

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

In the Matter of

**MARITIME COMMUNICATIONS/LAND
MOBILE, LLC, DEBTOR-IN-POSSESSION
Application to Assign Licenses to Choctaw
Holdings, LLC**

**MARITIME COMMUNICATIONS/LAND
MOBILE, LLC, DEBTOR-IN-POSSESSION
Applications to Modify and to Partially Assign
License for Station WQGF 318 to Southern
California Regional Rail Authority**

**Application for New Automated Maritime
Telecommunications System Stations**

**Order to Show Cause, Hearing Designation
Order, and Notice of Opportunity for Hearing**

)
)
) **WT Docket No. 13-85**
) **FCC File No. 0005552500**
)
)
) **FCC File Nos. 0004153701 and**
) **0004144435**
)
)
) **FCC File No. 0002303355**
)
)
) **EB Docket No. 11-71**
) **File No. EB-09-IH-1751**
) **FCC File Nos. 0004030479,**
) **0004193028, 0004193328, 0004354053,**
) **0004309872, 0004310060, 0004314903,**
) **0004315013, 0004430505, 0004417199,**
) **0004419431, 0004422320, 0004422329,**
) **0004507921, 0004153701, 0004526264,**
) **0004636537, and 0004604962**

Accepted/Files

OCT 31 2014

Federal Communications Commission
Office of the Secretary

To: Marlene H. Dortch, Secretary

**ENBRIDGE REPLY TO
OPPOSITION TO PETITION FOR RECONSIDERATION**

Enbridge Energy Company, Inc. ("Enbridge"), by its attorneys and pursuant to Section 1.106(h) of the rules and regulations ("Rules") of the Federal Communications Commission ("Commission"),¹ hereby submits this Reply to the Opposition - Errata Copy filed by Skytel-2

¹ 47 C.F.R. § 1.106(h) (2013).

Entities (“Havens” or “Havens’ Opposition”)² to Enbridge’s Petition for Reconsideration (“MO&O Reconsideration”)³ of the Commission’s Memorandum Opinion and Order (“MO&O”)⁴ in the captioned proceeding. Havens’ spurious allegations against Enbridge (and its counsel) are without merit.⁵

I. REPLY

Havens raises no legitimate reason to deny Enbridge’s MO&O Reconsideration seeking to have its application treated in the same manner as the application by the Southern California Regional Rail Authority (“SCRRA”). Under FCC Rules and precedent, Enbridge has a right to object to its forced involvement in this hearing. Like SCRRA’s application, Enbridge’s application should be removed from the hearing and granted. There is no factual or legal justification for the Commission to require Enbridge’s application to remain in limbo while SCRRA’s application is processed outside the hearing.

Havens’ other allegations regarding Enbridge are not relevant to the issue raised in the MO&O Reconsideration (*i.e.*, whether Enbridge’s application should be treated like SCRRA’s application) but are likewise without merit. Enbridge entered into its spectrum agreement with Maritime Communications/Land Mobile, LLC (“MCLM”) in good faith, paid fair market value

² To date, Havens has filed approximately 150 pleadings in this proceeding. At least 20 were followed shortly thereafter by “Errata,” thereby causing opposing counsel to review not only Havens’ initial pleadings but his subsequent, “corrected” copies.

³ Enbridge Petition for Reconsideration of Memorandum Opinion and Order, WT Docket No. 13-85, EB Docket No. 11-71, October 14, 2014.

⁴ In re Maritime Communications/Land Mobile, LLC, Debtor-in-Possession Application to Assign Licenses to Choctaw Holdings, LLC, Memorandum Opinion and Order, FCC 14-133 (*rel.* Sept. 11, 2014).

⁵ Mr. Havens has been warned repeatedly by the Commission for his abusive tactics. *See, e.g.*, Warren C. Havens, Memorandum Opinion and Order, 27 FCC Rcd. 2756, 2757 (*rel.* Mar. 12, 2012) (finding that Havens abused the Commission’s processes by filing frivolous and repetitive pleadings and requiring him to obtain the prior approval of the Wireless Telecommunications Bureau before filing further pleadings.) *See also*, Warren C. Havens, Memorandum Opinion and Order, FCC 12-1376 (*rel.* Aug. 21, 2012) (dismissing Havens’ Petition for Reconsideration because it raised duplicative arguments that had already been rejected by the Commission), and Warren C. Havens Memorandum Opinion and Order, FCC 14-148 (*rel.* Oct. 9, 2014) (“we expressly stated that Havens ‘should not expect further administrative review of the sanction.’”).

for it, and needs it for the detection of lethal gas, cybersecurity, and other public safety purposes. All of Enbridge's leases and notices were filed appropriately with the Commission.

