

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

FCC 14M-27
10095

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: August 21, 2014

Released: August 21, 2014

Background

On August 6, 2014, the Enforcement Bureau (“Bureau”) and Maritime Communications/Land Mobile, LLC (“Maritime”) submitted a Joint Proposed Prehearing Procedural Schedule. On that same date, Environmental LLC (“Environmental”) and Verde

Systems, LLC (“Verde”) submitted its own Proposed Prehearing Schedule. The Presiding Judge rejected the schedule of Environmental and Verde, and ordered them to confer with the other litigating parties and submit a new schedule on or before August 15, 2014. On August 12, 2014, Environmental and Verde submitted a Motion for Extension of that deadline until August 20, 2014, which the Presiding Judge granted. On August 20, 2014, Environmental and Verde submitted a new Proposed Hearing Schedule. Warren Havens concurred in that filing. On August 20, 2014, the Bureau filed a Statement Concerning the Prehearing Procedural Schedule.

Proposed Schedules

Environmental and Verde propose a schedule that would commence the hearing on January 13, 2015. No material difference exists between the schedule they propose and that of the Bureau and Maritime. But the latter schedule would commence the hearing more than a month earlier. In justification, Environmental and Verde anticipate that end of the year travel would result in a stay until January 2015.¹ Additionally, Mr. Havens may not be able to attend a hearing in December 2014 but can attend in January 2015.² Environmental and Verde argue that Mr. Havens’ attendance is important because he has factual information on the matters in this case.³

Environmental and Verde note two items in their proposed schedule to which Maritime would not agree. First, Environmental and Verde propose that Maritime must eliminate all but the “16 disputed licensed stations” by August 27, 2014.⁴ They cite Maritime’s August 4, 2014, Answers to Interrogatories as an admission that those other site-based licenses have been permanently abandoned.⁵ To include these licenses, Environmental and Verde argue, would waste time and “unduly delay their long-overdue, required deletion from ULS.”⁶ Further, Environmental and Verde insist that the pending application to transfer licenses from Maritime to Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, “Choctaw”) must be amended to reflect the deletion as required under Section 1.65 of the Commission’s Rules.⁷ However, the timeline proposed by Environmental and Verde suggests deletions of licenses and application amendments be preconditioned on the approval of the United States Bankruptcy Court in the parallel bankruptcy proceeding.⁸

Environmental and Verde seek to extend discovery to September 30, 2014. They believe that they and the Bureau should have an opportunity to conduct further discovery as to those “16 disputed licensed stations” and potentially narrow the issues for hearing or provide the basis for admissions of permanent abandonment.⁹ They argue that it would be appropriate to allow new counsel to conduct discovery as he sees fit, as the companies he represents were previously involved in a several month long antitrust trial against Maritime. They contend that first-hand

¹ ENL-VSL Proposed Hearing Schedule at 1-2.

² *Id.* at 2 n.2.

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

⁸ *See id.* at 7.

⁹ *Id.* at 3.

evidence of construction operations and services should be allowed in discovery; that there is need for discovery as to operations and authorizations for fill-in stations; that some discovery responses are insufficient, raising more questions than answers; that further discovery will permit testing of designations of substantial information as confidential or highly confidential; and that discovery will be necessary as to the “abandoned licenses” if those licenses go to hearing.¹⁰

The Bureau informs the Presiding Judge that it has in fact conferred with counsel for Environmental and Verde. It notes that the schedule submitted by Environmental and Verde includes a date certain by which Maritime should submit evidence that its surrender of certain site-based licenses is authorized by the Bankruptcy Plan.¹¹ The Bureau does not oppose this addition to the schedule. But it sees no reason to otherwise revise the schedule previously submitted on August 6.¹²

The Bureau states that it does not need additional discovery. It concurs with Environmental and Verde that there is insufficient time to commence a hearing this calendar year only if additional discovery is allowed.

Discussion

The Presiding Judge is encouraged that the litigating parties worked together to propose similar schedules. This spirit of cooperation should persist as hearing approaches. There are still some differences between the schedules to resolve: *i.e.*, whether the prehearing schedule should include a deadline for canceling “abandoned licenses;” whether additional discovery is warranted; and which procedural dates should be adopted. A reasoned and reasonable solution is adopted below.

