

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of:	
ORDER OF DISMISSAL, by ALJ Richard Sippel	FCC 17M-35
In and regarding:	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services	EB Docket No. 11-71 File No. EB-09-IH-1751
Applicant for Modification of Various Authorizations in the Wireless Radio Services	
Applicant with ENCANA OIL AND GAS (USA., INC.; DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP; JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC COOPERATIVE; PUGET SOUND ENERGY, 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	Application File Nos. ¹ 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004315903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service	
AMTS Site-Based Licenses of Maritime Communications/Land Mobile LLC (now held by Choctaw Holdings LLC)	Call Signs KAE889, WRV374 and WHG750
Maritime Communications/Land Mobile LLC's Second Thursday Application	Docket No. 13-85

To: Marlene H. Dortch, Secretary Attn: The Commission

**REPLY TO ENFORCEMENT BUREAU OPPOSITION
TO APPEAL OF ORDER OF DISMISSAL, FCC 17M-35²**

¹ Some dismissed after Docket 11-71 commenced.

² The defined terms used herein have the same meaning given in the respective appeals. “EB” herein means the Enforcement Bureau. FCC OGC granted an extension to file this reply today.

Warren Havens and Polaris PNT PBC (“Appellants”) hereby reply to the EB’s opposition (“EB Opp” or “Opposition”) to their appeals of FCC 17M-35 (“Two Appeals”). The Opposition fails to refute the facts and arguments in the Two Appeals.

Reference and Incorporation: In addition to the relevant below above, Appellants reference and incorporate herein the sections in their Reply to the Maritime/ Choctaw opposition on “Standing” and “Page Limits” in response to the EB Opp’s text on those subjects.

Standing. The Two Appeals standing showings were not effectively refuted and will not be repeated here. Herein, in addition:

(1) ALJ Sippel’s position for the FCC in the “Sippel Order” FCC 14M-15 and the EB and MCLM support thereof settle the matter that Havens does have current legal standing (in 11-71, 13-85 and other FCC matters), and the FCC, EB and MCLM are subject to judicial estoppel to assert otherwise. That is because the Sippel Order attributed to the “Havens” or “SkyTel” entities rights and obligations, by finding that those entities are subject to severe sanctions (mainly: removal from the hearing, and threat of and HDO on character issues) imposed due to the (falsely) alleged wrongful actions by Havens over many years.³ That attribution, imposing severe sanctions and prejudice, gives Havens standing that may otherwise be attributed to or solely to those entities.

(2) In addition, as the FCC and receivership records show, Havens shareholder ownership in these entities has not changed, and there is no question that a company shareholder has legal standing to bring derivative actions to protect the entity especially where, as here, the shareholder has related personal injuries as well.⁴ *See, e.g.,* Ross v. Bernhard, 396 U.S. 531, 542 (US Supreme Court, 1970): “Derivative suits ...[are] ways of allowing parties to be heard in

³ The Sippel Order asserts the need to stop Havens’s alleged disruptive actions, taking place for years, but with no explanation of why the Judge did not stop them when the allegedly took place. That is first salient indication of the false factual and legal basis of the Sippel Order.

⁴ The Sippel Order is (spurious) attack on Havens personal rights, reputation, career, etc.

equityno longer any procedural obstacle standing to assert those rights....preserves to the parties in a stockholder's suit the same right to a jury trial that historically belonged to the corporation and to those against whom the corporation pressed its legal claims.” *Blasband v. Rales*, 971 F.2d 1034, 1046 (3d Cir.1992) (applying Delaware law and holding that plaintiff who was a shareholder in surviving corporation could sue derivatively on behalf of its merged parent corporation); *Mendell ex rel. Viacom, Inc. v. Gollust*, 909 F.2d 724, 729 (2d Cir.1990) (holding that in federal securities-law case, shareholder in surviving parent corporation had standing to pursue claims on behalf of merged subsidiary corporation); *Keyser v. Commonwealth.*, 120 F.R.D. 489, 493 (M.D.Pa.1988) (allowing shareholders to maintain a derivative action on behalf of merged entity and separate individual actions) (superseded by statute); *Miller v. Steinbach*, 268 F. Supp. 255, 268-69 (S.D.N.Y.1967) (holding that plaintiff who was a shareholder in surviving corporation had "capacity to sue derivatively on behalf of" company that was merged into the surviving company).

