

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In re	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	EB Docket No. 11-71
<b>MOBILE, LLC</b>	)	
	)	
Participant in Auction No. 61 and Licensee of	)	File No. EB-09-IH-1751
Various Authorizations in the Wireless Radio	)	
Services	)	
	)	
Applicant for Modification of Various	)	FRN: 0013587779
Authorizations in the Wireless Radio Services	)	
	)	
Applicant with <b>ENCANA OIL AND GAS (USA),</b>	)	Application File Nos. 0004030479,
<b>INC.; DUQUESNE LIGHT COMPANY; DCP</b>	)	0004193028, 0004193328, 0004354053,
<b>MIDSTREAM, LP; PUGET SOUND</b>	)	0004309872, 0004314903, 0004315013,
<b>ENERGY, INC.; ENBRIDGE ENERGY</b>	)	0004430505, 0004417199, 0004419431,
<b>COMPANY, INC.; INTERSTATE POWER</b>	)	0004422320, 0004422329, 0004507921,
<b>AND LIGHT COMPANY; WISCONSIN</b>	)	and 0004604962
<b>POWER AND LIGHT COMPANY; DIXIE</b>	)	
<b>ELECTRIC MEMBERSHIP CORPORATION,</b>	)	
<b>INC.</b>	)	
To: The Commission		

**JOINT OPPOSITION TO APPEAL**

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC – DEBTOR-IN-POSSESSION**

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<b>ELECTRIC MEMBERSHIP CORPORATION,</b>	)	
<b>INC.</b>	)	
To: The Commission		

**JOINT OPPOSITION TO APPEAL**

Maritime Communications/Land Mobile, LLC – Debtor-in-Possession (“MCLM”), and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, “Choctaw”) hereby oppose<sup>1</sup> the Appeals filed by Warren Havens and Polaris PNT PBC regarding *Order FCC 17M-35* (Sept. 28, 2017) (“*Termination Order*”) which terminated the captioned proceeding.<sup>2</sup>

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<sup>1</sup> This Opposition is being filed timely. *See* 47 C.F.R. § 1.320(g).

<sup>2</sup> Warren Havens Appeal of Order of Dismissal, EB Docket No. 11-71 (filed Oct. 30, 2017); Polaris PNT PBC Appeal of Order of Dismissal, EB Docket No. 11-71 (filed Oct. 30, 2017). Because the Polaris Appeal merely incorporates the Havens Appeal and provides no new legal arguments, references to the “Havens Appeal” herein also refer to the Polaris Appeal.

## SUMMARY

The instant Appeals should be dismissed or denied on numerous grounds. First, Polaris and Havens have failed to demonstrate standing. Second, the Appeals are procedurally defective in numerous respects – the Appeals (i) fail to contain a succinct, but accurate and clear condensation of the substance of the filing, (ii) violate the page limits, and (ii) were never properly served on Choctaw. Third, nothing in the four corners of the Appeals justifies overturning the *Termination Order*.

Moreover, the Appeals demonstrate why the Commission should impose sanctions on Mr. Havens and move forward expeditiously with a hearing into his character qualifications. Mr. Havens has engaged in a pattern of frivolous, harassing filings before the Commission and has previously been sanctioned for this conduct. Additional sanctions are now warranted based on his conduct in proceedings involving Choctaw and MCLM. The instant filing is the latest in a long string of frivolous filings which inhibit the ability of Choctaw to move forward with its business and, more importantly, to re-pay innocent creditors in the MCLM bankruptcy.

## DISCUSSION

### I. POLARIS AND HAVENS LACK STANDING TO FILE THE APPEALS

Polaris and Mr. Havens do not have standing to file their Appeals. Neither party has provided *any specific evidence* in their appeals indicating that they would suffer a direct injury as a result of the *Termination Order*. Both parties attempt to assert standing on the basis of other, unspecified pleadings filed by Havens and entities he controls.<sup>3</sup> The convoluted ramblings in prior filings about standing as a result of ownership in entities that are now controlled by a

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<sup>3</sup> Havens Appeal at 4-5; Polaris Appeal at 3. The Commission has previously found that it is not “obligated to search the record” to determine whether arguments incorporated by reference may be relevant. *See, e.g., Petition of Core Communications, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14215 n.48 (2007).

receiver are flawed – they fail to allege specific facts sufficient to demonstrate a direct injury.<sup>4</sup>

A presiding officer's final ruling may only be appealed by parties to the proceeding.<sup>5</sup>

Neither Havens nor Polaris are parties in the subject proceeding. Havens was removed from the proceeding more than two years ago<sup>6</sup> and Polaris has never been a party to the proceeding.

