

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 14M-44

In the Matter of)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	File No. EB-09-1H-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, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004526264, 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.; AND ATLAS PIPELINE-MID CONTINENT, LLC)	
)	
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service)	

ORDER

Issued: December 19 2014

Released: December 19, 2014

Proposed Findings of Fact

On December 10, 2014, James Stenger, Esq., counsel for Environmental LLC (“Environmental”) and Verde Systems LLC (“Verde”), executed a declaration to the *Protective Order*, FCC 11M-21, thus enabling him to access confidential and highly confidential information. At hearing on December 11, Mr. Stenger asked the Presiding Judge for guidance on whether his signing of the declaration would require Mr. Havens to submit separate Proposed Findings of Fact. The Presiding Judge decided that Mr. Stenger could come to a conclusion on his own, given the prior orders on the point and comments in court. The Presiding Judge now

believes that further guidance to Mr. Stenger, as well as further regulation of the parties' participation, is necessary in order to avoid possible confusion and disruption, as well as inadvertent leaking of confidential material.

Mr. Havens' Contemptuous Behavior

On November 15, 2012, the Presiding Judge released *Order*, FCC 12M-52. That *Order* found that Warren Havens, as well as the SkyTel companies,¹ had caused substantial confusion and delay and thus it was necessary to set guidelines for their respective participations.² The Presiding Judge found nothing to distinguish Mr. Havens' personal interests from the corporate interests of his SkyTel companies.³ Mr. Havens was allowed to participate *pro se* provided that he coordinated his participation with counsel for the SkyTel companies, including filing joint pleadings where they took substantially identical positions.⁴ If Mr. Havens and his SkyTel companies disagreed on an issue, they were required to file individual pleadings that addressed only that issue and give the reasons why they could not agree.⁵ In addition, Mr. Havens was reminded of the restriction of the *Protective Order*, at the time executed by counsel for all parties except Mr. Havens and the SkyTel companies, denying Mr. Havens any access to information designated confidential or highly confidential.⁶

For a time, the provisions of *Order*, FCC 12M-52 were effective in preventing confusion and delay. However, these guidelines are no longer sufficient as Mr. Havens has found additional ways to significantly delay and disrupt this proceeding. In this round, he has submitted or joined in the filing of multiple frivolous pleadings,⁷ threatened the Presiding Judge, his staff, and Enforcement Bureau counsel with legal action,⁸ and baselessly accused counsel for the Enforcement Bureau of engaging in a criminal conspiracy to obstruct justice,⁹ thereby disrupting the hearing. Mr. Havens' brazen conduct is contemptuous of the Presiding Judge, prejudicial to all parties, and disruptive to the proceeding as it delays decision on the issues designated for hearing. Under these circumstances, he cannot be permitted to continue *pro se*.

Instructions for Filing Proposed Findings of Fact

The Presiding Judge is authorized to regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings.¹⁰ Under such authority, the Presiding Judge is considering whether to allow Mr. Havens and his companies to continue participating in this proceeding at

¹ The SkyTel companies are Environmental LLC; Intelligent Transportation and Monitoring Wireless LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; Verde Systems LLC; and V2G LLC.

² *Order*, FCC 12M-52 at 4 (rel. Nov. 15, 2014).

³ *Id.* at 3.

⁴ *Id.* at 4.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ See *Order*, FCC 14M-38 (rel. Dec. 3, 2014); *Order*, FCC 14M-40 (rel. Dec. 4, 2014).

⁸ E-mail from Mr. Havens to Austin Randazzo via distribution list (dated Nov. 6, 2014); Response to Oral Orders at 2 (filed Nov. 7, 2014); E-mail from Mr. Havens to Michael Engel and Pamela Kane (dated Dec. 11, 2014).

⁹ E-mail from Mr. Havens to Michael Engel and Pamela Kane (dated Dec. 11, 2014).

¹⁰ 47 C.F.R. § 1.243(f).

all. As a stopgap, however, the most effective way to manage the filing of the current round of Proposed Finding of Fact is to permit Mr. Havens to make his submission on findings through counsel. Counsel shall serve as a filter, ideally allowing only meritorious arguments and relevant facts that Mr. Havens wishes to present in his proposed findings while eliminating frivolous arguments and meritless, abusive accusations and threats.

Relatedly, earlier in this proceeding, Mr. Havens seemingly unsuccessfully searched for months to find qualified counsel to appear at hearing. However, Proposed Findings of Fact must be submitted while the admitted exhibits and the witness testimony provided at hearing are still fresh in the minds of the parties and their counsel. The Presiding Judge will not delay this proceeding for months while Mr. Havens again searches for counsel, who will have little familiarity with the facts and law related to this proceeding. Fortunately for Mr. Havens, he need not seek out new counsel as he already has qualified and ready counsel in James Stenger, counsel for Environmental and Verde.

