

Original

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Maritime Communications/Land Mobile, LLC et
al.

EB Docket No. 11-71

For commission consent to assignment of various
authorizations in wireless radio service

DATE OF HEARING: August 1, 2012 VOLUME: 6

PLACE OF HEARING: WASHINGTON, D.C. PAGES: 676-820

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

-----) EB Docket
 In the Matter of:) No. 11-71
)
 MARITIME COMMUNICATIONS/LAND,) File No.
 MOBILE, LLC) EB-09-
) IH-1751
 Participant in Auction No. 61)
 and Licensee of Various) FRN:
 Authorizations in the Wireless) 0013587779
 Radio Services)
) Application
 Applicant for Modification of) File Nos.
 Various Authorizations in the) 0004030479
 Wireless Radio Services) 0004144435
) 0004193028
 Applicant with ENCANA OIL AND) 0004193328
 GAS (USA), INC.; DUQUESNE LIGHT) 0004354053
 COMPANY; DCP MIDSTREAM, LP;) 0004309872
 JACKSON COUNTY RURAL MEMBERSHIP) 0004310060
 ELECTRIC COOPERATIVE; PUGET) 0004314903
 SOUND ENERGY, INC.; ENBRIDGE) 0004315013
 ENERGY COMPANY, INC.;) 0004430505
 INTERSTATE POWER AND LIGHT) 0004417199
 COMPANY; WISCONSIN POWER AND) 0004419431
 LIGHT COMPANY; DIXIE ELECTRIC) 0004422320
 MEMBERSHIP CORPORATION, INC.;) 0004422329
 ATLAS PIPELINE-MID CONTINENT,) 0004507921
 LLC; DENTON COUNTY ELECTRIC) 0004153701
 COOPERATIVE, INC., DBA COSERV) 0004526264
 ELECTRIC; AND SOUTHERN) 0004636537
 CALIFORNIA REGIONAL RAIL) 0004604962
 AUTHORITY)
)
 For Commission Consent to)
 the Assignment of Various)
 Authorizations in the)
 Wireless Radio Service)
 -----)

ORIGINAL

VOLUME VI Wednesday, August 1, 2012

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HEARING LOCATION:

Room A, TW A-363
FCC Headquarters
445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for prehearing conference, pursuant to notice, at 10:00 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

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1 JUDGE SIPPEL: Okay. Yes, because
2 after Friday I've got nobody to blame.

3 All right. Anything else on the
4 speakerphone?

5 MR. HAVENS: Yes, sir.

6 JUDGE SIPPEL: Mr. Havens again?

7 MR. HAVENS: Yes. I would like
8 the opportunity to raise an issue with regard
9 to an FCC rule, 80.471. It is a rule under
10 Part 80 with regard to public coast stations'
11 filings of applications for permission to
12 discontinue. Now that rule is on the books.
13 It applies to public coast. NTS is public
14 coast. There was forbearance granted years
15 ago of that role because public coast stations
16 are deemed to be CMRS and the Commission has
17 issued forbearance with regard to CMRS
18 entities having to submit applications to
19 discontinued service.

20 However, Maritime has stated to
21 the FCC in its request for a \$1.3 million
22 refund of universal service fees paid by its

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1 predecessor entity Watercom that Maritime
2 discontinued interconnection many years ago,
3 and on that basis it sought a refund of the
4 universal service fees paid as CMRS entities.

5 Now, you know, it's -- if Maritime
6 has stated and it's -- clearly that these
7 stations are not interconnected; now I believe
8 it reaffirmed that in responses to the
9 Enforcement Bureau's discovery, then these
10 stations by FCC definition under 20.3 are not
11 CMRS stations. And if they're not CMRS
12 stations, then they are not entitled to
13 forbearance and therefore Maritime has to have
14 files under 80.471, application to
15 discontinue, because it has discontinued
16 operations at a large portion of these
17 stations. So I'm raising that as an important
18 issue with regard to issue G.

19 JUDGE SIPPEL: Anybody have a
20 comment on that?

21 MR. KELLER: I think we've gone --
22 even assuming we hadn't been there before,

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1 we've certainly going beyond collecting
2 factual information. We're into legal
3 arguments and inferences and results to be
4 drawn from legal arguments.