Moreover, the Commission has previously dismissed petitions where Havens asserts non-injuries and fails to show competitive harm.<sup>7</sup> The FCC has rejected Havens' standing claims in other matters regarding the licenses at issue in this proceeding on several occasions, and should do so again here in an expeditious manner.<sup>8</sup>

## **II. THE APPEALS VIOLATE SECTIONS 1.49 AND 1.302 OF THE COMMISSION'S RULES**

The instant Appeals are the most recent examples of confusing pleadings filed by Mr. Havens and violate Sections 1.49(c) and 1.302 of the Commission's rules.<sup>9</sup> Pursuant to Section 1.302(c), all appeals of a presiding officer's final ruling must comply with Section 1.49(c), which in turn mandates that pleadings exceeding ten pages contain a summary of the filing that is "a

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<sup>4</sup> See *Applications of AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235 (WTB 1995), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972). See also *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002); *Touchtel Corporation*, Order on Reconsideration, 29 FCC Rcd 16249, 16250-51 (WTB Broadband Div. 2014).

<sup>5</sup> 47 C.F.R. § 1.1302(a).

<sup>6</sup> See *Order*, FCC 15M-14 (Apr. 22, 2015).

<sup>7</sup> See, e.g., *Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline; Application to Assign Licenses to Choctaw Holdings, LLC*, Order, 32 FCC Rcd 3907, 3910-12 (2017) ("Renewal Order").

<sup>8</sup> See, e.g. *Maritime Communications/Land Mobile, LLC and Southern California Regional Rail Authority File Applications to Modify License and Assign Spectrum for Positive Train Control Use, and Request Part 80 Waivers*, Order 31 FCC Rcd 9826, 9830 (WTB MD 2016); *Renewal Order*, 32 FCC Rcd at 3910-12.

<sup>9</sup> 47 C.F.R. §§ 1.49(c), 1.302.

succinct, but accurate and clear condensation of the substance of the filing.”<sup>10</sup> No such clear, succinct, and accurate summary appears in the Appeal. Instead, the “Introduction and Summary” included with the Appeal is a series of rambling statements and cross-references to other pleadings.

The Appeals also violate Section 1.302(e), which sets forth a 25 page limit on such pleadings. Mr. Havens is well aware of the page limit<sup>11</sup> but nevertheless attempts to circumvent Commission requirements by filing a 12 page “Memo in Support of and Related to Notice of Appeal” and incorporating that pleading by reference into his 17 page appeal. These two filings taken together exceed the 25 page limit. To make matters worse, Mr. Havens attempts to incorporate by reference 6 additional pleadings. Based on Section 1.302(e), Choctaw and MCLM only respond to the arguments set forth in the actual Appeals and do not address each of the various arguments set forth in the various pleadings referenced by Mr. Havens.

Mr. Havens also failed to properly serve Choctaw as required by Section 1.302(d).<sup>12</sup> Throughout this proceeding Mr. Havens has attempted to game the process<sup>13</sup> and, consistent with

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<sup>10</sup> 47 C.F.R. § 1.49(c).

<sup>11</sup> Appeal at 4 (“To the extent that they are accepted by the Commission without exceeding the page limit for this Appeal (and if they are deemed to exceed such limit, then Appellant references and incorporates only up to the pages of his *Memo in Support of and Related to Notice of Appeal* filed October 6, 2017, that discuss his legal interest and standing, up to the point at which this Appeal’s page limit is not exceeded . . .”).

<sup>12</sup> 47 C.F.R. § 1.302(d).

