

**PUBLIC VERSION – REDACTED PURSUANT TO  
PROTECTIVE ORDER, FCC 11M-21 (July 20, 2011)**

**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 )  
Authorizations in the Wireless Radio Services )  
) Application File Nos. 0004030479,  
Applicant with **ENCANA OIL AND GAS (USA),** ) 0004144435, 0004193028,  
**INC.; DUQUESNE LIGHT COMPANY; DCP** ) 0004193328, 0004354053,  
**MIDSTREAM, LP; JACKSON COUNTY** ) 0004309872, 0004310060,  
**RURAL MEMBERSHIP ELECTRIC** ) 0004314903, 0004315013,  
**COOPERATIVE; PUGET SOUND ENERGY,** ) 0004430505, 0004417199,  
**INC.; ENBRIDGE ENERGY COMPANY, INC.;** ) 0004419431, 0004422320,  
**INTERSTATE POWER AND LIGHT** ) 0004422329, 0004507921,  
**COMPANY; WISCONSIN POWER AND LIGHT** ) 0004153701, 0004526264,  
**COMPANY; DIXIE ELECTRIC MEMBERSHIP** ) 0004636537 & 0004604962  
**CORPORATION, INC.; ATLAS PIPELINE –** )  
**MID CONTINENT, LLC; DENTON COUNTY** )  
**ELECTRIC COOPERATIVE, INC., DBA** )  
**COSERV ELECTRIC; AND SOUTHERN** )  
**CALIFORNIA REGIONAL RAIL AUTHORITY** )  
To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

**MARITIME’S PROPOSED FINDINGS OF FACT ON ISSUE G**

Maritime Communications/Land Mobile, LLC (“Maritime”), by its attorney, tenders herewith its proposed findings of fact on Issue G in the above-captioned matter.<sup>1</sup>

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<sup>1</sup> Maritime has made a good faith effort to be as sparing as possible in designating any portion of this document as confidential or highly confidential under the *Protective Order*, FCC 11M-21 (rel. July 20, 2011). Accordingly, only two brief portions of these proposed findings are being redacted. It is noted, however, that some of the underlying record materials cited are restricted.

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PROCEDURAL HISTORY

1. By the *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, FCC 11-64 (rel. Apr. 19, 2011), the Commission designated the captioned matter for evidentiary hearing of the following issues:

- (a) To determine whether Maritime failed to disclose all real parties in interest and other ownership information in its applications to participate in Auction No. 61, in willful and/or repeated violation of section 1.2112 of the Commission's rules, and whether Donald DePriest was such a real party in interest.
- (b) To determine whether Maritime failed to disclose all attribution information in its applications to participate in Auction No. 61, in willful and/or repeated violation of section 1.2110 of the Commission's rules.
- (c) To determine whether Maritime falsely certified to its eligibility as a designated entity, in willful and/or repeated violation of section 1.2105 of the Commission's rules.
- (d) To determine whether Maritime failed to amend its Auction No. 61 long-form application, in willful and/or repeated violation of section 1.65 of the Commission's rules.
- (e) To determine whether Maritime engaged in misrepresentation and/or lack of candor in its applications relating to Auction No. 61 and/or in its responses to official Commission inquiries for information relating to its participation in Auction No. 61.
- (f) To determine whether Maritime made incorrect written statements of fact to, and/or omitted material information from, the Commission, in connection with matters arising from its participation in Auction No. 61, and/or in its responses to official Commission inquiries for information relating to its participation in Auction No. 61, in willful and/or repeated violation of section 1.17 of the Commission's rules.
- (g) 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.
- (h) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Maritime is qualified to be and remain a Commission licensee.
- (i) To determine, in light of the foregoing issues, whether the captioned authorizations for which Maritime is the licensee should be revoked.
- (j) To determine, in light of the foregoing issues, whether the captioned applications filed by or on behalf of Maritime Communications/Land Mobile, LLC, should be granted.

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*Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520 (2011) (hereinafter cited as “*Hearing Designation Order*” or “*HDO*”).

