

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

ACCEPTED/FILED

MAY - 6 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; PUGET SOUND)
ENERGY, INC.; ENBRIDGE ENERGY)
COMPANY, INC.; INTERSTATE POWER)
AND LIGHT COMPANY; WISCONSIN)
POWER AND LIGHT COMPANY; DIXIE)
ELECTRIC MEMBERSHIP CORPORATION,)
INC.)

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

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

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

ENFORCEMENT BUREAU'S OPPOSITION TO INTERLOCUTORY APPEALS

1. On April 22, 2015, the Presiding Judge issued *Order*, FCC 15M-14, in which he excluded Warren Havens and Environmental, LLC and Verde Systems, LLC (ENL-VSL), each of which is controlled by Mr. Havens,¹ from participating as parties in the above-captioned proceeding for repeated "deliberate transgressions" and "a history of disruptive disregard of

¹ See *Order*, FCC 14M-44 (ALJ, rel. Dec. 19, 2014), at 2 ("Mr. Havens is the majority shareholder of Verde and, through Verde, is the majority shareholder of Environmental [sic]. He effectively has full control of those companies, including all decisions made in the course of litigation.").

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orders and otherwise contemptuous behavior.”² On April 29, 2015, Warren Havens and ENL-VSL filed separate interlocutory appeals of *Order*, FCC 15M-14.”³ In the interest of conserving the Commission’s resources, and as Mr. Havens and ENL-VSL (collectively, EVH) have not identified any adequate bases to be treated separately (and as their appeals likewise do not meaningfully differ), the Chief, Enforcement Bureau, by his attorneys, herein respectfully opposes EVH’s interlocutory appeals in one response.

2. As an initial matter, both appeals are procedurally flawed. Specifically, ENL-VSL’s appeal exceeds the strict five (5) page limit set forth in Section 1.301(c)(5) of the Commission’s rules (Rules).⁴ Beyond the five pages of text, ENL-VSL includes additional argument in Exhibit 1 to its appeal. This Exhibit constitutes more than just factual support for his legal arguments.⁵ Thus, under Section 1.48 of the Rules, ENL-VSL’s appeal is clearly “greater than permitted.”⁶ Mr. Havens’ appeal, even if entertained under the presumption that he is a *pro se* party and that he may file an appeal separately from ENL-VSL,⁷ is unsigned⁸ and contains no proof of service.⁹ Accordingly, both pleadings should be denied on the basis of

² *Order*, FCC 15M-14 (ALJ, rel. Apr. 22, 2015), at 1-2.

³ See ENL-VSL Interlocutory Appeal As Of Right, filed Apr. 29, 2015 (ENL-VSL Appeal); [Havens] Interlocutory Appeal, filed Apr. 29, 2015 (Havens Appeal). After the April 29, 2015 deadline for filing an interlocutory appeal, Mr. Havens submitted an “Errata” to his appeal. See [Havens] Interlocutory Appeal Errata Copy, filed Apr. 30, 2015 (Havens Errata). This late-filed pleading should be struck in its entirety.

⁴ 47 C.F.R. § 1.301(c)(5) (“The appeal shall not exceed 5 double-spaced typewritten pages.”).

⁵ See 47 C.F.R. § 1.48(a) (distinguishing materials that factually support a pleading from other materials).

⁶ See 47 C.F.R. § 1.48(a) (when materials other than affidavits, statements, tables of contents and summaries of filings, and those that factually support a pleading are submitted with a pleading, those materials are considered in determining the length of the pleading).

⁷ ENL-VSL’s interlocutory appeal, almost *in its entirety*, argues on behalf of Mr. Havens, referred to in that pleading both by name and as “HHC,” which stands for “Havens and all companies he manages.” ENL-VSL Appeal at 1.

⁸ See 47 C.F.R. § 1.52 (stating in relevant part that “[a] party who is not represented by an attorney shall sign and verify the document and state his address”).

⁹ See 47 C.F.R. § 1.47(g). Although the Commission’s service rules provide that the Commission “may allow” a party to correct the proof of service, *see id.*, on April 30, 2015, Mr. Havens filed a *revised* pleading with his “April 29, 2015” certificate of service – with several typographical and substantive changes (including the unexplained addition of several Havens’ entities, who are not relevant to the Presiding Judge’s order at issue, to the signature

procedural defects alone.

3. In addition, in *Order*, 15M-14, the Presiding Judge identified specific examples of how EVH's participation repeatedly delayed and disrupted the proceeding. In particular, the Presiding Judge noted that EVH "defiantly filed a Motion for Summary Decision"¹⁰ in violation of the Presiding Judge's previous directive "that he would not consider further motions for summary decision"¹¹ and "flaunted and disregarded other rulings on summary decision."¹² The Presiding Judge also raised a concern that, in their pleadings, ENL-VSL repeatedly relied on "false and misleading statements ... to support their position."¹³ The Presiding Judge further identified numerous pleadings for which EVH could not have reasonably believed there was support in violation of Section 1.52 of the Rules.¹⁴ Moreover, the Presiding Judge documented EVH's pattern of disruptive conduct which unnecessarily burdened the parties, the Office of the Administrative Law Judge, and the Enforcement Bureau in preparing for and conducting the hearing.¹⁵ The Presiding Judge plainly has the discretion to manage the proceedings before him in a manner that serves "the interests of efficiency and expediency."¹⁶ In accordance with this

block). *See* Havens Errata. Moreover, as has repeatedly been a cause of concern in this proceeding, it appears that Mr. Havens may have received the assistance of counsel in preparing his appeal while purporting to be a *pro se* party. *See* Havens' Appeal at 1 (including what is apparently the same document coding in the footer, "CPAM: 7654852.5" that was used by ENL-VSL's counsel, Mr. James Stenger, who is an attorney with Chadbourne & Park LLP, and which Mr. Havens conspicuously redlined in his April 29th "Errata" filing). For a separate example of Mr. Stenger's distinctive document coding in an unrelated proceeding, *see* Comments of Vaisala, PS Docket No. 09-19 (filed Feb. 18, 2011) (containing the document coding "CPAM: 2274800.4"). In addition, Mr. Havens' April 29 and April 30 filings include certificates of service which list *himself* as a served party. It is suspected that this occurred when counsel for ENL-VSL provided Mr. Havens with the service list used with ENL-VSL's Appeal.

¹⁰ *Order*, FCC 15M-14, at 2.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *See id.* at 4-5.

¹⁵ *See id.* at 5-12.

¹⁶ *Order*, FCC 12M-52 (ALJ, rel. Nov. 15, 2012), at 2 (*citing In re Applications of Warren Price Communications Inc. et al.*, Memorandum Opinion and Order, 4 FCC Rcd 1992, 1992 ¶ 4 (1989) (quoting *Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419, 419 ¶ 3 (1986))). *See also* 47 C.F.R. § 1.243(f).

authority, the Presiding Judge properly concluded that “the removal of Mr. Havens and his companies from this proceeding”¹⁷ was necessary to maintain the integrity of this proceeding. Mr. Havens’ and ENL-VSL’s appeals fail to demonstrate otherwise.

4. Accordingly, for the foregoing reasons, the Enforcement Bureau respectfully opposes EVH’s interlocutory appeals and supports the Presiding Judge’s removal of EVH from the proceeding and the certification of EVH’s conduct to the Commission for determination as to whether the facts warrant the designation for hearing of issues as to EVH’s qualifications to hold Commission licenses.

¹⁷ *Order*, FCC 15M-14, at 13.

Respectfully submitted,

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May 6, 2015

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 6th day of May, 2015, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO INTERLOCUTORY APPEALS" to:

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