

1                   MR. KELLER: I just want to make  
2                   sure we --

3                   JUDGE SIPPEL:        Would it be  
4                   convenient for you, sir, to provide us a copy  
5                   of the license that he's, that Mr. --

6                   MR. PLACHE: I could do that very  
7                   easily, yes.

8                   JUDGE SIPPEL:        Okay. You have  
9                   Denise's email address?

10                  MR. PLACHE: I should have it,  
11                  sure.

12                  JUDGE SIPPEL: It'll be on the  
13                  service list someplace. So you'll just send  
14                  it her -- if you don't have it there, then  
15                  just send it to me or Mary.

16                  MR. PLACHE: And Your Honor was  
17                  provided with a copy of our discovery  
18                  responses --

19                  JUDGE SIPPEL: I'm sure I was.

20                  MR. PLACHE: -- where this is  
21                  discussed.

22                  JUDGE SIPPEL: Oh, I'm sure I was.

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1 I'll be very honest with you, I have not read  
2 every lick of paper --

3 MR. PLACHE: Well, it's a good  
4 read.

5 (Laughter.)

6 JUDGE SIPPEL: -- you know,  
7 floating around, but --

8 MR. PLACHE: You might want to  
9 read this one.

10 JUDGE SIPPEL: That's why I have  
11 this overpaid intern, because zip, zap, zero,  
12 as far as Commission are concerned.

13 MR. PLACHE: Overpaid, huh?

14 JUDGE SIPPEL: Yes. Yes, I think  
15 somebody ought to think about hiring her. She  
16 leaves on Friday. She's good.

17 Now, okay. Okay. All I'm trying  
18 to do is get a snapshot, and I think with your  
19 testimony, the documents, your explanation, I  
20 think for my purposes anyway, I'm going to  
21 have something, and that's a big plus for me.  
22 Okay. Now let's not dwell on it.

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1           Okay. I only got to the first  
2 line of your to-do list. So for purposes of  
3 your to-do list, can I just forget about this  
4 motion to compel for the time being, that  
5 you're working on that? I mean, dribble and  
6 dribble it's coming in?

7           MS. KANE: No, Your Honor, because  
8 we still don't have the information on the  
9 operational status. I don't think we've  
10 completed --

11          JUDGE SIPPEL: Can you narrow it?  
12 Can you narrow the motion?

13          MS. KANE: I have narrowed the  
14 motion. It's this document that I handed you.

15          JUDGE SIPPEL: Yes, but I don't  
16 have a file, I don't have a pleading that says  
17 revised motion to compel or something like  
18 that.

19          MS. KANE: Your Honor, this has  
20 been pending since February.

21          JUDGE SIPPEL: Well, that's my  
22 fault. I'll take blame for that.

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1 MS. KANE: I don't mean to be  
2 blaming you, but this has been delaying  
3 everything else. We can't really take  
4 depositions without even the most basic  
5 information about the operational status.

6 And, you know, we're looking at a  
7 proposed schedule of a close in discovery in  
8 three months, where we've been sitting waiting  
9 for months for this information. We get  
10 inconsistent information on the operational  
11 status of the stations that they will agree  
12 are not actually operational. You know, to  
13 then file yet another pleading and to wait for  
14 then Mr. Keller to file yet another pleading  
15 in response to that, we're looking at yet  
16 another month at a minimum before we can even  
17 potentially get an order to get this  
18 information.

19 So we would plead with you to  
20 actually take this pleading or this document  
21 that we've provided to you instead of a  
22 pleading. We have filed probably six

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1 pleadings on this very issue. And we still  
2 have none of the information that we've asked  
3 for since January.

4 JUDGE SIPPEL: All right. Go  
5 ahead, Mr. Keller.

6 MR. KELLER: I think maybe I can  
7 help here, maybe not; I don't know. If what  
8 I'm hearing Ms. Kane say is that this document  
9 represents what --

10 JUDGE SIPPEL: This is what she  
11 passed out today.

12 MR. KELLER: -- what she believes  
13 is --

14 JUDGE SIPPEL: This is the  
15 Bureau's --

16 MR. KELLER: The Bureau's position  
17 is that these are the matters that are still  
18 live, if you want to call it that, from the  
19 pending motion to compel that you need either  
20 a ruling on or responses to.

