

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

MAY 31 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
STATUS REPORT ON JOINT STIPULATION WITH MARITIME

1. During the May 22, 2012 prehearing conference, and by Order, FCC 12M-26 (ALJ, rel. May 23, 2012), the Presiding Judge directed the Enforcement Bureau (Bureau) and Maritime Communications/Land Mobile, LLC (Maritime) to “reduce to Stipulation the operational status of Maritime’s licensed stations, the dates of construction and commencement

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of operations as the Bureau has been seeking by a series of interrogatories”¹ concerning Issue (g) of the HDO.

2. Pursuant to the Presiding Judge’s Order, the Bureau, on its own behalf, hereby informs the Presiding Judge that the Bureau and Maritime met and conferred, as directed. The parties were able to reach a limited Stipulation concerning only a limited number of Maritime’s site-based facilities. This limited Stipulation was filed on May 31, 2012.² The Bureau and Maritime were not able to reach agreement on stipulations directed to the current and historical operational status of the remainder of Maritime’s site-based facilities or directed to the dates of construction and commencement of operations for the facilities for which Maritime has not previously identified the construction date.

3. Specifically, the Bureau and Maritime were unable to reach agreement on stipulations directed to the current and historical operational status of Maritime’s site-based facilities identified with an “O” and “L” and “U” status in its responses to the Bureau’s Interrogatory Nos. 13, 14 and 15.³ As the Bureau has previously articulated, Interrogatory Nos. 13, 14, and 15 seek information as to whether Maritime’s site-based facilities are currently operating (*i.e.*, on-the-air, transmitting a signal) and, if not, the date they went off-the-air and why. These inquiries are relevant to determining whether operations at Maritime’s stations have been permanently discontinued as set forth in Issue (g) of the HDO. 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.

4. With regard to the twenty-seven (27) site-based facilities that Maritime has

¹ See Order, FCC 12M-26 (ALJ, rel. May 23, 2012).

² See Limited Joint Stipulation Between Enforcement Bureau And Maritime And Proposed Schedule, filed May 31, 2012 (Limited Stipulation).

³ See, *e.g.*, Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories, filed March 19, 2012, (Errata) at Revised Table 2.

designated as Status “O”, Maritime has confirmed only that these facilities have not offered AMTS service since December 2007, that they currently do not have AMTS subscribers, and that they have been “capable” of operating since December 2007. Maritime still refuses to confirm whether these facilities have been operating since December 2007, and if not, why not, and whether they were operating before December 2007. Thus, the Bureau still does not have a complete response to Interrogatory Nos. 13, 14, and 15 with regard to the following “O” site-based facilities:

Call Sign	Location/Frequency
WHG703	Block B
WHG709	Block B
WHG712	Block B
WHG714	Block B
WHG715	Block B
WHG716	Block B
WHG719	Block B
WHG720	Block B
WHG721	Block B
WHG723	Block B
WHG725	Block B
WHG726	Block B
WHG733	Block B
WHG734	Block B
WHG735	Block B
WHG737	Block B
WHG741	Block B
WHG743	Block B
WHG746	Block B
WHG751	Block B
WHG752	Block B
WRV374	14
WRV374	18
WRV374	26
WRV374	33
WRV374	35
WRV374	40

5. With regard to the twelve (12) site-based facilities that Maritime designated as Status “L”, Maritime will confirm only that these facilities are covered by a spectrum lease.

Maritime has provided no discovery as to whether any of these stations are actually operating, and if not, for how long and why. Surely as the lessor, Maritime is in a position to easily obtain this information and provide it to the Bureau. Indeed, just because a licensed site-based facility is subject to a spectrum lease, does not mean the lessee is operating at that licensed facility. Thus, the Bureau still does not have a complete response to Interrogatory Nos. 13, 14, and 15 with regard to the following “L” site-based facilities:

Call Sign	Location/Frequency
KAE889	3
KAE889	4
KAE889	13
KAE889	20
KAE889	30
KAE889	34
KAE889	48
WHG750	Block B
WRV374	12
WRV374	15
WRV374	25
WRV374	39

6. With regard to the twenty-one (21) site-based facilities that Maritime designated as Status “U”, Maritime maintains that “it does not have sufficient information to allow it to swear under oath to the[ir] current operational status.”⁴ Thus, the Bureau still does not have a complete response to Interrogatory Nos. 13, 14, and 15 with regard to the following “U” site-based facilities:

Call Sign	Location/Frequency
KAE889	6
KAE889	12
KAE889	22
KAE889	46

⁴ See Maritime’s Reply Per Order (FCC 12M-21), filed on March 28, 2012, at page 6. During the meet and confer with Maritime on May 31, 2012, Maritime clarified the operational status of two of the stations previously identified as Status “U” – WHG711 and WHG747. These stations are now included in those to which the parties jointly stipulated. See Limited Stipulation.

