

JUN 13 2011

In re ) ) <b>MARITIME COMMUNICATIONS/LAND</b> ) <b>MOBILE, LLC</b> ) ) 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 ) ) Applicant with <b>ENCANA OIL AND GAS (USA),</b> ) <b>INC.; DUQUESNE LIGHT COMPANY; DCP</b> ) <b>MIDSTREAM, LP; JACKSON COUNTY</b> ) <b>RURAL MEMBERSHIP ELECTRIC</b> ) <b>COOPERATIVE; PUGET SOUND ENERGY,</b> ) <b>INC.; ENBRIDGE ENERGY COMPANY,</b> ) <b>INC.; INTERSTATE POWER AND LIGHT</b> ) <b>COMPANY; WISCONSIN POWER AND</b> ) <b>LIGHT COMPANY; DIXIE ELECTRIC</b> ) <b>MEMBERSHIP CORPORATION, INC.;</b> ) <b>ATLAS PIPELINE – MID CONTINENT, LLC;</b> ) <b>DENTON COUNTY ELECTRIC</b> ) <b>COOPERATIVE, INC. , DBA COSERV</b> ) <b>ELECTRIC; AND SOUTHERN CALIFORNIA</b> ) <b>REGIONAL RAIL AUTHORITY</b> )	Federal Communications Commission Office of the Secretary  EB Docket No. 11-71 File No. EB-09-IH-1751 FRN: 0013587779   Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
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To: Marlene H. Dortch, Secretary  
 Attention: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S**  
**OPPOSITION TO MOTION REGARDING TIMING AND PROCEDURE**

1. On June 10, 2011, Skybridge Spectrum Foundation, Environmental LLC, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and V2G LLC (collectively, "SkyTel") filed with the Presiding Administrative Law Judge ("Presiding Judge") a pleading entitled Motion Regarding Timing and

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Procedure (“Motion”). Pursuant to section 1.294 of the Commission’s rules, 47 C.F.R. § 1.294, the Chief, Enforcement Bureau (“Bureau”), by her attorneys, hereby opposes the Motion.

2. By way of background, the Commission commenced the above-captioned hearing proceeding with its release of *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, FCC-11-64, rel. April 19, 2011 (“HDO”). The HDO requires the Presiding Judge to determine ultimately whether Maritime is qualified to be and remain a Commission licensee and consequently whether its pending applications should be denied and its licenses should be revoked. On May 3, 2011, the Presiding Judge released an Order scheduling a pre-hearing conference in the above-captioned proceeding for June 15, 2011.<sup>1</sup>

3. Although SkyTel’s Motion is not a model of clarity, SkyTel appears to be requesting that the Presiding Judge postpone the June 15, 2011 pre-hearing conference for two weeks and that the Presiding Judge reset “the dates for any past and future filings and action by SkyTel by allowing SkyTel up to the same date noted above for all such filings and actions.” SkyTel also requests that, if the Presiding Judge denies SkyTel’s request to change the date of the pre-hearing conference, SkyTel should be permitted to appear without counsel at the pre-hearing conference and that it be permitted to participate telephonically.<sup>2</sup>

4. In support of its Motion, SkyTel appears to rely on the fact that the Nossaman law firm that originally filed a Notice of Appearance on its behalf cannot continue to represent SkyTel because of an apparent conflict and that SkyTel has not yet retained new counsel to represent it in this matter. Notably, however, the Nossaman firm has not yet withdrawn as counsel for SkyTel. Instead, it has only filed a notice that it intends to do so at some later date.

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<sup>1</sup> *Maritime Communications/Land Mobile, LLC*, Order, FCC 11M-11 (ALJ, rel. May 13, 2011).

<sup>2</sup> The Bureau does not oppose SkyTel’s request to appear *pro se* at the pre-hearing conference or to participate in the conference telephonically.

