

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FILED/ACCEPTED

MAR 6-2012

Federal Communications Commission  
Office of the Secretary

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

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

**ENFORCEMENT BUREAU'S REQUEST FOR A PREHEARING CONFERENCE ON  
MARITIME'S DISCOVERY DEFICIENCIES**

1. The Chief, Enforcement Bureau (Bureau), by her attorneys, hereby respectfully requests the Presiding Judge to schedule, at the earliest possible time, a prehearing conference to discuss the disruptive course of conduct in which Maritime Communications/Land Mobile, LLC (Maritime) has engaged during the discovery phase of this proceeding. In support whereof, the following is shown.

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## Delaying Tactics

2. Nearly a year ago, the Commission released *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. Since the commencement of this hearing, Maritime has *routinely* delayed responding to the Bureau's legitimate discovery requests. The Bureau recognizes that unexpected situations arise from time to time requiring the need for a brief extension of time to satisfy a discovery request. In such instances where there is a legitimate, good faith basis for requiring additional time, the Bureau has cooperated fully. However, when a party habitually demands additional time to fulfill routine discovery requests – as Maritime has done – it becomes evident that such party is simply engaging in gamesmanship at the expense of the Bureau, the Presiding Judge and the Commission's processes.

3. In some instances in which Maritime has requested additional time, it has sought relief from the Presiding Judge. For example, see:

- 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;
- Maritime's Request for Extension of Time, filed November 4, 2011; and
- Maritime's Status Report on Discovery and Request for Partial Extension of Time, filed February 6, 2012.

In other instances, however, Maritime has simply ignored the Presiding Judge and granted itself unlimited time to respond. For example, see:

- Maritime's Response to Interrogatories, filed February 6, 2012, at Interrogatory Nos. 13 and 15.
- Maritime's Supplemental Response to Interrogatories, filed February 8, 2012, at Interrogatory Nos. 13 and 15.

4. Of course, the effect of Maritime's repeated extensions of time to respond to legitimate discovery requests has been to obstruct the Bureau's ability to amass the evidence it needs to prosecute this case in the public interest. This consequence cannot be lost on Maritime; indeed, it is perhaps Maritime's intention to try to wear the Bureau and the Presiding Judge down by doggedly interposing excuse after excuse for not meeting its discovery obligations. Such conduct is particularly egregious in the instant case where the Presiding Judge has established a date certain for the conclusion of discovery on the one issue for which there is currently active discovery – Issue (g). Maritime's course of conduct should no longer be tolerated.

**Information Provided is Incomplete and Nonresponsive**

5. Even on those occasions when Maritime has finally responded to a discovery request, its answers to interrogatories or production of documents have been woefully incomplete, carelessly prepared, or simply nonresponsive. Case in point – the CD containing thousands of Maritime's electronically scanned copies of documents. Maritime initially argued strenuously during a lengthy prehearing conference – and in multiple pleadings filed *after* the date on which the documents were ordered to be produced – that it could not afford to or was unable to scan or affix a Bates stamp to each page. Then, somehow it “magically” managed to do so. Thereafter, the company produced a CD to the Bureau that was electronically “locked” and its contents rendered incapable of being printed. Then, it provided a corrected CD that deliberately omitted numerous documents that were too large to scan. Now that those “large” documents finally have been produced, it turns out many are not even responsive to the Bureau's discovery requests.<sup>1</sup>

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<sup>1</sup> Bureau counsel is still sifting through more than 27,000 pages of documents to determine the extent to which the documents on the CD are responsive. At first glance, it would appear that Maritime simply dumped all of the documents it had concerning a particular site-based authorization on the Bureau without reviewing them to determine whether they were responsive to the Bureau's requests. Such discovery practices may be sanctionable. *See, e.g., Rothman v Emory Univ.*, 123 F.3d 446,455 (7<sup>th</sup> Cir. 1997) (finding sanctions appropriate when producing party rebuffed obligation to sort through its documents and produce only those responsive to the requests); *In re*

6. Another case in point – Maritime’s responses to the “Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Site-Based Operations,” filed by the Bureau and SkyTel<sup>2</sup> on December 7, 2011 (Interrogatories). Despite being ordered by the Presiding Judge to respond “fully and completely” to these Interrogatories,<sup>3</sup> Maritime provided inadequate and evasive responses or no response at all.<sup>4</sup> The Bureau had no choice but to move the Presiding Judge for an order compelling Maritime to respond in good faith.<sup>5</sup> In response to the Bureau’s Motion to Compel, Maritime provided so-called “supplemental” interrogatory responses.<sup>6</sup> These supplemental responses supposedly were intended to remedy deficiencies in Maritime’s initial set of responses.<sup>7</sup> However, because these supplemental responses were not made “under oath or affirmation” as required by the Commission’s rules, the Bureau cannot rely on them.<sup>8</sup> In the absence of an oath or affirmation, Maritime’s supplemental responses are tantamount to no responses at all.

