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

In re	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71
	)	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 Authorizations in the Wireless Radio Services	)	Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004315903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
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	)	

To: Secretary, Attn: the Commission

Petition for Reconsideration
and in the Alternative Request under §1.41

Warren Havens ("I" or "Havens") petitions for reconsideration of the Commission's *Memorandum Opinion and Order* (the "Order")[1] that denied various interlocutory appeals that he filed under §1.301(a) of various rulings by the Chief Administrative Law Judge Sippel in the hearing in Docket No. 11-71 (the "I Appeals" or "Appeals", and "I Appeal" when talking about a single appeal) (the "ALJ" or "Judge").[2] The Oral Order denied or withheld any relief requested by Havens in his multiple interlocutory appeals under Section 1.301(a).

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[1] *Memorandum Opinion and Order*, FCC 14-149, released October 14, 2014.

[2] See list of Havens' interlocutory appeals in the Order's "Ordering Clauses" section.

- I -

I request that the Commission should respond to this petition in a timely fashion because withholding relief is prejudicial to Havens' participation in Docket No. 11-71, as well as prejudicial to companies managed by Havens that are represented by counsel in that docket. I assert that the prejudice already caused, noted in his I Appeals, is reversible error, and that withholding further relief compounds that error and associated damages.

I was the person that researched, prepared, filed and pursued (most all with out counsel representation or advice) the petitions cited throughout the Commission's HDO-OSC FCC 11-64 that gave rise to proceedings in 11-71, and then the related proceedings in 13-85, but the Judge has constantly, form near the start of hearing, acted to bar (an outright bar in periods), inhibit, apparently mock at times, and severely burden my simple attempt to participate to protect and pursue Constitutionally protected rights[3] (also protected under FCC law) with a serious of false characterizations and major improper constraints. It is well known in history that when an authority supposedly constrained by law seeks to prejudice a party, he/she will not do so blatantly, but use a serious of devices. That is demonstrated in this hearing, and reflected in part in the I Appeals, and further in the new appeal I filed today with the Commission under Section 1.301(a), which I reference and incorporate herein in full. It is specious to suggest, as in the Order, that only an outright bar or ban of a party's participation is subject to an appeal under

[3] Including Fifth Amendment due process and equal rights, and First Amendment petition rights. The rights involve my management and ownership interests in AMTS spectrum involving the geographic and site-based spectrum held by MCLM, and also affected adjacent-channel AMTS spectrum. The government has a duty under these Fifth Amendment rights to protect them, not merely to allow them, *but in this case, the FCC does the opposite*. See: "Passive Takings: The State's Affirmative Duty to Protect Property." Vanderbilt Public Law Research Paper No. 14-19: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419482 : "[T]he Takings Clause imposes an affirmative obligation on the government to protect property." Also See: http://www.law.cornell.edu/wex/due_process : "The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be 'deprived of life, liberty or property without due process of law.' The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states."

Section 1.301(a). I am confident that in an appeal to the DC Circuit Court that the history of this proceeding and the result that I just noted can demonstrated.

I request that on reconsideration the Commission rule in favor of the requests Havens submitted in his I Appeals, including (i) to find that the Judge's ACI Orders (defined below) were unlawful and damaging and are rescinded; (ii) to find that the Judge's "Counsel Order" (defined below) was unlawful because it imposed a requirement to obtain counsel on a party who had a right to participate on a pro se basis; (iii) to find that the other I Appeals, considered along with all of the I Appeals, had a sound basis and should result in the relief requested; and (iv) to find that the Judge committed prejudicial error regarding the matters complained of in the I Appeals and this Recon, and to thus apply appropriate remedies.

If the petition is not considered as a petition for reconsideration, then I request that it be considered under Section 1.41, including since the consideration of the facts and matters herein is in the public interest.

