

Exhibit 5

From the May 8, 2013 11-71 05-08-2013 Maritime Communications-Land Mobile LLC 702231086. MARITIME COMMUNICATIONS/LAND MOBILE, LLC'S MOTION FOR SUMMARY DECISION ON "ISSUE G":

[blue highlighting below has been added for emphasis]

Page 2:

Issue G is moot as to most stations. For the remainder, the documentary record and **past** Commission decisions demonstrate that they were timely constructed.

Page 6:

(4) The “Watercom Licenses”. Stations WHG701—WHG703 & WHG705—WHG754 (Exhibit A, Items 12–64, respectively), listed in Exhibit D.1 hereto, are defined as the “Watercom Licenses” in Maritime’s pending *Motion for Partial Summary Decision*, filed on August 31, 2012.⁴ A copy of that motion is appended as Exhibit D.2. As explained in that motion, and summarized in Section III.A, below, the Commission definitively **ruled** some **26 years ago** that these facilities had been timely constructed.

Page 8:

A. The Watercom Licenses

On August 31, 2012, Maritime filed its *Motion for Partial Summary Decision*, a copy of which is appended hereto as Exhibit D.2. That motion, which remains pending, is incorporated fully herein by this reference. It seeks summary decision in Maritime’s favor on the **construction aspect of Issue G** as to the Category 4 or so-called “Watercom Licenses” licenses listed in Exhibit D.1.⁶

As explained in the *Motion for Partial Summary Decision*, the Commission in 1987 (some 26 years ago) definitively ruled 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 into operation within the time we had allowed,” and that there was “no question of spectrum hoarding or other dereliction in its inauguration of service.” *Waterway Communications System, Inc., Memorandum Opinion and Order* (FCC 87-373), 2 FCC Rcd 7317 at ¶ 14 (1987).

B. The Remaining Licenses

The balance of Maritime’s authorizations, assigned to Category 5, is listed in Exhibit E hereto. 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. Maritime took assignment of these authorizations from *Mobex Network Services, LLC* (“*Mobex*”) in late 2005.⁷ The applicable construction deadline for each of these stations had passed *years before* that, and in some cases decades earlier.

Appended hereto as Exhibits F and G are copies of construction completion *notification* letters for Stations KAE889 and WRV374, respectively. Each document is labeled to indicate the applicable call sign and location number.⁸ Appended hereto as Exhibit H are copies of the notification filings for Stations WHV733, WHV740 & WHV843. Numerous other documents produced in discovery overwhelmingly demonstrate that the Category 5 licenses were timely constructed and placed in operation. As explained below, moreover, the Commission accepted these submissions and has repeatedly and consistently rejected claims and assertions by Warren C. Havens and entities controlled by him (“*Havens*”) that these stations should be terminated for failure to meet the construction requirements.

At that time the Maritime 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* to Clarity GenPar, LLC (File No. 0001885281). Warren C. Havens (“*Havens*”) had protested the transfer application, arguing that various authorizations, including each of the authorizations listed in Exhibit E, should be canceled for failure to meet the applicable construction requirements. The Wireless Telecommunications Bureau, in rejecting the Havens protest, explained, explained that an audit conducted “in anticipation of the AMTS auction confirmed that the vast majority [*Mobex*’s stations] were timely constructed” and that any “unconstructed facilities have been deleted.” *Mobex Network Services, LLC*, 19 FCC Rcd 24939, 24943-24944

¶ 6 (WTB 2004). This finding was later reiterated: The ... Bureau recently completed a review of its licensing records to determine whether all licensed AMTS facilities were constructed and operational. ... *Our review of the information obtained in that process confirms that Mobex was in compliance with Section 80.475(a). Mobex Network Services, LLC*, 20 FCC Rcd 14813, 14817 n.40 (2005) (emphasis added). When *Mobex* later sought Commission consent to the assignment of its incumbent AMTS licenses to Maritime, Havens rehashed the same tired arguments regarding construction, and the Bureau denied his protest on the same grounds as before. *Mobex Network Services, LLC*, 20 FCC Rcd 17957 (WTB 2007). This Wireless Bureau ruling was later affirmed on reconsideration, 22 FCC Rcd 665 (WTB 2007) and, insofar as relevant to the authorizations here in issue, by the Commission on review, 25 FCC Rcd 2290 (2010).

The Commission also considered the same allegations and came to the same conclusion in several renewal proceedings involving Category 5 licenses, specifically: the 2004 renewal of Station KAE889 (File No. 001768691). *Mobex Network Services, LLC*, 19 FCC Rcd 24939 (WTB 2004); *recon. denied*, 22 FCC Rcd 665 (WTB 2007); *review denied*, 25 FCC Rcd 2290 (2010); and the 2005 renewal of Stations WHV733, WHV740, and WHV843 (FCC File Nos. 0002365319, 0002365320 & 0002365321,

respectively). *Mobex Network Services, LLC*, 22 FCC Rcd 1311 (WTB 2007); review denied, 25 FCC Rcd 2290 (2010).⁹ In light of the documentary record and past Commission determinations, summary decision on the construction aspect of Issue G is warranted as to the Category 5 licenses.

⁶ Exhibit D.1 lists **only the Block B** portion the Watercom Licenses. As discussed in the preceding section, Issue G is **moot** as to the **Block A** portion of these authorizations.

⁷ The Commission consented to the assignment on November 9, 2005 (File No. 0002197542). The transaction closed on December 30, 2005, and the consummation notification was filed on January 6, 2006 (File No. 0002437657).

⁸ Because as the construction occurred more than a decade ago, and extending back over multiple former licensees and/or renewal cycles, Maritime has not been able to locate similar notifications for Location 12 of KAE889 or Location 23 of WRV374. There is, however, no reason to doubt that such notifications were filed at or around the same time, and there is in any event, numerous other documents produced in discovery indicating that these facilities were timely constructed, and as explained herein, the Commission has repeatedly rejected challenges to these stations on grounds of failure to construct.

⁹ In addition, Station WHG693 was renewed in 2002 (File No. 0001082495), and Station WRV374 was renewed in 2001 (File No. 0000443747).