

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

JUL 5 2012

Federal Communications Commission
Office of the Secretary

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)

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

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

ENFORCEMENT BUREAU'S REQUEST TO CLARIFY ORDER

1. On July 2, 2012, the Presiding Judge issued *Order*, FCC 12M-32 (ALJ, rel. July 2, 2012), in the above-captioned proceeding. The Order suggests that the Enforcement Bureau (Bureau) has been less than diligent in conducting discovery concerning the “structure and

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directional management” of Maritime Communications/Land Mobile, LLC (Maritime).¹ As a result, it directs the Bureau to “seek publicly available information on Maritime”² and to depose Maritime concerning its “princip[als], investors, creditors, structure, direction and control, and other subjects that relate to management, construction and operation” by July 23, 2012.³ The Chief, Enforcement Bureau, by her attorneys, respectfully requests that the Presiding Judge clarify his Order. In support whereof the following is shown.

The Bureau Has At All Times Proceeded Reasonably With Discovery

2. The Order implies that the Bureau may not have been diligent in conducting discovery in this proceeding, particularly with regard to obtaining information from Maritime about its corporate structure. The Bureau disagrees. By *Order*, FCC 11M-15 (ALJ, rel. June 16, 2011), discovery on all issues in this proceeding commenced on July 5, 2011. Just one day later, on July 6, 2011, the Bureau initiated discovery of Maritime concerning, among other things, Maritime’s corporate organization, operation, and control. Such discovery was primarily relevant to Issues (a) and (b) in the HDO relating to “whether Maritime failed to disclose all real parties in interest and other ownership information in its applications to participate in Auction 61”⁴ and “whether Maritime failed to disclose all attribution information in its applications to participate in Auction 61.”⁵ Accordingly, in its initial discovery requests, the Bureau requested Maritime to produce “[d]ocuments sufficient to identify all officers, directors, shareholders,

¹ See *Order*, FCC 12M-32 (ALJ, rel. July 2, 2012).

² See *id.*

³ See *id.*

⁴ See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (HDO) at ¶ 62(a).

⁵ See HDO at ¶ 62(b).

partners and/or beneficial owners of Maritime;”⁶ to “describe all activities and transactions conducted by Donald DePriest on behalf of Maritime;”⁷ and to “[i]dentify all ‘Managers’ of Maritime and describe the role and responsibilities of each such individual.”⁸ The Bureau also requested that Maritime “[i]dentify all individuals involved in Maritime’s decision to purchase any Mobex asset, including but not limited to Mobex’s [site-based] licenses for wireless spectrum”⁹ and “[i]dentify all individuals who, on behalf of Maritime, participated in negotiations with Mobex concerning the acquisition of any of Mobex’s assets, including but not limited to Mobex’s [site-based] licenses for wireless spectrum.”¹⁰ Rather than responding to these discovery requests within the time proscribed by the Commission’s rules,¹¹ Maritime sought a three and a half-week extension – until August 12, 2011 – to respond.¹² The Presiding Judge did not issue a ruling on Maritime’s extension request.

3. While waiting for Maritime’s delayed response to its first set of document requests and interrogatories, the Bureau followed up with additional corporate-related discovery requests on August 1, 2011. Specifically, the Bureau requested that Maritime produce all

⁶ See Enforcement Bureau’s First Request for Production of Documents to Maritime Communications/Land Mobile, LLC, filed July 6, 2011, at No. 1.

⁷ See Enforcement Bureau’s First Set of Interrogatories to Maritime Communications/Land Mobile, LLC (First Interrogatories), filed July 6, 2011, at No. 5.

⁸ See First Interrogatories at No. 26.

⁹ See First Interrogatories at No. 10.

¹⁰ See First Interrogatories at No. 11.

¹¹ Maritime’s responses to the Bureau’s first set of interrogatories were due on July 20, 2011; its responses to the Bureau’s first set of document requests were due on July 21, 2011. See 47 C.F.R. §§ 1.323 and 1.325.