5 JUDGE SIPPEL: Oh, I'm not sure
6 what it is. If you've got something to
7 comment on -- if you're going to present a
8 legal argument, present it through counsel,
9 please.

10 MR. HAVENS: Well, Your Honor, I
11 think the only question is on a fact basis;
12 and perhaps I --

13 JUDGE SIPPEL: All right.

14 MR. HAVENS: -- erred here in not
15 presenting it more as a fact -- that I believe
16 it's relevant. I think the fact of whether or
17 not Maritime alleges to have submitted to the
18 Bureau directly or indirectly in some way
19 applications to discontinue -- whether it has
20 or has not. Now if it has, then, you know,
21 the legal issue surrounding 80.471 is one
22 thing. If it has not, if it says it has never

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1 submitted any applications to discontinue,
2 then of course there's a different way to look
3 at how 80.471 may apply.

4 JUDGE SIPPEL: Okay. Well, do
5 this, if you will then, unless I get an
6 objection here, after this additional
7 information statement is submitted by Mr.
8 Keller, you know, the one we've been talking
9 about here, expanding the -- well, you know
10 what it's about. After that is filed and
11 circulated, within 10 days you can file -- I
12 would just call it the statement of -- Havens'
13 statement, Warren Havens' statement, that's
14 it, on whatever the subject matter is. And
15 that's it. And then you can write a
16 statement. And for what it's worth, just lay
17 out what it is, the facts as you see it of
18 what it is that you're talking about.

19 MR. HAVENS: I appreciate that.

20 JUDGE SIPPEL: Is that okay?

21 Anybody have an objection to that? Mr.

22 Plache?

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1 MR. PLACHE: This whole
2 conversation; I don't know whether it's
3 factual testimony, it's not under oath that
4 Mr. Havens is giving. He's getting into areas
5 that are not covered in the hearing
6 designation order, this issue about whether
7 Maritime should get money back, or previous
8 payments that were made into the ULS fund. I
9 just don't see how it's even related to what
10 we're doing here.

11 JUDGE SIPPEL: Mr. Jackson?

12 MR. JACKSON: I think it is
13 relevant. I mean, I think what Mr. Havens is
14 suggesting is that the question is are these
15 stations operating? And one question would be
16 have they filed any applications to
17 discontinue service.

18 JUDGE SIPPEL: Circumstantial
19 evidence.

20 MR. JACKSON: Circumstantial
21 evidence. I mean, it's more evidence on issue
22 G. I think it is relevant. Then to be given

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1 the weight that Your Honor deems it's to be
2 given.

3 JUDGE SIPPEL: Okay. Bureau? Do
4 you think it's worth it?

5 MS. KANE: I'm not really sure I
6 understand. I think I understood Mr. Jackson
7 much more than I understood where Mr. Havens
8 was heading with this. But obviously in terms
9 of discovery purposes, if there's information
10 that Maritime has as to whether they filed
11 applications for discontinuance, that would be
12 highly relevant, but I thought we'd been
13 asking for that since February.

14 JUDGE SIPPEL: Whoa, whoa, whoa.
15 You're taking me into two different worlds.
16 You think that it is conceivably possible
17 circumstantial evidence?

18 MS. KANE: Yes.

19 JUDGE SIPPEL: Of the status of
20 the stations? That's all?

21 MS. KANE: Yes.

22 JUDGE SIPPEL: Okay. All right.

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1 MS. KANE: If such applications
2 exist.

3 JUDGE SIPPEL: All right. Let's
4 stop there. I'm going to let Mr. Havens
5 submit it, but he has to submit it through
6 counsel. In other words, you work with
7 counsel. I'm sure you're going to do most of
8 the work, Mr. Havens, but it's got to come in
9 through counsel, you know, as an appropriate
10 pleading.

