

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 17M-35

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	File No. EB-09-1H-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 Wireless Radio Services	)	Application File Nos. 0004030479, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, and 0004604962
)	
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; AND DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.)	
)	
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service)	
)	

ORDER OF DISMISSAL

Issued: September 28, 2017

Released: September 28, 2017

Following the Commission's grant of relief for Maritime and Choctaw's Second Thursday request, FCC 16-172 (rel. Dec. 15, 2016), the Presiding Judge lifted the stay in this proceeding. *Order*, FCC 17-04 (rel. Feb. 14, 2017). The only remaining issue for resolution by the Presiding Judge was whether the 16 site-based facilities still at issue had been permanently discontinued.

The parties agreed that 14 of the 16 site-based facilities had *not* been discontinued; however, the Bureau argued that the other two facilities had been permanently

discontinued. *See* Enforcement Bureau's Proposed Findings of Fact for Issue (g) (filed April 8, 2015); Maritime's Proposed Findings of Fact for Issue (g) (filed April 8, 2015). Those two facilities, Locations 3 and 13 of Station KAE889, had been leased to Evergreen School District (ESD). However, ESD represented that it had ceased using them on or about September 7, 2014. *See* DePriest Written Direct Testimony at ¶ 9; EB Ex. 47 (declaration of ESD).

Following a conference call with the parties on August 28, 2017, the Presiding Judge ordered Maritime and Choctaw to submit a declaration providing additional details regarding ESD's lease with Maritime and the current status of the two facilities. *Order*, FCC 17M-32 (rel. Aug. 29, 2017). Maritime and Choctaw submitted the declaration on September 8, 2017.

On September 3, 2017, the Presiding Judge ordered that the parties submit a joint stipulation by September 22, 2017, as to the 14 site-based facilities not in dispute. *Order*, FCC 17M-34. The Presiding Judge also ordered, based on arguments made during the conference call, that the parties submit briefing as to "whether Maritime had a duty as lessor to ensure that the leased spectrum was being used [by ESD]." *Id.* at 2.

In a cover email to the joint stipulation submitted on September 22, 2017, the Bureau informed OALJ that the parties had reached an agreement as to the remaining two site-based facilities, stipulating that neither had been permanently discontinued. *See* Attachment A (cover email) and Attachment B (stipulation). Therefore, the ordered briefing is now moot and is not required.

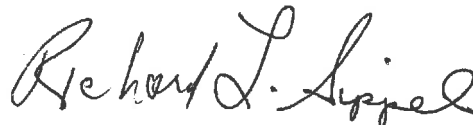
Conclusion

Since the parties have jointly stipulated that none of the remaining 16 site-based facilities have been permanently discontinued, there are no further issues for decision.

Accordingly, this case **IS HEREBY DISMISSED**.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION¹



Richard L. Sippel
Chief Administrative Law Judge

¹ Courtesy copies will be sent to all counsel by e-mail upon issuance.

Attachment A

Rachel Funk

From: Pamela Kane
Sent: Friday, September 22, 2017 10:48 AM
To: Rachel Funk; Richard Sippel
Cc: Patricia Ducksworth; rjk@telcomlaw.com; moconnor@wbklaw.com; RKirk@wbklaw.com; Michael Engel
Subject: 9 22 17 Maritime EB Docket No. 11-71
Attachments: Joint Stipulation per FCC 17M-34.pdf; Joint Stipulation per FCC 17M-34 (ECFS Confirmation).pdf

Enclosed please find a courtesy copy of the joint stipulation of Maritime, Choctaw and the Enforcement Bureau filed earlier today on EFCS. You will note that the parties were able to reach a stipulation on all 16 of the site-based stations addressed at the hearing. The parties believe that this moots the need for the briefing procedure set forth in *Order*, FCC 17M-34, concerning KAE889 (Locations 3 and 13). Please let us know if the OALJ believes briefing is still warranted.

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

Attachment B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the matter of)	
)	
MARITIME COMMUNICATIONS/LAND)	
MOBILE, LLC)	
)	
Participant in Auction No. 61 and Licensee	)	EB Docket No. 11-71
of Various Authorizations in the Wireless	)	File No. EB-09-IH-1751
Radio Services	)	FRN: 0013587779
)	
Applicant for Modification of Various	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328, 0004354053,
	)	0004309872, 0004314903, 0004315013,
Applicant with ENCANA OIL AND GAS	)	0004430505, 0004417199, 0004419431,
(USA), INC.; DUQUESNE LIGHT	)	0004422320, 0004422329, 0004507921,
COMPANY; DCP MIDSTREAM, LP; PUGET	)	and 0004604962
SOUND ENERGY, INC.; ENBRIDGE)	
ENERGY COMPANY, INC.; INTERSTATE)	
POWER AND LIGHT COMPANY;)	
WISCONSIN POWER AND LIGHT)	
COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.)	

