

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

In re)
)
MARITIME COMMUNICATIONS/LAND MOBILE, LLC) EB Docket No. 11-71
) File No. EB-09-IH-1751
) FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various)
Authorizations in the Wireless Radio Services)
)
Applicant for Modification of Various Authorizations in the) Application File Nos.
Wireless Radio Services) 0004030479, 0004144435,
) 0004193028, 0004193328,
Applicant with ENCANA OIL AND GAS (USA), INC.;) 0004354053, 0004309872,
DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP;) 0004310060, 0004315903,
JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC) 0004315013, 0004430505,
COOPERATIVE; PUGET SOUND ENERGY, INC.;) 0004417199, 0004419431,
ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE) 0004422320, 0004422329,
POWER AND LIGHT COMPANY; WISCONSIN POWER) 0004507921, 0004153701,
AND LIGHT COMPANY; DIXIE ELECTRIC) 0004526264, 0004636537,
MEMBERSHIP CORPORATION, INC.; ATLAS) and 0004604962
PIPELINE-MID CONTINENT, LLC; DENTON COUNTY)
ELECTRIC COOPERATIVE, INC., DBA COSERV)
ELECTRIC; AND SOUTHERN CALIFORNIA)
REGIONAL RAIL AUTHORITY)

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

OPPOSITION AND REPLY TO
JOINT MOTION TO STRIKE HAVENS' RESPONSE TO THE JOINT RESPONSE
OF THE ENFORCEMENT BUREAU & MARITIME TO ORDER, FCC 14M-9
AND
CONTINGENT REQUESTS TO ACCEPT

Warren Havens, the undersigned, ("Petitioner" or "Havens") hereby submits this pleading for several purposes (for all of the purposes, the "Pleading"). (i) The Pleading is an opposition (the "Opposition") to the Maritime Communications/Land Mobile LLC ("Maritime" or "MCLM") and FCC Enforcement Bureau (the "EB" or "FCC EB") (together, "M-EB") joint motion to strike (the "Motion" or "Motion to Strike") Havens' Response filed April 9, 2014, (the "Response") to the MCLM and EB Joint Response, filed March 26, 2014, (the "Joint Response")

to the Administrative Law Judge's (the "ALJ") Order, FCC 14M-9, released March 12, 2014 (the "Order" or "M9") regarding the Maritime and EB Joint Motion for Summary Decision on Issue G, filed December 2, 2013¹ (the "EB-M Motion" or the "Joint Motion") regarding its AMTS licenses (the "Licenses") and 16 component stations (the "Stations") that Maritime seeks to retain in its Joint Motion. (ii) This Pleading also comments on the substantive further asserted facts and arguments presented in the motion to strike, mostly in footnote 11 : while "only" a footnote, it in fact asserted additional facts and arguments in support of the Joint Motion and Joint Response: facts and arguments Maritime and EB appear to believe are essential for their position, and within the topic of FCC 14M-9 ("M9"). (ii) This pleading also contains contingent requests to accept below.

The "Motion to Strike" is really an impermissible reply to the Havens Response, and an attempt to bolter the defective Joint Motion and Joint Response, but is useful in what it "protests too much," to which I am entitled to reply and do so herein. The Motion is not simply asserting that the Havens Response is defective or outside of what is permitted, but it is also responding to the substance of the Havens Response and asserting new facts (with no sworn statement in support) and arguments. In sum, the Supplement- Motion follows Maritime-EB signature *modus operandi*:

HAMLET: Madam, how like you this play? GERTRUDE: The lady protests too much, methinks.... CLAUDIUS: Have you heard the argument? Is there no offense in 't? HAMLET: .. they do but jest. Poison in jest.²

¹ "Issue G" involves the question of whether Maritime Communications/Land Mobile, LLC, "constructed or operated any of its stations at variance with sections 1.955(a) and 80.49(a) of the Commission's rules." *Maritime Communications/Land Mobile, LLC*, 26 F.C.C.R. 6520, 6547 (2011) (FCC 11-64; EB Docket No. 11-71).

² Established in case law, and abjurdications, e.g, 23 Hamline L. Rev. 370.

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Summary and Initial Comment

The descriptive table of contents above provides full summary.

As an initial comment: Havens has pending interlocutory appeals before the Commission. Thus, rule section 1.291(d) applies. Havens has asserted already that until his interlocutory appeal that the Judge has effectively barred Havens from counsel, the interlocutory appeal rules says that the case should have been stayed. Section 1.291(d) reads:

(d) No initial decision shall become effective under § [1.276\(e\)](#) until all interlocutory matters pending before the Commission in the proceeding at the time the initial decision is issued have been disposed of and the time allowed for appeal from interlocutory rulings of the presiding officer has expired.

