

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter Of

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 Wireless Radio
Services

Application File Nos.
0004030479, 0004144435,
0004193028, 0004193328,
0004354053, 0004309872,
0004310060, 0004314903,
0004315013, 0004430505,
0004417199, 0004419431,
0004422320, 0004422329,
0004507921, 0004153701,
0004526264, 0004636537,
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;
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

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

ENL-VSL Proposed Discovery Schedule

Environmental LLC (“ENL”) and Verde Systems LLC (“VSL”) (together “ENL-VSL”), through their undersigned counsel, hereby submit their Proposed Discovery Schedule pursuant to the October 1, 2014 scheduling Order, FCC 14M-30. Mr. Havens joins in this Notification (collectively “EVH”).

Initially, Order 14M-10 instructed that participating parties present a proposed schedule “jointly if possible,” which required good faith meet-and-confer exchanges. All parties

exchanged (largely reflected in Exhibit 1 below), but the Bureau and other parties (other than EVH) (herein, the “Applicants” since they are applicants to buy or lease spectrum in the 16 Stations)¹ gave *no reasons* for their proposed schedule. This is shown in Exhibit 1 hereto.

In this regard, while the Bureau asked for the responses to its proposed schedule not only from EVH and Maritime but also from the Applicants, the Applicants are by their choice not active participants in the issue (g) hearing, and thus have no reasons they can credibly assert as to why they cannot respond to discovery requests from this time forward, regardless of the hearing proceeding on issue (g). For this reason, the Judge should find that the Bureau and Applicants failed to comply with Order 14M-30 and disregard or at least give less weight to their proposed schedule, if this Order and the Judge’s control of the hearing are to be taken seriously.

EVH proposes that the discovery schedule on the HDO-OCS issues (a)-(f)/(h)-(i) under ¶62 and related independent determination under ¶¶ 63-65 (together, sometimes called the “Issues”) begin immediately, so that MCLM and affiliated parties can commence to be tested and attempt to meet their OCS burdens and so that evidence can be preserved, and that the hearing on issue (g) be postponed indefinitely until after the Issues are decided. This proposal is soundly based on the Commission adoption of geographic licensing for AMTS and associated Congressional mandate discussed herein. The Bureau/Maritime proposal to delay discovery on issues (a)-(f)/(h)-(i) until next March and proceed with a hearing on issue (g) is inconsistent with the AMTS geographic licensing regime and the associated mandate. EVH have rights involved that, under law, must be protected. The HDO-OCS and this hearing is not simply about

¹ Choctaw is not permitted by the Judge to participate as a party, only for limited status reports. It cannot submit or object to proposed schedules. In addition, Pinnacle was only permitted to intervene for certain purposes and EVH retains all rights in that regard. Pinnacle was not determined by the Commission to be a party in the HDO-OSC FCC 11-64. Later under Order FCC 12M- Pinnacle was granted limited participation rights and ordered to perform obligations, limited solely to providing certain relevant information it represented it had. EVH will later address those representations and related matters, but not herein that Pinnacle was not granted rights to propose or object to schedules.

Maritime and its violations, but came about and concerns the ultimate proper ownership and use of the AMTS spectrum involved under rights of the SkyTel entities, including Environmental LLC and Verde Systems LLC (which together, out of the SkyTel entities, hold the majority of the AMTS spectrum).

I. The EVH Discovery Schedule Is Consistent With Geographic Licensing

To reiterate, the Commission adopted geographic licensing and an auction for AMTS. Under this regime the Commission auctioned off geographic area licenses. Geographic licensees are allowed to build transmitter sites wherever they wish within their geographic license area and using new technology they typically build multiple low site, low power stations similar to cellular or PCS service. Geographic licensees are required to protect the actual service contours of legacy site based licensees. Not the licensed service contours, only the actual service contours. Site based stations are technologically obsolete because they are high power, high site stations. They are not economical or effective to operate and the Commission fully expected them to disappear which they have. When there is no longer an actual service contour for a legacy site based station, the license automatically cancels and the spectrum reverts to the geographic licensee. These matters are described in rule §§ 80.353(b) and (c) and associated rule making and declaratory Orders. The above noted Congressional mandate involves section 309(j) of the Communications Act that reflect the purposes of auctions, transitioning from freely-given site-based licenses to competitive auctions, for which the just cited rule sections and Orders were established.

