

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
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) Application File Nos. 0004030479,
Services) 0004144435, 0004193028,
) 0004193328, 0004354053,
) 0004309872, 0004310060,
Applicant with ENCANA OIL AND GAS (USA),) 0004314903, 0004315013,
INC.; DUQUESNE LIGHT COMPANY; DCP) 0004430505, 0004417199,
MIDSTREAM, LP; JACKSON COUNTY) 0004419431, 0004422320,
RURAL MEMBERSHIP ELECTRIC) 0004422329, 0004507921,
COOPERATIVE; PUGET SOUND ENERGY,) 0004153701, 0004526264,
INC.; ENBRIDGE ENERGY COMPANY, INC.;) 0004636537, and 0004604962
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)
)
)
For Commission Consent to the Assignment of)
Various Authorizations in the Wireless Radio)
Services)

FILED/ACCEPTED

AUG 19 2011

Federal Communications Commission
Office of the Secretary

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

**RESPONSE TO REPLY TO OPPOSITIONS TO MARITIME'S MOTION TO DEFER ALL
PROCEDURAL DATES**

Warren C. Havens, Environmental, LLC, Intelligent Transportation and Monitoring
Wireless, LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC, Verde Systems,
LLC, and V2G LLC (collectively, "SkyTel"), by their attorneys, hereby responds to the Reply to
Oppositions to Motion to Defer all Procedural Dates submitted by Maritime

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Communications/Land Mobile, LLC (“Maritime”) on August 16, 2011 in the above-captioned proceeding (the “Maritime Reply”). As the Maritime Reply correctly notes, the Commission’s hearing rules do not provide for replies in interlocutory matters, nor do they provide for responses to any reply that is submitted.¹ Accordingly, SkyTel is submitting a motion for leave concurrently with this response.

Maritime’s Reply continues to fail to identify a timeframe within which Maritime will formally seek relief from the Commission pursuant to the Commission’s *Second Thursday* policy. Maritime has only stated that it intends “very shortly to seek court approval for the debtor-in-possession to assume these contracts and proceed with the proposed transactions,” and that a “substantive Second Thursday showing will be presented by the Commission” only when Maritime submits amended or replacement assignment of license applications.²

Maritime’s Reply further continues to avoid a threshold problem with its *Second Thursday* theory, which is that the identity of the “wrongdoers” who may not benefit from an assignment of license under *Second Thursday* is essentially one of the central issues in this hearing proceeding. Maritime has confirmed only that neither Sandra M. DePriest nor Donald R. DePriest will derive any benefit from its speculative future transactions.³ This ignores the fact that identifying who controlled Maritime and who may have been a wrongdoer is a critical issue in this proceeding. Unless and until Maritime is prepared to disclose all parties who could be considered “affiliates” of Maritime under the Commission’s auction rules – a disclosure that would only confirm that Maritime materially misrepresented facts to the Commission in its

¹ Reply to Oppositions to Motion to Defer Procedural Dates, EB Docket No. 11-71, 2, citing 47 C.F.R. § 1.294(b) (Aug. 16, 2011) (“Maritime Reply”).

² *Id.* at 4.

³ *Id.* at 6.

auction applications – the Commission cannot possibly conclude that *Second Thursday* relief would be warranted.

In this regard, Maritime’s attempted parry of the precedent cited by the Enforcement Bureau in the Bureau’s Opposition to Maritime’s Motion to Defer Procedural Dates is unavailing. In its Opposition, the Bureau noted that, in *Mobile Media Corp et. al*, the Commission stayed a “license revocation hearing to permit MobileMedia to seek relief under the *Second Thursday* doctrine **after** it identified the transactions for which it sought *Second Thursday* treatment and **after** it sufficiently demonstrated that potential wrongdoers could not benefit as a result of those transactions.”⁴ Maritime claims that *MobileMedia* “actually holds precisely the opposite!”⁵ In fact, the Bureau is correct, and Maritime significantly overstates the case when it claims that the Commission “did not require detailed answers in advance” with respect to “precisely how the principals were to be insulated from benefit.”⁶ The Commission’s determination in *MobileMedia* was based in large part on the collapse of MobileMedia’s stock price from a high of \$27 per share to 50 cents per share and eventual delisting from the NASDAQ.⁷ The Commission specifically noted that, “any stock currently in the hands of suspected wrongdoers has irretrievably lost all substantial value,” that “any reorganization will eliminate all or nearly all of these stockholders’ equity,” and that it was therefore unlikely that granting relief “could substantially benefit suspected wrongdoers.” Thus, the Commission’s grant of relief in *MobileMedia* was based on significantly more compelling information than

⁴ Enforcement Bureau’s Opposition to Motion to Defer All Procedural Dates, EB Docket No. 11-71, n.7, citing *MobileMedia Corp, et. al*, *Order*, 12 FCC Rcd 7927 (1997) (emphasis in original).