Motion to strike should not be granted. / Herein Request to Accept the Response and this Pleading. / Timing of this Pleading

FCC 14-M9 (“M9”) included (emphasis added):

Maritime should provide further facts regarding its plans for future operation of its facilities licensed as call signs WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WHG750, KAE889-4 (Rainier Hill), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34. (Capital Peak), and KAE889-48 (Tiger Mountain)....

The Motion appears to tacitly assume that (1) the operation of a facility has not permanently discontinued if it is demonstrated that the spectrum authorized

for use by its site based license has been leased to, and is in use by, a third party; and (2) the operation of a facility has not permanently discontinued if its operation is restricted by the operations of other facilities. Maritime and the Enforcement Bureau should provide further explanation and authority in support of their positions, or state their positions more clearly. Maritime and the Enforcement Bureau should also submit their views on what obligations exist for a licensee to continue operating a licensed facility after the related spectrum is leased to a third party.

As noted in the last section below, re candor, the M9 language dealt with, inter alia, current (present tense) lease uses. The Havens Response addressed that and the Joint Response addressing of M9 as cited above, including for reasons explained therein, that under FCC rules and case precedent, evidence and determination of “construction” “operation” and “service” area interdependent, and apply to asserted leases. The Judge asked for “Glossaries” on these matters, and Havens directly, and attorney Jim Chen for Havens later and in addition, provided relevant law, definitions, etc. The Judge did not reject these. The Havens Response thus argued based on these.

Requests and Timing. Havens request that the Havens Response, and this Pleading be accepted for a more full and complete record. See also the Conclusion section below. As to the due date for this Pleading, Havens called the office of the Judge today and spoke with Ms. Gosse and asked for Mr. Randazzo, but he was out today. The question was: when this Pleading is due. Havens will separately submit a request for clarification, on this question, and if the due date is later than today, he will supplement or replace this Pleading.

Havens Response was accurate regarding the leases, but motion to strike argued further on merits of leases, thus Havens responds herein (in rest of this pleading)
and
Majority of leases were for licenses that expired, and no new leases

The Exhibits hereto support this section 2, and are mostly self explanatory. In addition:

Contrary to the Motion at its page 3 and footnote 11, where it discusses Havens's challenges to the lease notifications, Havens is not barred from raising clear facts from FCC public ULS records in his Response, that rebut the Joint Response and show it to be relying on incorrect or misleading information about the actual status of the leases that FCC EB and MCLM purport to be grounds for not finding the 16 Stations permanently discontinued.

In addition, the Motion misconstrues what Havens argued. Havens did not argue that MCLM failed to file lease notifications entirely, instead Havens pointed out that, per FCC ULS records, many of the lease notifications filed by MCLM, upon which the Joint Response and Joint Motion rely on as proof of current operations, have been canceled, expired, terminated or withdrawn (prior to any FCC acceptance or operation under them) several years ago. A review of FCC ULS records for the lease notifications noted in the Motion's footnote 11 show this to be the case (Also, see Havens's Response's Exhibit 2, which took information directly from FCC ULS records, and that shows the status of the leases). The EB and MCLM are not telling the whole truth regarding the lease notifications and their status, including up to present. Apparently, they believe that the Administrative Law Judge will rely solely on their representations regarding the status of the leases and lease notifications, and not look at FCC ULS records that clearly show most of the leases and lease notifications have expired, been canceled, withdrawn, or otherwise terminated (except the lease notification with Evergreen and the still pending lease notification with Puget Sound Energy). The facts in its ULS system regarding the leases and lease notifications cannot be ignored.

Furthermore, see Exhibit 1 hereto that contains Rule Section 1.9020 cited in its entirety. As can be seen from a review of that rule section, a lease notification must be filed with the FCC before commencing operations under the lease agreement,³ that the FCC will accept the

³ Section 1.9020(e) reads [underlining added for emphasis]:

notification, and once accepted the lease goes on a Public Notice, and is then subject to challenges.⁴ Further, Section 1.9020 states that when a lease is extended, terminated or expires, that a new lease notification must be filed with the FCC, which in the case of several of the lease notifications for many of the 16 Stations was not done.⁵ Exhibit 2 hereto contains copies of the

(e) Notifications regarding spectrum manager leasing arrangements. A licensee that seeks to enter into a spectrum manager leasing arrangement must notify the Commission of the arrangement in advance of the spectrum lessee's commencement of operations. The spectrum manager lease notification will be processed pursuant either to the general notification procedures or the immediate processing procedures, as set forth herein. The licensee must submit the notification to the Commission by electronic filing using the Universal Licensing System (ULS) and FCC Form 608, except that a licensee falling within the provisions of § 1.913(d) may file the notification either electronically or manually.

