In the Matter of:

Maritime Communications/Land Mobile, LLC et al.

For commission consent to assignment of various authorizations in wireless radio service

DATE OF HEARING: August 1, 2012 VOLUME: 6

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NEAL R. GROSS & CO., INC.
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Before the
Federal Communications Commission
Washington, D.C. 20554

------------------------------) EB Docket
In the Matter of: ) No. 11-71

MARITIME COMMUNICATIONS/LAND, ) File No.
MOBILE, LLC ) EB-09-

Participant in Auction No. 61 ) IH-1751
and Licensee of Various ) FRN:
Authorizations in the Wireless ) 0013587779
Radio Services )

Application for Modification of ) Application
Various Authorizations in the ) File Nos.
Wireless Radio Services ) 0004030479
) 0004144435
) 0004193028

Applicant with ENCANA OIL AND ) 0004193328
GAS (USA), INC.; DUQUESNE LIGHT ) 0004354053
COMPANY; DCP MIDSTREAM, LP; ) 0004309872
JACKSON COUNTY RURAL MEMBERSHIP ) 0004310060
ELECTRIC COOPERATIVE; PUGET ) 0004314903
SOUND ENERGY, INC.; ENBRIDGE ) 0004315013
ENERGY COMPANY, INC.; ) 0004430505
INTERSTATE POWER AND LIGHT ) 0004417199
COMPANY; WISCONSIN POWER AND ) 0004419431
LIGHT COMPANY; DIXIE ELECTRIC ) 0004422320
MEMBERSHIP CORPORATION, INC.; ) 0004422329
ATLAS PIPELINE-MID CONTINENT, ) 0004507921
LLC; DENTON COUNTY ELECTRIC ) 00045153701
COOPERATIVE, INC., DBA COSERV ) 0004526264
ELECTRIC; AND SOUTHERN ) 0004636537
CALIFORNIA REGIONAL RAIL ) 0004604962
AUTHORITY )

For Commission Consent to )
the Assignment of Various )
Authorizations in the )
Wireless Radio Service )
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VOLUME VI Wednesday, August 1, 2012
HEARING LOCATION:

Room A, TW A-363
FCC Headquarters
445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for prehearing conference, pursuant to notice, at 10:00 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge
JUDGE SIPPEL: Okay. Yes, because after Friday I’ve got nobody to blame.

All right. Anything else on the speakerphone?

MR. HAVENS: Yes, sir.

JUDGE SIPPEL: Mr. Havens again?

MR. HAVENS: Yes. I would like the opportunity to raise an issue with regard to an FCC rule, 80.471. It is a rule under Part 80 with regard to public coast stations’ filings of applications for permission to discontinue. Now that rule is on the books. It applies to public coast. NTS is public coast. There was forbearance granted years ago of that role because public coast stations are deemed to be CMRS and the Commission has issued forbearance with regard to CMRS entities having to submit applications to discontinued service.

However, Maritime has stated to the FCC in its request for a $1.3 million refund of universal service fees paid by its
predecessor entity Watercom that Maritime discontinued interconnection many years ago, and on that basis it sought a refund of the universal service fees paid as CMRS entities.

Now, you know, it's -- if Maritime has stated and it's -- clearly that these stations are not interconnected; now I believe it reaffirmed that in responses to the Enforcement Bureau's discovery, then these stations by FCC definition under 20.3 are not CMRS stations. And if they're not CMRS stations, then they are not entitled to forbearance and therefore Maritime has to have files under 80.471, application to discontinue, because it has discontinued operations at a large portion of these stations. So I'm raising that as an important issue with regard to issue G.

JUDGE SIPPEL: Anybody have a comment on that?

MR. KELLER: I think we've gone -- even assuming we hadn't been there before,
we’ve certainly going beyond collecting factual information. We’re into legal arguments and inferences and results to be drawn from legal arguments.

JUDGE SIPPEL: Oh, I’m not sure what it is. If you’ve got something to comment on -- if you’re going to present a legal argument, present it through counsel, please.

MR. HAVENS: Well, Your Honor, I think the only question is on a fact basis; and perhaps I --

JUDGE SIPPEL: All right.

MR. HAVENS: -- erred here in not presenting it more as a fact -- that I believe it’s relevant. I think the fact of whether or not Maritime alleges to have submitted to the Bureau directly or indirectly in some way applications to discontinue -- whether it has or has not. Now if it has, then, you know, the legal issue surrounding 80.471 is one thing. If it has not, if it says it has never
submitted any applications to discontinue, then of course there's a different way to look at how 80.471 may apply.