Cancellation of Licenses—While characterized as a pre-hearing deadline, Environmental and Verde seek summary ruling on Issue G for “abandoned” licenses. They rely on Maritime’s Answers to Interrogatories as admissions of permanent discontinuance. The Presiding Judge has previously ruled that additional summary decision will not be considered.¹³ But it must be noted that here all litigating parties are coalescing on litigating only the so-called “16 disputed licenses.” The Presiding Judge encourages minimizing the number of licenses challenged in order to lessen the burden of litigation. But appropriate procedure must prevail. The Presiding Judge will continue to consider well-crafted stipulations that obviate the need to examine factual matters if they are joined by all parties actively participating in litigation.¹⁴

Previous stipulations of Maritime and the Bureau for deletion of several licenses were denied solely for reasons grounded in equity. The Presiding Judge sought to avoid any ancillary harm to creditors in the bankruptcy proceeding that could result from Maritime seeking deletion of those licenses when those reasons related not to the merits of Issue G, but only for

¹⁰ *Id.* at 4-6.

¹¹ Bureau’s Statement at 2 ¶ 2.

¹² *Id.*

¹³ *Order*, FCC 14M-22 at 3 (rel. July 15, 2014).

¹⁴ *Order*, FCC 14M-22 at 3.

convenience of the litigants.¹⁵ Upon further reflection, should all litigating parties unanimously agree that the record now establishes that operations at the stipulated facilities have been permanently discontinued, such equitable concerns could be sufficiently mitigated. In that case, the Presiding Judge would rule favorably on a stipulation. If litigating parties cannot unanimously reach such a stipulation, then all site-based licenses must go to hearing on substantial questions of permanent discontinuance.

Further Discovery—In *Order*, FCC 14M-22, the Presiding Judge ruled that but for one exception, he would grant additional discovery only if justified by extraordinary circumstances.¹⁶ Environmental and Verde have failed to demonstrate any extraordinary circumstance. Rather, the circumstances which are relied on in making their request are the predictable result of inadvertent or intentional inaction. Environmental and Verde have been parties to this proceeding for its three year duration. Yet they have not participated for over a year, and finally obtained counsel late last month. They had much earlier opportunities to discover. Discovery they now seek is unfocused and run-of-the-mill. It would have been easily obtainable by participating vigorously in discovery from the get-go. To grant the request to reopen for such discovery at this late stage would honor attorney absenteeism and result in unfair delays and costs to other parties that have completed their discovery during the allotted time.¹⁷ Accordingly, Environmental and Verde’s request for additional discovery will be denied.

Pre-Hearing Calendar—The two contested deadlines recommended by Environmental and Verde have been rejected. As no material difference exists between the remaining portions of their schedule and that of the Bureau and Maritime, the Presiding Judge sets the hearing for the earlier of the proposed dates, which best avoids scheduling conflicts with hearings in the other proceedings over which he presides.

The prehearing calendar in this case is set as follows:

August 14, 2014	Discovery Period Closes
September 16, 2014	Direct case document exhibits, deposition designations and written direct testimony to be exchanged
September 30, 2014	Witness Notification for Cross Examination – exchange of witness lists
October 14, 2014	Objections to Witnesses for Cross Examination - exchange of witness lists
October 28, 2014	Objections filed to Direct Case Exhibits and/or Testimony

¹⁵ See *Memorandum Opinion and Order*, FCC 14M-18 at 23-26 ¶¶ 67-72 (rel. June 17, 2014).

¹⁶ *Order*, FCC 14M-22 at 3.

¹⁷ While it is acknowledged that Environmental and Verde are simultaneously involved in related litigation, this does not excuse their obligation to remain an active participant in this proceeding.

October 31, 2014	Response filed to Objections to Direct Case Exhibits/ and or testimony
November 4, 2014	Evidence Admission Session - Presiding Judge to Rule on any unresolved Exhibit Objections
November 25, 2014	Trial Briefs of EB, Maritime, Havens to be exchanged
December 9, 2014	Hearing Commences

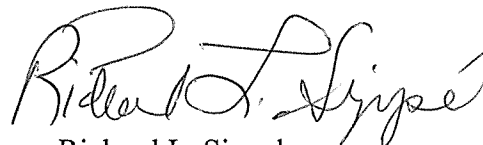
The interested litigating parties have in excess of three months to prepare for hearing. Therefore, it is expected that all participants, including witnesses, will adjust schedules to appear. At this time, the need for a stay until January 2015 is speculative. Should specific, unavoidable scheduling conflicts suddenly arise (e.g. sickness verified medically) as the hearing date approaches, the Presiding Judge will entertain appropriate, promptly submitted motions.

Rulings

IT IS ORDERED that the Joint Proposed Prehearing Procedural Schedule of the Enforcement Bureau and Maritime Communications/Land Mobile, LLC **IS ADOPTED**.

IT IS FURTHER ORDERED that the hearing **IS SET** to commence at 10:00 AM EST on **December 9, 2014**.

FEDERAL COMMUNICATIONS COMMISSION¹⁸



Richard L. Sippel
Chief Administrative Law Judge

¹⁸ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and to Mr. Havens.