7. If that weren’t enough, even a cursory examination of the supplemental responses reveals that they are as substantively deficient as the initial responses they were purportedly

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*Adelphia Communications Corp.*, 338 B.R. 546, 551 (S.D.N.Y. 2005) (noting that the Court will not “endorse a method of document production that merely gives the requesting party access to a ‘document dump’”).

<sup>2</sup> “SkyTel” refers to Warren Havens, V2G, LLC, Telesaurus Holdings GB, Verde Systems, Intelligent Transportation & Monitoring Wireless, Environmental, LLC and Skybridge Spectrum Foundation.

<sup>3</sup> See Order, FCC 12M-7 (ALJ, rel. Jan. 27, 2012).

<sup>4</sup> See Enforcement Bureau’s Motion to Compel Maritime to Respond to Joint Interrogatories, filed February 16, 2012 (Motion to Compel).

<sup>5</sup> See *id.*

<sup>6</sup> See Maritime’s Response to Motion to Compel (Response), filed on February 28, 2012, at page 4; see also Maritime’s Further Supplemental Response to Interrogatories, filed on February 28, 2012 (Supplemental Response).

<sup>7</sup> Surprisingly, Maritime did not offer any explanation as to why it had failed to provide the information three weeks earlier when it initially responded to the Bureau’s interrogatories. None of the information it belatedly provided in its Supplemental Response appears to have been newly discovered or previously unavailable.

<sup>8</sup> See Section 1.323(b) of the Commission’s rules, 47 C.F.R. § 1.323(b). The Bureau notes that Maritime’s previous Supplemental Response to the Interrogatories, filed on February 8, 2012, similarly fails to comply with Section 1.323(b), and thus is also unreliable.

intended to augment. The Bureau is not being overly critical with regard to Maritime's lack of responsiveness. For example, the Bureau asked Maritime in Interrogatory No. 15 to identify, by call sign and location, each station that was currently off the air, explain why, and specify for how long.<sup>9</sup> The requested information unquestionably goes to the heart of Issue (g) – whether Maritime's site-based operations had been discontinued. The interrogatory was clear, concise, and straightforward; neither vague nor subject to misinterpretation. Indeed, Maritime offered no objection to this interrogatory.

8. In its supplemental response to Interrogatory No. 15, Maritime directed the Bureau to a chart which Maritime claimed “includes a designation of the status of each of the sites” and a “key explaining the codes” that appear in that chart. An excerpt from this four-page chart, with the key, is reproduced below.

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<sup>9</sup> See Interrogatories at Interrogatory No. 15, filed with the Bureau's Motion to Compel as Exhibit A.

Revised Table 2 (continued)

Call Sign	Loc	Status	Date Granted	Construction Deadline	Construction Completed	City	County	ST
WRV374	3	G	30-Nov-98	29-Nov-00	29-Nov-00	PHILADELPHIA	PHILADELPHIA	PA
	8	U	30-Nov-98	29-Nov-00	29-Nov-00	MANGONIA PARK	PALM BEACH	FL
	12	L	30-Nov-98	29-Nov-00	29-Nov-00	ORLANDO	ORANGE	FL
	14	O	15-Jul-99	14-Jul-01	6-Jun-01	SELDEN	SUFFOLK	NY
	15	L	15-Jul-99	14-Jul-01	6-Jun-01	VERONA	ESSEX	NJ
	16	O	15-Jul-99	14-Jul-01	6-Jun-01	ALLENTOWN	LEHIGH	PA
	17	G	15-Jul-99	14-Jul-01	5-Jul-01	WINTERTHUR	NEW CASTLE	DE
	18	O	15-Jul-99	14-Jul-01	6-Jun-01	VALHALLA	WESTCHESTER	NY
	19	U	30-Nov-98	29-Nov-00	29-Nov-00	MIAMI	MIAMI-DADE	FL
	20	U	30-Nov-98	29-Nov-00	29-Nov-00	RAYMOND	CUMBERLAND	ME
	22	U	30-Nov-98	29-Nov-00	29-Nov-00	SFAULDING	DUVAL	FL
	23	U	03-Feb-99	02-Feb-01	31-Jan-01	CHARLESTON	CHARLESTON	SC
	24	G	03-Feb-99	02-Feb-01	29-Nov-00	CONWAY	HORRY	SC
	25	L	03-Feb-99	02-Feb-01	31-Jan-01	PERRINVILLE	MONMOUTH	NJ
	26	O	03-Feb-99	02-Feb-01	31-Jan-01	SAVANNAH	CHATHAM	GA
	27	G	03-Feb-99	02-Feb-01	31-Jan-01	NAVASSA	BRUNSWICK	NC
	28	G	30-Nov-98	29-Nov-00	29-Nov-00	SUFFOLK	SUFFOLK	VA
	29	G	30-Nov-98	29-Nov-00	29-Nov-00	RICHMOND	RICHMOND	VA
	31	G	30-Nov-98	29-Nov-00	29-Nov-00	BALTIMORE		MD
	33	O	30-Nov-98	29-Nov-00	29-Nov-00	NEW YORK	NEW YORK	NY
34	U	30-Nov-98	29-Nov-00	29-Nov-00	FAJARDO	FAJARDO	PR	
35	O	30-Nov-98	29-Nov-00	29-Nov-00	REHOBETH	BRISTOL	MA	
36	G	30-Nov-98	29-Nov-00	29-Nov-00	NEW BERN	CARTERET	NC	
39	L	30-Nov-98	29-Nov-00	29-Nov-00	CLEARWATER	PINELLAS	FL	
40	O	15-Jul-99	14-Jul-01	6-Jun-01	HAMDEN	NEW HAVEN	CT	