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

**JOINT STIPULATION BETWEEN CHOCTAW TELECOMMUNICATIONS, LLC AND
CHOCTAW HOLDINGS, LLC, MARITIME COMMUNICATIONS/LAND MOBILE,
LLC AND THE ENFORCEMENT BUREAU ON DISCONTINUANCE OF
OPERATIONS OF CERTAIN SITE-BASED FACILITIES**

1. On September 13, 2017, the Presiding Judge directed Maritime Communications/Land Mobile, LLC (“Maritime”); Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, “Choctaw”); and the Enforcement Bureau (“Bureau”) to jointly prepare and submit a stipulation of facts directed to fourteen (14) of the sixteen enumerated site-based facilities that were the subject of a hearing held December 9 through December 11, 2014.¹ The submission of additional facts after the close of the hearing has allowed the parties to also stipulate to facts concerning the operational status of the remaining

¹ See *Order*, FCC 17M-34 (ALJ, rel. Sept. 13, 2017).

two (2) site-based facilities. Accordingly, the parties agree to the following stipulations concerning each of the sixteen (16) site-based facilities that were the subject of the above-captioned proceeding.

I. BACKGROUND

2. Issue (g) of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (“HDO”) against Maritime placed upon the Bureau the burden of proof to demonstrate: (a) whether 169 site-based Automated Maritime Telecommunications System (“AMTS”) facilities licensed to Maritime were constructed within two years of their grant, as required by Section 80.49(a)(3) of the Commission’s rules; and (b) whether operations of any of these site-based facilities had been *permanently* discontinued pursuant to Section 1.955(a) of the Commission’s rules.²

3. The Bureau developed an extensive evidentiary record on Issue (g) involving the production and review of thousands of pages of documents and responses to multiple sets of interrogatories served on Maritime and its lessees, depositions of Maritime’s principals and employees, and a review of the record developed before the U.S. Bankruptcy Court for the Northern District of Mississippi (Case No. 11-13463). On the basis of this record, the Bureau moved for a summary decision that 16 site-based facilities licensed to Maritime had been timely constructed and had not been permanently discontinued.³

4. In June 2014, the Presiding Judge granted summary decision on the timely construction aspect of Issue (g) as to these 16 site-based facilities,⁴ but denied summary decision

² See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011).

³ See Joint Motion of Enforcement Bureau and Maritime for Summary Decision On Issue G, filed Dec. 2, 2013.

⁴ See *Memorandum Opinion and Order*, FCC 14M-18 (ALJ, rel. Jun. 17, 2014) at 18, ¶ 50.

on the permanent discontinuance aspect.⁵ The Presiding Judge found that “[s]ignificant factual questions still need to be resolved as to whether service will resume at the licensed facilities [and] [f]or that reason, the taking of further evidence at hearing is necessary.”⁶ The Presiding Judge later adopted a joint stipulation submitted by the Bureau and Maritime that operations at 153 of the 169 site-based facilities had been permanently discontinued.⁷

5. The following 16 site-based AMTS facilities remained at issue for the hearing that commenced on December 9, 2014: WHG750, KAE889-3 (Livingston Peak), KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE889-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), KAE889-48 (Tiger Mountain), WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrineville), WRV374-33 (One World Trade Center), WRV374-35 (Rehobeth), and WRV374-40 (Hamden).⁸

6. At the hearing, the Bureau presented evidence that Maritime did not intend to permanently abandon the licensed spectrum and had instead taken concrete steps to ensure that it is being used or will be used at the following 14 site-based locations: WHG750, WRV374 (Locations 14, 15, 16, 18, 25, 33, 35 and 40), and KAE889 (Locations 4, 20, 33, 34, and 48).

7. With regard to KAE889 (Locations 3 and 13), the Bureau presented evidence that, although Maritime had entered into a spectrum lease agreement for this spectrum with Evergreen School District (ESD) that had been in effect since October 30, 2008, as of September 7, 2014,

⁵ See, e.g., *id.* at 21-22, ¶¶ 61 and 62.

⁶ *Id.* at 22, ¶ 61. See also *id.* at 20, ¶ 57 (recognizing that there remain substantial questions of material fact “regarding efforts to resume operations at 14 of the 16 facilities”).

⁷ See *Order*, FCC 14M-31 (ALJ, rel. Oct. 9, 2014). Given the Presiding Judge’s adoption of the legal conclusion that operations at the 153 site-based facilities had been permanently discontinued, it is no longer necessary to consider the question of their timely construction.

