

Appendix A: Chart Comparing Facts and Law in Related Pleadings and Orders (listed in Row 0 below) Regarding Maritime’s *Three* Motions for Summary Decision on Issue (g) in Docket 11-71.¹

A	B	C	D	E	F	G	H	I	J
0		LA (Legal Argument) / or FC (Fact) / or OT (Other)	First MMSD ²	Second MMSD ^[*]	EB ^[*] Opposition to Second MMSD	Havens-SkyTel-E Opposition to Second MMSD	ALJ MO&O FCC 13M-16	Third MMSD Jointly by EB and M (no Commission defense)	Havens Response to Second MMSD (the instant filing)
1	LA	Meaning of rule §80.155 regarding termination for failure to timely <u>construct</u> . Same regarding §80.49.	n/a	n/a	n/a	<p>“EB is essentially correct regarding permanent discontinuance—lack of required ‘operation’ and service—and additional facts and law on this prong of the MSD.” At p. 3.</p> <p>Citation to an attached memorandum regarding “construction.” <i>See</i> p. 3.</p> <p>“‘Construction’ requires coverage which the licenses never had, and interconnected service which Maritime admits the licenses did not use</p>	n/a	<p>“In particular, Mr. Havens has relied on Section 80.49(a)(3) of the Commission’s rules to argue that Part 80 AMTS site-based licenses—such as the 16 that remain at issue in this proceeding—must meet ‘substantial service’ requirements to be deemed timely constructed. This argument raises a question of law, not fact, and it misreads Section 80.49(a)(3). That section plainly imposes a ‘substantial service’ obligation related only to <i>geographic</i> AMTS licenses, not to the <i>site-based</i> AMTS licenses at issue here.”</p>	<p>“Although the Enforcement Bureau and Maritime concede that the presiding officer “has not determined how to define the term ‘construction’” as it is used in 47 C.F.R. §§ 1.946, 1.955, 80.49, “neither the Bureau nor Maritime believes that the term ‘construction’ must be further defined to resolve” Issue G. Joint Motion, at 5 ¶ 8. Despite offering no guidance of its own regarding the definition of pivotal legal terms (aside from belittling and mischaracterizing previous legal positions adopted by Havens), <i>see id.</i> at 6-7 ¶¶ 9-10, the Joint Motion asserts that summary decision is an appropriate vehicle for resolving the purely legal question of whether Maritime operated the site-based licenses at issue in variance with 47 C.F.R. §§ 1.955(a) and 80.49(a). <i>See</i> Joint Motion, at 5 ¶ 8, 7 ¶ 11. The lone legal authority marshaled by the Joint Motion in support of this assertion, <i>Paging Systems, Inc., and Maritime Communications/Land Mobile LLC</i>, 27 F.C.C.R. 8028 (2012) [hereinafter <i>PSI</i>], specifically noted that the precise “question of whether [Maritime’s] site-based AMTS stations were properly constructed is pending” in the hearing designation order FCC 11-64 and that any decision by the Wireless Bureau in that case would be “without prejudice to</p>

¹ “Not Included” in any cell means that the pleading or Order in the cell’s column did not address the item in column C in the same row.

² “First MMSD” means Maritime’s Motion for Partial Summary Decision.

^[*] “Second MMSD” means Maritime’s Motion for Summary Decision. The “Third MMSD” was by Maritime and the Enforcement Bureau. “M” means Maritime. “EB” means Enforcement Bureau

									<p>any determinations” in this proceeding. <i>Id.</i> at 8029 n.6. Nor did the Wireless Bureau in <i>PSI</i> undertake to reconcile its reasoning with its own contrary position in <i>Dennis C. Brown: Request by Maritime Communications/Land Mobile, LLC for Clarification of Sections 80.385 and 80.215 of the Commission’s Rules</i>, 24 F.C.C.R. 4135 (2009) [hereinafter <i>Dennis Brown</i>]. Inasmuch as Issue G hinges upon proper definition of “construction” and other terms central to the meaning of 47 C.F.R. §§ 1.955(a) and 80.49(a), this opposition will now offer guidance on those questions of law (including, in due course, proper reconciliation of the Wireless Bureau’s contradictory positions).” At pp. 38-39.</p> <p>“An incumbent Automated Maritime Telecommunications System should be deemed “constructed” if all the necessary equipment³ and each station in the system and system authorization are in place, and the system has been built in compliance with the terms of the then-current authorization. After issuance, all authorizations issued by the Commission may remain valid, provided that licensees comply with the applicable rules in effect at the time that the licenses are issued. Failure to comply with those rules is cause for revocation, <i>see</i> 47 U.S.C. § 312(a)(4), and, under some circumstances, “automatic termination.”” At p. 39.</p>
2	LA	Meaning of rule §80.155 regarding termination due to <u>permanent discontinuance</u> . (lack of	n/a	n/a	“Commission precedent has also specifically addressed the issue of permanent discontinuance of an AMTS	“‘Operation’ requires coverage which the licenses never had, and Interconnected service	“Where neither the authorizations at issue nor the individual rules for	“Pursuant to Section 1.955(a)(3) of the Commission’s rules, “[a]uthorizations	“In addition, section 1.955(c)(3) of the Commission’s Rules appears to treat the words “service” and “operations” as interchangeable.

³ AMTS is a species of commercial mobile radio service (CMRS). *See* 47 U.S.C. § 20.9(a)(3) (describing AMTS as a form of “public coast” service). Because CMRS is subject to the rules governing common carriers, CMRS requires interconnection. *See id.* § 20.5 (defining CMRS). Since a base station cannot support subscribers solely by one-way signals from the station to subscribers, CMRS service requires station equipment that allows subscribers (who are a *sine qua non* of “construction”) to communicate back to equipment at the base station. An AMTS station cannot support subscribers solely by one-way, base station-to-subscriber signals.

