Subject: Re: EB Docket No. 11-71 Maritime Communications/Land Mobile

Date: Thursday, September 11, 2014 10:33:09 AM PT

From: eitt líf koma nú griðastaðir <warren.havens@sbcglobal.net>

To: Pamela Kane <Pamela.Kane@fcc.gov>, 'JStenger@chadbourne.com' <JStenger@chadbourne.com>, 'Matthew.Plache@PlacheLaw.com' <Matthew.Plache@PlacheLaw.com>, 'cole@fhhlaw.com' <cole@fhhlaw.com>, 'czdebski@eckertseamans.com' <czdebski@eckertseamans.com>, 'feldman@fhhlaw.com' <feldman@fhhlaw.com>, 'richards@khlaw.com' <richards@khlaw.com>, 'Bob Keller' <rjk@telcomlaw.com>, 'Sheldon, Jeffrey' <jsheldon@lb3law.com>, 'rkirk@wbklaw.com' <rkirk@wbklaw.com>, ''wright@khlaw.com' (wright@khlaw.com)' <wright@khlaw.com>, 'Jimmy Stobaugh (jstobaugh@telesaurus.com)' <jstobaugh@telesaurus.com>, 'Catalano, Albert J.' <catalano@khlaw.com>

CC: Austin Randazzo <Austin.Randazzo@fcc.gov>, Richard Sippel <Richard.Sippel@fcc.gov>, Mary Gosse <Mary.Gosse@fcc.gov>, Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>, Michael Engel <Michael.Engel@fcc.gov>

Ms. Kane,

Since time is short as to the Exhibits production date, an a potential decision by Judge Sippel on the subject motions noted below, I am using this email method. I may also put the below in a formal pleading to file on ECFS and serve by the end of today.

Your response, delivered below, to the Motion of yesterday by ENL-VSL-Havens (EVH) suggests that the Bureau tried to accommodate EVH as to factual assertions in the draft Stipulation (Stip) from the Enforcement Bureau and Maritime (EBM). Based on those factual assertions, the EBM Stip also suggests legal conclusions.

As shown in the EVH motion, EVH in fact agreed to that all but the 16 Stations were auto terminated under rule 1.955(a) -- as EBH (and other SkyTel entities also) have asserted-- with evidence-- for about a decade in this proceeding and WTB proceedings, and in a court litigation that continues. Your response to our language added that provided that agreement, and reserved all else, was to assert to EVH in response that we did not agree to anything which was plainly false. And that lead to the EVH motion of yesterday.

However, EBM did not provide evidence sufficient to support those factual assertions in this proceeding, or in references in the EBM Stip.

In addition, EBM have repeatedly asserted that evidence relevant to issue (g) is so confidential that it is attorney eyes only (AEO), to keep that from this public proceeding and from me, and thus effectively from the SkyTel entities including ENL-VSL. In this regard, I attach hereto a FOIA request I filed today, that contains my email to you (and the EB chief) today on this matter, and seeks this evidence not yet on ECFS in this proceeding, and why in my view EBM could not lawfully and cannot continue to assert confidentiality of any sort including AEO under applicable law especially give the Maritime effective waivers, records abandonment, etc. that I outline therein. Any FCC or other federal agency decision made on basis of unlawfully withheld evidence can be overturned. I believe that applies in this case, in both 11-71 and 13-85, as well as the Maritime antitrust case I have described from time to time in this proceeding.

The EBM current Stip, provided below, appears to be an artful pleading that, properly read, is like the EBM Stip of Dec 20, 2013 in which Maritime does not come out and candidly admit to facts and evidence of permanent discontinuance and auto termination, for reasons other than proper participation in and decision on this issue (g) proceeding and application of rule §1955(a), including to attempt to thwart the eventual decisions under issue (h) for purposes of both 11-17 an 13-85 proceedings, and other issues in the HDO FCC 11-64, and to undermine Judge Sipple's decision regarding Maritime's breaches or apparent breaches of bankruptcy law, procedures and its own Chapter 11 Plan disclosure and Order.

If anyone shows my statements above are not correct, I will modify.

Sincerely,
Warren Havens
a Party *pro se*

President - "SkyTel" companies: Skybridge Spectrum Foundation | Telesaurus Holdings GB LLC | ATLIS Wireless LLC | Environmentel LLC | Verde Systems LLC | Intelligent Transportation & Monitoring Wireless LLC | V2G LLC | Berkeley California | 510 841 2220 | 510 848 7797 - direct | www.terranautx.com

