

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

In the Matter Of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

EB Docket No. 11-71

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio Services

File No. EB-09-IH-1751  
FRN: 0013587779

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 OPPOSITION TO MOTION TO STRIKE STATUS REPORTS**

Environmental LLC (“ENL”) and Verde Systems LLC (“VSL”) (together “ENL-VSL”), through their undersigned counsel, hereby oppose the motion to strike filed by the Enforcement Bureau (“Bureau”) on November 10 (“Motion”) with regard to the ENL-VSL and Havens Status Reports filed on November 9. Mr. Havens joins in this opposition (together “EVH”).

## **I. Alleged Lateness Is No Basis For The Motion**

Given that oppositions were not authorized, the alleged lateness of the ENL-VSL and Havens filings could not have prejudiced the Bureau, so the Motion is without basis and simply an excuse for an unauthorized filing. As such, EVH is entitled to respond to the further allegations in the Motion.

## **II. The Bureau Intends To Re-File An Identical, Baseless Motion**

The Motion denies ENL-VSL was informed the Bureau intends to file an identical motion for summary decision to that filed December 2, 2013 (“SD Motion”), supplemented March 26, 2014 (“SD Supplement”), and rejected by the Presiding Judge on June 17, 2014, as to abandonment. Yet the Motion restates that Maritime is entitled to keep the 16 disputed stations. Since 16 equals 16, an identical motion is a fair description.<sup>1</sup> EVH justifiably expressed alarm that the Bureau fails to acknowledge the facts and the applicable law.

The SD Supplement admitted that neither Maritime nor its alleged “third-party lessees” are operating any of the 16 stations: “Here, however, it is undisputed that neither Maritime nor its third-party lessees are operating the licensed locations specified in the aforementioned license.”<sup>2</sup> In fact, the Bureau is aware that the licensed facilities were not operated for at least *five to seven* years, according to Maritime’s belated admissions.<sup>3</sup> The Joint Stipulation shows the Bureau is aware of the extended period of discontinuance of numerous Maritime stations. Yet the Bureau has taken no enforcement action against Maritime with regard to prior inaccurate

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<sup>1</sup> EVH never accepted alleged facts either as to the minimum required construction, or the minimum required service-operation. This has not changed, but in addition, new credible, material facts further undermine the Bureau and Maritime, including the admissions in the Bureau Direct case that Evergreen and Duquesne no longer use any Maritime spectrum.

<sup>2</sup> SD Supplement at para. 5.

<sup>3</sup> EVH’s position and evidence, in past pleadings, supports much earlier dates, as will be shown on issues of licensee disqualification and license revocation.

representations to the Commission and the Bureau itself, and the Commission's rules against warehousing spectrum and intentionally manipulating and distorting the auction of allegedly encumbered spectrum. Instead, the Bureau reiterates that it will continue to ask the Presiding Judge to reward Maritime's unlawful conduct with retention of 16 stations that are by the evidence, long ago abandoned and terminated.<sup>4</sup> The Bureau assertion it will take the same position again flies in the face of the obvious errors in the prior SD Motion and Supplement.

**A. Fill-in Stations Do Not Excuse Abandonment Of The Main Station**

First, the Bureau claimed that the Presiding Judge should excuse the abandonment of the stations because the spectrum allegedly is being used by lessees.<sup>5</sup> Yet the Wireless Telecommunications Bureau (WTB) has ruled that operation of fill-in stations cannot excuse abandonment of the main, licensed station, and the Presiding Judge so ruled in rejecting the Bureau motion for summary decision on June 17, 2014: "However, the operational status of a

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<sup>4</sup> This position is contrary to the Bureau's position in its Opposition filed February 7, 2013 to the Choctaw motion for summary decision:

10...The Commission has a compelling interest in ensuring that scarce, valuable spectrum does not lie fallow when it could be used to provide service to the public. 26

FN26. See, e.g., Pacific Gas & Electric Co., 26 FCC Red 3465, 3467 (WTB 2011) ("The purpose of the construction and permanent discontinuance rules is [to] ensure use of licensed spectrum, and prevent licensees from warehousing spectrum .... "); Northstar Technology, LLC, 24 FCC Red 13476, 13479 (WTB 2009) ("We agree with the Applicants that a purpose of section 1.955(a)(3) is to ensure use of licensed spectrum and to prevent its warehousing by a licensee."); Northstar Technology, LLC, 19 FCC Red 3015, 3022 (WTB 2004) (recognizing that the Commission's performance requirements are intended "to ensure speedy delivery of service to the public, and to prevent stockpiling or warehousing of spectrum by licensees").

