

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND MOBILE, LLC</b>	)	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,
Applicant with <b>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.;</b>	)	0004144435, 0004193028,
<b>INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN POWER AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.; ATLAS PIPELINE – MID CONTINENT, LLC; DENTON COUNTY ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC; AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY</b>	)	0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537 & 0004604962

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

**MARITIME’S OBJECTIONS TO DIRECT CASE EXHIBITS AND TESTIMONY**

Maritime Communications/Land Mobile, LLC (“Maritime”), by its attorney and pursuant to the Presiding Judge’s recent orders (FCC 14M-29, rel. Aug. 24, 2014; FCC 14M-30, rel. Oct. 1, 2014; and FCC 14M-32, rel. Oct. 9, 2014), submits these objections to direct case exhibits and witness testimony proffered by Envirionmental LLC, Verde Systems LLC, and Warren Havens (collectively, “EVH”). Maritime will refer herein to *ENL-VSL and Havens Direct Case Exchange*, filed September 15, 2014 (“*EVH Exchange*”) and “ENL-VSL List of Witnesses with Explanations, filed October 10, 2014 (“*EVH Explanations*”).

### **EVH CE Exhibits 1 - 4**

EVH states that these documents “will be used in cross-examination.” EVH Exchange at p. 3. Since the documents are not being introduced as evidence, the presiding judge should need not rule on their admissibility at this time. The propriety of using such documents for cross-examination is not something that can be decided in advance and in a vacuum. It will depend on how the documents are to be use and with what particular witness. Thus, any ruling on this should be deferred until such time as EVH actually seeks to use one or more of the documents. To the extent EVH actually seeks to introduce the documents as part of its direct case, they should be rejected.

### **Request for Admission**

EVH “request[s] that all parties admit the genuineness of the documents that we have served as exhibits.” EVH Exchange at states that these documents “will be used in cross-examination.” EVH Exchange at § 1(b), p. 4. For its part, Maritime respectfully declines to so admit. The deadline for requests for admissions passed more than three and one half years ago. The applicable regulation clearly states in pertinent part that requests for admission must be served “[w]ithin 20 days after the time for filing a notice of appearance has expired ... or within such shorter or longer time as the presiding officer may allow.” 47 C.F.R. § 1.246(a). EVH once again demonstrates that its numerous complaints about alleged infringements of its “party status” are feigned crocodile tears. As a party, EVH had every opportunity to file timely requests for admission. Subsequently, EVH could have participated in discovery via interrogatories, request for production, depositions, etc., to determine the authenticity of any documents. That it chose not to avail itself of these opportunities was a voluntary choice within its discretion. But having failed to do so, it may not now encumber and abuse the hearing process in effort to accomplish what it failed to do in proper sequence.

To the extent any of the proffered documents are otherwise admissible, therefore, the presiding judge should require that EVH properly authenticate the document either via its own witnesses or other legal basis, e.g., official notice, where applicable. This is in addition to Maritime's specific objections to the admissibility of most of the proffered documents discussed elsewhere in this pleading.

### **Reservation of Rights**

EVH claims "the right to use additional exhibits that we may gain access to that are not available to us now." EVH Exchange at § 1(c), p. 4. EVH is referring primarily, but apparently not exclusively, to document subject to confidentiality under the Protective Order (FCC 11M-21; rel. Jul. 20, 2011) in this proceeding. Once again, and for many of the same reasons discussed in the preceding paragraphs, EVH's attempt at ad hoc revision of the procedural rules to suit its own purposes must be rejected. The time for EVH to proffer exhibits for inclusion in its own direct case has passed. To the extent other documents are admitted into the record as part of the other parties' direct cases or otherwise, EVH will be free to rely on those as record evidence in preparing its proposed findings and conclusions. But this sua sponte claim of a blank check allowing the introduction of other as yet unidentified and, indeed, unknown documents, must be rejected. That some documents may be subject to confidentiality under the Protective Order does not dictate a different result. See further discussion of the Protective Order in the following section of this pleading.

