

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

**FCC 13M-4
09597**

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

ORDER

Issued: March 11, 2013

Released: March 11, 2013

Background

On December 10, 2012, Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively Choctaw) petitioned to intervene in this proceeding pursuant to Section 1.223(c) of the Commission's rules.¹ Believing Choctaw to assert that its participation in the

¹ Choctaw's Petition to Intervene at 1.

proceeding through discovery and other means would aid in the determination of the issues presented in the Hearing Designation Order,² the Presiding Judge permitted Choctaw to intervene as a full participant.³ However, in its objections to the discovery requests of the Enforcement Bureau (the Bureau), Choctaw indicated its belief that its role in this proceeding was significantly more limited than the Presiding Judge envisioned when he granted its Petition.⁴ Because of this impasse, Choctaw was ordered to show cause as to why the Presiding Judge's Order allowing Choctaw's intervention should not be vacated.⁵ In particular, Choctaw was ordered to show how its participation in this proceeding would assist the Presiding Judge in the determination of the issues presented in the Hearing Designation Order.⁶

In its Response to Show Cause Order, Choctaw indicated that its intervention was "premised solely on its desire to benefit the Presiding Judge with information in its possession relating to the Bankruptcy Order and status of the applications before the Commission's Wireless Telecommunications Bureau seeking *Second Thursday* relief."⁷ Choctaw maintained that discovery related to the issues designated for hearing would be unduly burdensome given the limited role that it intended to play.⁸ Stating that party status would require Choctaw to expend substantial resources in responding to discovery requests,⁹ Choctaw moved to withdraw from the proceeding.¹⁰ However, Choctaw noted that if the Presiding Judge envisioned a more limited role for it to play in this proceeding, that it was willing to remain such a party.¹¹

In its submission, the Bureau noted that it does not oppose Choctaw's motion to withdraw.¹² Additionally, the Bureau argues that Choctaw's Petition to Stay and its Motion for Summary Decision of Issue G should be deemed moot, as Choctaw's "refus[al] to comply with the Presiding Judge's Show Cause Order, and fail[ure] to present any basis for how its participation would have assisted the Presiding Judge in determination of the issues present in the Hearing Designation Order" should have disqualified it from ever becoming a party to this proceeding.¹³ The Bureau withdrew from the record its Motion to Compel Choctaw to Respond to Discovery, Opposition to Choctaw's Motion to Strike, and Motion to Extend Discovery.¹⁴

Discussion

Section 1.223(c) of the Commission's rules requires that a party seeking to intervene show how its participation will assist the Commission in the determination of the issues in

² *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).

³ See *Order*, FCC 12M-60; *Show Cause Order*, FCC 13M-2 at 2.

⁴ Choctaw's Objections and Responses to the Bureau's First Set of Interrogatories at ¶ 2; Choctaw's Objections to the Bureau's First Set of Requests for Documents at ¶ 2.

⁵ *Show Cause Order*, FCC 13M-2 at 3.

⁶ *Id.*

⁷ Choctaw's Response to Show Cause Order at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.* at n.2.

¹² Enforcement Bureau's Response to Choctaw's Response to Show Cause Order at 3 ¶ 4.

¹³ *Id.* at 3 ¶ 5.

¹⁴ *Id.* at 3 n.11.

question.¹⁵ Choctaw now clarifies that it “does not uniquely possess any information regarding the construction/operation of facilities decades before Choctaw came into existence,”¹⁶ and fails to present any additional explanation as to how it can assist with the determination of the issues presented in the Hearing Designation Order. As the requirements of Section 1.223(c) have not been satisfied, it is determined that allowing Choctaw’s intervention in this proceeding as a fully participating party was inadvertent and improper.

However, Choctaw need not be excluded completely from this proceeding. Section 1.223(c) allows the Presiding Judge the discretion to permit a party to intervene “limited to particular issues or to a particular stage of the proceeding.”¹⁷ Choctaw now clarifies that it sought intervention solely to “benefit the Presiding Judge with information in its possession relating to the Bankruptcy Order and the status of the applications before the Commission’s Wireless Telecommunications Bureau seeking *Second Thursday* relief.”¹⁸ For good cause shown and having met the requirements of Section 1.223(c) in this sole respect, Choctaw shall be permitted to continue as a party in this proceeding only for the limited purpose of updating the Presiding Judge on the status of its applications. Until other good cause is shown, Choctaw will not be subject to discovery and will not be permitted to file motions that implicate the substantive issues presented by the Hearing Designation Order.

Choctaw’s pending motions¹⁹ were submitted at a time when its participation in this proceeding was improper. In its new limited role in this proceeding, Choctaw is unable to resubmit those motions. Accordingly, Choctaw’s pending motions will not be considered.

Rulings

For the reasons stated above, **IT IS ORDERED** that Choctaw’s Petition to Stay, filed January 21, 2013, and Motion for Summary Decision of Issue G, filed January 24, 2013, **ARE DEEMED MOOT**.

IT IS FURTHER ORDERED that Choctaw shall be permitted to continue participating in this proceeding only in the prescribed limited capacity.

FEDERAL COMMUNICATIONS COMMISSION²⁰



Richard L. Sippel
Chief Administrative Law Judge

¹⁵ 47 C.F.R. 1.223(c).

¹⁶ Choctaw’s Response to Show Cause Order at 4.

¹⁷ 47 C.F.R. 1.223(c).

¹⁸ Choctaw’s Response to Show Cause Order at 4.

¹⁹ Choctaw’s Petition to Stay, filed January 21, 2013; Motion for Summary Decision of Issue G, filed January 24, 2013.

²⁰ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and Mr. Havens.