

# TRANSCRIPT OF PROCEEDINGS

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

2012 MAR 22 A 10:49

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In the Matter of:

Maritime Communications/Land Mobile, LLC et al.

EB Docket No. 11-71

For commission consent to assignment of various authorizations in wireless radio service

**ORIGINAL**

DATE OF HEARING: March 12, 2012 VOLUME: 4

PLACE OF HEARING: WASHINGTON, D.C. PAGES: 437-519

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of: : EB Docket No.  
: 11-71

MARITIME COMMUNICATIONS/LAND, :  
MOBILE, LLC : File No.  
: EB-09-IH-1751

Participant in Auction No. 61: :  
and Licensee of Various : FRN:  
Authorizations in the : 0013587779  
Wireless Radio Services :  
: Application

Applicant for Modification of: File Nos.  
Various Authorizations in the: 0004030479  
Wireless Radio Services : 0004144435  
: 0004193028

Applicant with ENCANA OIL AND: 0004193328  
GAS (USA), INC.; DUQUESNE : 0004354053  
LIGHT COMPANY, DCP MIDSTREAM; : 0004309872  
JACKSON COUNTY RURAL : 0004310060  
MEMBERSHIP ELECTRONIC : 0004314903  
COOPERATIVE; PUGET SOUND : 0004315013  
ENERGY, INC.; ENBRIDGE ENERGY: 0004430505  
COMPANY, INC.; INTERSTATE : 0004417199  
POWER AND LIGHT COMPANY; : 0004419431  
WISCONSIN POWER AND LIGHT : 0004422320  
COMPANY; DIXIE ELECTRIC : 0004422329  
MEMBERSHIP CORPORATION, INC.; : 0004507921  
ATLAS PIPELINE-MID CONTINENT, : 0004153701  
LLC; DENTON COUNTY ELECTRIC : 0004526264  
COOPERATIVE, INC., DBA COSERV: 0004636537  
ELECTRIC; AND SOUTHERN : 0004604962  
CALIFORNIA REGIONAL RAIL :  
AUTHORITY :  
:  
:  
For Commission Consent to the: Volume IV  
Assignment of Various :  
Authorizations in the :  
Wireless Radio Service :  
:  
:

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Monday, March 12, 2012

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Room A, TW A-363  
FCC Headquarters  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C.

The above-entitled matter came on for  
conference, pursuant to notice, at 10:00 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL,  
Administrative Law Judge

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MARY GOSSE

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

10:06 a.m.

JUDGE SIPPEL: Good morning. Be seated. I came in and looked at the clock in my office this morning and I said, well I've got a lot of time. Then I got the phone call. Okay. I am going to start, are we on speaker phone? Does anybody hear me over there?

MR. ROBERSON: Yes, sir.

JUDGE SIPPEL: Who do I have there?

MR. ROBERSON: You've got Richard Roberson with Gardere in Dallas.

JUDGE SIPPEL: Okay and that's it? All right. It ought to be quiet this morning. I'm going to start with the, Mr. Keith Ferguson with the Bureau's request for a Pre-Hearing Conference.

It looks like, there shouldn't be any more delays, I wouldn't think. Well let's hear from Maritime. What's going on with this? Well let's start right off.

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1 MR. KELLER: Well, Your Honor, I'm  
2 not sure which part of it this addresses  
3 actually. I think --

4 JUDGE SIPPEL: Well I'll tell you  
5 what I want to know. I want to know what is,  
6 what have you not produced and when will it be  
7 produced?

8 MR. KELLER: Well we've got some  
9 outstanding requests, we've got some  
10 outstanding interrogatories.

11 JUDGE SIPPEL: They're outstanding  
12 to you?

13 MR. KELLER: These that were just  
14 filed. I mean, filed a couple weeks ago. By  
15 my calculations the due date on that is  
16 tomorrow.

17 JUDGE SIPPEL: All right. Are  
18 they going to be filed tomorrow?

19 MR. KELLER: You said to respond  
20 to those tomorrow.

21 JUDGE SIPPEL: Fully and  
22 completely?

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1 MR. KELLER: Well that's going to  
2 be up to the Bureau. I mean, I believe fully  
3 and completely. Part of what, the problem  
4 here is you're over --

5 JUDGE SIPPEL: It sounds like an  
6 unfair question.

7 MR. KELLER: -- what that means.  
8 Well, not really.

9 JUDGE SIPPEL: Go ahead. I'm --

10 MR. KELLER: It really comes down  
11 to, Your Honor, I don't, I mean yes there have  
12 been some issues in terms of timing. But  
13 that's really been a product of we're doing  
14 the best we can under very trying  
15 circumstances. I mean, the fact is the lack  
16 of money and no people at all to deal with  
17 these things.