With this background, it is apparent that the hearing on the defined Issues should precede the hearing on issue (g). The hearing on the Issues will determine whether the geographic licensee in the mid-Atlantic area is Maritime or SkyTel entities. Maritime was the high bidder but it cheated and lied in the auction. In the event Maritime can somehow overcome the HDO, then Maritime will be the geographic licensee in the mid-Atlantic area. In that case, the 9 site

based licenses in the mid-Atlantic area will be irrelevant. These are comprised of one station on WHG750 and eight stations on WRV374. In the event Maritime is the geographic licensee, it will cancel these licenses because a geographic licensee does not keep site based licenses within its geographic area.

On the other hand, SkyTel entities may become the geographic licensee if Maritime is disqualified under the Issues. SkyTel was the next highest bidders so SkyTel would receive the geographic license where Maritime the high bidder is disqualified. So does that mean issue (g) would then be relevant to determine whether SkyTel entities need to protect the nine legacy site based stations of Maritime on WHG750 and WRV374? The answer is probably no.

In the event that Maritime loses on the Issues and is disqualified from the geographic license, then Maritime also is likely to be disqualified from continuing to hold the site based licenses. The HDO is a revocation proceeding applicable to all the licenses of Maritime. It is difficult to conceive of a scenario where Maritime would be disqualified from the geographic license, but somehow found qualified to keep the site based licenses. Only in that unlikely scenario would issue (g) have any relevance.

Surely the Presiding Judge must consider this in logical fashion. The relevant decision tree is straightforward:

1. Maritime win on issues (a)-(f)/(h)-(i) and becomes the geographic licensee in the mid-Atlantic area. Maritime will cancel the nine site based stations on WHG750 and WRV374 and no issue (g) hearing is needed.
2. Maritime loses on issues (a)-(f)/(h)-(i) and SkyTel entities, the next high bidders, become the geographic licensee. One of two situations then exists:
 - a. Maritime is disqualified under issues (a)-(f)/(h)-(i) from holding any licenses and loses the nine site based licenses on WHG750 and WRV374 based on issues (a)-(f)/(h)-(i) and there is no reason for a hearing on issue (g).

- b. Maritime is disqualified under issues (a)-(f)/(h)-(i) from holding the geographic license but somehow remains qualified to hold the site based licenses so a hearing on issue (g) is necessary.

Under this decision tree there is only one branch, 2.b., where a hearing on issue (g) is anything other than a waste of time and money. And the 2.b. branch is perilously thin to the point of being non-existent. The reason is that branch 2.b. is perilously thin is that there is no reasonable likely of success of the Bureau/Maritime on issue (g).

Under the geographic licensing regime, the Commission auctioned off geographic licenses subject only to a requirement to protect actual service contours of site based stations. The Bureau and Maritime has now filed their direct cases. They admit that Maritime has no actual service contours. The stations have been abandoned and disassembled and the equipment sold to a buyer from Las Vegas. The Bureau/Maritime case is based upon an alleged intent to one day resume operations. This argument is a legal impossibility under the geographic license auction regime.

The Bureau/Maritime are asking the Presiding Judge to write a decision which states that a site based licensee can turn off their station indefinitely but remain entitled to continued protection from the geographic licensee, who bought the geographic license from the Commission in an auction, based upon a mere intent to one day resume operations. The Commission cannot sanction this decision and cannot auction spectrum on this basis.

The Commission has bright line tests for license cancellation that are not based on intent. A station must be built by a date certain and it must be kept in operation. Sometimes, there is a grace period in the rules to discontinue operation for a limited time. There is no grace period for AMTS. The reason is obvious. The Commission has adopted geographic licensing so when a site based licensee turns off his station, he no longer has an actual contour that is entitled to protection and the spectrum immediately reverts to the geographic licensee.

The Bureau/Maritime spend time in their direct case discussing fill-in stations operated by would-be buyers/lessors of Maritime such as Pinnacle and Duquesne. A fill-in station can only be operated within the actual service contours of a site-based station. The Maritime stations were turned off and dismantled and have no actual contours, so there are no lawful fill-in operations.

