

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

In re )  
)  
**MARITIME COMMUNICATIONS/LAND** ) EB Docket No. 11-71  
**MOBILE, LLC** ) 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 ) Application File Nos. 0004030479,  
Authorizations in the Wireless Radio Services ) 0004193028, 0004193328, 0004354053,  
) 0004309872, 0004310060, 0004314903,  
) 0004315013, 0004430505, 0004417199,  
Applicant with **ENCANA OIL AND GAS (USA),** ) 0004419431, 0004422320, 0004422329,  
**INC.; DUQUESNE LIGHT COMPANY; DCP** ) 0004507921, and 0004604962  
**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 CORPORATION, INC.** )  
)

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

**ENFORCEMENT BUREAU'S PROPOSED FINDINGS OF FACT  
FOR ISSUE (G)  
(PUBLIC VERSION)**

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## **I. INTRODUCTION**

### **A. Procedural Background**

1. On April 19, 2011, the Commission released an Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (HDO) against Maritime Communications/Land Mobile, LLC (Maritime), a participant in Auction No. 61, a licensee of various authorizations in the wireless radio services, and an applicant for modification of various authorizations in the wireless radio services. (*See* EB Notice Exh. 3.)

2. Issue (g) of the HDO placed upon the Enforcement Bureau (Bureau) the burden of proof to demonstrate: (a) whether 169 site-based Automated Maritime Telecommunications System (AMTS) facilities licensed to Maritime Communications/Land Mobile, LLC (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. (*See* EB Notice Exh. 3 at ¶ 62(g).)

3. The Bureau developed an extensive evidentiary record on Issue (g) through a 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). Considering that record, the Bureau moved for a summary decision that 16 of the AMTS site-based facilities licensed to Maritime had been timely constructed and that operations at these 16 site-based facilities had not been permanently discontinued. (EVH Exh. 333; *see also* EB Notice Exh. 4 at ¶¶ 43-46, 57.)

4. The Presiding Judge granted summary decision on the timely construction aspect of Issue (g) as to these 16 site-based facilities, but denied summary decision on the permanent discontinuance aspect. (*See* EB Notice Exh. 4 at ¶ 50; *see also, e.g., id.* at ¶¶ 61-62.) 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.” (*Id.* at ¶ 61; *see also id.* at ¶ 57 (recognizing that there remain substantial questions of material fact “regarding efforts to resume operations at 14 of the 16 facilities”).)

5. The Presiding Judge adopted a joint stipulation that the Bureau had reached with Maritime that operations at 153 of the 169 site-based facilities had been permanently discontinued. (*See* EB Exh. 97; *Order*, FCC 14M-31 (ALJ, rel. Oct. 9, 2014).) The Presiding Judge set for hearing the question of whether operations at the remaining 16 AMTS site-based facilities had been permanently discontinued. (*See Order*, FCC 14M-27 (ALJ, rel. Aug. 21, 2014).)

6. Pursuant to *Order*, FCC 14M-27, a hearing commenced on December 9, 2014 concerning the use and operation of the following 16 site-based AMTS facilities licensed to Maritime: 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 (Perrinville), WRV374-33 (One World Trade Center), WRV374-35 (Rehoboth), and WRV374-40 (Hamden) (*See* Hearing Transcript (Hearing Tr.) at 1235:24-1236:3.) The hearing concluded on December 11, 2014.

(*See id.* at 1716:7-8.)

**B. The Licensed Spectrum**

7. Sandra DePriest is the president and director of Maritime, which was formed following a series of conversations with her husband, Donald DePriest, Dan Smith from Maritel (a company with which her husband was associated), and Ronald Fancher, a business associate. (*See* EB Exh. 1D: Written Testimony of Sandra DePriest (DePriest Written Direct) at ¶¶ 1, 3.)

8. Upon its formation, Maritime acquired authorizations for a number of AMTS site-based facilities, including WHG750, WRV374 (locations 14, 15, 16, 18, 25, 33, 35 and 40), and KAE889 (locations 3, 4, 13, 20, 33, 34, and 48) through an Asset Purchase Agreement executed between Maritime and Mobex Network Services (MNS), effective December 31, 2005. (EB Exh. 1A: Written Direct Testimony of John Reardon (Reardon Written Direct) at ¶ 4; DePriest Written Direct at ¶ 4; *see also* EB Exh. 72.)