<sup>13</sup> See, e.g., *Order*, FCC 13M-22 (rel. Dec. 19, 2013) (noting Havens’ failure to file by require deadlines and his use of the extra time to respond to arguments in pleadings that were timely filed); *Order*, FCC 14M-6 (rel. Jan. 30, 2014) (noting that Havens files pleadings that would require the Commission to somehow “divine” what he is arguing from other, previously filed pleadings); *Order*, FCC 14M-7 at 6 (rel. Feb. 26, 2014) (noting Havens’ attempts (i) to gain an unfair advantage by filing pleadings late, and (ii) delay the proceedings by filing meritless pleadings); *Order*, FCC 14M-11 at 4 (rel. Apr. 2, 2014) (concluding that Mr. Havens filing was “transparently calculated to gin up yet another justification upon which he can hang an interlocutory appeal which cannot succeed, and thereby further slow this proceeding”); *Order*,

this approach, sent a copy of the Appeal to an address that has not been used by Choctaw's counsel for more than two years. Mr. Havens is well aware of the correct address for service purposes and used it to serve copies on Choctaw previously, including as recently as September 12, 2017.<sup>14</sup>

For each of the aforementioned reasons, there is no need to reach the merits of the Appeals. The Commission should summarily dismiss the appeals as procedurally defective.

### **III. THE APPEALS PROVIDE NO BASIS FOR OVERTURNING THE ORDER**

There is nothing in the four corners of the Appeals that justifies overturning the *Termination Order*. The pleadings largely reference prior pleadings without any explanation regarding their relevance – requiring the Commission, Choctaw, and MCLM to attempt to discern what Mr. Havens is arguing.<sup>15</sup> The Commission has previously found that it is not “obligated to search the record” to determine whether arguments incorporated by reference may be relevant.<sup>16</sup>

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FCC 14M-25 at 3 (rel. Aug. 11, 2014) (finding that the hearing schedule proposed by Havens “is a mess of convoluted and confusing deadlines, unnecessary motions, and proposed delays with no timely filed justification. It actually defies the Presiding Judge’s aim to establish firm dates and that will allow the proceeding to finally move forward.”); *Order*, FCC 15M-14 at 2 (rel. Apr. 22, 2015) (concluding that the Presiding Judge “must certify such deliberate transgressions, together with an account of Mr. Havens’ history of disruptive disregard of orders and otherwise contemptuous behavior, to the Commission for determination as to whether a separate proceeding should be designated to decide whether Mr. Havens and his companies qualify to hold Commission licenses.”).

<sup>14</sup> See Certificate of Service attached to Reply to Oppositions to Petition to Deny, EB Docket No. 11-71 (filed Sept. 17, 2017).

<sup>15</sup> Given the lack of clarity in the Appeals, the failure to address an alleged argument should not be construed as a concession regarding its validity.

<sup>16</sup> See, e.g., *Petition of Core Communications, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14215 n.48 (2007).

**A. REMOVAL OF HAVENS AS A PARTY IS NOT A BASIS FOR OVERTURNING THE INSTANT ORDER ON APPEAL**

Mr. Havens alleges that the *Termination Order* should be reversed because he was removed as a party to the hearing more than two years ago.<sup>17</sup> This claim is without merit and, not surprisingly, no legal support is provided for the requested relief. The Order removing him was fully justified<sup>18</sup> and should not be revisited here. Instead, the Commission should move forward with a hearing into Mr. Havens' character to hold FCC licenses as requested by Chief Administrative Judge Richard Sippel.<sup>19</sup>

**B. THE ENFORCEMENT BUREAU DID NOT FAIL TO PROSECUTE THE CASE**

Mr. Havens claims that the Presiding Judge "committed reversible error by allowing the Enforcement Bureau to abandon its prosecution of Maritime, many months before the trial in December 2014 and through and after the trial."<sup>20</sup> This claim is factually incorrect and another attempt to mislead the Commission. The Bureau did not abandon its prosecution of Maritime prior to trial. At the time of the Hearing Designation Order, there were 169 site-based licenses at issue in the case. Although the Bureau ultimately agreed that a mere 16 of these licenses had been timely constructed and never permanently discontinued, it successfully prosecuted the case – 153 of the site-based licenses were surrendered by MCLM.

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<sup>17</sup> Havens Appeal at 5.

<sup>18</sup> See, e.g., Enforcement Bureau's Opposition to Interlocutory Appeals, EB Docket No. 11-71 (filed May 6, 2015).

<sup>19</sup> See *Order*, FCC 15M-14 (Apr. 22, 2015).

<sup>20</sup> Havens Appeal at 9.