		<p>permanent “operation” or “service”)</p>			<p>license raised by Issue (g). In <i>Northeast Utilities Service Co.</i>, 24 FCC Rcd 3310 (WTB 2009), the Wireless Bureau placed maritime on notice that ‘Part 90 licensees may not cease operations indefinitely without the license terminating for permanent discontinuance.’ And that the Wireless Bureau would ‘evaluate claims of permanent discontinuance on a case-by-case basis.’ At 12-13.</p> <p>In <i>Northeast Utilities</i>, the licensee suspended operations at the licensed location—the World Trade Center in New York City—when it was destroyed by the September 11, 2011 terrorist attack. The Wireless Bureau concluded that the licensee’s due diligence to secure a new space to operate demonstrated that the discontinuance was not yet permanent. In reaching that conclusion, the Wireless Bureau considered evidence of communications, beginning in 2005, between the licensee and the entity administering the Freedom Tower antenna concerning the licensee’s request to operate on the new tower. Thus, as of the date of this decision (March 2009), Maritime had fair notice that it could cease operations at a site without the license terminating for permanent discontinuance if (1) operations were discontinued due to events beyond its control, like a terrorist attack; and (2) objective evidence showed that it was making reasonable efforts to resume operations at the site.” At 12-13.</p>	<p>which Maritime admits the licenses did not have.” At p. 3.</p>	<p>AMTS licenses provide further guidance as to the meaning of ‘permanent discontinuance,’ determinations as to whether operation has been permanently discontinued are made on a case-by-case basis.” At p. 10.</p> <p>“Here, the Commission’s Rules regarding permanent discontinuance of AMTS services provide clear notice of what conduct is prohibited and provide ascertainable certainty as to the standard to which Maritime must conform. Maritime’s Motion insofar as it argued that there existed inadequacy of notice as to the permanent discontinuance aspect of Issue G is denied.” At p. 11.</p> <p>“[T]here is no explicit definition of the phrase ‘permanent discontinuance’ under the Commission’s Rules. However, the meaning of the phrase as used in Section 1.955(a)(3) is plain: operation of a service may not indefinitely lapse or else its authorizations will automatically terminate. Through case-by-case determination, the</p>	<p>automatically terminate, without specific Commission action, if service is permanently discontinued. The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.” Although neither the Commission authorization nor the individual service rules provide a definition of permanent discontinuance for Part 80 AMTS licenses at issue here, AMTS precedent provides sufficient guidance for the Presiding Judge to render a decision on the question of permanent discontinuance.” At p. 11.</p> <p>“In <i>Northeast Utilities Service Co.</i>, the Wireless Bureau concluded that it would ‘evaluation claims of permanent discontinuance [of Part 80 AMTS licenses] on a case-by-case basis.’ In that case, the licensee suspended operations at the licensed location—the World Trade Center in New York City—when it was destroyed by the September 11,</p>	<p>That provision states: “Authorizations automatically terminate, without specific Commission action, if service is permanently discontinued.” Section (c)(3) proceeds to direct “[a] licensee who discontinues operations [to] notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation.” 47 C.F.R. § 1.955(c)(3) (emphases added). The relevance of these legal interpretations becomes evident upon closer examination of the claims advanced by the Enforcement Bureau and Maritime. Much of the Joint Motion is devoted to a recitation of spectrum lease arrangements involving Maritime’s site-based licenses. <i>See</i> Joint Motion, at 12-19 ¶¶ 21-33. The mere leasing of spectrum, however, does not suffice to constitute continuance of service or of operations. AMTS, it must be remembered, is a species of commercial mobile radio service. <i>See</i> 47 C.F.R. § 20.9(b). The Commission defines CMRS as “[a] mobile service that is,” among other things, “[a]vailable to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public.” <i>Id.</i> § 20.3(a)(3). By contrast, private mobile radio service (PMRS) is a “mobile service that is neither a commercial mobile radio service nor [its] functional equivalent.” <i>Id.</i> § 20.3; <i>see also id.</i> § 20.15 (detailing regulatory obligations that bind CMRS operators, but not their PMRS counterparts).” At pp. 41-42.</p>
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				<p>“[I]n <i>Mobex Network Services, LLC</i>, 25 FCC Rcd 3390 (2010), the Commission . . . concluded that evidence that a licensee had failed to maintain or operate equipment at a licensed location for multiple years ‘is sufficient to demonstrate permanent discontinuance of operation.’”</p>		<p>Commission allows licensees the opportunity to present a range of evidence that may demonstrate whether operation of an assigned frequency has or has not indefinitely lapsed.” At p. 11.</p> <p>“For example, in <i>Mobex Network Services</i>, the Commission examined whether an AMTS license for a Chicago station that Mobex sought to transfer to Maritime had automatically terminated due to permanent discontinuance of operation. The Commission determined that the station had permanently discontinued its operations, citing an affidavit from the manager of the licensed site stating that equipment that was necessary for operation had not been present at the site for years. In <i>Northeast Utilities Service Company</i>, the Wireless Telecommunications Bureau’s Mobility Division (“Division”) examined whether an AMTS license had terminated for permanent discontinuance where a station had not operated for several years due to its tower’s destruction</p>	<p>2001 terrorist attack. The Wireless Bureau concluded that the licensee’s due diligence to secure a new space to operate demonstrated that the discontinuance was not yet permanent. In reaching that conclusion, the Wireless Bureau considered evidence of communications beginning in 2005, four years after the destruction of the World Trade Center, between the licensee and the entity administering the Freedom Tower antenna concerning the licensee’s request to operate on the new tower. The evidence showed that the licensee was making reasonable efforts to resume operations at the site.” At pp. 11-12.</p> <p>“A year later, in <i>Mobex Network Services, LLC</i>, the Commission provided additional guidance concerning the permanent discontinuance of AMTS operations. The Commission concluded that evidence that a licensee had removed equipment for the licensed location in August 2003, nearly seven years earlier, and thus had not received electric power supply at that location after that date ‘is sufficient to demonstrate permanent discontinuance of operation.’” At pp. 11-12.</p>	
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3	LA	Authorities associated with the rules under C1 or C2 above, including as to due process, vagueness, lack of notice, etc.: FCC case precedents, and other authorities.							
4	LA	Meaning of words (that related to LA 1 and 2) ⁴ including "constructed" (and derivatives such as "construction"), "operation" (and "operating"), "service"	"Section 1.955(a)(3) of the Commission's Rules provides: <i>Service discontinued</i> . Authorizations automatically terminate, without specific Commission action, if service is permanently discontinued. The	"[T]he Commission has evaluated AMTS permanent discontinuance issues on a case-by-case basis, and resolution of the outstanding factual questions is indispensable to the question	"Construction requires coverage which the licenses never had, and Interconnected service which maritime admits the licenses did not use." At p. 4.	"The construction aspect of issue G required the Presiding Judge to determine whether any of 'Maritime's licenses for site-	"The undisputed facts concerning the 16 site-based AMTS facilities at issue here demonstrate that they were timely constructed, and neither	"Section 1.946 of the Commission's Rules, 47 C.F.R. § 1.946, sets forth the Commission's "[c]onstruction and coverage requirements": "For each of the Wireless Radio Services, requirements for construction and	

⁴ That relate to LA 1 and/or LA 2, whether or not the First MMSD or the Second MMSD express any such relation explicitly.