The Bureau/Maritime seek to circumvent this fatal defect with a novel legal argument, that the fill-in stations can be operated within the service contours of the Maritime stations that existed when Maritime operated the stations. No legal basis exists to support this argument, but the Presiding Judge need not decide it. Even if this argument could somehow be accepted under the geographic auction license regime (which it cannot), nevertheless, it is apparent that the Bureau/Maritime have failed to establish the factual predicate for the argument. Their direct case fails to attempt to show any actual contours, so the legal argument is a shame without basis.

The sole argument that the Bureau/Maritime are left with is that we should continue with issue (g) because we have spent the time and money to get this far on the issue. This argument must be rejected given everything the Presiding Judge must know about what is involved in conducting a hearing. The time and money spent to get to this point pales in comparison to what will be required from this point through a hearing on issue (g).

II. A Hearing On KAE889 Is A Shame And Abuse Of Process

What is said above relates to the nine site-based licenses in the mid-Atlantic area on WHG750 and WRV374. In the case of those licenses, there is a narrow branch of a decision tree where Maritime may somehow remain qualified to be site-based licensee while SkyTel entities become the geographic licensee. Under that barely conceivable scenario, an issue (g) hearing could arise, although the Bureau/Maritime have no likelihood of success.

The situation is entirely different as to the seven site-based stations in the Pacific Northwest on KAE889. It is important that the Presiding Judge understand how frivolous the hearing is on the seven KAE889 stations.

SkyTel entities acquired the geographic auction license for the Pacific Northwest area. The geographic licensee is not in doubt and is not dependent on issues (a)-(f)/(h)-(i). Furthermore, SkyTel entities sold to Puget Sound Energy (PSE) the geographic license spectrum for the PSE service territory. The Maritime site based licenses in dispute could constitute “holes” in the geographic spectrum license of PSE, in the event that PSE were required to protect those seven stations. So PSE entered into a separate contract to purchase the seven site based authorizations from Maritime.

As a result, it is apparent that the hearing on KAE889 has no public interest purpose. In the event that Maritime can prevail on issue (g) – and issues (a)-(f)/(h)-(i) – Maritime will then consummate the sale of the authorizations to PSE and *PSE will cancel the seven site based authorizations because PSE is the geographic licensee*. A geographic licensee does not retain site-based licenses, it cancels them.

The issue (g) hearing is a charade and an abuse of the Commission and party resources because PSE has no intention of ever operating the seven site-based stations, on the contrary, PSE will immediately cancel the licenses if it ever gets them.

The issue (g) hearing exists solely for a private purpose, to determine whether Maritime gets paid by PSE to cancel the licenses or PSE does not have to pay Maritime because the licenses are cancelled by operation of the rules. Regardless of whether such a hearing ever has any basis, it is readily apparent that a hearing on this frivolous issue provides no basis to delay discovery on Maritime’s basic qualifications to be a licensee of the geographic auction licenses at issue under the HDO.

III. The Bureau Failed To Confer With EVH In Good Faith

EVH provided the Bureau with a detailed explanation as to why the Bureau's proposal to start discovery next March is unjustified. Even if there were some basis to proceed with issue (g), that hearing is in December and the March start date for discovery is groundless. Here is the detailed explanation that EVH provide to the Bureau:

Dear Ms. Kane,

ENL-VSL and Mr. Havens (EVH) see no basis to delay the start of discovery on issues (a)-(f) and (h)-(i) until March 1, 2015, and do not believe that the Bureau's proposal complies with the Commission's September 11, 2014 Second Thursday decision (the "Order"). The Order lifts the stay and directs the hearing on all issues to proceed. The Commission was well aware that the hearing on issue (g) was not completed. The Order contains no suggestion that the stay should remain in place until after a hearing on issue (g) is completed, not to mention waiting another three months as the Bureau proposes. On the contrary, to preserve evidence in a serious license revocation proceeding, Maritime and other parties and witnesses with relevant information should be subject to discovery as soon as possible. Accordingly, EVH proposes a discovery start date of the end of this month.

The length of the initial discovery phase may be as long as the Bureau proposes, or longer if good cause arises. Good cause may well arise given the nature of Maritime's responses to Commission inquiries as detailed in the HDO, and unwarranted diversions in the issue (g) proceeding.

