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

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| **MARITIME COMMUNICATIONS/LAND MOBILE, LLC** | ) | EB Docket No. 11-71<br>File No. EB-09-IH-1751<br>FRN: 0013587779 |
| | ) | |
| Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services<br>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; DIXIE 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 | ) | |

To: Marlene H. Dortch, Secretary
Attn: The Honorable Richard L. Sippel, Chief Administrative Law Judge

**MARITIME'S RESPONSE TO HAVENS-SKYTEL MOTIONS PER ORDER FCC 13M-19**

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December 16, 2013

**MARITIME'S RESPONSE TO HAVENS-SKYTEL MOTIONS PER ORDER FCC 13M-19**

Maritime Communications/Land Mobile, LLC (Maritime), pursuant to the procedures and schedule set by the Presiding Judge's *Order*, FCC 13M-19 (Oct. 25, 2013) in the captioned proceeding, hereby responds to pleadings filed in the captioned matter by Warren C. Havens ("Havens"), to wit: *Havens-SkyTel First Motion Under Order 13M-19 To Reject Settlement, Proceed with the Hearing and Provide Additional Relevant Discovery* ("*Havens First Motion*")[1] and *Havens-SkyTel Additional Motions Under Order 13M-19* ("*Havens Additional Motion*").[2]

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[1] According to data in the Commission's Electronic Comment Filing System ("ECFS"), *Havens First Motion* was submitted on December 2, 2013. The ECFS does not indicate the time of filing, but it is clear from the document itself that it was filed well after the 5:30 PM EST deadline that the Presiding Judge has set for this proceeding. See *Order*, FCC 12M-55 (Dec. 5, 2012). *Havens First Motion* expressly references the *Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G*, ("*Joint Summary Decision Motion*") filed earlier the same day and not posted on the ULS system just prior to the 5:30 PM deadline. Moreover, a significant portion of *Havens First Motion* is in specific response to the *Joint Summary Decision Motion*. Clearly, Havens ignored the Presiding Judge's 5:30 PM deadline, and then exploited the violation, using the additional time to review and respond to a pleading that was timely filed earlier that same day. Such gamesmanship and cavalier attitude toward the established procedures should not be countenanced.

[2] *Havens Additional Motion* as well as an *Errata Copy to Havens-SkyTel First Motion Under Order 13M-19 To Reject Settlement, Proceed with the Hearing and Provide Additional Relevant Discovery* were filed both filed on December 3, 2013, the day *after* the deadline set by the Presiding Judge. On December 9, 2013—a full week after the filing deadline—Havens also submitted a *Second Errata Copy to Havens-SkyTel First Motion Under Order 13M-19 To Reject Settlement, Proceed with the Hearing and Provide Additional Relevant Discovery*. Maritime respectfully requests that all four of the Havens pleadings be stricken and not considered. One was submitted after the 5:30 PM deadline, and the other three were submitted after the prescribed filing date. Moreover, the ostensible errata filings go beyond correcting mere typographical or other minor clerical errors. Consistent with his usual practice, Mr. Havens filed incomplete pleadings with brackets identifying information to be filled in later. Subsequent "errata" filings were then submitted to supply the missing information. To the extent the errata make genuinely minor clerical corrections, the errors and the original meaning are clear from the face of the originally filed documents, so that striking the "errata" filings will not unduly prejudice Havens.

1. Havens argues that: (i) the proposed resolution set forth in the *Joint Summary Decision Motion* constitutes a prohibited "consent order"; (ii) summary decision is improper because the alleged wrongdoing of Maritime must be adjudicated; (iii) Maritime lacks the legal capacity and/or authority to pursue the proposed resolution of Issue G; (iv) he was improperly excluded from negotiations with Maritime and the Enforcement Bureau ("Bureau"); (v) discovery should be reopened; and (vi) Maritime should be barred from seeking *Second Thursday* relief. Each of these items is briefly addressed herein.

**(1) The Summary Decision Motion Is Not a Request for a Consent Order.**

2. Havens asserts that the proposed summary decision would be a "consent order," violative of Section 1.93(b) of the Commission's Rules.[3] *Havens First Motion* at 11-20. A consent order is generally an alternative to adjudication of outstanding enforcement issues. But Maritime and the Bureau do not seek an alternative to adjudication. They rather seek judgment on the merits of Issue G, *i.e.*, adjudication pursuant to established summary decision procedures.