	<p>“service to subscribers,” “service to customers,” etc.), “coverage” (or “radio service coverage or contours”), <u>AMTS</u>,” etc.</p>		<p>Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section. A licensee who discontinues operations shall notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation.” At p. 9.</p> <p>“[Section 1.955(a)(3)] clearly states that the ‘authorization or the individual service rules govern the definition of permanent discontinuance.’ Neither the Maritime authorizations here in issue, nor the individual service rules governing them, defines permanent discontinuance.” At p. 9.</p> <p>“Whatever objective criterion is ultimately set in that rulemaking, it may not be retroactively applied to Maritime. This is self-evident application of fairness and equity, but court precedent clearly establishes it as a fundamental matter of due process rights guaranteed by the United States Constitution. <i>FCC v. Fox Television Stations</i>, 132 S.Ct. 2307 (2012); <i>Trinity Broad. of Florida, Inc. v. FCC</i>, 211 F.3d 618 (D.C. Cir. 2000). At p. 10.</p> <p>“The Fox Television opinion has obvious and inescapable implications for the instant matter. The Commission has no objective standard for defining permanent discontinuance, the licensee must first be given fair notice of what will trigger such termination. The Commission has expressly acknowledged both the lack of any such clear standard, as well as its paramount importance, precisely because of the severity of the consequence involved.” At p. 12.</p>	<p>of whether the licenses at issue were permanently discontinued under applicable precedent.” At p. 9.</p> <p>“[T]he law is clear that Maritime was provided with fair notice if, by reviewing the Commission’s regulations and other public statements, Maritime would be able to identify, with ascertainable certainty, the standards with which it was expected to conform in operating its AMTS site-based stations. <i>Trinity Broad. of Fla., Inc. v. FCC</i>, 211 F.3d 618, 628 (D.C. Cir. 2000).” At p. 10.</p> <p>“To prevail on its due process ‘notice argument, Maritime must show that it reasonably could have interpreted the AMTS permanent discontinuance rule to mean that failure to operate a station for years on end without any excuse would not result in termination of the underlying license by operation of law. Maritime has not met this burden.” At pp. 10-11.</p> <p>“It is clear that the Commission expected maritime to construct and operate its site-based stations. The Commission has a compelling interest in ensuring that scarce, valuable spectrum does not lie fallow when it could be used to provide service to the public. The Commission’s rules plainly indicate that the consequence of permanently discontinuing operations is automatic termination of the license.” At p. 11.</p> <p>“In articulating the standards that it expected AMTS</p>		<p>based AMTS stations have canceled automatically because [they] were never [timely] constructed” as required by Section 80.49(a). Section 80.49 of the Commission’s Rules titled ‘Construction and regional service requirements,” provides: (a) Public coast stations. (3) Each AMTS coast station geographic area licensee must make a showing of substantial service within its service area within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based AMTS coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within two years from the date of the grant, the authorization becomes invalid and must be returned to</p>	<p>the Bureau nor Maritime believes that the term ‘construction’ must be further defined to resolve this Issue.’ In previous filings, however, Mr. Havens has argued otherwise and suggested that summary decision on the question of timely construction of Maritime’s site-based licenses is improper because the Presiding Judge has not determined how to define the term ‘construction’ for the purposes of this proceeding. But even if the term ‘construction’ were in need of additional interpretation, that question would not raise an issue of material fact that would require a hearing.” At p. 5.</p>	<p>commencement of service or commencement of operations are set forth in the rule part governing the specific service.” <i>Id.</i> § 1.946(a). The term “construction period” refers to “the period between the date of grant of an authorization and the date of required commencement of service or operations.” <i>Id.</i> Licensees in certain wireless radio services must also satisfy “geographic coverage” or “substantial service” requirements: “In certain Wireless Radio Services, licensees must comply with geographic coverage requirements or substantial service requirements within a specified time period. These requirements are set forth in the rule part governing each specific service.” <i>Id.</i> § 1.946(b). “Geographic” coverage requirements refer to a wider area, with multiple sites. Section 1.946(b) of the Commission’s Rules defines the term “coverage period” as “the period between the date of grant of an authorization and the date that a particular degree of coverage or substantial service is required.” <i>Id.</i> The failure to meet either the obligation to construct (to “commence[]” required “service or operations”) or to cover (to satisfy a requirement of “a particular degree of coverage or substantial service”) leads to the automatic termination of a licensee’s authorization: “If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.” <i>Id.</i> § 1.946(a).” At pp. 39-40.</p>
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				<p>"In sum, there is no Commission Rule that would allow MCLM to determine with 'ascertainable certainty' how long an AMTS station could remain out of service before its license would be held to have terminated. Further, consistent with the requirements of due process . . . the Commission may not now develop a definition of permanent discontinuance and apply it retroactively and without notice to MCLM and deprive it of its AMTS licenses. Thus, any factual issues underlying the 'permanent discontinuance' aspects of Issue G are simply not material to any legal judgment the Presiding Judge may properly render in the court of the hearing." At p. 12.</p>	<p>licensees to meet, the Wireless Bureau cited to Sections 1.955(a) and 80.49(a) of the Commission's rules. Section 1.955(a)(3) confirms that, in the absence of specific Commission action, authorizations automatically terminate if service is permanently discontinued. Section 80.49(a)(3) requires that an AMTS facility be 'placed in operation' within two years from the grant: '[I]f the station or frequencies authorization becomes invalid and must be returned to the Commission for cancellation.'" At p. 12.</p>		<p>the Commission for cancellation.'" At p. 4.</p>		
5	LA	Whether <u>Havens</u> being <i>Pro Se</i> in this proceeding has an effect upon grant of the Motion for Summary Decision, and related	n/a	n/a	n/a	n/a	<p>"The Commission has noted that summary decision should not in fairness be used against parties who appear <i>pro se</i>. The Commission adopted this view with the caveat that 'parties normally appear without counsel in only the simplest of cases, in which they have personal knowledge of all matters of fact, and that in such cases, the capability of a party to understand and respond to a motion for summary decision may, in fairness, be left to the discretion of the presiding officer.' The Commission has followed this policy, noting that 'where . .</p>	<p>"Mr. Havens' choice to proceed <i>pro se</i>, however, does not make summary decision improper." At p. 20.</p>	<p>The Joint Motion should also be denied because of the third party Opposition of Havens, a <i>pro se</i> party herein. In his <i>Memorandum Opinion and Order</i> (FCC 13M-16) (the "<u>Memo Opinion</u>"), released on August 14, 2013 in connection with Maritime's <i>Motion for Partial Summary Decision on Issue (g)</i> (the "First Motion"), the Presiding Judge correctly stated the Commission's view that summary decision "should not in fairness be used against parties who appear <i>pro se</i>."⁵ The presiding judge also correctly noted that the Commission's view in this regard is subject to a limited exception applicable to the simplest of cases, in which (in addition to being simple) the <i>pro se</i> party has personal knowledge of the facts. The basic rationale for the limited exception is that, in such simple cases, the capability of a <i>pro se</i> party to understand and respond to a motion for summary decision may fairly be left to the discretion of the presiding officer.⁶</p>

⁵ FCC 13M-16, p. 7 (citing *In the Matter of Summary Decision Procedures*, 34 F.C.C.2d 485, 488 ¶ 6 (1973)).

