

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

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MAY 29 2012
FCC Mail Room

FCC-12M-26
09305

In re)
)
MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)
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.; 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)
Various Authorizations in the Wireless Radio)
Services)

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos. 0004030479,
0004144435, 0004193028,
0004193328, 0004354053,
0004309872, 0004310060,
0004314903, 0004315013,
0004430505, 0004417199,
0004419431, 0004422320,
0004422329, 0004507921,
0004153701, 0004526264,
0004636537,
and 0004604962

ORDER

Issued: May 23, 2012

Released: May 23, 2012

I.

A Prehearing Conference was conducted on May 22, 2012. See *Order* FCC 12M-24. The status of discovery was again probed and discussed and unfortunately, it appears that there has been little progress since the last conference.

Maritime and the Bureau were instructed once more to reduce to Stipulation the operational status of Maritime's licensed stations, the dates of construction and commencement of operations as the Bureau has been seeking by a series of interrogatories. Also, as instructed at the Conference, tentative new hearing and procedural dates¹ are to be included in the same Stipulation, or set forth in a separate Stipulation. The parties are free to expand their Stipulation(s) to include any relevant background information and a descriptive narrative with examples of the nature and purpose of the stations in issue, and the application of a subsuming of site stations into the shoe print of geographic licenses.² The Stipulations are to be filed by **May 31**.

II.

The burden of coming forward with relevant evidence and the burden of proof where the relevant information is within the possession or control of a particular party may be assigned to that party in the discretion of the Presiding Judge. See *In re Rem Malloy*, 5 FCC Rcd 3988-89 (Rev. Bd. 1990) (assigning burden of proceeding and of proof to party having "peculiar knowledge as to intent and motivation of their actions is appropriate)." Cf. *Twin Rivers Communication, Ltd.*, (*Admin. L. J. Memorandum Opinion and Order* FCC 88M-1941 (1988), _____ FCC Rcd _____ (1988) (party that knows the facts best should make the record in the first instance); and *TeleSTAR, Inc.* 2 FCC Rcd 7352-53 (Comm's 1987) (TeleSTAR bears the burden of proving (1) that premature construction was done without knowledge it would violate an FCC rule and (2) TeleSTAR did not lack candor or misrepresent to the Commission in denying such knowledge. *Id.*

In this case, Maritime is the primary and best source of the relevant evidence since it is responsible for lawful construction and operation of stations under its Commission licenses, and as licensee has peculiar knowledge of the factual questions of construction, operation and current status of its many stations. Therefore, it would seem appropriate to assign the burden of coming forward with the evidence and proving its compliance with Commission rules and of being candid with the Commission, and not misrepresenting itself to the Commission. However, to assure fairness of notice and opportunity to be heard, the Bureau and Maritime should file Bench Briefs on their points and authorities by **June 7**, not to exceed 15 pages.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION³



Richard L. Sippel
Chief Administrative Law Judge

¹For current planning and scheduling, a previously set date of May 26 for completion of discovery is cancelled and discovery shall be extended for a period of 6 months to an appropriate date in November 2012.

²Recall Maritimes' verbal explanation on-the-record of "geographic" stations subsuming existing site stations, which was helpful for purposes of the conference.

³Courtesy copies sent to all counsel and to Mr. Warren Havens by e-mail upon issuance of this *Order*.