### **Deposition Designations**

Maritime objects to EVH's designation of the entire transcripts for the depositions of Sandra and Donald DePriest. See EVH Exchange at § 2, pp. 4-5. EVH states that it cannot designate particular pages of the transcripts because they are subject to the Protective Order (FCC 11M-21; rel. Jul. 20, 2011) in this proceeding. This is not an accurate statement. EVH has always had access to the deposition transcripts—and, indeed, even the right to participate in the

depositions—on the same basis as any other party to this proceeding, i.e., subject to the terms of the Protective Order. It may not display contempt and refuse to abide by the terms of the Protective Order, and then later complain of being denied access on the basis of that order. In any event, Maritime made a special accommodation to the Havens parties whereby its bankruptcy counsel at the time was permitted to monitor the depositions of Mr. & Mrs. DePriest via teleconference, and subject to the terms of the protective order. Thus, if there were matters discussed in the deposition deemed crucial to EVH’s direct case, there was more than ample opportunity to make arrangement, in accordance with the Protective Order, to obtain and use the relevant transcript portions. But EVH is not entitled to any latitude where its alleged lack of access is due to its own stubborn refusal to abide by the Protective Order.

With regard to the depositions of John Reardon and Robert “Tim” Smith, not even EVH’s illegitimate reliance on denied access is of avail. Maritime did not designate any portion of the Tim Smith transcript as confidential, and only a very few minor portions of the John Reardon deposition. EVH has had more than ample opportunity to study these transcripts and designate relevant portions. EVH’s excuse for not doing so is that it did not know in advance what the direct cases of Maritime and the Enforcement Bureau would be. “Once we see their direct cases, we will be in a position to limit the deposition testimony that will be used on cross-examination.” EVH Exchange at § 2, p. 5. But that is not how the process works.

No one is entitled to examine the other parties’ direct case submissions in advance, although there is nothing to prevent the parties from voluntarily disclosing and coordinating such information. EVH has adamantly defended its party status in this proceeding, but it must abide by the rules applicable to all parties. These rules do not include sitting on one’s hands, hoping that another party will put in the desired evidence, and then claiming the right to dump volumes into the record when those hopes are not satisfied.

To the extent EVH seeks to introduce the transcripts as part of its direct case, this should be denied for all the reasons stated above. The propriety of using some portion of a transcript for cross-examination of a witness can be evaluated at the time of such cross-examination.

**Direct Witness Testimony**

Maritime objects to the introduction of the pre-filed testimony of Peter Harmer, Fred Goad, and Steve Calabrese. EVH Exchange at § 3, p. 5.

**Peter Harmer**

Mr. Harmer candidly admits at paragraph 2 of his pre-filed testimony: “I have no personal knowledge as to whether Maritime constructed and operated [the sixteen] stations.” That being so, he has no information relevant to Issue G, the sole focus of this phase of the hearing. EVH admittedly prepared its direct case in anticipation of a hearing on all designated issues, not just Issue G, Mr. Harmer’s testimony was clearly directed to the basic qualifications issues. Thus, Mr. Harmer would testify regarding alleged misrepresentations in the AMTS auctions as well as challenging the facts underlying the pending request for Second Thursday relief. Neither of these subjects is relevant to Issue G.

In light of the presiding judge’s decision to defer the basic qualifications phase of the hearing, EVH now falls back on assertions that Mr. Harmer’s testimony may be relevant to “[c]redibility and motives of Maritime.” EVH Explanations at § A.1, p. 2. It is clear from the face of his testimony, however, that Mr. Harmer is far from being an unbiased witness. He has a laundry list of prior disputes and legal conflicts with Donald DePriest, the spouse of Maritime’s principal, Sandra DePriest. Moreover, the gravamen of this attempt to salvage Mr. Harmer’s testimony is the theory that because Maritime allegedly misrepresented in the auctions and the Second Thursday filings, its testimony in this proceeding cannot be deemed credible. In other words, EVH would have the presiding judge, on the basis of Mr. Harmer’s testimony, adjudicate and render findings on matters central to the basic qualifications issue (which are not being tried

at this time) and the Second Thursday proceeding (which is before the Commission, not the presiding judge). The testimony should be rejected.

Direct Testimony of Fred C. Goad

Maritime objects to the testimony of Fred C. Goad on the same grounds as discussed above with respect to Peter Harmer. Mr. Goad also states, at paragraph 2 of his pre-filed testimony: “I have no personal knowledge as to whether Maritime constructed and operated [the sixteen] stations.” He likewise discusses matters arguably relevant only to the basic qualifications issues and the Second Thursday proceeding. Finally, like Mr. Harmer, he admittedly has long standing disputes with Maritime and Mr. DePriest, making him a highly biased witness. His testimony should not be received.

