

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,
) 0004314903, 0004315013, 0004430505,
Applicant with **ENCANA OIL AND GAS (USA),**) 0004417199, 0004419431, 0004422320,
INC.; DUQUESNE LIGHT COMPANY; DCP) 0004422329, 0004507921, 0004153701,
MIDSTREAM, LP; JACKSON COUNTY) 0004526264, 0004636537,
RURAL MEMBERSHIP ELECTRIC) and 0004604962
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

**JOINT RESPONSE OF THE ENFORCEMENT BUREAU AND MARITIME
TO ORDER, FCC 14M-9**

1. On March 12, 2014, the Presiding Judge issued an Order requesting additional information from the Enforcement Bureau (Bureau) and Maritime Communications/Land Mobile, LLC (Maritime) concerning the operational status of certain of Maritime's site-based

authorizations.¹ The Acting Chief, Enforcement Bureau, by his attorneys, and Maritime herein respond to the Presiding Judge's *Order*.

The Presiding Judge's Request for Additional Factual Information

2. In *Order*, FCC 14M-9, the Presiding Judge requested that Maritime provide further facts regarding the current operational status of the facilities located at WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WHG750, and KAE889-13 (Portland).²

3. Call signs WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), and WRV374-33 (One World Trade Center) are subject to a spectrum lease arrangement between Maritime and Pinnacle Wireless, Inc. (Pinnacle).³ Neither Pinnacle nor Maritime currently operates facilities at the locations specified in the licenses, but [REDACTED]

[REDACTED].⁴ As explained in the Bureau and Maritime's Joint Motion for Summary Decision on Issue G,⁵ [REDACTED]

¹ See *Order*, FCC 14M-9 (ALJ, rel. Mar. 12, 2014).

² See *id.* at 1-2.

³ See Pinnacle Wireless, Inc. Response to Enforcement Bureau's First Set of Interrogatories and First Set of Requests for Production of Documents, served on April 10, 2012, filed as Exhibit 5 to the Joint Motion of Enforcement Bureau and Maritime for Summary Decision On Issue G which was filed Dec. 2, 2013 (Joint Motion), at 2-3, 7; Spectrum Lease Agreement between Pinnacle Wireless, Inc. and Mobex Network Services, LLC, dated December 22, 2005, filed as Exhibit 6 to the Joint Motion. [REDACTED]. See Exhibit 5 to the Joint Motion at 3.

⁴ [REDACTED]. See Exhibit 5 to the Joint Motion at 4.

⁵ See, e.g., Joint Motion at 15, ¶ 25. The Bureau and Maritime specifically referenced WRV374-16 (Allentown), WRV374-18 (Valhalla), and WRV374-33 (One World Trade Center) in the Joint Motion, but [REDACTED]

[REDACTED].⁶ Pursuant to a spectrum lease agreement with Maritime,⁷ Duquesne Light Company (Duquesne) operates fill-in sites using spectrum authorized under call sign WHG750.⁸ Neither Duquesne nor Maritime currently operates facilities at the location specified in the license for WHG750.⁹ Maritime suspended its own operations of WHG750 in order to avoid interference with Duquesne's operations under the lease.¹⁰ The licensed facility at KAE889-13 (Portland) is subject to a spectrum lease agreement between Maritime and Evergreen School District (Evergreen).¹¹ Neither Evergreen nor Maritime currently operates facilities at the licensed location of KAE889-13 (Portland) because operation of this facility would interfere with Evergreen's operation of the facility at KAE889-3 (Livingston) and with operations of other KAE889 locations.¹²

4. The Presiding Judge also requested that Maritime provide further facts concerning any plans for future operations of the facilities located at WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WHG750, KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE880-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34

[REDACTED]. See Exhibit 5 to the Joint Motion at 6.

⁶ See Exhibit 5 to the Joint Motion at 6.

⁷ See, e.g., Asset Purchase Agreement entered into between Duquesne Light Company and Maritime, dated Feb. 18, 2010, filed as Exhibit 12 to the Joint Motion.

⁸ See, e.g., Duquesne Light Company's First Amended Response to Enforcement Bureau's First Set of Interrogatories, served on Sept. 6, 2012, filed as Exhibit 13 to the Joint Motion, at 5, ¶ 7.

⁹ See *id.*

¹⁰ See Maritime's Amended and Further Supplemental Response to Interrogatories, served on Mar. 16, 2012, filed as Exhibit 9 to the Joint Motion, at 3, ¶ 8.

