

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION¹
Washington, D.C. 20554

In re)	
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	EB Docket No. 11-71
)	File No. EB-09-01-1751
Participation in Auction No. 61 and Licensee Of Various)	FRN: 001358779
Authorizations in the Wireless Radio Services)	
)	
Applicant for Modification of Various)	App. FNs 0004030479,
Authorizations in the Wireless Radio Services)	0004144435, 0004193028,
Applicant with ENCANA OIL AND GAS, <i>Et al.</i>)	0004193328, 0004354053, etc.

To: Marlene Dortch, Secretary. Attn: the Commission

Interlocutory Appeal Under § 1.301(a)

The undersigned (“Havens”) hereby appeals under §1.301(a)(1) the Order FCC 14M-44 of ALJ Sippel (the “ALJ”) (“M44”) (“M44 Appeal”) which orders: “Havens.... cannot be permitted to continue prose.” This bars, without good cause, my rights designated in the HDO FCC 11-64 as an individual party and rights to self representation and thus should be overturned. Until this is decided, the Commission should stay and toll matters in this proceeding since otherwise I am prejudiced by this Order.

The ALJ primarily cites to his past orders for “facts” of alleged disturbance I caused in the past as justification for this bar. However, the alleged facts, if examined, range from the speculative to the plainly false. But even if all were true, they do not justify this bar of basic rights.

5 USC § 555 (b) provides that “A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.” This central provision of the APA is based on the right to self-representation in civil proceedings, that, as discussed by the US Court of Appeals, was recognized in the United States already in 1789 and that ‘remained constant for over 200 years’:

¹ It is the ALJ, not Havens, that has caused disruption since the ALJ’s clear purpose and effect is

We start with the proposition that the right to self-representation in civil cases conferred by § 35 of the Judiciary Act of 1789, although not enjoying the constitutional protection subsequently afforded to the right of self-representation in criminal cases, *Faretta v. California*, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975), is a right of high standing, not simply a practice to be honored or dishonored by a court depending on its assessment of the desiderata of a particular case. As the Court said in *Faretta*, supra, 422 U.S. at 830 n.39: "The Founders believed that self-representation was a basic right of a free people." ^{5/} Section 1654 comes to us freighted with history; it calls back visions of days when much litigation, especially on the "law side", was carried on by strong self-reliant citizens who preferred to appeal to the sense of justice of "the country" rather than entrust their causes to lawyers trained in the intricacies of the law. In light of all this and with a citation to *Faretta*, we recognized in *Phillips v. Tobin*, 548 F.2d 408, 411 (2d Cir. N.Y. 1976), the "long established principle that in the federal courts the parties have the right to plead and conduct their own cases. . . ."

^{5/} The sources of this belief were several -- the widespread confidence in the ability of the average individual to manage all his own affairs; the keen distrust of lawyers which took hold early in the colonial period and quickly established itself as an American "institution", see D. Boorstin, *The Americans: The Colonial Experience* 197 (1958); L. Friedman, *A History of American Law* 81-83 (1975); the lingering memories of the Star Chamber's practice of compulsory counsel; and the natural law thinking that dominated the Revolutionary period. See *Faretta*, supra, 422 U.S. at 826-30. Tom Paine's statement made in defense of the 1776 Pennsylvania Constitution, quoted by the *Faretta* court at 422 U.S. at 830 n.39, doubtless expressed the prevailing view of the relationship between the right of self-representation and the right to counsel. The "right to plead [one's] own cause", Paine said, is a "natural right"; the "right of pleading by proxy, that is, by a council" is a "civil right", an "appendage" to the natural right which supplements rather than supplants it. Section 1654, like its lineal ancestor in the First Judiciary Act, follows Paine's analysis. The right of self-representation is first accorded; representation by counsel is then recognized as an alternative.

* * * *

^{7/} Given Rev. O'Reilly's inexperience with the rules of evidence and with courtroom protocol, a certain amount of confusion, delay, even irregularity, would be expected. But this sort of "disruption" accompanies *pro se* representation generally; it is a price the Framers of the Sixth Amendment and the First Judiciary Act thought well worth paying. See *United States v. Dougherty*, supra, 473 F.2d at 1124-25.

