireless with a technologically capable system of serving customers.

///

PAGE 2 - REPLY TO COUNTERCLAIMS

**STEWART SOKOL & GRAY LLC**  
ATTORNEYS AT LAW  
1200 SW FIRST AVENUE, SUITE 200  
PORTLAND, OREGON 97204-3947  
(503) 223-4889  
FAX (503) 223-3784

11. Defendants anticipatorily repudiated the Initial Facility Leases ("Leases") by failing and refusing to make the payments required under the Leases.

**FOURTH AFFIRMATIVE DEFENSE**

(Waiver/Estoppel)

12. Defendants have waived, or are estopped from asserting their counterclaims by their own conduct.

**FIFTH AFFIRMATIVE DEFENSE**

(Breach of Contract)

13. The damages sustained by defendants, if any, were caused by their own breaches of the Agreement and the Leases.

**SIXTH AFFIRMATIVE DEFENSE**

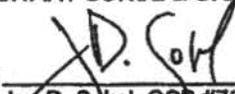
(Breach of Covenant of Good Faith and Fair Dealing)

14. Defendants breached the covenant of good faith and fair dealing inherent in the Agreement and in the Leases.

WHEREFORE, having fully answered the counterclaims, plaintiff prays that they be dismissed with prejudice and that plaintiff be awarded the relief sought in its Complaint.

DATED this 25<sup>th</sup> day of November, 2003.

STEWART SOKOL & GRAY, LLC

By: 

Jan D. Sokol, OSB #78087  
(503) 221-0699

Of Attorneys for Plaintiff Day Management  
Corporation, dba Day Wireless Systems

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PAGE 3 - REPLY TO COUNTERCLAIMS

STEWART SOKOL & GRAY LLC

ATTORNEYS AT LAW

2300 SW FIRST AVENUE, SUITE 200  
PORTLAND, OREGON 97201-2907  
(503) 221-0699  
FAX (503) 221-0706

CERTIFICATE OF SERVICE

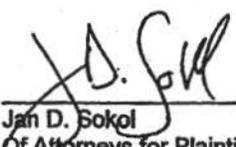
I hereby certify that I served the foregoing **REPLY TO COUNTERCLAIMS** on:

Kathryn P. Salyer  
Farleigh Wada & Witt PC  
121 SW Morrison Street, Suite 600  
Portland, OR 97204-3136  
Attorneys for Defendants Mobex Communications, Inc.,  
Mobex Network Services, LLC and Regionet Wireless Operations, LLC

by the following indicated method or methods:

- by mailing a full, true and correct copy thereof in a sealed, first-class postage-paid envelope, and addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.
- by causing a full, true and correct copy thereof to be hand-delivered to the attorney at the attorney's last-known office address listed above on the date set forth below.
- by sending a full, true and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.
- by faxing a full, true and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below.

Dated this 25<sup>th</sup> day of November, 2003

  
\_\_\_\_\_  
Jan D. Sokol  
Of Attorneys for Plaintiff Day  
Management Corporation, dba Day  
Wireless Systems

CERTIFICATE OF SERVICE

**STEWART SOKOL & GRAY, LLC**  
ATTORNEYS AT LAW  
120 SW FIRST AVENUE, SUITE 200  
PORTLAND, OREGON 97204-0847  
(503) 223-0999  
FAX (503) 223-0766

Exhibit 1A: Document 4

Jan D. Sokol, OSB #78087  
E-mail: [jsokol@lawssg.com](mailto:jsokol@lawssg.com)  
STEWART SOKOL & GRAY, LLC  
2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
Telephone: (503) 221-0699  
Fax: (503) 227-5028

FILED 05 JAN 31 16 00 USDC ORP

RECV'D 05 JAN 21 14 02 USDC ORP

**Attorneys for Plaintiff**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**DAY MANAGEMENT CORPORATION dba  
DAY WIRELESS SYSTEMS, an Oregon  
corporation,**

Case No. CV 03-1399 JE

Plaintiff,

v.

**JUDGMENT**

**MOBEX COMMUNICATIONS, INC., a  
Delaware corporation; MOBEX NETWORK  
SERVICES, LLC, fka Regionet Wireless  
Licenses, LLC, a Delaware limited liability  
company; REGIONET WIRELESS  
OPERATIONS, LLC, a Delaware limited  
liability company,**

Defendants.

Based upon the Stipulation to Judgment, it is hereby, adjudged and decreed,  
as follows:

1. Plaintiff is entitled to Judgment against defendants, and each of them, in the  
sum of \$311,547, together with plaintiff's reasonable attorney fees, and costs and

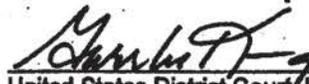
PAGE 1 - JUDGMENT

**STEWART SOKOL & GRAY LLC**  
ATTORNEYS AT LAW  
2300 SW FIRST AVENUE, SUITE 200  
PORTLAND, OREGON 97201-5047  
(503) 221-0699  
FAX (503) 221-5028

disbursements, all together with interest at the rate of six percent (6%) per annum from  
June 25, 2004 until paid.

Defendants' counterclaims are dismissed with prejudice.

DATED this 31 day of January, 2005.

  
United States District Court Judge

Submitted by:

Jan D. Sokol, OSB # 78087  
Stewart Sokol & Gray, LLC  
2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
Phone: (503) 221-0699  
Of Attorneys for Plaintiff Day Management  
Corporation dba Day Wireless Systems

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PAGE 2 - JUDGMENT

**STEWART SOKOL & GRAY LLC**

ATTORNEYS AT LAW  
2300 SW FIRST AVENUE, SUITE 200  
PORTLAND, OREGON 97201-5047  
(503) 221-0699  
FAX (503) 221-0704

Exhibit 1B: Regarding SRI v. Mobex

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1) SRI v. Mobex. "Verified Complaint at Law", SRI Michigan Avenue Venture, LLC (Plaintiff) v. Mobex Network Services LLC et al. (Defendants) in The Circuit Court of Cook County, Illinois, County Department, Law Division. Case #: 03L 010811. Also, included here are the first page and signature page to the lease contract that was provided as an exhibit to the Verified Complaint. This Verified Complaint shows that Mobex breached its lease agreement for the Chicago station and thus had no lease or right to use the site since the 3-month lease term expired on 10/3/01 and was not renewed by Mobex.

The license automatically terminated for permanent discontinuance years ago, but was maintained by Mobex in several filings prior to the AMTS auctions and in ULS until present. It also reveals that Mobex lied to the Commission when it filed its STA, File No. 0001337757 (filed 6/5/03), and its Modification Application ("Modification") to move this station to the Sears Tower, File No. 0001438800 (filed 9/3/03).

The STA and Modification were filed shortly before SRI Michigan filed its Court Complaint. In the STA and Modification Mobex stated that it needed to relocate due to interference issues. Now, it is obvious that Mobex wanted to avoid loss of the station if other parties, such as Petitioners or KMLP-TV discovered these facts, so it applied for the Modification.

This also means that Mobex has been operating an illegal fill-in station at the Sears Tower, which has been causing interference problems to the KMLP-TV, owner of WOCC-CA. Mobex's actions here have wasted the Commission's resources, KMLP-TV's resources, and Petitioners' (Havens) resources.

They have also harmed the public interest, KMLP-TV's viewers, and recently competition for the Great Lakes A-block license at Auction No. 61 (Obviously, the Great Lakes A-block license is much more valuable if Chicago is unencumbered).

In addition, if Mobex could not afford to pay a lease to maintain its licensed station in the middle of its most important market in the Great Lakes region, Chicago (Mobex has this posted as its "Passport" station in the Great Lakes on its website), then it is questionable it has maintained any of the Great Lakes stations.