Bureau Opposition to Choctaw at para. 10. EVH is, but should not have to, take over that role of the Bureau and reserves all rights in this regard.

<sup>5</sup> SD Supplement at para. 9. An actual "lessee" is an entity with a valid and current lease, so the Bureau's characterization is contradicted by the FCC ULS records, and for PMRS use, also contradicted by the ULS records.

station is determined with respect to the licensed site and not the operation of fill-in sites that may exist within the licensed spectrum.”<sup>6</sup> The Presiding Judge cited the same cases that the Bureau itself cited in opposing the earlier motion for summary decision by Choctaw. The Bureau SD Motion and Supplement are *directly contrary to the Bureau’s own position* in its Opposition to Choctaw:

11. ... Maritime's discontinuance of operations, the record to date indicates that Maritime has failed to operate the majority of its site-based stations for many years. Specifically, Maritime chose to discontinue operations at seventy (70) of its eighty-nine (89) site-based stations as of December 31, 2007, more than five years ago....

\* \* \* \*

13. ... Maritime had fair notice that its failure to operate its site-based stations for several years constitutes permanent discontinuance....

14. As early as December 2004—a year before Maritime acquired the site-based licenses in question—the Wireless Bureau made clear that "AMTS facilities must be constructed within a specified time and must remain operational in order for the license to remain valid."....

\* \* \* \*

16. ... [I]n *Mobex Network Services, LLC*, 25 FCC Red 3390 (2010), the Commission ... concluded that evidence that a licensee had failed to maintain or operate equipment at a licensed location for multiple years "is sufficient to demonstrate permanent discontinuance of operation." The evidence in question was an affidavit from the property manager ... that the licensee had removed equipment from the licensed location nearly three years earlier. ... This decision ... provided Maritime with fair notice as of 2010 that if it did not have equipment at any of its licensed locations for multiple years or if any of its equipment did not receive electric power supply for multiple years, the Commission would consider those stations permanently discontinued.

\* \* \* \*

20. In light of this precedent, a reasonable person also would have been able to identify, with ascertainable certainty, that it could not meet its operating requirements by simply having equipment at the licensed locations that was capable of providing service but was not doing so. Merely building a facility that was capable of utilizing the licensed spectrum but then allowing it to sit dormant for years without using the spectrum would be at odds with the Commission's licensing structure as a whole and would make a mockery of the Commission's long-standing policy against warehousing spectrum.<sup>7</sup>

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<sup>6</sup> FCC 14M-18, para. 61 (emphasis added).

<sup>7</sup> Bureau Opposition to Choctaw at paras. 13, 14, 16 and 20 (emphasis added).

Indeed, the Bureau's stated intent to continue to support Maritime's retention of authorizations for 16 long abandoned and automatically terminated stations "would make a mockery of the Commission's long-standing policy against warehousing spectrum." The entire Direct Case of the Bureau is that Maritime should be allowed to warehouse spectrum indefinitely while it looks for buyers, and a redundant motion for summary decision by the Bureau to the same effect would be contrary to the WTB and Presiding Judge rulings, and the Bureau's own statements.

