

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

APR 19 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 LIMITED OPPOSITION TO
REQUEST FOR PREHEARING CONFERENCE**

1. On April 19, 2012, Maritime Communications/Land Mobile, LLC (Maritime) requested that the Presiding Judge schedule a prehearing conference to discuss discovery-related motions pending before the Presiding Judge.¹ These motions relate to discovery that the

¹ See Maritime's Request for Prehearing Conference, filed April 19, 2012 (Request).

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Presiding Judge ordered to be produced more than two months ago, by February 6, 2012,² but which Maritime still has not provided. The Chief, Enforcement Bureau (Bureau), by her attorneys, respectfully responds to Maritime's Request.

2. The Bureau does not oppose the Presiding Judge scheduling a prehearing conference as long as it is narrowly tailored to address the status of Maritime's discovery responses, and not used as a forum to introduce improper and premature testimonial evidence and legal conclusions. Indeed, the Bureau is hopeful that a prehearing conference will precipitate final resolution of the discovery matters currently pending before the Presiding Judge. However, the Bureau has the following legitimate concerns about Maritime's Request:

- The Bureau is concerned about Maritime's offer to make its employee, John Reardon, available for questioning by the Presiding Judge. The Bureau vigorously opposes any suggestion that Mr. Reardon be allowed to testify on behalf of Maritime during this prehearing conference without the Bureau first having had the benefit of full and complete discovery from Maritime, the opportunity to depose Mr. Reardon, and the right to cross-examine Mr. Reardon. Allowing testimony to be introduced into the record in the manner that Maritime apparently intends would be prejudicial to the Bureau and possibly establish a basis for reversible error.
- The Bureau is concerned that Maritime intends to use this prehearing conference to again prematurely raise its legal arguments that any discontinuance of operations at its various stations should not be considered permanent.³ These arguments are more appropriately raised in the hearing to be scheduled on Issue (g). Indeed, before the Presiding Judge can even reach the legal argument of whether any discontinuance of operations should be considered permanent, he must know whether operations have even been discontinued. Thus, this prehearing conference should focus only on the factual question of whether Maritime has provided full and complete discovery on the operational status of each of its site-based stations and not on legal arguments that are more appropriately addressed in a full hearing.

3. Accordingly, the Bureau respectfully requests that the Presiding Judge preclude Mr. Reardon from offering any testimony during the prehearing conference and that he limit the matters to be discussed at the prehearing conference to (1) whether the 142 stations identified

² See Order FCC 12M-7 (ALJ, rel. January 27, 2012).

³ See, e.g., Maritime's Request That the Presiding Judge's April 6, 2012 Order (FCC 12M-22) Be Vacated or Modified, filed on April 12, 2012, at pages 5-6.

with Status Codes “U” “G” “G1” and “L” in Maritime’s Amended and Further Supplemental Response to Interrogatories (Amended Response) and Maritime’s Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories (Errata)⁴ are currently operating, and if they are not currently operating, when they stopped operating and why; (2) whether each of the stations identified in Maritime’s Errata at Table 3 had been operating since Maritime acquired them until the dates set forth in Table 3; (3) whether operations at each of the stations identified in Maritime’s Errata at Table 3 terminated on the dates set forth therein and have not since resumed operations; and (4) whether all stations identified with Status Code “O” in Revised Table 2 of Maritime’s Amended Response and its Errata are currently operating and have been operating since Maritime acquired them, and if they are not currently operating, when they stopped operating and why.

Respectfully submitted,
P. Michele Ellison
Chief, Enforcement Bureau



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⁴ See Maritime’s Amended and Further Supplemental Response to Interrogatories, filed on March 16, 2012 (Amended Response), at Revised Table 2 and Maritime’s Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories, filed March 19, 2012 (Errata), at Revised Table 2.

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April 19, 2012

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 19th day of April, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S LIMITED OPPOSITION TO REQUEST FOR PREHEARING CONFERENCE" to:

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