- 2) SRI v. Mobex. "Order Setting Status Date" entered 1/21/04, for Case #03L 010811, SRI Michigan Avenue Venture, LLC (Plaintiff) v. Mobex Network Services LLC et al. (Defendants) in The Circuit Court of Cook County, Illinois, County Department, Law Division. This shows that Plaintiff's Complaint was valid because Mobex agreed to settlement payments to Plaintiff.
- 3) Affidavit & Email Communications: Copy of an affidavit from John Kapp, employee of Shorenstein Realty Services, L.P., the property manager of the John Hancock Center building from which Mobex claims to be operating its KPB531 license. Also, email communications between Shorenstein Realty Services employees and KM LPTV 13 regarding Mobex's equipment at the John Hancock Building. These clearly reveal Mobex has been misrepresenting its operations from John Hancock Building.

Exhibit 1B, Document 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

SRI MICHIGAN AVENUE VENTURE,  
LLC, a Delaware limited liability company,

Plaintiff,

v.

MOBEX NETWORK SERVICES, LLC, a  
Delaware limited liability company, *d/b/a*  
REGIONET WIRELESS LICENSE, LLC, and  
MOBEX COMMUNICATIONS, INC.,  
a Delaware corporation, *d/b/a* MOBEX  
NETWORK SERVICES COMPANY,

Defendant.

Case No.

DEL. MON. 11  
COURT  
SEARCHED & INDEXED

03 SEP - 9 PM 3:45

**VERIFIED COMPLAINT AT LAW**

Plaintiff, SRI MICHIGAN AVENUE VENTURE, LLC, a Delaware limited liability company, by and through its attorneys, JONATHAN M. WEIS and MICHAEL A. SARAFIN, of LEVIN & GINSBURG LTD., states as and for its Verified Complaint at Law against Defendant, MOBEX NETWORK SERVICES, LLC, a Delaware limited liability company, *d/b/a* REGIONET WIRELESS LICENSE, LLC, and MOBEX COMMUNICATIONS, INC., a Delaware corporation, *d/b/a* MOBEX NETWORK SERVICES COMPANY (collectively referred to hereinafter as "Defendant"), as follows:

**BACKGROUND**

1. Plaintiff is and was at all times relevant hereto a Delaware limited liability company with its principal place of business located in Cook County, Illinois and is engaged in the ownership of certain real property known as the John Hancock Center, located at 875 North Michigan Avenue, Chicago, Illinois (the "Building").

2. Upon information and belief, Defendant is and was at all times relevant hereto a legally recognized Delaware entity.

Page 1 of 4

3. This lawsuit is based upon Defendant's breach of a certain Antenna Site License Agreement (the "Agreement") entered into by and between Plaintiff and Defendant by which Plaintiff permitted Defendant to utilize and occupy certain antenna space and other areas of the Building defined in the Agreement (the "Premises"). Defendant did so utilize and occupy the Premises in exchange for promising to pay Plaintiff a monthly fee pursuant to the terms of the Agreement. (A true and correct copy of the Agreement is attached hereto as Exhibit "1" and incorporated herein by this reference as though more fully set forth herein.)

4. All of the material acts upon which this lawsuit is based, and which occurred between Plaintiff and Defendant, occurred within the state of Illinois and Defendant has sufficient minimum contacts with the state of Illinois to subject it to the jurisdiction of this Court and to service of process pursuant to 735 ILCS 5/2-209(a)(1), (3), (7) and (10).

5. Venue is appropriate in Cook County, Illinois, pursuant to 735 ILCS 5/2-101, because the acts and transactions complained of and out of which this action arises, occurred in Cook County, Illinois.

#### **COUNT I: BREACH OF CONTRACT**

6. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 5 of this Verified Complaint at Law as though more fully set forth at length herein.

7. In or about July 2001, Plaintiff entered into the Agreement with Defendant pursuant to which Defendant installed, operated and maintained certain of its communications equipment on the Premises.

8. Pursuant to the Agreement and in reasonable reliance thereon, Plaintiff fully performed all of its obligations under the Agreement, including delivering possession of the Premises to Defendant.

9. Pursuant to Paragraph 2.a. of the Agreement, the initial term of the Agreement was for a period of three (3) full calendar months commencing on July 1, 2001 (the "Term").

Pursuant to Paragraph 3.a. of the Agreement, Defendant agreed to pay Plaintiff a monthly fee of \$1,175.00 (the "Monthly Fee").

10. Pursuant to Paragraph 18.a. of the Agreement, Defendant was to surrender possession of the Premises upon expiration of the Term and remove all of its equipment from the Premises prior to expiration of the Term.

11. Defendant failed to comply with its obligations under Paragraph 18.a. of the Agreement described above.

12. Defendant's equipment remained on the Premises, and Defendant continued to accept power supply to its equipment through August 21, 2003 (the "Holdover Period"). In other words, Defendant continued to operate, maintain and access its communications equipment within the Premises during the Holdover Period.

13. Under the terms of Paragraph 18.b. of the Agreement, Defendant was obligated to continue to make monthly payments to Plaintiff for its continued utilization and occupancy of the Premises following the expiration of the Term.

14. Defendant breached the Agreement by failing to make any payments to Plaintiff for its continued possession, use and access of and to the Premises during the Holdover Period. As a result of the Defendant's failure to make such payments in accordance with the Agreement, Plaintiff has been damaged in an amount exceeding Thirty Thousand Dollars and 00/100 (\$30,000.00).

15. At all times relevant hereto, the Agreement was valid and enforceable and Plaintiff fully performed all of its obligations hereunder.

16. Pursuant to Paragraph 18.b. of the Agreement Defendant is obligated to pay

Plaintiff three hundred percent (300%) of the Monthly Fee during the Holdover Period.

17. Pursuant to Paragraph 29 of the Agreement, Defendant is obligated to pay Plaintiff late charges of five percent (5%) on each overdue monthly payment ("Late Charges").

18. Pursuant to Paragraph 30 of the Agreement, Plaintiff is entitled to recover its attorneys fees, costs and expenses.

WHEREFORE, for the above and foregoing reasons, Plaintiff, SRI MICHIGAN AVENUE JOINT VENTURE, LLC, a Delaware limited liability company, respectfully requests that this Court enter its judgment order that:

- A. Defendant pay compensatory damages to Plaintiff in an amount exceeding Thirty Thousand Dollars (\$30,000.00), including all late charges and holdover charges;
- B. Defendant pay Plaintiff's attorneys fees, costs and expenses for bringing this action; and
- C. Plaintiff be awarded such other and further relief as this Court deems just and appropriate under the circumstances.

Respectfully submitted,

SRI MICHIGAN AVENUE VENTURE, LLC,  
a Delaware limited liability company, Plaintiff

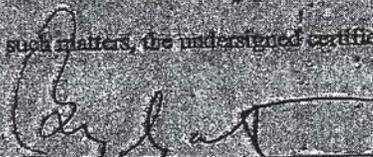
By: \_\_\_\_\_

One of its attorneys

Mr. Jonathan M. Wels  
Mr. Michael A. Sarafin  
LEVIN & GINSBURG LTD.  
Attorneys for Plaintiff  
Firm ID #34765  
130 North LaSalle Street, 22nd Floor  
Chicago, Illinois 60604-2794  
Telephone: 312-363-0100  
Telefax: 312-363-0111

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, Bryan L. Oyster, Property Manager of Agent of Plaintiff, certifies that the statements set forth in the attached Complaint are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.



---

Bryan L. Oyster

## ANTENNA SITE LICENSE AGREEMENT

*3rd*  
*2nd*  
THIS ANTENNA SITE LICENSE AGREEMENT ("Agreement") is made as of the 22nd day of June, 2001, between SRI MICHIGAN AVENUE VENTURE, LLC, a Delaware limited liability company ("Licensor"), and Rogers Wireless, Inc. ("Licensee").

