

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

In the Matter of)	
)	
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 Authorizations)	
in the Wireless Radio Services;)	
)	
Applicant with ENCANA OIL AND GAS (USA), INC.;	)	Application File Nos.
DUQUESNE LIGHT COMPANY; DCP	)	0004030479, 0004144435,
MIDSTREAM, LP; JACKSON COUNTY RURAL	)	0004193028, 0004193328,
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET	)	0004354053, 0004309872,
SOUND ENERGY, INC.; ENBRIDGE ENERGY	)	0004310060, 0004314903,
COMPANY, INC.; INTERSTATE POWER AND	)	0004315013, 0004430505,
LIGHT COMPANY; WISCONSIN POWER AND	)	0004417199, 0004419431,
LIGHT COMPANY; DIXIE ELECTRIC	)	0004422320, 0004422329,
MEMBERSHIP CORPORATION, INC.; ATLAS	)	0004507921, 0004153701,
PIPELINE—MID CONTINENT, LLC; DENTON	)	0004526264, 0004636537,
COUNTY ELECTRIC COOPERATIVE, INC., DBA	)	and 0004604962
COSERV ELECTRIC; AND SOUTHERN)	
CALIFORNIA REGIONAL RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of Various)	
Authorizations in the Wireless Radio Services)	
)	
To: The Honorable Richard L. Sippel		
Chief Administrative Law Judge		

**REQUEST THAT THE PRESIDING JUDGE’S APRIL 6, 2012
ORDER (FCC 12M-22) BE VACATED OR MODIFIED**

Maritime Communications/Land Mobile, LLC (“Maritime”), by its attorney, respectfully requests the presiding judge to vacate or modify his April 6, 2012, *Order* (FCC 12M-22) in the captioned matter.¹ The *Order* is based at least implicitly on the erroneous theory that the

¹ To the extent this may be viewed as a petition for reconsideration of an interlocutory ruling within the meaning of Section 1.106(a)(1) of the Rules, Maritime is filing concurrently herewith a motion for leave to submit this request.

financial condition of Maritime's owners is determinative of or relevant to the question of Maritime's indigent status. The *Order* further assumes the inaccurate factual premise that that Maritime has not been forthcoming with construction and operation information in response to discovery requests, an inaccurate factual premise.²

I. FINANCIAL STATEMENTS OF MARITIME'S OWNERS

The *Order* directs Maritime to produce financial statements of its owners as evidence of its claimed financial distress. This assumes that Maritime's owners are required to contribute any needed additional capital to the entity. Maritime, a separate legal entity distinct from its owners, is in bankruptcy. Its financial affairs are subject to the protection, jurisdiction, and oversight of the U.S. Bankruptcy Court for the Northern District of Mississippi. There is absolutely no legal requirement in bankruptcy law, FCC regulation, or otherwise that, in the absence of some pre-existing contractual or other legal obligation, the owners are personally responsible for Maritime's debts or ongoing financial requirements. The Rev. Sandra M. DePriest, the indirect owner of Maritime,³ and her husband, Mr. Donald R. DePriest, have already contributed, directly or indirectly, in excess of \$7 Million to Maritime.⁴ They are under no legal obligation to contribute additional funds, nor do they intend to do so. Accordingly, there is no basis for compelling the production of financial statements, tax returns, *etc.*, for Maritime's owners as

² Maritime incorporates herein by this reference *Maritime's Status Report on Discovery and Response to the Enforcement Bureau's Request for the Presiding Judge's Intervention*, filed on March 22, 2012, and *Maritime's Reply Per Order (FCC 12M-21)*, filed on March 28, 2012. Copies are appended hereto for convenient reference as Attachments A and B, respectively.

³ Sandra DePriest owns and controls 100% of SRJ/W Limited Partnership, which in turn owns 98% of Maritime.

⁴ This total is comprised of a \$2,930,296 claim of Sandra DePriest, a \$3,950,000 claim by Donald DePriest, and a \$350,000 claim of Scotland House, Inc., and entity indirectly owned by the DePriests. Under the anticipated Second Thursday resolution of this matter, the DePriests will not recover any of these claims.

these documents have absolutely no bearing whatsoever on the current or future financial condition of Maritime.

II. TIMELY CONSTRUCTION AND DISCONTINUANCE OF SERVICE

The *Order* incorrectly assumes that Maritime has not been forthcoming with discovery on “(1) when the construction of each licensed facility was completed, and (2) which licensed facilities are currently in operation or not.” *Order* at p. 2. Maritime has provided all the responsive information available to it on these questions.

A. *When Was Construction Completed?*

Maritime does not claim that lack of monetary resources prevents it from responding to discovery on the question of when initial construction was completed. Maritime rather states that it has answered that question as to each of the facilities and has no additional information.

