

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED

SEP 17 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 RESPONSE TO
MARITIME'S MOTION FOR PARTIAL SUMMARY DECISION

1. On August 31, 2012, Maritime Communications/Land Mobile, LLC (Maritime) filed a Motion for Partial Summary Decision (Motion).¹ Maritime seeks partial summary

¹ See Motion for Partial Summary Decision, filed August 31, 2012.

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decision on two categories of licenses: (i) Maritime authorizations subject to the stipulation filed by the Enforcement Bureau (Bureau) and Maritime on May 31, 2012 (Subsumed Incumbent Licenses); and (ii) Maritime authorizations initially issued to Waterway Communications System, Inc. (Watercom Licenses). Maritime argues that questions raised by Issue (g) of the HDO concerning construction and operation of stations² should be deemed moot with respect to the Subsumed Incumbent Licenses. Maritime also argues that summary judgment should be granted on the question of whether the Watercom Licenses were constructed within two years from the date of their grant in accordance with Section 80.49(a) of the Commission's rules. For the reasons set forth below, the Bureau does not oppose Maritime's Motion.

The Subsumed Incumbent Licenses

2. It is undisputed that on May 31, 2012, the Bureau filed a pleading, on behalf of both the Bureau and Maritime, entitled "Limited Joint Stipulation Between Enforcement Bureau And Maritime And Proposed Schedule" (Joint Stipulation).³ In this pleading, the Bureau and Maritime stipulated, solely for the purposes of this proceeding, that:

- Maritime filed applications to modify its authorization for call sign KAE889 by deleting Locations 8, 14, 26, 27, 28, 33, 37, 39, 40 and 44, and that such Locations shall be treated as "deleted" from this authorization;⁴
- Maritime filed applications to modify its authorizations for call signs WHG693, WHG701-703 and WHG705-WHG754 by deleting the Block A frequencies and that such frequencies shall be treated as deleted from these authorizations;⁵ and
- Locations 2, 3, 17, 24, 27, 28, 29 and 36 of Maritime's

² 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(g).

³ See Limited Joint Stipulation Between Enforcement Bureau And Maritime And Proposed Schedule, filed on May 31, 2012.

⁴ See Joint Stipulation at ¶ 5.

⁵ See Joint Stipulation at ¶ 6.

authorization for call sign WRV374 shall be treated as deleted from this authorization.⁶

Maritime refers to the authorizations subject to the Joint Stipulation as the Subsumed Incumbent Licenses because they are entirely subsumed within geographic licenses currently held by Maritime.⁷ Maritime and the Bureau intended that the Joint Stipulation eliminate the need to further litigate any part of Issue (g) with respect to the Subsumed Incumbent Licenses. Accordingly, the Bureau agrees with Maritime that Issue (g) should be deemed moot as it pertains to the Subsumed Incumbent Licenses.

3. In addition, on August 9, 2012, Maritime filed a pleading entitled, “Supplemental Responses Per Order FCC 12M-38” (Supplemental Responses)⁸ in which it noted that Location 31 of call sign WRV374 “was inadvertently omitted” from the list of Subsumed Incumbent Licenses set forth in the Joint Stipulation.⁹ In its Supplemental Responses, Maritime agreed to voluntarily delete this Location from the authorization for call sign WRV374.¹⁰ Thus, Location 31 of call sign WRV374 should be treated the same as the Subsumed Incumbent Licenses for the purposes of Maritime’s Motion. Accordingly, Issue (g) also should be deemed moot with regard to Location 31 of call sign WRV374.

⁶ See Joint Stipulation at ¶ 7.

⁷ See Motion at 2.

⁸ See Maritime’s Supplemental Responses Per Order FCC 12M-38, filed on August 9, 2012. By Order, FCC 12M-38 (ALJ, rel. Aug. 2, 2012), Maritime was to “flush out data on EB’s chart” concerning the operating status of Maritime’s site-based authorizations.

⁹ See Supplemental Responses at ¶ 2. As with the Subsumed Incumbent Licenses, Maritime argues that Location 31 of call sign WRV374 is subsumed within one of its later-acquired geographic licenses.

¹⁰ See *id.* at ¶ 2.

The Watercom Licenses

4. There is no dispute among the parties that the HDO put into hearing the following Maritime authorizations: WHG701 – WHG703 and WHG 705-WHG754.¹¹ Maritime refers to these authorizations as the Watercom Licenses.¹² As discussed above, the Bureau and Maritime stipulated to the deletion of the Block A frequencies from the Watercom Licenses.¹³ Thus, for the purposes of Maritime’s Motion, references to the Watercom Licenses implicate only the Block B frequencies of these authorizations.

5. On December 10, 1987, the Commission released an Order finding that the Watercom Licenses had been constructed within the time prescribed by the Commission’s rules.¹⁴ Specifically, the Order stated that “Watercom was required to meet a schedule of construction ... and put the system into operation within the time we had allowed.”¹⁵ The Commission further noted that “there can be no question of spectrum hoarding or other dereliction in [Watercom’s] inauguration of service.”¹⁶

6. Issue (g) of the HDO requires that the Presiding Judge determine (a) whether Maritime’s site-based facilities were constructed within two years of their grant, as required by Section 80.49(a)(3) of the Commission’s rules; and (b) whether operations of Maritime’s site-based facilities have been discontinued and whether any such discontinuance is permanent pursuant to Section 1.955(a) of the Commission’s rules.¹⁷ In its Motion, Maritime argues that

¹¹ See HDO at ¶ 62(g) and Attachment A, thereto.

¹² See Motion at ¶ 2 and Exhibit 1, thereto.

¹³ See *supra* page 2 and note 4.

¹⁴ See *Waterway Communications System, Inc., Memorandum Opinion and Order (FCC 87-373)*, 2 FCC Rcd 7317 (1987) (Watercom Order), attached as Exhibit 4 to Maritime’s Motion.

¹⁵ Watercom Order at ¶ 16.

¹⁶ *Id.*

¹⁷ See HDO at ¶ 62(g).

“[t]he issue of whether the Watercom Stations were timely constructed need not be determined at hearing because it has already been determined by the Commission [in the Watercom Order] some 25 years ago.”¹⁸ The Bureau acknowledges that the Watercom Order resolves the “construction” question of Issue (g) with respect to the Watercom Licenses. Accordingly, the Bureau agrees with Maritime that there is no genuine issue of material fact for determination at the hearing as to whether the Watercom Licenses were timely constructed in accordance with Section 80.49(a) of the Commission’s rules and that summary judgment should be granted on this question.

7. The Bureau notes, however, that the Watercom Order does not address the second part of Issue (g) – *i.e.*, whether operations of the Watercom Licenses have been discontinued and, if so, whether such discontinuance is permanent pursuant to Section 1.955(a) of the Commission’s rules. Thus, even if the Presiding Judge were to grant summary judgment on the “construction” question of Issue (g) with respect to the Watercom Licenses, the “operations” question of Issue (g) would still need to be determined at hearing with respect to these authorizations.

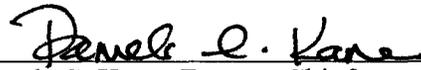
Conclusion

8. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge issue an Order concluding that (i) all parts of Issue (g) are moot with respect to the Subsumed Incumbent Licenses and to Location 31 of call sign WRV374; and (ii) the Block B frequencies of the Watercom Licenses were constructed in accordance with Section 80.49(a) of the Commission’s rules.

¹⁸ Motion at ¶ 26.

Respectfully submitted,

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September 17, 2012

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 17th day of September, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S RESPONSE TO MARITIME'S MOTION FOR PARTIAL SUMMARY DECISION" to:

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