1. **License Areas.** Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, on the terms and conditions set forth herein, a license to use certain portions, as set forth below, of the building presently known as the JOHN HANCOCK CENTER, located at 275 North Michigan Avenue, Chicago, Illinois. As used herein, the term "Building" shall refer to the portions of the building in which the License Areas are located that are owned by Licensor. The Building, the parcel(s) of land (the "Land") on which the Building is located and the other improvements on the Land are referred to herein as the "Real Property." As part of the license granted to Licensee hereunder:

a. Licensee shall have the right to use the site located on the roof of the Building that is identified on the attached Exhibit A as "Transmit Antenna @ 1135' Elev (EXHIBIT A)", and the site located on the roof of the Building that is identified on the attached Exhibit A as "Receive Antenna @ 1108' elev (SWLR 2)" (collectively, the "Antenna Site") for the installation, operation, maintenance, repair, replacement and use by Licensee, at Licensee's sole expense and risk, of the Antenna Equipment, as defined below.

b. Licensee shall have the right to install in the Antenna Site, in accordance with the Approved Drawings, as defined in Paragraph 7(b) below, the antenna(s) described in the attached Exhibit A. Such antenna(s) and the associated mounting equipment shall be collectively referred to herein as the "Antenna Equipment."

c. Licensee shall have the right to install, operate, maintain, repair, replace and use the communications equipment of Licensee specified in Exhibit B attached hereto (the "Interior Equipment") in the area known as SLN27 (the "Equipment Room") located on the 100<sup>th</sup> floor of the Building in the South East area, as identified on the attached Exhibit A-1.

d. Subject to the terms and conditions hereof, Licensee shall have the right to install, operate, maintain, repair, replace and use cabling between the Antenna Equipment and the Equipment Room of quantity, size and type approved in advance by Licensor and, if approved or required by Licensor, install therefor (the "Lines"), with the installation of the Lines to be in accordance with Approved Drawings, as defined in Paragraph 7(b) below.

e. Licensee shall have the right solely for the purpose of making the connections and for no other purpose whatsoever, to use the vertical shafts and horizontal raceways of the Building, and other areas of the Real Property, but only to the extent such shafts, raceways and/or areas are shown on Approved Drawings as the sites through which the Lines will be run (all such areas together with the Equipment Room being referred to collectively herein as the "License Areas").

f. Licensee shall have the right to use the Antenna Equipment, Interior Equipment and Lines (collectively, the "Communications Equipment") solely for the purpose of providing two-way trunking for Licensee's automated maritime telecommunications system (the "Services") and for no other purpose. Licensee shall operate the Communications Equipment only on the frequencies designated in the attached Exhibit B.

g. Licensee shall, at reasonable times and subject to the security requirements of Licensor, have the right to enter and leave the License Areas.

The interest created herein is a non-exclusive license. No leasehold or tenancy is intended to be or shall be created hereby. Licensor reserves the right to grant, renew or extend similar licenses to others.

## 2. Term.

a. The term of this Agreement shall commence on July 1, 2001 (the "Commencement Date") and, unless sooner terminated pursuant to the terms hereof, shall expire on the last day of the third full calendar month thereafter.

b. If Licensor, for any reason whatsoever, cannot provide access to the License Areas to Licensee on or before the scheduled Commencement Date, this Agreement shall not be void or voidable, nor shall Licensor be liable to Licensee for any loss or damage resulting therefrom, but the monthly License Fee under Paragraph 5(a) below shall be waived for the period from the scheduled Commencement Date through and including the day preceding the date Licensor so makes the License Areas available to Licensee.

The renewal option must be exercised, if at all, by written notice given by Licensee to Licensor not later than sixty-five (65) days prior to expiration of the initial term of this Agreement. Notwithstanding the foregoing, at Licensor's option, this renewal option shall be null and void and Licensee shall have no right to renew this Agreement if on the date Licensee exercises the option or on the date immediately preceding the commencement date of the renewal period Licensee is in default of any of its obligations under this Agreement beyond any applicable cure or grace period.

**Terms and Conditions.** If Licensee exercises the renewal option, then during the renewal period all of the terms and conditions set forth in this Agreement as applicable to the License Area and Communications Equipment during the initial term shall apply during the renewal term, except that (i) Licensee shall have no further right to renew this Agreement, and (ii) the Monthly License Fee payable by Licensee under Paragraph 12. above shall be the following sums for the following respective periods:

Period	Monthly License Fee
First License Year	\$1,174.00
Second License Year	\$1,210.00
Third License Year	\$1,247.00
Fourth License Year	\$1,284.00
Fifth License Year	\$1,321.00

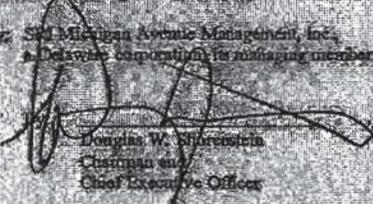
The "First License Year" shall be the period commencing on the first day of the renewal term and ending on the last day of the twelfth (12th) full calendar month thereafter. Each twelve (12) calendar month period hereafter shall constitute a "License Year", except that the final License Year shall end on the date the renewal term expires or terminates, regardless of whether it comprises 12 full calendar months.

THIS AGREEMENT IS EXECUTED by Licensor and Licensee as of the date set forth at the top of page 1 hereof.

**LICENSOR**

SRI MICHIGAN AVENUE VENTURE, LLC  
a Delaware limited liability company

By: SRI Michigan Avenue Management, Inc.  
a Delaware corporation its managing member

  
Douglas W. Silverstein  
Chairman and  
Chief Executive Officer

**LICENSEE**

REGIONAL WIRELESS  
*Delaware Limited Liability Company*

By:   
Name: Paul Steven Heger  
Title: VP Network Dev.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

SRI Multimedia Inc. Venture  
Plaintiff(s)

vs.  
Mobex Network and Mobex  
Communications Defendant(s)

NO. 03 L 10811

ORDER SETTING STATUS DATE

This cause coming to be heard on Calendar "V" Call, this matter is hereby

4315 continued for status on March 4, 2004 at 9:00 a.m. 6315

~~4384~~ The status date of           , 200   at            a.m./p.m. is hereby Stricken.

Other: At this time, the parties will report 4291  
on Mobex's second settlement payment  
status. All parties agree to the status  
date.

Enter: [Signature]  
Ronald F. Bartkowiak Circuit Court Judge-193

ENTERED

JAN 2 2004

RONALD F. BARTKOWIAK-193A

Attorney No: 90100

Attorney Name: Rubena Cartright - Defendants

Attorney Address: 70 W. Madison St

City/State: Chicago, IL 60601

Attorney Phone No: 312-572-1121

Exhibit 1B, Document 3

Affidavit from John Kapp, employee of Shorenstein Realty Services, L.P., the property manager of the John Hancock Center building from which Mobex claims to be operating its KPB531 license. This affidavit reveals that Mobex has been misrepresenting construction and operation of the Chicago station for years in order to continue to illegally operate fill-in stations and, along with MCLM, discourage competition in Auction Nos. 57 and 61 for the A-block geographic Great Lakes license.

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AFIDAVIT

I, John Kapp, under penalty of perjury and pursuant to Section 1.16 of the Federal Communications Commission's rules, 47 C.F.R. § 1.16, do hereby declare that:

1. I am an employee of Shorenshtein Realty Services, L.P. ("SRS") the property manager of the John Hancock Center building located at 575 North Michigan Avenue, Chicago, Illinois, and I am responsible for the licensing for use of space on the roof of the John Hancock Center (including on the two antenna masts located thereon, the "Hancock Site") for broadcast of other telecommunications antennas or similar purposes.

2. Although SRI Michigan Avenue Venture, LLC ("SRI") the Owner of the John Hancock Center, entered into an Antenna Site License Agreement (the "License Agreement") with Network Services, LLC, f/k/a Regeneret Wireless License, LLC, for use of space on the roof of the John Hancock Center, Mobex's equipment was removed from the Hancock Site on or about August 21, 2005, and Mobex no longer received electric power supply to its equipment after that date. As a result, Mobex has not operated from the Hancock Site since approximately August 21, 2005.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed this 04th day of January, 2006.

