

**Before the
Federal Communications Commission
Washington, DC 20554**

**FCC 14M-24
10070**

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: July 29, 2014

Released: July 29, 2014

On July 15, 2014, the Presiding Judge issued *Order*, FCC 14M-22. That *Order* re-opened discovery for a limited time and set the hearing to begin on September 30, 2014. It additionally required the parties to propose a calendar of prehearing procedural deadlines, and to estimate the length of the hearing, on or before July 30, 2014. The *Order* also required counsel

who will be representing Warren Havens at trial to file and serve a Notice of Appearance on or before July 30, 2014.¹

Eight days ago, on July 21, the Enforcement Bureau (“Bureau”), Maritime Communications/Land Mobile, LLC (“Maritime”), Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, “Choctaw”) submitted a Joint Request for a Prehearing Conference (“Joint Request”). The Joint Request asks the Presiding Judge to schedule a prehearing conference to discuss the status of the case and the simple directives of *Order*, FCC 14M-22.² The filing parties believe it would be more efficient to establish a prehearing schedule after Mr. Havens’ trial counsel files a Notice of Appearance.³

The movants also contend that a hearing date of September 30, 2014, “would be challenging and would likely lead to inefficiencies during the hearing.”⁴ There would be insufficient time before trial to review newly-obtained evidence before pre-trial submissions were due.⁵ They would be preparing for hearing and simultaneously conducting discovery.⁶ Logistical challenges are predicted to arise due to conflicts with vacation and holiday schedules.⁷

Maritime and Choctaw would also use the prehearing conference to “clarify and address bankruptcy issues raised by [*Memorandum Opinion and*] *Order*, FCC 14M-18” in the hopes of narrowing the issues to be tried at hearing.⁸

Choctaw’s Participation

As an initial matter, the parties must be reminded that Choctaw is not a full party to this proceeding. Choctaw moved to intervene in this proceeding on December 10, 2012.⁹ That motion was granted by the Presiding Judge on December 14, 2012.¹⁰ Choctaw later moved to withdraw from this proceeding on February 28, 2013, stating that while 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,”¹¹ the Presiding Judge “envision[ed] a more expansive role” that Choctaw believed would be financially burdensome to its members.¹² The Presiding Judge instead allowed Choctaw to remain a party to this proceeding “only for the limited purpose of updating the Presiding Judge on the status of its

¹ On August 27, 2013, Mr. Havens reported to the Presiding Judge that he intended to have counsel for the hearing and some prehearing matters. Proposed Schedule From Warren Havens at 3 ¶ 4 (filed Aug. 27, 2013).

² Joint Request at 1-2 ¶ 1.

³ *Id.* at 2 ¶ 2.

⁴ *Id.* at 2 ¶ 3.

⁵ *Id.* at 3 ¶ 4.

⁶ *Id.* at 3 ¶ 5.

⁷ *Id.* at 3 ¶ 6.

⁸ *Id.* at 4 ¶ 8.

⁹ Motion to Intervene (filed Dec. 10, 2012).

¹⁰ *Order*, FCC 12M-60.

¹¹ Response to Show Cause Order at 4 (filed Feb. 28, 2013).

¹² *Id.* at 2.

applications.”¹³ Choctaw has been barred from filing motions that implicate substantive issues presented under the Hearing Designation Order.¹⁴

Choctaw is not authorized to actively participate in the litigation of issues at hearing. Nor can it participate in conferences, beyond the narrow task of providing status updates and reports on the progress of other proceedings. Nor was it authorized to request that the Presiding Judge call a prehearing conference as it did in the Joint Request. In the future, the Presiding Judge expects that Choctaw’s participation will hew more closely to the narrow role it sought and was authorized to perform.

Conference Request

The Presiding Judge notes the movants’ concerns that the set hearing date creates challenges in preparing for trial. To alleviate those concerns, the Presiding Judge continues the hearing and waives the July 30, 2014, deadline for proposing a prehearing calendar. Instead, the parties are directed to propose a new calendar on or before August 6, 2014, that sets prehearing procedural deadlines and a new hearing date. The litigating parties’ proposal must recommend that the hearing commence before the end of the calendar year.

The Joint Request seeking a prehearing conference is denied at this time, as the issues the movants raise do not justify the time and expense. First, as the parties are granted additional time to propose a hearing calendar, there is no need for the parties and the Presiding Judge to waste time and money on a “Cadillac” scheduling session when a “Chevy” would do just as well. Second, Maritime and Choctaw’s request to “clarify and address bankruptcy issues raised by [*Memorandum Opinion and*] Order, FCC 14M-18” is vague and must be clarified. Maritime must be specific as to what matters are to be presented at such a conference. Also, it must explain why a conference, rather than a written report, is necessary for such a presentation. Third, the movants represent that Mr. Havens has informed them that he “would be traveling for some time,” creating doubt as to his availability to negotiate a prehearing procedural calendar before the July 30 deadline.¹⁵ In short, he is AWOL without having designated an attorney to act in his absence. All these same doubts and unknowns make it impractical to call for a conference in which all the litigating parties will participate.

Orders

IT IS ORDERED that the hearing set for September 30, 2014, **IS CONTINUED** *sine die*.

IT IS FURTHER ORDERED that, in accordance with the above discussion, the litigating parties **SHALL SUBMIT on or before August 6, 2014**, a proposed schedule of procedural and trial dates and a report that fully delineates matters needed to be covered at a prehearing conference, or to be considered and addressed without a prehearing conference.

¹³ Order, FCC 13M-4 at 3 (rel. Mar. 11, 2013).

¹⁴ *Id.*

¹⁵ Joint Request at 2 n.5.

IT IS FURTHER ORDERED that the Joint Request for a Prehearing Conference **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION¹⁶

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive style with a large, looping initial "R".

Richard L. Sippel
Chief Administrative Law Judge

¹⁶ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and to Mr. Havens.