Direct Testimony of Steve Calabrese

To the extent Mr. Calabrese discusses matters within the scope of the permanent discontinuance aspect of Issue G for the sixteen remaining incumbent stations, he says nothing that is inconsistent with Maritime’s position. He states, at paragraph 4 of his testimony, that operations of the WRV374 locations “were discontinued no later than 2009 ... [and] may have been discontinued as early as 2007 due to lack of customers.” This is entirely consistent with Maritime’s position, and his testimony therefore contributes nothing additional of relevance to Issue G. He alleges that Maritime used Critical RF technology to create inexpensive channel markers “to make it appear that the channels are being used.” He does not state, however, that any such alleged channel markers were used as to the sixteen stations at issue in this proceeding, and in fact as to the subject WRV374 stations, he admits they were in operation until at least 2007. In any event, Maritime is not relying on Critical RF technology or operations with respect to the permanent discontinuance aspect of Issue G for the sixteen incumbent stations at issue.

Mr. Calabrese, like Messrs. Harmer and Goad, is not an unbiased witness. Unlike the other two witnesses, however, he does not fully disclose the basis for his bias against Maritime.

While he acknowledges that he entered into an agreement to sell Critical RF to Maritime, he fails to mention that to this day he continues to dispute ownership of the technology, if not the company itself, and that he continues operations of his own using both the technology and the Critical RF name. With this substantial reason for animus toward Maritime, and with the lack of anything to say relevant to Issue G as to the remaining sixteen stations, his testimony should be rejected.

### **Direct Case Exhibits**

Maritime objects to the introduction of each of the following direct case exhibits for the reasons discussed below. Maritime asks that the exhibits be rejected or, in the alternative, that any ruling on admissibility be deferred until trial. Given the extremely large number of exhibits (444), Maritime has grouped them into categories for purposes of these objections.

### **Pleadings**

EVH Exhibits 2-18, 20-21, 23-26, 28-32- 34-36, 41-42, 44-46, 48, 50, 52-55, 59-61, 63, 65, 61, 63, 65, 68, 72-74, 76-77, 85-88, 219-221, 237-240, 253-240, 245, 247-251, 255, 257, 262-263, 253-272, 274-276, 279-282, 284-286, 288-290, 294, 296-297, 299, 302-308, 310-317, 319-333, 335-339, 355-362, 378-379, 381-387, 389-403, 415-427, and 435-444.

EVH includes numerous copies of pleading, correspondence, and related documents in both the pre and post designation phases of this proceeding, as well as other FCC proceedings, and even matters in other forums. No effort has been made to pare this down to a manageable number or to explain specifically how each document is relevant to what remains of Issue G. It is also not clear for which of these exhibits official notice will be sought, and the basis therefor, or whether any of the three proposed EVH witnesses can authenticate any of these documents.

### **Orders**

EVH Exhibits 19, 22, 27, 33-37-39, 69-71, 82-84, 241-244, 246, 259, 261, 264, 273, 277-278, 283-287, 291, 293, 298, 380, 388, and 404-414.

EVH includes various orders, some by the Commission and/or the presiding judge in this proceeding, and others by the Commission or its operating bureaus in other unrelated proceedings. Apart from questions of relevance, orders are not evidence. To the extent an order entered in this case is to be relied upon for legal authority, it can be so cited. It need not be introduced as an evidentiary exhibit.

#### Discovery Responses

EVH Exhibits 1, 27, 40, 43, 47, 49, 51-52, 56-58, 62, 64, 67, 75, and 340.

Maritime has no objection to the limited use of discovery responses produced in this proceeding, upon proper authentication or official notice, being used in cross-examining the parties or witnesses who provided such responses. Beyond that, the introduction of entire sets of discovery responses is not proper. To the extent EVH intended to rely on some portion of a discovery response as part of its direct case, it should have identified and provided the pertinent excerpt and indicated its relevance. EVH did not do so, and these exhibits should therefore be excluded.

#### ULS Documents

EVH Exhibits 89-218, 342-354, 363-377, and 428-434.

