

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>	)	

To: The Commission

**MOTION FOR LEAVE TO SUPPLEMENT JOINT OPPOSITION TO APPEAL**

Maritime Communications/Land Mobile, LLC – Debtor-in-Possession (“MCLM”), and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, “Choctaw”) hereby seek leave to supplement their opposition to 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>1</sup> The attached Supplement provides additional information regarding a court decision released after the Opposition was filed that addresses misconduct by Mr. Havens. This court decision provides a further basis for moving forward with a hearing into Mr. Havens’ character qualifications.

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<sup>1</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).

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

By:

/s/ Robert J. Keller  
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CHOCTAW TELECOMMUNICATIONS, LLC  
CHOCTAW HOLDINGS, LLC

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Their Attorneys

December 18, 2017

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

In re	)	
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<b>MARITIME COMMUNICATIONS/LAND</b>	)	EB Docket No. 11-71
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<b>POWER AND LIGHT COMPANY; DIXIE</b>	)	
<b>ELECTRIC MEMBERSHIP CORPORATION</b>	)	
To: The Commission		

**SUPPLEMENT TO JOINT OPPOSITION TO APPEAL**

Maritime Communications/Land Mobile, LLC – Debtor-in-Possession (“MCLM”), and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, “Choctaw”) hereby supplement their opposition to 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>1</sup>

The Opposition demonstrated why the Commission should impose sanctions on Mr. Havens and move forward expeditiously with a hearing into his character qualifications. It

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<sup>1</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).

detailed Mr. Havens' pattern of frivolous filings before the FCC and noted that issues raised in litigation between Mr. Havens and Arnold Leong (referenced in Havens' Notice of Appeal) justified issuance of a hearing designation order into Mr. Havens' character qualifications.<sup>2</sup>

After the Opposition was filed, the United States District Court for the Northern District of California denied a request for a stay of a contempt order against Mr. Havens for failing to comply with a court order and directed him to report to the county jail to serve a five-day jail sentence.<sup>3</sup> This decision is further evidence of a pattern of abuse of process indicating that Mr. Havens lacks the requisite character qualifications to be a Commission licensee.

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

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CHOCTAW TELECOMMUNICATIONS, LLC  
CHOCTAW HOLDINGS, LLC

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Dated: December 18, 2017

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<sup>2</sup> Opposition at 7-14; Notice of Appeal at 6 n.7.

<sup>3</sup> A copy of this decision is attached.

**CERTIFICATE OF SERVICE**

I, Paula M. Lewis, hereby certify that on this 18th day of December 2017, copies of the attached "Supplement to Joint Opposition to Appeal" were served via first class mail to the following:

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/s/ Paula M. Lewis

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WARREN C. HAVENS,

Petitioner,

v.

XAVIER BECERRA,

Respondent.

Case No. [17-cv-06772-PJH](#)

**ORDER DENYING REQUEST FOR  
STAY OF SENTENCE**

This is a habeas corpus case filed pro se pursuant to 28 U.S.C. § 2254. The action was filed on November 24, 2017, and reassigned to the undersigned on November 27, 2017. Petitioner was sentenced to five days in Alameda County Jail after being found in contempt by the Alameda County Superior Court. Petitioner is to report to the county jail on November 29, 2017. In addition to challenging the contempt order, petitioner seeks a stay of the five-day jail sentence until this court reviews the petition on the merits. It does not appear that petitioner is currently in custody, and it appears that petitioner has exhausted his claims in state court. Respondent has not yet been served because this case was just filed.<sup>1</sup>

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<sup>1</sup> Preliminarily, the court notes that a habeas petitioner may be "in custody" pursuant to a state court judgment other than a criminal conviction. Accordingly, federal habeas review may be available to challenge a state court order of civil commitment or a state court order of civil contempt. *Duncan v. Walker*, 533 U.S. 167, 175-76 (2001). However, petitioner is not currently in custody and will not be in custody until November 29, 2017. While this filing may be premature, the court will assume for purposes of this request for a stay that petitioner is in custody.

