TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of: Maritime Communications/Land Mobile, LLC et al. For commission consent to assignment of various authorizations in wireless radio service	EB Docket No. 11-71

DATE OF HEARING:__January 25, 2012_____ VOLUME:_____3_____

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

In the matter of:	EB Docket No. 11-71
MARITIME COMMUNICATION/	File No. EB-09-IH-1751
LAND MOBILE, LLC	FRN: 0013587779
Application in Auction	Application File Nos.
No. 61 and Licensee of	0004030479, 0004144435
Various Authorizations	0004193028, 0004193328
in the Wireless Radio	0004354053, 0004309872
Services	0004310060, 0004314903
	0004315013, 0004430505
Applicant for	0004417199, 0004419431
Modification of Various	0004422320, 0004422329
Authorizations in the	0004507921, 0004153701
Wireless Radio Services	0004526264, 0004636537
	and 0004604962
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	Wednesday
Various Authorizations	January 25, 2012
in Wireless Radio	Volume 3
Service	

Hearing Room TW-A363
445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.,

BEFORE:

THE HONORABLE JUDGE RICHARD L. SIPPEL
Chief Administrative Law Judge

APPEARANCES:

On Behalf of the Federal Communications Commission:

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Deputy Chief
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ALSO PRESENT (by teleconference):
WARREN HAVENS
President, SkyTel Entities

1 P-R-O-C-E-E-D-I-N-G-S

2 9:38 a.m.

3 JUDGE SIPPEL: This is a

4 prehearing conference that was called on my

5 order in the matter of Maritime

6 Communications, EB Docket 11-71, and there are

7 three things that I want to accomplish this

8 morning.

9 One is the size of the bankruptcy.

10 Second is the status of the discovery, and we

11 were going on that issue of construction. Is

12 Pinnacle's counsel here? Excellent. Okay.

13 Who is here on behalf of the Bureau?

14 MS. KANE: Pamela Kane and Brian

15 Carter, Your Honor.

16 JUDGE SIPPEL: Thank you. I think

17 that the reporter has all your names. So I

18 don't think we have to go through this again.

19 I don't mind, but --

20 What was the third thing I was

21 going to do? Well, I wanted to see where Mr.

22 Havens sits with respect to counsel, and I see

1 his counsel here is at the table this morning,
2 which I appreciate that very much under these
3 conditions, particularly. I know it is --
4 Well, anyway we are not going to get caught up
5 in it yet, and I think it is going to be
6 handled very well. I appreciate your input,
7 Mr. Havens, thus far. The pleading seemed to
8 be very clear.
9 I just want to be sure everybody
10 is on the same wave length, and then, as far
11 as I am concerned -- I will tell you what my
12 biggest concern is. I am going now from back
13 to front. When are you going to have a new
14 lawyer, Mr. Havens?
15 MR. HAVENS: As soon as I can
16 complete screening, interviewing, and make
17 that arrangement. No attempt at delay on my
18 side.
19 JUDGE SIPPEL: There's a lot of
20 good ones out there. Why should be that be --
21 spend that much time on it?
22 MR. HAVENS: Well, what I have

1 found, Your Honor, is that, first, I need a
2 firm who can handle this matter. There is a
3 related bankruptcy. Drinker also at the same
4 time felt that -- had to withdraw on --
5 JUDGE SIPPEL: Well, don't get
6 into that. I don't want to get into that. I
7 want to get into when you are going to get
8 another lawyer.
9 MR. HAVENS: Okay. I can't give
10 you a date right now.
11 JUDGE SIPPEL: Well, how much time
12 is it going to take you? You are a good
13 businessman. How long is it going to take you
14 to get a lawyer?
15 MR. HAVENS: I don't know at this
16 time. I am attempting myself. In the time I
17 can make available every day, I am going
18 through certain local counsel I have around
19 the country, and I am doing some screening and
20 checking and have some tips coming up.
21 As soon as I can give a reasonable
22 estimation, I will be happy to do that.