21 JUDGE SIPPEL: That's what I got  
22 the impression of.

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1 MR. KELLER: Okay. So --

2 MS. KANE: We would need the  
3 responses to it.

4 MR. KELLER: I understand, but  
5 this is the --

6 JUDGE SIPPEL: The operational  
7 document.

8 MR. KELLER: The motion to compel  
9 has been boiled down to this.

10 JUDGE SIPPEL: Is that correct?  
11 "This" being your document that you passed  
12 around this morning? Does it have a title or  
13 something?

14 MR. KELLER: Well, the --

15 JUDGE SIPPEL: "This" on the  
16 record doesn't really help a lot.

17 MS. KANE: The title of the  
18 document is "Maritime's Interrogatory  
19 Deficiencies on Operating Status as of 8/1/12,  
20 Discovery the Enforcement Bureau Still Needs  
21 on Issue G."

22 MR. KELLER: Right.

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1 JUDGE SIPPEL: Good. Let's call  
2 that then the "Maritime's Deficiencies" that's  
3 been passed around today by the Bureau. It's  
4 a Bureau document. Don't like that?

5 MR. KELLER: No, no, that's okay.  
6 I just want to make sure it's identified.

7 JUDGE SIPPEL: "Maritime's  
8 Operating Status" --

9 MR. KELLER: As of 8/1.

10 JUDGE SIPPEL: -- "as of 8/1."  
11 How's that? That's a beauty.

12 MR. KELLER: Okay. But here's  
13 what I can do, Your Honor, that I think will  
14 help us, because I mean I'm hearing things  
15 that I think we're -- I think there's a  
16 difference of wording here or something. The  
17 stations that were listed as operational, I  
18 don't think we ever claimed they were  
19 operating in the sense of providing service.  
20 But be that as it may, let me say I will  
21 assume that this then is effectively an order  
22 for us to go out and provide further answers

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1 to this, based on this under the motion --

2 JUDGE SIPPEL: "This" again being  
3 the status of 8-1-12?

4 MR. KELLER: We will file, yes.  
5 And as I said, what I'll do further, because  
6 -- to clarify things, to help the confusion if  
7 there's inconsistencies, the cobbling  
8 together, I will also -- I'm volunteering to  
9 pull together all of the past responses and  
10 supplement responses and amended responses and  
11 cobble it together into a single combined  
12 composite filing that will be the sort of  
13 definitive answers to each of these, including  
14 this, and we will submit that. I'll submit  
15 that within a week, a week from today.

16 JUDGE SIPPEL: That's good. Okay.  
17 Because that's a start. Now I'm not going to  
18 -- you do that and let me worry about the  
19 motion. You do just what you said you're  
20 going to do.

21 (Phone rings.)

22 JUDGE SIPPEL: What's happening

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1 over there? Somebody's got a phone ringing.

2 RECORDED VOICE ON PHONE: If you'd  
3 like to make a call, please hang up and try  
4 again. If you need help, hang up and then  
5 dial your operator.

6 MS. VILLARREAL: We got cut off.

7 JUDGE SIPPEL: We got cut off?  
8 Yes, what makes me think that --

9 RECORDED VOICE ON PHONE: If you'd  
10 like to make a call, please hang up and try -

11 JUDGE SIPPEL: Let them try. I'm  
12 losing my track of thought here. All right.  
13 Yes, you do exactly what you said you're going  
14 to do. I'm not going to try and paraphrase  
15 it --

16 MR. KELLER: Okay.

17 JUDGE SIPPEL: -- Mr. Keller. And  
18 then I will take another look at this motion  
19 to compel and we'll take it from there. I'm  
20 not going to say anything about what I'm going  
21 to do, but you're going to do for me what, if  
22 Denise was staying here for another week or

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1 two, Denise would be doing.