⁶ See *id.*

						<p>. the issues are more simple than complex and the respondent has personal knowledge of the facts, the Presiding judge has discretion to apply summary decision.” At p. 7.</p> <p>“Mr. Havens has repeatedly been warned about (and discouraged from) appearing <i>pro se</i> due to his propensity to cause ‘substantial delay and confusion on questions having nothing to do with the merits of this complex litigation and due to concerns that he was not adequately qualified to represent the SkyTel corporate entities in this litigation. Mr. Havens’ Opposition demonstrates that these concerns are warranted.” At p. 8.</p> <p>“While the Commission has determined that summary decision against parties appearing <i>pro se</i> may be appropriate in situations where litigation is simple, the litigation in this proceeding is complex. Mr. Havens has not adequately ‘shown through his pleadings that he understands the</p>	<p>typical <i>pro se</i> party to whom the Commission was referring when it raised the possibility of unfairness in using summary decision against parties who appear without counsel. In his own words, Mr. Havens claims to ‘know[] far more about the facts, and probably more about the specific AMTS law ... involved in [I]ssue (g) ... than any attorney at law in [or] outside of DC, or in the FCC.” At p. 20.</p>	<p>Havens is appearing <i>pro se</i> in connection with his <i>Opposition to the Joint Motion</i>. Therefore, summary decision should not in fairness be used against him unless the limited exception applies (and then only in the discretion of the judge). However, in the Memo Opinion, the presiding judge effectively found that the limited exception does not apply here. Specifically, the judge found that “[w]hile the Commission has determined that summary decision against parties appearing <i>pro se</i> may be appropriate in situations where the litigation is simple, the litigation in this proceeding is complex.”⁷ Accordingly, the Joint Motion should be denied, for this reason alone.</p> <p>In the Joint Motion, the movants ignore the prior ruling and its effect as law of the case, and argue that summary decision is appropriate as to Havens because, according to movants, he has, through his participation in this and other proceedings, shown that he has the ability to understand and respond to a motion for summary decision.⁸ This argument is completely contrary to the judge’s findings in the Memo Opinion and must be rejected. Indeed, the judge expressly stated in the Memo Opinion, among other things, that Havens’ Opposition to the First Motion (for partial summary decision), suggests that, in the judge’s opinion, he did not have a firm grasp on the scope or impact of that motion; he struggles to communicate his understanding of the facts to the presiding judge and Commission; and, in short, he has not adequately “shown through his pleadings that he understands the</p>
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⁷ FCC 13M-16, p. 8 (emphasis added).

⁸ Joint Motion, pp. 20-21.

						<p>procedures and the issues and that he has first-hand knowledge of the facts.” At p. 8.</p> <p>“The Presiding Judge suspects that Havens may have information in his grasp that relates to Issue G. Therefore, he should not be foreclosed at this stage of the proceeding simply because he is ill-equipped as a <i>pro se</i> litigant to participate in complex motion practice. <i>The only way to properly determine the worth and substance of the evidence that Mr. Havens brings to this case would be to examine it at and after hearing. Granting Maritime’s Motion in total in this case would be in direct contravention of the Commission’s well-reasoned policy of foregoing summary decision to ensure the fairest proceeding possible for pro se litigants. This finding is further supported by the Commission’s emphasis ‘that the presiding officer has broad authority to go forward with a hearing, regardless</i></p>	<p>procedures and the issues and that he has first-hand knowledge of the facts.”⁹ Based on the foregoing, the Joint Motion should be denied. The judge also observed that Havens has demonstrated that he has a good grasp of the business aspects of the AMTS market; has knowledge of the history of Maritime and its predecessor, Mobex; may have information that relates to Issue (g); and, as such, he “should not be foreclosed at this stage of the proceeding simply because he is ill-equipped as a pro se litigant to participate in complex motion practice.”¹⁰ Indeed, the judge clearly held that “[t]he only way to properly determine the worth and substance of the evidence that Havens brings to this case would be to examine it at and after hearing.”¹¹ For the foregoing reasons, among possible others, the Joint Motion should be denied in the face of the third party Opposition of Havens. Indeed, granting the Joint Motion “would be in direct contravention of both the judge’s prior findings and the Commission’s well-reasoned policy of foregoing summary decision to ensure the fairest proceeding possible for pro se litigants.”¹² At pp. 81-83</p>
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⁹ FCC 13M-16, p. 8.

¹⁰ FCC 13M-16, p. 8.

¹¹ FCC 13M-16, p. 8 (emphasis added).

¹² FCC 13M-16, p. 8

							<p>from presenting evidence at hearing related to those authorizations that also is relevant to the remaining issues to be heard in this proceeding.” At p. 9 n. 66.</p> <p>“There remains a genuine issue of material fact as to whether Maritime attempted to comply with any reasonable interpretation of Section 1.955(a)(3). Accordingly, Maritime’s Motion for Summary Decision will be denied on the permanent discontinuance aspect of Issue G.” At p. 13.</p>		<p>misrepresentations or other evidence discrediting Maritime’s character and fitness to hold Commission licenses. Accordingly, Issue (g) must be pursued with respect to <i>all</i> of Maritime’s licenses, including those that Maritime intends to delete.” At p. 57-58.</p>
7	OT	Did Maritime file a request for leave to file the MMSD or Second MMSD for good cause?	n/a	No	n/a	n/a	n/a	No	
8	FC	NCASS boxes of records (approx.100) and other records that Havens-Skytel assert involve evidence spoilage by Maritime and affiliates, including Mobex (e.g., records with Iron Mountain and at other locations and with other persons), and which FCC EB would not act to secure from court clerks..	n/a	n/a	n/a	<p>“The MSD fails, including since there are facts of decisional importance in dispute, Maritime has withheld essential evidence including by apparent fraud, and the Judge has not decided on the Glossary as to relevant law.” At p. 3.</p> <p>“Lack of required sworn statement of fact asserted. The person with key evidence, David Premore, testifies to the contrary.” At p. 3.</p>	n/a	n/a	<p>“The Joint Motion should further be denied on account of Maritime’s failure to produce relevant, discoverable documents that may potentially demonstrate the lack of timely construction and/or permanent discontinuance of service relating to many of the AMTS site-based licenses at issue in this proceeding (the “<u>Mobex Documents</u>”). Indeed, it appears Maritime <i>affirmatively represented</i> that the Mobex Documents did not exist when, in fact, they did. For example, in August of 2011, Maritime filed an <i>Opposition to Petition to Dismiss, Petition to Deny, or in the Alternative Section 1.41 Request</i>, wherein Maritime stated that the Mobex Documents, which relate to the licenses</p>

									<p>Maritime acquired from Mobex, had been placed into storage and were “all destroyed years ago by the storage company” when Mobex ceased paying rent for document storage.¹⁶ Moreover, David Predmore, an officer of Mobex, represented that he was told by the storage company that the Mobex Documents would be destroyed. Predmore did not, however, state that he made any present effort to determine whether the documents had actually had been destroyed. Further, in Maritime’s February 6, 2012, <i>Responses to Interrogatories</i> in EB Docket No. 11-71, Maritime stated as follows with respect to Interrogatory 23: “It is Maritime’s understanding that the documents were destroyed when the storage fees fell into arrears. It is possible that some of these documents might provide further details regarding some of the responses herein.”¹⁷ Notwithstanding Predmore’s Declaration and Maritime’s interrogatory responses, SkyTel learned directly from the storage facility, Nation’s Capital Archives & Storage Systems (“NCASS”), that 93 boxes of documents existed. These documents may potentially reveal facts germane to the issues underlying this proceeding and, in light of Maritime’s actions, summary decision should not be granted.” At pp. 58-59.</p>
9	FC	Authority of Maritime to submit the Motion, under its Chapter 11 Plan and the bankruptcy court Order approving the Plan (with modifications)	n/a	n/a	n/a	“The Maritime-Choctaw Chapter 11 Plan reveals facts that show there is no legal commitment to use the licenses for operations and service, a fact th[at] undercuts MSD premises	n/a	n/a	Havens’s second basis for challenging the Joint Motion also rests on the premise that any voluntary resolution of Issue G (or any other issue designated for hearing) must be based on the Commission’s procedures for a

¹⁶ See Maritime Opposition to Petition to Dismiss, Petition to Deny, or in the Alternative Section 1.41 Request, filed Aug. 2013 at 3, Declaration of David Predmore, at no. 5 and attachments to July 30, 2012 Request of Warren Havens to Appear at Prehearing Conference by Telephone.