9. John Reardon, a former manager at Maritime, but who was, in December 2005, the president and chief executive officer of MNS' parent company, Mobex Communications, Inc. (Mobex), executed the Asset Purchase Agreement on behalf of MNS. (Reardon Written Direct at ¶ 4; *see also* EB Exh. 72 at 32.)

10. Sandra DePriest executed the Asset Purchase Agreement on behalf of Maritime. (DePriest Written Direct at ¶ 4; *see also* EB Exh. 72 at 32.)

11. In August 2011, Maritime filed for bankruptcy protection. (Hearing Tr. (DePriest) at 1282:23-24.) In January 2013, Maritime and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, Choctaw) sought Commission consent for Maritime to assign to Choctaw its AMTS licenses, including WHG750, WRV374 (locations 14, 15, 16, 18,

25, 33, 35 and 40), and KAE889 (locations 3, 4, 13, 20, 33, 34, and 48). (EB Exh. 1B: Written Direct Testimony of Patrick Trammel (Trammell Written Direct) at ¶ 2.) This transaction would implement Maritime's Plan of Reorganization which was approved by Judge David W. Houston, III, for the United States District Court for the Northern District of Mississippi on November 15, 2012 and by entry of an order on January 11, 2013 in the bankruptcy proceedings pending therein (Case No. 11-13463). (*Id.*) If the Commission were to consent to this assignment, Choctaw would assume Maritime's obligations concerning Maritime's AMTS licenses. (*Id.*)

**C. Maritime Actively Marketed The Licensed Spectrum**

12. Shortly after Maritime acquired the AMTS site-based facilities from MNS, including site-based facilities WHG750, WRV374 (locations 14, 15, 16, 18, 25, 33, 35 and 40), and KAE889 (locations 3, 4, 13, 20, 33, 34, and 48), the demand for the traditional use of AMTS spectrum was dwindling. (*See, e.g.*, Reardon Written Direct at ¶¶ 6, 15; EB Exh. 1C: Written Direct Testimony of Robert Timothy Smith (Smith Written Direct) at ¶ 6.) The record reflects that the traditional customer base for AMTS spectrum was no longer there. (*See, e.g.*, Smith Written Direct at ¶ 6.)

13. Maritime focused its efforts on re-purposing this AMTS spectrum. (Reardon Written Direct at ¶¶ 6-7, 9-10; Smith Written Direct at ¶ 6.) In 2006, Maritime pursued the possibility of using its AMTS spectrum for tracking cargo ship containers and for digital billboards. (Reardon Written Direct at ¶ 7.) Maritime discovered that it could not compete against companies like Sprint in this market. (*Id.*)

14. In 2007, Maritime hired a third-party consultant to investigate using the AMTS spectrum with the Automatic Identification System (AIS), which is a Coast Guard public safety

system. (Reardon Written Direct at ¶ 7.) Maritime also partnered with a company that owns AIS Class B patents, with the goal of launching Maritime's spectrum for the enhanced AIS maritime industry. (*Id.*) Maritime discovered that there was no market for this solution on the AMTS frequencies because the Maritime spectrum was not allocated internationally for AIS. (*Id.*)

15. In March 2008, Maritime decided to sell or lease the spectrum to companies that would use it for their own internal communication systems, including smart grid, Positive Train Control, SCADA/telemetry, two way radio, and similar forms of internal communications. (Reardon Written Direct at ¶ 9.) In September 2008, Maritime hired a third-party broker, Spectrum Bridge, and engaged the services of the National Rural Telecommunications Cooperative (NRTC) to market its spectrum. (*Id.* at ¶ 10.) The NRTC has a number of members who are rural electric cooperatives, such as Dixie Electric, Jackson County Electric, Denton County Electric, to whom they successfully marketed Maritime spectrum. (*Id.*)

16. Maritime also worked with Alan Polivka, a representative of the railroad industry and government's testbed in Pueblo, Colorado, on rail-related technologies such as Positive Train Control. (Reardon Written Direct at ¶ 10.) Mr. Polivka referred potential customers, such as Southern California Regional Rail Authority (Metrolink), who were interested in using Maritime spectrum for Positive Train Control. (*Id.*)

17. Through these marketing efforts, Maritime has been successful in making sure that its AMTS site-based spectrum was deployed in the public interest. (*See* Hearing Tr. (Reardon) at 1386:12-16.)

