

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In re)	
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	EB Docket No. 11-71
)	File No. EB-09-01-1751
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

Motion to Dismiss Oppositions to Interlocutory Appeal Under § 1.301(a)¹ - [Errata Copy](#)^[*]

On January 6, 2015, staff from the FCC Enforcement Bureau (“EB”) filed an Opposition to the undersigned’s Interlocutory Appeal under §1.301(a)(1) filed on December 29, 2014 (the “Appeal”) (the “EB Opposition”). On January 9, 2015, an attorney, Robert Keller, purportedly acting for Maritime Communications/Land Mobile LLC Debtor in Possession (“DIP”) filed an Opposition to said Appeal (“Purported DIP Opposition”).² Both Oppositions are late, and I move that they be dismissed and disregarded.

The EB and the DIP have, in concert, been highly and overly aggressive before the ALJ for years to curb, sanction and ultimately remove me, as a pro se party, from this proceeding, without good cause and by use of misleading assertions, where my clear intent and filings were to pursue the Commission’s issues set out in the HDO FCC 11-64 as the person most knowledgeable, and based on my Article III interest and standing. Especially given this background, the EB and DIP should be, at minimum, subject to application of procedural rules they fail to adhere to as described below and requested herein.

¹ Based on recent ~~events~~ [FCC actions](#) not yet completed, including matters subject to the ALJ’s Order FCC 15M-3 dated January 16, 2014, I plan to substantially supplement this ~~Motion~~ [Appeal](#) with additional relevant supportive information (along with a request to accept the supplement). I request that the Commission wait for the supplement before deciding on this ~~motion~~ [Appeal](#).

^[*] Deletions in ~~strikeout~~ and new words in blue.

² See Endnotes below.

The Appeal was filed timely on December 29. "Oppositions shall be filed within 5 days after the appeal is filed" (§1.301(d)(7)) which is January 3, but that is a Saturday, thus the due date was Monday Jan 5, not January 6 when the EB Opposition was filed, and not January 9 when the Purported DIP Opposition was filed. §1.4, cited in part in the DIP Opposition, applies only "[u]nless otherwise provided [in other] Rules measuring time." (§1.4(b)). §1301(c)(7) *does* "otherwise provide [for the] measuring time," as cited above. Thus, the two Oppositions are late and should be dismissed and disregarded.

Regarding the Purported DIP Opposition, even if "holidays" are excluded-- which is not provided for in Section 1.301(c)(7) together with 1.4(b) (and subsequent sections of 1.4)-- the Opposition was due on January 6, not January 9.

In further support of the above, in the *MO&O DA 05-2479*, 20 FCC Rcd 14723 (2005), the FCC explained (emphasis added):

The Commission prescribed the time period for filing applications for review in 47 C.F.R. § 1.115. According to 47 C.F.R. § 1.115(d), n7 an application for review must be filed within thirty days of public notice of such action, as that date is defined by 47 C.F.R. § 1.4(b). n8

n7/ In pertinent part, 47 C.F.R. § 1.115(d) provides: "The application for review and any supplemental thereto shall be filed within 30 days of public notice of such action, as that date is defined in section 1.4(b). . . ."

n8/ In pertinent part, 47 C.F.R. § 1.4(b)(2) provides:

Unless otherwise provided

* * * *

n13/ The U.S. Court of Appeals for the District of Columbia Circuit counseled the Commission not to accept such untimely submissions. "This Court has . . . gone so far as to discourage the Commission from entertaining late-filed pleadings It follows that the Commission did not abuse its discretion by dismissing the untimely arguments." *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (citing *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199 - 200 (D.C. Cir. 2003)).

Unlike in §1.115, §1.301 provides *only* for a five-day period for an opposition, and it does *not* refer to §1.4 as to any additional days. Further, appeals and oppositions thereto under §1.301(a)(1) are of obvious critical timing importance, due to the nature of what is involved

(matters of such importance in a formal hearing that interlocutory appeal is permitted, and that may stay the hearing as provided in §1.301(c)),³ and thus the five days for an appeal under this rule section, and five more for any opposition, is understood to be what is meant by the letter of this rule, to which no additional time under §1.4 is either referenced or allowed under a reading of the letter of §1.4.

Further, what the EB staff and purported DIP attorney seek to support by their Oppositions, is a decision by the ALJ that accepted their inaccurate repeated assertions that I was the party that failed to follow orderly procedures for purposes of this hearing, often alleging I was tardy.⁴ They have shown no reason that they could not have filed the Oppositions on time.

For the above reasons, these two late Oppositions should be dismissed and disregarded.

I do not otherwise comment since replies are not permitted under §1.301, but I reserve rights to challenge the factual and legal inaccuracies of these Oppositions at permitted stages, if then called for, and I also note herein above the apparent lack of authority of Mr. Keller, and thus also the EB actions in support of the DIP.

Respectfully submitted,

/s/

Warren Havens

2509 Stuart St, Berkeley CA 94705

Ph: 510 841 2220, 848 7797

January 21, 2015

³ §1.301(c) “Procedures, effective date....The Commission may stay the effect of any ruling which comes before it for consideration on appeal.”