2 MR. KELLER: Okay.

3 JUDGE SIPPEL: So that's exactly  
4 what I had in mind.

5 MR. KELLER: All right.

6 JUDGE SIPPEL: Sorry, Denise.

7 Want to take a break? Why don't  
8 we take a five-minute break? That okay?

9 RECORDED VOICE ON PHONE: Please  
10 hold while I confirm your pass code.

11 (Whereupon, at the above-entitled  
12 matter went off the record at 10:51 a.m. and  
13 resumed at 10:55 a.m.)

14 JUDGE SIPPEL: Okay. Can we go  
15 back on the record?

16 I'm sorry, where did we leave off?  
17 I think we left off with we're going to get  
18 from Maritime what Maritime has promised and  
19 we were going to move on. I know what I'm  
20 going to do with the motion. Don't worry  
21 about it. I will address it.

22 The next item is a bench brief

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1 endorsing the idea of assigning -- okay.

2 By the way, Duquesne was looking  
3 for me to consider their brief also, which I  
4 have done. Consider it received. If I can  
5 get to an order at some point, I will.

6 MR. ZDEBSKI: Thank you, Your  
7 Honor.

8 JUDGE SIPPEL: But you've got it.  
9 You've got what you wanted.

10 So the burdens of proceeding, I  
11 don't have any -- first of all, let me start  
12 by saying this is a matter of my discretion.  
13 Secondly, let me say that I have no problem  
14 with assigning the proceeding under these  
15 circumstances. I'm not completely sold on the  
16 idea of also the burden of proof. In fact,  
17 I'm kind of disinclined to go that far.

18 If the burden of proceeding is not  
19 met as to certain evidence, then there are  
20 certain presumptions that kick in and you can  
21 articulate the presumptions at the appropriate  
22 time. You understand what I'm saying, Ms.

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1 Kane?

2 MS. KANE: I believe so, Your  
3 Honor.

4 JUDGE SIPPEL: All right. I'm not  
5 going to rule on this, however, as to the  
6 discretionary matter. I'm not going to rule  
7 on it until, you know, just before the hearing  
8 because I'm learning more and more as this  
9 "discovery process" goes forward and I'm not  
10 just -- I'm just not yet convinced that  
11 Maritime -- that I should exercise my  
12 discretion to that extent to Maritime's  
13 detriment. I'm just not convinced of that yet  
14 in my mind. But as far as the law is  
15 concerned, I'm clear on the law. If I'm  
16 wrong, I'm wrong, but there will be -- I don't  
17 want to give anybody time for a motion for  
18 clarification. It'll be clear enough at the  
19 hearing. So that's number two.

20 Number three, the request to  
21 clarify the order. Okay. The request to  
22 clarify the order. Okay. What do we have

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1 left on that? Well, one thing that apparently  
2 has been unclear on the order is -- let's see.  
3 Oh, yes. This is my order dated July 2. It's  
4 order FCC 12M-32. Clarification on my order  
5 requiring depositions to start, the Bureau  
6 depositions and discovery to start July 23rd.  
7 And I would not have been offended had that  
8 been interpreted as meaning that you would get  
9 out notices of deposition by July 23rd. I  
10 didn't say it exactly that way, but I would  
11 not have been offended if you had interpreted  
12 it that way. But you have not interpreted  
13 that way. So now we're past July  
14 23. Nothing has been done and I'm supposed to  
15 clarify why I didn't tell you that you had 20  
16 days and all that kind of business. So I'm  
17 clarifying that today. To that extent there  
18 has been nothing done in any event, so it's  
19 moot. But I still think that it's appropriate  
20 to start deposing people on the issue that  
21 Maritime -- I'm sorry, sir -- Maritime's  
22 counsel has laid out very specifically where

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1 the information is going to be available to  
2 you by deposition. They can really do nothing  
3 further.

4 MS. KANE: Well, Your Honor, I  
5 think one of the primary purposes of our  
6 motion to clarify was what the scope of this  
7 deposition should cover. We're prepared to --

8 JUDGE SIPPEL: You didn't say  
9 that.

10 MS. KANE: No, I think we did,  
11 Your Honor, because we are questioning whether  
12 or not we should be able to proceed with a  
13 deposition on the structure, management and  
14 operation of Maritime when we haven't really  
15 been provided with ample opportunity to take  
16 discovery on those issues.

