

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

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: The Commission

ENFORCEMENT BUREAU’S MOTION TO RE-OPEN THE DISCOVERY PERIOD

1. On December 2, 2013, the Enforcement Bureau (Bureau) and Maritime Communications/Land Mobile, LLC (Maritime) jointly filed a motion for summary decision related to Issue (g) of the HDO (Joint Motion).¹ Therein, the Bureau and Maritime requested that the Presiding Judge conclude that (1) authorizations WHG750, KAE889 (locations 3, 4, 13,

¹ See Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G, filed on Dec. 2, 2013.

20, 20, 34, and 48), and WRV374 (locations 14, 15, 16, 18, 25, 33, 35, and 40) were timely constructed within two years of their grant, as required by Section 80.49(a)(3) of the Commission's rules, and (2) that operations at these same 16 site-based facilities have not been permanently discontinued pursuant to Section 1.955(a) of the Commission's rules.² On June 17, 2014, the Presiding Judge granted summary decision on the timely construction of these facilities but denied summary decision on the question of permanent discontinuance because "[s]ignificant factual questions still need to be resolved as to whether service will resume at the licensed facilities."³ In addition, the Presiding Judge rejected the Bureau and Maritime's December 2, 2013 joint stipulation in which Maritime had agreed to modify its authorizations to delete 73 licensed facilities and rescinded an earlier *Order* deeming Issue (g) moot for 80 other facilities (identified in an earlier joint stipulation), thereby putting at issue for trial the timely construction and operational status of 153 additional licensed facilities.⁴ In light of the Presiding Judge's recent rulings, the Acting Chief, Enforcement Bureau, through his attorneys, respectfully requests that the Presiding Judge re-open the discovery period to ensure that the record is complete, and hopefully, narrow the factual questions to be decided, before the parties proceed to hearing.

2. With regard to the question of permanent discontinuance, the Presiding Judge concluded in *Order*, FCC 14M-18, that there was insufficient evidence before him on whether the discontinuance of the 16 licensed facilities discussed in the Joint Motion was temporary.⁵ In particular, the Presiding Judge found that there remain material questions of fact concerning the

² See, e.g., *id.* at 22-23, ¶ 39. The Bureau and Maritime had entered into two joint stipulations, dated May 31, 2012 and December 2, 2013, in which Maritime had agreed to file applications to voluntarily cancel or delete from its licenses authority for the remaining 153 site-based facilities identified in the HDO.

³ See *Order*, FCC 14M-18 (ALJ, rel. Jun. 17, 2014) at 22, ¶ 61.

⁴ See, e.g., *id.* at 25, ¶ 71.

⁵ See, e.g., *id.* at 20, ¶ 57.

nature of the discontinuance at WRV374-75 (Rehoboth) and WRV374-40 (Hamden) and whether operations at the 16 licensed facilities will resume.⁶ Indeed, the Presiding Judge indicated that “[s]ummary decision cannot be granted without reliable evidence that Maritime or its lessees are taking concrete steps that are calculated to result in operations resuming at the licensed facilities.”⁷ However, there is no such evidence currently in the record. Rather than elicit and develop this evidence for the first time at trial, the Bureau requests the opportunity to seek additional discovery relevant to permanent discontinuance from Maritime and its lessees before the hearing.⁸

3. In addition, in *Order*, FCC 14M-18, the Presiding Judge made it clear that he expects Maritime (and presumably, the Bureau) “to present evidence at hearing as to the construction and operational status”⁹ of the 80 licensed facilities subject to the Bureau and Maritime’s May 31, 2012 joint stipulation¹⁰ for which he had earlier deemed Issue (g) moot¹¹ and the 73 licenses subject to the Bureau and Maritime’s December 2, 2013 joint stipulation, submitted at the same time as the Joint Motion.¹² With regard to the 80 licensed facilities, the Bureau and Maritime had entered into a joint stipulation, at the direction of the Presiding

⁶ See, e.g., *id.* See also *id.* at 21-22, ¶¶ 61-62.

⁷ *Id.* at 22, ¶ 62.

⁸ The Bureau anticipates that both Maritime and its lessees will cooperate in this fact-gathering and it is unlikely that traditional methods of formal discovery will be necessary. Indeed, the Bureau expects that Maritime and its lessees will agree to stipulate to facts concerning the nature of the discontinuance at WRV374-75 (Rehoboth) and WRV374-40 (Hamden) and any efforts they have taken to resume operations at the licensed facilities.

⁹ *Order*, FCC 14M-18, at 25, ¶ 72.

¹⁰ See Limited Joint Stipulation Between Enforcement Bureau and Maritime and Proposed Schedule, filed May 31, 2012 (identifying KA98265, KCE278, KPB531, KUF732, WFN, WHW848, WHX877, WRD580, KAE889 (locations 8, 14, 26, 27, 28, 33, 37, 39, 40 and 44), WHG693 (Block A), WHG 705-754 (Block A) and WRV374 (locations 2, 31, 17, 24, 27, 28, 29, 31, and 36)).