3. Even if this were a consent order, it would not be proscribed by the regulation. Section 1.93(b) provides in pertinent part: "Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license." 47 C.F.R. § 1.93(b). As the Presiding Judge previously clarified, however, "determinations as to whether Maritime is qualified to hold Commission licenses have no bearing on the resolution of Issue G, which requires only a determination of 'whether the licenses for any of Maritime's site-based AMTS stations have canceled automatically for lack of construction or permanent discontinuance of operation.'" *Memorandum Opinion and Order*, FCC 13M-16 at ¶ 21 n.66 (Aug. 14, 2013). Accordingly, Section 1.93(b) is not an impediment to summary decision.

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[3] *See* 47 C.F.R. § 1.93 (2012).

**(2) Summary Decision on Issue G Does Not Preclude Adjudication of Basic Qualifications Issues as to the Sixteen Retained Site-Based Licenses.**

4. Mr. Havens argues that summary decision on Issue G should be denied so there can be the hearing on the "wrongdoing" alleged in the hearing designation order. *Havens First Motion* at 3. As stated in the preceding section, however, Issue G does not involve questions of Maritime's basic qualification. Even if the requested summary decision is granted, the remaining sixteen site-based licenses still will be subject to the designated basic qualifications issues. See *Memorandum Opinion and Order*, FCC 13M-16 at ¶ 21 n.66 (Aug. 14, 2013). Whatever rights Havens has in that regard will not be extinguished by a summary decision resolving Issue G.

**(3) Neither Bankruptcy Law Nor Orders of the Bankruptcy Court Prohibit the Proposed Resolution of Issue G.**

5. Havens asserts that Maritime lacks capacity to pursue the settlement. *Havens First Motion* at 20-22. His argument appears to be based on the erroneous premises that (a) control of the licenses has been transferred to Choctaw Holdings, LLC ("Choctaw") by virtue the court order confirming the plan reorganization in the bankruptcy proceeding,[4] (b) the settlement agreement is barred by the *Confirmation Order*, and/or (c) implementation requires prior bankruptcy court approval. Once again, Havens "has shopped in the wrong forum," asking the Presiding Judge to adjudicate questions of bankruptcy law. See, *Order*, FCC 13M-9 (May 1, 2013). Havens is in any event wrong on the merits.

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[4] *Order Confirming Plan of Reorganization*, Case No. 11-13463 (Bankr. N.D. Miss., Jan. 11, 2013) ("*Confirmation Order*").

6. The court expressly conditioned implementation of the plan on prior FCC approval:

> All authorizations, consents, certifications, approvals, rulings, no action letters, opinions or other documents or actions required by any law, regulation or order to be received or to occur in order to implement the Plan on the Effective Date, including an order by the FCC approving the transfer of the FCC Spectrum licenses to Choctaw, shall have been obtained or shall have occurred ….

*Confirmation Order* at 7 (emphasis added). The bankruptcy court was abundantly clear that it was not resolving matters within the FCC's regulatory purview.

> [N]o provision of the Plan relieves the Debtor, … Choctaw … or the Liquidating Agent from their obligations to comply with the Communications Act … and the rules regulations and orders [of] the FCC, including but not limited to any order issued by the FCC *or settlement reached in the administrative proceeding* initiated against the Debtor by the FCC in [EB Docket No. 11-71], and any FCC order issued in response to a Petition for Extraordinary Relief pursuant to the FCC's Second Thursday doctrine ….

*Id.* at 7 (emphasis added).[5] The request for authorization to assign licenses to Choctaw is pending before the Commission in File No. 0005552500. See *Public Notice*, DA 13-569 (Mar. 28, 2013). Until that application is granted and the transaction consummated, all of licenses remain in Maritime's control as debtor-in-possession. There has been no transfer of control.[6]

7. Further, any court approval needed for implementation of the proposed settlement has already been obtained, and no further prior court approval is required. Attachment No. 4 hereto is the sworn declaration of Craig M. Geno, Esquire, Maritime's bankruptcy attorney, confirming the points asserted in this section. In addition, Maritime concurs fully in *Choctaw's Response to Havens-SkyTel First Motion Under Order 13M-19*, being filed on the same date as

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[5] Significantly, the emphasized phrase in the above quote—" *or settlement reached in the administrative proceeding"*—shows that the court actually contemplates and expressly includes it in the *Confirmation Order* the possibility of a settlement resolving some or all of this FCC proceeding.