¹² See, e.g., Maritime’s Motion for Extension of Time to Respond to the Enforcement Bureau’s Initial Discovery Requests, filed on July 15, 2011.

documents evidencing communications by its Board, including meeting minutes.¹³ The Bureau also requested that Maritime:

- identify the members of its Board;¹⁴
- describe all communications by the Board and any actions taken by the Board;¹⁵
- describe all activities and transactions conducted by Sandra DePriest and Maritime employees John Reardon and Robert “Tim” Smith on behalf of Maritime;¹⁶
- describe Sandra DePriest’s involvement in the decision to purchase site-based facilities from Mobex;¹⁷
- identify the outside entity to whom 22 partnership units of Maritime were issued in 2008;¹⁸
- identify the partner(s) of Maritime’s Managing Member, S/RJW Partnership, L.P.;¹⁹ and
- identify any Member of Maritime other than S/RJW Partnership, L.P.²⁰

However, on the same day that the Bureau served on Maritime this second round of discovery requests, Maritime filed for bankruptcy protection and requested an immediate stay of all

¹³ See Enforcement Bureau’s Second Request for Production of Documents to Maritime Communications/Land Mobile, LLC, filed on August 1, 2011, at No. 10.

¹⁴ See Enforcement Bureau’s Second Set of Interrogatories to Maritime Communications/Land Mobile, LLC (Second Interrogatories), filed on August 1, 2011, at No. 14.

¹⁵ See Second Interrogatories at Nos. 15 and 16.

¹⁶ See Second Interrogatories at Nos. 2, 17 and 21.

¹⁷ See Second Interrogatories at No. 5 and 6.

¹⁸ See Second Interrogatories at No. 28.

¹⁹ See Second Interrogatories at No. 29.

²⁰ See Second Interrogatories at No. 30.

procedural dates and discovery obligations in the above-captioned proceeding.²¹ Maritime did not respond to the Bureau's July 6, 2011 or August 1, 2011 discovery requests.

4. Because the Presiding Judge scheduled a prehearing conference for October 25, 2011, to address the Bureau's pending discovery requests, the Bureau refrained from moving to compel Maritime's responses. As a result of this prehearing conference, the Presiding Judge did not require Maritime to respond to any of the Bureau's initial discovery requests and he strictly limited the scope of further discovery in this proceeding to Issue (g) concerning Maritime's "alleged failure of timely construction and alleged discontinuance of usage."²²

5. Given that Issue (g) relates solely to the build-out and technical status of Maritime's site-based facilities, it was the Bureau's understanding that Maritime's corporate structure, organization, operation, and control were not germane to the factual inquiries associated with Issue (g).²³ Moreover, Maritime never suggested that its corporate organization or control was relevant to its ability to provide complete information in response to the Bureau's discovery requests on Issue (g). Thus, since October 2011, the Bureau has not pursued further its initial discovery requests directed to the company's corporate structure, organization, operation, and control.

6. Instead, the Bureau has focused its limited resources on seeking discovery concerning the date each of Maritime's site-based facilities were constructed and the current and historical operating status of each of its site-based facilities, including whether these facilities are

²¹ See Maritime's Motion to Defer All Procedural Dates, filed on August 1, 2011.

²² See *Order*, FCC 11M-31 (ALJ, rel. Oct. 26, 2011).

²³ See HDO at ¶ 62(g): whether Maritime's site-based facilities were constructed (*i.e.*, placed in operation) within two years of their grant and (b) whether any discontinuance of Maritime's site-based facilities was permanent.

currently operating, and if not, why not and for how long operations have been discontinued.²⁴ As the Presiding Judge is well aware, however, more than four months after Maritime was ordered to respond fully and completely to the Bureau's discovery requests on Issue (g),²⁵ the Bureau still has incomplete information on Maritime's construction of its site-based facilities and its continued usage of these facilities. The Bureau first filed a motion to compel Maritime to respond to its discovery requests on Issue (g) on February 16, 2012.²⁶ The Presiding Judge did not rule on this motion. Instead, he ordered the parties to discuss ways for Maritime to improve its discovery responses.²⁷ The parties met and conferred in compliance with the Presiding Judge's Order, but Maritime's subsequent amended discovery responses failed to include the information Maritime had agreed to provide.²⁸ Since then, the Bureau has filed multiple pleadings urging the Presiding Judge to compel Maritime to produce this discovery so that the Bureau can proceed with depositions on Issue (g).²⁹ Indeed, as the Bureau has argued previously, depositions on Issue (g) will be productive only if the Bureau is able to question

²⁴ *See, e.g.*, Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Site-Based Operations, filed on December 7, 2011; Joint Requests for the Production of Documents to Maritime Relating to Nonconstruction and Discontinuance of Site-Based Operations, filed on December 7, 2011.

