

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

ACCEPTED/FILED

JAN 23 2015

Federal Communications Commission
Office of the Secretary

In re)
)
MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)
)
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)
)
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)

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos. 0004030479,
0004144435, 0004193028, 0004193328,
0004354053, 0004309872, 0004310060,
0004314903, 0004315013, 0004430505,
0004417199, 0004419431, 0004422320,
0004422329, 0004507921, 0004153701,
0004526264, 0004636537,
and 0004604962

DOCKET FILE COPY ORIGINAL

To: Marlene H. Dortch, Secretary
Attention: The Commission

**ENFORCEMENT BUREAU'S OPPOSITION TO
MR. HAVENS' MOTION TO DISMISS**

1. On December 29, 2014, Mr. Havens filed an interlocutory appeal of *Order*, FCC 14M-44, in which the Presiding Judge concluded that Mr. Havens could not continue to represent himself *pro se* because he failed to distinguish his personal interests from the corporate interests

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of his companies, Environmental, LCC and Verde Systems, LLC (which are also parties to the above-captioned matter), and because his *pro se* representation delayed and disrupted the proceedings.¹ On January 6, 2015, the Enforcement Bureau (Bureau) timely filed its Opposition to Mr. Havens' appeal.² Mr. Havens has now moved to dismiss the Bureau's Opposition on the grounds that it was "late."³ For the reasons set forth below, the Chief, Enforcement Bureau, by his attorneys, herein opposes Mr. Havens' motion to dismiss.

2. Section 1.301(c)(7) of the Commission's rules (Rules) states that oppositions to an interlocutory appeal shall be filed within five days after the appeal is filed.⁴ Mr. Havens argues that the five-day period for filing oppositions to his appeal began on December 30, 2014 and concluded on Saturday, January 3, 2015, and thus that any oppositions filed after the next business day – or January 5, 2015 – were untimely.⁵ However, Mr. Havens has failed to account for the fact that Section 1.4(g) of the Rules plainly states that "if the filing period is less than 7 days [which it is here], intermediate holidays shall not be counted in determining the filing date."⁶ Holidays are defined by Section 1.4(e)(1) of the Rules to include Saturdays, Sundays, and officially recognized Federal legal holidays.⁷ New Year's Day is identified as an officially recognized Federal legal holiday.⁸ Pursuant to Section 1.4(g) of the Rules, therefore, the intervening New Year's Day holiday (January 1), Saturday (January 3), and Sunday (January 4) are not counted in determining the five-day deadline for opposing Mr. Havens' appeal. Given

¹ See Havens' Interlocutory Appeal Under Section 1.301(a), filed Dec. 29, 2014. See also Order, FCC 14M-44 (ALJ, rel. Dec. 19, 2014), at 2 (Havens' Appeal).

² See Enforcement Bureau's Opposition To Mr. Havens' Interlocutory Appeal, filed Jan. 6, 2015.

³ See Havens' Motion to Dismiss Oppositions to Interlocutory Appeal Under 1.301(a), filed Jan. 21, 2015 (Havens' Motion). Mr. Havens has not identified any Commission rule pursuant to which he is filing this motion.

⁴ See 47 C.F.R. § 1.301(c)(7).

⁵ See Havens' Motion at 2.

⁶ 47 C.F.R. § 1.4(g).

⁷ See 47 C.F.R. § 1.4(e)(1).

⁸ See note to 47 C.F.R. § 1.4(e)(1).

that Mr. Havens filed his appeal on December 29, 2014, the five-day deadline to file an opposition was January 6, 2015 – the very day on which the Bureau filed its opposition.⁹ The Bureau’s filing was timely.

3. Mr. Havens appears to suggest that Section 1.4 of the Rules applies in calculating the deadline for filing oppositions to his appeal only if the Rules did not otherwise set a time-frame in which to file such an opposition.¹⁰ He purports to rely on language in Section 1.4(b) as support for this assertion.¹¹ Mr. Havens’ reliance on this Section is misplaced. Section 1.4(b) addresses the discreet question of how to determine the first day from which to begin counting any deadline to respond to an action taken by the Commission, an Administrative Law Judge or by members of the Commission or its staff.¹² It has no bearing on whether Section 1.4(g) of the Rules applies to the deadline for filing oppositions to Mr. Havens’ appeal.

4. Rather, Section 1.4(a) makes clear that Section 1.4 as a whole applies whenever one is computing the amount of time in which to act in response to any deadlines established by the Commission. As such, Section 1.4(g)’s exclusion of Saturdays, Sundays, and officially recognized Federal legal holidays properly applied to calculating the five-day deadline to file oppositions to Mr. Havens’ appeal proscribed in Section 1.301(c)(7).

⁹ The Bureau notes that Mr. Havens served his appeal by mail. *See* Havens’ Appeal at 6. Pursuant to Section 1.4(h) of the Rules, “[i]f a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail..., and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceeding for filing a response.” 47 C.F.R. § 1.4(h). Thus, the Bureau – and any other party served by mail – could have added an additional three days to the deadline for filing an opposition to Mr. Havens’ appeal, making any oppositions due January 9, 2015.

¹⁰ *See* Havens’ Motion at 2.

¹¹ *See id.*

¹² *See* 47 C.F.R. § 1.4(b).

5. For the foregoing reasons, the Bureau respectfully opposes Mr. Havens' motion to dismiss. Mr. Havens' motion should be denied.¹³

Respectfully submitted,

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January 23, 2015

¹³ Mr. Havens' motion should also be denied on procedural grounds. In essence, it is nothing more than a thinly-disguised reply to the Bureau's Opposition to which Mr. Havens is not entitled. See 47 C.F.R. § 1.301(c)(7). ("Replies shall not be permitted, unless the Commission specifically requests them.").

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 23rd day of January, 2015, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MR. HAVENS' MOTION TO DISMISS" to:

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