¹⁷ See Maritime’s Responses to Interrogatories in EB Docket No. 11-71, dated Feb. 6, 2012.

					and purpose[s] of licensing.” At p. 3.			consent order, 47 C.F.R. §§ 1.93-.94, rather than its summary decision procedures, <i>id.</i> § 1.251. In addition to violating the prohibition against consent orders addressing “matters which involve a party’s basic statutory qualifications to hold a license,” 47 C.F.R. § 1.93(b), Maritime’s efforts to negotiate a consensual resolution of Issue G of the hearing designation order effectively violate at least two further requirements imposed by section 1.93(b) of the Commission’s rules. Rule 1.93(b) requires that “the Commission, by its operating Bureaus, ... negotiate a consent order <i>with a party.</i> ” <i>Id.</i> (emphasis added). Since Maritime and Maritime alone — and not Choctaw collectively or any individual Choctaw entity — is the licensee subject to the hearing designation order, Maritime and Maritime alone must qualify as the party that negotiates a consent order. The requirement that the Commission negotiate with “a party” squarely puts into dispute the capacity of Maritime to negotiate, let alone to enter, any consent order. As a debtor or debtor in possession subject to the Bankruptcy Court’s confirmed plan and related confirmation order, Maritime may act only in accordance with that plan and that order. Governing bankruptcy law does not permit Maritime to negotiate the contemplated settlement. Construing the bankruptcy plan and order to authorize such a course of action by Maritime would violate 47 C.F.R. § 1.93(b). To repeat: Maritime may negotiate a voluntary resolution of Issue G or other matters designated for hearing solely through the Commission’s consent order procedures, and not through its process for summary decision. To treat the Joint Motion as a proposed consent order rather than
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								constitute an independent violation of 47 C.F.R. § 1.93(b). Maritime is proposing to effect an unlawful <i>de facto</i> transfer of control to Choctaw Telecommunications or some other entity named in the bankruptcy court’s plan and order, in violation of section 310(d) of the Communications Act, 47 U.S.C. § 310(d). At an absolute minimum, Commission policies regarding <i>de facto</i> transfers of control, <i>see Intermountain Microwave</i> , 24 Rad. Reg. (P&F) 983, 984 (1964); <i>Ellis Thompson Corp.</i> , 7 F.C.C.R. 3932, 3935 (1992), bar the acceptance of any purported consent order that violates these policies regarding <i>de facto</i> transfers of control. It bears repeating that 47 C.F.R. § 1.93(b) authorizes consent orders only “[w]here the interests of timely enforcement or compliance, the nature of the proceeding, and the public interest [so] permit” (emphasis added).” At pp. 21-23.	
10	FC	Whether Maritime is entitled to Summary Decision as to the “Watercom Licenses.” (Stations WHG701-WHG703 & WHG 705-WHG754).	Maritime argues the Watercom Licenses were timely constructed, but does nto argue that service was never permanently discontinued: “In its 1997 order renewing the Watercom Licenses, the Commission specifically and expressly stated: ‘Watercom was	Maritime argues the Watercom Licenses were timely constructed, but does not argue that service was never permanently discontinued: “[T]he Commission in 1987 (some 26 years ago) definitely rules that these stations were timely constructed. The Commission held that the initial licensee ‘regularly kept us apprised of the status of construction and put the system of spectrum hoarding or other dereliction in its inauguration of service.’” First Motion at p. 6.	The EB agrees with Maritime’s argument that the Watercom Licenses were properly constructed, while disagreeing that they were not permanently discontinued (see below): “On December 10, 987, the Commission released an Order finding that the Watercom Licenses had been constructed within the time prescribed by the Commission’s rules. The Order stated that ‘Watercom was required to meet a schedule of	“Initially, these evidentiary issues, and the lack of agreement on how “construction” is to be defined, require a finding by the ALJ that a material issue of fact exists for all licenses, including the non-Watercom licenses and all Watercom licenses, not just KAE889, WRV374 and WHG693. See exhibit 8.0 to be read with the other parts of this pleading.” At p. 7.	“There remains a genuine issue of material fact as to whether Maritime attempted to comply with any reasonable interpretation of Section 1.955(a)(3). Accordingly, Maritime’s Motion for Summary Decision will be denied on the permanent discontinuance aspect of Issue G.” At p. 13. Issue G deemed moot	The EB now agrees with Maritime that a certain Watercom License was never permanently discontinued: “The Bureau and Maritime have reached agreement on the material facts related to the construction and operational status of the following . . . state-based AMTS facilit[y]: WHG750” Second Motion at P. 4.	As to call sign WHG750, Maritime and the EB allege there are no issues of material fact regarding whether the station was timely constructed as required by 47 C.F.R. § 80.49(a)(3). ¹⁹ To support this contention, Maritime and the EB merely cite <i>Waterway Communications Systems, Inc., Memorandum Opinion and Order</i> (the “ <i>Watercom Order</i> ”), ²⁰ wherein the Commission addressed certain renewal applications of the Watercom Licenses filed by Waterway Communications System, Inc. (“ <i>Watercom</i> ”) and certain petitions to deny those applications. ²¹ Those petitions to

¹⁹ See Joint Motion, at p. 8 ¶ 13.

²⁰ The Watercom Order, 2 FCC Rcd 7317 (1987).

²¹ *Id.* at 7317.