The Presiding Judge finds that for all practical purposes related to this proceeding, Mr. Havens, Environmental, and Verde are one and the same. Mr. Havens is the majority shareholder of Verde and, through Verde, is the majority shareholder of Environmental. He effectively has full control of those companies, including all decisions made in the course of litigation. Mr. Havens has duly collaborated with Mr. Stenger on most matters in this proceeding, including the filing of trial briefs, direct exhibits, and motions. Indeed, the direct exhibits admitted into evidence all bear the designation “EVH,” which is an acronym for Environmental, Verde, and Havens.

Mr. Havens and Mr. Stenger consulted in open court throughout the hearing, including on questions that were directed solely to either Mr. Havens or to Mr. Stenger. By all appearances, they share an attorney-client relationship and are not separate parties working together at arm’s length. On at least one occasion at hearing, Mr. Stenger even made a Freudian slip in referring to Mr. Havens as his client. Further, Mr. Havens has failed to identify a single way in which the interests of his companies in this proceeding are separate and distinct from his own personal interest.¹¹ Even when Mr. Havens has filed separately from his companies, he has failed to identify any reasons why he could not agree with his companies’ positions as required by *Order*, FCC 12M-52.¹²

Accordingly, the Presiding Judge finds that Mr. Havens’ interests in this proceeding are identical to those of his companies. Those interests are already being represented by Mr. Stenger. It would be trivial for Mr. Stenger to represent Mr. Havens for the purpose of filing Proposed Findings of Fact.¹³

If Mr. Havens does not agree to representation by Mr. Stenger, he will not be permitted to file Proposed Findings of Fact *pro se*. Even if Mr. Havens does not file Proposed Findings of

¹¹ *Id.* at 3.

¹² *Id.* at 4.

¹³ As counsel to Mr. Havens, Mr. Stenger would not be permitted to share confidential information with his client. However, this is not a new burden, as Mr. Stenger is already barred from sharing confidential information with Mr. Havens, who is president of Environmental and Verde.

Fact, Mr. Havens' interests will be adequately represented by the pleadings filed by Mr. Stenger on the behalf of Environmental and Verde.

The Proposed Findings of Fact shall be due 30 days after the redacted transcripts are released on ECFS. The Presiding Judge will identify that date by later *Order*. In the meantime, parties are directed to Paragraph 10(a) of the *Protective Order* for guidance on the redaction process.

Other Business

In *Order on Evidentiary Rulings*, FCC 14M-34, the Presiding Judge ruled that Exhibits CE1-4, 78, 81, 219, 221, 237, 367, 388, 389, 398, 436-440, and 442 of Environmental, Verde, and Mr. Havens ("EVH's Pending Exhibits") may be admitted into evidence subject to satisfactory proffer at hearing.¹⁴ To the recollection of the Presiding Judge and his staff, no proffer was made for any of EVH's Pending Exhibits. Accordingly, those exhibits are struck. This ruling may be modified if EVH can demonstrate, with citation to the hearing transcript, that any of the exhibits were proffered to and ultimately accepted by the Presiding Judge.

On December 10, 2014, Mr. Havens submitted a Memo on Documents Alleged Confidential Under the Protective Order But Lawfully in the Public Domain ("Memo"). In this Memo, Mr. Havens argues that he should be granted access to three confidential exhibits. His argument is moot. As stated above, Mr. Havens' conduct has necessitated that he only be permitted to file Proposed Findings of Fact on Issue G through counsel. As Mr. Stenger has signed the declaration to the Protective Order, he can use the unredacted versions of those documents to Mr. Havens' benefit in non-public filings.

Even if the issue were not moot, Mr. Havens' request would be rejected as untimely. As the Presiding Judge articulated at hearing, Mr. Havens and his companies have missed several opportunities to challenge confidentiality designations. Those designations could have been challenged when the designated documents were first produced, when many of those documents were used in support of summary decision motions, and when the Enforcement Bureau sought to have those documents admitted as exhibits. Throughout these prehearing activities, the Presiding Judge expected that Mr. Havens would move for review of the confidentiality designations, but that motion never arrived. Instead, Mr. Havens opted to search for a solution outside of this proceeding by serially filing requests under the Freedom of Information Act and searching filings made in other legal proceedings. He then failed to offer the public versions of confidential documents that he claims to possess as direct exhibits. In fact, the only person to appear at the Evidence Admission Session on behalf of EVH was Mr. Stenger.

Mr. Havens cannot sit on his hands for more than a year and then waste time by belatedly seeking relief at hearing, with direct exhibits already admitted and witnesses in court and ready to testify. To do so disrupts the hearing, unfairly burdens opposing counsel, and needlessly distracts the Presiding Judge from the business at hand. Accordingly, for all the above reasons, his request is denied.

¹⁴ *Order on Evidentiary Rulings*, FCC 14M-34 at 5 (rel. Nov. 14, 2014).

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION¹⁵

A handwritten signature in blue ink that reads "Richard L. Sippel". The signature is written in a cursive style with a large initial "R" and "S".

Richard L. Sippel
Chief Administrative Law Judge

¹⁵ Courtesy copies sent to all counsel and to Mr. Warren Havens by e-mail upon issuance of this *Order*.