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From: Pamela Kane <Pamela.Kane@fcc.gov>
To: "'JStenger@chadbourne.com'" <JStenger@chadbourne.com>; "'Matthew.Plache@PlacheLaw.com'" <Matthew.Plache@PlacheLaw.com>; "'cole@fhhlaw.com'" <cole@fhhlaw.com>; "'czdebski@eckertseamans.com'" <czdebski@eckertseamans.com>; "'feldman@fhhlaw.com'" <feldman@fhhlaw.com>; "'richards@khlaw.com'" <richards@khlaw.com>; 'Bob Keller' <rjk@telcomlaw.com>; "'Sheldon, Jeffrey'" <jsheldon@lb3law.com>; "'rkirk@wbklaw.com'" <rkirk@wbklaw.com>; ""wright@khlaw.com' (wright@khlaw.com)'" <wright@khlaw.com>; "'Warren Havens (warren.havens@sbcglobal.net)'" <warren.havens@sbcglobal.net>; "'Jimmy Stobaugh (jstobaugh@telesaurus.com)'" <jstobaugh@telesaurus.com>; "'Catalano, Albert J.'" <catalano@khlaw.com>
Cc: Austin Randazzo <Austin.Randazzo@fcc.gov>; Richard Sippel <Richard.Sippel@fcc.gov>; Mary Gosse <Mary.Gosse@fcc.gov>; Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>; Michael Engel <Michael.Engel@fcc.gov>
Sent: Thursday, September 11, 2014 12:44 PM
Subject: EB Docket No. 11-71 Maritime Communications/Land Mobile

Enclosed please find a courtesy copy of two pleadings the Enforcement Bureau filed earlier today

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington , D.C. 20554
202-418-2393

Warren Havens
2509 Stuart Street
Berkeley CA 94705
510 841 2220, or 510 914 0190

September 11, 2014

To FCC FOIA officers
By email to: FOIA FOIA@fcc.gov and Shoko Hair Shoko.Hair@fcc.gov

This is a FOIA request.

1. Records requested: All records described in and defined as the "**Records**" in the Exhibit hereto as marked therein by the red underlining.

2. FCC staff that may have or know of the Records or some of them: Pamela Kane and others at the FCC Enforcement Bureau.

3. Fees and commitment. I will pay up to $1,500 for any fees due to satisfy this request. If this is determined to not be sufficient, then I request an explanation of the determination, and a breakdown of estimated costs so that I may decide if to either commit to pay the determined amount, or chose to modify this request to keep it within the $1,500 amount.

The above commitment and payment of fees thereunder is subject to the following fee waiver or reduction request. The following request is for a refund of fees charged and paid, unless the FCC processes and grants the following request within the time limit under FOIA to timely respond to the Records Request. Thus, the following request should not be used by the FCC to slow down a decision on the Records Request and release of the Records.

This request is highly important to the public interest in proceedings under dockets 11-71 and 13-85, as discussed in the Exhibit hereto. I specifically seek the Records to place them in these dockets to inform the public in these public proceedings of the FCC rules enforcement (and lack thereof, for decades) involved, of the workings of the government involved, and for all of the reasons that federal agency adjudications are public, with very narrow limits (see discussion in the Exhibit hereto).

Thus, fees should be waived or reduced so that I can perform this important publication function to demonstrate the workings of government in this matter of nationwide wireless over decades: The case in 11-71 and 13-85 involves nationwide AMTS licensing over decades, and unlawful obtaining warehousing of spectrum, and other important matters shown in this case more than any other, or equal to only a few other such cases.

4. Other. At this time, based on the character of the Records, I intend to appeal a denial that is based on untimely response or otherwise, including by withholding based on

asserted exemption(s) under FOIA that I believe is impermissible. If the FCC finds Records it believes it should withhold in full or in part, I requests (i) a detailed explanation so I can determine if and how to appeal, and (ii) the immediate release of any other portions of the Records that are not subject to said asserted withholding exemption by redacting the portion the FCC asserts must be withheld. I assert that case law does not permit the FCC to apply an exemption except in cases where it must, not in cases in which it believes it can. I submit the preceding since in my experience the FCC does not follow the purpose of FOIA very well, nor the applicable case law that controls, and I seek to mitigate further problems that may lead to filing litigation and waste of FCC and the my resources.

This request is highly time sensitive, and relates to purposes of dockets 11-71 and 13-85.

Sincerely,

Warren Havens

Exhibit

Underling added below to the original email for purposes of this FOIA request.

From: eitt líf koma nú griðastaðir <warren.havens@sbcglobal.net>
To: Pamela Kane <Pamela.Kane@fcc.gov>
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>; James Stenger <JStenger@chadbourne.com>; "travis.leblanc@fcc.gov" <travis.leblanc@fcc.gov>
Sent: Thursday, September 11, 2014 11:04 AM
Subject: Request, direct and via FOIA, for Maritime's alleged records of its stations already admitted as non-confidential

Ms. Kane,

I am I am cc'ing here Mr. LeBlanc for reasons indicated herein, including: Matters described below have not been resolved by my past attempts, and I believe they are now at a critical stage that require resolution essential to the integrity of the EB 11-71 law-enforcement public proceeding, under the full Commission HDO 11-71. I believe that without immediate release of the requested Records, the proceeding will be irreparably prejudiced, leading to a potential challenge before the FCC and in courts as to a final decision of Judge Sippel. In addition, as you may know, there are also issues that the US DOJ is reviewing related to Maritime's AMTS licenses, wrongdoing alleged in the HDO FCC 11-64, and this proceeding (I obtained this information in part via a FOIA request response), and that further shows the seriousness of the matters I discuss below.