  
Name: John Kapp  
Title: General Manager  
Company: Shorenshtein Realty Services, L.P.

Exhibit 1B, Document 3 continued

Two Email stings Communications between KM LPTV Channel 13 ("KM") and Shorestein Realty Services employees—see <http://www.johnhancockcenterchicago.com/contactus.shtml>. These were forwarded by counsel to KM, Jeffrey Timmons, to Petitioner. In addition to the above affidavit, the below email communications clearly state that Mobex's equipment was removed from the Hancock building and its lease was terminated a long time ago.

---

Email string 1:

From: Mead Elliott [mailto:Mead.Elliott@richlandtowers.com]  
Sent: Tuesday, December 06, 2005 10:11 AM  
To: Kevin Bae  
Cc: John Kapp  
Subject: RE: One More Item re: Mobex Chicago Station and KM's LPTV

Kevin,

I can guarantee you (verbally) that the Mobex lease was terminated over a year ago and their equipment has been removed from the rooftop. We are reluctant to possibly be embroiled in any legal matters without knowing what exactly is going on.

John is back from vacation and would be happy to talk to you to further understand what is going on. He can be reached at 312.751.3680.

Please let me know if I can be of further assistance in this matter.

Regards,

Mead

Mead Elliott  
Richland Towers  
John Hancock Center  
875 N. Michigan Ave. #1335  
Chicago, IL 60611  
312.944.5800

312.266.1651

---

From: Kevin Bae [mailto:kevinbae@kmcommunications.com]  
Sent: Tuesday, November 29, 2005 4:43 PM  
To: Mead Elliott  
Subject: FW: One More Item re: Mobex Chicago Station and KMLP-TV

Mead,

We are preparing some defenses against Mobex should they file with the FCC for reconsideration of their denial. Is it possible to get the information below regarding their relationship with the Hancock? Do I have to go through John Kapp? Thanks.

Kevin Bae  
KM Communications, Inc.  
3654 W. Jarvis Avenue  
Skokie, IL. 60076  
PH: 847-674-0864  
Fax: 847-745-0295  
kevinbae@kmcommunications.com

---

Email string 2: Email from Mr. Kapp—see  
<http://www.johnhancockcenterchicago.com/contactus.shtml>. forwarded by Mr. Kevin Bae, an  
officer of KM, to KM's counsel.

From: Kevin Bae [mailto:kevinbae@kmcommunications.com]  
Sent: Thursday, December 29, 2005 4:17 PM  
To: 'Jeff Timmons'  
Subject: FW: Mobex Opposition to Petition for Reconsideration

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From: John Kapp [mailto:JKapp@Shorenstein.com]  
Sent: Thursday, December 29, 2005 3:03 PM  
To: Kevin Bae  
Subject: RE: Mobex Opposition to Petition for Reconsideration

Kevin:

Mobex is no longer a tenant at the John Hancock Center. They have not been for sometime. Send me something for review and I'll see if I can get it signed. I can't promise you anything.

## Exhibit 2

Commission Precedents regarding fitness to hold FCC licenses, including precedents on false renewal applications.

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- The Commission considers the character and fitness of parties seeking to become or remain FCC licensees to be of such importance that in 1985 it promulgated a *Character Policy Statement* so that applicants and licensees would be aware of the Commission's character and fitness requirements for holding FCC authorizations. *See Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 F.C.C. 2d 1179 (1985) ("*Character Policy Statement*").
  - Although the character standards were originally applied to broadcast licensees, the Commission has found that the standards "can provide guidance in the common carrier area as well," *MCI Telecommunications Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509, 515 n.14 (1998), and has routinely applied the standards to carriers holding Title III licenses, e.g., *Southern New England Telecommunications Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21305 (1998).
- The primary focus of the Commission's character requirements has involved "FCC-related" behavior. In developing its character standards, the Commission "focused on specific traits which are predictive of an applicant's propensity to deal honestly with the Commission and comply with the Communications Act and the Commission's rules or policies." *Character Policy Statement*, 102 F.C.C. 2d at 1189.
- "Generally, breach of the duty to be truthful to the Commission takes two basic forms: (1) misrepresentation, and (2) lack of candor (failure to disclose). The former involves false statements of fact; the latter involves concealment, evasion, or other failure to be fully informative. Thus, an applicant's duty can be breached by affirmative misrepresentations and/or by a failure to come forward with a candid statement of relevant facts, whether or not such information is particularly elicited by the Commission." *Applications of Westel Samoa, Inc.*, Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause, 12 FCC Rcd. 14,057 (1997) at ¶ 38 ("*Westel*").
  - "Mr. Breen's failure to timely inform the Commission about material facts of which he was aware constitutes a breach of duty to the Commission and raises a substantial and material question of fact as to whether Mr. Breen lacked candor before the Commission. As the majority shareholder in Westel, Mr. Breen's misconduct calls into question whether Westel is qualified to be a Commission licensee. Accordingly, Westel's applications will be designated for a hearing in this consolidated proceeding." *Westel* at ¶ 48.
- In particular, the Commission has described the duty of licensee candor as "basic and well known." *See Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240, 243 (D.C. Cir. 1980), *cert. denied*, 449 U.S. 834 (1980) ("*Sea Island*").

- The Commission has explained that “As we noted in the Character Policy Statement, we are authorized to treat even the most insignificant misrepresentations as serious.” *Applications of PCS 2000, L.P.*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703 (1997) at ¶ 47.
- See also 47 C.F.R. § 1.17 (providing that no person, in any investigation or adjudicatory proceeding, shall “intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading”).
- In many cases, the Commission has disqualified companies from holding FCC authorizations. See, e.g., *Radio Carrollton*, Memorandum Opinion and Order, 69 F.C.C.2d 1139 (1978) at ¶¶ 11,17 (“Thorburn’s testimony on this matter before the Commission evinces an unmistakable lack of candor bordering on deception, conduct the Commission cannot and will not tolerate. . . . Through this conduct, Faulkner has demonstrated that it does not possess the qualifications to be a licensee. Accordingly, we conclude that the public interest would not be served by a renewal of Faulkner’s license.”)
- The Commission has found that “[o]nce we find that we cannot rely on a licensee’s representations to us, the only suitable penalty is revocation of the license.” *Sea Island*, 60 F.C.C.2d at 157 (revoking license because the owner and officers of the licensee company made deliberate misrepresentations and other misleading and deceptive statements to the Commission in order to conceal improper financial practices); *RKO General, Inc.*, Decision, 78 F.C.C.2d 1 (1980), *aff’d*, 670 F.2d 215 (D.C. Cir. 1981) (denying an application based upon applicant’s lack of candor in proceedings before the FCC).
- In *Pass Word, Inc.*, a radio common carrier falsely certified to the FCC that it had completed its construction obligations (pursuant to a construction permit), in order to obtain a grant of its licenses. The FCC revoked Pass Word’s licenses:
  - “Among [the] documents are forms and letters filed with the Commission certifying the operative status of facilities for which construction permits had been issued. As detailed herein, the Commission finds that Pass Word and Bacon filed documents with the Commission in 1974 representing that construction of certain facilities had been completed in accordance with the term of the construction permit, and that equipment and service tests would begin shortly, when in fact the facilities were not ready for operation. The record establishes that equipment essential for operation of the facilities was not on hand when the representations were made, and that construction was completed and service commenced long after the expiration of the construction permits. Moreover, the record establishes that Bacon, individually and as the chief operating officer of Pass Word, concealed facts in correspondence, pleadings and forms filed over a three-year period regarding construction of the facilities and the Commission’s inquiry pertaining thereto. The facts establish that the concealment was deliberate and that Bacon deliberately made misrepresentations to the Commission.” *Pass Word, Inc.*, Order to Revoke Licenses, 76 F.C.C.2d 465 (1980) at ¶ 10, *aff’d*, *Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982).