⁸ See *Order*, FCC14M-27 (ALJ, rel.

ESD had ceased operations of the Maritime spectrum. Neither Maritime nor any other party provided evidence of concrete steps that it had taken (or intended to take) to resume operations at KAE889 (Locations 3 and 13). Thus, the Bureau argued that operations at these stations had been permanently discontinued.

8. After the hearing, and at the request of the Presiding Judge, Maritime and Choctaw supplemented the record regarding operations at KAE889 (Locations 3 and 13). Specifically, Maritime and Choctaw submitted a sworn declaration from John Reardon, Choctaw's Managing Director, which states that Choctaw (assignee of these licenses) has contacted the site managers for Locations 3 and 13 regarding new site lease agreements and intends to resume operation of these facilities.

II. JOINT STIPULATION

9. Based on the record established in this case, Maritime, Choctaw and the Bureau hereby stipulate as follows:

A. OPERATIONS AT SITE-BASED FACILITY WHG750 HAVE NOT BEEN PERMANENTLY DISCONTINUED

10. At the time Maritime acquired this authorization, the facility was part of the Watercomm system, operated by Mobex Network Services, Inc. ("Mobex"), the predecessor licensee, providing mobile communications services to services to barges and other vessels on the Mississippi and Ohio Rivers and the Great Lakes.

11. The demand for traditional AMTS service to barges and other vessels had migrated to cellular and satellite services. Maritime therefore ceased providing traditional AMTS services to end users as it pursued other uses for the spectrum. The facilities of WHG750 remained constructed and operational.

12. In February 2010, Maritime leased AMTS spectrum authorized to Maritime under call sign WHG750 to Duquesne Light Company ("Duquesne") to support its electric utility

operations serving approximately 584,000 residents, businesses, government institutions, and hospitals throughout Allegheny and Beaver Counties in southwestern Pennsylvania, including the city of Pittsburgh. The AMTS spectrum was well suited to Duquesne's communication needs due to factors such as propagation and affordable equipment availability. Duquesne deployed facilities on the AMTS spectrum at several locations throughout the coverage area footprint of WHG750. Operational equipment remains at the licensed location for call sign WHG750.

13. Based on these facts, the parties stipulate that operations at WHG750 have not been permanently discontinued.

B. OPERATIONS AT SITE-BASED FACILITIES WRV374 (LOCATIONS 35 AND 40) HAVE NOT BEEN PERMANENTLY DISCONTINUED

14. When Maritime acquired the authorization for WRV374, the prior licensee, Mobex, was operating a PassPort system using the AMTS spectrum to provide land mobile services in the Chicago, New York, New Jersey, Philadelphia, Baltimore, and Washington, D.C. areas. Maritime considered expanding the PassPort system to include Locations 35 and 40 of WRV374, but determined that there was insufficient demand for either traditional ATMS or land mobile communications services.

15. Maritime actively marketed WRV374 (Locations 35 and 40) for use with Positive Train Control ("PTC") through the use of multiple third-party consultants and brokers. In particular, Maritime marketed WRV374-35 (Rehobeth) and WRV374-40 (Hamden) to AMTRAK, the MetroNorth Rail Road, and the Massachusetts Bay Transportation Authority ("MBTA").

16. Evidence produced at the hearing indicates that Maritime intended to continue to pursue potential PTC opportunities for the spectrum associated with these locations.

17. There is equipment in place that is transmitting signals at WRV374-35 (Rehobeth). The equipment is capable of providing service to subscribers as soon as Maritime is able to lease or assign these locations.

18. There is also equipment in place at WRV374-40 (Hamden) which is transmitting signals and which is capable of providing service to subscribers as soon as Maritime is able to lease or assign these locations.

19. Choctaw has developed a business plan for resuming service at these locations.

20. Based on these facts, the parties stipulate that operations at site-based facilities WRV374 (Locations 35 and 40) have not been permanently discontinued.

**C. OPERATIONS AT SITE-BASED FACILITIES WRV374
(LOCATIONS 14, 15, 16, 18, 25, AND 33) HAVE NOT BEEN
PERMANENTLY DISCONTINUED**

21. Until late 2007, site-based facilities WRV374 (Locations 14, 15, 16, 18, 25, and 33) were operating at the licensed locations as part of the PassPort system constructed by Motorola.

22. Pursuant to spectrum leases with Maritime and Mobex, Pinnacle Wireless, Inc. (“Pinnacle”) used the AMTS spectrum within the authorized footprint for these facilities to facilitate operational support and public safety communications to the State of New Jersey. Specifically, Pinnacle implemented an 18-site trunked system serving the Garden State Parkway and the New Jersey Turnpike, and a single-site trunked system serving the New Jersey Sports and Expositions Center at the Meadowlands, including Giants Stadium and the New Jersey Devils hockey arena.