²⁵ *See* Order, FCC-12M-7 (ALJ, rel. Jan. 27, 2012).

²⁶ *See* Enforcement Bureau's Motion To Compel Maritime To Respond To Joint Interrogatories, filed February 16, 2012.

²⁷ *See* Order, FCC-12M-19 (ALJ, rel. March 12, 2012).

²⁸ *See* Maritime's Amended and Further Supplemental Response to Interrogatories, filed on March 16, 2012, and Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories, filed March 19, 2012. *See also* Enforcement Bureau's Status Report On Maritime's Discovery Deficiencies And Request For Presiding Judge's Intervention, filed March 20, 2012.

²⁹ *See, e.g.*, Enforcement Bureau's Request For A Prehearing Conference On Maritime's Discovery Deficiencies, filed on March 6, 2012; Enforcement Bureau's Status Report On Maritime's Discovery Deficiencies And Request For Presiding Judge's Intervention, filed March 20, 2012; Enforcement Bureau's Response To Request To Vacate Or Modify, filed April 16, 2012; Enforcement Bureau's Status Report On Joint Stipulation With Maritime, filed May 31, 2012.

Maritime's principals about the information it is still waiting for Maritime to produce.³⁰

Nevertheless, the Presiding Judge has not yet ruled on any of the Bureau's pleadings.³¹

Depositions of Maritime's Principals At This Time Would Be Premature

7. The Order requires the Bureau to depose Maritime concerning its "princip[als], investors, [and] creditors" and its "structure, direction and control" – none of which appear to be relevant to Issue (g). Indeed, none of these topics appear reasonably calculated to lead to the discovery of admissible evidence concerning the dates on which Maritime's site-based facilities were constructed or their current and historical operational status.

8. Moreover, to compel the Bureau to move forward with depositions of Maritime without allowing the Bureau to first obtain copies of relevant documents and pertinent background information from Maritime on these topics would unfairly prejudice the Bureau. At a minimum, the Presiding Judge should allow the Bureau to obtain basic information from Maritime concerning its corporate structure, direction and control before compelling it to proceed with a deposition on these topics. For example, instead of placing upon the Bureau the obligation to seek publicly available information on Maritime concerning its structure, direction and control, the Presiding Judge should compel Maritime to produce, by a date certain, any such information it has in its possession, custody or control (*e.g.*, its charter, articles of incorporation, or by-laws). The Presiding Judge should also grant the Bureau leave to renew its pending June 6, 2011 and August 1, 2011 discovery requests related to Maritime's structure, operation or

³⁰ See, *e.g.*, Enforcement Bureau's Status Report On Maritime's Discovery Deficiencies And Request For Presiding Judge's Intervention, filed March 20, 2012, at para. 7; Enforcement Bureau's Response To Request To Vacate Or Modify, filed April 16, 2012, at para. 4.

³¹ The Presiding Judge also has not ruled on whether to reassign the "the burden of coming forward with evidence and proving its compliance with Commission rules" on Issue (g), which he asked the Bureau and Maritime to brief by June 7, 2012. See *Order*, FCC-12M-26 (ALJ, rel. May 23, 2012).

control and to serve any additional requests as the Bureau deems necessary.³² The Presiding Judge should also identify a date certain by which Maritime is to produce the “corporate and board of director minutes, resolutions and any and all recordings, written or mechanical, of Maritime’s meetings” that the Presiding Judge identified in his July 2, 2012 Order.³³

9. In addition, Maritime has produced only the most cursory information concerning its creditors in this proceeding.³⁴ It has not produced any information concerning its investors. It is unclear how discovery concerning Maritime’s investors and creditors will shed light on any of the issues set forth in the HDO,³⁵ including Issue (g), and it is premature to compel the Bureau to depose Maritime on these subjects before allowing it to request and obtain documents and information in discovery that could inform the depositions.