- “Section 312(a)(3) explicitly grants authority to the Commission to revoke a license for willful or repeated failure to operate substantially as set forth in the license. Had we been apprised that the 454 MHz channels had not been constructed and ready to operate by the expiration date of the construction permits and why, we would have been warranted in refusing to grant a license to cover those channels and in revoking the construction permit. Bacon did not in fact construct the channels in a timely manner and demonstrated no diligence in attempting to do so. Bacon willfully failed to construct and provide service and thus to operate as set forth in the licenses. It is important that a permittee, having received a valuable privilege, take immediate steps to construct the facilities that are to be dedicated to public service. A disregard for the construction period terms not only deprives the public of the service which has been represented as unfulfilled, but also ties up the frequency so another applicant is unable to meet the need. Thus, even if these had been no deliberate misrepresentation, revocation would have been appropriate in the factual situation described herein.” *Id.* at ¶ 122.
- The FCC rejected Pass Word’s request for a monetary forfeiture in lieu of revocation, stating “There is no question that revocation is an appropriate remedy under the Act where there has been a repeated pattern of deliberate misrepresentation and concealment to this Commission. Section 312(a)(1). *FCC v. WOKO, Inc.*, 329 U.S. 223 (1949). *Sea Island Broadcasting Corp.*, 60 F.C.C. 2d 146 (1976), *aff’d*, F. 2d, No. 76-1735 (D.C. Cir. Jan. 14, 1980). This same standard is applied to common carrier licensees. *The Telephone Co., et al.*, 65 F.C.C. 2d 605 (1977).” *Id.* at ¶ 121.

• The FCC has specifically disqualified licensees based on misleading renewal applications. *See RKO General, Inc.*, 78 FCC 2d 1, 98 (1980) (submissions to the Commission 'containing statements that are 'technically correct' but misleading as to the known facts' amount to lack of candor). In affirming the Commission's disqualification of the licensee in RKO solely on the grounds of lack of candor, the Court of Appeals stated:

- “Section 1.65 of the Commission's Rules requires applicants to inform the Commission within thirty days whenever 'there has been a substantial change' regarding any matter that may be 'of decisional significance in a Commission proceeding involving the pending application.' This requires that an applicant inform the Commission 'of all facts, whether requested in [renewal] Form 303 or not, that may be of decisional significance so that the Commission can make a realistic decision based on all relevant factors.’” *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (1981). (internal citations omitted).

Exhibit 3:

John Reardon Responses to an Alexandrians for Sensible Growth, Inc. Questionnaire for Alexandria, VA Y2003 City Council Elections--excerpts. John Reardon is President of Mobex.

The below are excerpts from: [http://www.alex4sensiblegrowth.org/candidates/reardon\\_q.html](http://www.alex4sensiblegrowth.org/candidates/reardon_q.html). Underlining and other emphasis added.

According to Mr. Reardon below, Mobex was still "building-out" its licenses, although Mobex had years before reported to the FCC that it constructed all of its licenses, and years before the FCC had frozen any additional AMTS site-based licensing.

Also, according to Mr. Reardon below, he had eliminated all Mobex debt, but per numerous court cases, where vendors, former employees, and even its own law firms sued Mobex for sums due, well into many millions of dollars in the aggregate—Mobex had increased huge debt as a result of court judgments against Mobex and court settlements, and that involved bankruptcy of one of its subsidiaries.

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**Questionnaire Response for John Reardon**

**JOHN REARDON**

714 South Overlook Drive  
Alexandria, Virginia 22305  
(703) 837-0576 (evenings and weekends)  
(703) 887-2109 (weekdays)  
[lnreardon@aol.com](mailto:lnreardon@aol.com)

I am running for City Council at Large as a Republican candidate.

1) Please provide a detailed bio, including your educational background, employment history and civic involvement.

**PROFESSIONAL EXPERIENCE**

Mobex Communications, Inc. January 2001-Present  
President and CEO

Mobex is a privately-held wireless communications company operating in 80 of the top 100 markets in the United States. As President and CEO, I have eliminated all corporate debt, redirected operations into new lines of revenue generation, and streamlined overhead costs. Mobex is in the process of building out its recently-acquired nationwide network of wireless licenses. This buildout is expected to result in very positive shareholder returns.

General Counsel and Vice President of Human Resources 1997-2000

I directed all legal policies for Mobex. \* \* \* \*

Certificate of Service

I, the undersigned, certify that I have, on this 3<sup>rd</sup> day of February 2006, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Supplement to Petition for Reconsideration, including exhibits, to the following:

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
(filed via email to [WTBSecretary@fcc.gov](mailto:WTBSecretary@fcc.gov) , pursuant to Order, FCC 01-345)

Dennis Brown (legal counsel for Mobex and Maritime Communications/  
Land Mobile LLC)  
8124 Cooke Court, Suite 201  
Manassas, VA 20109-7406  
(also via nationwide courier)

Audrey Rasmussen (legal counsel for Paging Systems, Inc.)  
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.  
1120 20<sup>th</sup> Street, NW  
Suite 700, North Building  
Washington DC 20036

*[ Filed Electronically. Signature on File. ]*

---

Warren Havens

Certificate of Service

I, the undersigned, certify that I have, on this 7th day of February 2006, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Supplement to Petition for Reconsideration,<sup>9</sup> which is being filed today on ULS, to the following:

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
(filed via ULS)

Dennis Brown (legal counsel for Mobex & Maritime)  
8124 Cooke Court, Suite 201  
Manassas, VA 20109-7406  
(Also served via nationwide courier.)

Audrey Rasmussen (legal counsel for Paging Systems Inc.)  
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.  
1120 20<sup>th</sup> Street, NW  
Suite 700, North Building  
Washington DC 20036

*[ Filed Electronically. Signature on File. ]*

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Warren Havens

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<sup>9</sup> This was previously filed via email and served on the parties as the preceding Certificate of Service indicates.

**EXHIBIT 4**

**THIS EXHIBIT HAS NOT BEEN INCLUDED IN THE PUBLIC FILE BECAUSE  
IT CONTAINS CONFIDENTIAL AND/OR HIGHLY CONFIDENTIAL  
INFORMATION SUBJECT TO PROTECTIVE ORDER IN  
FCC EB DOCKET NO. 11-71**

**EXHIBIT 5**

**THIS EXHIBIT HAS NOT BEEN INCLUDED IN THE PUBLIC FILE BECAUSE  
IT CONTAINS CONFIDENTIAL AND/OR HIGHLY CONFIDENTIAL  
INFORMATION SUBJECT TO PROTECTIVE ORDER IN  
FCC EB DOCKET NO. 11-71**

**EXHIBIT 6**

**THIS EXHIBIT HAS NOT BEEN INCLUDED IN THE PUBLIC FILE BECAUSE  
IT CONTAINS CONFIDENTIAL AND/OR HIGHLY CONFIDENTIAL  
INFORMATION SUBJECT TO PROTECTIVE ORDER IN  
FCC EB DOCKET NO. 11-71**

**EXHIBIT 7**

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

In the Matter of )

**MARITIME COMMUNICATIONS/LAND )  
MOBILE, LLC )**

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Participant in Auction No. 61 and Licensee of Various )  
Authorizations in the Wireless Radio Services )  
Applicant for Modification of Various Authorizations )  
in the Wireless Radio Services; )

Applicant with ENCANA OIL AND GAS (USA), INC.; )  
DUQUESNE LIGHT COMPANY; DCP )  
MIDSTREAM, LP; JACKSON COUNTY RURAL )  
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET )  
SOUND ENERGY, INC.; ENBRIDGE ENERGY )  
COMPANY, INC.; INTERSTATE POWER AND )  
LIGHT COMPANY; WISCONSIN POWER AND )  
LIGHT COMPANY; DEXIE ELECTRIC )  
MEMBERSHIP CORPORATION, INC.; ATLAS )  
PIPELINE—MID CONTINENT, LLC; DENTON )  
COUNTY ELECTRIC COOPERATIVE, INC., DBA )  
COSERV ELECTRIC; AND SOUTHERN )  
CALIFORNIA REGIONAL RAIL AUTHORITY )

Application File Nos.  
0004030479, 0004144435,  
0004193028, 0004193328,  
0004354053, 0004309872,  
0004310060, 0004314903,  
0004315013, 0004430505,  
0004417199, 0004419431,  
0004422320, 0004422329,  
0004507921, 0004153701,  
0004526264, 0004636537,  
and 0004604962

For Commission Consent to the Assignment of Various )  
Authorizations in the Wireless Radio Services )

**RESPONSE TO INTERROGATORIES**

Maritime Communications/Land Mobile, LLC ("Maritime") hereby respectfully tenders these responses to the *Enforcement Bureau's First Set of Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Site-Based Operations*, served on February 28, 2012.

