

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

NOV 6 - 2012

Federal Communications Commission
Office of the Secretary

In re)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	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	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with ENCANA OIL AND GAS (USA),	)	0004314903, 0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004417199, 0004419431, 0004422320,
MIDSTREAM, LP; JACKSON COUNTY	)	0004422329, 0004507921, 0004153701,
RURAL MEMBERSHIP ELECTRIC	)	0004526264, 0004636537,
COOPERATIVE; PUGET SOUND ENERGY,	)	and 0004604962
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 REQUEST FOR A PREHEARING CONFERENCE

¹ Pursuant to Paragraph 10 of the Protective Order entered in this proceeding (FCC 11M-21), deposition testimony shall be considered Confidential and/or Highly Confidential Information until five (5) business days from the receipt by counsel of the preliminary transcript. The Bureau understands that Maritime’s counsel has not yet received the preliminary transcript of Robert T. Smith’s deposition. Accordingly, the Bureau has treated his testimony as Confidential and/or Highly Confidential Information. Pursuant to Paragraph 11(a) of the Protective Order, the Bureau is filing a redacted version of this pleading.

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1. The Chief, Enforcement Bureau (Bureau), by her attorneys, hereby respectfully requests that the Presiding Judge schedule, at the earliest possible time, a prehearing conference to address Maritime's sudden change of position on the timing of when its site-based stations stopped providing service to customers. After nearly six months of asserting that the majority of its site-based stations did not provide any service after December 2007 – including in response to FCC Order 12M-36 and FCC Order 12M-38 – Maritime's most recent discovery responses now call this December 2007 date into question. The timing of when Maritime's stations stopped providing service to customers is directly relevant to determining whether Maritime's site-based operations were permanently discontinued. The Bureau relied on Maritime's prior representations regarding the site-based stations in drafting its extensive written discovery requests, in deposing Maritime witnesses, and in otherwise preparing its case in this hearing. At this advanced stage in the proceeding, Maritime should be held to the December 2007 service cut-off date it has repeatedly represented to the Bureau, to the Parties and to the Presiding Judge. In further support whereof, the following is shown.

2. During the May 22, 2012 prehearing conference, counsel for Maritime told the Presiding Judge that Maritime **was willing to stipulate** that the majority of its site-based stations stopped providing service to end user customers as of December 2007. For example:

- “We are prepared to stipulate that as to most of these [site-based] licenses, Maritime has not provided AMTS service on these facilities since December of 2007.”²
- “As of December 2007, no AMTS service was provided. We received no further revenue. The company did not provide AMTS service as to most of these licenses. We are willing to stipulate to that.”³
- “[W]e will stipulate that since 2007, no service has been provided.”⁴

² Transcript of Prehearing Conference, dated May 22, 2012, at page 612.

³ Id. at page 615.

⁴ Id. at page 616.

3. In numerous pleadings and discovery responses filed after the May 22, 2012 prehearing conference, including Maritime's responses to two of the Presiding Judge's Orders (FCC Order 12M-36 and FCC Order 12M-38), Maritime reaffirmed that it ceased providing AMTS service to end user subscribers as of December 2007. For example:

- June 7, 2012: "Maritime has candidly conceded that the vast majority of the incumbent [site-based] stations have not been used in the provision of AMTS service since December 2007."⁵
- August 1, 2012: "Maritime has not provided AMTS services pursuant to any of its incumbent (site-based) licenses since December 2007."⁶
- August 9, 2012: "Maritime ceased providing AMTS service to end user subscribers as of December 31, 2007."⁷
- August 9, 2012: "As of December 31, 2007, Maritime was no longer providing service to AMTS customers via these [site-based] stations."⁸

4. Barely three weeks ago, on October 11, 2012, the Bureau deposed Robert T. Smith, the Maritime employee who had previously verified under penalty of perjury the accuracy of the December 31, 2007 date in Maritime's August 1, 2012 and August 9, 2012 responses to FCC Orders 12M-36 and 12M-38.⁹ During this deposition, Mr. Smith repeatedly testified under oath that [REDACTED]

[REDACTED]¹⁰ For example:

⁵ See Maritime's Bench Brief Per Order, 12M-26, filed June 7, 2012, at paragraph 15.

⁶ See Maritime's Report Per Order FCC 12M-36 (Report), filed August 1, 2012, at page 2.

⁷ See Maritime's Supplemental Responses Per Order 12M-38 (Supplemental Responses), filed August 9, 2012, at page 5, paragraph 7.

⁸ See *id.* at page 7, paragraph 9.

⁹ See Report at page 2 and at the sixth page of the document; see Supplemental Responses at paragraph 7 and Letter to the Honorable Richard L. Sippel, filed September 7, 2012.

¹⁰ [REDACTED]

[REDACTED]

[REDACTED]¹¹

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹²

5. Now, just weeks before the proposed deadline for completion of discovery, and after the Bureau has already expended the effort and expense of deposing Maritime employees Smith and Reardon on these very issues, Maritime has changed its story. In its October 31, 2012 Response to Document Production Requests, Maritime contends, for the first time, that the December 31, 2007 date which it has stood by for the last six months, and on which the Bureau has relied, “was not necessarily a hard service cut-off date for all of the systems, but rather the date after which Maritime no longer had any end user subscriber revenue on any of its systems.”¹³ Maritime offers no explanation for this change and no further information.

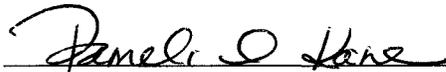
6. Without a firm Maritime service-cut off date on which the Bureau can rely, discovery is at a standstill. Indeed, it makes no sense for the Bureau to proceed with the planned depositions of Mr. and Mrs. DePriest and to incur the associated costs of traveling to Mississippi until this issue is resolved and a new discovery deadline is established. Accordingly, although the Bureau is reluctant to request a prehearing conference, in the instant situation, it sees no

¹¹ [REDACTED]

¹² [REDACTED]

choice but to engage the participation of the Presiding Judge in confirming the service cut-off date for Maritime's site-based stations and in setting a new hearing schedule.

Respectfully submitted,
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November 6, 2012

¹³ See Maritime's Response to Document Production Requests, filed October 31, 2012, at Response to Request No. 1.

EXHIBIT A

**REDACTED PURSUANT
TO PROTECTIVE ORDER IN FCC EB DOCKET NO. 11-71**

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 6th day of November, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S REQUEST FOR A PREHEARING CONFERENCE" to:

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