Havens' Opposition, insofar as it applies to Enbridge, should be promptly dismissed. The Commission should recognize the obvious public-safety merits of Enbridge's request, remove the company's application from the hearing and grant it after almost four years.

1. Enbridge is entitled to object to its forced involvement in this hearing.

Havens claims Enbridge had no right under the Rules to file a Petition for Reconsideration⁶ of the Hearing Designation Order ("HDO")⁷ setting for hearing Enbridge's application (as well as applications by three other oil and gas companies, and seven electric utilities) to acquire small portions of spectrum licensed to MCLM but allowing an application by SCRRRA to be removed from the hearing and granted due to the public safety implications of Positive Train Control ("PTC").⁸ Other than repeating language from the MO&O, Havens provides no support for his position. Instead, he suggests Enbridge appeal if it is unsatisfied with the final decision in the hearing."⁹

Section 1.106(a)(1) of the Rules states that "[a] petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding."¹⁰ In the MO&O, the Commission held that *forcing* a party to participate in the hearing (as opposed to *excluding* a

⁶ CII Companies' Petition for Reconsideration, filed May 19, 2011 (EB Docket No. 11-71).

⁷ Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, FCC 11-64 (*rel.* Apr. 19, 2011).

⁸ *Id.*, n.7.

⁹ Havens Opposition, p.6.

¹⁰ *Id.*

party from a hearing) is not an “adverse ruling.” This holding, however, is directly contrary to longstanding Commission precedent.¹¹

In *Western States Telephone Company et al*, a party filed a petition for reconsideration of a designation order and sought to be removed from a hearing. The Commission determined to entertain the petition, “because it involves an alleged adverse ruling respecting petitioner's participation in the hearing. See, Section 1.106(a)(1) of the Rules.”¹² This clear precedent shows that forcing an entity *into* a hearing is every bit as “adverse” as keeping one *out* of it. It was cited by Enbridge in the MO&O Reconsideration but is ignored in the Havens Opposition. It controls the Commission’s decision in the instant case.

There is no real question about the “adversity” faced by Enbridge if the MO&O is not reversed. As pointed out in the MO&O Reconsideration, SCRRA is now free to prosecute its application on a “fast track” while Enbridge’s application remains entrenched in an uncertain, complex, time-consuming, and expensive hearing proceeding with no end in sight.¹³ In addition, unlike SCRRA’s application, Enbridge’s application will be reviewed under a more stringent standard as it is tied to the character qualifications of MCLM.¹⁴

- 2. There is no justifiable reason for the Commission to consign Enbridge’s application indefinitely to the hearing while allowing SCRRA’s application to be removed from the hearing and granted.**

¹¹ MO&O Reconsideration, pp. 10-11.

¹² *Western States Telephone Company et. al*, 66 FCC 2d 370 (1977) at ¶ 3.

¹³ MO&O Reconsideration, p.11, n. 26.

¹⁴ *Id.*

Havens claims “the CII Companies should not be able to leverage any exceptional relief extended to SCRRA for getting similar relief.”¹⁵ In his separate Petition for Reconsideration of the MO&O, however, he states:

“...the utilities who were denied Footnote 7 (Footnote 7-like) relief undoubtedly will ask why SCRRA is different. The alleged rationale is that SCRRA has to meet a statutory mandate, and railroads have decided to only use 220 MHz-range spectrum for PTC, whereas utilities just think it might be nice to have some of that spectrum especially if its (sic) cheap by the MCLM fire sale due to its being caught cheating and unloading it before it loses (sic) it, and to allege that the buyers then cure its cheating... This rationale shows a complete lack of understanding of the federal and state laws that govern utilities. It also ignores entirely the President’s Cybersecurity Order the (sic) mandates imposed on utilities.”¹⁶

Other than his claim that the price Enbridge committed to pay for the spectrum from MCLM was “cheap,” he is accurate in his characterization of the FCC’s decision: it does demonstrate a lack of understanding of the federal and state laws governing utilities, and it ignores the President’s Cybersecurity Order.