Thus, SkyTel is still represented by counsel. Nevertheless, this is the same argument that SkyTel made to the Presiding Judge in an *ex parte* email communication in late May 2011 and which the Presiding Judge found insufficient as a basis for extending the conference to a later date. SkyTel offers no reason for the Presiding Judge to conclude any differently now.<sup>3</sup>

5. SkyTel also appears to be relying on an argument that the pre-hearing conference, specifically, and the Maritime hearing, generally, should not proceed until *first*, the completion of a series of hearings pursuant to Section 309(d) of the Communications Act of 1934 (“the Act”), to which SkyTel believes (wrongfully) it is entitled; and *second*, SkyTel receives information it has sought pursuant to a pending Freedom of Information Act (“FOIA”) request. Neither of these circumstances warrants delaying the pre-hearing conference or the Maritime hearing.

6. SkyTel appears to be suggesting that, pursuant to Section 309(d) of the Act it is entitled to a hearing separate and apart from the instant one in connection with its petition to deny Maritime’s Auction No. 61 application, one of several petitions to deny that SkyTel has filed against Maritime. However, there is nothing in Section 309(d) – and SkyTel points to nothing – that requires the Commission to hold separate hearings on each of SkyTel’s petitions to deny. Rather, Section 309(d) authorizes the Commission to designate an application (or in this case, multiple applications) for hearing when “a substantial and material question of fact is presented.” As plainly set forth in the HDO, the Commission commenced a license revocation proceeding against Maritime because there are substantial and material questions of fact as to whether Maritime is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied. Several of the designated issues in

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<sup>3</sup> Neither Section 1.21(d) nor Section 1.27 of the Commission’s Rules, as cited by SkyTel, suggests that SkyTel is required to be represented by counsel. Section 1.21(d) allows a duly authorized corporate officer or employee to act for the corporation, and Section 1.27 allows any individual compelled to appear in person in any Commission

this proceeding are directed to Maritime's Auction No. 61 application. Accordingly, the HDO already provides for the relief that SkyTel is seeking in its Motion – a hearing which will address Maritime's Auction No. 61 application. Thus, SkyTel has offered no justification for delaying either the pre-hearing conference or the Maritime hearing.

7. SkyTel's suggestion that the Presiding Judge delay both the pre-hearing conference and the Maritime hearing until SkyTel's FOIA request is granted is also baseless. In fact, SkyTel offers no explanation for why its pending FOIA request should affect in any way its ability to participate in the pre-hearing conference. In addition, SkyTel appears to ignore the fact that the Presiding Judge does not have jurisdiction over the disposition of FOIA requests and that whether information it has requested therein can be released is governed by an entirely different process over which the Presiding Judge has no control. SkyTel also appears to ignore the fact that, as a party to the Maritime hearing, it has the right to avail itself of the discovery tools set forth in the Commission's Rules to seek the information it believes is necessary for it to participate fully in the hearing. Thus, the mere fact that SkyTel has a pending FOIA request does not justify postponing either the pre-hearing conference or the Maritime hearing.

8. Lastly, SkyTel's request that the Presiding Judge reset "the dates for any past and future filings and action by SkyTel by allowing SkyTel up to the same date noted above for all such filings and actions" should also be denied. Not only does SkyTel fail to specify the precise relief it is seeking as it neither identifies the specific filings for which SkyTel is seeking an apparent extension or the requested timing of such an extension, but SkyTel suggests no reason it needs any such extension. Indeed, SkyTel fails to identify any deadlines of "past filings and actions" it was unable to meet or any "future filings and actions" it will not be able to meet.

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proceeding to be represented by counsel. SkyTel is not being compelled to appear in person at the pre-hearing conference – or even at the Maritime hearing. Indeed, SkyTel chose to be a participant in the Maritime hearing.

Accordingly, there is no basis for the Presiding Judge to grant SkyTel's ambiguous and unfounded request to "reset" any deadlines.

9. Based on the foregoing, the Bureau opposes SkyTel's requests that the Presiding Judge postpone the June 15, 2011 pre-hearing conference for two weeks and that the Presiding Judge reset "the dates for any past and future filings and action by SkyTel by allowing SkyTel up to the same date noted above for all such filings and actions."

Respectfully submitted,

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June 13, 2011

**CERTIFICATE OF SERVICE**

David Bradford, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 13th day of June, 2011, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MOTION REGARDING TIMING AND PROCEDURE" to:

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