These purport to be printouts of licensing records from the FCC's Universal Licensing System ("ULS"). They are not, however, self-explanatory. Maritime objects to any of these exhibits except insofar as they can be shown to related to one or more of the remaining sixteen incumbent stations, and further shown to be relevant to the only remaining aspect of Issue G as to those licenses, namely, permanent discontinuance.

#### Stipulations

EVH Exhibits 252, 256, 258, 295, and 334.

EVH has included copies of various stipulations between Maritime and the Enforcement Bureau. To the extent the presiding judge has accepted any stipulation, it may of course be relied

upon in this proceeding for purposes of proving the stipulated fact. The wholesale introduction of stipulations, some of which have not been accepted, and others that are no longer relevant to the remaining limited scope of Issue G is not proper.

#### FCC Transcripts

EVH Exhibits 300-301, 309, and 318.

These are transcripts of various prehearing conferences in this proceeding. The discussion of counsel and the presiding judge at prehearing conferences are neither testimony nor evidence. The transcript is available as a record of what transpired, of course, and may from time to time be referred to for historical reference. But it should not be admitted into the official record as evidence.

#### New Jersey Transcripts

EVH Exhibits 228-236.

EVH seeks to introduce the transcripts of virtually the entire antitrust trial in the New Jersey proceeding. This is objectionable on numerous grounds. Clearly the entire antitrust trial is not relevant to the limited scope of Issue G. Even if some portions may arguable relate to certain aspects of issue G, that does not justify introducing a transcript of the entire trial. Moreover, the matters were discussed in a different context and should not be transplanted to this proceeding absent proper explanation. EVH had the opportunity to present the same evidence, to the extent relevant, here. But the wholesale dumping of an entire trial transcript is not the way to do it.

#### NCASS Documents

EVH Exhibits 222-227.

This issue has been discussed and argued and, Maritime thought, resolved before. It relates to the 100 (or whatever number) of boxes of documents that Mobex placed in storage with National Capital Archives (NCASS). As previously explained, these documents were never the property of Maritime. Maritime does not have custody of or control over the documents.

EVH has had ample opportunity to examine these document subject to applicable protective orders and, if any had been found relevant, to introduce them as part of its direct case. But the scheduled hearing is not the proper place to litigate EVH's baseless allegations regarding custody and preservation of the documents.

Respectfully Submitted,



---

Robert J. Keller  
Counsel for Maritime  
Communications/Land Mobile, LLC

Email: [rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)  
Telephone: 202.656.8490  
Facsimile: 202.223.2121

Law Offices of Robert J. Keller, P.C.  
PO Box 33428  
Washington, D.C. 20033

Dated: October 29, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of October, 2014, I caused copies of the foregoing pleading to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

Pamela S. Kane, Esq., Deputy Chief  
Brian J. Carter, Esq.  
Investigations and Hearing Division  
Enforcement Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W. – Room 4-C330  
Washington, D.C. 20554  
Counsel for the Enforcement Bureau

Robert G. Kirk, Esq.  
Mary O'Connor, Esq.  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW Suite 700  
Washington, DC 20037  
Counsel for Choctaw  
Telecommunications, LLC  
and Choctaw Holdings, LLC

Charles A. Zdebski, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
Counsel for Duquesne Light Co.

Jeffrey L. Sheldon, Esq.  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036  
Counsel for Puget Sound Energy, Inc.

Jack Richards, Esq.  
Wesley Wright, Esq.  
Albert J. Catalano, Esq.  
Keller & Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
Counsel for Atlas Pipeline – Mid Continent  
LLC; DCP Midstream, LP; Enbridge Energy  
Co., Inc.; Dixie Electric Membership Corp.;  
EnCana Oil and Gas (USA), Inc.; and Jackson  
County Rural Membership Electric Cooperative

Matthew J. Plache, Esq.  
5425 Wisconsin Ave., N.W.  
Suite 600 – PMB 643  
Chevy Chase, MD 20815  
Counsel for Pinnacle Wireless

Warren Havens  
2509 Stuart Street  
Berkeley, CA 94705  
*Pro Se*

James A. Stenger, Esq.  
Chadbourn & Parke LLP  
1200 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
Counsel for Environmental LLC  
and Verde Systems LLC



---

Robert J. Keller, Counsel for Maritime  
Communications/Land Mobile, LLC