As described in the MO&O Reconsideration,¹⁷ the primary use of these frequencies by Enbridge is for critical public safety applications: (1) monitoring and detecting highly lethal gases, as required by the Occupational Safety and Health Administration (“OSHA”),¹⁸ and (2) cybersecurity, which is closely linked to the President’s Executive Order and corresponding recommendations by the National Institute of Standards and Technology (“NIST”).¹⁹

¹⁵ Havens Opposition, p. 7.

¹⁶ Petition for Reconsideration of Skytel-2 Entities- Errata copy, p. 18.

¹⁷ MO&O Reconsideration, pp. 11-14.

¹⁸ See, <https://www.osha.gov/SLTC/hydrogensulfide/> (last visited Oct. 31, 2014).

¹⁹ See, *NIST Framework for Improving Critical Infrastructure Cybersecurity*, Feb. 12, 2014, available at: <http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf> (last visited Oct. 31, 2014).

Enbridge also uses the AMTS frequencies for physical security to promote public safety, including video monitoring, snap shot cameras, motion sensors, intruder alerts, security gate access, and badge identification, as well as monitoring and controlling the multitude of valves and switches necessary to operate and maintain its pipelines in compliance with federal and state requirements. All of these functions are not merely business-related but are essential to public safety.

In the MO&O, the Commission exempted the SCRRA application from the hearing so it would not be held in abeyance “for an additional indefinite period.”²⁰ For some inexplicable reason, the Commission was not similarly concerned with the fate of Enbridge’s application that is equally based on public safety and has now been pending before the Commission for almost four years.

3. Enbridge is not “complicit” in any “sham” involving MCLM

Havens alleges that MCLM is a “sham entity” and that the CII entities (including Enbridge) entered into transactions with MCLM “knowing” the facts as to its wrongdoing “since those were in the SkyTel petitions cited in the HDO-OCS that were the seminal cause of HDO-OCS and were adopted in the HDO-OCS.”²¹ From this, Havens reasons that “the transactions were entered into to extract benefit from the wrongdoing and these actors are complicit therein.”²²

These allegations against Enbridge go far beyond the issues raised in the MO&O Reconsideration, but Enbridge will respond to clarify the record. Enbridge was not “complicit” in any “sham” involving MCLM. Enbridge entered into its Asset Purchase Agreement with

²⁰ MO&O, p. 13.

²¹ Havens’ Opposition, pp. 3-4.

²² Id.

MCLM in November, 2010, roughly six months before the Commission released its HDO. At the time of the agreement, MCLM was listed in the FCC's records as the fully authorized holder of its AMTS licenses. Once issued, the HDO did not convert Havens' claims against MCLM into proven facts. Nor did the HDO contain any allegations remotely questioning Enbridge's good faith in its dealings with MCLM.

4. Enbridge agreed to pay fair market value for this spectrum and has invested \$5M to develop it.

According to Havens, the main reason Enbridge still pursues the MCLM spectrum is because it was sold "below market value" due to MCLM's fraud and deceit during the auction. He claims there is "no good reason why these CII Companies cannot pursue market rate transactions for other spectrum."²³

The market value of the spectrum is not at issue in the MO&O Reconsideration, but again Enbridge will respond to clarify the record in light of Havens' allegations. The amount Enbridge committed to pay MCLM for 27 channels in and around Dallas and Houston, TX, is a matter of public record in the MCLM Bankruptcy proceeding.²⁴ It exceeds \$1.4M. It represents a substantial, fair market investment. Additionally, as reported in the MO&O Reconsideration, Enbridge to date has invested nearly \$5 million in equipment and engineering support in designing and deploying a sophisticated, public-safety related network using these frequencies. There are ample reasons why Enbridge requires their continued use.

5. Enbridge's spectrum lease with MCLM was filed appropriately with the Commission.

²³ Havens Opposition, p. 7.

²⁴ Bankruptcy filing In Re Maritime Communications/Land Mobile, LLC, Voluntary Petition for Chapter 11 Bankruptcy, No. 11-13463 (N.D. Miss. filed Aug. 1, 2011).

