

March 27, 2014

FOIA Request

To: Federal Communications Commission (“FCC” or the “Agency”)  
445 12th Street, SW, Room 1-A836  
Washington, DC 20554  
Attn: FCC FOIA Officer<sup>1</sup>  
Attn: Shoko Hair

Requestor:  
Warren Havens  
2509 Stuart Street  
Berkeley, CA 94705  
Phone: 510-848-7797

*Please confirm receipt of this request.*

Time period. See Exhibit 1 hereto.

Request and Records. See Exhibit 1 hereto.

If the FCC determines that it cannot provide, in full, the requested Records, then I request that the FCC timely provide all Records it can provide, only withholding those full Records it determines that it must withhold, and any parts of Records it determined that it must redact, under any asserted FOIA release exemption it finds it must apply under this FOIA request.

Payment. I will pay up to \$1,000 for obtaining the requested Records. If that is not sufficient, then Requestor asks to be informed (with a proper breakdown and explanation), so that I may determine whether to increase this limit.

Time for response. I believe the FCC has the Records in specific files and locations, due to the nature of the Records. Based on this believe, I further submit that the FCC may not reasonably or lawfully extend the 20-day period under the FOIA and FCC rule §0.461 to

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<sup>1</sup> A complementary copy of this request may be emailed to: [foia@fcc.gov](mailto:foia@fcc.gov) and/ or [shoko.hair@fcc.gov](mailto:shoko.hair@fcc.gov). However, the undersigned requester does not accept email as a means to receive any FCC responses to this request, in lieu of mail service required under FCC rules, and given that email is not always available and reliable, and it is not a governmental service as is the US Postal Service which was created and is maintained including for purposes of legal-document delivery to and from citizens and the government.

respond to this Request, *or use the entire 20-day period.*<sup>2</sup>

Purpose and Character. See Exhibit 2 hereto.

Assistance of counsel. Limited disclosure: I have considered and partially employed in this FCC filing (this FOIA Request) assistance of legal counsel. I note this here since (i) this is being filed in FCC proceeding 11-71 (see Exhibit 2 below), and Judge Sippel has expressed interest, and Orders, to know when I have assistance of counsel (and various details of that) and (ii) Judge Sippel and his office appear to take part in decisions upon FOIA request I have submitted that involve records submitted in docket 11-71, as is the case under this Request. While I do not believe I have a legal obligation to explain when I have non-representative legal counsel or any details thereof (based on legal counsel, and findings by the American Bar Association, and other sources), in this instance I disclose this much, and leave it to the Judge and Parties if they want to timely challenge this limited disclosure, as they have my past limited disclosures.<sup>3</sup>

If you have any questions regarding this Request or need any additional information or clarification of the above, please contact me at the above-listed address.

Thanks for your assistance.

Warren Havens

Exhibits attached.

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<sup>2</sup> The time periods for an agency initial response and other actions under a FOIA request must be as prompt as possible, and not up to the maximum time allowed unless it is actually required. Time is of the essence in any FOIA request.

<sup>3</sup> I think it is responsible for any party acting on *pro se* basis before the Government to use all resources the party has at its disposal, including direct or indirect counsel of attorneys, in their actions, to act with more relevant knowledge and ability as to procedure and substance. Some in government and law prefer otherwise. Show me that government and you esquires come close to fulfilling your high roles and claims, and public trust, and I will be happy to be more dumb and passive in your arena, but until then I don't, and that's how our nation began.

Time Period.

From beginning of year 2011 to the date of completion of processing of this request under FOIA.

Request and Records.

I request a copy of all records submitted or referenced by, or used in support of, Maritime Communications/Land Mobile LLC, Debtor-in-Possession (also known as, Maritime Communications/Land Mobile, LLC) ("Maritime") and/or the FCC Enforcement Bureau, in EB Docket No. 11-71, in the "Joint Response of the Enforcement Bureau and Maritime to Order, FCC 14M-9," dated March 26, 2014 (a "public" copy of which, with *redactions* by the Enforcement Bureau and Maritime, is Exhibit 3 hereto) (the "Joint Response") (the "Request").

*Exceptions* to the requested records under this Request are all documents that are publicly available on ECFS under the proceeding in EB Docket No. 11-71.<sup>4</sup>

*Included*<sup>5</sup> in the requested records under this Request are all documents submitted as Confidential or Highly Confidential under the Protective Order in this proceeding in EB Docket No. 11-71, *including but not limited to* those reflected in the *redactions* shown in the Joint Response copy included as Exhibit 3 hereto (i.e., any records that are the subject of the redactions under claims that the contained information is properly subject to the classification as "confidential" or "highly confidential," or otherwise to be protected from general public release under, said Protective Order.

To the degree that the FCC believes that I have already requested under FOIA any of the above described, requested records herein, in a past FOIA request, which the FCC further believes it has properly and finally responded to, then please identify any such past request under FOIA and the FCC's response thereto, and the date upon which the FCC research to find records under any such past FOIA requests was completed. *See also* my FOIA Request with Control Number 2014-320, dated March 25, 2014 (the "320 Request").

I am not sure, but expect that some records I request under that 320 Request includes some Records under the instant Request. For this reason, I do not object if, and I request that, the FCC consolidate the 320 Request with the instant Request.

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<sup>4</sup> While I think this is clear, to avoid misunderstanding, I mean: these are the *only* exceptions.

<sup>5</sup> While I think this is clear, to avoid misunderstanding, I mean: these are *among* the included records: All records other than the exceptions are included.