<p>required to meet a schedule of construction, regularly kept us apprised of the status of construction and put the system into operation within the time we had allowed. So there can be no question of spectrum hoarding or other dereliction in its inauguration of service.” At p. 5.</p> <p>“The issue of whether the Watercom Stations were timely constructed need not be determined at hearing because it has already been determined by the Commission some 25 years ago. In considering, and granting, the application for renewal of the Watercom Licenses at the end of the initial license term, the Commission examined the facts and very clearly held that ‘Watercom ... put the system into operation within the time allowed,’ and that there could be</p>	<p>construction . . . and put the system into operation within the time we had allowed.’ The Commission further noted that ‘there can be no question of spectrum hoarding or other dereliction in [Watercom’s] inauguration of service.’ The Bureau acknowledges that the Watercom Order resolves the ‘construction’ question of Issue (g) with respect to the Watercom Licenses. Accordingly, the Bureau agrees with Maritime that there is no genuine issue of material fact for determination at the hearing as to whether the Watercom Licenses were timely constructed in accordance with Section 80.49(a) of the Commission’s rules and that summary [decision] should be granted on this question.” EB Opposition at 4-5.</p> <p>“The Bureau notes, however, that the Watercom Order does not address the second part of Issue (g)—i.e., whether operations of the Watercom Licenses have been discontinued and, if so, whether such discontinuance is permanent pursuant to Section 1.955(a) of the Commission’s rules. Thus, even if the Presiding Judge</p>	<p>as to deleted/canceled licenses. Summary decision denied in all other respects. At p. 13.</p>	<p>“In its earlier motion, Maritime demonstrated the timely construction of each of the 16 remaining site-based licenses. The Bureau concurred, and there has been no additional evidence that calls that conclusion into question.” At p. 7.</p> <p>“First maritime argued that WHG750, one of the Watercom Licenses, had been timely constructed in accordance with Section 80.49(a) of the Commission’s rules as a result of the Commission’s finding in <i>Waterway Communications System, Inc.</i> In that decision, the Commission concluded that the Watercom Licenses had been timely constructed. The Order stated that ‘Watercom was required to meet a schedule of construction ... and put the system into operation within the time we had allowed.’ The Commission further noted that ‘there can be no question of spectrum hoarding or other</p>	<p>deny alleged that: (1) “Watercom filed its renewal applications too early [in] violation of 47 CFR § 1.926(b);” “Watercom’s operations [would] cause interference to TV stations to a degree as yet unknown, Watercom’s response to such potential interference [were] also unknown” “Granting the renewals would . . . perpetuat[e] Watercom’s monopoly of both the Group A and B channels;” “Watercom [did] not need the Group B channels;” and “Watercom’s service [was] deficient.”²² As to the allegation that Watercom’s service was deficient, the Commission stated that “Watercom was required to meet a schedule of construction, regularly kept us apprised of the status of construction and put the system into operation within the time we had allowed. So there can be no question of <i>spectrum hoarding</i> or <i>other dereliction in its inauguration of service.</i>”²³ Maritime and the EB rely solely on this quote to support their contention that there are no issues of material fact concerning whether the stations for call sign WHG750 were constructed at variance with 47 C.F.R. § 80.49(a)(3). But, as previously set forth in <i>Havens Opposition to Motion for Summary Decision, Errata Copy</i>,²⁴ the Watercom Order does <i>not</i> unequivocally conclude that the relevant stations were timely constructed for numerous reasons:</p> <ul style="list-style-type: none"> • The Watercom Order was not a fact finding proceeding; • The Watercom Order did not
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²² *Id.*

²³ *Id.* at ¶ 14.

²⁴ Opposition to Motion for Summary Decision, Errata Copy, filed May 22, 2013.

		<p>‘no question’ regarding this.” At p. 7.</p> <p>“In the 25 years since that decision, Watercom Licenses have been renewed five times and control and/or ownership of the licenses changed at least three times before Maritime was even in existence. Whether it is proper to hold Maritime Accountable for initial construction of stations occurring decades ago, after multiple license terms, and by entities with which Maritime had no contractual privity is highly debatable. But this certainly may not be done where the Commission, in an adjudication that has been closed and final for decades, definitively and unequivocally determined that the facilities were in fact timely constructed.” At pp. 7-8.</p>		<p>were to grant summary judgment on the ‘construction’ question of Issue (g) with respect to the Watercom Licenses, the ‘operations’ question of Issue (g) would still need to be determined with respect to these authorizations.” EB Opposition at 5.</p>		<p>dereliction in [Watercom’s] inauguration of service.’ Thus, the Bureau concurred that summary decision was appropriate as to the Watercom Licenses, including WHG750.” At p. 8.</p>	<p>review any <i>Maritime’s</i> evidence or assertions of how <i>Maritime</i> met its construction obligations;</p> <ul style="list-style-type: none"> The Watercom Order did not specifically find that the Watercom stations were lawfully constructed (e.g., providing the required coverage, interconnection and meeting requisite construction deadlines under the Commission’s rules).²⁵ <p>Accordingly, Maritime and the EB’s reliance on the Watercom Order utterly fails to meet their burden of showing that no genuine issues of material fact exist as to the timely construction of WHG750. Indeed, in the EB’s <i>Response to Maritime’s Motion for Summary Decision on Issue G</i>,²⁶ the EB itself rejected a similar argument made by Maritime. In Maritime’s previous <i>Motion for Summary Decision on Issue G</i>, Maritime argued that certain licenses assigned to it by Mobex Network Services, LLC (“<i>Mobex</i>”) had been properly constructed pursuant to § 80.49(a).²⁷ But instead of providing documentation to prove timely construction, Maritime merely cited decisions from the Commission and the Wireless Telecommunications Bureau (“<i>WTB</i>”), wherein the Commission or the <i>WTB</i> approved applications to renew certain licenses or approved applications to transfer certain licenses from <i>Mobex</i> to either</p>
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²⁵ *Id.*

²⁶ Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, filed May 21, 2013.

²⁷ Maritime’s Motion for Summary Decision on Issue G, filed May 8, 2013.

									<p>Clarity GenPar, LLC or Maritime.²⁸ Like the Watercom Order, these decisions did not specifically address timely construction. In rejecting Maritime’s argument, the EB noted that “[n]one of these decisions conclude the[] licenses were constructed on time The burden is on Maritime, as the movant, to establish that there is no genuine issue of material fact that [its licenses] were constructed in accordance with . . . the Commission’s rules. To meet this burden, <i>Maritime must do more than cite decisions holding that Mr. Havens failed to meet his burden of proving that an undefined subset of Mobex licenses were not timely constructed or that the licensed AMTS facilities did not meet certain coverage requirements.</i>”²⁹</p> <p>Likewise, Maritime and the EB cannot simply cite to the Watercom Order to meet their burden of showing that no genuine issues of material fact exist as to whether the stations relevant to WHG750 were timely constructed. Apart from the Watercom Order, Maritime and the EB have failed to provide any other evidence of timely construction. Accordingly, Maritime and the EB have failed to meet their burden as to these Licenses.” At pp. 59-62.</p> <p>“In their Joint Motion, Maritime and the EB assert that there are no genuine issues of material fact as to the timely construction of the remaining Block B Watercom Licenses. In support, Maritime and the EB note that they have agreed that those licenses will be deleted pursuant to the Joint Stipulation. Thus, according to the</p>
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²⁸ *Id.* (citing Mobex Network Services, LLC, 19 FCC Rcd 24939, 24943-24944 ¶ 6 (WTB 2004); Mobex Network Services, LLC, 20 FCC Rcd 14813, 14817 n. 40 (2005); Mobex Network Services, LLC, 20 FCC Rcd 17957 (WTB 2007), aff’d 22 FCC Rcd 665 (WTB 2007); 25 FCC Rcd 2290 (2010)).