¹¹ See Agreement between Evergreen School District and Maritime, dated Oct. 30, 2008, filed as Exhibit 15 to the Joint Motion.

¹² See, e.g., Joint Motion at 17, ¶ 30.

(Capital Peak), and KAE889-48 (Tiger Mountain).¹³

5. Each of the above-listed authorizations is subject to and/or affected by spectrum lease agreements,¹⁴ and Maritime has temporarily suspended operation of many of its own facilities to avoid interference with the lessees' operations.¹⁵ Nevertheless, it has always been and remains Maritime's intention to maintain each of these authorizations and to recommence operations in accordance with applicable regulations upon termination of the applicable spectrum leases.¹⁶

The Presiding Judge's Request for Further Explanation and Authority

6. In *Order*, FCC 14M-9, the Presiding Judge also requested that the Bureau and Maritime "state... more clearly" or "provide further explanation and authority" in support of their positions that "operation of a facility has not been permanently discontinued if it is demonstrated that the spectrum authorized for use by its site-based license has been leased to, and is in use by, a third party"¹⁷ and "operation of a facility has not permanently discontinued if its operation is restricted by the operations of other facilities."¹⁸

7. With regard to the Presiding Judge's first inquiry, the Commission has repeatedly

¹³ See *Order*, FCC 14M-9, at 2.

¹⁴ See, *supra*, notes 3, 7, and 11. Call signs KAE889-4 (Rainier Hill), KAE880-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain) are subject to a spectrum lease agreement between Maritime and Puget Sound Energy, Inc. (PSE). See Asset Purchase Agreement between Maritime and PSE, effective May 20, 2010, filed as Exhibit 18 to the Joint Motion, at Exhibit C.

¹⁵ See, e.g., *supra*, notes 6, 10 and 12.

¹⁶ In light of its financial insolvency, Maritime intends to assign each of these authorizations to Choctaw Holdings, LLC (Choctaw), subject to Commission consent. See Order Confirming Plan of Reorganization, entered in Case No. 11-13463, by the Bankruptcy Court for the Northern District of Mississippi, dated Jan. 11, 2013. "Choctaw stands ready to take any and all action necessary to preserve the licenses...." Application and accompanying Description of Transaction, Public Interest Statement and *Second Thursday* Showing submitted to the Wireless Bureau on Jan. 23, 2013 in WT Docket No. 13-85, at 3.

¹⁷ *Order*, FCC 14M-9, at 2.

¹⁸ *Id.*

recognized that a third-party lessee’s operation of licensed facilities should be considered the same as if the licensee itself was operating those facilities. Section 1.9020(d)(5)(i) of the Commission’s rules, for example, affirmatively authorizes a licensee to “attribute to itself the...performance activities of its spectrum lessee(s) for purposes of complying with any applicable performance...requirement.”¹⁹ Thus, if Maritime’s lessees were operating the licensed facilities at WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WHG750, KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE880-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain), the Commission would not consider that operation to be any different from Maritime’s own operation of those facilities. Here, however, it is undisputed that neither Maritime nor its third-party lessees are operating the licensed locations specified in the aforementioned licenses.²⁰

[REDACTED]

[REDACTED].²¹ Because operation of fill-in sites, [REDACTED]

[REDACTED], cannot render operative Maritime’s inactive licensed facilities,²² the question before the Presiding Judge is whether any discontinuance of operations at these facilities should be

¹⁹ 47 C.F.R. § 1.9020(d)(5)(i). *Accord* 47 C.F.R. § 1.9030(d)(5)(i). *See also* WT Docket No. 002-30, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604, 20666 ¶ 146 (2003); *see generally Principles of Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, WT Docket No. 00-230, Policy Statement, 15 FCC Rcd 24178 (2000).

²⁰ *See, supra*, notes 4, 9 and 12. PSE is “not leasing, using, or proposing to use any equipment or other facilities owned or controlled by Maritime” but rather is constructing its own network system using the AMTS spectrum it leases from Maritime. *See* Answers of Puget Sound Energy, Inc. to the Enforcement Bureau’s First Set of Interrogatories, served on Aug. 29, 2012, filed as Exhibit 19 to the Joint Motion, at 5.

²¹ *See, supra*, notes 4 and 8, Exhibit 19 to the Joint Motion, at 5.