Call Sign	Location/Frequency
WHG702	Block B
WHG708	Block B
WHG710	Block B
WHV733	1
WHV733	2
WHV733	3
WHV740	2
WHV843	1
WHV843	5
WHV843	6
WRV374	8
WRV374	16
WRV374	19
WRV374	20
WRV374	22
WRV374	23
WRV374	34

7. In addition, because the Bureau and Maritime were unable to reach any agreement on stipulations directed to the dates of construction and commencement of operations for the facilities for which Maritime has not previously identified the construction date, the Bureau has incomplete discovery on construction and commencement of operations for the following site-based facilities:

Call Sign	Location/Frequency
KAE889	12
WHG693	Block B
WHG701	Block B
WHG702	Block B
WHG703	Block B
WHG705	Block B
WHG706	Block B
WHG707	Block B
WHG708	Block B
WHG709	Block B
WHG710	Block B
WHG711	Block B
WHG712	Block B
WHG713	Block B
WHG714	Block B

Call Sign	Location/Frequency
WHG715	Block B
WHG716	Block B
WHG717	Block B
WHG718	Block B
WHG719	Block B
WHG720	Block B
WHG721	Block B
WHG722	Block B
WHG723	Block B
WHG724	Block B
WHG725	Block B
WHG726	Block B
WHG727	Block B
WHG728	Block B
WHG729	Block B
WHG730	Block B
WHG731	Block B
WHG732	Block B
WHG733	Block B
WHG734	Block B
WHG735	Block B
WHG736	Block B
WHG737	Block B
WHG738	Block B
WHG739	Block B
WHG740	Block B
WHG741	Block B
WHG742	Block B
WHG743	Block B
WHG744	Block B
WHG745	Block B
WHG746	Block B
WHG747	Block B
WHG748	Block B
WHG749	Block B
WHG750	Block B
WHG751	Block B
WHG752	Block B
WHG753	Block B
WHG754	Block B
WHV733	1
WHV733	2
WHV733	3
WHV740	2
WHV843	1

Call Sign	Location/Frequency
WHV843	5
WHV843	6

Maritime offered no explanation for its continued inability to provide this discovery.

8. Although Maritime suggested during its meet and confer with the Bureau that it may be prepared to provide additional discovery responsive to the Bureau’s requests, it would not identify the additional discovery it may be willing to produce, the site-based facilities such discovery may concern, or whether such discovery would be directed to the current and historical operational status or to the dates of construction and commencement of operations of Maritime’s site-based facilities.

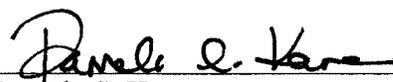
9. Accordingly, the Bureau urges the Presiding Judge to exercise his discretion to control the conduct and disposition of this proceeding and rule definitively on the Bureau’s outstanding motions to compel which have been pending for more than three months. Specifically, the Bureau asks that the Presiding Judge compel Maritime (1) to provide full and complete discovery directed to whether the site-based facilities identified by Maritime as Status “O” “L” and “U”: (a) were operating and offering any type of service prior to December 2007; (b) are currently operating; and (c) if not currently operating, the date they went off-the-air and why; and (2) to identify the dates of construction and commencement of operations for each of the site-based facilities set forth in the chart in paragraph 7.

10. Alternatively, the Bureau requests that the Presiding Judge assign Maritime “the burden of coming forward with the evidence and proving its compliance with Commission rules” as contemplated by Order, FCC 12M-26 (ALJ, rel. May 23, 2012).⁵

⁵ The Bureau will address this alternative relief more fully in its bench brief to be filed June 7, 2012. *See* Order, FCC 12M-26 (ALJ, rel. May 23, 2012).

Respectfully submitted,

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May 31, 2012

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 31st day of May, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S STATUS REPORT ON JOINT STIPULATION WITH MARITIME" to:

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