11 I don't know what you want to call
12 it, Mr. Jackson, but give it some kind of a
13 pleading title.

14 MR. JACKSON: Yes, Your Honor.

15 JUDGE SIPPEL: And then parties
16 can do what they will with it, if they want to
17 respond. Again, this is not evidence. This
18 is nothing conclusive here. I consider it to
19 be, you know, well, basically leads in
20 discovery. That's basically it. But let's
21 see what you come up with.

22 Mr. Plache again? Sir? Mr.

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1 Plache, were you looking to say something?

2 MR. PLACHE: So this isn't
3 considered testimony, it's not considered
4 evidence, the whole discussion?

5 JUDGE SIPPEL: No, it's not.

6 MR. PLACHE: Okay.

7 JUDGE SIPPEL: But, no, the
8 concept of a lead, you know? I mean, it's
9 something like a Joe Friday thing, I guess,
10 maybe, or a --

11 MR. PLACHE: It sounded as if
12 there hasn't been a filing showing
13 discontinuance of stations.

14 JUDGE SIPPEL: I have no idea
15 right now on any specific station what your
16 point is. I mean, and I understand what
17 you're saying, but I don't know for a fact.
18 That's what Mr. Keller's going to be doing, I
19 hope.

20 MR. PLACHE: Okay.

21 MR. CATALANO: Your Honor?

22 JUDGE SIPPEL: Yes, sir? Will you

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1 again --

2 MR. CATALANO: Mr. Catalano
3 representing Pinnacle also.

4 JUDGE SIPPEL: Yes, sir?

5 MR. CATALANO: Just to clarify the
6 record, I would ask you to strike Mr. Havens'
7 statement. Let him submit anything he wants
8 to submit through counsel by way of affidavit
9 and then everybody can have an opportunity to
10 respond to that. It was hard to follow that,
11 at least.

12 And secondly, we don't believe Mr.
13 Havens should be continuing to represent
14 himself in this proceeding. You've previously
15 made a ruling that he had to obtain counsel
16 and he has obtained counsel, but he's also
17 continued to represent himself. And would
18 direct you to FCC case law where the
19 Commission has adopted the federal courts'
20 policy on this basically where a party either
21 represents himself pro se or has counsel
22 representing him, but not both. And we can

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1 direct you to that case law, if you'd like.

2 And it's very confusing.

3 JUDGE SIPPEL: Are these the cases
4 that you submitted today? I got a copy of a
5 case from somebody.

6 MR. KELLER: I submitted today
7 probably the same cases he's referring to, or
8 at least cases that say not only that, but
9 also talk directly about the situation where
10 the parties attempting to represent himself
11 pro se while having counsel represent an
12 entity which had a common interest. And the
13 court ruling said you have to choose on or the
14 other. You have to name your poison. And the
15 FCC has adopted that. It's Black Television
16 Workshop of Los Angeles.

17 JUDGE SIPPEL: Well, you've got to
18 admit it's pretty clever.

19 MR. CATALANO: Just a brief little
20 bit, Your Honor?

21 JUDGE SIPPEL: No, I'm going to
22 grant your motion. I think you're right.

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1 He's been basically acting in violation of my
2 instruction and for that reason alone I'm
3 going to strike it. But it's going to come in
4 -- I'm not excluding it, obviously, if it
5 comes in the right way. So your motion is
6 granted. That's it.

7 MR. CATALANO: Thank you.

8 JUDGE SIPPEL: You got anything
9 else, Mr. Havens?

10 MR. HAVENS: Your Honor, I would
11 ask to clarify. What is that I, Warren
12 Havens, a pro se party in the hearing can and
13 cannot do?

14 JUDGE SIPPEL: Well, as far as the
15 Commission rules are concerned, I think you
16 can't do anything except be a witness, and
17 you're really not -- that's a open question,
18 too, in light of the way that you're -- but,
19 look, I don't want to dissuade you from
20 providing useful information, or any
21 information that may not be so useful. But
22 the point is that you still haven't gotten it

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1 straightened out with your legal
2 representation. And it's hard for me to
3 believe that you can't do that because --

4 MR. HAVENS: Well, Your Honor,
5 respectfully, I have made it very clear that
6 Mr. Jackson represents the three entities he
7 identified at the --

8 JUDGE SIPPEL: I know that. I
9 know that. But what --

10 MR. HAVENS: But I am an
11 individual party in the hearing as the
12 Commission stated in the hearing designation
13 order.