²⁹ Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, filed May 21, 2013, at pp. 8-9 ¶ 13 (emphasis added).

11	FC	<p>Whether Maritime timely constructed the remaining licenses not set forth above, which Maritime received from Mobox Network Services, LLC (“Mobex”).”</p>	<p>“Each of these facilities was timely constructed by the prior licensees. Significantly, Maritime was not the licensee responsible for the initial construction of these facilities [and] Maritime took assignment of these authorizations from [Mobex] in late 2005. The applicable construction deadline for each of these stations had passed years before that, and in some cases decades earlier.” First Motion at pp. 6-7.”</p> <p>Maritime provided copies of “construction completion notification letters” for these stations and argues that these and “[n]umerous other documents produced in discovery overwhelmingly demonstrate that the [Mobex] licenses were timely constructed and placed in operation.” First Motion at p. 7.</p> <p>“At the time the Maritime [sic] acquired these stations, the Commission had already considered and rejected assertions that the prior licensees had not timely constructed these facilities. In December of 2004 the Commission consented to the transfer of control of Mobex Clarity Genpar, LLC (File No. 0001885281).” First Motion at p. 7.”</p>	<p>“Maritime relies on construction completion notifications for stations KAE889 (locations 3, 4, 6, 12, 13, 20, 22, 30, 34, 46, and 48) and WRV374 (locations 8, 12, 14-16, 18-20, 22, 25, 26, 33-35, 39 and 40) and on notification filings for stations WHV733, WHV40, and WHV843. The Bureau agrees that these construction completion notifications and notification filings demonstrate that these authorizations were timely constructed.” EB Opposition at 6.</p> <p>“With respect to the remaining licenses, Maritime’s Motion should be denied for lack of proof.” EB Opposition at p. 6.</p> <p>“Maritime concedes that it has not located any document demonstrating that KAE889 (location 12) or WRV (location 23) were timely constructed. Maritime likewise has not submitted any documentation that call sign WHG693 was timely constructed. Instead, Maritime relies solely on decisions by the Wireless Telecommunications</p>	<p>“Pending proceedings by SkyTel-E against MCLM and Mobex before the FCC demonstrate compelling reasons why the Mobex licenses and stations are subject to both termination, prior to the sale and assignment to Maritime, and to revocation for effectively admitted extensive fraud in the Wireless Bureau’s year 2004 ‘audit.’ These challenged under 47 U.S.C. § 309(d) and 405 cannot be trumped by the subject MSD.” At p. 3.</p> <p>“The activation notices are admissions of non construction by a facial reading, and there were not subsequent filings by MCLM predecessors as to actual timely “construction” (as that term means, or any timely construction).” At p. 7.</p>	<p>“There remains a genuine issue of material fact as to whether Maritime attempted to comply with any reasonable interpretation of Section 1.955(a)(3). Accordingly, Maritime’s Motion for Summary Decision will be denied on the permanent discontinuance aspect of Issue G.” At p. 13.</p> <p>Issue G deemed moot as to deleted/canceled licenses. Summary decision denied in all other respects. At p. 13.</p>	<p>“The Bureau and Maritime have reached agreement on the material facts related to the construction and operational status of the following . . . state-based AMTS facilities: “KAE889” (3, 4, 13, 20, 30, 34, 48), “WRV374” (14, 15, 16, 18, 25, 33, 35, 40).” Second Motion at p. 4.</p> <p>“In its earlier motion, Maritime demonstrated the timely construction of each of the 16 remaining site-based licenses. The Bureau concurred, and there has been no additional evidence that calls that conclusion into question.” At p. 7.</p> <p>“Second, Maritime argued that there were construction completion notifications demonstrating that the remaining 15 (non-Watercom) site-based facilities at issue had been timely constructed. The Bureau agreed, and there have been no recent developments or newly-added evidence to suggest a different</p>	<p>“According to the Joint Motion and the Joint Stipulation, Maritime intends to retain the following Mobex Licenses: call signs KAE889 (locations 3, 4, 13, 20, 30, 24, and 48) and WRV374 (locations 14, 15, 16, 18, 25, 33, 35, and 40).³¹ To support their argument that no genuine issues of material fact exist as to whether these licenses were timely constructed, Maritime and the EB rely on copies of certain Construction Completion Notifications (the “Activation Notices”) for these licenses,³² which Maritime had previously appended to its <i>Motion for Summary Decision on Issue G</i>, filed on May 8, 2013.³³ These Activation Notices, however, contain numerous facial defects. For example, the Activation Notices (1) were not submitted on FCC Form 601; (2) they indicate only when testing will commence, but not the commencement of “service,” as required by the Commission’s rules; (3) they provide only approximate (“on or about”) commencement dates; (4) they provide intended future dates for when the facility will commence operating, rather than notification of when operations in fact commenced; and (5) the notices indicated that construction had occurred at a location and/or with parameters other than as listed on the license, for which Mobex should have sought authorization via modification applications, rather than notifying the Commission of the changes via Activation Notices.³⁴ Moreover, these Activation</p>
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³¹ See Joint Stipulation, filed Dec. 2, 2013.

³² See Joint Motion, filed Dec. 2, 2013, at pp. 8-10 ¶¶ 14-16. See also Maritime’s Motion for Summary Decision on “Issue G”, filed on May 8, 2013, at p. 7-9; Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, filed on May 21, 2013, at pp. 5- 6 ¶ 8.

³³ See Maritime’s Motion for Summary Decision on “Issue G”, filed on May 8, 2013, Exhibits “F” and “G.”

³⁴ See Activation Notices, Exhibits “F” and “G” to Maritime’s Motion for Summary Decision on “Issue G”, filed on May 8, 2013.