For the below numbered reasons, I ask that the Enforcement Bureau (EB) make available for inspection and copying, at this time, all documents it holds or controls that were labelled confidential or attorney-eyes-only in proceeding 11-71 (under the protective order or otherwise) that pertain to the Maritime Communications/ Land Mobile LLC ("Maritime") AMTS licenses and stations that are relevant to "issue (g)" under the HDO FCC 11-64, which have not yet been made publicly in the docket on ECFS (the sought "Records"). I intend to place these Records on ECFS so that they are properly in the public record in this public rules-enforcement proceeding, and so that I can use them in the hearing. The Records include but are not limited to deposition transcripts held by the EB that were taken in this proceeding or that related to matters in this proceeding.

I intend to submit a request for these Records under FOIA, but I do not believe that should be, or should have been, required due to reasons given in this email. To the degree you satisfy this request, a FOIA request response will not be needed. I seek to reduce burden on the FCC in this regard, and on myself, and expedite getting the Records properly in the proceeding public records on ECFS.

1. As you know, at a past time, the FCC decided in my favor in the past to grant in full a FOIA request of records Maritime produced in discovery in this 11-71 proceeding on a "CD" as to AMTS stations. This decision was sustained on review by FCC OCG in FCC 12-113, copy attached. These records were not found as confidential or attorneys eyes only (AEO).

As I asserted at that time, and otherwise in this proceeding, there is nothing about records of alleged or actual lawful construction and operation of FCC licensed AMTS stations, or lack thereof, that is confidential (including "attorneys eyes only"), instead, that information must be in public filings and needed for compliance with basic rules of public, licensed, CMRS stations and operations. All of the subject Maritime alleged licenses and stations are CMRS.

2. Also as you know, Maritime has stated in its Opposition (in the text and sworn declaration in support) to the SkyTel petition to deny the renewal application of WRV374, and repeated in this 11-71 proceeding, <u>that it did not want and did not possess</u>, and was not privy to, any of the Mobex records of any AMTS licenses and alleged stations that Maritime acquired from Mobex, as to the construction and operation of those Mobex licenses and stations (site leases, equipment, etc.). Thus, MCLM cannot assert that these records, or information from or related to these records, is confidential (including AEO). Nor can information that is not confidential, later become confidential, or can the same class of information that was not confidential, later become confidential, either under FOIA law or related law of federal agency adjudications subject to any protective order that is used legitimately.

3. It is proper for parties to cooperate in procedure and discovery in this proceeding. I am a party pro se, and EB of course is a party. I request the Records on this basis, also.

4. In further support, the American Bar Association writes the following applicable to my request (bolding added):

"Subject to the set of exceptions set forth in 554(a), a formal hearing is required by the APA in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing. Where a federal statute requires such an on-the-record hearing, the hearing must comply with the provisions of APA §§ 554, 556, and 557 of the APA.

"**Openness**: Although § 556 of the APA does not specifically state that hearings must be open, **the very concept of a hearing comparable to a judicial proceeding entails norms of openness**. Thus, agency hearings generally must be open to the public.

"Notwithstanding the general policy favoring open hearings, agencies may close hearings for reasons of confidentiality or to protect potential spectators, witnesses or parties to a hearing. In such circumstances, the presiding administrative law judge may

take **only the most limited action necessary** to sufficiently protect the **interest perceived to be paramount to the interest of the public in an open hearing**."

I do not believe that the EB of other part of the FCC can show that the requested Records must be protected for Maritime, or any other party to this proceeding, for any legitimate interest such parties at all, what to speak of interest that are **"paramount to the interest of the public in an open hearing."**

I also seek to use the Records (or some of them after inspection) as **exhibits** by the due date, **next Tuesday**, and need them to copy and put in binders by the start of this weekend.

For reasons just noted above, please provide access to the Records, or copies thereof, by the end of tomorrow, or place a copy of the Records on ECFS by that time.

I request a phone discussion on this matter with you. I will try to get James Stenger, attorney for ENL-VSL to be on the call, also, if his schedule permits. Please let me know if you are available today for this call.

I am currently on travel and my email has an auto response indicating that, but if you respond to this email, I will get it soon and tend to it. Also, my cell phone is below.

Thank you,
Warren Havens
Cell phone 510 914 0910

CERTIFICATE OF SERVICE

The undersigned certifies that he has on this 11th day of September 2014, caused to be served by first class United States mail copies of his foregoing email dated September 11, 2014, and its attachment, to:

The Honorable Richard L. Sippel
Chief Adminstrative Law Judge
Federal Communications Commission
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Patricia Ducksworth Patricia.Ducksworth@fcc.gov
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/ s / [Electronically signed. Signature on file.]

Warren Havens