**Key to Status Codes**

- G Station subsumed within geographic license obtained in auction; status of incumbent license not relevant.
- G1 Channel Block A as to all of the WHG licenses are subsumed within geographic license obtained in auction. Second code stated applies to Channel Block B.
- O Station constructed and operational; some rents and other obligations may be in arrears since bankruptcy.
- L Station subject to a spectrum lease.

The deficiencies in this chart are immediately obvious – Maritime provided no information whatsoever as to whether any station under Call Sign WRV374 is currently off the air, and, if so, for how long, and why.<sup>10</sup> The same deficiencies exist with regard to each of the 66 other site-based authorizations identified in the preceding pages of this chart. It is of no matter that Maritime may have painstakingly assembled information for this chart if the chart does not

<sup>10</sup> Based on Maritime’s explanation of “Status Code” G, it would appear that for many of the locations of Call Sign WRV374, Maritime is actually refusing to provide the requested information concerning the status of the incumbent license as “not relevant.” Pursuant to the Commission’s rules, Maritime was required to serve objections to the Interrogatories – to the extent it had any – on February 6, 2012, at the time it filed its original responses. See 47 C.F.R. § 1.323(b). Maritime failed to do so at that time and as such, has waived its right to assert such objections now. Moreover, there is no legal basis – and Maritime offers none – for why the information requested is not relevant.

contain data that is responsive to the interrogatory. The chart is, as a consequence, nothing more than an elaborate smokescreen intended to make it appear that Maritime had provided responsive information, when in fact it provided nothing relating to the interrogatory. Such a course of conduct is an affront to the Bureau, the Presiding Judge, and the Commission's processes.

9. Maritime's responses to Interrogatory No. 14 further exemplify the mockery it is making of its discovery obligations. This interrogatory asked Maritime to identify, by call sign and location, (1) each site-based authorization for which a station's operation was discontinued for more than a year; (2) the dates such operation was discontinued and when, if applicable, it resumed; and (3) the reasons why the operation was discontinued. Here again, the information sought was plainly relevant to Issue (g) and whether Maritime's site-based operations had been discontinued.

10. In its initial response, Maritime represented that "operations at some of the stations were temporarily suspended for short periods of time" and that "it is likely that some stations have been inactive for continuous periods of more than one year."<sup>11</sup> In its "supplemental" response – supposedly intended to provide more comprehensive answers – Maritime surprisingly could not identify the particular stations whose operations had been "temporarily suspended" or were likely to "have been inactive for continuous periods of more than one year." Indeed, Maritime now claims it "cannot provide a discrete, exact timeframe during which station operations at any particular locations may have been discontinued."<sup>12</sup> Maritime's inability to substantiate its own previous representations is astonishing and renders its initial response useless.

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<sup>11</sup> See, e.g., Exhibit B to the Motion to Compel at No. 14. The Bureau challenged Maritime's failure to identify at which stations operations "were temporarily suspended," for how long, and for what reason and its failure to identify which stations likely to "have been inactive for continuous periods of more than one year," during which time period, and for what reason. See Motion to Compel at 5.

<sup>12</sup> Maritime's Supplemental Response at No. 14.

11. These examples of Maritime's "responses" are just a few of many in which Maritime gives lip service to the Bureau, the Presiding Judge, and this hearing. The company's conduct smacks of bad faith and gamesmanship. The Bureau should not be placed in the position of having to grovel for relevant information from a licensee in a formal hearing before an administrative law judge. The kind of run-around that Maritime has exhibited plainly suggests that it would be futile for the Bureau to file further motions to compel with the Presiding Judge. Maritime appears to be just as unresponsive to the orders of the Presiding Judge as it is to the Commission's discovery rules.

12. Maritime's pattern of refusing to provide timely and complete discovery in response to legitimate discovery requests – and its subsequent attempts to hide these deficiencies with its "smoke and mirror" supplemental responses – reflects a complete disregard for its obligations as a licensee. The Bureau has been generally reluctant to request a further prehearing conference because of the attending costs involved. However, in the instant situation, it sees no choice but to engage the participation of the Presiding Judge in scheduling a prehearing conference during which he can direct Maritime in no uncertain terms to shape up or be subject to certain and severe consequences.

Respectfully submitted,  
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March 6, 2012

## CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 6th day of March, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S REQUEST FOR A PREHEARING CONFERENCE ON MARITIME'S DISCOVERY DEFICIENCIES" to:

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