(3) In the MCLM-EB Joint Stipulation ([Exhibit 2](#)), MCLM asserts at fn 6: “...Choctaw understands that, as a party to this [11-71] proceeding, it will be bound by any Order from the Presiding Judge....” At that time, Choctaw did not own any licenses at issue (in the HDO FCC 11-64): it was only a prospective assignee of those licenses. MCLM and Choctaw are bound by judicial estoppel to that party-standing position. Under that standing position, Havens (and his partial assignee Polaris) clearly have party standing since Havens remains owner in the Havens Skytel companies and the future controller of them, in full or part, at the end of the temporary receivership “pendente lite” under California and Delaware law.

(4) The current status of Havens (and Polaris, as a Havens assignee) with regard to the “Havens” “Skytel” companies involving a temporary court receivership “pendente lite” is due to the “[Sippel Order](#)” FCC 14M-15. The receivership and the claims of Leong to get the receivership are void under FCC exclusive jurisdiction and preemption (express and field), and

for lack of due process, and the Sippel Order is also void for lack of due process, moot, and otherwise defective.⁵ Appellants' positions, in part just summarized, must ultimately be decided by the FCC under its exclusive jurisdiction, and if Appellants prevail, then the receivership and other *alleged* causes of, and finding of, Appellants' lack of current legal standing (or suspended standing) will also fail including in findings to date in some licensing actions, by a Wireless Bureau Division.⁶

Other. The Opposition (as does the MCLM-Choctaw Opposition) primarily makes procedural arguments why the Two Appeals should be dismissed or denied, while at the same time failing to address or refute the Two Appeals' showings that the Sippel Order, FCC 15M-14, is procedurally defective, and that the 11-71 proceeding is rife with procedural defects and failures, including by Judge Sippel and EB to fulfill the most fundamental purposes of the hearing as stated in FCC 11-64 (as shown in the Two Appeals). All of those substantial defects, as well as others, are good cause for the entire hearing to be found void and redone. Any alleged procedural defects (and Appellants dispute those defects) in an appeal cannot trump the major procedural defects within the 11-71 proceeding that preceded the Two Appeals.⁷

⁵ E.g.: The gravamen solely involves FCC matters: the Sippel Order and appeals thereof, Leong's (false) claim to holding co-control from year 1998 in the receivership companies without any assertion thereof in FCC licensing matters (applications he could have file as co-controller, if that he had any such control, and petitions challenging Havens' licensing filings with (accurate) ownership and control stated. If Leong (and his Receiver) believed this story, Leong had an obligation, not just a right, to appear and state his co-control to the FCC. No state judge can decide these matters, with any legal effect.

⁶ But not at the Bureau level, and not by the Commissions in the December 2016 "Second Thursday" order that described Havens as having current standing in text, and by addressing at length his legal pleading positions (after the receiver had abandoned for the receivership entities any position that matter.

⁷ For example, the EB presenting, prosecuting and defending MCLM's case; Judge Sippel never determining the issue of construction with any proper fact finding but instead relying on renewal applications that FCC 11-64 called into material question; MCLM never admitting to its actual ownership and control; Judge Sippel rewriting and misapplying Rule Section 1.251; Judge Sippel permitting stipulations in lieu of fact-finding; Judge Sippel improperly throwing out the only

The Two Appeals pointed out major procedural and regulatory defects of ALJ Sippel's order FCC 15M-14 (e.g., throwing out parties when Sippel could not do that under the rule, accusing parties of filing a prohibited motion when it was permitted, etc.), which were then compounded by Judge Sippel and the Commission not acting on the pending appeals of FCC 15M-14 for over two years, while Maritime and EB worked out stipulations in 11-71 in the absence of the only opposing parties, and then Judge Sippel terminating the 11-71 proceeding and case without those pending appeals ever being decided, which now Maritime and EB conveniently argue are moot—i.e. the EB, Maritime and Choctaw positions can only be construed to mean they think Havens has no rights or recourse to appeal an improper, adverse decision against him by Judge Sippel or the Termination Order or the actions in the 11-71 proceeding that were damaging and prejudicial to him as a party. Unlike the Two Appeals that are procedurally and substantively sound, the 11-71 hearing and the Termination Order that concluded it are clearly not, as shown by the Two Appeals, and the procedural and regulatory defects caused by Sippel's improper removal of parties by FCC 15M-14, and other improper actions by Sippel, EB and Maritime, cannot be cured by the Termination Order and improper denial of Appellants' rights, including to appeal and Due Process, under the Communications Act and Constitution.

