

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

MAILED
JAN 23 2012
FCC Mail Room

FCC 12M-2
09159

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	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.
Authorizations in the Wireless Radio Services	)	0004030479, 0004144435,
	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with ENCANA OIL AND GAS	)	0004310060, 0004314903,
(USA), INC.; DUQUESNE LIGHT COMPANY,	)	0004315013, 0004430505,
DCP MIDSTREAM, LP; JACKSON COUNTY	)	0004417199, 0004419431,
RURAL MEMBERSHIP ELECTRIC	)	0004422320, 0004422329,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004507921, 0004153701,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004526264, 0004636537,
INC.; INTERSTATE POWER AND LIGHT	)	and 0004604962
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERHIP 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)	

DOCKET FILE COPY ORIG

MEMORANDUM OPINION AND ORDER

Issued: January 18, 2012;

Released: January 18, 2012

Background

1. This is a ruling on a Petition to Intervene that was filed on December 19, 2011, by Pinnacle Wireless, Inc. ("Pinnacle").

2. Section 1.223 of the Commission's Rules [47 C.F.R. §1.223] generally requires that a petition for leave to intervene be filed within thirty days after publication of the designation order in the Federal Register. *See* 47 C.F.R. § 1.223(a) (2010). Publication occurred in this case on May 24, 2011. 70 Fed. Reg.12792 (2012). Thus, Pinnacle's petition to intervene was not timely filed.

3. But under subsection (c) of Section 1.223, a request to intervene will be entertained later than thirty days after publication. The request must set forth the interest of petitioner in the proceeding, show how petitioner's participation will assist the Commission in the determination of the issues, set forth any proposed issues in addition to those already designated, and set forth reasons why it was not possible to file a petition within the thirty-day time period. If the Presiding Judge finds good cause for the delay in filing, he/she may exercise discretion to grant the petition and may limit the intervention to particular issues, or to a particular stage of the proceeding. *See* 47 C.F.R. § 1.223(c) (2010).

4. Pinnacle is seeking to intervene as a lessee of Maritime spectrum which Pinnacle uses for its construction of trunked radio networks operated by New Jersey Turnpike Authority and New Jersey Sports and Exposition Authority for "critical communications". Pinnacle claims to have significant investments in the construction of existing networks operating on Maritime's spectrum for New Jersey. Pinnacle further claims that its participation will assist the Commission in resolving the issues in question in this proceeding, specifically Issue (g)¹, which addresses the construction of Maritime's site-based licenses.² Pinnacle claims to have information that would assist in resolving Issue (g) regarding its own construction of Station WRV374 and of Station WQF35.³

Discussion

5. Under *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, Maritime Communications/Land Mobile, LLC, EB Docket No. 11-71, FCC 11-64, released April 19, 2011 (the *HDO*), the Wireless Telecommunications Bureau received applications filed by Maritime Communications/Land Mobile, LLC ("Maritime") in 2005. At paragraphs sixty-nine, seventy-one and seventy-two, of the *HDO*, the Federal Communications Commission ("Commission") recognized as parties the Enforcement Bureau, the individual applicant Maritime, and the captioned petitioners.

6. Pinnacle now asserts that it could not intervene at the time of the hearing designation order because similar to other spectrum lessees, it was not designated as a party to this proceeding.⁴ Pinnacle also asserts that under the spectrum lease agreements between itself and Maritime, Maritime retains responsibility for maintaining the integrity of the licenses at the FCC.⁵ Pinnacle further asserts that it could not anticipate that Maritime would file a petition in bankruptcy, or that Warren C. Havens ("Havens") would try to expedite cancellation of Station WRV374 without allowing full discovery and disclosure on Issue (g) as it relates to Station WRV374.⁶

¹ "(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. *Maritime Communications/Land Mobile, LLC, Hearing Designation Order*, ¶ 62 (released April 19, 2011) ("HDO").

² *Petition to Intervene* at p. 2.

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.*

⁶ *Petition to Intervene* at p. 7

7. In its reply to Pinnacle's Petition to Intervene filed, Skytel states that it does not object to Pinnacle's intervention as a party in this proceeding but requests that Pinnacle's participation be confined solely to providing relevant information concerning the history and status of the site-based authorizations licensed to Maritime.⁷ Skytel requests that the Presiding Judge will act to limit Pinnacle's participation in the event that Pinnacle's conduct in the proceeding indicates any intention to delay this proceeding.⁸ Skytel further requests that in granting Pinnacle intervention as a party, Pinnacle will not object to reasonable discovery requests submitted to Pinnacle by Skytel or the Enforcement Bureau.⁹ There is no reason shown at this time to place any special requests on Pinnacle.

8. Of overall concern to the Presiding Judge is the need for focused discovery on issues which relate solely to the allegations of the Hearing Designation Order. Thus, there is no need for unreasonable delay to this proceeding or irrelevant collateral attacks on any parties. However, additional information concerning Station WRV374 and Station WQF315 that may be in Pinnacle's possession or control may be needed for complete adjudication of Issue (g), and Pinnacle appears to have such information.

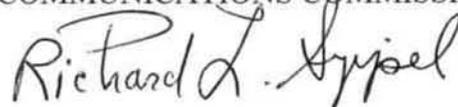
Ruling

9. Pinnacle is a lessee of Maritime's spectrum and relies on Maritime's spectrum in its business enterprises which Pinnacle leases to support its construction of trunked radio networks operated by two New Jersey agencies in connection with "critical communications" (e.g. GSP for drivers on New Jersey Turnpike and Garden State Parkway). Pinnacle also has made investments to construct these networks on Maritime spectrum for agencies of New Jersey. Pinnacle asserts that it has substantial information demonstrating the construction of Station WRV374 which is included in its spectrum leases with Maritime. Pinnacle further asserts that it has information about its own construction of Station WRV374. With such opportunity to gain relevant information, Pinnacle's petition will be granted pursuant to Section 1.223(c), because Pinnacle has made an adequate showing. However, Pinnacle's participation will be limited solely to the providing of relevant information within its possession or control concerning history and status of site-based authorizations licensed to Maritime. Pinnacle will be required to produce through discovery any information in its possession or control that reasonably may lead to admissible evidence relevant to any issue designated for hearing. *See* 447 C.F.R. §1.311(b) *et seq.*

Order

It is ORDERED that the Petition to Intervene filed by Pinnacle Wireless, Inc. is GRANTED and Pinnacle Wireless, Inc. IS NOW A PARTY to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION¹⁰



Richard L. Sippel
Chief Administrative Law Judge

⁷ *Skytel Reply and Limited Objection to Pinnacle Petition to Intervene* at p. 2.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ Courtesy copies of this *MO&O* were e-mailed to each counsel upon issuance.