10. Finally, because the Presiding Judge recently proposed re-assigning from the Bureau to Maritime “the burden of coming forward with evidence and proving its compliance with Commission rules” on Issue (g),³⁶ the Bureau has not yet expended the significant effort necessary to prepare document and deposition subpoenas for each of Maritime’s third-party lessees concerning the operational status of Maritime’s leased site-based facilities. At a

³² Because questions concerning Maritime’s management structure and day-to-day operations and control are relevant, at a minimum, to Issues (a)-(c) of the HDO, the Bureau should not be limited in its ability to seek additional written or deposition discovery, as necessary, from Maritime directed to these topics (as well as to others), if the hearing proceeds on Issues in the HDO other than Issue (g). *See, e.g.*, HDO at ¶¶ 62(a)-(c).

³³ *See Order*, FCC 12M-32 (ALJ, rel. July 2, 2012).

³⁴ *See Maritime’s Response to the Enforcement Bureau’s Court-Ordered Discovery Requests*, filed on November 7, 2011.

³⁵ Such information seems relevant, if at all, only to the Commission’s consideration of Maritime’s as yet un-filed petition for extraordinary relief pursuant to the Commission’s *Second Thursday* policy and the identification of “innocent” creditors. If questions arise from that filing as to whether a creditor is “innocent” for the purposes of recovery under *Second Thursday*, the Commission and the Bureau have the ability to request additional information, outside the context of this proceeding.

³⁶ *See Order*, FCC-12M-26 (ALJ, rel. May 23, 2012).

minimum, the Bureau should be granted time to prepare and serve subpoenas on these third-party lessees and Maritime should be compelled to produce complete responses to the Bureau's pending discovery requests concerning nonconstruction and discontinuance of operations before the Bureau is compelled to depose Maritime.

The Deposition Schedule is Contrary to the Commission's Rules

11. The Order compels the Bureau to complete depositions of Maritime's principals by July 23, 2012.³⁷ Section 1.315 of the Commission's rules, however, requires that the Bureau provide a minimum of 21 days advance notice in writing before taking an individual's deposition.³⁸ In order to complete depositions of Maritime's known principals by July 23, 2012, the Bureau would have had to identify such persons and serve notices of its intention to take their depositions no later than July 2, 2012 – the very day on which the Order compelling such depositions was released. At the very least, the Order should be clarified to account for the 21-day notice requirement, as well as for any oppositions that deponents may interpose, by providing for additional time within which such depositions must be completed.

Conclusion

12. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge clarify his July 2, 2012 Order to allow the Bureau to obtain additional information from Maritime and/or third-parties before proceeding with depositions of Maritime. In this regard, the Bureau asks that the Presiding Judge clarify his Order as follows:

- (a) within 5 business days of the Presiding Judge's Order clarifying the July 2, 2012 Order, Maritime shall produce for the Bureau, SkyTel, Warren Havens and their outside counsel, all corporate and board of director minutes and resolutions, and any and all recordings, written or mechanical, of Maritime's meetings as well as any

³⁷ See *Order*, FCC 12M-32 (ALJ, rel. July 2, 2012).

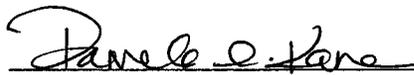
³⁸ See 47 C.F.R. § 1.315.

publicly available documents concerning its corporate structure, operation, and control;

- (b) within 10 business days of receiving Maritime's production pursuant to section (a), above, the Bureau shall renew its July 6, 2011 and August 1, 2011 discovery requests directed to Maritime's corporate structure, operation and control as well as file additional written discovery directed to these topics as necessary;
- (c) within 45 business days of Maritime's production of complete information in response to the Bureau's discovery requests served pursuant to section (b), above, and to its pending discovery requests concerning nonconstruction and discontinuance of operations, the Bureau shall depose known principals of Maritime.
- (d) The Bureau shall not be precluded from seeking additional written or deposition discovery from Maritime at some date in the future if the hearing proceeds on Issues in the HDO other than Issue (g).

Respectfully submitted,

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July 5, 2012

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 5th day of July, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S REQUEST TO CLARIFY ORDER" to:

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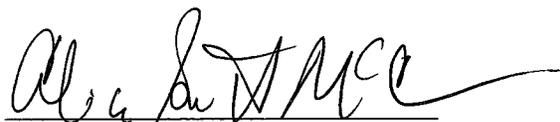
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