[6] Maritime has, of course, conferred with Choctaw to ensure that the proposed summary decision will not be an obstacle to implementing the reorganization plan after FCC approval, but Maritime has made the relevant decisions regarding agreement with the Bureau and pursuit of summary decision.

the instant pleading, and supported by the analysis of qualified bankruptcy counsel and the sworn declaration of the court-appointed liquidating agent.

**(4) Havens Voluntarily Elected Not to Participate in Settlement Discussions.**

8. Havens complains that he was improperly excluded from settlement discussions and that the Bureau and Maritime misled him regarding the nature of the proposed settlement. *Havens First Motion* at 8-10. The facts are simple and straightforward. Maritime and the Bureau, in consultation with Choctaw, initiated discussions to explore the possibility of resolving Issue G without further litigation. The parties wanted to include Havens in these discussions, but this was complicated by the fact that certain information likely to be discussed and shared was subject to confidentiality. Although the *Protective Order*, FCC 11M-21 (Jul. 20, 2011) provides for the sharing of confidential information with legal counsel, neither Havens nor his entities are currently represented by legal counsel.

9. In a good faith attempt to include Havens, Maritime suggested a way around the limitations of the *Protective Order*. It was proposed that Havens execute a nondisclosure agreement for purposes of the settlement talks. He declined to do so. Notwithstanding that refusal, Maritime still invited Havens to participate in a preliminary conference call, scheduled for September 16, 2013. See *Joint Summary Decision Motion* at n.1 & Exhibit 1. Havens was provided with the call-in number and access code needed to participate in the conference call, either by himself or with legal counsel, according to his desire. See Attachment No. 1, hereto (September 13, 2013, email message from undersigned counsel for Maritime to Warren Havens). Despite these overtures, Havens voluntarily elected not to participate.

10. Maritime, the Enforcement Bureau, and Choctaw continued their discussions. On November 6, 2013, Maritime once again invited Havens to participate. Maritime requested that he execute a nondisclosure agreement or, alternatively, that he and/or the SkyTel parties retain

legal counsel subject to the *Protective Order*. See *Joint Summary Decision Motion* at n.1 & Exhibit 2. Havens elected not to participate.

11. Havens characterizes the request for confidentiality protections as the imposition of conditions on his participation which he says "is not 'negotiation' by any stretch of any denotation or connotation of the word." *Havens First Motion* at 9.[7] This argument does not withstand scrutiny. Confidentiality of settlement discussions and negotiations is the general rule, rather than the exception. This is codified in the Federal Rules of Evidence which make information obtained in settlement discussions inadmissible. See Fed. R. Evid. 408(a).[8] Maritime merely insisted on maintaining the protection afforded by a duly entered protective order. As the Presiding Judge has previously stated, "Havens could have access to [confidential documents] by retaining (and keeping) qualified legal representation," *Memorandum Opinion and Order*, FCC 13M-10 at ¶ 7 (May 7, 2013), but he stubbornly refuses to secure counsel, despite repeated orders to do so.[9] Even so, Maritime has bent over backward in a good faith effort to include Havens and his entities in the settlement discussions notwithstanding his self-imposed restrictions. Neither Maritime nor the Bureau has done anything improper here.

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[7] It is presumptuous for Havens to lecture Maritime on what constitutes good faith negotiation. Havens unequivocally states: "I oppose any settlement … whereby Maritime keeps any of the FCC licenses involve[d] …." *Havens First Motion* at 9-10. In other words, the only "settlement" Havens will consider is one in which Maritime fully capitulates. Havens is certainly within his right to take such an absolute position, utterly refusing even to consider any possible settlement. But he may not then be heard to falsely complain that he was denied the opportunity to negotiate.