JUDGE SIPPEL: Okay. Well, do this, if you will then, unless I get an objection here, after this additional information statement is submitted by Mr. Keller, you know, the one we've been talking about here, expanding the -- well, you know what it's about. After that is filed and circulated, within 10 days you can file -- I would just call it the statement of -- Havens' statement, Warren Havens' statement, that's it, on whatever the subject matter is. And that's it. And then you can write a statement. And for what it's worth, just lay out what it is, the facts as you see it of what it is that you're talking about.

MR. HAVENS: I appreciate that.

JUDGE SIPPEL: Is that okay?

Anybody have an objection to that? Mr. Plache?
MR. PLACHE: This whole conversation; I don't know whether it's factual testimony, it's not under oath that Mr. Havens is giving. He's getting into areas that are not covered in the hearing designation order, this issue about whether Maritime should get money back, or previous payments that were made into the ULS fund. I just don't see how it's even related to what we're doing here.

JUDGE SIPPEL: Mr. Jackson?

MR. JACKSON: I think it is relevant. I mean, I think what Mr. Havens is suggesting is that the question is are these stations operating? And one question would be have they filed any applications to discontinue service.

JUDGE SIPPEL: Circumstantial evidence.

MR. JACKSON: Circumstantial evidence. I mean, it's more evidence on issue G. I think it is relevant. Then to be given
the weight that Your Honor deems it's to be
given.

JUDGE SIPPEL: Okay. Bureau? Do
you think it's worth it?

MS. KANE: I'm not really sure I
understand. I think I understood Mr. Jackson
much more than I understood where Mr. Havens
was heading with this. But obviously in terms
of discovery purposes, if there's information
that Maritime has as to whether they filed
applications for discontinuance, that would be
highly relevant, but I thought we'd been
asking for that since February.

JUDGE SIPPEL: Whoa, whoa, whoa.
You're taking me into two different worlds.
You think that it is conceivably possible
circumstantial evidence?

MS. KANE: Yes.

JUDGE SIPPEL: Of the status of
the stations? That's all?

MS. KANE: Yes.

JUDGE SIPPEL: Okay. All right.
MS. KANE: If such applications exist.

JUDGE SIPPEL: All right. Let's stop there. I'm going to let Mr. Havens submit it, but he has to submit it through counsel. In other words, you work with counsel. I'm sure you're going to do most of the work, Mr. Havens, but it's got to come in through counsel, you know, as an appropriate pleading.

I don't know what you want to call it, Mr. Jackson, but give it some kind of a pleading title.

MR. JACKSON: Yes, Your Honor.

JUDGE SIPPEL: And then parties can do what they will with it, if they want to respond. Again, this is not evidence. This is nothing conclusive here. I consider it to be, you know, well, basically leads in discovery. That's basically it. But let's see what you come up with.

Mr. Plache again? Sir? Mr.
Plache, were you looking to say something?

MR. PLACHE: So this isn't considered testimony, it’s not considered evidence, the whole discussion?

JUDGE SIPPEL: No, it’s not.

MR. PLACHE: Okay.

JUDGE SIPPEL: But, no, the concept of a lead, you know? I mean, it’s something like a Joe Friday thing, I guess, maybe, or a --

MR. PLACHE: It sounded as if there hasn’t been a filing showing discontinuance of stations.

JUDGE SIPPEL: I have no idea right now on any specific station what your point is. I mean, and I understand what you’re saying, but I don’t know for a fact. That’s what Mr. Keller’s going to be doing, I hope.

MR. PLACHE: Okay.

MR. CATALANO: Your Honor?

JUDGE SIPPEL: Yes, sir? Will you
again --

MR. CATALANO: Mr. Catalano representing Pinnacle also.

JUDGE SIPPEL: Yes, sir?

MR. CATALANO: Just to clarify the record, I would ask you to strike Mr. Havens' statement. Let him submit anything he wants to submit through counsel by way of affidavit and then everybody can have an opportunity to respond to that. It was hard to follow that, at least.

And secondly, we don't believe Mr. Havens should be continuing to represent himself in this proceeding. You've previously made a ruling that he had to obtain counsel and he has obtained counsel, but he's also continued to represent himself. And would direct you to FCC case law where the Commission has adopted the federal courts' policy on this basically where a party either represents himself pro se or has counsel representing him, but not both. And we can
direct you to that case law, if you'd like. And it's very confusing.

JUDGE SIPPEL: Are these the cases that you submitted today? I got a copy of a case from somebody.

MR. KELLER: I submitted today probably the same cases he's referring to, or at least cases that say not only that, but also talk directly about the situation where the parties attempting to represent himself pro se while having counsel represent an entity which had a common interest. And the court ruling said you have to choose on or the other. You have to name your poison. And the FCC has adopted that. It's Black Television Workshop of Los Angeles.