O'Reilly v NY Times Company, 692 F2d 863 (1982) (US Court of Appeal, 2nd Circuit) 870 ("O'Reilly"). The ALJ has not come close to demonstrating any valid justification for barring this high right of self-representation, as indicated above and further discussed below. The Second Circuit in *O'Reilly* discussed the justifications (brackets and numbers therein added):

What the district court has done in effect is to disqualify Rev. O'Reilly from representing himself; at the instance of the adverse party it has forced upon him counsel whom he does not want.... * * * * The few qualifications which this court has put on the clear language of the self-representation clause of § 1654 are consistent with its high purpose. [1] One

such qualification, enunciated in criminal cases,... but equally applicable in civil cases, is that the right to self-representation must be timely asserted. The right is "unqualified" if invoked prior to trial but is "sharply curtailed" if first asserted after the trial has begun.... Rev. O'Reilly asserted his right in timely fashion, well before trial. [2] A second qualification recognized in our cases is that the rights of self-representation and representation by counsel "cannot be both exercised at the same time." *United States v. Mitchell*, 137 F.2d 1006, 1010 (2 Cir. 1943), cert. denied, 321 U.S. 794, 88 L. Ed. 1083, 64 S. Ct. 785 (1944)....Rev. O'Reilly has done just that.... [3]... the interests of Contemporary Mission and Rev. O'Reilly...are not identical, much less conceded to be so.

Likewise, in the instant case, [1] I asserted the right of self representation years ago, long before the trial. [2] I am not represented by counsel: I have repeatedly stated that for years, and if I had counsel, they would have appeared and acted as counsel.² And [3] I am clearly distinct from Environmental LLC and Verde Systems LLC as shown in State of Delaware records of these distinct legal entities, and in FCC records and findings.³ Indeed, the ALJ himself has recognized this.⁴ Thus, under this case law criteria, there are no valid reasons to bar this high right of self representation. In fact, the ALJ has done worse than the Judge reversed by the Second Circuit in O'Reilly (emphasis added):

We do not find any of the other reasons assigned by the judge adequate to justify denying Father O'Reilly's statutory right of self-representation. The first reason was that:

It would be disruptive to the process of the trial to have Father O'Reilly represent himself. If he had originally intended to represent himself, it might have been a different story.

The first sentence is conclusory and will be considered in connection with the judge's other reasons. The second sentence is irrelevant; indeed it is very nearly an admission that the other reasons lack merit. The next reason was that [attorney] William O'Reilly, though "discharged", would not "disappear" but instead would continue to represent Contemporary Mission and the other individual plaintiffs. The only "practical effect" of granting Rev. O'Reilly's motion would thus be that:

² There is no question that if Mr. Stenger, with a major International law firm, was my representative counsel he would make that clear and act as my counsel, and state that. Instead, Mr. Stenger has made clear that he does not represent me.

³ E.g., see auction short- and long-forms of these LLCs, their Forms 602, and FCC 10-54, MO&O FCC 10-54, ¶¶ 6, 11, and citing to the Division Order, 19 FCC Rcd at 20485 ¶ 9.

⁴ Order FCC 12M-52, footnote 10: "The Commission has recognized SkyTel entities and Mr. Havens as separate parties." However, what is relevant are the facts of the differences between myself and these two LLCs, which are outside of the ALJ's jurisdiction, and also not even matters in which he has made any factual investigation. These facts are established under State law and filings, and in certified disclosures before the Wireless Bureau indicated above.

. . . . there would be two openings, there would be two summations, there would be two cross examinations of every witness, there would be a summation of Father O'Reilly in Roman collar before a jury.