[8] Maritime's confidentiality concerns were validated when Havens placed into the public record materials that were clearly marked "Confidential – Pursuant to FRE 408(a) – For Settlement Purposes Only." See *Havens First Motion* at Exhibit 1, p. 6.

[9] *E.g.*, *Order*, FCC 12M-52 (Nov. 15, 2012); *Order*, FCC 12M-16 (Mar. 9, 2012); *Order*, FCC 13M-8 (May 1, 2013); *Order*, FCC 13M-11 (May 14, 2013).

**(5) Discovery is Closed and Should Not Be Reopened.**

12. Discovery on Issue G was closed as of November 21, 2012.[10] Havens nevertheless asks the Presiding Judge to "issue subpoenas and allow related discovery to be conducted by Havens" to inquire into "wrongdoing."[11] *Havens First Motion* at 11. Havens and his entities have been actively involved in this proceeding (at various times with legal counsel and at others without) from its inception in April 2011. Havens had ample time to conduct discovery, and he actually participated in discovery at various times. Also, the Presiding Judge has previously denied requests by Havens for further discovery. See, e.g., *Order*, FCC 13M-10 at ¶ 9 (May 7, 2003).

13. Havens nonetheless attempts to justify yet another such request by pointing to the infamous "boxes" of documents that were placed in a third-party storage facility by the entity that held the incumbent licenses prior to Maritime. Havens speculates that these documents are relevant to Issue G and would show "wrongdoing" by Maritime.[12] As the Presiding Judge is well aware, this is hardly a new development. Havens has raised it in pleadings, email, and at prehearing hearing conferences some two and one half years now. During that time Havens has,

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[10] There was one limited exception to this, namely, modification of the schedule solely to permit the depositions Mr. and Mrs. DePriest, which had been timely scheduled but could not be completed before the discovery deadline due to disruption of travel plans by Hurricane Sandy. See *Limited Joint Stipulations Between Enforcement Bureau and Maritime and Proposed Discovery Schedule*, filed November 28, 2012; *Order*, FCC 12M-53 (Nov. 21, 2012)

[11] On May 17, 2012, Havens subpoenaed the documents from National Capital Archives Storage Systems in connection with the New Jersey antitrust litigation. See Attachment No. 2. On June 6, 2012, the Mississippi bankruptcy court entered an order, granting a motion filed by Havens, authorizing him to arrange for a bonded copier to scan the documents. See Attachment No. 3.

[12] Havens asserts that the Presiding Judge "found" such "wrongdoing" in his *Memorandum Opinion and Order*, FCC 13M-16 (Aug. 14, 2013) n.66. But as previously discussed (see sections (1) & (2), above), the Presiding Judge was there referring to the basic qualifications issues in the case. He made it perfectly clear that Issue G could be resolved independently of and without prejudice to the basic qualifications issues. Thus, no further inquiry into alleged wrongdoing is warranted in the context of Issue G.

through legal counsel in both the Mississippi bankruptcy proceeding and the New Jersey antitrust litigation, had access to a court-supervised control over these documents.[13] There is absolutely no justification for the request to allow further pre-trial inquiry more than a year after the close of discovery. As the Presiding Judge has previously ruled:

> Havens has had ample time to seek these documents during the lengthy discovery period provided in this proceeding. Yet he fails to state any reason why he was unable to seek access to these documents within the discovery period. He also fails to provide any legal citation to validate his decision to sleep on his discovery rights

*Order*, FCC 13M-10 at ¶ 3 (May 7, 2013).

**(6) The *Second Thursday* Matter is Properly Before the Commission.**

14. Havens seeks an order from the Presiding Judge prohibiting Maritime from seeking relief under the *Second Thursday* doctrine[14] or any other exception to the *Jefferson Radio* policy.[15] *Havens Additional Motion* at 2-3. The Presiding Judge stayed the hearing on basic qualifications issues, pending Commission consideration of *Second Thursday* relief. Order,

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[13] On May 17, 2012, Havens subpoenaed the documents from National Capital Archives Storage Systems in connection with the New Jersey antitrust litigation. See Attachment No. 2. On June 6, 2012, the Mississippi bankruptcy court entered an order, granting a motion filed by Havens, authorizing him to arrange for a bonded copier to scan the documents. See Attachment No. 3.