There are 71 call signs listed in Attachment A to the hearing designation order in this proceeding. Of those, 67 are incumbent site-based licenses authorizing 124 fixed station locations that were subject to the two-year construction deadline specified in Section 80.49(a)(3) of the Commission’s Rules.⁵ Maritime first acquired the incumbent licenses by assignment in late 2005, at which time each of the stations had already been licensed, initially constructed, and gone through at least one renewal cycle. Some 85% (57 out of 67) of the licenses had been through at least two renewal cycles. The majority of the stations were licensed and constructed more than fifteen years prior to their acquisition by Maritime.

Nevertheless, as to 57 of the 124 fixed station locations at issue, Maritime has provided the Bureau with the dates on which initial construction was completed. As to these facilities,

⁵ 47 C.F.R. § 80.49(a)(3) (2011). Four of the 71 signs (WQGF315, WQGF316, WQGF317, and WQGF318) are auctioned, geographic licenses for which the initial construction deadline has not yet occurred. Two of the incumbent call signs (KA98265 and WHW848) are for itinerant or mobile only operations and therefore do not authorize fixed facilities requiring construction.

Maritime has in its possession documentation of the construction dates and/or current Maritime personnel were involved in or had some knowledge of the construction. For the reasons stated in the preceding paragraph, however, Maritime has no information allowing it to pinpoint the exact construction completion date for the other 67 locations. Maritime has nonetheless stated, on information and good faith belief, that each of the facilities was constructed on or before the applicable construction deadline. Maritime has further stated the basis for this good faith belief.

Maritime has stated that initial construction of each of the facilities in question was completed on or before the applicable deadline. Maritime has also provided the precise date of construction where known. Furthermore, Maritime has identified and provided contact information for individuals who were involved in and/or may have additional information regarding the initial construction of the incumbent facilities.

To be clear, this has nothing to do with Maritime's financial condition. This is not about a lack of funds, it is rather a lack of any additional information. Maritime has provided all the information it has regarding construction completion dates. Stated another way,

B. Which Stations Are Currently In Operation?

Maritime has identified specific stations that are known to be in operational status, i.e., constructed and capable of providing two-way communications service, notwithstanding the current lack of any end users. Maritime has also identified those stations known to be in non-operational status and provided the dates and reasons for such temporary discontinuances, e.g., loss of a tower or access to a site, termination of utilities, etc. Finally, Maritime has specifically identified those facilities as to which the current operational status is unknown. Maritime has candidly admitted that such facilities are not currently being used to provide AMTS service.

The Bureau demands that Maritime unequivocally state, "yes" or "no," with no explanation, whether each station is "transmitting a signal." Answering in that form would

require Maritime to visit and inspect each of the sites in question.⁶ This would serve no useful purpose. Maritime has already stated that these stations are not currently being used in the provision of AMTS service to end users. The issue is whether the discontinuance of service is permanent or temporary. A site-by-site visit will provide no useful information in that regard.

The discontinuance aspect of Issue 8 is based on Section 1.955 of the Commission's Rules, which provides in pertinent part: "Authorizations automatically terminate, without specific Commission action, if service is *permanently* discontinued."⁷ Significantly, the regulation goes on to provide: "The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section."⁸ In many radio services, there are regulations prescribing a set period of time after which discontinuance of service is presumed to be permanent. ***But there is no such provision governing AMTS authorizations.*** In fact, there is a pending rulemaking to establish such a provision.⁹ The Commission acknowledges that, because the consequence of permanent discontinuance is

⁶ If the facilities have been physically removed by a site owner, destroyed by natural phenomenon, or utilities terminated for lack of payment, etc., then they would not be transmitting a signal. But Maritime has only reported stations as in "temporary discontinuance" where it knows from reliable information that this is the case. Otherwise, it is quite possible that many of these stations may still be transmitting periodic station IDs. Because Maritime does not actually know this, however, it has not so claimed. Rather, it has reported that the current operational status is unknown.

⁷ 47 C.F.R. § 1.955(a)(3) (2011) (emphasis added).