JUDGE SIPPEL: Well, you've got to admit it's pretty clever.

MR. CATALANO: Just a brief little bit, Your Honor?

JUDGE SIPPEL: No, I'm going to grant your motion. I think you're right.
He's been basically acting in violation of my instruction and for that reason alone I'm going to strike it. But it's going to come in -- I'm not excluding it, obviously, if it comes in the right way. So your motion is granted. That's it.

MR. CATALANO: Thank you.

JUDGE SIPPEL: You got anything else, Mr. Havens?

MR. HAVENS: Your Honor, I would ask to clarify. What is that I, Warren Havens, a pro se party in the hearing can and cannot do?

JUDGE SIPPEL: Well, as far as the Commission rules are concerned, I think you can't do anything except be a witness, and you're really not -- that's a open question, too, in light of the way that you're -- but, look, I don't want to dissuade you from providing useful information, or any information that may not be so useful. But the point is that you still haven't gotten it
straightened out with your legal representation. And it's hard for me to believe that you can't do that because --

MR. HAVENS: Well, Your Honor, respectfully, I have made it very clear that Mr. Jackson represents the three entities he identified at the --

JUDGE SIPPEL: I know that. I know that. But what --

MR. HAVENS: But I am an individual party in the hearing as the Commission stated in the hearing designation order.

JUDGE SIPPEL: I know, but they expect you -- go ahead. They expect you to be a party represented by counsel under the rules.

MR. HAVENS: Well, Your Honor, I respectfully have submitted in the past to you that as pro se I'm entitled under the Constitution to represent myself. And are you making a decision that I cannot represent
myself as a party in this hearing but for

giving facts? Is that your decision?

JUDGE SIPPEL: Well, I'm going to
do it again. I'll take a look at these case
authorities that the counsel has given me and
I will reconsider it again with a view towards
making it very clear as to what your
obligations are. I'm not going to be
frightened by some claim of Constitutional
rights to represent yourself. You know, we're
in a different -- we're in the corporate
world, you know?

MR. HAVENS: No, no.

JUDGE SIPPEL: This is when Bain
steps in and straightens everything out.

MR. HAVENS: And, Your Honor --

JUDGE SIPPEL: Don't --

MR. HAVENS: -- I'm talking about
representing myself, not a corporation. The
Commission designated me individually --

JUDGE SIPPEL: Well, you're
designated because I -- if I'm reading it
right, they think that maybe you might be helpful. You’re not in as a party who’s suspected of doing something wrong.

MR. HAVENS: Well, Your Honor, respectfully, the Commission in the hearing designation order did not say that Warren Havens is designated as a party solely to give facts. It simply said I’m a party. And I was a party --

JUDGE SIPPEL: Yes, you can be a party. I’m sorry to cut you off on that. You can be a party, and you should feel proud that you have been appointed a party, because usually you have to file a motion to intervene at some point. But they did it right up front for you. The problem is you as a person are really part of all these corporations and you need a lawyer to represent corporations. That’s what the law provides for.

MR. HAVENS: I am different from --

JUDGE SIPPEL: Well, I know you’re
different, but that’s not what the law says. Now I’ll explain it to you because I can’t do this anymore over the phone. I’m not trying to cut you off and I appreciate all the energy that you’re bringing into this case, but it’s got to be done the right way if you want to have it listened to, or heard.

MR. HAVENS: I’m seeking clarification.

JUDGE SIPPEL: You’re going to get it. You’re going to get it.

MR. HAVENS: Then that’s what I’m looking for. Then I’ll deal with that.

JUDGE SIPPEL: You know how I feel about requests for clarification, but you’re going to get it. Okay? I promise you.

MR. HAVENS: If you don’t want to issue that, that’s fine, but --

(Laughter.)

MR. HAVENS: -- Pinnacle brought up this question.

JUDGE SIPPEL: You’re right.
You’re absolutely -- everything -- you’re right on all score, except you’re not right that you’re not in violation of the rule. And I’m going to explain why.

MR. HAVENS: All right. I don’t want to get into an argument. I don’t want to accuse you of anything. I don’t want to hold it against you, hopefully, and I want to just move this case forward. And you’ve done very well and thank you very much. Okay? That’s it, Mr. Havens. You’ll hear from me.

Anybody else have anything else?

No? Yes, Mr. Jackson?

MR. RICHARDS: Yes, very briefly, Your Honor, if I may.

JUDGE SIPPEL: Mr. Richards. Mr. Richards, is that right?

MR. RICHARDS: Yes, Your Honor, Jack Richards. I’d just like to note for the record that our clients Enbridge, Encana, Jackson County, Canaxis, Atlas Pipeline, along with Mr. Catalano and Mr. Plache’s client...