

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter Of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

EB Docket No. 11-71

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio Services

File No. EB-09-IH-1751  
FRN: 0013587779

Applicant for Modification of Various  
Authorizations in the Wireless Radio  
Services

Application File Nos.  
0004030479, 0004144435,  
0004193028, 0004193328,  
0004354053, 0004309872,  
0004310060, 0004314903,  
0004315013, 0004430505,  
0004417199, 0004419431,  
0004422320, 0004422329,  
0004507921, 0004153701,  
0004526264, 0004636537,  
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 CORP., INC.;  
ATLAS PIPELINE—MID CONTINENT, LLC;  
DENTON COUNTY ELECTRIC COOPERATIVE,  
INC., d/b/a COSERV ELECTRIC; and  
SOUTHERN CALIFORNIA REGIONAL RAIL  
AUTHORITY

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

**ENL-VSL OPPOSITION TO MOTION TO STRIKE**

Environmental LLC (ENL) and Verde Systems LLC (VSL), together “ENL-VSL”, through their undersigned counsel and pursuant to Section 1.48 of the Commission’s rules, hereby oppose the Motion to Strike filed by Maritime Communications/Land Mobile, LLC (“Maritime”) on May 6, 2015 (“Motion to Strike”), with regard to the ENL-VSL Interlocutory Appeal filed on April 29, 2015 (“ENL-VSL Appeal”).

## **I. Maritime's Contentions**

Maritime moved to strike the ENL-VSL appeal on the grounds that it includes “additional argument in the form of quotes from prior pleadings.” Motion to Strike at 1. According to Maritime this was done to “skirt the applicable five page limit.” *Id.* Maritime also argues that ENL-VSL is the “*alter ego*” of Havens and therefore the ENL-VSL Appeal exceeds the page limit when combined with the separately filed Havens appeal. Both of these contentions are meritless and only serve to underscore how Maritime (not ENL-VSL) has obfuscated and delayed this proceeding with frivolous filings.

## **II. The Exhibit Is Permitted Under Section 1.48**

Section 1.48(a) provides that page limitations do not apply to, “Affidavits, statements, tables of contents and summaries of filings, and other materials which are submitted with and factually support a pleading are not counted in determining the length of the pleading.” The Commission has routinely applied Section 1.48(a) to find that factual attachments that merely support legal arguments made in the pleading do not count against the page limitations listed in the Commission’s rules.<sup>1</sup>

The one page attachment to the ENL-VSL Appeal contains three excerpted paragraphs from the filings in this proceeding that show what ENL-VSL said, what the Bureau said and what ENL-VSL responded with regard to a cross-motion for summary decision the Bureau proposed to file. These three paragraphs provide the Commission with the facts to address the concern in the May 22 Order that ENL-VSL misrepresented a statement made by the Bureau.

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<sup>1</sup> *In re Maritime Communications*, 18 FCC Rcd. 24391, 24396-97 (2003) (holding that sixteen pages of factual attachments used to support the legal arguments made in the pleading did not count against the page limitation under Section 1.429(d)) (citing 47 C.F.R. § 1.48(a)); *In the Matter of Amendment of Section 73.606(b), Table of Allotments Television Broad. Stations. (Clermont & Cocoa, Florida)*, 5 F.C.C. Rcd. 6566, 6567 n.6 (1990) (holding that a factual attachment, in the form of an engineering statement, used to support the legal arguments made in the pleading did not count against the page limitation under Section 1.115(f)) (citing 47 C.F.R. § 1.48(a)).

Order, FCC 15M-14, at paras. 9-10. Thus, the excerpts “factually support” the appeal under Section 1.48.

There is no question that ENL-VSL could have submitted complete copies of the relevant pleadings, since they were being cited for the fact of what was said, and not as additional argument. The pleadings were excerpted for the convenience of the Commission and doing so qualifies the attachment within the allowed “summaries of filings.” Furthermore, the excerpts constitute “other materials” which factually support the appeal since, as noted, they show exactly what was said by ENL-VSL and the Bureau and allow the Commission to determine directly whether a misrepresentation occurred.

As noted in footnote 1, Maritime was a party to one of the few previous cases rejecting a similar contention about page lengths. This suggests the frivolous nature of the motion.

### **III. ENL-VSL and Havens Are Entitled To File Separate Appeals**

With regard to the further contention that ENL-VSL and Havens made duplicative filings that together exceed the page limitation, the Hearing Designation Order, FCC 11-64, April 19, 2011 (“HDO”) makes each of the Havens companies and Havens individually parties to the proceeding. *See* HDO at para. 72. Maritime had an opportunity to appeal that aspect of the HDO and did not do so. Accordingly, it is too late for Maritime to complain about the Commission making Havens and his managed companies each parties to the proceeding.

**Conclusion**

For the foregoing reasons, the Motion to Strike should be dismissed.

Respectfully submitted,

          /s/            
James A. Stenger

Dana Frix  
Aaron M. Bartell  
Chadbourne & Parke, LLP  
1200 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 974-5682

May 20, 2015

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has on this 20<sup>th</sup> day of May, 2015, arranged to be mailed by first class United States mail copies of the foregoing Opposition to Motion to Strike to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Pamela S. Kane  
Deputy Chief  
Investigations and Hearings Division Enforcement Bureau  
Federal Communications Commission  
445 12th Street SW, Room 4-C330  
Washington, DC 20554

Sandra DePriest  
Maritime Communications/Land Mobile LLC  
206 North 8th Street  
Columbus, MS 39701

Dennis C. Brown  
8124 Cooke Court  
Suite 201  
Manassas, VA 20109  
*Counsel for Maritime Communications/Land Mobile LLC*

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

Wesley Wright  
Jack Richards  
Keller & Heckman LLP  
1001 G Street, NW  
Suite 500 West  
Washington, DC 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*

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.*

Paul J. Feldman  
Harry F. Cole  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
*Counsel for Southern California Regional Rail Authority*

Matthew J. Plache  
Law Office of Matthew J. Plache  
5425 Wisconsin Avenue, NW  
Suite 600, PMB 643  
Chevy Chase, MD 20815  
*Counsel for Pinnacle Wireless Corp.*

Albert J. Catalano  
Keller & Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, DC 20001  
*Counsel for Dixie Electric Membership Corp.*

Robert J. Keller  
Law Offices of Robert J. Keller, P.C.  
PO Box 33428  
Washington, DC 20033  
*Counsel for Maritime Communications/Land Mobile LLC*