2. On August 1, 2011, Maritime filed a petition for Chapter 11 protection with the United States Bankruptcy Court for the Northern District of Mississippi, Case No. 11-13463. Maritime concurrently filed with the Presiding Judge a *Motion to Defer Procedural Dates*, advising that it would be seeking Commission consent to assign its authorizations to a court-approved buyer pursuant to the “Second Thursday” doctrine.<sup>2</sup> On January 11, 2013, the bankruptcy court approved a plan of reorganization providing for, inter alia, the assignment of Maritime’s authorizations to Choctaw subject to prior FCC approval. *Order Confirming Plan of Reorganization*, Case No. 11-13463-DWH (Bankr. N.D. Miss. Jan. 11, 2013). On January 23, 2013, Choctaw and Maritime filed an application for consent to the proposed license assignment, requesting relief pursuant to the Second Thursday doctrine. FCC File No. 0005552500. *See Public Notice*, DA 13-569 (rel. March 28, 2013).<sup>3</sup> On March 21, 2013, the Presiding Judge ordered that “the consideration of all issues [in the above-captioned hearing proceeding], with the exception of the issue that has become known as Issue (g), IS STAYED until that [Choctaw] application is decided upon.”

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<sup>2</sup> The Commission will typically not consent to the assignment of a Title III authorization if there are unresolved issues as to the licensee’s basic qualifications. *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964). Under the “Second Thursday” doctrine, however, a proposed transaction may be approved where it will allow for relief to innocent creditors and the alleged wrongdoers “will derive no benefit, either directly or indirectly, from the sale or will derive only minor benefit which is outweighed by the equities in favor of innocent creditors.” *LaRose v. FCC*, 494 F.2d 1145, 1148 (D.C. Cir 1974), quoting *Shell Broadcasting, Inc.*, 38 F.C.C. 2d 929, 931 (1973); see also *Second Thursday Corp.*, 22 FCC 2d 515, on recon., 25 FCC 2d 112 (1970).

<sup>3</sup> On September 11, 2014, the Commission released a *Memorandum Opinion and Order*, FCC 14M-133 (rel. Sept. 11, 2014), denying the request for Second Thursday relief. Both Maritime and Choctaw timely sought reconsideration which is currently under consideration by the Commission. On October 1, 2014, the Presiding Judge, rescinded his prior stay of the non-Issue G aspects of this proceeding. *Order*, FCC 14M-20 (rel. Oct. 1, 2014). The discovery and trial of the basic qualifications phase of this proceeding has been deferred, however, until conclusion of the Issue G phase.

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3. Issue G inquires whether any of Maritime’s incumbent (site-based) AMTS authorizations have automatically terminated pursuant to 47 C.F.R. §§ 1.955(a) and 80.49(a). There are two distinct aspects of Issue G: (a) whether Maritime’s incumbent AMTS facilities were timely constructed, or (b) whether operation of Maritime’s incumbent AMTS stations was permanently discontinued. *Hearing Designation Order*, 26 FCC Rcd at 6546-6547 ¶ 61. Issue G is applicable only to the incumbent (site-based) AMTS authorizations.

4. On September 11, 2014, Maritime and the Enforcement Bureau stipulated that operation at the vast majority of the incumbent, site-based authorizations—all but sixteen—had been permanently discontinued. On October 9, 2014, the Presiding Judge accepted this stipulation, thereby declaring Issue G moot as to all but the remaining sixteen incumbent facilities. Order, FCC 14M-31 (rel. Oct. 9, 2014). The stipulated licenses are “deemed to have automatically terminated” and therefore “have no further bearing on the issues that remain to be decided in this proceeding.” Order, FCC 14M-42 (rel. Dec. 8, 2014).

