Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter Of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services	EB Docket No. 11-71 File No. EB-09-IH-1751 FRN: 0013587779
Applicant for Modification of Various Authorizations in the Wireless Radio Services Applicant with ENCANA OIL AND GAS (USA), INC.; DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP; JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC COOPERATIVE; PUGET SOUND ENERGY, INC.; ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN POWER AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP CORP., INC.; ATLAS PIPELINE—MID CONTINENT, LLC; DENTON COUNTY ELECTRIC COOPERATIVE, INC., d/b/a COSERV ELECTRIC; and SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962.

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

ENL-VSL REQUEST FOR CLARIFICATION AND RELIEF REGARDING THE PROTECTIVE ORDER AND MOBEX DOCUMENTS

Environmental LLC ("ENL") and Verde Systems LLC ("VSL") (together "ENL-VSL"), through their undersigned counsel, hereby request clarification and relief regarding the Protective Order and certain Mobex documents, and Mr. Havens joins in this request (together, "EVH"). Undersigned counsel has not signed the Protective Order.

1. The Protective Order and Certain Documents and Information

The Protective Order in this proceeding says that it is to protect certain information that is confidential or highly confidential as therein defined contained in documents that are produced. However, it appears that the parties are not providing redacted documents, and it is not plausible that documents related to issue (g) are composed in their entirety of confidential information. They are simply designating entire documents as highly confidential (or "attorneys eyes only," as it is sometimes called) and not providing them at all to EVH. In addition, it appears that in most cases they are not even providing a list or description of the documents being withheld and the reasons for withholding an entire document rather than providing a redacted copy.

This practice is not in accordance with the Protective Order as undersigned counsel reads it and is not in accordance with any proper procedure for dealing with confidential documents in a formal federal agency hearing case that is conducted as in federal court litigation where, but for very narrow and well demonstrated reasons, no information is sealed or otherwise kept from the public proceeding.[1]

Even if counsel were to sign the Protective Order, this practice prevents our clients, and Mr. Havens, from seeing redacted documents or a list or description of documents.

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[1] The protective order cites to FOIA exemptions, which are narrow and to be applied only to specific information if compelling reasons are demonstrated, under the standard to be applied to determine information that may be asserted and kept confidential or highly confidential. See ¶2(d) defining "Confidential Information" of which a subcategory is in ¶2(f) "Highly Confidential Information." ¶2(d) describes, as an example, certain "payments made" that are reflected *within* certain spectrum sale or lease agreements, and that must mean agreements of valid spectrum licenses, not abandoned or unlawfully warehoused licenses, to be meaningful and to now allow protection of unlawful action contrary to public policy. Any such specific confidential or highly confidential information, within a document can be redacted, and is not directly relevant to the issue (g) matters under rule §1/955(a).

In addition, Mr. Havens is a prosecuting party, *pro se*, and has rights to any information relevant to this issue(g) hearing to prosecute his case and protect his party interests.[2] However, the Enforcement Bureau, Maritime and other parties have taken the position that he cannot obtain or see any of the above-noted documents labeled as highly confidential on any basis.

2. Deposition Transcripts and Further Discussion

Our concern includes, as prominent examples, deposition transcripts. There are four deposition transcripts according to the Enforcement Bureau: Donald and Sandra DePriest, John Reardon and Tim Smith. According to the Bureau and Maritime, the DePriest depositions have been designated confidential in their entirety and we are denied access to them. The Reardon deposition that we have is redacted.

These persons are the central figures in this case. Even if undersigned counsel signs the AEO order, counsel cannot communicate with our clients' managers who have all of the personal knowledge regarding the extensive matters at issue extending many years in the past. This simply makes no sense. The alleged business transactions are either outdated, or involve the now-admitted abandoned station licenses (all but the 16 stations that appear to be under expired or terminated FCC authorized leases), or involve common industry knowledge, or the transaction is evident from the many railroad lobbying letters filed in docket 13-85, or other information indicated below that is likewise suspect as to any valid confidentiality claims. The confidential designations, full document withholdings, and redactions are highly suspect and appear to have been interposed with no good reason and solely to obstruct our clients from participation in the

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[2] Courts are "sensitive to the need of a party particularly a pro se litigant, 'to fully prepare and present its legally authorized challenge to an administrative determination and to do so based on all available relevant material.' " Connors Steel Co. v. United States, 85 Cust. Ct. 112, 113, C.R.D. 80-9 (1980), as cited in Katunich v Secretary of Labor, F. Supp. 636.

case or divert them into chasing hidden irrelevant information. We thus ask for relief regarding the deposition transcripts of the DePriests and Reardon.