1 JUDGE SIPPEL: Well, you know,
2 this is not going to wait for you. I hope you
3 understand that. There is a whole list of
4 qualified communications lawyers in the Bar
5 Association Handbook. There are so many easy
6 ways to find a good law firm. You have a good
7 one now. So now you want to find another one.
8 You had no trouble finding the first one.
9 Drinker is a good firm. Hello?
10 MR. HAVENS: Yes, I am here.
11 JUDGE SIPPEL: Well, do you
12 understand what my concern is? I have to have
13 you in this case with an attorney, but on the
14 other hand, I am not going to wait for you.
15 MR. HAVENS: Hello?
16 JUDGE SIPPEL: Hello. Who is not
17 hearing me? Hello? Hello. Are you okay?
18 Testing.
19 MR. HAVENS: I couldn't hear
20 anybody for about a minute.
21 JUDGE SIPPEL: Yes, there was an
22 accident at this end. All right. Well, I am

1 saying is that I am not going to put up with
2 any kind of a prolonged delay. I think you
3 should have -- You know, 10 days, to me, is
4 very reasonable. You can wind somebody up by
5 10 days, and then that party -- I'm sorry,
6 that firm can get in touch with me and tell me
7 what that attorney has to do to get ready. It
8 shouldn't take you longer than 10 days to get
9 a lawyer.
10 As I say, I am not going to wait,
11 but I am not here to drill you on this. I am
12 just trying to find out what the status of
13 things are so that we can get this railroad
14 running again. That's all.
15 Now is there anything that you
16 want to say about -- There is no reason to go
17 into any -- The pleadings are very clear that
18 the Drinker firm filed, and as far as I
19 understand -- You saw my order. My
20 understanding is there is no -- You have no
21 problem with the fact that you and the Drinker
22 firm have reached a point of separating. Is

1 that correct?

2 MR. HAVENS: No, I do object. I

3 have a problem with it.

4 JUDGE SIPPEL: Well, you haven't

5 indicated it yet. Without going into detail,

6 what is the nature of the problem you have?

7 MR. HAVENS: The nature is they

8 gave me a notice to cease services.

9 JUDGE SIPPEL: Yes.

10 MR. HAVENS: And to immediately

11 withdraw without any discussion, without any

12 attempt to define what their asserted general

13 objections were, and it left -- It just

14 immediately cut off the relation, and it threw

15 this matter into disarray.

16 So I object to that under my

17 understanding of the Bar Association rules.

18 JUDGE SIPPEL: Well, wait a

19 minute. Wait a minute. The Drinker firm has

20 made a commitment in their supplemental

21 pleadings saying that they will stay with this

22 -- They will basically be around until you

1 find another attorney.

2 Correct me if I am wrong on this

3 now, but basically, that is the understanding

4 and, of course, they will do -- they will

5 take all reasonable steps to transition the

6 case files and what-not to the new attorney.

7 That is really the only two things you can ask

8 of them, and I am not going to get into the

9 nuts and bolts of what or what not may be the

10 problem.

11 You have to have a meeting of the

12 minds on that kind of relationship. If you

13 don't have it anymore, then that's it. So I

14 will leave you on a basis to object, but -- If

15 you are looking for a new -- If you are

16 really, really looking for a new lawyer, I am

17 assuming that your mind has now shifted gears,

18 and you are finished with the Drinker firm,

19 and you are going after somebody. You are

20 looking for somebody else to represent you.

21 So let's forget about why you and

22 the Drinker firm had, if I may call it, a

1 falling out or whatever you want to fall it.
2 Okay? You with me?
3 MR. HAVENS: Yes, sir, I hear you,
4 but you asked me my view, and I gave it to
5 you.
6 JUDGE SIPPEL: I appreciate that,
7 and I am telling you --
8 MR. HAVENS: My objection is that
9 -- and you are telling me not to get into it,
10 and that is fine, but it is a public filing
11 that Drinker made, and I believe it in error.
12 I believe they did not characterize accurately
13 the reason for the falling out.
14 So I won't get into detail, but I
15 am making that statement.
16 JUDGE SIPPEL: All right. Well,
17 it is noted for the record, and to the extent
18 that that is an objection, I am going to
19 overrule it for the reasons that I have
20 stated. The record is very clear.
21 The only thing I need to know
22 about it is that there has, in fact, been a

1 parting of the ways, and I have to know that
2 you are going to be -- that there is going to
3 be a reasonable transition to your next
4 counsel of choice, and the Drinker firm has
5 undertaken to do all that.
6 So I don't want to delay them. I
7 don't want to -- I see no further reason why
8 they have to be participating in this -- Well,
9 I would like you to stay at the hearing, but
10 I am not expecting much participation.
11 MR. HAVENS: May I ask, there is a
12 related bankruptcy, of course. That is one of
13 the topics today. My company has been very
14 active in that. Drinker was our lead counsel
15 on that. We still have local counsel in
16 Mississippi who are stretching themselves to
17 maintain the actions we have down in that
18 case.
19 I have a trip coming up where I
20 have to be deposed in that case and testify
21 and take certain actions before that, and we
22 have preparation for that. That is going to