**C. THE ORDER WAS PROPERLY ENTERED DUE TO UNDISPUTED, STIPULATED FACTS**

Mr. Havens incorrectly claims that the ALJ failed to determine whether MCLM's site-based stations had been timely constructed.<sup>21</sup> More than three years ago, in response to a joint motion for summary decision filed by the Bureau and MCLM, the presiding judge determined that 16 site-based AMTS licenses had been timely constructed.<sup>22</sup> Thus, consistent with Mr. Havens conduct in the hearing, this allegation is false.

Mr. Havens also appears to claim that the *Termination Order* was defective because the Presiding Judge relied on stipulated facts and did not conduct an independent factual analysis.<sup>23</sup> Such reliance does not constitute reversible error. Stipulations are regularly used in the hearing process and the Commission has previously indicated that factual stipulations can moot the need for a hearing.<sup>24</sup> Again, Mr. Havens fails to cite any legal precedent for the proposition that a presiding judge needs to conduct a separate factual analysis when all parties to the proceeding resolve all factual issues pursuant to stipulations.

**IV. THE COMMISSION SHOULD AGAIN SANCTION MR. HAVENS FOR FILING FRIVOLOUS AND HARASSING PLEADINGS AND MOVE FORWARD WITH A HEARING INTO HIS CHARACTER**

Mr. Havens has engaged in a pattern of frivolous, harassing filings before the Commission and has previously been sanctioned for this conduct.<sup>25</sup> Additional sanctions are now warranted based on his conduct in proceedings involving MCLM and Choctaw. The instant filing is the latest in a long string of frivolous filings which inhibit the ability of Choctaw to

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<sup>21</sup> Havens Appeal at 5-6.

<sup>22</sup> *Order*, FCC 14M-18 (June 17, 2014).

<sup>23</sup> Havens Appeal at 6-8.

<sup>24</sup> *See MobileMedia Corporation*, 12 FCC Rcd 14896, 14901 (1997).

<sup>25</sup> *Warren C. Havens, Memorandum Opinion and Order*, 29 FCC Rcd 12532, 12532 (2014) ("*Havens Sanction Order*").

move forward with its business and, more importantly, to re-pay innocent creditors in the MCLM bankruptcy. Since January 1, 2014, Mr. Havens and/or entities that he controlled have submitted more than 115 pleadings, supplements, errata, and other filings to the Commission regarding Choctaw and/or MCLM.<sup>26</sup> As the Commission has long recognized, “[a]n agency is not powerless to prevent an abuse of its processes,’ and it ‘need [not] allow the administrative process to be obstructed or overwhelmed by captious or purely obstructive protests.’”<sup>27</sup>

The Commission has repeatedly warned Mr. Havens “against filing ‘abusive or harassing pleadings.’”<sup>28</sup> The Wireless Telecommunications Bureau also committed to revisiting the need for imposing sanctions on Havens if he continues to make “repeated pleadings premised on allegations that were previously adjudicated in MC/LM’s favor.”<sup>29</sup> The Bureau later warned that it “would not hesitate to take action in other proceedings where there are additional abusive or frivolous pleadings.”<sup>30</sup> Nevertheless, additional actions have not been taken yet to curb the continuing onslaught of abusive and harassing filings by Mr. Havens. As a Commissioner, now Chairman Pai noted that “[t]he Commission has already sanctioned Warren Havens for abusing the FCC’s processes by filing frivolous and repetitive pleadings”<sup>31</sup> but nevertheless expressed

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<sup>26</sup> More than 115 filings were submitted in *Docket 11-71 alone*; numerous additional filings were submitted in other docketed proceedings involving MCLM and Choctaw.

<sup>27</sup> *Havens Sanction Order*, 29 FCC Rcd at 12532 (quoting *Radio Carrollton*, Memorandum Opinion and Order, 69 FCC 2d 1139, 1150 (1978)).

<sup>28</sup> See, e.g., *Progeny LMS LLC*, 27 FCC Rcd 5871, n.88 (WTB 2012); *Mobex Network Services, LLC*, 22 FCC Rcd 665, 672 (WTB 2007).

<sup>29</sup> *Mobex Network Services, LLC*, 22 FCC Rcd 665, 672 (WTB 2007).

<sup>30</sup> *Petition for Reconsideration of Various Auction 87 Public Notices*, 27 FCC Rcd 4374, 4388 (WTB 2012) (“*Auction 87 Order*”).