18 But, nevertheless, we've produced  
19 what we could. Secondly, I think the issue  
20 here is not that we haven't produced or  
21 haven't answered the questions. It's that the  
22 Bureau doesn't like the answers. We can only

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1 tell what we know.

2 I mean, just to give you one  
3 example, there's this issue about the wanting  
4 to know exactly when certain stations went off  
5 the air or whatever that means. I mean that's  
6 also a question of legal determination as to  
7 what that means. But it's not like in this  
8 particular case, as we've explained in our  
9 interrogatory answers, there was never a  
10 decision to terminate operations at a  
11 particular location.

12 There have been things that have  
13 happened over time by attrition where, you  
14 know, utilities or rents were not being able  
15 to be paid for periods of time and that might  
16 be, constitute that, but that wasn't an exact  
17 decision. We can't get exact dates on that.  
18 All we can provide is the information that we  
19 actually have.

20 Secondly, there's questions about  
21 precisely what date construction was  
22 completed. For most of the stations that were

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1 constructed in the east part of the United  
2 States, they were constructed by MOBEX after  
3 it acquired the two prior companies involved  
4 here. We've given precise dates, because we  
5 have that information because the current  
6 principals were involved in those  
7 constructions.

8 Most of the other stations that  
9 were acquired here were acquired years ago.  
10 Some of them in their second to third renewal  
11 cycle already. In other words, we're talking  
12 about stations that were built decades ago,  
13 renewed at least once, in some cases twice by  
14 the Commission, and then acquired by MOBEX.  
15 Well, I mean, there's no, MOBEX wasn't around  
16 15 years ago or 20 years ago when these  
17 stations were constructed.

18 All we can do is the best we can  
19 do. In other words, we're obligated to answer  
20 questions and provide the information that we  
21 have, but we can't give you exact dates on  
22 some of this stuff.

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1 JUDGE SIPPEL: Well, who  
2 constructed those stations that you just  
3 referred to?

4 MR. KELLER: Most of, we've given  
5 the names of the people that were involved.  
6 They were constructed by two different  
7 companies. One was called Day Wireless and  
8 the other one was called Region Net.

9 JUDGE SIPPEL: But was that  
10 Maritime's construction basically --

11 MR. KELLER: No.

12 JUDGE SIPPEL: -- working for  
13 Maritime?

14 MR. KELLER: No.

15 JUDGE SIPPEL: Maritime had  
16 nothing to do with the stations?

17 MR. KELLER: No. Maritime, per  
18 se, came in after all these stations were  
19 constructed. What happened was, there were  
20 stations out in the west and licensed through  
21 Day Wireless and through a company that later  
22 became known as, I think it was Region Net,

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1 but I'm not sure. And then there were also  
2 stations along the Mississippi operated by a  
3 company called Watercom.

4 Some time in around 2000, I  
5 believe, MOBEX acquired those licenses.  
6 Whether it was a merger of the companies, I  
7 don't know exactly, but they acquired those  
8 companies. At that time all, most of the  
9 stations except for those in the east had  
10 already been constructed long ago.

11 MOBEX, in that period of time  
12 between 2000, 2001, completed construction of  
13 the stations in the east. And as I say, we've  
14 given dates on those because we know about  
15 them. And we've disclosed the people who were  
16 involved, to the best of our knowledge, in the  
17 earlier constructions.

18 Maritime acquired MOBEX in 2005, I  
19 believe, and this was long, this had nothing,  
20 I mean, this was all history before Maritime  
21 ever came onto the scene. So, all I'm saying  
22 is, given that background of facts, we're

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1 doing the best we can with the information  
2 that we have. All we can do is say what we  
3 know. We can't make up information.

4 JUDGE SIPPEL: Well have you been,  
5 I mean, is there an effort by you and Ms. Kane  
6 to, you know, is there a discussion going on  
7 explaining to her the problems you're  
8 explaining to me?

9 MR. KELLER: Well, I've explained  
10 this in our answers, but it's apparently not  
11 satisfactory.

12 JUDGE SIPPEL: Well no, I'm not  
13 talking about your answers. I know the  
14 answers look like one thing, picking up the  
15 phone and talking looks like another. In  
16 other words, can you massage this a little  
17 bit? I mean is there, can these dates be on  
18 or about? Can you, I mean is there some way  
19 of getting at this information?

20 MR. KELLER: I'm sure we could if  
21 we could have just a reasonable discussion.

22 JUDGE SIPPEL: Well have you tried

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1 to?