And Section 1.9020(e)(1)(ii) reads [underlining added for emphasis]:

(ii) The licensee must submit such notification at least 21 days in advance of commencing operations unless the arrangement is for a term of one year or less, in which case the licensee must provide notification to the Commission at least ten (10) days in advance of operation. If the licensee and spectrum lessee thereafter seek to extend this leasing arrangement for an additional term beyond the initial term, the licensee must provide the Commission with notification of the new spectrum leasing arrangement at least 21 days in advance of operation under the extended term.

⁴ Section 1.9020(e)(1)(iii) reads:

(iii) A notification filed pursuant to these general notification procedures will be placed on an informational public notice on a weekly basis (see § 1.933(a)) once accepted, and is subject to reconsideration (see § § 1.106(f), 1.108, 1.113).

⁵ Section 1.9020(h)(1) and (2) read [underlining added for emphasis]:

(h) Expiration, extension, or termination of a spectrum leasing arrangement. (1) Absent Commission termination or except as provided in paragraph (h)(2) or (h)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification provided that the licensee notifies the Commission of the extension in advance of operation under the extended term and does so pursuant to the general notification procedures or immediate processing procedures set forth in this section, whichever is applicable. If the general

lease notification pages and lease ID pages off of the FCC ULS systems, and they show the actual status of the leases (including expired, canceled or withdrawn), which is what is relevant for the Administrative Law Judge to consider.

Section §1.9020(a) reads [underlining added for emphasis]:

Overview. Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a spectrum manager leasing arrangement, without the need for prior Commission approval, provided that the licensee retains de jure control of the license and de facto control, as defined and explained in this subpart, of the leased spectrum. The licensee must notify the Commission of the spectrum leasing arrangement pursuant to the rules set forth in this section. The term of a spectrum manager leasing arrangement may be no longer than the term of the license authorization.

The Motion argues that the Commission does not need to “affirmatively ‘approve’ spectrum leases” and cites to the first part of the above rule section, however, it stops short of citing the remaining portion of Section 1.9020 that states a “licensee must notify the Commission of the spectrum leasing arrangement pursuant to the rules” in Section 1.9020. In addition, Section 1.9020 requires that advance notice be provided before commencing operations under leases, except if the application is acceptable under immediate approval procedures, and that if a lease notification expires or otherwise terminates, then a new lease notification must be filed.

The EB and MCLM are parsing words and trying to be cute by stating a lease does not need prior FCC “approval”, however, they are leaving out that a notification “must” be filed with the FCC prior to commencing operations, and that the FCC “accepts” the notification at some point, and once accepted, it then goes on a public notice and is subject to challenges. Acceptance is the same as approval. That is what Havens meant. The lease notifications need to be accepted by the FCC ultimately, which in some cases did not occur, and in other cases, if they were accepted, the lease notification were then later terminated, expired, withdrawn, canceled, or the

notification procedures are applicable, the licensee must notify the Commission at least 21 days in advance of operation under the extended term.

lessee has admitted to not having conducted operations under the lease at the time the lease notification was filed with the FCC, or a period thereafter (e.g. the MCLM lease notification for its lease with Puget Sound, File No. 0004299952, was filed on 6/28/10, and listed a lease commencement date of 8/1/10; however, Puget Sound stated in 2012 in this proceeding that it has not commenced operations under the lease,⁶ and more recently, in Puget Sound's Reply to Havens's Response, filed April 25, 2014 in the subject docket, it has stated it did not start building and operating stations under the lease arrangement until some time in September 2012—over two years after the lease's commencement date listed on the lease notification—and approximately 5 years after the end of 2007, by which time MCLM has admitted that none of its site-based stations were in operation).

Regarding the lease notifications referenced in footnote 11 of the Motion, Havens provides the following table of information on them taken directly from FCC ULS records, and also refers to Exhibit 2 hereto that contains ULS pages showing the lease notifications' actual status, and in the case of the lease with Puget Sound Energy, Puget Sound Energy's answers to the EB's first set of interrogatories, in which it states that it had not yet activated any radio stations as of August 2012 (despite the lease notification saying it commenced in 2010):

⁶ Puget Sound Energy stated at page 5 of its *Answers of Puget Sound Energy, Inc. to the Enforcement Bureau's First Set of Interrogatories*, filed on August 29, 2012, in EB Docket No. 11-71, that [underlining added for emphasis]:

PSE entered a Spectrum Manager Lease Agreement with Maritime on May 20, 2010. Notification of the lease was filed with the FCC on June 28, 2010, and the Notification was assigned File No. 0004299952. The Spectrum Manager Lease authorizes PSE to use spectrum licensed to Maritime under Call Sign KAE889 at Location 4 (Rainier Hill), Location 20 (Mount Constitution), Location 30 (Gold Mountain), Location 34 (Capital Peak), and Location 48 (Tiger Mountain). PSE is in the process of constructing the new Consolidated Radio System but has not yet activated any of its own radio facilities under the Spectrum Manager Lease Agreement. PSE is not leasing, using, or proposing to use any equipment or other facilities owned or controlled by Maritime.