<sup>31</sup> *Warren Havens*, 31 FCC Rcd 10332 (2016) (Statement of Commissioner Ajit Pai).

concern that Commission actions may encourage Mr. Havens' behavior.<sup>32</sup> The failure to designate Mr. Havens for hearing merely encourages him. The time to act is now to put an end to his conduct.

During the proceeding that is the subject of this Appeal, the Commission's Chief Administrative Law Judge Richard Sippel determined that Mr. Havens and his companies had filed numerous frivolous pleadings, at least one in bad faith.<sup>33</sup> Judge Sippel also noted a pattern of harassing e-mails submitted by Mr. Havens and noted that "his conduct has been consistently contumacious and disrespectful."<sup>34</sup> Based on this conduct, Judge Sippel excluded Mr. Havens and his companies from future participation in the proceeding and certified to the Commission the question of whether a separate proceeding should be commenced into the character qualifications of Mr. Havens to hold FCC licenses. Among other things, Judge Sippel noted:

- Mr. Havens and his companies made false and misleading statements to support their positions.<sup>35</sup>
- Mr. Havens and his companies intentionally made false and misleading statements for the purpose of misleading the presiding judge.<sup>36</sup>
- Mr. Havens and his companies filed a Motion for Summary Decision that was in bad faith and patently frivolous.<sup>37</sup>
- Mr. Havens engaged in a pattern of harassing e-mails;<sup>38</sup>
- Mr. Havens and his companies "unreasonably burdened the [Office of the Administrative Law Judge], the Presiding Judge, the Enforcement Bureau, the other parties, and counsel

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<sup>32</sup> *Id.* ("[G]iven Havens' long history with the Commission, I think there is a good chance that this Order will spawn a new series of more 'limited' FOIA requests from Havens. . . .").

<sup>33</sup> *Order*, FCC 15M-14 at ¶¶ 13, 18 (Apr. 22, 2015).

<sup>34</sup> *Id.* at ¶17.

<sup>35</sup> *Id.* at ¶¶ 9, 11.

<sup>36</sup> *Id.* at ¶ 10.

<sup>37</sup> *Id.* at ¶ 13.

<sup>38</sup> *Id.* at ¶¶ 14-17.

by ‘dumping’ more than 444 unscreened exhibits constituting over 17,000 pages as their direct case. Review of these pages revealed that the direct case could not have been prepared in good faith. Most exhibits lacked relevance, were repetitive, or were otherwise useless.”<sup>39</sup>

- “The *seriatim* filing of frivolous motions by Mr. Havens and his companies prompted the unusual measure of excusing non-Havens counsel from responding, while barring further motion practice *sine die*. Such contemptuous conduct, when taken with other similar conduct, raises inescapable questions of whether Havens and his companies abused the Commission’s Rules and process ‘with premeditation by strategically burdening opposing parties at such times as to maliciously interfere with preparation for hearing.’”<sup>40</sup>
- Mr. Havens and his companies undermined efforts to assemble a joint stipulation and refused to agree on rudimentary background facts without proffering credible reasons or alternatives.<sup>41</sup>
- On numerous occasions, Mr. Havens took conflicting positions in successive pleadings.<sup>42</sup>
- Mr. Havens filed more than half a dozen meritless interlocutory appeals under Section 1.301(a) of the Commission’s Rules.<sup>43</sup>
- Mr. Havens filed multiple frivolous interlocutory appeal requests with the Presiding Judge under Section 1.301(b) of the Commission’s Rules, including one appeal that contained no argument at all.<sup>44</sup>
- Mr. Havens failed to meet deadlines and then used the unauthorized additional time to respond to pleadings that were timely filed at the deadline.<sup>45</sup>

Judge Sippel’s request for a character hearing remains outstanding.

A hearing on Mr. Havens’ character also is warranted based on issues raised in the litigation between Mr. Havens and Arnold Leong referenced in Havens’ Notice of Appeal.<sup>46</sup> In

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<sup>39</sup> *Id.* at ¶ 18(f).

<sup>40</sup> *Id.* at ¶ 18(h) (emphasis added).

<sup>41</sup> *Id.* at ¶ 18(i).

<sup>42</sup> *Id.* at ¶ 18(k).

<sup>43</sup> *Id.* at ¶ 18(l).

<sup>44</sup> *Id.* at ¶ 18(m).

<sup>45</sup> *Id.* at ¶ 18(q).