We understood the Presiding Judge to have rejected the suggestion that issue (g) is separate from the other issues that have now been ordered to proceed. We understood the direction at the status conference to mean that licensee qualification and credibility are intertwined with issue (g) and must be included in determining the facts relevant to issue (g). Nevertheless, we heard the Bureau express discomfort at having to proceed with discovery and preparation for hearing at the same time. But that is a problem of the Bureau's own making and provides no basis to hold up the proceedings on issues a-f and h-i. The Bureau chose to support Maritime on issue (g) in previous summary decision requests and, indeed, the Bureau's direct case. In our view, the Bureau decision to support Maritime unduly delayed the inevitable ruling on issue (g) that Maritime abandoned all 16 stations. The unjustified delay in cancellation of the 16 remaining site-based licenses will only be compounded by delaying discovery until next March on the other issues and the auction licenses.

Furthermore, the Bureau's position that it should not have to prepare for hearing and conduct discovery at the same time fails to offer any basis to delay discovery for months after the hearing will have ended. The Bureau has not shown that it is unable to prepare post-hearing filings and conduct discovery at the same time. Indeed, the Bureau was able to conduct discovery and prepare summary decision motions and stipulations in support of Maritime on issue (g).

The Bureau's proposed delay reflects and compounds the inconsistency between the Bureau's support of Maritime and the direction in the HDO and Order to prosecute a revocation case against them. Whether the HDO issues are heard in seriatim or simultaneously, the Bureau has put itself in an untenable position by supporting Maritime in the Bureau's Direct Case on issue (g). Even if the Bureau continues to act in tandem with Maritime, a discovery schedule should not be adopted that blocks EVH from expeditious discovery into all of the revocation issues.

Jim Stenger

The Bureau failed to respond to EVH in good faith. Here is what the Bureau said:

Mr. Stenger: For reasons we already articulated, the Enforcement Bureau cannot support your proposal to begin discovery on Issues other than Issue (g) by the end of the month.

It is readily apparent that the Bureau did not respond to EVH on the substance and therefore failed to negotiate in good faith. As a result, an agreement could not be reached and EVH had no choice other than to make this independent filing.

IV. Conclusion

Wherefore, ENL-VSL and Mr. Havens submit their proposal that the discovery on issues (a)-(f)/(h)-(i) begin immediately and that any further proceedings on issue (g) be postponed until after issues (a)-(f)/(h)-(i) are decided.

Respectfully submitted,

 /s/
James A. Stenger
Chadbourne & Parke, LLP
1200 New Hampshire Avenue, NW
Washington, DC 20036
(202) 974-5682

October 9, 2014

CERTIFICATE OF SERVICE

The undersigned, a secretary at Chadbourne & Parke, LLP, hereby certifies that she has on this 9th day of October mailed by first class United States mail copies of the foregoing ENL-VSL Proposed Discovery Schedule to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Pamela S. Kane
Deputy Chief
Investigations and Hearings Division Enforcement Bureau
Federal Communications Commission
445 12th Street SW, Room 4-C330
Washington, DC 20554

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Maritime Communications/Land Mobile LLC
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*Counsel for Atlas Pipeline — Mid Continent LLC; DCP Midstream, LP;
Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson
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Albert J. Catalano
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Counsel for Maritime Communications/Land Mobile LLC

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*

Warren Havens
Atlis Wireless & Companies
2509 Stuart Street
Berkeley CA 94705
Attn: Jimmy Stobaugh

/s/

Lisa C. Colletti

EXHIBIT 1

Subject: Re: Proposed Discovery Schedule

From: eitt líf koma nú griðastaðir (warren.havens@sbcglobal.net)

To: Pamela.Kane@fcc.gov;

Cc: catalano@khlaw.com; CZdebski@eckertseamans.com; Matthew.Plache@plachelaw.com; feldman@fhhlaw.com; richards@khlaw.com; jsheldon@lb3law.com; rkirk@wbklaw.com; wright@khlaw.com; jstobaugh@telesaurus.com; Michael.Engel@fcc.gov; rjk@telcomlaw.com;

Date: Wednesday, October 8, 2014 5:10 PM

Ms. Kane, Well done, but comedy aside, where are your **reasons**- just cite them.

Others, Please respond, unless Ms. Kane is your delegated agent in which case confirm that.