[14] *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964), and its progeny generally proscribe the assignment or transfer of control of a Title III authorization while there are unresolved issues of the licensee's basic qualifications. *Second Thursday* is an exception to *Jefferson Radio*, providing that licenses may be assigned notwithstanding unresolved character qualifications issues where the licensee is in bankruptcy, the sale of the licenses will benefit innocent creditors, and the alleged wrongdoers will no longer be involved in the licensed operations and will realize no benefit from the sale or only a minor benefit that is outweighed by the equities in favor of innocent creditors. *Second Thursday Corp.*, 22 FCC 2d 515, recon. granted, 25 FCC 2d 112 (1970); LaRose v. FCC, 494 F.2d 1145 (D.C. Cir 1974).

[15] Havens also objects to the assignment of any Maritime license pursuant to "Footnote 7" of the hearing designation order. *Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520 6523 n.7 (2011). The Commission there stated that it would consider allowing the assignment of licenses to the Southern California Regional Rail Authority ("Metrolink") and several other "critical infrastructure" entities have since requested relief pursuant to Footnote 7. This, like *Second Thursday*, is a matter before the Commission, not the Presiding Judge. Issue G is a separate matter.

FCC 13M-6 (Mar. 21, 2013). A request for *Second Thursday* relief is already pending before the Commission. It was filed in connection with the application for consent to the assignment of the Maritime licenses to Choctaw. That application is not part of the captioned hearing proceeding.

15. The Commission, not the Presiding Judge, is the proper forum for addressing the applicability and propriety of *Second Thursday* relief. Indeed, Havens has protested the Choctaw assignment application and opposed the request for *Second Thursday* relief. The requested summary decision will have no bearing on the Second Thursday matter nor will it prejudice Havens' position in that matter. His request that the Presiding Judge interfere with those proceedings or attempt to restrict Maritime's right to participate in them is misplaced and entirely without merit.

WHEREFORE, it is requested that the Presiding Judge dismiss or deny the Havens pleadings and that he grant the December 2, 2013, *Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G*.

Respectfully Submitted,

Robert J. Keller, Counsel for Maritime
Communications/Land Mobile, LLC
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PO Box 33428
Washington, D.C. 20033

Email: rjk@telcomlaw.com
Telephone: 202.656.8490

December 16, 2013

**ATTACHENT No. 1**
Maritime's Response to Havens-SkyTel Motions Per Order FCC 13M-19
December 16, 2013

**From:** Robert J. Keller [mailto:rjk@telcomlaw.com]
**Sent:** Friday, September 13, 2013 1:26 PM
**To:** 'Pamela Kane'; 'Warren C. Havens'; 'Kirk, Robert'
**Cc:** 'Brian Carter'; 'moconnor@wbklaw.com'; 'jstobaugh@telesaurus.com'
**Subject:** RE: ** RE: EB Dkt # 11-71 / Issue G Settlement Discussions

We will host the conference call to commence at 1:00 PM EDT on Monday, September 16, 2013. Here is the conference bridge information:

**Call In: 916-558-7514**
**PIN: 895749**

Thank you.

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Bob Keller <rjk@telcomlaw.com>
PO Box 33428, Washington DC 20033
Tel 202.656.8490 | Fax 202.223.2121

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises

# UNITED STATES DISTRICT COURT

for the
District of New Jersey

| | | |
|---|---|---|
| Skybridge Spectrum Foundation, et al. | ) | |
| *Plaintiff* | ) | |
| v. | ) | Civil Action No. 2:11-cv-000993 (KSH) (PS) |
| | ) | |
| Mobex Network Services, et al. | ) | If the action is pending in another district, state where: |
| *Defendant* | ) | |

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES**

To: Nation's Capital Archive Storage Systems, Inc.
14811 farm Creek Drive, Woodbridge, VA 22191

☒ *Production*: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information or objects, and permit their inspection, copying, testing, or sampling of the material:

[1] **A true and complete copy of all of the files, documents, emails, handwritten notes, invoices, correspondence, checks and all other hard copies or electronically stored documents of whatever kind located, stored or otherwise under your possession (together, the "Records"), along with boxes or other containers containing Records, that you obtained from, or that are in the name of, the following entities and/or persons:**

