

DEC 20 2017

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

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

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

**ENFORCEMENT BUREAU'S SURREPLY TO  
HAVENS AND POLARIS APPEALS OF ORDER OF DISMISSAL**

1. On September 28, 2017, the Presiding Judge dismissed the above-captioned case after the Enforcement Bureau (Bureau), Maritime Communications/Land Mobile, LLC (Maritime), and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, Choctaw) entered into a joint stipulation regarding the last remaining facilities in dispute and

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resolved all of the outstanding issues in the proceeding.<sup>1</sup> On October 30, 2017, Warren Havens (Havens), apparently proceeding as a *pro se* party, filed an appeal of the Presiding Judge's *Order of Dismissal* (Havens Appeal).<sup>2</sup> On October 30, 2017, Polaris PNT PBC (Polaris), which is not – and never has been – a party to the proceeding and which is apparently controlled by Warren Havens, filed a separate appeal of the *Order of Dismissal* (Polaris Appeal).<sup>3</sup> The Bureau opposed these Appeals on procedural and other grounds.<sup>4</sup>

2. On December 13, 2017, Havens and Polaris filed a joint reply to the Bureau's Opposition, raising arguments that are legally and factually deficient and otherwise muddy the record before the Commission.<sup>5</sup> The Bureau believes it is in the public interest for the Commission to have an accurate and complete record as it considers Havens' and Polaris' Appeals. It is for this reason that the Chief, Enforcement Bureau, through her attorneys, hereby respectfully requested leave to file a surreply.

3. In its Opposition, the Bureau argued that neither Havens nor Polaris have standing to appeal the order terminating the hearing proceeding.<sup>6</sup> As the record plainly reflects, the

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<sup>1</sup> See *Order of Dismissal*, FCC 17M-35 (ALJ, rel. Sept. 28, 2017) (*Order of Dismissal*). See also Joint Stipulation between Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, Maritime Communications/Land Mobile, LLC and the Enforcement Bureau on Discontinuance of Operations of Certain Site-Based Facilities, EB Docket No. 11-71, filed Sept. 22, 2017.

<sup>2</sup> See [Havens] Appeal of Order of Dismissal, FCC 17M-35 and Underlying Decisions and Actions in EB Docket 11-71, filed Oct. 30, 2017 (Havens Appeal).

<sup>3</sup> See [Polaris PNT PBC] Appeal of Order of Dismissal, FCC 17M-35 and Underlying Decisions and Actions in EB Docket 11-71, filed Oct. 30, 2017 (Polaris Appeal). Throughout the instant proceeding, Havens continually flooded the record by filing pleadings *pro se* and also on behalf of entities he controls. In every instance, however, Havens and his entities appear to have always taken the same position(s), thus only serving to waste significant time of all involved.

<sup>4</sup> See Enforcement Bureau's Opposition to Havens and Polaris Appeals of Order of Dismissal, filed Nov. 14, 2017 (Opposition).

<sup>5</sup> See Reply to Enforcement Bureau Opposition to Appeal of Order of Dismissal, FCC 17M-35, filed Dec. 13, 2017 (Reply).

<sup>6</sup> See Opposition at 4-6.

Presiding Judge excluded Havens from the proceeding in April 2015.<sup>7</sup> Moreover, Polaris is not – and never has been – a party to the proceeding.

4. In the Reply, Polaris offers nothing in response to the Bureau’s challenge to its standing. Havens, on the other hand, appears to argue for the first time that he has standing because he is a shareholder in other entities named as parties in the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (HDO)<sup>8</sup> – specifically, Environmental LLC, Verde Systems LLC, Intelligent Transportation and Monitoring Wireless LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC, and V2G LLC (collectively, SkyTel Entities).<sup>9</sup> Havens fails to acknowledge that each of these entities – like Havens – was excluded from the proceeding as part of the Presiding Judge’s April 2015 Order.<sup>10</sup> Thus, like Havens, none of the SkyTel Entities would have standing to appeal in this matter.