			<p>“The Wireless Telecommunications Bureau . . . explained that an audit conducted ‘in anticipation of the AMTS auction confirmed that the vast majority [of Mobex’s stations] were timely constructed” and that any unconstructed facilities have been deleted.” First Motion at p. 8.</p>	<p>Bureau (Wireless Bureau) and the Commission that rejected Warren Havens’ allegations that certain unidentified licenses previously licensed to Mobex Network Services (Mobex) were not timely constructed. Non of these decisions conclude that call signs KAE889 (location 12), WRV374 (location 23), WHG693 were constructed on time.” EB Opposition at pp. 6-8</p> <p>“The burden is on Maritime, as the movant, to establish that there is no genuine issue of material fact that call signs KAE889 (location 12), WRV374 (location 23), or WHG693 were constructed in accordance with Section 80.49(a) of the Commission’s rules. To meet this burden, Maritime must do more than cite decisions holding that Mr. Havens failed to meet his burden of proving that an undefined subset of Mobex licenses were not timely constructed or that the licensed AMTS facilities did not meet certain coverage requirements.”EB Opposition at pp. 8-9.</p>			<p>outcome now. Accordingly, as to the timely construction of call signs KAE899 (locations 3, 4, 13, 20, 30, 34, and 48) and WRC374 (locations 14-16, 18, 25, 33, 35 and 40), summary decision should be granted.” At pp. 8-9.</p>	<p>Notices fail to list the stations’ actual constructed technical parameters, such as, among other things, power output, antenna directionality and gain, final mounted antenna height, system losses, and actual ERP—all of which are needed to determine the station’s actual service contour and thus the area being covered. Indeed, the FCC has stated that an AMTS site-based license’s coverage is based on actual station parameters and actual effective radiated power, not theoretical parameters and theoretical effective radiated power.³⁵ So, without knowing what was actually constructed, and therefore what service area is actually being covered, the Activation Notices utterly fail to show whether the stations ever met the Commission’s standards for construction and service, including coverage requirements for waterways and continuity of service.³⁶ Maritime and the EB also cite to numerous decisions of the Commission and the EB for the proposition that these stations were timely constructed. In the Joint Motion, Maritime and the EB claim that—in these decisions—the WTB and the Commission had previously “rejected Mr. Havens’ allegations that Mobex’s licenses, including call signs KAE889 and WRV374, were not timely constructed”³⁷ Interestingly, however, the EB cited these exact cases in its <i>Response to Maritime’s Motion for Summary Decision on Issue G</i>,</p>
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³⁵ See Letter Order, re Request by Maritime Communications/Land Mobile, LLC for clarification of Sections 80.385 and 80.215 of the Commission’s Rules, DA 09-793, Dated April 8, 2009, 24 FCC Rcd 4135; Order on Reconsideration (of DA 09-793), DA 10-664, Rel. April 19, 2010, 25 FCC Rcd 3805.

³⁶ See Letter (Declaratory Ruling and Order), DA 09-793, Rel. April 8, 2009.

³⁷ See Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G, filed Dec. 2, 2013, at pp. 9-10 ¶¶ 15-16 (citing *In re Applications of Mobex Network Services, LLC*, 19 FCC Rcd 24939 (WTB 2004); *In re Applications of Mobex Network Services, LLC*, 25 FCC Rcd 3390, 3395 (2010)).

									and came to the opposite conclusion. ³⁸ For example, the EB stated that, “[i]n <i>Mobex Network Services, Inc.</i> , 19 FCC Rcd 24939 (WTB 2004), the Wireless Bureau concluded only that Mr. Havens’ petitions to deny did not ‘demonstrate that the licenses for the stations at issue should be deemed to have canceled automatically for failure to meet construction/coverage requirements’ [but] the [WTB] did not identify the Mobex licenses subject to its ruling or affirmatively rule that all of Mobex’s licenses had been constructed on time.” ³⁹ Accordingly, the EB concluded in that Response that Maritime had failed to meet its burden, as the movant for summary decision, to establish that there are no genuine issues of material fact as to those Mobex licenses: “Maritime must do more than cite decisions holding that Mr. Havens failed to meet his burden of proving that an undefined subset of Mobex licenses were not timely constructed or that the licensed AMTS facilities did not meet certain coverage requirements.” ⁴⁰ Likewise, by citing these same decisions and by relying on facially defective Activation Notices, Maritime and the EB have failed to meet their burden of showing that there are no genuine issues of material fact as to the timely construction of call signs KAE889 (locations 3, 4, 13, 20, 30, 24, and 48) and WRV374 (locations 14, 15, 16, 18, 25, 33, 35, and 40).” At pp. 63-66
12	FC	The subject Maritime licenses were, on and after	“[T]here is no Commission Rule that would allow MCLM	“Although Maritime acknowledges that there		“There remains a genuine issue of	“Maritime’s earlier motion had also	“As the EB has noted, “the Commission has evaluated AMTS	

³⁸ See Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, filed on May 8, 2013, at p. 7 ¶ 10 and p. 8 n. 37.

³⁹ See Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, filed on May 8, 2013, at p. 7 ¶ 10 (citing *In re In re Applications of Mobex Network Services, LLC*, 19 FCC Rcd 24939 (WTB 2004)).

⁴⁰ See Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, filed on May 8, 2013, at p. 7 ¶ 10.

	lawful and timely Construction, kept in Operation and were not subject of Permanent Discontinuance		to determine with ‘ascertainable certainty’ how long an AMTS station could remain out of service before its license would be held to have terminated. Further, consistent with the requirements of due process . . . , the Commission may not now develop a definition of permanent discontinuance and apply it retroactively and without notice to MCLM and deprive it of its AMTS licenses. Thus, any factual issues underlying the ‘permanent discontinuance’ aspects of Issue G are simply not material to any legal judgment the Presiding Judge may properly render in the course of the hearing.” First Motion at 12.	are ‘factual issues underlying the ‘permanent discontinuance’ aspects’ of Issue (g), Maritime suggests that these questions of fact—the same questions on which the Bureau and other parties expended considerable resources during the lengthy discovery phase of this proceeding—are not material to the resolution of Issue (g). The Bureau disagrees with Maritime’s claim that these questions of fact are immaterial.” EB Opposition at p. 9. “The record here indicates that Maritime has failed to operate the majority of its site-based stations for many years. Specifically, Maritime chose to discontinue operations at seventy (70) of its eighty-nine (89) site-based stations as of December 31, 2007, more than five years ago. Third-four (34) of these discontinued stations are no longer even capable of providing service because Maritime lost access to the towers or sites for failure to maintain lease payments or because the utilities were disconnected.”		material fact as to whether Maritime attempted to comply with any reasonable interpretation of Section 1.955(a)(3). Accordingly, Maritime’s Motion for Summary Decision will be denied on the permanent discontinuance aspect of Issue G.” At p. 13. Issue G deemed moot as to deleted/canceled licenses. Summary decision denied in all other respects. At p. 13.	sought summary decision on the question of permanent discontinuance. The Bureau had opposed that motion because Maritime’s legal argument was flawed, but summary decision is not appropriate on this question based on the undisputed facts and the proper application of the permanent discontinuance standard.” At pp. 10-11. “Pursuant to Section 1.955(a)(3) of the Commission’s rules, “[a]uthorizations automatically terminate, without specific Commission action, if service is permanently discontinued. The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.” Although neither the Commission authorization nor the individual service rules provide a definition of permanent discontinuance for Part 80 AMTS	permanent discontinuance issues on a case-by-case basis, and resolution of the outstanding factual questions is indispensable to the question of whether the licenses at issue were permanently discontinued under applicable precedent.” ⁴¹ Here, genuine issues of material fact exist as to whether the operations of Maritime’s site-based facilities have been permanently discontinued pursuant to § 1.955(a) of the Commission’s rules. Accordingly, summary decision is not appropriate as to this aspect of Issue (g).” At p. 67. <i>See also</i> pp. 67-81.
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⁴¹ See Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, filed May 21, 2013, at p. 9 ¶ 14.

							<p>licenses at issue here, AMTS precedent provides sufficient guidance for the Presiding Judge to render a decision on the question of permanent discontinuance.” At p. 11.</p> <p>“[T]he undisputed facts demonstrate that operations at the 16 remaining state-based facilities have not permanently discontinued pursuant to Section 1.955(a)(3) of the Commission’s rules.” Joint Motion at p. 12.</p>	
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