²² *See In the Matter of Mobex Network Services, LLC*, 25 FCC Rcd 3390, 3397 n.48 (2010); *In the Matter of Applications of Northeast Utilities Service Co.*, 24 FCC Rcd 3310, 3316 n.39 (WTB 2009).

considered permanent.

8. As the Bureau and Maritime noted in their Joint Motion, neither the Commission authorization nor the individual service rules provide a definition of permanent discontinuance for the Part 80 AMTS licenses at issue here.²³ Rather, AMTS precedent suggests that claims of permanent discontinuance of AMTS licenses should be decided on a case-by-case basis.²⁴ As a result, in their Joint Motion, the Bureau and Maritime argued that for site-based authorizations WRV374-15 (Verona), WRV374-25 (Perrinville), WHG750, KAE889-4 (Rainier Hill), KAE880-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain), the Presiding Judge should consider as one of the case-specific factors against permanent discontinuance the undisputed fact that the licensed spectrum had not been abandoned but was being utilized by Maritime’s lessees [REDACTED].²⁵ The Bureau and Maritime also explained that these lessees were using this spectrum to promote public safety. For example, Pinnacle’s network uses the spectrum licensed to Maritime to provide service to the New Jersey Transit Authority (NJTA) along the Garden State Parkway and New Jersey Turnpike and to the New Jersey Sports and Entertainment Authority (NJSEA) at the Meadowlands Complex, which includes Giants Stadium and the New Jersey Devils’ hockey arena.²⁶ [REDACTED]

[REDACTED]²⁷ Similarly, PSE is constructing a private mobile radio (PMR) network system using the AMTS spectrum licensed to Maritime to provide “PMR service to

²³ See Joint Motion at 11, ¶ 18.

²⁴ *In the Matter of Applications of Northeast Utilities Service Co.*, 24 FCC Rcd 3310, 3314, ¶ 10 (WTB 2009).

²⁵ See, e.g., Joint Motion at 14, ¶¶ 23-24; 16, ¶ 28; and 18, ¶ 32.

²⁶ See Maritime’s Response to Interrogatories, served March 13, 2012, filed as Exhibit 7 to the Joint Motion, at 2.

²⁷ Exhibit 5 to the Joint Motion at 4.

approximately 2,000 vehicular and portable radio units used by PSE's employees and contractors for critical communications related to the construction, operation and maintenance of PSE's electric and gas utility operations."²⁸

9. With regard to the Presiding Judge's second inquiry, no precedent directly addresses the question of "whether the operation of a licensed facility has not permanently discontinued if its operation is restricted by the operations of other facilities." Nevertheless, because, as discussed above, claims of permanent discontinuance of AMTS licenses require a case-by-case analysis,²⁹ the Bureau and Maritime argued in their Joint Motion that the Presiding Judge should take into consideration that neither Maritime nor its lessees could operate the licensed facilities at WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-33 (One World Trade Center), and KAE889-13 (Portland) without interfering with operations at other sites subject to spectrum lease agreements.³⁰ The Bureau does not recommend that the discontinuance of operations at these facilities be deemed permanent because that discontinuance is an unintended result of Maritime's leasing of its authorized spectrum and because the length of the discontinuance is essentially defined by the period of the lease agreements. Those agreements have limited duration; if and when Maritime (or its successor) has an opportunity to renew those spectrum lease agreements, it will have an option to begin operating its facilities again.

²⁸ Exhibit 19 to the Joint Motion at 6.

²⁹ *See, supra*, note 24.

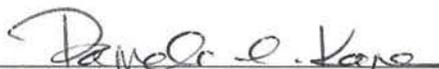
³⁰ *See* Joint Motion at 15, ¶ 25 and 17, ¶ 30. As discussed earlier, [REDACTED]

[REDACTED]. *See, supra*, note 5.

Conclusion

10. For the foregoing reasons and those addressed in the Bureau and Maritime's Joint Motion, the Bureau and Maritime respectfully request that the Presiding Judge issue an Order concluding that operations at WHG750, KAE889 (locations 4, 13, 20, 30, 34, 48) and WRV374 (locations 14-16, 18, 25, 33) have not been permanently discontinued pursuant to Section 1.955(a) of the Commission's rules.

Respectfully submitted,
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March 26, 2014

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 26th day of March, 2014, sent by first class United States mail copies of the foregoing "JOINT RESPONSE OF THE ENFORCEMENT BUREAU AND MARITIME TO ORDER, FCC 14M-9" to:

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