1. *Identify each current and former lessee for each Site-based Authorization, including but not limited to the full and official name of the lessee, its principal place of business, and its main telephone number.*

Central Communications Network  
Grace Lindblom, President  
1412 West Colonial Drive  
Orlando, FL 32804  
(407) 835-9500

Duquesne Light Company  
Attention Lesley C. Gannon, Esq.  
411 Seventh Avenue  
Pittsburgh, PA 15219  
(412) 393-1518

Evergreen School District  
Bill Thackeray, Purchasing and Account Manager  
13501 Northeast 28 Street, PO Box 8910, Vancouver, WA 98668  
(360) 604-4084

Pinnacle Wireless, Inc.  
Mike Hayford or Chris Love, Principals  
80 Commerce Way  
Hackensack, NJ 07601  
800-214-6642 ext. 114

Puget Sound Energy, Inc.  
Attn: Margaret Hopkins, Director IT Infrastructure  
10885 NE 4th Street  
Bellevue, WA 98009-9734  
(425) 462-2875

2. *Identify, by call sign and location, each Site-based Authorization leased to Pinnacle Wireless and any documents related thereto (by document production number).*

The agreements with Pinnacle Wireless were included in the documents produced in response to the Bureau's October 26, 2011, Court-Ordered Discovery Requests. The documents were not numbered, but there is attached hereto the table listing the documents produced, each entry having been numbered by hand. The relevant Pinnacle agreements are item numbers 9, 14, and 15 on that listing.

Pinnacle Wireless leases spectrum throughout New Jersey for use by the New Jersey Transit Agency along the Garden State Parkway and New Jersey Turnpike, and by the New Jersey Sports and Entertainment Authority at The Meadowlands Complex, which includes Giants Stadium, the New Jersey Devils' hockey arena, and the Xanadu shopping center, as well as related parking lots. Pinnacle has constructed approximately 20 sites within New Jersey to service the over 800 radios that operate on the statewide system. Upon renewal, Maritime will seek to modify its license to permanently license these various sites so that the license more accurately reflects the actual usage in place.

In particular, Pinnacle has built this system within the contours of two incumbent locations, WRV374-15 in Verona, NJ and WRV374-25 in Perrinville, NJ. Because of the overlapping nature of 38 dBu service contours and 20 dBu protection contours of incumbent sites, Pinnacle operates a system that impacts and restricts operations from other Maritime incumbent sites with contours overlapping northern New Jersey

operations, including WRV374-16 in Allentown, PA, WRV374-33 in New York City, and WRV374 -18 in Valhalla, NY.

Pinnacle also leases spectrum pursuant to the geographic area license for the Mid-Atlantic Region in the middle and southern areas of NJ which impacts incumbent sites WRV374-3 in Philadelphia and WRV374-17 in Winterthur, Delaware. Thus, Maritime's ability to otherwise operate at these incumbent sites is negligible because such operations would conflict with the lease agreement and would interfere with the heavy usage of the existing Pinnacle lease operations for public safety uses. Those uses include communications among and between the New Jersey Turnpike troopers, Garden State Parkway troopers, and road crews performing hazardous duties such as signal light bulb replacement along a busy highway, and similar emergency repairs. Security forces at The Meadowlands complex also use the system. The system is used for intelligent transportation purposes along the highways, including coordination of ambulances and hazardous conditions communications to motorists, such as signs reading "Ice Ahead" or "Fog Ahead".

3. *Identify, by call sign and location, each Site-based Authorization leased to Access 220, LLC and any documents related thereto (by document production number).*

Maritime does not lease spectrum to Access 220 LLC. Maritime instead assumed the lease between Evergreen School District and Access 220 LLC and replaced that lease agreement by an amendment pursuant to which Evergreen utilizes spectrum on KAE889-3 at Livingston Peak in Clark County, Washington. The relevant agreement is item number 16 on the attached listing.

4. *Identify, by call sign and location, each Site-based Authorization leased to Atlas Pipeline Mid-Continent LLC and any documents related thereto (by document production number).*

None.

5. *Identify, by call sign and location, each Site-based Authorization leased to Denton County Electric Cooperative Inc. d/b/a Co-Serv Electric and any documents related thereto (by document production number).*

None.

6. *Identify, by call sign and location, each Site-Based Authorization leased to Duquesne Power & Light and any documents related thereto (by document production number).*

WHG750 in Harshaville, Beaver County, (near Pittsburgh), in Pennsylvania. The relevant agreement is numbered item 22 on the attached listing.

7. *Identify, by call sign and location, each Site-Based Authorization leased to Encana Oil & Gas and any documents related thereto (by document production number).*

None.

8. *Identify, by call sign and location, each Site-Based Authorization leased to Evergreen School District and any documents related thereto (by document production number).*

Evergreen School District is in Clark County, Washington. Evergreen utilizes spectrum on KAE889-3 at Livingston Peak in Clark County, Washington. Due to the overlapping service and interference contours, other sites are restricted and impacted by this lease: those sites include KAE889-13 in Portland, Oregon and KAE889-46 at Goat Mountain in Oregon. Please see Exhibits B and B-1 to the Puget Sound Energy Asset Purchase Agreement for interference protection between PSE and Evergreen School District. See Response No. 4, above.

9. *Identify, by call sign and location, each Site-Based Authorization leased to Alliant Energy and any documents related thereto (by document production number).*

None. Alliant is Interstate Power and Light and Wisconsin Power and Light, and they have a right, at their option, under Section 3(B) of the Asset Purchase Agreements to test and use the spectrum by filing either a request for Special Temporary Authority or an Experimental License application, or both. Maritime reserves this right for them which includes incumbent call signs covered by these two agreements, which are: WHG722, WHG723, WHG724, WHG725, WHG742, WHG743, and portions of KPB531 for channels 161-164 at location 3 in Kenosha, WI. The above listed incumbent call signs must be cancelled in whole or part prior to initial closing, please see Exhibit A of these agreements. (These incumbent call signs are overlapped by the geographic license area being partitioned). The relevant agreements are item numbers 29 and 30 on the attached listing. They were also included in documents produced by email on March 1, 2012 (see "Bates" number pages PK0228\_000009 through PK0228\_000063).

10. *Identify, by call sign and location, each Site-based Authorization leased to Questar Market Resources, Inc. and any documents related thereto (by document production number).*

None.

11. *Identify, by call sign and location, each Site-based Authorization leased to DCP Midstream, LLC and any documents related thereto (by document production number).*

None. Through an inadvertent error in a prior response, Maritime included DCP in a list of incumbent station lessees, but the agreement with DCP was an asset purchase agreement for a geographic area license and did not include a lease provision. The relevant agreement is item number 18 on the attached listing.

12. *Identify, by call sign and location, each Site-based Authorization leased to Enbridge, Inc. and any documents related thereto (by document production number).*

None.

13. *Identify, by call sign and location, each Site-based Authorization leased to Dixie Electric Membership Corporation and any documents related thereto (by document production number).*

None.