Although completely irrelevant to the MO&O Reconsideration, Havens levels charges of illegal, unauthorized, and unlawful operations against unidentified CII Companies (and their counsel) regarding alleged deficiencies in their filing of Spectrum Leases at the FCC:

Any of the CII Companies that in their petitions are stating that they are using the MCLM spectrum under a lease (or have otherwise informed the FCC that they are operating on the MCLM spectrum), but where no lease has been filed or accepted in FCC ULS records covering the period of such operation, should be investigated for illegal operation and appropriately sanctioned, including sanctions of their FCC counsel who clearly knew that any operations under a lease have to be reported to the FCC by filing a lease application on the ULS system.²⁵

In light of these charges, Enbridge will take this opportunity to confirm its Spectrum Manager Lease with MCLM was filed with the FCC on February 10, 2011.²⁶ Under the Rules, Enbridge was entitled to begin operations under this Lease on March 3, 2011.²⁷ There was nothing illegal, unauthorized or unlawful about Enbridge's operations in reliance on the lease filing.

6. The Commission has been duly notified of Enbridge's use of these frequencies for private purposes.

Havens also alleges "unlawful PMRS without authority" and claims "the use of the MCLM spectrum by the CII entities lacks §20.9(b) authority."²⁸ This allegation also is not relevant to the MO&O Reconsideration, but Enbridge will clarify the record again in light of Havens' claims.

On February 10, 2011, Enbridge filed the certification required by §20.9(b)(1) confirming it would be using MCLM's spectrum for private, internal operations, and not to provide

²⁵ Havens Opposition, pp. 7-8.

²⁶ FCC File No. 0004610535.

²⁷ 47 C.F.R. 1.9020(e)(1)(ii).

²⁸ Havens' Opposition, p. 6-7.

commercial service.²⁹ Section 20.9(b)(2) of the Rules allows 30 days for interested parties to challenge these types of certifications, however, neither Havens nor any other party challenged Enbridge's certification, nor, to Enbridge's knowledge, is there any ground for anyone to do so. Enbridge continues to operate its system for private, internal purposes, not for common carriage, in accordance with its certification.

II. CONCLUSION

Enbridge entered into its spectrum agreement with MCLM in good faith, paid fair market value for it, committed \$5M to developing it, and needs it for the detection of lethal gas, cybersecurity, and other public safety purposes.

The Commission's summary dismissal of Enbridge's HDO Reconsideration, based on a belief that Enbridge's operations were not primarily related to public safety, is factually wrong and must be corrected. Enbridge's AMTS system is essential to the safety of employees, contractors, and the public, and is necessary for the protection of property and preservation of the environment under circumstances where a failure in communications can have catastrophic consequences.

²⁹ FCC File No. 0004610535.

The Havens' Opposition should be promptly dismissed insofar as it applies to Enbridge. The Commission should recognize the obvious public-safety merits of Enbridge's request, remove the company's application from the hearing, and, finally, grant it.

Respectfully submitted,

ENBRIDGE ENERGY COMPANY, INC.



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October 31, 2014

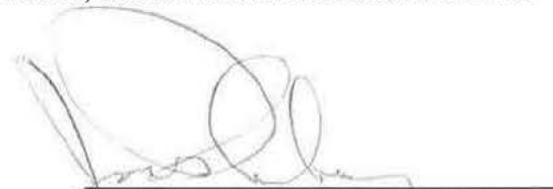
Attachments: Affidavit of Joel Prochaska
Certificate of Service

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
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AFFIDAVIT OF JOEL PROCHASKA

I, Joel Prochaska, Manager of Operations Services for Enbridge, Inc. ("Enbridge"), hereby affirm that I have reviewed the Reply to Havens' Opposition to Petition for Reconsideration in the captioned matter and to the best of my knowledge, information, and belief, the facts and information relating to Enbridge's operations, infrastructure, and investments contained therein are true and accurate.

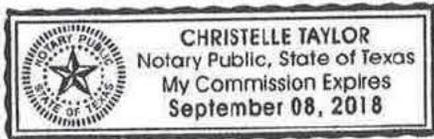


**Joel Prochaska
Operations Manager**

STATE OF TEXAS
CITY/COUNTY OF Harris, to wit:

Subscribed and sworn to on this 30 day of October, 2014, by Joel Prochaska,
Operations Manager for Enbridge, the above-named Affiant, before me.

My Commission expires on: September 8, 2018



Christelle Taylor
Notary Public

CERTIFICATE OF SERVICE

I, Beverly Harding, hereby certify that on this 31st of October, a copy of the foregoing Reply to Opposition to Petition for Reconsideration was filed with the Commission, served on the parties listed below via First Class U.S. Mail and a courtesy copy was provided via electronic mail.

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