5. Nevertheless, Havens appears to be suggesting that he has standing to appeal the *Order of Dismissal* on behalf of the SkyTel Entities because he would have standing to bring a shareholder derivative action.<sup>11</sup> Alternatively, Havens appears to be asserting that he has standing because he is the owner of the SkyTel Entities.<sup>12</sup> There is no legal bases for these arguments. Indeed, the Commission’s rules specifically prohibit a corporate officer or employee from acting on behalf of a corporation in any matter which has been designated for an evidentiary hearing.<sup>13</sup> Moreover, at no point in his initial appeal papers does Havens ever

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<sup>7</sup> See *Memorandum Opinion and Order*, FCC 15M-14 (ALJ, rel. Apr. 22, 2015).

<sup>8</sup> See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (HDO).

<sup>9</sup> See, e.g., Reply at 2-3.

<sup>10</sup> See, e.g., *Memorandum Opinion and Order*, FCC 15M-14, at 2-5, 7-13.

<sup>11</sup> See, e.g., Reply at 2-3.

<sup>12</sup> See, e.g., *id.* at 3.

<sup>13</sup> See 47 C.F.R. § 1.21(d). The Bureau notes that early in this matter, the Presiding Judge acknowledged that Havens was not permitted to represent the SkyTel Entities *pro se* and that the Skytel Entities must retain legal

suggest he was appealing on behalf of the SkyTel Entities. Rather, he only ever suggested that he was appealing on behalf of his own interests.<sup>14</sup> He cannot now – in his Reply – claim that he is representing the interests of any entity other than himself. As a result, Havens has no standing and his Appeal should be denied.

### **Conclusion**

6. For the foregoing reasons, and those raised in the Bureau's earlier-filed Opposition, the Bureau respectfully requests that the Commission deny both the Polaris and Havens Appeals.

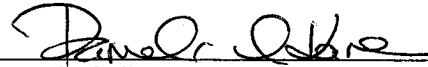
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representation. *See, e.g., Order*, FCC 12M-16 (ALJ, rel. Mar. 9, 2012); *Order*, FCC 12M-52 (ALJ, rel. Nov. 15, 2012), at 4. Havens is not an attorney. Thus, Havens has no right to represent the Skytel Entities. His attempt to do so in the Reply could be construed therefore as the unauthorized practice of law before the Commission and create an additional basis for scrutinizing his qualifications as a licensee.

<sup>14</sup> *See, e.g.,* Havens Appeal at 2 ("Warren Havens ('Havens' or 'Appellant') submits this Appeal").

Respectfully submitted,

Rosemary Harold  
Chief, Enforcement Bureau



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Pamela S. Kane  
Special Counsel  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street SW, Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

Michael Engel  
Special Counsel  
Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street SW, Room 4-C366  
Washington, D.C. 20554  
(202) 418-7330

December 20, 2017

## CERTIFICATE OF SERVICE

Pamela S. Kane, certifies that she has on this 20th day of December, 2017, sent by email copies of the foregoing "ENFORCEMENT BUREAU'S SURREPLY TO HAVENS AND POLARIS APPEALS OF ORDER OF DISMISSAL" to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554 (by hand, courtesy copy)

Jeffrey L. Sheldon  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036  
**Counsel for Puget Sound Energy, Inc**

Jack Richards  
Albert J. Catalano  
Wesley Wright  
Keller & Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
**Counsel for Atlas Pipeline – Mid Continent LLC; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; Jackson County Rural Membership Electric Cooperative; and Dixie Electric Membership Corp.**


Charles A. Zdebski  
Gerit F. Hull  
Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
**Counsel for Duquesne Light Co.**

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

Robert J. Keller  
Law Offices of Robert J. Keller, P.C.  
P.O. Box 33428  
Washington, D.C. 20033  
**Counsel for Maritime Communications/Land Mobile LLC**

Robert G. Kirk  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW Suite 700  
Washington, DC 20037  
**Counsel for Choctaw Telecommunications, LLC and Choctaw Holdings, LLC**

Warren Havens/Polaris PNT PBC  
2649 Benvenue Ave.  
Berkeley, CA 94704

  
Pamela S. Kane