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: 'eitt líf koma nú griðastaðir' <warren.havens@sbcglobal.net>
Cc: "Catalano, Albert J." <catalano@khlaw.com>; 'Charles A. Zdebski' <CZdebski@eckertseamans.com>; "Matthew.Plache@PlacheLaw.com" <Matthew.Plache@plachelaw.com>; "feldman@fhhlaw.com" <feldman@fhhlaw.com>; "richards@khlaw.com" <richards@khlaw.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>; Michael Engel <Michael.Engel@fcc.gov>; 'Bob Keller' <rjk@telcomlaw.com>
Sent: Wednesday, October 8, 2014 4:42 PM
Subject: RE: Proposed Discovery Schedule

Mr. Havens: As the record plainly shows, the Bureau has fully complied with the Judge's *Order*, 14M-30, in attempting to reach a joint discovery schedule. The chain below plainly sets forth the Bureau's reasoning as to why it will not join the discovery schedule proposed by you and ENL-VSL.

Pamela S. Kane
 Deputy Chief -- Investigations & Hearings Division
 Federal Communications Commission
 202-418-2393

From: eitt líf koma nú griðastaðir [mailto:warren.havens@sbcglobal.net]
Sent: Wednesday, October 08, 2014 4:34 PM
To: 'Bob Keller'
Cc: Catalano, Albert J.; 'Charles A. Zdebski'; Matthew.Plache@PlacheLaw.com; feldman@fhhlaw.com; richards@khlaw.com; Sheldon, Jeffrey; rkirk@wbklaw.com; Pamela Kane; 'wright@khlaw.com' (wright@khlaw.com); Jimmy Stobaugh (jstobaugh@telesaurus.com); Michael Engel
Subject: Re: Proposed Discovery Schedule

Mr. Keller, Plache and other counsel of MCLM and supporting parties,

For the record before Judge Sippel, since Ms. Kane, among your group, has not complied with

the Judge's Order to attempt a joint schedule proposal, because there is no such attempt without reasoning (see below), I request that other MCLM Counsel provide reasons at this time (there is not material time left) for your client or for your group if you can do that. This request is by me as a party pro se.

From: eitt lif koma nú gríðastaðir <warren.havens@sbcglobal.net>
To: Pamela Kane <Pamela.Kane@fcc.gov>; "'Stenger, James'" <JStenger@chadbourne.com>
Cc: "Matthew.Plache@PlacheLaw.com" <Matthew.Plache@plachelaw.com>; "feldman@fhhlaw.com" <feldman@fhhlaw.com>; "richards@khlaw.com" <richards@khlaw.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>; Michael Engel <Michael.Engel@fcc.gov>; "Sheldon, Jeffrey" <jsheldon@lb3law.com>; 'Bob Keller' <rjk@telcomlaw.com>; 'Charles A. Zdebski' <CZdebski@eckertseamans.com>
Sent: Wednesday, October 8, 2014 12:25 PM
Subject: Re: Proposed Discovery Schedule

Ms Kane,

Where are the "reasons we articulated" in your proposal: "The Enforcement Bureau proposes that we begin the discovery period on HDO Issues (a)-(f) on March 1, 2014 for an initial period of 6 months."

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: "'Stenger, James'" <JStenger@chadbourne.com>
Cc: "Matthew.Plache@PlacheLaw.com" <Matthew.Plache@plachelaw.com>; "feldman@fhhlaw.com" <feldman@fhhlaw.com>; "richards@khlaw.com" <richards@khlaw.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>; Michael Engel <Michael.Engel@fcc.gov>; "Sheldon, Jeffrey" <jsheldon@lb3law.com>; 'Bob Keller' <rjk@telcomlaw.com>; 'Charles A. Zdebski' <CZdebski@eckertseamans.com>
Sent: Wednesday, October 8, 2014 9:31 AM
Subject: RE: Proposed Discovery Schedule

Mr. Stenger: For reasons we already articulated, the Enforcement Bureau cannot support your proposal to begin discovery on Issues other than Issue (g) by the end of the month.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: Stenger, James [<mailto:JStenger@chadbourne.com>]
Sent: Tuesday, October 07, 2014 2:10 PM
To: Pamela Kane; 'Charles A. Zdebski'
Cc: Matthew.Plache@PlacheLaw.com; feldman@fhhlaw.com; richards@khlaw.com; rkirk@wbklaw.com; 'wright@khlaw.com' (wright@khlaw.com); Warren Havens (warren.havens@sbcglobal.net); Jimmy Stobaugh (jstobaugh@telesaurus.com); Catalano, Albert J.; Michael Engel; Sheldon, Jeffrey; 'Bob Keller'
Subject: RE: Proposed Discovery Schedule