⁴ The record is clear in this regard, and as to other comments herein on the EB support of the DIP and abandonment of its duties. The ALJ questioned the EB on this at the start of the December 2014 trial on “issue (g)” in this proceeding (see the public transcript, once released). *But for participation of myself, pro se, and counsel to Environmental LLC (“ENL”) and Verde Systems LLC (“VSL”), there would have been no trial at all on issue (g), and the Commission’s HDO, FCC 11-64, would have been gutted on this issue, and that participation was vigorously opposed before and at the trial by the EB.* Further, as the HDO instructs, this issue(g) is to be considered in the following issues on licensee character and license revocation. But for the Havens-ENL-VSL tenacious participation *opposed* by the EB, this Commission HDO proceeding would have long ago become a hopeless mockery of an “*enforcement*” adjudication.

Endnotes

(a) Regarding the DIP:

(i) Its control is under the married couple, Sandra and Donald Depriest, but in a Chapter 11 Plan arrangement that provides substantial control to the Choctaw entities (but without any approvals by or explanations to the FCC of this arrangement in dockets 13-85 or 11-71).

(ii) Mr. Depriest is subject of a personal bankruptcy that Mr. Keller used as a basis of the purported DIP petition for reconsideration of FCC 14-133 denying so-called Second Thursday relief. However, Mr. Depriest effectively opposes Mr. Keller's position in that petition by Mr. Depriest's position in this personal bankruptcy that he can pay his debts.

(iii) In addition, the Chapter 11 Plan Order is on appeal to the US District Court above the subject Bankruptcy Court by the Skytel entities that the undersigned manages, and the DIP has not revealed to either of these courts that the ownership of the DIP entity is involved in this personal bankruptcy, or that the DIP has given up in docket 11-71 proceeding approximately 90% of its previously alleged valid site-based licenses nationwide, which it valued in the bankruptcy proceeding as constituting a large portion of all of its assets, for benefit of the creditors including the FCC.

(iv) These and other matters call into question the control in the DIP and the legitimacy of actions purportedly taken in the name of the DIP including by Mr. Keller. Under the Chapter 11 Plan, it is Choctaw that funds the DIP and it effectively funds Mr. Keller's representation. Choctaw is not a party in this proceeding 11-71.

(b) Regarding the EB in this regard:

As the record in docket 11-71 unambiguously shows that the EB, or its staff purporting to act for the EB, have long ago abandoned their duties to prosecute Maritime Communications Land Mobile LLC (the DIP after it filed bankruptcy to attempt "Second Thursday" relief, not for due to creditor issues independent of the impending loss of its FCC licenses indicated in the HDO FCC 11-64) and has "jumped ships" to become primary defender and actual counsel with Mr. Keller tagging along. I challenge this also, since I challenge that this the current ownership and control in this DIP and any authority it may purport to give to Mr. Keller directly, or to the EB in some fashion, for reasons indicated above. That should be investigated by the Commission, and why the ALJ has allowed it.

I have been the main party prosecuting this case for the Commission after the HDO was issued, not the EB, as I was in the years before the HDO was issues. Based on a fair reading of the actual record: that is what the DIP and the EB actually object to, and unfortunately that is also what the ALJ speciously alleges is disturbing, giving rise to this Appeal.

Certificate of Service^[*]

The undersigned certifies that he has on this 21st day of January 2015, caused to be served, by first-class United States mail, a copy of the foregoing filing to:⁵

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Richard Sippel Richard.Sippel@fcc.gov
Patricia Ducksworth Patricia.Ducksworth@fcc.gov
Austin Randazzo Austin.Randazzo@fcc.gov
Mary Gosse Mary.Gosse@fcc.gov

Pamela A. Kane
Michael Engel
Enforcement Bureau, FCC,
445 12th Street, S.W., Room 4-C330
Washington, DC 20554
Pamela Kane Pamela.Kane@fcc.gov
Michael Engel Michael.Engel@fcc.gov

Jeffrey L. Sheldon
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
Counsel for Puget Sound Energy, Inc
Jeff Sheldon jsheldon@lb3law.com

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

^[*] This Errata copy is served as stated above but, replace “21st” with “22nd”.

⁵ 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.

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.
Charles Zdebski czdebski@eckertseamans.com

Matthew J. Plache
Law Office of Matthew J. Plache
5425 Wisconsin Avenue
Suite 600, PMB 643
Chevy Chase, MD 20815
Counsel for Pinnacle Wireless, Inc.
Matthew J. Plache Matthew.Plache@PlacheLaw.com

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 Keller rjk@telcomlaw.com

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
Robert G. Kirk RKirk@wbklaw.com

James A. Stenger
Chadbourne & Parke, LLP
1200 New Hampshire Ave., NW
Washington, DC 20036
Counsel to Environmental LLC and Verde Systems LLC
James Stenger jstenger@chadbourne.com

Jimmy Stobaugh
2509 Stuart Street
Berkeley, CA 94705
For 'Skytel' LLCs, and Skybridge Spectrum Foundation
Jimmy Stobaugh jstobaugh@telesaurus.com

/s/ [Filed Electronically. Signature on File]

Warren Havens