18. [REDACTED]

[REDACTED] (Hearing Tr. (Reardon) 1484:3-11.)

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*)

19. [REDACTED]

[REDACTED] (Hearing Tr.

(Trammell) at 1620:7-1621:10.) [REDACTED]

[REDACTED]

(Hearing Tr. (Trammell) at 1620:7-1621:10.)

## II. THE USE AND OPERATION OF THE LICENSED SPECTRUM

### A. The Operations At Site-Based Facility WHG750 Have Not Been Permanently Discontinued

20. At the time Maritime acquired site-based facility WHG750 in December 2005, it was being operated as part of the Watercom System, providing communications services to barges and other vessels on the Mississippi and Ohio Rivers and the Great Lakes. (Smith Written Direct at ¶ 3; DePriest Written Direct at ¶ 6.)

21. The demand in late 2005 in the towboat industry for a wireless terrestrial service was low. (Reardon Written Direct at ¶ 6; *see* Smith Written Direct at ¶ 6.) The towboat industry had turned to cellular providers such as Sprint and Verizon and to commercial satellite systems such as Globalstar. (Reardon Written Direct at ¶ 6.) In response to these market forces, Maritime discontinued providing service to end user customers via the Watercom System stations, including via station WHG750, as of December 31, 2007. (*See* Smith Written Direct at ¶ 3; Hearing Tr. (Smith) at 1543:1-13; 1545:25-1546:3; DePriest Written Direct at ¶ 6.) The

sites were still there and the stations were operational; they just were not providing service to end users. (Hearing Tr. (Smith) at 1546:3-4.)

22. As the result of its efforts to market its AMTS spectrum, Maritime successfully marketed [REDACTED] [REDACTED] to Duquesne Light Company (Duquesne). (Reardon Written Direct at ¶ 12; Smith Written Direct at ¶ 9; DePriest Written Direct at ¶ 7; EB Exh. 1E: Written Direct Testimony of Lee Pillar (Pillar Written Direct) at ¶ 4; *see also* EB Exh. 38.) Effective February 18, 2010, Duquesne entered into an Asset Purchase Agreement with Maritime for this spectrum. (Reardon Written Direct at ¶ 12; Smith Written Direct at ¶ 9; DePriest Written Direct at ¶ 7; Pillar Written Direct at ¶ 4; *see also* EB Exh. 38.)

23. On April 21, 2010, Duquesne and Maritime jointly filed with the Commission a complete Application for Assignment of Authorization WHG750 to Duquesne. (Pillar Written Direct at ¶ 4). Duquesne leased the spectrum from Maritime while waiting for the Commission to act on the assignment application. (*Id.*; *see also* EB Exh. 38.) That lease remains in effect. (*See* EB Exh. 40 (Duquesne Light Company's Answers to Enforcement Bureau's First Set of Interrogatories) at 2-3 (describing the parties' lease).)

24. Duquesne is an investor-owned electric utility serving approximately 584,000 residents, businesses, government institutions, and hospitals throughout Allegheny and Beaver Counties in southwestern Pennsylvania, including the city of Pittsburgh. (Pillar Written Direct at ¶ 2.) Duquesne's business mission is to deliver safe and reliable electric power service to its customers through an extensive network of 45,000 miles of overhead power lines, 250,000 distribution poles, and 103,000 transformers. (*Id.*) These operations rely upon a radio

communications system that allows voice communications between and amongst Duquesne's fixed and mobile storm recovery units and other utilities, municipalities, police and fire departments, and first responders; internal data communications; and supervisory control and data acquisition (SCADA). (*Id.*) Duquesne uses its radio spectrum to facilitate communications that promote public safety during storm and disaster recovery efforts, including communications between utility crews and between those crews and its storm recovery and communications centers and data communications and communications with local governments, first responders, and other utility crews involved in the recovery efforts. (*Id.*)

25. Pennsylvania House Bill 2009, commonly known as Act 129 of 2008, required all electric distribution companies having more than 10,000 customers to submit to the Pennsylvania Public Utility Commission (PAPUC) for approval a smart meter procurements and installation plan, including a full schedule for deployment and a statement of the total cost for implementation. (Pillar Written Direct at ¶ 3.)