17 JUDGE SIPPEL: You know, I'm  
18 telling you, you keep coming back to that. I  
19 don't want to keep beating a dead horse, but  
20 I didn't realize how much information you had  
21 just by virtue of the LOI. There's a lot of  
22 material there. I've taken depositions, many,

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1 many depositions, many, many years ago, but,  
2 boy, those organic documents, you can spend a  
3 day and have a great time.

4 MS. KANE: Well, Your Honor, we've  
5 gone through those documents and we very  
6 carefully --

7 JUDGE SIPPEL: Not with a witness.

8 MS. KANE: No, but we very  
9 carefully drafted interrogatories based on  
10 those documents.

11 JUDGE SIPPEL: You can't get it  
12 with an interrogatory. You know that. You  
13 should know that. You're not going to get  
14 that information cold from an -- you're just  
15 not going to get it.

16 MS. KANE: Well, I guess it would  
17 depend on the information, Your Honor, but the  
18 interrogatories we drafted were very, very  
19 narrowed in terms of what we were asking.

20 JUDGE SIPPEL: I'm not critical of  
21 the interrogatories.

22 MS. KANE: But if you will allow

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1 us to take depositions based on the discovery  
2 that we've put in interrogatories about the  
3 operation of Maritime, we're happy to do that,  
4 but we don't still have sufficient information  
5 from them on these topics. We shouldn't have  
6 to go in blind.

7 JUDGE SIPPEL: You're not going to  
8 be going in blind. You're not flying blind.  
9 He's giving you -- there's going to be an  
10 update on this. What I'm talking about is I  
11 wouldn't worry so much now about deposing on  
12 the organizational business. I mean, you can  
13 spend some time on that, but, you know, things  
14 keep shifting on me. I now find out, or at  
15 least I finally -- you know, it comes through  
16 loud and clear to me that there is a lot of  
17 basic organic documents floating around and  
18 it's going to say a lot.

19 MS. KANE: Well, Your Honor, I  
20 think when you see the documents you'll be  
21 disappointed that they are not providing  
22 sufficient information. I mean, one of the

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1 key issues in this HDO is who was running this  
2 company day to day.

3 JUDGE SIPPEL: Look, I understand  
4 that, but you keep shifting away from where  
5 I'm at. I'm trying to say is I'd just focus  
6 on one thing, and you can do depositions that  
7 way, particularly in a case like this. Now if  
8 they complain about being abused or dragged  
9 back and forth, I'll take care of that.

10 MS. KANE: Well, Your Honor,  
11 one --

12 JUDGE SIPPEL: I'm saying just  
13 depose them on that one specific fact issue  
14 that you have here with respect to what's  
15 operating, what's not operating, what do you  
16 know is operating and when did you know it and  
17 why don't you know it, and that kind of thing?

18 MS. KANE: That would be fine,  
19 Your Honor, but that -- we were just --

20 JUDGE SIPPEL: He's inviting you  
21 to do it.

22 MS. KANE: Well, if we're limiting

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1 -- but your order was much broader than simply  
2 issue G, so we needed clarification from Your  
3 Honor as to whether we were also being  
4 required at this time to take a broader issue  
5 than the one issue of construction and  
6 operation and of their stations. Because we  
7 want to make sure that if we're going to go  
8 forward down that path, that we have ample  
9 opportunity, should this case not go away on  
10 second Thursday, to take a broader deposition  
11 on that subject since it's the paramount  
12 issues relating to the HDOs that are not  
13 currently going to trial.

14 MR. KELLER: Let me back up a  
15 little bit. As I said earlier on, whether or  
16 not you just have one issue in this case,  
17 issue G; i.e., construction and operation of  
18 assigned designated licenses -- stations  
19 related thereto, you still need to know the  
20 background information about who's running the  
21 show. You have to know that.

22 MS. KANE: Well then, Your Honor,

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