Except for the matter of the Roman collar, ⁸ this prospect of multiple arguments, examinations, and the like, is presented in every case where there are several parties on one side and only one on the other and the former do not unite behind the same counsel. Such cases do indeed enhance problems of trial management, many of which are routinely resolved by obtaining the parties' cooperation. Where such cooperation is not forthcoming, the trial judge has ample powers to prevent duplication and minimize unfairness. Thus, in the present case, the judge can require William O'Reilly to initiate direct and cross-examination, can intervene to prevent repetitious examination of witnesses or other abuses in cross-examination and can allocate the same amount of time for opening and summation to each side, leaving it to the O'Reilly brothers to divide their time as they see fit. The third reason, the "glaring absence" of "any showing that Mr. O'Reilly's representation has been less than adequate", is irrelevant or worse; a party's right to discharge counsel prior to trial and represent himself does not require any showing of inadequacy. The fourth reason, that "there would be a distinct prejudice to the defendant in this case to permit Father O'Reilly to represent himself pro se," is again conclusory and adds nothing to the points more specifically stated. The fifth reason was that the fraternal relationship between Rev. O'Reilly and William O'Reilly would make it "impossible for this to be truly a pro se representation." We see nothing in § 1654 that warrants denial of self-representation simply because a party's brother [an attorney] is representing other parties. Moreover, the likelihood that the brothers will confer and even coordinate trial strategy does not distinguish the case from any other in which multiple parties have different lawyers. The sixth reason, that "it would only be pro se in the sense that Father O'Reilly would be able to play two roles, one as witness and one as advocate", applies in every case of self-representation; if this is an evil, it is one which the first Congress was willing to countenance and which none of its successors has seen fit to remedy. The seventh and last reason was that:

There is no constitutional right in the particular circumstances of this case for Father O'Reilly to be permitted to go through the motions of purporting to represent himself when in substance the only change would be the gaining of a distinct and very substantial litigation advantage.

The right while indeed statutory rather than constitutional is nonetheless entitled to respect, and the litigation advantage of being able to appear both as witness and as counsel is one which, for better or for worse, parties have been granted in the federal courts since 1789. In sum, while the trial, if there be one, would almost certainly be calmer and easier for the judge to manage if Father O'Reilly had not decided to represent himself, such considerations do not justify refusal of the historic statutory right of self-representation.

7/Given Rev. O'Reilly's inexperience with the rules of evidence and with courtroom protocol, a certain amount of confusion, delay, even irregularity, would be expected. But this sort of "disruption" accompanies pro se representation generally; it is a price the Framers of the Sixth Amendment and the First Judiciary Act thought well worth paying. See *United States v. Dougherty*, supra, 473 F.2d at 1124-25.

In the instant case, the ALJ asserts similar reasons as rejected by the Circuit Court above, but far worse, since the ALJ bases his reasons partly on speculation and mostly on demonstrable fallacies and problems he makes himself. For example, (i) the ALJ's allegation that I threatened the Enforcement Bureau (EB) is not accurate as a reading of the subject email shows, unless by "threat" he means a strong disagreement for good cause alleged, and a request to turn over evidence that the EB stated at the trial was a basis to scare off the only witness for the actual prosecutors of this case, myself and the two LLCs Mr. Stenger represented, (ii) his allegations that I am the same as the LLCs (see above: plainly a fallacy an outside his jurisdiction), and (iii) his allegations that I have been disruptive: what he really seems to means, as the record shows, is that I have stood up to and against the ALJ's continual attack on my pro se rights, and that "disrupts" this ALJ's control of the case. Rather than a disruption to this case under the Commission's HDO, FCC 11-66, my filings have presented relevant facts and law central to the issues and a proper and timely resolution: indeed, that is the seminal cause of the HDO to begin with as the HDO explains. Further (iv) the ALJ recklessly alleges I am "contemptuous," however, I have adhered to proper standards even when constantly provoked by false accusations of the ALJ, harassment and curbing of my basic rights, and like actions by the EB that has long ago abrogated its duties to prosecute this case for the Commission.

For these reasons, I request grant of the relief stated above.

Respectfully submitted,
/s/
Warren Havens
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December 29, 2014

CERTIFICATE OF SERVICE⁵

The undersigned certifies that he has on this 29th day of December, 2014 caused to be served by first class United States mail copies⁶ of the foregoing Appeal to:

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⁵ Only this errata copy is served. It contains in full the originally filed copy.

⁶ The email addresses herein are not for purposes of service of this pleading.

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/ s / [Electronically signed. Signature on file.]

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