1 take a good bit of time in the next 10 days.
2 I would ask 15 days.
3 JUDGE SIPPEL: I will give you 12
4 days. We will cut it in half. You got it.
5 You got 12 days, and I am not asking you to do
6 much more than just pick up a phone and get a
7 commitment from some firm that they will
8 represent you, and then we could take it from
9 there, but get somebody within 12 days.
10 There's plenty of lawyers around, good
11 lawyers.
12 All right. I don't want to spend
13 anymore time on that. So now we have -- I
14 have two other remaining issues. By the way,
15 to the extent that the -- I guess, well, it
16 was in my written order yesterday. I have
17 granted their motion to withdraw under the
18 conditions that are very clear in that order.
19 Now where do we stand on the
20 bankruptcy? Is he still in traffic? He is
21 not here yet? Okay. Counsel is in traffic --
22 for Maritime.

1 Where do we stand then on
2 discovery? Well, let me ask the Bureau then.
3 Is the Bureau satisfied with the reports they
4 are getting on the status of the bankruptcy?
5 MS. KANE: We do have some
6 questions. We were hoping that that would be
7 answered today in terms of some of the details
8 of the most recent status report. Obviously,
9 I am sure Your Honor has some questions as
10 well for Mr. Keller. So maybe those will be
11 answered today in terms of some of the
12 specifics that were raised in the status
13 report.
14 JUDGE SIPPEL: Well, Mr. Keller
15 has just entered the courtroom. So we got a
16 full deck now.
17 MR. KELLER: I apologize, Your
18 Honor.
19 JUDGE SIPPEL: That's all right.
20 Traffic is traffic. Mr. Keller, when you get
21 settled in there, can you just bring us up to
22 date on where the bankruptcy -- Give your

1 report on the bankruptcy status.

2 MR. KELLER: Okay. And let me say

3 that in the status report that we filed, we

4 mentioned that some of the attestations say

5 that I have been approved by the court and

6 others were coming up for hearing. That

7 hearing is, I believe, scheduled for February

8 the 2nd of the applications.

9 There were a few applications on

10 the list for which court approval has not been

11 sought. In the case of at least two of those

12 -- it is IPL and WPL -- they withdrew their

13 applications, and I think they have even filed

14 a motion here to withdraw from this

15 proceeding.

16 Maritime believes, as debtor in

17 possession, we could probably have the legal

18 right to still kind of hold them to these

19 contracts as an executory agreement under

20 bankruptcy law, but that decision is going to

21 be deferred, because while we could do that,

22 it might entail additional legal costs.

1 It is also possible that IPL or
2 WPL may change their mind, but we don't know
3 where those two contracts stand. But with a
4 few minor exceptions, all the others have
5 either been approved or are set for hearing on
6 February 2nd. That is where that part stands.
7 MR. TURNER: Your Honor, Josh
8 Turner, counsel for IPL and WPL. Actually,
9 one of the things that we wanted to address
10 today was just to ensure that we have, in
11 fact, withdrawn from this hearing, because we
12 haven't seen an order on that.
13 JUDGE SIPPEL: I'm sorry about
14 that.
15 MR. TURNER: But I would
16 appreciate some additional clarity from Mr.
17 Keller on the statement that he just made
18 about the status of the IPL contracts in
19 bankruptcy. Did you say that you are not
20 seeking to assume those under the Bankruptcy
21 Act?
22 MR. KELLER: No, I said we haven't

1 -- I just spoke with bankruptcy counsel
2 yesterday. My understanding is a decision
3 hasn't been made yet as to whether to assume
4 those or not.
5 MR. TURNER: Because I believe
6 motions to assume have been filed.
7 MR. KELLER: Oh, I stand
8 corrected. Motions to assume have been filed,
9 but he has not set a hearing date.
10 MR. TURNER: The hearing is set
11 for the 2nd for those.
12 MR. KELLER: For IPL and WPL?
13 MR. TURNER: Yes.
14 MR. KELLER: That is not what I
15 was told yesterday.
16 MR. TURNER: That is my
17 understanding.
18 MR. KELLER: Well, if that is the
19 case, then that makes it --
20 MR. TURNER: In Mississippi.
21 MR. KELLER: You better check,
22 because it is also, I understand, a three-hour

1 drive from the airport to get to the court.

2 MR. TURNER: That is our

3 understanding.