26. Duquesne investigated smart meter spectrum options in the 900 MHz licensed and unlicensed bands, as well as Wi-Max and other alternatives. (Pillar Written Direct at ¶ 3.) No solution proved as resilient or as having as good a range and coverage over the unique terrain of southwestern Pennsylvania as spectrum in the 217 MHz and 219 MHz bands, in which WHG750 operated. (*Id.* at ¶¶ 3, 8.) The lower frequency of the Maritime spectrum provides the best VHF and UHF range for the radios and protection and control relays that Duquesne uses for its emergency communications. (*See* Hearing Tr. (Pillar) at 1660:1-1660:13; 1662:24-1663:18.) In addition, equipment was readily available, proven and affordable in the 220 MHz band. (Pillar Written Direct at ¶ 3.)

27. Duquesne constructed multiple facilities within the coverage area of call sign WHG750, which began operating as early as May 2010. (Pillar Written Direct at ¶ 5.) Specifically, Duquesne constructed and placed into operation the following towers on the following dates: Dravosburg Tower 5/13/2010; Hopewell Tower 6/22/2010; Mt. Washington Tower 5/25/2010; North Tower 5/14/2010; Plum Tower 5/10/2010; Wilmerding Tower 5/18/2010; Shippingport Tower 7/30/2010; Valley Tower 5/3/2010; Clinton Tower 5/28/2010; and Raccoon Tower 6/15/2010. (*Id.*; *see* EB Exh. 40 (Duquesne Light Company's Answers to Enforcement Bureau's First Set of Interrogatories) at 2-3 (providing the specific tower locations and frequencies that Duquesne leases from Maritime).) These towers are built out at locations listed on the WHG750 license. (Hearing Tr. (Pillar) at 1666:5-1667:18.)

28. As of September 2012, Duquesne was still operating the Dravosburg, Hopewell, North, Plum, Wilmerding, Shippingport, and Raccoon Towers in the 217-219 MHz band. (*See* Pillar Written Direct at ¶ 6). In response to this hearing proceeding, and the uncertainty it caused Duquesne's operations, Duquesne replaced its 217-219 MHz antennas at the Mt. Washington, Clinton, and Valley sites in February 2012 with 900 MHz antennas, which Duquesne operates pursuant to other operating authority. (*Id.*; *see* EB Exh. 40 (Duquesne Light Company's Answers to Enforcement Bureau's First Set of Interrogatories) at 6 (stating in August 2012 that "[n]o operations have ceased" at these locations, but "in light of this on-going proceeding" Duquesne switched to 900 MHz antennas.)

29. Due to the critical infrastructure needs and the requirements of the Pennsylvania Public Utility Commission (PAPUC), Duquesne decided that it could not risk operating on call sign WHG750 at any of its sites until the hearing proceeding is resolved and the risk of losing

access to the spectrum is removed. (Pillar Written Direct at ¶ 7; EB Exh. 44 (Duquesne Light Company’s Consolidated Answers to Enforcement Bureau’s Interrogatories and Second Set of Interrogatories) at 4 (stating that Duquesne “temporarily halted use of [WHG750] due to the regulatory uncertainty created by this proceeding”).) As a result, Duquesne temporarily turned off its towers operating within the 217-219 MHz coverage of call sign WHG750. (Pillar Written Direct at ¶ 7). Duquesne is leasing other spectrum from another company to fill in its coverage requirements within the coverage parameters of call sign WHG750. (*Id.*) All of the equipment necessary to operate call sign WHG750 remains in place and capable of operation. (*Id.*)

30. As soon as the regulatory uncertainty regarding call sign WHG750 is resolved, Duquesne intends to resume operations at WHG750. (*See* Pillar Written Direct at ¶ 8.)

31. The other 500 kilohertz of spectrum of WHG750 that is not leased to Duquesne remains capable of operating at the licensed location. (*See* Hearing Tr. (Reardon) at 1392:8-13.) John Reardon inspected the site in March 2014, saw the lights turned on and everything posted that needed to be posted. (*Id.* at 1392:8-13; 1394:24-1395:1; *see also* 1393:2-5 (stating that “there’s no reason why any of the towboats that currently still maintain the radio in the wheelhouses of the towboats that are in residen[ce] in Pittsburgh could not key-up and operate from that site on WHG750”).)