2 MR. KELLER: We've not had one  
3 yet.

4 JUDGE SIPPEL: I said have you  
5 tried to? Do you understand my question?

6 MR. KELLER: Yes.

7 JUDGE SIPPEL: Have you tried to  
8 have a conversation?

9 MR. KELLER: No, we've not had a  
10 conversation.

11 JUDGE SIPPEL: I know you haven't  
12 had one. My question is did you try to have  
13 one?

14 MR. KELLER: I have not tried to  
15 have a conversation yet.

16 JUDGE SIPPEL: You're not trying.  
17 Well doesn't that make sense to you that maybe  
18 that might help?

19 MR. KELLER: Yes. That makes  
20 perfect sense.

21 JUDGE SIPPEL: Because explaining  
22 it to me isn't going to make it happen any

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1 better.

2 MR. KELLER: It makes perfect  
3 sense.

4 JUDGE SIPPEL: All right. Well  
5 when can you get together with counsel?

6 MR. KELLER: Whenever they're  
7 available.

8 JUDGE SIPPEL: Today? Before you  
9 leave the building?

10 MR. KELLER: I've got a lot of  
11 work to do on these interrogatories as well as  
12 some other things, so I would say no later, I  
13 mean anytime Wednesday or after.

14 JUDGE SIPPEL: Anytime --

15 MR. KELLER: Wednesday or after.

16 JUDGE SIPPEL: Now this being  
17 Monday.

18 MR. KELLER: This being Monday.

19 JUDGE SIPPEL: And all that's  
20 because you need more time on the  
21 interrogatories?

22 MR. KELLER: No, I mean, I've got

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1 other commitments too, I guess. I mean I'll  
2 certainly talk to them today, but as far as  
3 setting up a meeting to try and sit down and  
4 work through some of this --

5 JUDGE SIPPEL: Well that's a  
6 start.

7 MR. KELLER: Yes, right.

8 JUDGE SIPPEL: You could sit down  
9 and set something up.

10 MR. KELLER: Yes. We could set a  
11 date today.

12 JUDGE SIPPEL: I think that a  
13 little bit of back and forth conversation  
14 might --

15 MR. KELLER: Well, I'm --

16 JUDGE SIPPEL: -- smooth things  
17 along, I'm just --

18 MR. KELLER: I'm hopeful of that  
19 too. In fact, I think were we to do that it's  
20 possible we could even stipulate some of  
21 these.

22 JUDGE SIPPEL: Well that would be

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1 nice, wouldn't it?

2 MR. KELLER: Yes.

3 JUDGE SIPPEL: Did you prepare  
4 proposed stipulations and give it to Ms. Kane?

5 MR. KELLER: Not at this point.

6 I'm still --

7 JUDGE SIPPEL: Wouldn't that be  
8 the thing for you to do?

9 MR. KELLER: At some point, yes.

10 JUDGE SIPPEL: At some point. And  
11 when might that some point be?

12 MR. KELLER: We'll talk about it  
13 when we -- as soon as we --

14 JUDGE SIPPEL: Ms. Kane.

15 MS. KANE: Your Honor, I'm  
16 concerned about dragging this out through a  
17 further conversation with Mr. Keller. I mean,  
18 I think we understand his position. I think  
19 and he hasn't said anything new today that he  
20 hasn't said in his interrogatory responses or  
21 his Response for a Motion to Compel.

22 But, I think we need some

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1 affirmative answers as to whether they have  
2 this information or not. And we would like  
3 those in an interrogatory under affirmation  
4 and oath as they're required, not from Mr.  
5 Keller. So that the party, the Bureau can  
6 rely on that information going forward.

7 And, you know, instead what we get  
8 is well we think we might be able to come up  
9 with this information or if you talk to us.  
10 I think our interrogatories are extremely  
11 clear on what we're asking.

12 You know, we're asking for the  
13 date of either the beginning of the  
14 construction or the completion of  
15 construction. And either they have that  
16 information or they don't. And instead all we  
17 keep getting is well we're not sure what we  
18 have and we might have it. And now you hear  
19 Mr. Keller say that he might be able to work  
20 with us on that information.

21 I'm not sure where there's a  
22 workable solution if they don't have the

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1 information. And he should be in a position  
2 by now, certainly, to know if he has this  
3 information.

4 And so I think what we're looking  
5 for today is some affirmative answers from  
6 him. You know, yes they have this, no they  
7 don't, rather than this continued delay  
8 process of well now let's talk about it and  
9 still get nowhere, frankly.