**(1) Mobex Network Services LLC,**
**(2) Mobex Communications , Inc.**
**(3) Maritime Communications/Land Mobile, LLC (together, the "Three Entities"),**
**(4) any predecessors or successors of, or controlling or controlled entity of, any of the Three Entities (together, the "Affiliates"), including but not limited to any company using in its name the words: "Regionet," or "Watercom," or "Mobex," and**
**(5) any person that was or purported to be an employee, lawyer or other agent or associate of the Three Entities or Affiliates, including but not limited to: David Predmore, John Reardon, Tim Smith, Sharon Watkins, Donald Depriest, Sandra Depriest, Dennis Brown, Curt Brown, or Robert Gurss.**

**[2] A true and complete copy of all written communications, in hard copies or electronically stored documents, of whatever kind located, stored or otherwise under your possession, of communications between your company (and any of your affiliates or agents) and any of the entities and/or persons listed above in items numbered 1 - 5, including but not limited to: invoices and payments related to your storage services, agreements and contracts for your services, and hard copy letters and emails concerning your services.**

| Place: Marashlian & Donahue, LLC<br>1420 Spring Hill Road, McLean, Virginia 22102 | Date and Time:<br>05/17/2012 9:00 am |
|---|---|

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45(d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 05/03/12

CLERK OF COURT
OR

Signature of Clerk or Deputy clerk

Attorney's Signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Skybridge Spectrum Foundation, et al, who issues or requests this subpoena, are:
Tendai Richards, Esq. (trichards@winnebanta.com)
Winne, Banta, Hetherington, Basralian & Kahn, P.C.
Court Plaza South – East Wing, 21 Main Street, Hackensack, New Jersey 07601 (201) 487-3800

**PROOF OF SERVICE**
**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

This subpoena for (name of individual and title, if any) _____ was received by me on (date) _____.

☐ I personally served the subpoena on the individual at (place) _____ _____ on (date) _____ ; or

☐ I left the subpoena at the individual's residence or usual place of abode with (name) _____ _____, a person of suitable age and discretion who resides there, on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to (name of individual) _____, who is designated by law to accept service of process on behalf of (name of organization) _____ _____ on (date) _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ other (specify):

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $_____.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____.

I declare under penalty of perjury that this information is true.

Date: _____

_____
*Server's signature*

_____
*Printed name and title*

_____
*Server's address*

Additional information regarding attempted service, etc:

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

| | | |
|---|---|---|
| **IN RE:** | § | |
| | § | |
| | § | **CASE NO. 11-13463-DWH** |
| **MARITIME COMMUNICATIONS/** | § | |
| **LAND MOBILE, LLC,** | § | **CHAPTER 11** |
| | § | |
| **Debtor.** | § | |

**ORDER ON**
**MOTION OF SKYTEL FOR AN ORDER DIRECTING THE**
**(I) RULE 2004 EXAMINATION OF NATION'S CAPITAL ARCHIVES STORAGE SYSTEMS, (II) RELATED PRODUCTION, INSPECTION AND COPYING OF DOCUMENTS, AND (III) PRESERVATION OF CERTAIN DOCUMENTS**

**THIS MATTER** came on for hearing before the Court on May 31, 2012, on the *Motion of SkyTel for an Order Directing the (I) Rule 2004 Examination of Nation's Capital Archives Storage Systems, (II) Related Production, Inspection, and Copying of Documents, and (III) Preservation of Certain Documents in the Interim* (the "Motion," Dkt. No. 469). The Court, having considered the Motion and the arguments of counsel in connection therewith, and having found that due notice has been given under the circumstances, finds that the Motion should be granted in part as set forth herein. Accordingly,

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that:

1. The Motion shall be, and it hereby is, granted in part as set forth herein.

2. **On or before June 8, 2012,** or such other date as NCASS (as that term is defined in the Motion) and SkyTel may agree, NCASS shall provide a bonded copier -- to be selected by SkyTel -- with the Boxed Documents (as that term is defined in the Motion), so that the bonded copier may copy/scan those Boxed Documents at SkyTel's expense and for the purpose of preserving same on a CD in bates-stamped, electronic format.