5. The remaining sixteen incumbent facilities are: WHG750 (Frequency Block B), 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 (New York City), WRV374-35 (Rehobeth<sup>4</sup>), and WRV374-40 (Hamden). The Presiding Judge granted summary decision on the initial construction issue, holding that these facilities were initially constructed in timely fashion, thereby resolving the first aspect of Issue G as to these stations. *Memorandum Opinion and*

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<sup>4</sup> The license and related FCC records list this location as “Rehobeth” even though the town name is spelled “Rehoboth”. For consistency with reference throughout the record, “Rehobeth” is used in these findings.

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*Order*, FCC 14M-18 at ¶¶ 44-50 & 73 (rel. June 17, 2014). Accordingly, the sole question remaining under Issue G is whether operation of these facilities has been permanently discontinued.

6. An evidentiary hearing on this question was held over three days from December 9 through 11, 2014. At the end of the trial the Presiding Judge announced that, upon redaction and availability of the transcript, he would receive proposed findings of fact only on Issue G while the events of the trial were still fresh in the attorneys' minds. The Presiding Judge called for "proposed findings and reply findings of fact, not of law. The arguments on the law will wait until after [litigation of the basic qualifications issues]." Tr. 1702-1703. On March 9, 2015, the Presiding Judge set April 8, 2015, as the due date for submission of proposed findings of fact on Issue G Order, FCC 15M-9 (rel. March 9, 2015).

7. In compliance with the Presiding Judge's directive, this document is limited to presenting proposed findings of fact on Issue G. Maritime reserves the right, of course, to present proposed conclusions of law and related legal argument at the proper time.

PROPOSED FINDINGS OF FACT

A. Introduction

8. Sandra DePriest is the owner, president, and sole director of Maritime. (SMDP at 1; Tr. 1269) She is an Episcopalian Priest, and currently employed as pastor of a parish. (Tr. 1269, 1332). She formed Maritime as an investment opportunity with the goal of generating sufficient revenue to fund her charitable interests. (SMDP at 3) She has been unable to devote full time to the venture, however, primarily because of extensive litigation and financial difficulties that led the company to go into bankruptcy on August 1, 2011. (Tr. 1333) She relied on John Reardon and Tim Smith for the management and technical aspects of the business,

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respectively. (Tr. 1333-1334). She received reports from them monthly as well as weekly emails from Mr. Reardon. (Tr. 1334)

9. Maritime acquired the site-based authorizations from Mobex Network Services, LLC (“Mobex”) in a transaction approved by the FCC and closed on December 31, 2005. (EB Ex. 1-D ¶4) The sixteen incumbent facilities remaining subject to Issue G may be divided into three general groups, based on their use at the time Maritime acquired them from Mobex and the geographic regions in which they are located.

10. At the time Maritime acquired these facilities from Mobex in 2005, it was being operated as part of the “Watercom” system which covered the Mississippi and Ohio Rivers and parts of the Great Lakes, serving barges, tug boats, and other vessels using a proprietary communications format. (EB Ex. 1-C ¶3)

11. Demand for such use of AMTS spectrum declined sharply in the mid-2000’s as marine users shifted to cellular services, e.g., Sprint and Verizon, and satellite systems, e.g., Globestar. (EB Tr. 1509 & Ex. 1-A ¶5) Maritime ceased providing service to end user customers on the Watercom system in December 2007. (EB Ex. 1-C ¶3)

B. Call Sign WHG750

12. On February 18, 2010, Maritime entered into an Asset Purchase Agreement to assign 500 kHz of Block B spectrum from the WHG750 authorization to Duquesne Light Company (“DLC”), and DLC leased this spectrum from Maritime pending Commission approval of the assignment. (EB Exs. 1-A ¶12 & 1-E ¶4) WHG750 is located in Beaver County and its contours cover portions of Beaver and Allegheny Counties. (Tr. 1669-70)

13. Lee Pillar, a Senior Communications Engineer with DLC, testified that DLC is an electric utility serving 584,000 residents, businesses, government institutions, and hospitals