<u>Lease Notification #</u>	<u>Lessee</u>	<u>Status on ULS</u>	<u>Exhibit 2, part #</u>
0004149128	Duquesne Light Company	Lease Expired, by its own terms on 12/10/12	Exhibit 2, Part 1
0004299952 ⁷	Puget Sound Energy	Pending, since 2010 (Note: as of August 29, 2012, Puget Sound Energy had informed the EB that it was not operating any stations under its lease agreement with MCLM. Only recently, Puget Sound Energy has stated in a 4/25/14 Reply filing in Docket 11-71 that it commenced some facility operations under its lease as early as September 2012, but does not indicate if those are fill-ins or at the authorized locations)	Exhibit 2, Part 2.1, Part 2.2 and Part 2.3 (see page 5 of the Puget Sound Energy Answers, and Havens's notes on Exhibit 2, Part 2.3)
0004014426 (Lease ID: L000006933) ⁸	Pinnacle Wireless, Inc.	Canceled 3/22/10 (Lease was set to expired, by its own terms on 5/30/11, but canceled earlier)	Exhibit 2, Part 3.1, Part 3.2, Part 3.3
0004131898	Pinnacle Wireless, Inc.	Lease Expired, by its own terms on 5/30/11, and the lease notification was dismissed by the FCC on 1/26/12 because it had expired.	Exhibit 2, Part 4.1, Part 4.2, Part 4.3
0003834198 ⁹	Pinnacle Wireless, Inc.	Withdrawn on 11/3/09, one day after it was submitted.	Exhibit 2, Part 5.1

⁷ The Motion lists an incorrect file number (0004299951) for this lease notification for the MCLM and Puget Sound Energy lease.

⁸ The Motion lists an incorrect file number (0004024426) for this lease notification.

⁹ This lease notification was not referenced in the Motion's footnote 11, but is included here to show yet another example of lease notification that was "filed", but does not represent a current, active lease with operations under it.

In the Motion, Joint Response and Joint Motion, the EB and MCLM lack candor for not admitting the actual status of the lease notifications, which is what is most relevant to their Joint Motion. As shown above, filing of a lease notification is not proof of an active, current lease with operations under it. In the Joint Motion, MCLM and the EB suggest to the Administrative Law Judge that the 16 Stations are in operation, and have not been permanently discontinued, because they are subject to leases.

MCLM and the EB have failed to properly disclose to the Administrative Law Judge the actual status of the leases, per the lease notifications that were required to be filed with the FCC on ULS pursuant to Section 1.9020, and to admit to the Judge that the FCC ULS records show the underlying leases have either expired, been canceled, or been withdrawn (or, as admitted to by the lessee, the lessee did not commence operations under the lease at the time of filing of the lease notification or thereafter for a significant period of time--see discussion above regarding the Puget Sound Energy lease notification and its statements in 2012).

EB and MCLM appear to be arguing that just the act of filing a lease notification is sufficient to constitute an ongoing lease, even if the lease notification has expired, been cancelled, withdrawn, dismissed, or is otherwise no longer in effect per FCC rules, including Section 1.9020.

Under Section 1.9020(c)(5),¹⁰ the FCC EB had a right to inspect the facilities being allegedly operated under the alleged leases, and it could have confirmed firsthand what was

¹⁰ Section 1.9020(c)(5) states [underlining added for emphasis]:

In leasing spectrum from a licensee, the spectrum lessee must accept Commission oversight and enforcement consistent with the license authorization. The spectrum lessee must cooperate fully with any investigation or inquiry conducted by either the Commission or the licensee, allow the Commission or the licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the licensee and to the extent that such suspension would be consistent with the Commission's suspension policies.

actually being operated under the leases. It would have been simple enough for the EB to do so, given it has field offices around the country, and that the stations in New Jersey are very close to DC. However, at no time did the FCC EB conduct any inspection of the leased facilities, yet it agrees with, and asks the Administrative Law Judge to rely upon, the assertions of MCLM regarding leases and alleged operations thereunder, when the Commission has stated in FCC 11-64, that MCLM's word cannot be relied upon, and is investigating MCLM for lack of candor and fraud related to its actions in Auction No. 61.