3. Mobex Records

A related matter is the dispute between our clients and Maritime regarding the records of Mobex as to the 16 Stations described in the EVH motion of September 10, 2014. These and other Mobex stations (FCC licenses and equipment) were acquired by Maritime. Therefore, the Mobex records are controlled by Maritime, and it has not asserted otherwise, so Maritime is obligated to produce these records. They have been requested by our clients, but withheld by Maritime. These historical records are certainly not confidential, as discussed below.

At a minimum under issue (g), we ask that Maritime be ordered to give us the Mobex records that relate to the 16 stations in dispute and with no designation as "confidential" or "highly confidential" under the Protective Order (or otherwise). Moreover, given the decisions of Commission in FCC 14-133 released September 11, 2014 that the ALJ will proceed with all issues under the HDO FCC 11-64, we request that the order include the Mobex records of and related to *all* of the sited-based station licenses and equipment assigned to Maritime (all of these together, the "Mobex Records").[3] The HDO issues encompass all of the stations.[4]

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[3] Issues other than issue (g), including but not limited to issue (h), involve all of these stations and records, as the ALJ has previously indicated. The Presiding Judge stated the following in his denial of the 2012 Maritime motion for summary decision in FCC 13M-16, on page 9: "SkyTel-O correctly asserts that 'the character and fitness of Maritime to hold any license is at issue,' in this proceeding and that a review of the 'Subsumed Licenses' might reveal conduct related to that issue." The same holds as to the other site-based licenses and stations that are not "subsumed."

[4] E.g., see the HDO: Issue (g), "To determine whether Maritime constructed or operated any of its stations at variance with sections 1.955(a) and 80.49(a) of the Commission's rules." Issue (h) "To determine, *in light of the evidence adduced pursuant to the foregoing issues*, whether Maritime is qualified to be and remain a Commission licensee. And Issue (i): "To determine, in

Maritime cannot have it both ways with regard to the former Mobex stations. Maritime has claimed that it abandoned the Mobex records, first in its Opposition to the SkyTel entities petition to deny the Maritime renewal application for WRV374, and later in this 11-71 proceeding. On the other hand, in that Opposition, Maritime asserts that the Mobex records demonstrate the existence and legitimacy of all of the Mobex stations, including the 16 Stations still in dispute, including the "detailed construction records of [the licensed station] facilities … including copies of site leases, equipment inventory, and other … information."[5]

In this regard, under various Orders, the WTB and Commission only allow Maritime to assert stations and station service and interference contours[6] of the stations that Mobex actually lawfully constructed and kept in operation (surviving automatic termination under rule 1.955(a)) and not what was theoretically possible under the rules prior to the "freeze," which is

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light of the foregoing issues, whether the captioned authorizations for which Maritime is the licensee should be revoked. (Emphasis added.)

[5] The noted Opposition included the following (emphasis added):

> Havens blustered that the fact that MCLM does not possess certain old documents was "simply an admission of conspiracy between MCLM and Mobex to launder defective FCC license [sic] stations and the license," FCC File No. 0004738157, filed July 22, 2011. Satisfied with the Mobex transaction, MCLM had no need *for detailed construction records of facilities* first authorized a decade earlier and did not demand them from Mobex. As demonstrated by the declaration of David Predmore attached hereto as Exhibit 1, Mobex wound up its affairs and ceased paying National Capital storage company the rent on stored records, including *copies of site leases, equipment inventory, and other old information*, which was all destroyed years ago by the storage company.

The assertion of destruction of this core evidence was false, as Mr. Havens showed in this proceeding.