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throughout Allegheny and Beaver Counties in Pennsylvania. DLC's system is a network of 45,000 overhead power lines, 250,000 distribution poles, and 103,000 transformers. DLC is dependent upon mobile radio communications in the day-to-day operation and maintenance of this system, as well as communications with its field personnel and other utilities, municipalities, police and fire departments, first responders, etc., during storm relief operations and other emergencies. (EB Ex. 1-E ¶4) The terrain of DLC's service area has a lot of hills, valleys, and river beds, making the AMTS spectrum particularly useful in providing reliable coverage. (Tr. 1660)

14. DLC constructed multiple facilities using the Block B spectrum leased from Maritime and began operating them in May 2010. (EB Ex. 1-E ¶5) As of September 2012, DLC was operating from seven locations within the coverage area footprint of Station WHG750. (EB Ex. 1-E ¶6) In light of Maritime's potential loss of WHG750, however, DLC recently decided to make temporary alternative arrangements for its spectrum needs. DLC temporarily suspended operations on the AMTS spectrum until the litigation and regulatory proceedings involving WHG750 are resolved. In the interim DLC is leasing alternative spectrum in the adjacent 217-219 MHz range. (EB Ex. 1-E ¶7) DLC still intends to resume operations on the AMTS spectrum upon resolution of legal and regulatory issues. (EB Ex. 1-E ¶8)

15. Maritime maintains operational facilities at the licensed location for Station WHG750. John Reardon, former manager of Maritime and currently the Managing Director of Choctaw personally visited the site and verified that the equipment remains installed and operating. (Tr. 1392 & 1394)

C. Call Sign KAE889

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16. When Maritime acquired Station KAE889 from Mobex in 2005, the facilities were being operated a part of a West Coast regional system providing land mobile radio service using the MPT1327 format. (EB Ex. 1-C ¶4) Maritime ceased providing service to end users on this system as of December 2007. (MCLM Ex. 1 ¶56)

17. Effective May 2010, Maritime entered into an asset purchase agreement providing for the assignment of Locations 4, 20, 30, 34 and 48 of Station KAE889 to Puget Sound Energy (“PSE”) PSE leased this spectrum from Maritime pending Commission approval of the assignment. (EB Ex. 1-A ¶13) PSE constructed and is operating facilities within the coverage footprint of these locations. (Tr. 1377-1379)

18. Maritime still maintains operational equipment at the licensed locations. Tim Smith, a former Maritime engineer, personally visited the sites with PSE personnel and verified that . (Tr. 1397).

19. In the 2008 timeframe, Maritime entered into an agreement with Evergreen School District (“ESD”) for the lease of spectrum in connection with Locations 3 and 13 of Station KAE889. (EB Ex. 1-A ¶11). Evergreen operates facilities utilizing AMTS spectrum within the service area contours of Locations 3 and 13. (Tr. 1401) The spectrum lease is prepaid and currently in effect through July 14, 2019. (EB Ex. 1-A ¶11)

20. Maritime does not currently have operating equipment at Locations 3 and 13. The equipment remains in place at one of the locations and has apparently been disconnected and possibly removed from the other location for nonpayment of site rental. (Tr. 1402) This information was verified by Mr. Dane Ballew, who is with the site manager Day Wireless. Mr. Reardon understands that upon payment the site leases can be reactivated for either Maritime or Choctaw. (Tr. 1402-1403)

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D. Call Sign WRV374

21. When Maritime acquired WRV374 from Mobex in 2005, Motorola was constructing and operating the PassPort system, utilizing a proprietary Trident Micro Systems format. Motorola had established PassPort facilities in Chicago, New York, New Jersey, Philadelphia, Baltimore, and Washington DC. Maritime planned to convert other WRV374 locations to PassPort, but the demand for land mobile service did not materialize and the project was abandoned by late 2007. (EB Exs. 1-A ¶14 & 1-C ¶5)