<sup>46</sup> Notice of Appeal at 6 n.7.

that litigation (and in subsequent pleadings before the Commission), Mr. Leong has alleged that Mr. Havens “improperly usurped control” over numerous FCC licenses.<sup>47</sup> The Complaint in that suit demonstrates that Mr. Leong and Mr. Havens entered into a partnership in which Mr. Leong’s ownership interest would be concealed from the Commission so that the partnership would be entitled to a 35% discount in FCC auctions.<sup>48</sup> If Mr. Leong’s allegations are correct, Mr. Havens intentionally misled the Commission and falsely certified the accuracy of his application before the FCC. Mr. Havens certainly was familiar with the discount process and disclosure requirements – his allegations against MCLM on these issues ultimately led to a hearing.<sup>49</sup> Given that he now faces the same allegations from Mr. Leong, a hearing is warranted.

As the Commission has noted, “a real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed” and “both the potential for deception and the failure to submit material information can undermine the Commission’s essential licensing functions.”<sup>50</sup> The issue in a real party in interest inquiry is whether an applicant is, or will be, controlled in a manner that differs from the one presented to the Commission.<sup>51</sup>

Choctaw agrees with Mr. Leong that the Commission must act to ensure that FCC licenses are no longer “entangled in Mr. Havens continued bad faith and legendary

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<sup>47</sup> See Arnold Leong Opposition to “Petition for Reconsideration, to Deny, and for Other Relief,” File Nos. 0007061847, 0007067613, at 1 (Mar. 24, 2016) (“Leong Opposition”).

<sup>48</sup> Complaint, Leong v. Havens, Case No. 2002070640 at 2-5 (Oct. 31, 2002).

<sup>49</sup> See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520 (2011).

<sup>50</sup> See *Fenwick Island Broadcast Corp.*, Decision, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992)(citation omitted); *Intermart Broadcasting Pocatello, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 8822, 8827 (2008).

<sup>51</sup> See, e.g., *Arnold L. Chase*, Decision, 5 FCC Rcd 1642, 1648 n.5 (1990).

gamesmanship.”<sup>52</sup> Mr. Leong has spent “millions of dollars in legal fees and costs and thousands of hours over the last decade trying to prevent Mr. Havens from continuing his misconduct before the Commission.”<sup>53</sup> Mr. Havens’ antics have caused Choctaw also to incur unnecessary legal fees and waste countless hours responding to frivolous pleadings.

The time is now to put an end to the circus created by Mr. Havens.<sup>54</sup> Despite the repeated warnings and potential hearing on character qualification grounds, Mr. Havens continues his pattern of frivolous filings. These filings often re-raise allegations that were previously adjudicated in MCLM’s favor. In addition, these filings often are made despite prior determinations that Mr. Havens lacks standing to make them and numerous decisions explaining to Mr. Havens what is needed to demonstrate standing.<sup>55</sup> The failure of the Commission to act merely encourages further frivolous and harassing filings by Mr. Havens.

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<sup>52</sup> Leong Opposition at 2-3.

<sup>53</sup> *Id.* at 3, n.7.

<sup>54</sup> See Hearing Transcript, EB Docket No. 11-71, at 1648 (Counsel for the Enforcement Bureau noting that the hearing “is becoming such a circus” because of the conduct of Mr. Havens).

<sup>55</sup> See, e.g., *Auction 87 Order*, 27 FCC Rcd at 4379, 4382-86 (“[B]road allegations of potential competition in the marketplace are insufficient to establish standing. Instead, as noted above, to obtain standing, a petitioner must allege facts sufficient to demonstrate a direct injury; claims amounting to a ‘remote’ or ‘speculative’ injury are insufficient to confer standing. Increased competition in the general CMRS marketplace does not create the type of injury that confers standing. Accordingly, we find that the Havens Parties lack standing. . . .”); *Metropolitan Transportation Authority*, 31 FCC Rcd 1436, 1441 (2016) (“The Havens Entities offer no explanation in their pleadings regarding why ENL-2 or Mr. Havens himself would have standing . . . , nor are we aware of any basis to afford them standing.”); *Wireless Properties of Virginia*, 22 FCC Rcd 1287 (WTB 2007) (finding no basis for standing); *Regionet Wireless License, LLC*, 17 FCC Rcd 21269, 21273 (2002) (affirming lack of standing); *Jeff Scott Cofsky*, 22 FCC Rcd 1857, 1859 (WTB 2007) (“As Mr. Havens is well aware, to have standing to challenge an auction outcome, a party must show ‘that it was able and ready to bid and that the decision of the Commission prevented it from doing so on an equal basis.’ . . . Mr. Havens did not meet this standard. . . .”).