10 JUDGE SIPPEL: Okay. I understand  
11 what you're saying.

12 MS. KANE: And we would take issue  
13 with the fact that there are several  
14 interrogatories for which they've still  
15 provided no response. And you know, we've  
16 prepared a chart of those today, of the  
17 specific interrogatories that we move to  
18 compel on.

19 And we're happy to provide you a  
20 copy of it and walk through it and have Mr.  
21 Keller explain to the Judge, explain to you,  
22 Your Honor, whether or not they have the

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1 information and why they've given the kind of  
2 information that they have in response to a  
3 very simple question.

4 JUDGE SIPPEL: Well how many, what  
5 is that, can you hand me up a copy?

6 MS. KANE: Absolutely, Your Honor.

7 JUDGE SIPPEL: I believe everybody  
8 else has to get it too.

9 MS. KANE: I didn't make copies  
10 for these guys, but I did make copies for  
11 everybody.

12 JUDGE SIPPEL: Sorry about that.  
13 These guys, I think you can tell the counsel.

14 MR. ROBERSON: Yes, can you  
15 please.

16 JUDGE SIPPEL: We're going to make  
17 copies for the other guys. Okay.

18 MS. KANE: I apologize for --

19 JUDGE SIPPEL: If there's nothing  
20 else we aim to please, okay.

21 MS. KANE: Well I do presume that  
22 of all the issues these were not the ones that

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1 they had specific interest in, because these  
2 deal with the site-based licenses.

3 JUDGE SIPPEL: Well you never  
4 know. Okay. So text of the interrogatory,  
5 you've got one, two, three, four --

6 MS. KANE: There are seven  
7 interrogatories on which we've moved. And I  
8 think when you walk through them, and if Mr.  
9 Keller is prepared to respond to what it is  
10 we're still missing, I think that would be,  
11 that would move things further along then  
12 having yet another conference with him.

13 JUDGE SIPPEL: All right. Well  
14 let's stop right there. I'm prepared to go  
15 through this with you and counsel on the  
16 record at the end of our, whatever business  
17 we're going to conduct here. And if anybody  
18 wants to stay around for it they're welcome.  
19 If they don't want to stay around for it, you  
20 can get a, read the transcript.

21 But it's not going to be, I don't  
22 expect it to be very interesting. I'm simply

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1 going to try and pin down why stuff hasn't  
2 been delivered and when it will be, when the  
3 information, if the information. Anyway,  
4 that's what I plan to do at the close of the  
5 business section, portion of this conference.

6 So what else is missing? What  
7 else is, can you explain that with respect to  
8 the dates of the construction?

9 MS. KANE: The dates of the  
10 construction are missing. The dates of  
11 placing the stations in operation. And the  
12 only response we've gotten from Maritime with  
13 regard to that is it's the date of  
14 construction.

15 Well, as he's already indicated to  
16 you, Maritime can't provide the date of  
17 construction. So if they can't provide the  
18 date of construction, can they also not  
19 provide the date of putting, placing these  
20 stations in operation. If they're the same  
21 date, then they don't have the information for  
22 that one either.

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1 JUDGE SIPPEL: So your concern is  
2 really not so much that they don't have the  
3 information. You're just not getting a  
4 straight answer.

5 MS. KANE: We're not getting a  
6 straight answer. And I think the most  
7 illustrative example of that is we've asked  
8 for a very specific set of information, which  
9 is are there any stations which are not  
10 currently operating and if so, how long they  
11 haven't been operating and why.

12 And we've absolutely gotten the  
13 runaround on that response. First, we got two  
14 delays that they imposed on themselves without  
15 either asking us or asking Your Honor for an  
16 extension. And then we got a chart which  
17 doesn't provide any information about whether  
18 any stations are not operating.

19 You know, we've gone through many  
20 of the twelve boxes of documents that they've  
21 provided for us on the CD and most of those  
22 documents stop about the 1995, maybe at best

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1 2000 time frame. So there's no information in  
2 those documents that would suggest whether  
3 these stations are currently operating.

4 And this should be basic  
5 information that Maritime has in its  
6 possession. Are our stations operating or  
7 not? And if they haven't been, why not?

8 JUDGE SIPPEL: All right. Let me  
9 ask Mr. Keller to respond to that one. We  
10 just did construction, now we can talk about  
11 operation.

12 MR. KELLER: Well, Your Honor, I  
13 think part of the answer is again, there's a  
14 misunderstanding of what we're, what the  
15 definition of terms here.

16 JUDGE SIPPEL: Really.

17 MR. KELLER: They've asked whether  
18 each station is operating or providing service  
19 to AMTS, providing AMTS service. As we've  
20 tried to explain, these stations are not  
21 currently providing AMTS service as such.

22 Secondly, as far as the

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