⁵ Maritime Reply at 5.

⁶ *Id.*

⁷ *MobileMedia* at ¶ 16.

Maritime's breezy assertion that any future transactions will be structured so that two, and only two, individuals – the DePriests – will not benefit.

Maritime has also done nothing to counter the impression that its bankruptcy petition and its Motion to Defer are nothing more than dilatory tactics to evade compliance with its discovery obligations. Maritime dismisses as “frivolous and irresponsible” the argument that Maritime’s deficient bankruptcy petition generated a number of court orders directing Maritime to cure specific deficiencies to avoid dismissal, claiming that the majority of Chapter 11 bankruptcy petitions filed with the U.S. Bankruptcy Court for the Northern District of Mississippi this year have resulted in similar deficiency orders.⁸ Maritime’s observations concerning the inadequacy of other petitions are, of course, irrelevant – the point is that Maritime’s submission of a facially inadequate bankruptcy petition is consistent with SkyTel’s concern that the bankruptcy petition is merely a tactical effort to delay participation in this proceeding. This concern is only heightened by Maritime’s submission of a Motion for Extension of Time Within Which to File Required Documents related to its petition – a motion Maritime only submitted the evening of the original due date for the submission of this information.⁹

Maritime also has not substantially addressed the fact that the Hearing Designation Order that initiated this proceeding directs the Presiding Judge to consider issues that would survive a proper *Second Thursday* showing by Maritime. As the Enforcement Bureau has noted: “Maritime continues to suggest that Maritime intends to sell only some of the licenses that have been designated for hearing and thus to seek *Second Thursday* treatment for only those

⁸ Maritime Reply at n. 7.

⁹ Attachment 1.

transactions. This would leave in the hearing substantial and material questions of fact concerning Maritime's qualifications to be and to remain a licensee of the remaining licenses."¹⁰

The entirety of Maritime's conduct in this proceeding to date, including its multiple requests for extension of time to respond, its most recent Motion for Stay, filed just two days before its responses to the Bureau's Requests for Admission were due,¹¹ and its seeking of an unspecific, open-ended deferral of all procedural dates absent a remotely substantial justification all suggest that Maritime is engaged in nothing more than an effort to delay and obfuscate. Maritime's Motion for Stay is particularly egregious. Maritime acknowledges that the Judge's order directing Maritime to respond to the Bureau's requests for admissions was released *nine days* after Maritime submitted its Motion to Defer.¹² This certainly suggests that the Presiding Judge was well aware of Maritime's Motion to Defer but, nevertheless, directed Maritime to respond to the Bureau's Requests for Admissions by noon on August 19. Maritime nevertheless waited a full week, until just two days before its responses were due, to request a stay of that order.

For these reasons, and for the reasons set forth in its Opposition to Maritime's Motion to Defer All Procedural Dates, SkyTel requests that the Presiding Judge deny Maritime's Motion to Defer as well as Maritime's last-minute request for stay. SkyTel further respectfully requests that the Presiding Judge instruct Maritime that, whatever Maritime may wish, its requests for extension, deferral, delay or stay are not self-executing.. Finally, in the event Maritime

¹⁰ Enforcement Bureau's Opposition to Motion to Stay the Presiding Judge's Order, EB Docket No. 11-71, n. 5 (Aug. 17, 2011) ("Bureau Opposition to Motion to Stay").

¹¹ Maritime Motion to Stay Memorandum Opinion and Order, EB Docket No. 11-71 (Aug. 17, 2011) (Maritime Motion to Stay). As the Bureau correctly notes, Maritime, despite being represented by experienced counsel, has not even attempted to meet the criteria for a stay. Bureau Opposition to Motion to Stay at 3.

¹² Maritime Motion to Stay at 2.

continues to refuse to abide by its discovery obligations and the Judge's orders, SkyTel respectfully requests that the Presiding Judge entertain motions for sanctions and for adverse inferences, including that the Enforcement Bureau's Requests for Admissions be deemed admitted.

Respectfully Submitted,

Warren C. Havens, Environmental, LLC,
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Wireless, LLC, Skybridge Spectrum
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August 19, 2011

CERTIFICATE OF SERVICE

I, Patrick R. McFadden, hereby certify that on this 19th day of August, 2011, a true copy of this Opposition was served via first class, postage paid United States Mail upon the following:

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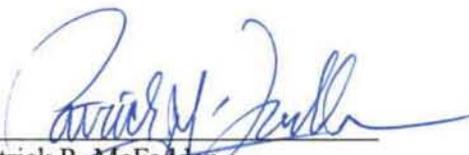
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