Clearly, the EB and MCLM seek to have the Response stricken in its entirety, because their Joint Motion cannot withstand the facts presented by Havens, including those from the FCC's own public ULS records for the leases, of which MCLM and EB are entirely aware, but avoid fully and accurately disclosing to the Administrative Law Judge, including but not limited to, the actual status of the leases per ULS lease notification records, and that not all of the licensed spectrum was being leased per most of the lease notifications, so MCLM could have continued to operate its authorized station locations

Leases (all long past) were also invalid under § 20.9(b) and related

Nothing in any lease or other rule provides relief from this rule, but it was not complied with in the subject leases.

Maritime-EB lack candor in characterization of leases

In the Joint Motion and Joint Response, M-EB lack candor. This is clear by review of those filings, M9, and the Havens Response, including but not limited since M-EB did not explain to the Judge the actual history and status of the leases, as described in the Havens Response and in this Opposition pleading. Thus, the Judge inquired in M-9 regarding "its site-based license...leased to, and is in use by, a third party..." That language, "is in use by", is in the present tense. The Judge clearly had the impression from the Joint Motion that the leases

asserted by M-EB were providing current use to the lessees. However, that is clearly false, as shown in FCC records, demonstrated in the Havens Response and in the instant pleading. For this and other reasons shown in the Havens Response and the instant pleading, M-EB lack candor on these critical matters with regard to their request for summary decision/settlement. Exhibit 3 hereto supports the above paragraph for reasons explained in Exhibit 3.

Conclusion

The Havens Response should not be stricken, but processed in full, and this Pleading should also be processed in full, for the critical facts and law presented directly relevant to Issue (g) that the Commission designated, after investigations and proceedings leading up to FCC 11-64 for over a decade: This will provide to the Judge and the Commission, and public, a more full and complete, and well informed, record in the public interest. While the undersigned strongly disagrees with the Judge on some matters, he has always properly provided facts and law, as called on and permitted, and believes the Judge's inquiry in M9 was important.

While Havens does not waive his previously submitted assertion and argument that the Joint Motion for summary decision was defective procedurally and in substance, and if so, it should have been denied, and thus, that M9 was an uncalled for allowance of a third or fourth bit at the apple (Maritime attempted summary decision several times, and in various pleadings, before the currently pending Joint Motion, etc.)-- it appears, however, that M9 has resulted in M-EB demonstrations of nothing to show for the asserted lease uses but nominal long-past possible uses, with no sworn statements of any actual user (and lack of candor), and demonstrations by Havens in the Havens Response and this Pleading that should assist the Judge in his determinations. Accordingly, it appears that the Judge has sufficient facts, and law, to issue a summary decision as to automatic termination of all of the subject remaining Maritime site-based licenses.

Respectfully submitted,

WARREN C. HAVENS

/s/ Warren C. Havens
2509 Stuart Street
Berkeley, California 94705
(510) 841-2220

April 25, 2014

Exhibit 1: Rule Section 1.9020

§1.9020 Spectrum manager leasing arrangements.

(a) Overview. Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a spectrum manager leasing arrangement, without the need for prior Commission approval, provided that the licensee retains de jure control of the license and de facto control, as defined and explained in this subpart, of the leased spectrum. The licensee must notify the Commission of the spectrum leasing arrangement pursuant to the rules set forth in this section. The term of a spectrum manager leasing arrangement may be no longer than the term of the license authorization.

(b) Rights and responsibilities of the licensee. (1) The licensee is directly and primarily responsible for ensuring the spectrum lessee's compliance with the Communications Act and applicable Commission policies and rules.

(2) The licensee retains responsibility for maintaining its compliance with applicable eligibility and ownership requirements imposed on it pursuant to the license authorization.

(3) The licensee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(c) Rights and responsibilities of the spectrum lessee. (1) The spectrum lessee must comply with the Communications Act and with Commission requirements associated with the license.

(2) The spectrum lessee is responsible for establishing that it meets the eligibility and qualification requirements applicable to spectrum lessees under the rules set forth in this section.

(3) The spectrum lessee must comply with any obligations that apply directly to it as a result of its own status as a service provider (e.g., Title II obligations if the spectrum lessee acts as a telecommunications carrier or acts as a common carrier).

(4) In addition to the licensee being directly accountable to the Commission for ensuring the spectrum lessee's compliance with the Commission's operational rules and policies (as discussed in this subpart), the spectrum lessee is independently accountable to the Commission for complying with the Communications Act and Commission policies and rules, including those that apply directly to the spectrum lessee as a result of its own status as a service provider.

(5) In leasing spectrum from a licensee, the spectrum lessee must accept Commission oversight and enforcement consistent with the license authorization. The spectrum lessee must cooperate fully with any investigation or inquiry conducted by either the Commission or the licensee, allow the Commission or the licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the licensee and to the extent that such suspension would be consistent with the Commission's suspension policies.