32. [REDACTED]  
[REDACTED] (Trammell Written Direct at ¶ 5.) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (*Id.*)

**B. The Operations At Site-Based Facilities WRV374 (Locations 35 and 40) Have Not Been Permanently Discontinued**

33. At the time Maritime acquired site-based facilities WRV374 (locations 35 and 40), MNS was operating PassPort systems offering land mobile radio service in the Chicago, New York/New Jersey, Philadelphia, and Baltimore/Washington, D.C. markets. (Reardon Written Direct at ¶ 15; *see also* Smith Written Direct at ¶ 5; DePriest Written Direct at ¶ 10.) Motorola constructed these Passport systems pursuant to a management agreement between MNS and Motorola. (Reardon Written Direct at ¶ 15.) Maritime considered expanding the already existing PassPort systems to include call signs WRV374-35 (Rehoboth) and WRV374-40 (Hamden). (*Id.*)

34. Because the demand for both traditional AMTS and the PassPort services had dwindled, Maritime actively marketed WRV374 (locations 35 and 40) for use with Positive Train Control through the use of multiple third-party consultants and brokers. (Reardon Written Direct at ¶ 15.) In particular, Maritime marketed WRV374-35 (Rehoboth) and WRV374-40 (Hamden) to AMTRAK, the MetroNorth Rail Road, and the Massachusetts Bay Transportation Authority (MBTA). (*See id.*; *see also* Hearing Tr. (Reardon) at 1384:9-17 (describing efforts Maritime made efforts to find lease customers and buyers for WRV374-35 (Rehoboth) and WRV374-40 (Hamden); Hearing Tr. (Reardon) at 1484:5-14 (describing Maritime's efforts to cultivate interest in these sites from the transportation industry by, for example, attending "on the transportation side every three months, the American Association of Railroad Positive Train Control Committee" meetings) and 1485:5-23 ([REDACTED]).)

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Hearing Tr.

(Reardon) at 1485:5-23.)

36. There is equipment in place that is transmitting signals at WRV374-35 (Rehoboth). (See Hearing Tr. (Reardon) at 1378:22-1379:5; 1379:21-1380:2, 1384:2-6, and 1394:10-12; Reardon Written Direct at ¶ 15; DePriest Written Direct at ¶ 10; EB Exh. 49 (Declaration of Cyber Comm, Inc.) (verifying that the equipment for WRV374 in Rehoboth, Massachusetts was transmitting as of August 2013); see also Exh. 48 at 1 (Declaration of John Reardon) (stating that Maritime entered into new site leases for the Rehoboth station in 2009).) The equipment in place at WRV374-35 (Rehoboth) is capable of providing service to subscribers as soon as Maritime is able to lease or assign these locations. (See Reardon Written Direct at ¶ 15; DePriest Written Direct at ¶ 10.)

37. 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. (See Hearing Tr. (Reardon) at 1379:5-20, 1384:2-6, and 1394:10-15; Reardon Written Direct at ¶ 15; DePriest Written Direct at ¶ 10; EB Exh. 50 (Declaration of Robert W. Meister) (verifying that WRV374 in Hamden, Connecticut was transmitting as of August 24, 2013); see also Exh. 48 at 1 (Declaration of John Reardon) (stating that Maritime entered into new site leases for the Hamden station).) The equipment in place at WRV374-40 (Hamden) is capable of providing service to subscribers as soon as Maritime is able to lease or assign these locations. (See Reardon Written Direct at ¶ 15; DePriest Written Direct at ¶ 10.)

38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See Trammell Written Direct at ¶ 3.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See *id.*)

**C. The Operations At Site-Based Facilities WRV374 (Locations 14, 15, 16, 18, 25, and 33) Have Not Been Permanently Discontinued**

39. 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. (See Smith Written Direct at ¶ 8.)

40. Pursuant to spectrum lease agreements between MNS and Pinnacle, and then Maritime and Pinnacle, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See Hearing Tr. (Reardon) at 1471: 4-15; Reardon Written Direct at ¶ 14; EB Exh. 1G: Testimony of Larry Allen (Allen Written Direct) at ¶ 2; EB Exh. Nos. 51-53; *see also* EB Exh. 58 (Pinnacle's Response to Enforcement Bureau's (sic) Second Set of Interrogatories to Pinnacle Pursuant to *Order*, FCC 14M-22) at 2.)