**B. Abandoned Authorizations Cannot Be Sold To Public Safety Entities**

Second, the SD Supplement attempted to enhance its self-contradicted claims regarding fill-in stations with the unsupported allegation they are being used for "public safety".<sup>8</sup> Any suggestion that another motion will be filed raising this argument again would defy the Presiding Judge who rejected this allegation in FCC 14M-18:

66. Finally, Maritime, the Bureau, and other parties argue that the Presiding Judge should take the public interest into account because much of the spectrum that Maritime has leased<sup>9</sup> to third parties is used "for critical infrastructure and public safety communications." For instance, Pinnacle argues that the public interest requires that the Presiding Judge's decision should protect its ongoing<sup>10</sup> operations which use Maritime spectrum or else "the State of New Jersey will incur financial, operational, and life safety risks." The moving parties should be aware that the Presiding Judge has been tasked 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." Public safety interests served by the use of the licensed spectrum are not relevant to deciding that issue. Further, the Commission has not delegated the authority to waive any Commission rules to the Presiding Judge. (Emphasis added)

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<sup>8</sup> Supplement at para. 9.

<sup>9</sup> ULS shows there are *no leases* and *no authority* of the alleged lessees to use the spectrum for the alleged public-safety PMRS uses.

<sup>10</sup> This alleged fact of ongoing use is in serious dispute, as ENL-VSL commented earlier, according to records from the State of New Jersey being released under the State's Open Public Records Act, contrary to Pinnacle's designation of such documents as highly confidential attorney-eyes-only.

Moreover, the full Commission rejected this notion in disposing of Maritime's *Second Thursday* petition with regard to the self-professed "critical" entities (apart from the railroad SCRRA). Ironically, *none* of the alleged lessees on whose behalf the SD Supplement made this allegation, Puget Sound, Duquesne, and Pinnacle, saw fit to petition the Commission for reconsideration. Thus, they abandoned such allegations, which raises another question as to the Bureau's refusal to change its position.

Further, the factual basis for the Bureau's contention is lacking given ULS does not show any current leases, only long-ago defunct ones, as Havens demonstrated in response to the Judge's request for more information on the SD Motion. Nor does ULS show any authority for these lessees to use the spectrum for PMRS for which they would need either a rule waiver or a granted application under rule §20.9(b). These facts alone dispose of this allegation. But in addition, ULS further shows that PSE holds the AMTS geographic area licenses that cover its utility service territory and NJTA and NJSEA have 800 and 220 MHz public safety licenses, and therefore neither of them needs Maritime spectrum for "public safety" as claimed by the Bureau in its March, 2014 Supplement. Moreover, the Bureau's Direct Case contains no testimony from Puget Sound or the New Jersey State entities, NJTA and NJSEA, to back up the claim in the SD Supplement that these entities need Maritime spectrum for "public safety".<sup>11</sup> Accordingly, EVH justifiably was concerned that the Bureau would re-plead that Maritime should be permitted to sell long-ago abandoned spectrum for "public safety", based on allegations contrary to the ULS records and controlling precedent.

### **C. Alleged Fill-in Operations Are Unauthorized**

Third, and perhaps most alarmingly, the SD Supplement failed to inform the Presiding Judge of the law relevant to the Bureau/Maritime claim that abandonment of the 16 stations

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<sup>11</sup> Supplement at para. 9.

should be excused because operation of some of them could cause interference to the alleged spectrum lessees. The SD Supplement recited that the Presiding Judge specifically asked for precedent to support the claim that a facility has not permanently discontinued if its operation is restricted by the operations of other facilities.<sup>12</sup> The SD Supplement represents that: “no precedent directly addresses the question...”<sup>13</sup> On the contrary, the Commission’s rules explicitly state that a fill-in station is one that operates within the actual service contour of an existing system, and the WTB has so ruled.<sup>14</sup> Thus, there is law directly on point, namely that the lessee alleged operations of fill-in stations are first unlawful, and second do not count toward operations of the licensed stations. The SD Supplement excuses abandonment of the 16 stations based on operation of alleged “fill-in” stations that, if they existed or exist, are unlawful, and do not count as operation of the licensed stations under the plain language of the relevant law, and the assertion the Bureau will move again to allow Maritime to retain the 16 stations defies the law and Presiding Judge’s rulings.<sup>15</sup>

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<sup>12</sup> Supplement at para. 10.

<sup>13</sup> Supplement at para. 10.

<sup>14</sup> 47 C.F.R. Section 80.475(b); *Robert M. Gurss, Letter Ruling*, 18 FCC Rcd 14439, DA 03-2275 (July 11, 2003).