⁸ *Id.*

⁹ *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996 (2010).

automatic termination of the authorization, “it is imperative that our rules provide a clear and consistent definition of permanent discontinuance of operations; *they do not.*”¹⁰

In this case, whether any discontinuance is permanent turns on Maritime’s intent. The opinion of the D.C. Circuit in *Birt v. Surface Trans. Bd.*,¹¹ is instructive on this point. Birt asserted that the Union Pacific Railroad had abandoned a section of track and that rights to the land should revert to Birt. The court held for the railroad, declaring

a determination as to whether there is an "abandonment" should involve a more searching and functional inquiry about the actual intent of the parties to the transaction than the bare formalities addressed by the Commission here. As stated by the Eighth Circuit Court of Appeals, *abandonment is characterized by an intention of the carrier to cease permanently or indefinitely all transportation service on the relevant line. ... It is the "intent" of the railroad--as evidenced by a spectrum of facts varying as appropriate from case to case--that should be the pivotal issue.*¹²

There is absolutely no basis for requiring Maritime to incur substantial additional debt and devote extremely limited personnel to engage in a site-by-site inspection that will not, regardless of the results, provide any useful or relevant information. For the reasons already discussed, even a definitive determination that each and every station of unknown status is non-operational, i.e., not currently capable of providing service, would not enlighten the presiding judge or the parties on Issue 8. Even if Maritime were in sound financial health, the insistence on such a nationwide site-by-site inspection would be deemed unnecessarily burdensome.

¹⁰ 25 FCC Rcd at 7017 (emphasis added). The objective criterion that will presumably be established in that rulemaking cannot be retroactively applied to Maritime.

¹¹ 90 F.3d 580 (D.C. Cir. 1996).

¹² 90 F.3d at 585, *citing* Black v. ICC, 762 F.2d 106, 113 & n.15 (D.C. Cir. 1985) (emphasis added).

III. CONCLUSION

Maritime has from time to time pointed to its financial condition, not as a basis for exemption from discovery, but in response to false assertions that Maritime has not been cooperative or forthcoming in discovery.¹³ Maritime does not ask to be excused from responding to interrogatories based on its financial condition. To the contrary, as explained above and in recent pleadings,¹⁴ Maritime has answered the disputed interrogatories. Maritime should not be required to incur additional debt for an overly burdensome undertaking that will not produce any further relevant or useful information. Finally, whatever relevance Maritime's financial condition has with respect to Issue 8, Maritime's owners are under no legal obligation to invest, lend, or otherwise contribute any additional money to the entity. Accordingly, the demand for production of their financial records should be rescinded.

WHEREFORE, in consideration of the foregoing, it is respectfully requested that the April 6, 2012, *Order* (FCC 12M-22) Order be vacated or appropriately modified.

Respectfully Submitted,



Robert J. Keller, Counsel for Maritime
Communications/Land Mobile, LLC

Law Offices of Robert J. Keller, P.C.
PO Box 33428
Washington, D.C. 20033

Email: rjk@telcomlaw.com
Telephone: 202.656.8490
Facsimile: 202.223.2121

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¹³ Maritime has done its utmost to be responsive notwithstanding its extremely limited personnel and virtually nonexistent financial resources. Taking document production as an example, Maritime cited its inability to pay for reproduction of literally tens of thousands of pages of documents, but it never insisted that its bankrupt status excused it from document production requests. To the contrary, Maritime took the initiative to bring the documents to Washington DC, when it would have been within its rights to keep the documents in Indiana and make the available there for inspection and copying by the parties at their expense.

¹⁴ See Attachments A and B appended hereto.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2012, I caused copies of the foregoing pleading to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

Pamela A. Kane, Esquire
Brian Carter, Esquire
Enforcement Bureau
Federal Communications Commission
445 Twelfth Street NW – Room 4-C330
Washington DC 20554

Jack Richards, Esquire
Wesley K. Wright, Esquire
Keller and Heckman LLP
1001 G Street NW– Suite 500 West
Washington DC 20001

Robert J. Miller, Esquire
Gardere Wynne Sewell LLP
1601 Elm Street– Suite 3000
Dallas, Texas 75201

Albert J. Catalano, Esquire
Matthew J. Plache, Esquire
Catalano & Plache, PLLC
3221 M Street NW
Washington DC 20007

Robert H. Jackson, Esquire
Marashlian & Donahue, LLC
1420 Spring Hill Road – Suite 401
McLean, VA 22102

Jeffrey L. Sheldon, Esquire
Fish & Richardson, P.C.
1425 K Street NW –Eleventh Floor
Washington, D.C. 20005

Warren C. Havens
& SkyTel Companies
2509 Stuart Street
Berkeley CA 94705

Howard Liberman, Esquire
Patrick McFadden, Esquire
DrinkerBiddle
1500 K Street NW– Suite 1100
Washington DC 20005-1209

Charles A. Zdebski, Esquire
Eric J. Schwalb, Esquire
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue NW
Washington DC 20006

Kurt E. Desoto, Esquire
Joshua S. Turner, Esquire
Wiley Rein LLP
1776 K Street NW
Washington DC 20006

Paul J. Feldman, Esquire
Harry F. Cole, Esquire
Christine Goepf, Esquire
Fletcher, Heald & Hildreth, P.L.C.
1300 N Street – Eleventh Floor
Arlington, Virginia 22209



Robert J. Keller
Counsel for Maritime
Communications/Land Mobile, LLC