41. Pinnacle's networks serve critical public safety interests, and a loss of this spectrum could jeopardize the NJSEA's ability to perform medical, security, crowd control, and maintenance tasks at the Meadowlands Sports and Entertainment Complex and could endanger the NJTA's ability to coordinate road closures, snow removal, driver assistance, and other activities on the New Jersey Turnpike. (*See* Allen Written Direct at ¶¶ 4-7; *see also* Hearing Tr. (Reardon) at 1386:17-20 ("Pinnacle has filed paperwork to show that there are over 2000 radios using the system."); 1391: 4-6 (noting that by using Maritime's AMTS spectrum for critical communications for the NJSEA and NJTA, Pinnacle is "meeting the public interest goal of the FCC, which is to help the licensee, in this case Maritime Communications, to operate the spectrum".))

42. Although Pinnacle is not operating its networks for the NJTA and the NJSEA (and has not operated at any time) from the locations listed on the WRV374 license, the NJTA and NJSEA networks operate within the combined footprint of call sign WRV374, locations 14, 15, 16, 18, 25, and 33 using fill-in locations to provide communications services. (Allen Written Direct at ¶ 2; *see also* Hearing Tr. (Reardon) at 1499:11-25; Hearing Tr. (DePriest) at 1350:8-18.)

43. Pinnacle constructed its networks for the NJTA and NJSEA using fill-in locations within the combined footprint of WRV374, locations 14, 15, 16, 18, 25, and 33, because it provided better coverage, more efficient spectrum utilization and reuse, and a more robust service to users than if Pinnacle had operated from the licensed locations. (Hearing Tr. (Allen) at 1533:20-25; Allen Written Direct at ¶ 3; *see also* Hearing Tr. (Reardon) at 1390:17-1391:3 (stating that even though Pinnacle is not using a transmitter on the top of the building where the

site is located, Pinnacle is operating from that licensed location because they are operating frequency at that licensed location.) There would be gaps in the communications if Pinnacle used the licensed sites. (Hearing Tr. (Allen) at 1534:3-8.)

44. Despite the fact that Pinnacle is operating from fill-in stations, there is equipment in place at site-based facilities WRV374-14 (Selden) and WRV374-18 (Valhalla) which is transmitting and capable of providing service. (Hearing Tr. (Reardon) at 1394:16-23.) There is also equipment at the Allentown location (WRV374-16) but, at the request of Pinnacle, the utilities have been disconnected because it would interfere with the Pinnacle system. (*See* Hearing Tr. (Reardon) at 1395:11-13; *see also id.* at 1502:24-1503:3; Hearing Tr. (Allen) at 1534:14-1535:4; Allen Written Direct at ¶ 3.) Maritime performed studies to see the effect of the licensed sites on the fill-in sites which demonstrated that there was potential co-channel and adjacent channel interference issues, which would have an adverse effect on the operations of the Garden State Parkway, the NJ Turnpike and the Meadowlands. (*See* Hearing Tr. (Smith) at 1576:15-1577:9.)

45. There is no equipment at site-based facility WRV374-15 (Verona) because Pinnacle is operating equipment at a lower frequency. (Hearing Tr. (Reardon) 1395:6-10.) There is also no equipment at site-based facility WRV374, location 25, because the site is now a rock quarry. (*See* Hearing Tr. (Reardon) at 1396:12-1397:3; *see also id.* at 1478:9-13.) Maritime entered into a site lease agreement for a nearby site and the equipment that Maritime procured for that nearby site is capable of operating and providing service. (*See* Hearing Tr. (Reardon) at 1396:12-1397:3.)

46. Although Pinnacle has not taken any steps to resume operations at the locations

listed on the WRV374 license, and has no specific plan to do so, Choctaw [REDACTED]  
[REDACTED]  
[REDACTED] (See Trammell Written Direct  
at ¶ 8.) [REDACTED]  
[REDACTED] (see Reardon Written Direct  
at ¶ 14), [REDACTED]  
[REDACTED]  
[REDACTED]

(See Trammell Written Direct at ¶ 9.)

**D. The Operations At Site-Based Facilities KAE889 (Locations 4, 20, 30, 34, and 48) Have Not Been Permanently Discontinued**

47. Maritime successfully marketed site-based authorization KAE889 to Puget Sound Energy (PSE). (See Reardon Written Direct at ¶ 13; DePriest Written Direct at ¶ 9; see also EB Exh. 60.) Effective May 2010, Maritime leased KAE889-4 (Rainier Hill), KAE880-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain) to PSE. (Reardon Written Direct at ¶ 13; DePriest Written Direct at ¶ 9; see also EB Exh. 60.)

