Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED
SEP – 4 2012
Federal Communications Commission
Office of the Secretary

In re	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71 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 Authorizations in the Wireless Radio Services	)	Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
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**	)	

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

ENFORCEMENT BUREAU'S OBJECTIONS TO MARITIME'S REPLY

1. Pursuant to the Presiding Judge's *Order*, FCC 12M-39 (ALJ, rel. Aug. 7, 2012), Maritime Communications/Land Mobile, LLC (Maritime) filed on August 16, 2012, a draft glossary of terms relating to Issue (g) in the above-captioned proceeding, entitled "Draft

Glossary Per Order, FCC 12M-39" (Draft Glossary).[1] On August 22, 2012, the Enforcement Bureau (Bureau) filed objections to Maritime's Draft Glossary, challenging, among other things, Maritime's proposed definition of the term "Operating" because it characterized a facility as "operating" when it was merely capable of operating.[2] On August 28, 2012, Maritime filed a Reply to the Bureau's First Objections.[3]

2. Maritime's Reply proposes *for the first time* definitions of the terms "in operation" and "in service." Because Maritime did not include these terms in its Draft Glossary, the Bureau did not have the opportunity in its previously-filed First Objections to address Maritime's proposed definitions of these terms. The term "in operation" is particularly relevant to Issue (g) because Section 80.49(a) of the Commission's rules governing construction requirements for AMTS site-based authorizations require that such authorizations be "placed in operation" within two years from the grant.[4] Thus, while the Bureau is reluctant to file another pleading related to the Draft Glossary, the Bureau believes it is in the public interest for the Presiding Judge to have a complete record as he considers Maritime's newly-proposed definitions of "in operation" and "in service." Accordingly, in addition to its previously-filed First Objections to the terms Maritime included in its Draft Glossary, the Bureau offers the following additional objections to the record.

3. In its Reply, Maritime contends, without citing to any legal support, that **both** "[a] station actively serving end user customers and a station that is constructed and capable of doing

---

[1] *See* Draft Glossary Per Order, FCC 12M-39, filed on August 16, 2012; *see also Order*, FCC 12M-39 (ALJ, rel. Aug. 7, 2012).

[2] *See* Enforcement Bureau's Objections to Maritime's First Draft Glossary, filed August 22, 2012 (First Objections), at 4-5.

[3] *See* Reply to Enforcement Bureau's Objection to Maritime's First Draft Glossary, filed on August 28, 2012 (Reply).

[4] *See* 47 C.F.R. § 80.49(a).

so but that currently has no customers"[5] should be considered "in operation" or "in service" for the purposes of the above-captioned proceeding. Thus, Maritime is proposing that the terms "in operation" and "in service" be interpreted to mean nothing more than capable of being in operation or in service.

4. Maritime suggests the proposed definition of these terms is reasonable simply because the Commission did not impose on AMTS licensees specific limitations on what it means to be "placed in operation" as it did for other services.[6] However, there is nothing to suggest that the Commission intended that an AMTS licensee be able to meet its "in operation" or "in service" requirements without offering any service at all. Yet, this is exactly what Maritime is proposing.

5. Taken to its logical conclusion, Maritime's proposed definitions of "in operation" and "in service" leads to the illogical result that an AMTS licensee would be able to meet its "placed in operation" construction requirement – and avoid automatic termination of its license – by building a facility that was capable of utilizing the licensed spectrum but without ever actually using that spectrum. Such an interpretation of "in operation" and "in service" would be at odds with the Commission's licensing structure as a whole and would make a mockery of the Commission's long-standing policy against warehousing spectrum. For these reasons, Maritime's proposed definitions of these terms should be rejected.

6. Instead, the Bureau proposes that the Presiding Judge interpret "in operation" and "in service" as follows:

> An AMTS facility is in operation or in service for regulatory purposes if it is constructed, and is on-the-air, transmitting a signal, *i.e.*, exchanging two-way communications traffic. Whether a facility is in operation or in service is determined with respect to

[5] *See* Reply at 4-5.

[6] *See* Reply at 5.

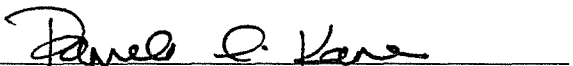
> the licensed site. Operation of fill-in sites does not render operative an inactive licensed transmitter. *See Mobex Network Services, LLC, Memorandum Opinion and Order*, 25 FCC Rcd 3390, ¶ 10, n. 48 (2010).

This proposed definition is consistent with the definition of "Operating" that the Bureau proffered in its Objections.[7]

7. Accordingly, the Bureau respectfully requests that the Presiding Judge reject Maritime's proposed definitions of "in operation" and "in service" and instead adopt the Bureau's proposed definitions of these terms as set forth above.

Respectfully submitted,

P. Michele Ellison
Chief, Enforcement Bureau



Pamela S. Kane
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Brian J. Carter
Attorney
Investigations and Hearings Division
Enforcement Bureau

Federal Communications Commission
445 12th Street SW
Room 4-C330
Washington, D.C. 20554
(202) 418-1420

September 4, 2012

[7] *See* First Objections at 5.

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 4th day of September, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OBJECTIONS TO MARITIME'S REPLY" to:

The Honorable Richard L. Sippel
Chief Adminstrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

Sandra DePriest
Maritime Communications/Land Mobile LLC
218 North Lee Street
Suite 318
Alexandria, Virginia 22314

Dennis C. Brown
8124 Cooke Court
Suite 201
Manassas, VA 20109
Counsel for Maritime Communications/Land Mobile LLC

Jeffrey L. Sheldon
Fish & Richardson P.C.
1425 K Street. N.W.
11th Floor
Washington, D.C. 20005
Counsel for Puget Sound Energy, Inc

Robert J. Miller
Gardere Wynne Sewell LLP
1601 Elm Street
Suite 3000
Dallas, Texas 75201
Counsel for Denton County Electric Cooperative, Inc. d/b/a CoServ Electric

Jack Richards
Wesley Wright
Keller & Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Counsel for Atlas Pipeline – Mid Continent LLC; DCP Midstream, LP; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson County Rural Membership Electric Cooperative

Charles A. Zdebski
Gerit F. Hull
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for Duquesne Light Co.

Paul J. Feldman
Harry F. Cole
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, VA 22209
Counsel for Southern California Regional Rail Authority

Matthew J. Plache
Albert J. Catalano
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, D.C. 20007
Counsel for Dixie Electric Membership Corp.
Counsel for Pinnacle Wireless Corp.

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033
Counsel for Maritime Communications/Land Mobile LLC

SkyTel
c/o ATLIS Wireless LLC
2509 Stuart Street
Berkeley, CA 94705
Attn: J. Stobaugh

Robert H. Jackson
Marashlian & Donahue, LLC
The Comm Law Group
1420 Spring Hill Road
Suite 401
McLean, VA 22102

Makia Day