

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

FCC 11M-33
09098

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In the Matter of)
)
MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)
)
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 **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 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)
Service)

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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FCC Mail Room

MEMORANDUM OPINION AND ORDER

Issued: November 8, 2011

Released: November 8, 2011

Preliminary Statement

1. On October 25, 2011, a Prehearing Conference was held pursuant to Presiding Judge's Order FCC 11M-27. The next day, the Presiding Judge ordered that by **12 noon on November 4, 2011**, Maritime Communications/Land Mobile, LLC ("Maritime") must provide the Enforcement Bureau ("Bureau") and 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") counsel with requested Discovery documents.¹ See *Order FCC 11M-31* released October 26, 2011.

Incipient Abuse of Process

2. On November 4, 2011, the due date for producing documents, Maritime submitted a tardy *Request for Extension of Time* ("Request"). As though it were routine, Maritime boldly asked for "a brief amount of additional time."² As reasons for needing additional time, Maritime pleads that the DePriests were unavailable due to international travel, a family medical emergency, and the diversion of principals and personnel to address an extensive discovery request of SkyTel in the bankruptcy proceeding."

3. Wasting no time, on November 4, 2011, the Bureau filed *Enforcement Bureau's Opposition to Request for Extension of Time*. The Bureau, in its exasperation, noted that "[l]ess than an hour before Maritime was required to produce these documents, Maritime requested an extension of the Presiding Judge's deadline." Later, on November 7, 2011, SkyTel filed its *Opposition to Request for Extension of Time*, reiterating many of the arguments of the Bureau.

4. Maritime did not object to the Presiding Judge's deadline of November 4 until November 4. Maritime had a generous nine and a half calendar days to produce a limited number of documents. But at 11:15 a.m. on the due date, just 45 minutes before document production was due, Maritime had the temerity to ask for additional time in its *Request*.

Further Discussion

5. This is not the first time that Maritime has asked for an extension to respond to discovery requests.³ The Presiding Judge believes that this reflects a pattern of Maritime seeking last-minute extensions without good cause.⁴ Maritime offers "international travel" as one explanation for needing an extension,⁵ but it is hard to understand how counsel could have found out about this international travel only on the actual day the documents were due.

6. Maritime further excused its need for time on some undefined "extensive discovery request [sic] submitted in the bankruptcy proceeding."⁶ Maritime was not ordered by the

¹ The documents that were due on November 4 included copies of all assignment contracts and leases that were or will be provided to the bankruptcy court. Maritime was also to provide copies of evaluations/estimates of the value of Maritime's licenses, including those prepared by Maritime's agent(s) and those prepared by creditors and/or lenders (e.g. bank). Maritime was also to provide documents within Maritime's possession or control that were used in connection with a 2008 assessment of Maritime's debt, estimated at that time, to be \$24 million (including \$6 million claimed to be owed, by Maritime, to the DePriests). Additionally, Maritime had to provide documents within Maritime's possession or control that were used in connection with a Pinnacle Bank assessment of Maritime's debt at an estimated \$13 million, as well as any other assessments of debt.

² See *Maritime's Request for Extension of Time*, filed November 4, 2011 ("Request").

³ *Id.* See, e.g., *Maritime's Motion for Further Extension of Time to Respond to Requests for Admission*, filed June 24, 2011; *Maritime's Motion for Extension of Time to Respond to the Enforcement Bureau's Initial Discovery Requests*, filed July 15, 2011. These extension requests were granted.

⁴ *Id.*

⁵ See *SkyTel's Opposition to Request for Extension of Time*, filed November 7, 2011.

⁶ See *Maritime's Request*, filed November 4, 2011.

bankruptcy court to comply with these discovery requests until October 31, and was not required to produce the documents until November 15.⁷

7. Finally, Maritime offers no explanation for why it waited until the day of, and almost the very hour of document production, to seek an extension. Maritime seemingly waited to file its request for an extension with the expectation that by doing so, the tardy request would be self-effectuating.⁸ Maritime's repeated tardiness followed by the requests for more time based on questionable justifications, approaches the line of an abuse of the Commission's process and rules of practice, to the detriment of the numerous parties involved in this case, the Presiding Judge and the OALJ.

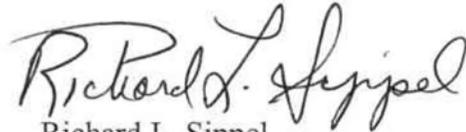
Ruling

Based on the foregoing, Maritime's *Request for Extension of Time* MUST BE DENIED.

IT IS ORDERED that, in his discretion, the Presiding Judge has determined the production of Maritime documents to be in the best interest of the prosecution of this case, and therefore, the documents SHALL BE PRODUCED by hand-delivery to Bureau counsel and to SkyTel counsel by close of business on the date selected by Maritime, and without any further delay.⁹

IT IS FURTHER ORDERED that copies of the documents shall be hand-delivered to counsel for each of the applicant parties by close of business on **November 10, 2011**.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Chief Administrative Law Judge

⁷ *Id.*

⁸ See Bureau's *Opposition*, filed November 4, 2011.

⁹ Copies of this Order are being e-mailed on issuance to counsel for each party.