14. *Identify, by call sign and location, each Site-Based Authorization leased to Spectrum Tracking Systems and any documents related thereto (by document production number).*

None. STS leases geographic area licenses in the Southern Pacific and Mississippi River license areas. STS uses the tracking service in conjunction with the FBI and law enforcement in Houston, Los Angeles, Birmingham, Little Rock and Dallas. However, STS operations do overlap incumbent sites in Houston, Texas and Orange County, CA and Los Angeles, CA, thereby restricting or preventing operations at locations near Houston and Los Angeles, such WHG708 and at KAE889-14.

15. *Identify, by call sign and location, each Site-Based Authorization leased to Central Communications Network and any documents related thereto (by document production number).*

CCN leases WRV374-39 in Clearwater and WRV374-12 in Orlando, FL. Although Maritime has been forced to sue CCN for non-payment of this lease, Maritime has never cancelled the lease, which runs through 2014. The relevant agreement was included in documents produced by email on March 1, 2012 (see "Bates" number pages PK0228\_000085 through PK0228\_000100. CCN constructed 14 lower sites within the footprint of the incumbent sites and loaded PassPort users on these sites.

CCN reneged on its lease payments, and Maritime was awarded a \$900K judgment against CCN. Maritime is actively attempting to collect on that judgment. Prior to filing Chapter 11, Maritime retained a collection agent, as follows:

Wayne Robinson  
Royal Mercantile Trust  
Tel: 772-220-1300 ext 220  
Tel: 800-327-9714 ext 220  
Fax: 772-283-9100  
Cell: 772-485-0111  
Email: wrobinson@rmtc.com

Royal Mercantile Trust is a collection agency retained well prior to Maritime filing Chapter 11. Maritime believes that some or all of the sites may be temporarily off the air due to CCN's financial condition, but Maritime does not have any direct knowledge of this. CCN continues to operate as a business. Maritime is not sure how long, if at all, the sites ceased operating under CCN's management. To date, CCN has been uncooperative with Maritime's efforts to collect on its judgment against CCN or seize the equipment. Maritime continues its collection efforts, and it certainly has not abandoned these sites.

16. *Identify, by call sign and location, each Site-Based Authorization leased to Shenandoah Electric, and any documents related thereto (by document production number).*

None.

17. *Identify, by call sign and location, each Site-Based Authorization leased to Rappahannock Electric and any documents related thereto (by document production number).*

None. Rappahannock Electric leases spectrum pursuant to Maritime's Mid-Atlantic geographic license. However this usage overlaps with and therefore restricts incumbent location WRV374-29 in Richmond, VA. The relevant agreement is item number 19 on the attached listing.

18. *Identify, by call sign and location, each Site-Based Authorization leased to Jackson County Rural Electric, and any documents related thereto (by document production number).*

None.

19. *Specify each location and frequency of any Site-Based Authorization leased to Central Communications Network for which you allege in your response to Joint Interrogatory No. 8 that operations have ceased.*

Maritime did not so state in its response to Joint Interrogatory No. 8.

20. *For each location and frequency you identified in your response to Interrogatory No. 19, above, describe why operations have ceased and for how long any such location and frequency has not been operating.*

Please refer to the preceding response.

21. *Specify each location and frequency of any Site-based Authorization from which you allege in your response to Joint Interrogatory No. 7 that "Maritime may have, from time to time, temporarily removed equipment."*

Maritime's authorized two way radio dealer, Eagle Communications, Inc., removed equipment from Santiago Peak, CA in or around August 2010 due to interference between Maritime's system operating there and the testing work performed by Southern California Regional Rail Authority. In particular, Maritime and Metrolink agreed in the Asset Purchase Agreement that Maritime would deconstruct that site and cancel that incumbent license on or prior to the assignment of the partitioned geographic Southern Pacific license to SCRRA (Metrolink). Maritime intends to return to that site in the event the APA with Metrolink is not approved by the FCC or otherwise fails to close.

Mobex, the prior licensee, changed technology platforms, building LTR and MPT-1327 format systems in various markets on the East Coast, West Coast and Great Lakes to meet original construction requirements. Mobex entered an agreement with Motorola in or around 2003 to permit Motorola to replace some of those LTR and MPT-1327 format systems with Motorola Passport format systems in the Chicago, New York, Washington, DC, Baltimore and Philadelphia markets. Moreover, CCN replaced the original Mobex LTR format system in Central Florida with a 14-site Passport format system that utilizes all the channels from the Clearwater and Orlando sites in Central Florida.

In addition, the prior response was intended to cover the situations in which, for maintenance, repair, or similar reasons a particular part of a station may be temporarily removed or replaced with another unit (e.g., changing out an antenna, replacing a radio, etc.). Maritime cannot state specific sites or dates where this occurred, but it is a routine occasional occurrence in any operating system. Any such removals would have been for very short periods, usually minutes or a few hours.

22. *For each location and frequency you provided in response to Interrogatory No. 21, above; describe why "Maritime may have, from time to time, temporarily removed equipment" and the length of time during which such equipment may have been removed.*

See the response to Interrogatory No. 21, above.

23. *Specify each location and frequency of each Site-based Authorization for which you allege in your response to Joint Interrogatory No. 7 that "payment of site leases and utilities fell into arrears" and the time period during which each such payment was or has been in arrears.*

As part of the terms of the Maritime acquisition, all of Mobex's lease payment obligations were paid in full up to the closing date, and Maritime was therefore current on all payments going forward as of January of 2006.

Due to the extremely high cost of defending itself against Warren Havens litigation at the FCC, before state courts in California and federal courts in New Jersey, Maritime felt constrained to keep up with utilities and site rents in the 2007-2009 timeframe. During this same time period, CCN reneged in its lease payments to Maritime, creating a financial perfect storm. As a result, payments once again fell into arrears at various sites.

In particular, KAE889 locations in the Pacific Northwest generally fell behind in the timeframe 2007-2009. These site rents in Washington State were brought current in early 2010 and utilities were paid current and continued to operate up until the time of the bankruptcy filing, August 1, 2011. Since the Chapter 11 filing, the rents and utilities have again fallen behind.

Payment fell into arrears on site rents on the East Coast at locations in Savannah, GA, Hamden Connecticut, Rehoboth, MA, New York, NY, Selden, NY, and Valhalla, NY generally in this same time frame of 2007-2009. Rents were brought current or new leases negotiated and utilities paid up through 2010, and were paid current up until the time of the bankruptcy filing, August 1, 2011. Since the Chapter 11 filing, the rents have again fallen behind.

The Raymond, ME, Fajardo, PR, Charleston, SC, Spaulding, FL, West Palm Beach, FL and Miami, FL rents fell behind in 2007-2008 timeframe and remain unpaid. Maritime has negotiated new leases for several of these sites, including Miami and Spaulding, FL, but the filing of Chapter 11 has stalled those efforts.

In Perrinville, NJ and Verona, NJ, Maritime operates its channels, through Pinnacle Wireless as the lessee, at the approximately 20 locations along the New Jersey Turnpike, the Garden State Parkway, and at The Meadowlands. Maritime paid the Verona, NJ lease manager, Pinnacle Wireless, in 2009 for back rent and for six months' rent going forward. The rooftop of the building, known as Claridge House, was under repair and Maritime's equipment may have been removed by the site owner during this time. Unknown to Maritime, Pinnacle lost the right to manage that site sometime in 2010, so that Maritime's payments to Pinnacle for restoration of that site did not in fact result in replacement of Maritime's equipment at the site at that time. Maritime has attempted to enter a new lease with the new management company for that site, but has been unable to do so because the roof was under repair.

At Perrinville, NJ the site is in a rock quarry and has fallen into disrepair. This site is temporarily off the air. Maritime entered a new lease with Diamond Communications at a nearby site but filed Chapter 11 before it could begin the installation process at this site. Maritime intends to modify its license to move the Perrinville licensed location to the Diamond Communications site once Maritime emerges from Chapter 11.