22. In the meantime, Locations 14, 15, 18, 25 and 33 of Station WRV374 were subject to series of spectrum lease agreements with Pinnacle Wireless USA (“Pinnacle”). The spectrum leases initially were with Mobex, but later were assumed and continued by Maritime. (EB Ex. 1-A ¶14) Pinnacle has constructed and operates extensive facilities using Maritime’s AMTS spectrum within the composite coverage footprint of these locations. (EB Ex. 1-G ¶1) This includes an 18 site trunked radio network for the New Jersey Turnpike Authority and a single site trunked system serving the New Jersey Sports and Exposition Center at the Meadowlands. (EB Ex. 1-G ¶2) Pinnacle constructed its facilities at lower sites rather than at the licensed Maritime locations because it provided better coverage and allowed more efficient use of spectrum. (EB Ex. 1-G ¶3)

23. If Maritime were to operate from its licensed site locations, such as Location 16, operations would result in interference to Pinnacle’s operations. (Tr. 1395; EB Ex. 1-G ¶3)

24. Equipment remains installed and operational at Locations 14 and 18 as verified by Tim Smith. (Tr. 1394)

25. Equipment is no longer installed at Location 15 (Verona). It was temporarily removed so that Pinnacle could deploy facilities at lower sites. (Tr. 1395)

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26. The tower at Location 25 (Perrinville) no longer exists. The location was converted into a stone quarry. Maritime negotiated a lease for an alternative location sometime around 2010, with a company called Diamond Communications. Due to financial problems it has not been constructed. (Tr. 1396-1397) Operations by Maritime at this site would in any event be restricted by the need to protect Pinnacle from interference. (EB Ex. 1-G ¶3)

27. Mr. Reardon has verified with both Tim Smith and site manager, Crown Castle, that operational equipment remains installed at Location 16 (Allentown). The equipment is not operating because such operations would cause interference to Pinnacle. (Tr. 1395)

28. Engineers from Cyber Comm verified that equipment is installed and operating at Location 35 (Rehobeth). (Tr. 1378-1379 & 1394).

29. Bob Meister, a radio frequency engineer and consultant, visited Location 40 (Hamden) and confirmed that Maritime facilities were installed and operating at the site. (Tr. 1379 & 1394)

30. Regarding location 33, Maritime had a lease at Trump Tower (not the World Trade Center which no longer exists) for a site operated by Tom Crowley with North American Mobile Systems. Equipment has been disconnected for nonpayment of rent. Operations by Maritime at this site would in any event be restricted by the need to protect Pinnacle from interference. (EB Ex. 1-G ¶3)

E. Efforts to Repurpose Spectrum

31. The record shows that none of the sixteen incumbent sites in question has been permanently abandoned by Maritime. The cessation of any services was the unforeseen result of migration of demand for traditional AMTS services to other services. (E.g. Tr. 1509 & EB Ex. 1-A ¶5) The loss of any transmitter sites or other facilities, moreover, was the result of dire

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financial problems encountered by Maritime. Even when there was no longer revenue, Maritime nonetheless maintained equipment at these facilities that was capable of operation for as long as it was able to pay site rental, utilities and related expenses,” (EB Ex. 1-D ¶6), It was not then, is not now, and has never been Maritime’s intention to permanently cease operation. As Sandra DePriest testified: “Maritime at all times intended to resume commercial operation of these stations .... (EB Ex. 1-D ¶6). She clearly stated: “I do not intend to allow these stations to become permanently inoperable.” (Tr. 1346)

32. Confronted with the lack of demand for traditional AMTS services, Maritime did not simply sit on its hands and do nothing. To the contrary, it undertook extensive efforts, expending considerable time, money, and other resources, in an effort to find new avenues for putting the spectrum back into public service. (EB Ex. 1-A ¶¶ 7-14)

33. During the 2006 timeframe, Maritime conducted extensive investigations into the possible use of the AMTS licenses to support container tracking at ports and other transportation terminals. Maritime engaged the services of a consultant, Tarry Holmes, specifically to pursue this avenue. Maritime also engaged the services of another consultant, Lamar Bishop, to pursue the possible use of AMTS facilities to support the terrestrial facilities of satellite radio operations such as XM. Maritime also explored the possibility with Mr. Bishop of using Maritime’s spectrum for digital billboards. After considerable study, it was determined that Maritime would not be competitive with similar offerings by companies like Sprint. (EB Ex. 1-A ¶7)

34. In 2007, Maritime hired Marc Bracken to look at the AISB component of automated information systems, which is a Coast Guard public safety type system. Maritime partnered with a company near Seattle, Shine Micro, which owns AISB patents, hoping to combine its AMTS spectrum with Shine’s technology for the enhanced AIS maritime industry.