Dear Ms. Kane,

ENL-VSL and Mr. Havens (EVH) see no basis to delay the start of discovery on issues (a)-(f) and (h)-(i) until March 1, 2015, and do not believe that the Bureau's proposal complies with the Commission's September 11, 2014 Second Thursday decision (the "Order"). The Order lifts the stay and directs the hearing on all issues to proceed. The Commission was well aware that the hearing on issue (g) was not completed. The Order contains no suggestion that the stay should remain in place until after a hearing on issue (g) is completed, not to mention waiting another three months as the Bureau proposes. On the contrary, to preserve evidence in a serious license revocation proceeding, Maritime and other parties and witnesses with relevant information should be subject to discovery as soon as possible. Accordingly, EVH proposes a discovery start date of the end of this month.

The length of the initial discovery phase may be as long as the Bureau proposes, or longer if good cause arises. Good cause may well arise given the nature of Maritime's responses to Commission inquiries as detailed in the HDO, and unwarranted diversions in the issue (g) proceeding.

We understood the Presiding Judge to have rejected the suggestion that issue (g) is separate from the other issues that have now been ordered to proceed. We understood the direction at the status conference to mean that licensee qualification and credibility are intertwined with issue (g) and must be included in determining the facts relevant to issue (g). Nevertheless, we heard the Bureau express discomfort at having to proceed with discovery and preparation for hearing at the same time. But that is a problem of the Bureau's own making and provides no basis to hold up the proceedings on issues a-f and h-i. The Bureau chose to support Maritime on issue (g) in previous summary decision requests and, indeed, the Bureau's direct case. In our view, the Bureau decision to support Maritime unduly delayed the inevitable ruling on issue (g) that Maritime abandoned all 16 stations. The unjustified delay in cancellation of the 16 remaining site-based licenses will only be compounded by delaying discovery until next March on the other issues and the auction licenses.

Furthermore, the Bureau's position that it should not have to prepare for hearing and conduct discovery at the same time fails to offer any basis to delay discovery for months after the hearing will have ended. The Bureau has not shown that it is unable to prepare post-hearing filings and conduct discovery at the same time. Indeed, the Bureau was able to conduct discovery and prepare summary decision motions and stipulations in support of Maritime on issue (g).

The Bureau's proposed delay reflects and compounds the inconsistency between the Bureau's support of Maritime and the direction in the HDO and Order to prosecute a revocation case against them. Whether the HDO issues are heard in seriatim or simultaneously, the Bureau has put itself in an untenable position by supporting Maritime in the Bureau's Direct Case on issue (g). Even if the Bureau continues to act in tandem with Maritime, a discovery schedule should not be adopted that blocks EVH from expeditious discovery into all of the revocation issues.

Jim Stenger

James A. Stenger
Chadbourne & Parke LLP
1200 New Hampshire Ave N.W., Washington, DC 20036
tel 202-974-5682 | fax 202-974-5602
jstenger@chadbourne.com | <http://www.chadbourne.com>

vCard: <http://www.chadbourne.com/vcard/jstenger.vcf>

Please consider the environment before printing this email.

From: Pamela Kane [<mailto:Pamela.Kane@fcc.gov>]
Sent: Monday, October 06, 2014 2:05 PM
To: 'Charles A. Zdebski'
Cc: Stenger, James; Matthew.Plache@PlacheLaw.com; feldman@fhhlaw.com; richards@khlaw.com; rkirk@wbklaw.com; 'wright@khlaw.com' (wright@khlaw.com); Warren Havens (warren.havens@sbcglobal.net); Jimmy Stobaugh (jstobaugh@telesaurus.com); Catalano, Albert J.; Michael Engel; Sheldon, Jeffrey; 'Bob Keller'
Subject: RE: Proposed Discovery Schedule