**Legal Standard**

There are no federal statutes or rules that address whether a district court may grant release to a petitioner pending its decision on the merits of a habeas petition. *Saldinger v. Santa Cruz Cnty. Super. Ct.*, No. C 10-3147 SBA, 2010 WL 3339512, at \*2 (N.D. Cal. August 24, 2010); *Hall v. San Francisco Cnty. Super. Ct.*, No. C 09-5299 PJH, 2010 WL 890044 at \*2 (N.D. Cal. March 8, 2010). The Ninth Circuit has not yet decided “whether a district court has the authority to grant bail pending a decision on a . . . habeas corpus petition.” *In re Roe*, 257 F.3d 1077, 1079–80 (9th Cir. 2001) (“We need not, and specifically do not, resolve this issue today.”). The same standard is applied whether the request is one for bail or for a stay of a sentence pending the resolution of the habeas petition. See *Stepney v. Lopez*, 597 F. Supp. 11, 13-14 (D. Conn. 1984).

Nevertheless, every circuit that has actually decided this issue has held that district courts do, in fact, possess such discretionary authority. *Hall*, 2010 WL 890044 at \*2 (citing cases from the First, Second, Third, Fifth, Sixth, Seventh, Tenth and District of Columbia Circuit Courts of Appeal). However, such discretion is to be “exercised very sparingly.” *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir.1985). To obtain such relief, the petitioner must demonstrate: (1) that the claim raises a substantial question and there is a high probability of success on the merits; and (2) the case is extraordinary involving special circumstances. *In re Roe*, 257 F.3d at 1080; *Hall*, 2010 WL 890044 at \*3-4.

**Discussion**

As grounds for federal habeas relief, petitioner alleges that: 1) he was improperly found in contempt of a state court order for filing a Chapter 11 Bankruptcy petition; and 2) he was unlawfully held in contempt for defending the rights of the State of California and the United States by seeking to put a nonprofit corporation into bankruptcy after it was taken over by private parties for their illegal gain.

Liberally construed, the first claim could be viewed as a challenge to the sufficiency of the evidence. The second claim does not set forth a separate federal

1 habeas claim. The court will look to the first claim and determine whether petitioner has  
2 shown that: (1) the claim raises a substantial question and there is a high probability of  
3 success on the merits; and (2) the case is extraordinary, involving special circumstances.

#### 4 **Substantial Question and Success on the Merits**

5 Petitioner presents many arguments concerning the ongoing civil proceedings and  
6 why the contempt finding was unjust. However, he presents few arguments concerning  
7 the evidence used to find him guilty of contempt. In this federal petition, petitioner  
8 attaches his habeas petition to the California Supreme Court. However, he refers to  
9 other filings prepared by a law firm that were filed in the California Court of Appeal that he  
10 states the California Supreme Court can access. Petition at 24. However, this court  
11 cannot access these filings and has no way to view the arguments or briefs filed by the  
12 law firm. A review of the superior court order holding petitioner in contempt appears to  
13 reflect that there was sufficient evidence. Petition at 49-58. Petitioner's few arguments  
14 to the contrary fail to demonstrate that this claim raises a substantial question and that  
15 there is a high probability of success on the merits in light of the high burden for a  
16 sufficiency of the evidence claim.

#### 17 **Special Circumstances**

18 Release from custody pending adjudication of a habeas petition is limited to  
19 extraordinary cases. See *Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir.1993) ("[s]ince a  
20 habeas petitioner is appealing a presumptively valid state conviction, both principles of  
21 comity and common sense dictate that it will indeed be the very unusual case where a  
22 habeas petitioner is admitted to bail prior to a decision on the merits in the habeas case").

23 Petitioner presents no specific arguments with respect to special circumstances  
24 that warrant a stay of his five-day sentence. His contentions that the finding was unlawful  
25 and the courts are in violation of federal law are too general and insufficient to warrant  
26 such an extraordinary remedy.



**Conclusion**

Petitioner has failed to show that his claim raises a substantial question and there is a high probability of success on the merits and that this case is extraordinary involving special circumstances. His motion for a stay of his jail sentence is **DENIED**. The court will screen the petition in a separate order.

**IT IS SO ORDERED.**

Dated: November 28, 2017



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PHYLLIS J. HAMILTON  
United States District Judge

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