Mr. Havens' recent Notice of Appeal is yet another example of a frivolous and harassing filing. There, Mr. Havens claimed that Choctaw and the Enforcement Bureau facilitated the destruction of evidence in the hearing and engaging in "like fraud and crime"<sup>56</sup> and that the Enforcement Bureau (along with MCLM) improperly withheld and concealed evidence.<sup>57</sup> There simply is no basis for these claims. This approach is routine for Mr. Havens. During the hearing, Mr. Havens "maligned and insulted" counsel for the Enforcement Bureau<sup>58</sup> and accused the Bureau of violating numerous Federal rules and threatened to bring criminal charges.<sup>59</sup>

The frivolous and harassing filings by Havens potentially impact finality of numerous Commission decisions relating to licenses now held by Choctaw and therefore directly impact the ability of Choctaw to conduct business. Choctaw obtained its licenses after a grant of *Second Thursday* relief and is diligently trying to get innocent creditors repaid. In order to do so, some licenses may have to be sold. Mr. Havens' numerous frivolous pleadings impede the ability of Choctaw to sell these licenses – potential buyers either want to reduce the price due to Mr. Havens' activity or are unwilling to enter into agreements due to a lack of finality. This is especially concerning given the potential of these licenses to be used to implement positive train control or address critical infrastructure needs.

Mr. Havens also is relying upon his various, frivolous filings before the FCC to create confusion in other tribunals – relying upon his "pending" FCC filings as the purported basis for resurrecting dismissed proceedings and delaying other proceedings. For example, Mr. Havens claims he remains a creditor in the MCLM Federal bankruptcy hearing because his claims

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<sup>56</sup> Notice of Appeal, 3 n.5.

<sup>57</sup> *Id.*

<sup>58</sup> Hearing Transcript, EB Docket No. 11-71, at 1654.

<sup>59</sup> Hearing Transcript, EB Docket No. 11-71, at 1646, 1648.

against MCLM before the FCC remain pending.<sup>60</sup> Similarly, he urged the United States District Court for the Northern District of Mississippi to reinstate his appeal of the MCLM bankruptcy decision pending resolution of his FCC “claims against and in the licenses” formerly held by MCLM.<sup>61</sup> He further has argued that he must have a claim in the MCLM bankruptcy because the FCC has determined that he has standing in various proceedings involving MCLM and that, if the court does not allow his participation, he “can continue at the FCC on matters of the [MCLM] FCC licenses and their assignment to Choctaw, the violations of both of those entities that are disqualifying and sanctionable, etc.”<sup>62</sup> Summary dismissal of his frivolous FCC pleadings, along with a prohibition on future filings against Choctaw and/or MCLM, will prevent Mr. Havens from causing future confusion before other tribunals.

Given Mr. Havens history in this proceeding, Choctaw urges the Commission to move forward expeditiously with the hearing requested by Judge Sippel. At a minimum, to avoid future frivolous and vexatious filings, the Commission should re-impose sanctions on Mr. Havens and prohibit any future filings by Mr. Havens against MCLM or Choctaw without the express, prior approval of the Commission.<sup>63</sup>

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<sup>60</sup> See Clarification and Supplement to Proof of Claim, Case No. 11-13463 (U.S. Bank. N.D.MS filed Sept. 19, 2017).

<sup>61</sup> See Motion for Rehearing, Civil Action No. 1:13-cv-00173-SA (filed July 12, 2017).

<sup>62</sup> See Havens’ Request of Pro Se Party for 2-Hour Extension of Time to File Opposition to Joint Motion to Strike and Initial Objection to the Joint Motion, Case No. 11-13463 (filed Oct. 25, 2017).

<sup>63</sup> See *Warren C. Havens*, 27 FCC Rcd 2756, 2762 (2012).



Respectfully submitted,

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Dated: November 14, 2017

**CERTIFICATE OF SERVICE**

I, Paula M. Lewis, hereby certify that on this 14th day of November 2017, copies of the attached “Joint Opposition to Appeal” were served via first class mail to the following:

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