Charlie: As was discussed at the prehearing conference, neither the Bureau nor the other participating parties wanted to proceed with discovery on Issues (a)-(f) at the same time as we are preparing for the hearing on Issue (g) -- which is proceeding as scheduled on December 9 -- or at the same time as we are addressing post-hearing obligations. The Presiding Judge recognized that concern. If Duquesne would like to propose an alternative schedule to the group, please feel free to do so.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: Charles A. Zdebski [<mailto:CZdebski@eckertseamans.com>]
Sent: Monday, October 06, 2014 1:49 PM
To: Sheldon, Jeffrey; Pamela Kane; 'Bob Keller'
Cc: JStenger@chadbourne.com; Matthew.Plache@PlacheLaw.com; feldman@fhhlaw.com; richards@khlaw.com; rkirk@wbklaw.com; 'wright@khlaw.com' (wright@khlaw.com); Warren Havens (warren.havens@sbcglobal.net); Jimmy Stobaugh (jstobaugh@telesaurus.com); Catalano, Albert J.; Michael Engel
Subject: RE: Proposed Discovery Schedule

Duquesne Light Company is wondering why we need to wait until March 2015 to begin discovery on these issues. Please let me know the rationale.

Thank you.

~ Charlie

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From: Sheldon, Jeffrey [<mailto:jsheldon@lb3law.com>]
Sent: Monday, October 06, 2014 12:51 PM
To: Pamela Kane; 'Bob Keller'
Cc: JStenger@chadbournelaw.com; Matthew.Plache@PlacheLaw.com; Charles A. Zdebski; feldman@fhhllaw.com; richards@khllaw.com; rkirk@wbkllaw.com; 'wright@khllaw.com' (wright@khllaw.com); Warren Havens (warren.havens@sbcglobal.net); Jimmy Stobaugh (jstobaugh@telesaurus.com); Catalano, Albert J.; Michael Engel
Subject: RE: Proposed Discovery Schedule

Puget Sound Energy has no objection to this proposal.

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From: Pamela Kane [<mailto:Pamela.Kane@fcc.gov>]
Sent: Monday, October 06, 2014 10:04 AM
To: 'Bob Keller'
Cc: JStenger@chadbournelaw.com; Matthew.Plache@PlacheLaw.com; czdebski@eckertseamans.com; feldman@fhhllaw.com; richards@khllaw.com; Sheldon, Jeffrey; rkirk@wbkllaw.com; 'wright@khllaw.com' (wright@khllaw.com); Warren Havens (warren.havens@sbcglobal.net); Jimmy Stobaugh (jstobaugh@telesaurus.com); Catalano, Albert J.; Michael Engel
Subject: RE: Proposed Discovery Schedule

Yes, sorry. The Enforcement Bureau proposes that we begin the discovery period on HDO Issues (a)-(f) on March 1, 2015 for an initial period of 6 months.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division

Federal Communications Commission
202-418-2393

*** Non-Public: For Internal Use Only ***

From: rjk5378@gmail.com [<mailto:rjk5378@gmail.com>] **On Behalf Of** Bob Keller

Sent: Monday, October 06, 2014 10:03 AM

To: Pamela Kane

Cc: JStenger@chadbourne.com; Matthew.Plache@PlacheLaw.com; czdebski@eckertseamans.com; feldman@fhhlaw.com; richards@khlaw.com; Sheldon, Jeffrey; rkirk@wbklaw.com; 'wright@khlaw.com' (wright@khlaw.com); Warren Havens (warren.havens@sbcglobal.net); Jimmy Stobaugh (jstobaugh@telesaurus.com); Catalano, Albert J.; Michael Engel

Subject: Re: Proposed Discovery Schedule

I believe you mean March 1, 2015 (not 2014).

On Mon, Oct 6, 2014 at 10:01 AM, Pamela Kane <Pamela.Kane@fcc.gov> wrote:

All: The Enforcement Bureau proposes that we begin the discovery period on HDO Issues (a)-(f) on March 1, 2014 for an initial period of 6 months. The Bureau also intends to seek leave from the Presiding Judge to serve Requests for Admission since the first set was served before the Protective Order was issued and thus could not address confidential information and because, as a result of the stay, certain RFAs were not fully answered.

Let us know whether you wish to discuss this proposal further or whether you can agree to the proposal.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
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Washington, D.C. 20554
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