[6] See rule Section 80.385(b): the "interference" protection contour is a certain 38 dBu contour, to be protected at that contour by a certain dB signal level difference, at actual "stations." "Station" is a defined term in rule Section 80.5.

fundamental to the purpose and restrictions imposed by the "freeze" on expansion of site-based licensed stations long before the first AMTS auction.[7]

Maritime cannot, as it is attempting with the 16 Stations, asserted valid operations *or even intent* of operations under leases with third parties (including Pinnacle, Puget Sound, Duquesne, and Evergreen) without having and providing the Mobex records of the 16 Stations, since all such lease operations and intent is based on "fill in stations" that can be authorized under the applicable rule, §80.475(b) only if the "proposed ['fill-in'] station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system." In this case, not only does Maritime withhold the full Mobex records of the subject 16 Stations needed for assertion of any lawful "fill-in station" as to permitted locations, antenna heights, power levels and other parameters that determine its "predicted interference contours," but in addition, Maritime has admitted in its interrogatory responses in this proceeding that is has not had, since 2007, any "existing system[s]' with "composite interference contours[s]" that are needed as the basis for any "fill-in stations" to "fill-in" the actual radio-service coverage of existing AMTS systems.

Thus, it is beyond dispute that the Mobex Records are essential to the Maritime attempted defense under issue (g) and rule §1.955(a) and they may not be lawfully withheld.

Moreover, the FCC ULS system reflects that the asserted leases, or most all of them, have terminated or expired. Recall that Maritime earlier took the position in this hearing that it was not asserting continued operations, it simply asserted that the Commission's rules on discontinued operations were too vague for Maritime to understand or follow. Only when the Presiding Judge rejected the claim that the rules and related Orders are too vague and did not

[7] See Orders DA 10-664 and DA 09-793 from the WTB to Maritime. The freeze is set forth in FCC 00-370 ¶¶ 76-77.

give Maritime sufficient notice, did Maritime then begin to offer allegations that it had not abandoned the 16 stations due to its and its lessees' mental states-- intentions to one day operate, or vague allegations that their need to operate with the spectrum is critical. These allegations need to be tested against the Mobex records, which must be released. For example, if the Mobex records show that these intentions cannot be lawfully put into action, in the purported or planned "fill in stations," then those intentions cannot be proposed or considered for purposes of lack of permanent discontinuance and consequent automatic termination under rule Section 1.955(a).

It is simply nonsensical, apart form highly prejudicial, for Maritime to withhold these records. Maritime has to show that it knows what Mobex allegedly built and operated, for the licensed stations, in order for Maritime to assert any lawful fill-in stations.

4. Relief Requests

Based on the foregoing, EVH respectfully request the following relief on an expedited basis in view of the filing deadline next Tuesday:

1. We respectfully request clarification of the Protective Order as applied to documents asserted as highly confidential or highly confidential thereunder, and we request that all parties that have withheld such documents from our clients, ENL-VSL, and from Mr. Havens, be ordered to provide ENL-VSL and Mr. Havens with:

a) redacted copies of all of those documents with an explanation justifying the redactions in accord with the standards in the protective order (see footnote 1 herein); or

b) if it is asserted that a redacted copy cannot be provided, then a description of the document being withheld and an explanation for each document justifying the withholding under said standards.

2. For reasons the given in Section 4 above, we also request an Order that Maritime immediately produce the described Mobex Documents with no designation of "confidential" or "highly confidential."

3. We further request that, upon release documents under requests 1 and 2 above, that ENL-VSL and Mr. Havens be permitted to promptly submit relevant documents as Exhibits for purposes of the hearing of issue (g) matters, and given the Commission decision FCC 14-133 released September 11, 2014, as to the other HDO issues as well.

Conclusion

Wherefore, for the foregoing reasons, ENL-VSL and Mr. Havens respectfully request prompt grant of the Relief Request set forth above.

Respectfully submitted,

/s/
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September 12, 2014

CERTIFICATE OF SERVICE

The undersigned, a secretary at Chadbourne & Parke, LLP, hereby certifies that she has on this 12th day of September, 2014, mailed by first class United States mail copies of the foregoing ENL-VSL Motion Re Protective Order and Mobex Documents to:

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