- II -

The Order erred in finding that the Judge *resolved* the issues that Havens raised in the I Appeals regarding the Judge's ordering release of extensive, detailed attorney-client privileged and confidential information to the Judge *and to the other parties* in the hearing, supposedly by a subsequent order, FCC 14M-18 (the "Attorney Client Information Orders," or the "ACI Orders").[4] The fact is that the Judge did not retract or modify the ACI Orders regarding said

[4] The ACI Orders, further described in the I Appeals, are the following: (i) the Judge's written order that the attorneys assisting Mr. Havens to some degree in his pro se actions fly to DC in a short number of days to personally give the Judge information he did not designate in the order and in which he explained no purpose for the meeting. He also ordered that MCLM and the Enforcement Bureau should attend. Immediately prior to the meeting, he then ordered that the attorneys must bring many documents, but still explained no purpose and no rule under which he was asserting the mandatory attendance; (ii) during the meeting of approximately two hours long, the Judge made various oral decisions and orders (see the transcript), including, after many requests by Mr. Havens for an explanation that his purported concerns were "ghostwriting," but still with no explanation as to why he believed under FCC or other law "ghostwriting" was not

attorney-client protected information. Another fact is that the Judge imposed upon Havens' attorneys and Mr. Havens extensive burdens in time and cost to comply with the ACI Orders, as shown in the I Appeals, regardless of any alleged later tangential "resolution," which I dispute. The total cost probably exceeded $100,000, in cash and in value of lost time. In addition, the ACI Orders caused the loss of these attorneys who had been at times assisting Havens in his *pro se* participation in Docket No. 11-71, and who were representing Havens and the Skytel entities in non-FCC legal matters. No subsequent order of the Judge can remedy the inappropriate and unlawful ACI Orders of the Judge and the damages caused, as just noted, and as detailed in the I Appeals. For this reason alone, the Commission should on reconsideration find in favor of Havens' complaint in the I Appeals.

With regard to the Havens I Appeal submitted July 22, 2014, it cited the Judge's order FCC 14M-22 as follows (the Counsel Order):

> " 'As part of trial preparations, by July 30, 2014, counsel representing Mr. Havens at trial shall have filed and served a Notice of Appearance.
> * * * *
> IT IS FURTHER ORDERED that counsel representing Mr. Havens at trial SHALL FILE AND SERVE a Notice of Appearance on or before July 30,2014.' "

The meaning of the above is plain and is not what the Order construed it to be. If the Commission thought that is what the Judge meant, then it could have asked the Judge to clarify his order and then decided upon the clarified order. But the Commission did not do that. As with the ACI Orders, this order caused real economic costs and prejudice to Havens that cannot be undone by the Commission construing the language to mean something other than it states months thereafter.

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permissible, however he did not define "ghostwriting"; and (iii) a written order from the Judge that he issued after the meeting, on the same day, in which some of his decisions and orders made orally during the meeting were reflected.

The so-called resolution at best, replaced on unlawful order with others that treated Havens like an attorney and denied proper consideration to a non-attorney pro se party, and all that at great costs indicated herein. That is not an equitable or lawful "resolution.

Also, insofar as the ALJ by the ACI Orders required Havens to appear at a prehearing conference, without allowing Havens sufficient time to obtain counsel, then that was a violation of §1.27 of the Commission's Rules. §1.27 reads [bolding added]:

> §1.27 Witnesses; right to counsel.
> Any individual compelled to appear in person in any Commission proceeding **may be** accompanied, represented, and **advised** by counsel as provided in this section. (Regulations as to persons seeking voluntarily to appear and give evidence are set forth in § 1.225.)
> **(a) Counsel may advise his client in confidence,** either upon his own initiative or that of the witness, **before**, **during**, and after the conclusion of the proceeding.

In this regard, no one is compelled to appear at an FCC formal hearing, but to protect their interests. I am compelled, in that regard, as much as MCLM. Under this rule, I had a right to <u>confidential</u> advice counsel before the hearing for any purposes of my participation in the hearng. The Judge's ACI Orders attached this right or ordered it to be violated, among other breaches indicated herein and in the I Appeals.