¹¹ See *Order*, FCC 13M-16 (ALJ, rel. Aug. 13, 2013) at 9, ¶ 21 and 13, ¶ 33.

¹² See *Order*, FCC 14M-18 at 25-26, ¶¶ 71-72. See also Limited Joint Stipulation Concerning Issue G Licenses, filed Dec. 2, 2013 (identifying KAE889 (locations 6, 12, 22, 46), WHG693 (Block B), WHG 705-754 (Block B), WHV733 (locations 1-3), WHV740 (location 2), WHV843 (locations 1, 5 and 6) and WRV374 (locations 12, 19, 20, 22, 23, 26, 34 and 39)).

Judge,¹³ on May 31, 2012, in which Maritime had agreed to voluntarily cancel its authorizations for, or modify its authorizations to delete, these facilities.¹⁴ As a result of this stipulation, the parties understood the case to be narrowed to only the remaining Maritime facilities. Indeed, Maritime sought partial summary decision on Issue (g) with regard to the 80 facilities identified in the stipulation on August 31, 2012, arguing that “[i]nsofar as Maritime has voluntarily submitted applications to delete the authority [for these facilities], and insofar as the Bureau and Maritime have stipulated that such authority shall be treated as deleted, there is nothing further to litigate under Issue G” with respect to these facilities.¹⁵ The Bureau agreed with Maritime.¹⁶ Moreover, the Bureau did not continue to pursue discovery on either the timely construction or the operational status of these 80 facilities after May 31, 2012. Thus, the record on Issue (g) is incomplete concerning these 80 facilities. Now that the Presiding Judge has affirmatively put these facilities at issue for hearing, the Bureau requests the opportunity to develop the record fully on Issue (g) as it pertains to these facilities.

4. With regard to the 73 facilities identified in the December 2, 2013 joint stipulation, the record is complete concerning their construction and operational status, except as to the additional areas of inquiry raised by *Order*, FCC 14M-18. In particular, as with the 16 licenses that were the subject of the Joint Motion, there is insufficient evidence in the record concerning whether operations at these 73 licensed facilities will resume. Accordingly, the Bureau respectfully requests the opportunity to further develop the record concerning these 73

¹³ See *Order*, FCC 12M-26 (ALJ, rel. May 23, 2012).

¹⁴ See Limited Joint Stipulation Between Enforcement Bureau and Maritime and Proposed Schedule, filed May 31, 2012

¹⁵ See Maritime’s Motion for Partial Summary Decision, filed Aug. 31, 2012, at 5-6.

¹⁶ See Enforcement Bureau’s Response To Maritime’s Motion For Partial Summary Decision, filed Sept. 17, 2012, at 2-3 (agreeing that the Bureau and Maritime intended that the May 31, 2012 Joint Stipulation eliminate the need to further litigate any part of Issue (g) with respect to the 80 licensed facilities). The Presiding Judge did not rule on Maritime’s motion.

facilities.¹⁷

5. Based on the foregoing, the Bureau hereby respectfully requests that the Presiding Judge re-open the discovery period to allow the Bureau to develop the record, before proceeding to trial, on the following: (a) whether operations at the each of the 16 licensed facilities subject to the Joint Motion will resume, including but not limited to, any concrete steps that Maritime and/or its lessees are taking that are calculated to result in operations resuming at the licensed facilities; (b) the timely construction and permanent discontinuance of the 80 licensed facilities that were the subject of the Bureau and Maritime's May 31, 2012 joint stipulation; and (c) whether the discontinuance of operations at the 73 licensed facilities identified in the Bureau and Maritime's December 2, 2013 joint stipulation is temporary.

Respectfully submitted,

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June 24, 2014

¹⁷ The Presiding Judge noted that he would reconsider his ruling rejecting the Bureau and Maritime's May 31, 2012 and December 2, 2013 joint stipulations "if the Bankruptcy Court makes an informed and specific ruling confirming that the surrender of Maritime's licenses as contemplated by the Joint Stipulation[s] is permitted under the Bankruptcy Code, is allowed by Court procedures and practices, is authorized by the [Confirmation] Plan, and is approved by the Bankruptcy Court." *Order*, FCC 14M-18, at 25, ¶ 72. Should the Bankruptcy Court issue such a ruling, and should the Presiding Judge reconsider his rulings on the viability of the parties' joint stipulations, those events would moot the need for this additional discovery. In the meantime, the Bureau is hopeful that given Maritime's willingness to relinquish its rights to the 153 site-based facilities identified in the joint stipulations, it will agree to stipulate to the facts concerning their construction and operational status and minimize the need for the Bureau to seek extensive formal discovery.

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 24th day of June, 2014, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S MOTION TO RE-OPEN THE DISCOVERY PERIOD" to:

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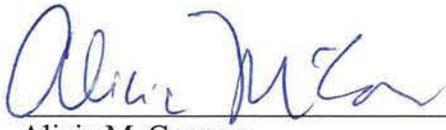
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