(6) The spectrum lessee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(d) Applicability of particular service rules and policies. Under a spectrum manager leasing arrangement, the service rules and policies apply in the following manner to the licensee and spectrum lessee:

(1) Interference-related rules. The interference and radiofrequency (RF) safety rules applicable to use of the spectrum by the licensee as a condition of its license authorization also apply to the use of the spectrum leased by the spectrum lessee.

(2) General eligibility rules.(i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization, with the following exceptions. A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Educational Broadband Service (see § 27.1201 of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee meets the other eligibility and qualification requirements applicable to 47 CFR part 27 services (see § 27.12 of this chapter). A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Public Safety Radio Services (see part 90, subpart B and § 90.311(a)(1)(i) of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee is an entity providing communications in support of public safety operations (see § 90.523(b) of this chapter). A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Mobile Satellite Service with ATC authority (see part 25) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee meets the other eligibility and qualification requirements of paragraphs (d)(2)(ii) and (d)(2)(iv) of this section.

(ii) The spectrum lessee must meet applicable foreign ownership eligibility requirements (see sections 310(a), 310(b) of the Communications Act).

(iii) The spectrum lessee must satisfy any qualification requirements, including character qualifications, applicable to the licensee under its license authorization.

(iv) The spectrum lessee must not be a person subject to the denial of Federal benefits under the Anti-Drug Abuse Act of 1988 (see § 1.2001 et seq. of subpart P of this part).

(v) The licensee may reasonably rely on the spectrum lessee's certifications that it meets the requisite eligibility and qualification requirements contained in the notification required by this section.

(3) Use restrictions. To the extent that the licensee is restricted from using the licensed spectrum to offer particular services under its license authorization, the use restrictions apply to the spectrum lessee as well.

(4) Designated entity/entrepreneur rules. A licensee that holds a license pursuant to small business and/or entrepreneur provisions (see § 1.2110 and § 24.709 of this chapter) and continues to be subject to unjust enrichment requirements (see § 1.2111 and § 24.714 of this chapter) and/or transfer restrictions (see § 24.839 of this chapter) may enter into a spectrum manager leasing arrangement with a spectrum lessee, regardless of whether the spectrum lessee meets the Commission's designated entity eligibility requirements (see § 1.2110) or its entrepreneur eligibility requirements to hold certain C and F block licenses in the broadband personal communications services (see § 1.2110 and § 24.709 of this chapter), so long as the

spectrum manager leasing arrangement does not result in the spectrum lessee's becoming a "controlling interest" or "affiliate" (see § 1.2110) of the licensee such that the licensee would lose its eligibility as a designated entity or entrepreneur. To the extent there is any conflict between the revised de facto control standard for spectrum leasing arrangements, as set forth in this subpart, and the definition of controlling interest (including its de facto control standard) set forth in § 1.2110, the latter definition governs for determining whether the licensee has maintained the requisite degree of ownership and control to allow it to remain eligible for the license or for other benefits such as bidding credits and installment payments.

(5) Construction/performance requirements. Any performance or build-out requirement applicable under a license authorization (e.g., a requirement that the licensee construct and operate one or more specific facilities, cover a certain percentage of geographic area, cover a certain percentage of population, or provide substantial service) always remains a condition of the license, and legal responsibility for meeting such obligation is not delegable to the spectrum lessee(s).

(i) The licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable performance or build-out requirement.

(ii) If a licensee relies on the activities of a spectrum lessee to meet the licensee's performance or build-out obligation, and the spectrum lessee fails to engage in those activities, the Commission will enforce the applicable performance or build-out requirements against the licensee, consistent with the applicable rules.

(iii) If there are rules applicable to the license concerning the discontinuance of operation, the licensee is accountable for any such discontinuance and the rules will be enforced against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.

(6) Regulatory classification. If the regulatory status of the licensee (e.g., common carrier or non-common carrier status) is prescribed by rule, the regulatory status of the spectrum lessee is prescribed in the same manner, except that § 20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a Private Mobile Radio Service (PMRS), private, or non-commercial basis.

(7) Regulatory fees. The licensee remains responsible for payment of the required regulatory fees that must be paid in advance of its license term (see § 1.1152). Where, however, regulatory fees are paid annually on a per-unit basis (such as for Commercial Mobile Radio Services (CMRS) pursuant to § 1.1152), the licensee and spectrum lessee are each required to pay fees for those units associated with its respective operations.

(8) E911 requirements. If E911 obligations apply to the licensee (see § 20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum.

(e) Notifications regarding spectrum manager leasing arrangements. A licensee that seeks to enter into a spectrum manager leasing arrangement must notify the Commission of the arrangement in advance of the spectrum lessee's commencement of operations. The spectrum manager lease notification will be processed pursuant either to the general notification

procedures or the immediate processing procedures, as set forth herein. The licensee must submit the notification to the Commission by electronic filing using the Universal Licensing System (ULS) and FCC Form 608, except that a licensee falling within the provisions of § 1.913(d) may file the notification either electronically or manually.