Regarding the I Appeal of FCC 14M-25, in which the Judge ordered that Havens and attorney James Stenger must coordinate and jointly act in various ways (the "Coordination Order"): the Commission is incorrect to find that FCC 14M-25 is not an effective termination or bar to Havens' pro se rights and participation, for many reasons that are fully apparent, including the following: (i) that it imposes substantial time and cost upon Havens;[5] and (ii) it imposes a

[5] Mr. Stenger, as with other attorneys, charge substantial fees, and require substantial lead time for coordination and concluding a coordinated matter, and have other requirements that may not be the same as Mr. Havens personal views, including based upon Mr. Havens' decades of experience with AMTS licensing matters, and MCLM and its predecessors, and the subject licenses, and the various FCC rules and orders. The Judge has repeatedly stated directly and indirectly that he believes Mr. Havens should be deemed for the purposes of the hearing the same as the "Skytel" companies that he manages. This has been the case since near the beginning of proceeding 11-71. The Judge has in fact earlier ordered, and never rescinded, that

limitation on the facts, law, language, form of language, and other aspects of written and oral presentations by Havens in the proceeding. Further to the preceding footnote, any time an independent party is ordered to only act in critical parts of a legal proceeding jointly with another person, in this case an attorney at a law firm, it effectively bars that party's independent rights. Rights have no meaning when they are subject to this level of coordination, likely restraint,[6] and certain costs. The Coordination Order turns pro se rights and participation into a right only to act with counsel. It does not matter whether that counsel who Mr. Havens must coordinate and jointly act with, is counsel to two LLCs that Mr. Havens serves as President, because those LLCs are independent and have their own decision making process, assets, risk analysis, etc., as indicated in a preceding footnote.

I also refer to a new appeal under §1.301(a) that I am filing concurrently today with the instant petition in docket 11-71. This new interlocutory appeal demonstrates further that the actions of the Judge in the I Appeals subject of the Order were based on prejudice, and were proper appeals for the reasons given therein. The new appeal demonstrates that the Judge has reached the point of improperly barring me from attendance at an important meeting in this proceeding, and thereafter refused to reduce to writing, upon my respectful request, the orders he issued orally at that meeting, which affected my party participation and rights. Similar treatment was noted in Havens' 1/28/14 I Appeal of FCC 14M-3, where Havens wrote, "The ALJ did not provide me sufficient time for this Appeal, and he had discretion to do so. Further, the ALJ and

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Mr. Havens cannot represent himself on a pro se basis. After many objections the Judge asked Mr. Havens to give him reasons why he even wanted to participate, when that could not be more clear in the HDO, FCC 11-64, that commenced the hearing. Mr. Havens has repeatedly explained, and neither the Judge nor any party has any evidence contrary to, the facts that Mr. Havens is distinct from the companies he manages, including separate assets, including FCC licenses, separate tax IDs, separate FCC FRNs, separate liability, separate business plans and risk analysis.

[6] The restraint here is not one of staying safely within proper pleading and other participation standards, but is very clearly a restraint on the speed, background knowledge of facts and law, method of expression, and consequent effectiveness of action.

FCC did not make available to me the transcript as required under 5 USC §556, but required that I buy a expedited copy."

This filing is solely by myself as pro se party. It has **not** been coordinated with any other person, including attorney James Stenger, who represents in this proceeding two LLCs that I manage as President.

Respectfully submitted,

/ s / Warren Havens
Warren Havens, party *pro se*
2509 Stuart Street
Berkeley, California 94705
(510) 841-2220

November 13, 2014

Declaration

I declare under penalty of perjury that the facts in the foregoing filing are true and correct to the best of my knowledge.

/s/ Warren Havens [Electronically submitted.]

_____

Warren Havens

November 13, 2014

Certificate of Service

The undersigned certifies that he has on this 13th day of November 2014, caused to be served, by first-class United States mail, a copy of the foregoing filing to:[7]

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[7] The mailed copy 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.

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