4 MR. KELLER: If that is true -- I

5 was told yesterday that the applications had

6 been filed, but that the hearing hadn't been

7 set for those. All right. Well, I stand

8 corrected then, if that is the case. But that

9 is even better. That means that those would

10 be heard on February the 2nd. I don't know

11 what that means, as far as your withdrawal,

12 though.

13 MR. TURNER: Withdrawal? Well,

14 the applications have been withdrawn.

15 JUDGE SIPPEL: Oh, I see. yes.

16 MR. TURNER: The IPL and WPL have

17 been withdrawn, and we have moved to withdraw

18 from this hearing, and just we are waiting for

19 an order from Your Honor on that to confirm

20 that we are no longer a part of this hearing.

21 We don't believe that the

22 contracts are still valid, and are going to

1 oppose the assumption of those contracts in
2 the Bankruptcy Court, but that is not,
3 obviously, an issue for Your Honor. That is
4 an issue for the judge in Mississippi.
5 JUDGE SIPPEL: Yes.
6 MR. TURNER: So as far as Your
7 Honor is concerned, the only thing, I think,
8 that is relevant is the applications have been
9 withdrawn. Maritime withdrew the applications
10 to transfer. The Wireless Bureau has
11 confirmed that, and we have moved to withdraw
12 from this hearing, and just would like Your
13 Honor's confirmation that that is okay.
14 JUDGE SIPPEL: Does the Bureau
15 have any objection to that?
16 MS. KANE: We have no objections,
17 Your Honor.
18 MR. RICHARDS: Your Honor, Jack
19 Richards with Keller and Heckman. One of our
20 clients is DCP Midstream, LP, which is in a
21 similar situation with Mr. Turner's clients,
22 also has withdrawn the application, also has

1 sought to withdraw from this proceeding. We
2 would appreciate clarification on that issue
3 as well, and would also appreciate Mr.
4 Keller's reference to DCP in connection with
5 the bankruptcy proceeding and that contract.
6 JUDGE SIPPEL: So WB, the Wireless
7 Bureau, has basically approved it or has acted
8 on your request to withdraw, and the
9 application has been withdrawn?
10 MR. TURNER: Those have been
11 withdrawn and those --
12 JUDGE SIPPEL: Well, I was talking
13 about Mr. Richards. Yes, I am clear on you.
14 MR. RICHARDS: Yes, Your Honor.
15 JUDGE SIPPEL: So you are clean as
16 far as the agency is concerned, except for
17 this?
18 MR. RICHARDS: Correct, Your
19 Honor.
20 JUDGE SIPPEL: All right. I will
21 get both of those orders out today granting
22 those motions. So if you gentlemen -- you can

1 leave here anytime you want.

2 MR. RICHARDS: We have four other

3 clients in this proceeding. So if it is okay,

4 I would like to stay.

5 JUDGE SIPPEL: This is a DCP -- We

6 are talking about DCP, though.

7 MR. RICHARDS: Yes, Your Honor.

8 JUDGE SIPPEL: And I've got Mr.

9 Turner as IPL. Is that correct? Do I have

10 that right?

11 MR. TURNER: Interstate Power and

12 Light and Wisconsin Power and Light, and that

13 is a withdrawal.

14 JUDGE SIPPEL: Oh, also Wisconsin

15 Power and Light, too?

16 MR. TURNER: Also Wisconsin Power

17 and Light. So IPL and WPL, and that is a

18 withdrawal of the parties, not just the

19 counsel.

20 JUDGE SIPPEL: I understand. Are

21 there any other parties that you represent

22 besides those two?

1 MR. TURNER: No, Your Honor. I
2 will stay and not participate, if it is okay.
3 JUDGE SIPPEL: That's fine. You
4 are welcome to stay. We are not serving
5 coffees and doughnuts, but you are welcome to
6 stay. All right.
7 Now please describe again, well,
8 what is the nature of the hearing? What does
9 the Bankruptcy Court have to hear? What is
10 the issue they have to hear?
11 MR. KELLER: First of all, the
12 basic issue for the Bankruptcy Court is these
13 licenses -- these license assets are assets of
14 the bankrupt estate. So in order to sell them,
15 that requires prior Bankruptcy approval, prior
16 Bankruptcy Court approval to sell the assets
17 pursuant to these contracts.
18 JUDGE SIPPEL: Yes.
19 MR. KELLER: So that is the
20 essence of what is there. Secondly --
21 JUDGE SIPPEL: Are you talking
22 about the contracts at issue in this case?