Tellingly, the EB Opp fails to address any of the substantive arguments raised in the Two Appeals, including Havens' Appeal. Instead, it raises procedural arguments. In fact, the EB Opp merely makes a bald, general assertion that "As with the Polaris Appeal, the Havens Appeal offers no legal or factual basis upon which to challenge the Order of Dismissal". The EB Opp offers nothing else to refute the Two Appeals', including the Havens' appeal's, substantial, material facts and arguments as to why the Termination Order should be overturned, a new

prosecuting parties, Havens and others; Judge Sippel and the Commission improperly sitting on Havens appeals for over 2 years, when interlocutory appeals are to be decided quickly; etc.

hearing conducted, and why the 11-71 proceeding was defective and is *void ab initio*, including that Judge Sippel failed to conduct any fact finding per FCC 11-64; that stipulations cannot be used in lieu of facts; that Judge Sippel failed to determine construction under issue (g) and improperly relied upon renewal applications called into material question by the Commission in FCC 11-64 (back in 2011); that Maritime never provided its actual control and ownership to the FCC; that Judge Sippel improperly threw out Havens and others as parties; that EB improperly acted as counsel to Maritime; etc. The EB's lack of any specific response to the Havens' appeal's substantive facts and arguments must be taken as an admission that they are correct and unopposed by the EB.

The EB continues to defend Maritime against actions taken by Havens, one of the only parties who was prosecuting the Commission's case in 11-71 after the EB jumped ships. The EB does so even though Maritime has never accurately disclosed its ownership and control (see FCC 11-64), and therefore, the EB does not even know who the real parties in interest are in Maritime.

It is improper for the EB to support and defend Maritime in that circumstance and highly prejudicial to Havens.

Respectfully submitted,



Warren Havens, an Individual



Warren Havens, President
Polaris PNT PBC

December 13, 2017

Warren Havens, and Polaris PNT PBC
2649 Benvenue Avenue, Berkeley, CA 94704
Phone 510. 914. 0910
December 13, 2017

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing was prepared by me and that the factual statements and representations contained herein known to me are true and correct.



Warren Havens

December 13, 2017

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on December 13, 2017: ^{[*]1/}

(1) Caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing to the following parties and other persons: ^{[*]2/}

Hon. Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

David Senzel
FCC Office of General Counsel
By email to: David.Senzel@fcc.gov

Pamela Kane
FCC EB
445 12th Street, SW
Washington, D.C. 20554
(Counsel at the Bureau, and for Maritime)

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033-0428
(Counsel to Maritime, DIP)

Wilkinson Barker Knauer, LLP
ATTN Mary N. O'Connor
2300 N Street, NW, Suite 700
Washington, DC 20037
(Counsel to Choctaw)

Wilkinson Barker Knauer, LLP
Robert G. Kirk
Mary N. O'Connor
1800 M Street, NW, Suite 800N
Washington, DC 20036
(Counsel to Choctaw)

Jeffrey L. Sheldon

^{[*]1/} The mailed service copies being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

^{[*]2/} Appellant does not admit by including any person on this list that they are a proper party to any matter described in this filing. Some are included out of an abundance of caution.

Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, D.C. 20036
(Counsel for Puget Sound Energy, Inc.)

Jack Richards, Albert J. Catalano, Wesley Wright

Keller & Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, D.C. 20001
(Counsel to Enbridge Energy Co., Inc.; Dixie Electric Membership Corp.,
EnCana Oil and Gas, Inc.; Jackson County Rural Membership Electric
Cooperative, DCP Midstream, LP; Atlas Pipeline-Mid Continent LLC)

Charles A. Zdebski, Gerit F. Hull

Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW
Washington, D.C. 20006
(Counsel for Duquesne Light Co.)

Matthew J. Plache

Law Office of Matthew J. Plache
5425 Wisconsin Avenue, NW
Suite 600, PMB 643
Chevy Chase, MD 20815
(Counsel for Pinnacle Wireless Corp.)

Paul J. Feldman, Harry F. Cole

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Arlington, VA 22209
(Counsel for Southern California Regional Rail Authority)

Arnold Leong

Abe Pacific Heights Properties, LLC
Hippy and Happy, LLC
3111 Green River Drive
Reno, NV 89503

Arnold Leong

Abe Pacific Heights Properties, LLC
Hippy and Happy, LLC
2028 Laguna Street
San Francisco, Ca 94115

(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed,^[**]3/ provide notice and service to any party that has or may seek to participate in Dockets 13-85 and 11-71.

(3) Caused to be sent the foregoing filing via email to the following:
Office of the Inspector General
David Hunt, Inspector General, David.hunt@fcc.gov

^[**]3/ The FCC Office of General Counsel informed me regarding others' filings concerning MCLM relief proceedings that I was served in this fashion. I assume OGC does not apply a different standard to others. If OGC has a different standard, it can make that clear and public.

Christopher Shields, agent, Christopher.shields@fcc.gov



Warren Havens