23. Due to the technical requirements of the operations, Pinnacle implemented the system at a number of lower “fill-in” sites within Maritime’s composite authorized coverage footprint, rather than at the actual licensed locations. Maritime temporarily suspended operation

at the licensed locations during the lease term in order to avoid causing interference with the Pinnacle operations.

24. Despite the fact that Pinnacle is operating from fill-in stations, equipment remains installed at the licensed sites with the exception of Locations 15 (where Pinnacle operated equipment at a lower frequency) and 25 (the site of which became a rock quarry).

25. Choctaw is committed to reestablishing operational facilities and Locations 15 and 25 and to resume operation and service via all these facilities after the expiration of the Pinnacle lease or, alternatively, to ensure that the spectrum associated with these facilities is quickly put into use.

26. Based on these facts, the parties stipulate that operations at site-based facilities WRV374 (Locations 14, 15, 16, 18, 25, and 33) have not been permanently discontinued.

**D. OPERATIONS AT SITE-BASED FACILITIES KAE889
(LOCATIONS 4, 20, 30, 34, AND 48) HAVE NOT BEEN
PERMANENTLY DISCONTINUED**

27. Puget Sound Energy (“PSE”), an energy utility providing electrical power and natural gas primarily in the Puget Sound region of the northwest United States, operates a private land mobile system to support the operation field crews and system dispatchers and to coordinate activities essential to the construction and maintenance electric generating facilities, natural gas storage facilities, and electric and gas transmission and distribution systems. Pursuant to a spectrum lease with Maritime, the PSE system includes use of AMTS spectrum within the composite authorized footprint of Station KAE889, Locations 4, 20, 30, 34, and 48. Operational equipment remains installed at each of the five licensed locations.

28. Based on these facts, operations at site-based facilities KAE889 (Locations 4, 20, 30, 34, and 48) have not been permanently discontinued.

**E. OPERATIONS AT SITE-BASED FACILITIES
KAE889 (LOCATIONS 3 AND 13) HAVE NOT
BEEN PERMANENTLY DISCONTINUED**

29. On October 30, 2008, Maritime entered into an agreement with Evergreen School District (“ESD”), whereby Maritime agreed to lease spectrum covered by site-based facilities KAE889 (Locations 3 and 13) to ESD.

30. Between October 20, 2008 and September 2014, ESD used or operated the spectrum covered by site-based facilities KAE889 (Locations 3 and 13) in connection with a 2-site 3-channel Motorola/Trident Passport radio system that was used to coordinate student transportation and safety, as well as ESD emergency communications with all schools and key personnel.

31. Although ESD ceased all operations in the 220 MHz band covered by site-based facilities KAE889 (Locations 3 and 13) as of September 7, 2014, ESD has an effective spectrum lease agreement prepaid through the end of the lease term that expires July 14, 2019. There is no indication that either Maritime or Choctaw was aware prior to the December 2014 hearing in this case that service had been discontinued at these locations.

32. At the request of the Presiding Judge, Maritime and Choctaw supplemented the record regarding the operational status of KAE889 (Locations 3 and 13) on September 8, 2017. Specifically, Maritime and Choctaw submitted a sworn declaration from John Reardon, the Managing Director of Choctaw, stating that Choctaw (the assignee of these licenses) has contacted the site managers for Locations 3 and 13 regarding new site lease agreements. In this declaration, Mr. Reardon also indicates that Choctaw anticipates that, upon finalization of these new site leases, the facilities can be operational within 60 to 90 days at Location 3 and within four to five weeks at Location 13, if not sooner.

33. Based on these new facts, the parties stipulate that operations at site-based facilities KAE889 (Locations 3 and 13) have not been permanently discontinued.

34. This Joint Stipulation may be signed in counterparts.

Respectfully submitted,

MARITIME COMMUNICATIONS/LAND
MOBILE, LLC – DEBTOR-IN-POSSESSION

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Dated: September 22, 2017

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Respectfully submitted,

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MOBILE, LLC – DEBTOR-IN-POSSESSION

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Washington, D.C. 20554

Dated: September 22, 2017

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Respectfully submitted,

MARITIME COMMUNICATIONS/LAND
MOBILE, LLC – DEBTOR-IN-POSSESSION

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ENFORCEMENT BUREAU

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Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554

Dated: September 22, 2017

CERTIFICATE OF SERVICE

I, Robert J. Keller, hereby certify that on this 22nd day of September 2017, copies of foregoing document served via first class mail to the following:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

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