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But the plan was thwarted primarily because AMTS was not allocated internationally for AIS.  
(EB Ex. 1-A ¶7)

35. In March 2006, Maritime acquired a majority interest in a technology company called Critical RF, Inc. (Critical RF) which developed technology known as radio over internet protocol. For three years Mr. Reardon spent 90 percent of his time working with Critical RF in an effort to deploy the technology in concert with Maritime's AMTS licenses to the maximum extent possible. While Critical RF was able to attract customers, this did not turn out to be an area of significant growth in demand for use of Maritime's AMTS spectrum. (EB Ex. 1-A ¶8)

36. After these and other efforts, by March 2008, Maritime determined that the best course was to pursue companies that would use the spectrum for their own internal communication systems, including smart grid, positive train control, SCADA/telemetry, two way radio, and similar forms of internal communications. In March 2009, Mrs. DePriest directed Mr. Reardon to devote 90 percent of his time this effort. By August 2010, this was Mr. Reardon's sole focus. (EB Ex. 1-A ¶9) These efforts led to the successful negotiation of several spectrum lease and/or asset purchase agreements, including those already discussed in the above discussion of the sixteen incumbent stations. (EB Ex. 1-A ¶¶11-14)

F. Future Plans

37. Under the reorganization plan confirmed by the bankruptcy court, all of Maritime's AMTS authorizations, including the incumbent licenses, will be assigned to Choctaw Holdings, LLC, subject to FCC approval. See ¶2, above. Patrick Trammel, the Chairman and Chief Executive Officer of Choctaw and its parent company, Choctaw Telecommunications, LLC, testified regarding the plans of Choctaw for future operation of the incumbent AMTS facilities. (EB Ex. 1B)

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38. If the assignment is approved, Choctaw plans to resume negotiations that Maritime previously had with AMTRAK and the Massachusetts Bay Transportation Authority, regarding the use of Locations 35 and 40 of WRV374 incumbent facilities for communications services. (EB Ex. 1B ¶3)

39. Choctaw also plans to consummate the proposed assignment of authority for Locations 4, 20, 30, 34, and 48 of KAE889 to PSE. These stations are currently under lease to PSE. If the PSE is not approved, however, Choctaw stand ready to resume commercial operation of these facilities. (EB Ex. 1B ¶4)

40. Similarly, Choctaw plans to pursue and complete the pending transaction with DLC regarding Station WHG750. If that transaction is not approved, however, Choctaw is prepared to resume commercial operation of the subject facilities. Choctaw also plans offer the remaining 500 kHz of spectrum to DLE and/or [REDACTED]

41. With respect to the remaining locations of WRV374, Choctaw will assume the licenses subject to the Pinnacle spectrum lease. While the lease is in effect, Choctaw is reluctant to resume full operation at these sites lest it cause interference to Pinnacle's operations. Nevertheless, if it is determined that resumed or continued operation of these facilities is necessary during the pendency of the Pinnacle lease, Choctaw will coordinate with Pinnacle a means of resuming operations without such interference. (EB Ex. 1B ¶¶6-8)

42. Choctaw has made initial investigations and, if the Commission approves the licenses assignments, will take steps to obtain approval for new transmitter sites for Locations 25 and 33 of WRV374. (EB Ex. 1B ¶¶7&9)

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43. Choctaw will also explore other potential uses of the spectrum, and it already pursuing promising options in this regard. For example, [REDACTED]

Respectfully submitted,  
MARITIME COMMUNICATIONS/  
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Its Attorney

Dated: April 8, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of April, 2015, I caused copies of the foregoing document to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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