<sup>15</sup> Maritime cannot cause itself interference since Maritime controls the operation of its licensed stations and the terms of its spectrum leases, and there are many well-known means to avoid interference such as not using the same channels at stations in proximity, directional antennas, and other techniques. Thus, the Presiding Judge in had no difficulty disposing of the nonsensical excuse for abandonment based on interference in FCC 14M-18 (emphasis added, footnotes deleted):

63. Maritime and the Bureau also ask that the Presiding Judge take into account facts showing that Maritime cannot operate several licensed facilities without interfering with the operations of other licensed facilities that are subject to spectrum lease agreements....

64. When a licensee enters into a spectrum lease agreement, it remains responsible for ensuring that the operation of licensed facilities complies with Commission rules. If Maritime enters a spectrum lease agreement that somehow prevents its site-based licensed facilities from operating as required under the Commission’s rules, it acts at its

The Bureau claims that filing redundant, baseless motions and stipulations does not burden Mr. Havens because he represented himself in responding to Bureau's December, 2013 summary decision motion. His time has value.<sup>16</sup> But even if the Bureau is allowed to disregard that value, the fact remains that companies he manages, ENL-VSL, would be forced to expend substantial resources to respond to a motion that would seek the identical result to a failed motion.

### **III. The Bureau Fails To Enforce The Much-Hyped Joint Stipulation**

Given the Bureau took the opportunity to file an unauthorized pleading, it is noteworthy that the Bureau chose to ignore the portion of the ENL-VSL Status Report that points out that Maritime has failed to implement the Joint Stipulation.

As pointed out in the ENL-VSL Status Report, the claim of Maritime that the ULS system is preventing Maritime from implementing the stipulation is baseless. Yet the Bureau has no comment on Maritime's failure to comply with the Joint Stipulation in a continuation of illegal nationwide spectrum warehousing, blocking ENL-VSL and other Havens-managed geographic AMTS licensees, including for actual service for public safety on highways.<sup>17</sup> The Bureau was silent at the Conference where this same point was addressed.

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peril. The movants' argument, that Maritime should be excused from complying with the Commission's rules because it has voluntarily entered into spectrum licensing agreements that disallows compliance with those rules, is unpersuasive and defies reason....

<sup>16</sup> FCC records show that he manages for-profit and nonprofit companies with nationwide spectrum in AMTS, M-LMS, MAS and Part 22 licenses, thousands in total. FCC staff should respect the public interest involved and not burden a licensee manager unnecessarily. See also footnote 17.

<sup>17</sup> For years, the Havens-managed AMTS licenses have presented their plans to the FCC and the general public to use their AMTS spectrum along with their other licenses including M-LMS for nationwide Intelligent Transportation Systems based on greatly increased highway safety on a *nonprofit* basis via Skybridge Spectrum Foundation. This is explained in their website at [www.terranautx.com](http://www.terranautx.com), <http://www.terranautx.com/ubiquitous-high-accuracy-location/>, <http://www.terranautx.com/ppnt-value-and-need/> (see article on public safety) and other pages.

The Bureau has stated it is attempting to allow Maritime to keep the 16 stations out of an exercise of “prosecutorial discretion.” This appears to suggest the Bureau made an agreement with Maritime that if Maritime agreed to cancel the authorizations listed in the Joint Stipulation, then the Bureau would allow Maritime to keep the 16 stations. It would appear the Bureau is allowing Maritime to delay cancellation of the authorizations listed in the Joint Stipulation until such time as the Bureau delivers on its side of the bargain. Yet any such agreement would be contrary to the facts and the law, and the Presiding Judge’s denial of the Bureau’s previous SD Motion and Supplement on abandonment.

**Conclusion**

Accordingly, for the foregoing reasons, the motion to strike should be denied.

Respectfully submitted,

          /s/            
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November 17, 2014

**CERTIFICATE OF SERVICE**

The undersigned, a secretary at Chadbourne & Parke, LLP, hereby certifies that she has on this 17<sup>th</sup> day of November, 2014, mailed by first class United States mail copies of the foregoing Opposition to:

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