14 JUDGE SIPPEL: I know, but they
15 expect you -- go ahead. They expect you to be
16 a party represented by counsel under the
17 rules.

18 MR. HAVENS: Well, Your Honor, I
19 respectfully have submitted in the past to you
20 that as pro se I'm entitled under the
21 Constitution to represent myself. And are you
22 making a decision that I cannot represent

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1 myself as a party in this hearing but for
2 giving facts? Is that your decision?

3 JUDGE SIPPEL: Well, I'm going to
4 do it again. I'll take a look at these case
5 authorities that the counsel has given me and
6 I will reconsider it again with a view towards
7 making it very clear as to what your
8 obligations are. I'm not going to be
9 frightened by some claim of Constitutional
10 rights to represent yourself. You know, we're
11 in a different -- we're in the corporate
12 world, you know?

13 MR. HAVENS: No, no.

14 JUDGE SIPPEL: This is when Bain
15 steps in and straightens everything out.

16 MR. HAVENS: And, Your Honor --

17 JUDGE SIPPEL: Don't --

18 MR. HAVENS: -- I'm talking about
19 representing myself, not a corporation. The
20 Commission designated me individually --

21 JUDGE SIPPEL: Well, you're
22 designated because I -- if I'm reading it

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1 right, they think that maybe you might be
2 helpful. You're not in as a party who's
3 suspected of doing something wrong.

4 MR. HAVENS: Well, Your Honor,
5 respectfully, the Commission in the hearing
6 designation order did not say that Warren
7 Havens is designated as a party solely to give
8 facts. It simply said I'm a party. And I was
9 a party --

10 JUDGE SIPPEL: Yes, you can be a
11 party. I'm sorry to cut you off on that. You
12 can be a party, and you should feel proud that
13 you have been appointed a party, because
14 usually you have to file a motion to intervene
15 at some point. But they did it right up front
16 for you. The problem is you as a person are
17 really part of all these corporations and you
18 need a lawyer to represent corporations.
19 That's what the law provides for.

20 MR. HAVENS: I am different
21 from --

22 JUDGE SIPPEL: Well, I know you're

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1 different, but that's not what the law says.
2 Now I'll explain it to you because I can't do
3 this anymore over the phone. I'm not trying
4 to cut you off and I appreciate all the energy
5 that you're bringing into this case, but it's
6 got to be done the right way if you want to
7 have it listened to, or heard.

8 MR. HAVENS: I'm seeking
9 clarification.

10 JUDGE SIPPEL: You're going to get
11 it. You're going to get it.

12 MR. HAVENS: Then that's what I'm
13 looking for. Then I'll deal with that.

14 JUDGE SIPPEL: You know how I feel
15 about requests for clarification, but you're
16 going to get it. Okay? I promise you.

17 MR. HAVENS: If you don't want to
18 issue that, that's fine, but --

19 (Laughter.)

20 MR. HAVENS: -- Pinnacle brought
21 up this question.

22 JUDGE SIPPEL: You're right.

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1 You're absolutely -- everything -- you're
2 right on all score, except you're not right
3 that you're not in violation of the rule. And
4 I'm going to explain why.

5 MR. HAVENS: All right. I don't
6 want to get into an argument. I don't want to
7 accuse you of anything. I don't want to hold
8 it against you, hopefully, and I want to just
9 move this case forward. And you've done very
10 well and thank you very much. Okay? That's
11 it, Mr. Havens. You'll hear from me.

12 Anybody else have anything else?
13 No? Yes, Mr. Jackson?

14 MR. RICHARDS: Yes, very briefly,
15 Your Honor, if I may.

16 JUDGE SIPPEL: Mr. Richards. Mr.
17 Richards, is that right?

18 MR. RICHARDS: Yes, Your Honor,
19 Jack Richards. I'd just like to note for the
20 record that our clients Enbridge, Encana,
21 Jackson County, Canaxis, Atlas Pipeline, along
22 with Mr. Catalano and Mr. Plache's client

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