3. Before the bonded copier is given access to the Boxed Documents, SkyTel shall pay to NCASS: (a) the past due storage fees incurred by NCASS in connection with those documents (which are less than $3,000.00); and (b) the retrieval/refiling fees to be incurred by NCASS in connection with complying with the terms of this Order (which are less than $800.00).

4. The Boxed Documents shall not be accessed or reviewed by any person or entity, other than NCASS and the bonded copier, until such time as the bonded copier completes its copying/scanning work under this Order.

5. The CD of the preserved, scanned, bates-stamped electronic document copies shall be retained by the bonded copier (or this Court if needed) until a privilege/confidentiality review process can be established by this Court upon, for example, an amended motion to be filed by SkyTel post-preservation and served on, *inter alia*, Mobex's New Jersey action counsel and NCASS (via Mr. Bishoff).

6. The other relief requested in the Motion is denied at this time, without prejudice to SkyTel's right to move the Court for such relief at a later date, via an amendment to the Motion or otherwise.

7. Notwithstanding the possible applicability of Fed. R. Bankr. Pro. 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over all matters arising from or relating to this Order or the Motion.

**SO ORDERED** this the 6th day of June, 2012.

David W. Houston, III
United States Bankruptcy Judge

**APPROVED AS TO FORM:**

/s/ Craig M. Geno
Craig M. Geno, Esq.
Counsel for Debtor

/s/ Derek F. Meek
Derek F. Meek, Esq.
Counsel for the Official Unsecured
Creditors Committee

**APPROVED AS TO FORM AND SUBMITTED TO THE COURT BY:**

/s/ William H. Leech
William H. Leech, Esq.
Danny E. Ruhl, Esq.
**Copeland, Cook, Taylor & Bush, P.A.**
600 Concourse Building, Suite 100
1076 Highland Colony Pkwy (Zip - 39157)
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bleech@cctb.com
druhl@cctb.com
Counsel for SkyTel

**ATTACHENT No. 4**
Maritime's Response to Havens-SkyTel Motions Per Order FCC 13M-19
December 16, 2013

DECLARATION OF CRAIG M. GENO

I, Craig M. Geno, hereby state as follows:

1. I am an attorney, duly licensed and admitted to practice in Mississippi. My practice concentration is bankruptcy.

2. I am bankruptcy counsel for Maritime Communications/Land Mobile, LLC ("Maritime"), the debtor-in-possession in Case No. 11-13463 in the United States Bankruptcy Court for the Northern District of Mississippi, and have been so engaged from the beginning of that proceeding.

3. I have conferred with FCC regulatory counsel for Maritime regarding the ongoing FCC proceedings in EB Docket No. 11-71. In that regard, I have reviewed the final version of a pleading styled as *Maritime's Response to Havens-SkyTel Motions Per Order FCC 13M-19*, which I understand is to be filed in the FCC hearing matter on December 16, 2013.

4. I have reviewed in particular the discussion the bankruptcy-related matters discussed in Section 3, Paragraphs 5 through 7 of that pleading. The statements regarding bankruptcy law and the confirmation order in the Maritime case are accurate. In particular:

   (a) The court's confirmation of the plan of reorganization, insofar as it provides for the transfer of control and/or assignment of AMTS licenses to Choctaw, is expressly conditioned on the parties first obtaining all requisite FCC regulatory approvals.

   (b) Neither the confirmation order nor any other bankruptcy law or policy confers title or control of the Maritime licenses unless and until properly approved by the FCC.

   (c) The plan of reorganization, as modified and approved by the confirmation order, expressly contemplates and specifically provides for the possibility of a full or partial resolution of EB Docket No. 11-71 by settlement. The settlement proposal reflected in the joint summary decision motion is within the scope of the plan of reorganization as confirmed by the court.

   (d) Maritime did not require prior court approval for submission of the joint summary decision motion or for stipulating the cancellation of the specified incumbent AMTS licenses.

The foregoing is true and accurate of my personal knowledge and is stated in good faith.

Subscribed and sworn to by me under penalty of perjury this 16 day of December, 2013.

Craig M. Geno

## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2013, I caused copies of the foregoing document, MARITIME'S RESPONSE TO HAVENS-SKYTEL MOTIONS PER ORDER FCC 13M-19 to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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