As I stated in the 320 Request (which applies to this Request as well): In such a case (as described two paragraphs above), this request should be deemed to seek the same class of records from that date in time to the end of the time period specified above, in the first paragraph of this Exhibit 1. (For example, as a hypothetical: if the FCC determines that I submitted a past FOIA request for any records described above, as requested here in this FOIA request, to which the FCC has responded to in the past, completing its research on January 1, 2013, then this instant request for the same class of records would be from that date to the end of the time period specified in the first paragraph of this Exhibit 1). To the degree that my pending FOIA request, FOIA Control No. 2014-306, is determined by the FCC to seek some of the records that I seek in the instant, above request, then the records under FOIA Control No. 2014-306 should be deemed excluded from the instant request. I cannot make that determination because I don't know what records the FCC has under this request, and under the request under FOIA Control No. 2014-306.

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Purpose and Character.

This relates to FCC proceeding 11-71.

Explanation of purpose underlying a FOIA request is not relevant to the agency's obligations under the request including since any information released under FOIA becomes public, in which case anyone party may use the information for any purpose.<sup>6</sup> However, I noted the following. At an appropriate time, with other relevant associated materials, I plan to publish online results of and Records obtained via this Request, to show the workings of the FCC in and related to proceeding 11-71. I also participate in this proceeding as a party. This proceeding and my participation has a public-interest purpose as clearly stated in FCC 11-64: the "petitioners" described therein, including myself, have rights in challenging another party's licensing actions based on assertion of the public interest as meant in the Communications Act including 47 USC §309(a) and (d)). The FCC has conducted the case involved in 11-71 in large part in secret, with documents of decisional importance it has kept secrete, not publicly accessible, which I believe is unlawful and in bad faith. There is a compelling public interest in challenging this, and obtaining and publishing the hidden information via proper use of FOIA requests to the FCC, and using it in this public proceeding. My challenges to the FCC authorities involved in this 11-71 proceeding (including the FCC Enforcement Bureau and the Administrative Law Judge Sippel and his office) are shown in my filings in the proceeding on the FCC ECFS. The challenges are not only for personal interests, but are in pursuit of public interests that also underlie the relevant FCC rules, Communications Act sections, APA sections, FOIA, and the First Amendment.

In addition, this Request is under rule §1.311(b)(3).<sup>7</sup> Seeking records under FOIA under this rule for use in proceeding 11-71 is for public purposes, and for showing the public

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<sup>6</sup> Release of information under FOIA is a release to the general public, not solely to plaintiff. *National Archives & Records Admin. v. Favish*, 541 U.S. 157, 158, 158 L. Ed. 2d 319, 124 S. Ct. 1570; *Inter Ocean Free Zone*, 982 F. Supp. at 871 (citing *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771) (1989), 103 L. Ed. 2d 774, 109 S. Ct. 1468 ("what is given to one requester is what is available to all who make the same request").

<sup>7</sup> §1.311(b)(3):

Commission records are not subject to discovery under § 1.325. The inspection of Commission records is governed by the Freedom of Information Act, as amended, and by § § 0.451 through 0.467 of this chapter. Commission employees may be questioned by written interrogatories regarding the existence, nature, description, custody, condition and location of Commission records, but may not be questioned concerning their contents unless the records are available (or are made available) for inspection under § § 0.451 through 0.467. See § 0.451(b)(5) of this chapter.

the workings of the FCC, including since this proceeding was established as a public one by the FCC under FCC 11-64, and involves public AMTS CMRS licenses and alleged license construction and operations for CMRS (actual Commercial Mobile Radio Service to subscribers) on a nearly nationwide basis. CMRS is by definition, rule and case precedent, public; and, in addition, specifics of alleged stations are also subject to public disclosure under §80.385(b) and FCC Orders DA 10-664, DA 09-793, and DA-09-64 (specific site-based station details to be released to the co-channel geographic license).

Because this Request may constitute a presentation in proceeding 11-71, I will file a copy of this on ECFS under docket 11-71 and serve a copy upon the parties.<sup>8</sup>

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<sup>8</sup> See §0.461 “Note to paragraph ( d )(3): Under the ex parte rules, § 1.1206(a)(7) of this chapter, a proceeding involving a FOIA request is a permit-but-disclose proceeding.... a pleading in a FOIA proceeding may also constitute a presentation in another proceeding if it addresses the merits of that proceeding.”

## Certificate of Service

I, Warren Havens, certify that on March 27, 2014 I caused to be served a copy of the foregoing filing, by placing it into the US Postal Service mail system in a sealed envelop with first-class postage affixed, to the following:<sup>9</sup>

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
Richard Sippel [Richard.Sippel@fcc.gov](mailto:Richard.Sippel@fcc.gov)  
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<sup>9</sup> The mailings may postmarked the following day if deposited with the US Postal Service after close of business. Emails herein are *not* for service, but may be used to provide a courtesy copy.

<sup>10</sup> Mr. Trammel asked my office to *exclude* him from further courtesy email copies of matters I file with the FCC as to FOAI matters. He was added in the past since FCC staff processing one of my FOIA requests added him, and I followed that. But unless the FCC orders otherwise, I believe I should follow Mr. Trammell's instructions, given that his company, Choctaw, is represented by counsel listed above.

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/ s / [Electronically signed. Signature on file.]

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Warren Havens

Note: Other persons may also receive a copy by email under apparent current interest of Judge Sippel or his office to include certain non-parties. However, the Judge did not order or explain this interest.