(1) General notification procedures. Notifications of spectrum manager leasing arrangements will be processed pursuant the general notification procedures set forth in this paragraph unless they are submitted and qualify for the immediate processing procedures set forth in paragraph (e)(2) of this section.

(i) To be accepted under these general notification procedures, the notification must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those of the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules in this chapter and any rules pertaining to the specific service for which the notification is filed. No application fees are required for the filing of a spectrum manager leasing notification.

(ii) The licensee must submit such notification at least 21 days in advance of commencing operations unless the arrangement is for a term of one year or less, in which case the licensee must provide notification to the Commission at least ten (10) days in advance of operation. If the licensee and spectrum lessee thereafter seek to extend this leasing arrangement for an additional term beyond the initial term, the licensee must provide the Commission with notification of the new spectrum leasing arrangement at least 21 days in advance of operation under the extended term.

(iii) A notification filed pursuant to these general notification procedures will be placed on an informational public notice on a weekly basis (see § 1.933(a)) once accepted, and is subject to reconsideration (see § § 1.106(f), 1.108, 1.113).

(2) Immediate processing procedures. Notifications that meet the requirements of paragraph (e)(2)(i) of this section qualify for the immediate processing procedures.

(i) To qualify for these immediate processing procedures, the notification must be sufficiently complete and contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service), or in the ATC of a Mobile Satellite Service, in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (see § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (see § § 1.2110 and 1.2111, and § § 24.709, 24.714, and 24.839 of this chapter); and,

(C) The spectrum leasing arrangement does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(ii) Provided that the notification establishes that the proposed spectrum manager leasing arrangement meets all of the requisite elements to qualify for these immediate processing procedures, ULS will reflect that the notification has been accepted. If a qualifying notification is filed electronically, the acceptance will be reflected in ULS on the next business day after filing of the notification; if filed manually, the acceptance will be reflected in ULS on the next business day after the necessary data from the manually filed notification is entered into ULS. Once the notification has been accepted, as reflected in ULS, the spectrum lessee may commence operations under the spectrum leasing arrangement, consistent with the term of the arrangement.

(iii) A notification filed pursuant to these immediate processing procedures will be placed on an informational public notice on a weekly basis (see § 1.933(a)) once accepted, and is subject to reconsideration (see § § 1.106(f), 1.108, 1.113).

(f) Effective date of a spectrum manager leasing arrangement. The spectrum manager leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, as of the beginning date of the term as specified in the spectrum leasing notification.

(g) Commission termination of a spectrum manager leasing arrangement. The Commission retains the right to investigate and terminate any spectrum manager leasing arrangement if it determines, post-notification, that the arrangement constitutes an unauthorized transfer of de facto control of the leased spectrum, is otherwise in violation of the rules in this chapter, or raises foreign ownership, competitive, or other public interest concerns. Information concerning any such termination will be placed on public notice.

(h) Expiration, extension, or termination of a spectrum leasing arrangement. (1) Absent Commission termination or except as provided in paragraph (h)(2) or (h)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification provided that the licensee notifies the Commission of the extension in advance of operation under the extended term and does so pursuant to the general notification procedures or immediate processing procedures set forth in this section, whichever is applicable. If the general notification procedures are applicable, the licensee must notify the Commission at least 21 days in advance of operation under the extended term.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(4) The Commission will place information concerning an extension or an early termination of a spectrum leasing arrangement on public notice.

(i) Assignment of a spectrum leasing arrangement. The spectrum lessee may assign its spectrum leasing arrangement to another entity provided that the licensee has agreed to such an assignment, is in privity with the assignee, and notifies the Commission before the consummation of the assignment, pursuant to the applicable notification procedures set forth in this section. In the case of a non-substantial (pro forma) assignment that falls within the class of pro forma transactions for which prior Commission approval would not be required under § 1.948(c)(1), the licensee must file notification of the assignment with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the assignment, whether substantial or pro forma, on public notice.

(j) Transfer of control of a spectrum lessee. The licensee must notify the Commission of any transfer of control of a spectrum lessee before the consummation of the transfer of control, pursuant to the applicable notification procedures of this section. In the case of a non-substantial (pro forma) transfer of control that falls within the class of pro forma transactions for which prior Commission approval would not be required under § 1.948(c)(1), the licensee must file notification of the transfer of control with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the transfer of control, whether substantial or pro forma, on public notice.

(k) Revocation or automatic cancellation of a license or a spectrum lessee's operating authority.