Like the Verona site mentioned above, the majority of channels are used by Pinnacle Wireless customers the New Jersey Turnpike and Garden State Parkway personnel in the area surrounding this site. Maritime questions the wisdom of providing a "channel saver" at this location simply to protect the licensed location; Maritime instead believes the Commission should be gratified with the public service being provided using the channels. Maritime notes that service to over 800 radios occurs daily all around this location, and that Maritime has never abandoned its service of the population around this contour.

24. *Describe all steps you have taken to obtain corporate and operational records of Mobex that were not destroyed when storage fees fell into arrears.*

Additional records of Mobex were located within the 12 boxes of documents (scanned and produced to the Bureau on disk), and in accounting computer files in Maritime's Clarksville, Indiana offices. In addition, Maritime has produced accounting and tax return records as well as USAC filings that provide evidence of the construction and operation of facilities. The availability of older Mobex documents was also discussed in the affidavit of Mr. David Predmore, the former Chief Administrative Officer of Mobex, submitted in connection with the WRV374 renewal proceeding. A copy is included in the single box of documents produced to the Bureau on or about February 8, 2012, numbered RJK\_41.

25. *Organizing your response by location and frequency of each Site-based Authorization, identify all documents (by document production number) on which Maritime is relying for its statement in response to Joint Interrogatory No. 2 that "construction of each of the listed facilities was completed within the applicable construction deadline, even where the exact dates are unknown."*

As previously explained, Maritime does not know the specific construction completion dates for the majority of the incumbent facilities, but has stated on information and good faith belief that each of the facilities was timely constructed. Except as stated in the next paragraph, these facilities were in place and operating, and each of the licenses had subsequently gone through at least one renewal cycle prior to acquisition by Mobex. Moreover, the Commission staff conducted an audit of the construction status of most of these stations at the time of the scheduling of the first AMTS auction. Finally, Maritime is aware of no information that would indicate that any of these stations was not timely constructed. On that basis, Maritime's assertion of timely construction on information and good faith belief is justified.

As to those site locations for Station WRV374 as to which the construction deadlines were after acquisition of the Regionet licenses by Mobex, the statements were based on the personal knowledge of Tim Smith, a current Maritime employee who was a Mobex employee at the time of such construction. In determining the specified completion dates, Maritime relied on the construction completion notices executed by Paul vander Heyden and filed with the Commission at the time. These documents were produced on or about February 8, 2012, as Item RJK\_31 in the single box of documents. It is also believe that some or all of these same letters are included among the scanned documents on the disk.

26. *Organizing your response by location and frequency of each Site-based Authorization, identify all documents (by document production number) on which Maritime is relying for its statement in response to Joint Interrogatory No. 5 that "each facility was placed into operation on the date construction was completed."*

Please refer to the response to Interrogatory No. 25, above. As previously explained, Maritime deems a station to be "placed in operation" as of the date construction was completed and the station was operational and capable of handling traffic.

27. *Organizing your response by location and frequency of each Site-based Authorization, identify all documents (by document production number) on which Maritime is relying for its statement in response to Joint Interrogatory No. 12 that "none" of the locations and frequencies of the Site-based Authorizations were placed in operation more than two years after grant of the authorization for that location and frequency.*

Please refer to the response to Interrogatory No. 25, above.

28. Describe your legal basis (including but not limited to any case law or other legal precedent) for Maritime's contention in its June 30, 2011 Responses to the Bureau's Requests for Admission at Request Nos. 122, 126, 142, 146, 150, 154, 158, 162, 166, 169, and 173 that the discontinuance of operations of any facility for a Site-based Authorization licensed to Maritime, including but not limited to any Site-based Authorization that Maritime acquired from Mobex, is not permanent.

**OBJECTION.** This is an improper interrogatory. It does not seek factual information, but rather calls for legal conclusions and a statement of legal positions and strategies.

Respectfully Submitted,



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Dated: March 13, 2012

ATTACHMENT

**Documents Being Produced in Response to the Enforcement  
Bureau's October 26, 2011, Court-Ordered Discovery Requests**

**Promissory Notes & Related Documents**

- 1 • Promissory note and related documents in connection with secured claim of Pinnacle National Bank
- 2 • Promissory note and related documents in connection with loans made to MCLM by various individuals

**Valuations, Appraisals, etc.**

- 3 • 13-Dec-03 Analysis of Intangible Assets of MOBEX Communications, Inc. Prepared by Bond & Pecaro
- 4 • 31-Jul-08 AMTS Spectrum Auction Proposal Prepared by Spectrum Bridge
- 5 • 1-Sep-08 Fair Market Valuation of FCC Licenses Prepared by Bond & Pecaro
- 6 • 2-Sep-08 Proposal to Market & Sell AMTS Spectrum Prepared by Spectrum Bridge, Inc.

**Purchase and Spectrum Lease Agreements**

- 7 • 20-May-05 Purchase agreement between MOBEX Network Services and MCLM
- 8 • 22-Dec-05 Lease agreement between MOBEX and Pinnacle Wireless, Inc.
- 9 • 24-Jan-06 Lease agreement with Pinnacle Wireless, Inc.
- 10 • 1-Dec-07 Lease agreement with NRTC LLC
- 11 • 1-Jan-08 Lease agreement with NRTC LLC
- 12 • 4-Jun-08 Lease agreement with NRTC LLC
- 13 • 30-Oct-08 Lease agreement with Evergreen School District
- 14 • 15-Dec-08 Lease agreement with Pinnacle Wireless, Inc.
- 15 • 15-Dec-08 Lease agreement with Pinnacle Wireless, Inc.
- 16 • 29-May-09 Lease agreement with Access 220 LLC
- 17 • 29-Jun-09 Purchase agreement with EnCana Oil & Gas (USA) Inc.
- 18 • 14-Aug-09 ✓ Purchase and lease agreement with DCP Midstream LLC
- 19 • 25-Sep-09 Lease agreement with Rappahannock Electric Cooperative
- 20 • 5-Feb-10 Purchase agreement with Southern California Regional Rail Authority
- 21 • 7-Feb-10 Purchase and lease agreement with Denton County Electric Coop. Inc

Documents Being Produced in Response to the Enforcement  
Bureau's October 26, 2011, Court-Ordered Discovery Requests  
(Page Two)

Purchase and Spectrum Lease Agreements (continued) ...

22	18-Feb-10	Purchase agreement with Duquesne Light Company
23	21-Apr-10	Purchase agreement with Jackson County REMC
24	10-May-10	Purchase agreement with Questar Market Resources, Inc.
25	11-May-10	Purchase agreement with Questar Market Resources, Inc.
26	12-May-10	Lease agreement with Questar Market Resources, Inc.
27	20-May-10	Purchase and lease agreement with Puget Sound Energy, Inc.
28	20-May-10	Lease agreement with Puget Sound Energy, Inc.
29	10-Sep-10	Purchase agreement with Interstate Power and Light Company
30	10-Sep-10	Purchase agreement with Wisconsin Power and Light Company
31	10-Sep-10	Purchase agreement with EnCana Oil & Gas (USA) Inc.
32	14-Sep-10	Purchase and lease agreement with Enbridge, Inc.
33	14-Sep-10	Lease and lease agreement with Enbridge, Inc.
34	25-Oct-10	Purchase and lease agreement with Dixie Electric Membership Corp.
35	16-Nov-10	Lease agreement with EnCana Oil & Gas (USA) Inc.
36	19-Nov-10	Purchase agreement with Atlas Pipeline Mid-Continent LLC
37	19-Nov-10	Lease agreement with Atlas Pipeline Mid-Continent LLC
38	16-Dec-10	Purchase agreement with EnCana Oil & Gas (USA) Inc.
39	21-Dec-10	Lease agreement with Progress Energy Carolinas, Inc.
40	21-Dec-10	Purchase agreement with Progress Energy Carolinas, Inc.
41	7-Feb-11	Lease agreement with Denton County Electric Cooperative Inc.