48. PSE constructed a private mobile radio (PMR) network system that operates within, or has signal contours that overlap with, KAE889-4 (Rainier Hill), KAE880-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain). (See EB Exh. 62 (Answers of Puget Sound Energy, Inc. to the Enforcement Bureau's First Set of Interrogatories) at 5-6; see also EB Exh. 65 (Answers of Puget Sound Energy, Inc. to the Enforcement Bureau's Interrogatories Pursuant to Order, FCC 14M-22) at 6;

EB Exh. 66 (Answers of Puget Sound Energy, Inc. to the Enforcement Bureau’s Second Set of Interrogatories Pursuant to *Order*, FCC 14M-22) at 5-6.) Using that system, together with AMTS spectrum that PSE leases from Mr. Havens’ companies (Environmental, LLC and Skybridge Spectrum Foundation), PSE provides service to “field crews and system dispatchers to coordinate activities essential to the construction and maintenance of PSE’s electric generating facilities, natural gas storage facilities, and electric and gas transmission and distribution systems.” (EB Exh. 66 (Answers of Puget Sound Energy, Inc. to the Enforcement Bureau’s Second Set of Interrogatories Pursuant to *Order*, FCC 14M-22) at 6.) PSE’s private radio system is “critical to the safe and efficient restoration of utility service following storms or other disasters when normal means of communications (*e.g.*, landline or cellular telephone service) are congested, are damaged, or are inoperable due to lack of commercial power.” (*Id.*)

49. As of August 2010, there was equipment installed at KAE889 (Locations 4, 20, 30, 34 and 48) that was operating. (*See* Hearing Tr. (Reardon) at 1397:4-15 (describing Maritime staff’s visit to the PSE sites in “the 2009 or 2010 timeframe” that “verified that all five of those sites were on the air, operating with equipment” and also that PSE is seeking to buy the equipment at those sites); *see also id.* at 1398:13-25 (describing a telephone call between John Reardon and Jerry Sykora, manager of the PSE radio system, and stating that sites 4, 20, 30, 34, and 48 “are on the air”); EB Exh. 62 (Answers of Puget Sound Energy, Inc. to the Enforcement Bureau’s First Set of Interrogatories) at 7, 8, 10; EB Exh. 65 (Answers of Puget Sound Energy, Inc. to the Enforcement Bureau’s Interrogatories Pursuant to *Order*, FCC 14M-22) at 3-4.)

**E. The Operations At Site-Based Facilities KAE889 (Locations 3 and 13) Have Been Permanently Discontinued**

50. 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. (*See* Reardon Written Direct at ¶ 11; EB Exh. 47 (Declaration of Evergreen School District Concerning Lease of Spectrum from Maritime) at ¶ 3; *see also* EB Exhs. 45 and 46; Hearing Tr. (Reardon) at 1401:21-23.)

51. 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. (*See* EB Exh. 47 at ¶¶ 2, 6; *see also* Hearing Tr. (Reardon) at 1401:23-25.)

52. As of September 7, 2014, ESD ceased all operations in the 220 MHz band covered by site-based facilities KAE889 (locations 3 and 13), and there is no indication that ESD has any intent to resume operations over Maritime's KAE889 spectrum. (*See* DePriest Written Direct at ¶ 9; *see also* Hearing Tr. (Reardon) at 1401:25-1402:2 (stating that "[a]s I understand it, Evergreen School District has decided to discontinue use of that spectrum, however, they have not sent a lease termination notice to Maritime"); Hearing Tr. (DePriest) at 1360:1-4.)

53. Equipment is not operating from either of these locations. (*See* Hearing Tr. (Reardon) at 1402:5-7; 1402:14-16.) Equipment was removed from one of these locations for nonpayment and is not capable of providing service. (*Id.* at 1402:11.)

### III. CONCLUSION

54. The Bureau respectfully requests that the Presiding Judge adopt the above proposed findings of fact showing that operations at WHG750, WRV374 (locations 14, 15, 16, 18, 25, 33, 35 and 40), and KAE889 (locations 4, 20, 33, 34, and 48) have not been permanently discontinued, and that operations at KAE889 (Locations 3 and 13) have been permanently discontinued.

Respectfully submitted,

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April 8, 2015

CERTIFICATE OF SERVICE

Tamika Parker, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 8th day of April, 2015, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S PROPOSED FINDINGS OF FACT FOR ISSUE (G) (PUBLIC VERSION)" to:

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