(1) In the event an authorization held by a licensee that has entered into a spectrum leasing arrangement is revoked or cancelled, the spectrum lessee will be required to terminate its operations no later than the date on which the licensee ceases to have any authority to operate under the license, except as provided in paragraph (j)(2) of this section.

(2) In the event of a license revocation or cancellation, the Commission will consider a request by the spectrum lessee for special temporary authority (see § 1.931) to provide the spectrum lessee with an opportunity to transition its users in order to minimize service disruption to business and other activities.

(3) In the event of a license revocation or cancellation, and the required termination of the spectrum lessee's operations, the former spectrum lessee does not, as a result of its former status, receive any preference over any other party should the spectrum lessee seek to obtain the revoked or cancelled license.

(l) Subleasing. A spectrum lessee may sublease the leased spectrum usage rights subject to the licensee's consent and the licensee's establishment of privity with the spectrum sublessee. The licensee must submit a notification regarding the spectrum subleasing arrangement in accordance with the applicable notification procedures set forth in this section.

(m) Renewal. Although the term of a spectrum manager leasing arrangement may not be longer than the term of a license authorization, a licensee and spectrum lessee that have entered into an arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, renew the spectrum leasing arrangement to extend into the term of the renewed license authorization. The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee

submits its application for license renewal (see § 1.949). The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization.

[[68FR66277](#),Nov.25,2003,as amended at [69FR72027](#),Dec.10,2004; [69FR77551](#),Dec.27,2004; [76FR31259](#),May31,2011]

Effective Date Note: At [69FR77551](#),Dec.27,2004,§1.9020(e)(2)was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Declaration

I, Warren C. Havens, declare and certify under penalty of perjury that the facts within this Opposition are true and correct. Pursuant to 47 C.F.R. §§ 1.251(c) and 1.351 and other applicable law, said declaration and certification of the Facts is made on personal knowledge and sets forth such facts as would be admissible in evidence, and that I am competent to testify to said Facts and matters of said Facts. In this Declaration, “Facts” further means both factual assertions and denials. This Declaration is for the purpose of my Opposition (defined above) to the Motion (defined above).

Executed at Berkeley, California, on April 25, 2014.

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

Warren Havens

CERTIFICATE OF SERVICE

The undersigned certifies that he has on this 25th day of April 2014, caused to be served by first class United States mail copies of the foregoing Opposition to:

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
Patricia Ducksworth Patricia.Ducksworth@fcc.gov
Austin Randazzo Austin.Randazzo@fcc.gov
Mary Gosse Mary.Gosse@fcc.gov

Pamela A. Kane, Brian Carrter
Enforcement Bureau, FCC,
445 12th Street, S.W., Room 4-C330
Washington, DC 20554
Pamela Kane Pamela.Kane@fcc.gov, Brian Carter brian.carter@fcc.gov

Sandra DePriest
Maritime Communications/Land Mobile LLC
218 North Lee Street
Suite 318
Alexandria, Virginia 22314

Dennis C. Brown
8124 Cooke Court
Suite 201
Manassas, VA 20109
Counsel for Maritime Communications/Land Mobile LLC
Dennis Brown d.c.brown@att.net

Jeffrey L. Sheldon
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
Counsel for Puget Sound Energy, Inc
Jeff Sheldon jsheldon@lb3law.com

Jack Richards
Dawn Livingston
Keller & Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Counsel for Atlas Pipeline – Mid Continent LLC; DCP Midstream, LP; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson County Rural Membership Electric Cooperative

Jack Richards Richards@khlaw.com, Dawn Livingston Livingston@khlaw.com

Charles A. Zdebski
Gerit F. Hull
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Counsel for Duquesne Light Co.

Charles Zdebski czdebski@eckertseamans.com

Paul J. Feldman
Harry F. Cole
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, VA 22209

Counsel for Southern California Regional Rail Authority

Paul Feldman feldman@fhhlaw.com, Harry Cole cole@fhhlaw.com

Matthew J. Plache
Albert J. Catalano
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, D.C. 20007

Counsel for Dixie Electric Membership Corp.

Counsel for Pinnacle Wireless Corp.

Matthew Plache mjp@catalanoplache.com, Albert J. Catalano ajc@catalanoplache.com

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033

Counsel for Maritime Communications/Land Mobile LLC

Robert Keller rjk@telcomlaw.com

Robert G. Kirk
Wilkinson Barker Knauer, LLP
2300 N Street, NW Suite 700
Washington, DC 20037

Counsel for Choctaw Telecommunications, LLC and Choctaw Holdings, LLC

Robert G. Kirk RKirk@wbklaw.com

Jimmy Stobaugh, GM
Skytel entities
2509 Stuart Street
Berkeley, CA 94705

Jimmy Stobaugh jstobaugh@telesaurus.com

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

Warren Havens