

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

In re)	
)	
MARITIME COMMUNICATIONS/LAND)	EB Docket No. 11-71
MOBILE, LLC)	File No. EB-09-IH-1751
)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	
Applicant for Modification of Various)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services)	0004193028, 0004193328, 0004354053,
)	0004309872, 0004314903, 0004315013,
Applicant with ENCANA OIL AND GAS (USA),)	0004430505, 0004417199, 0004419431,
INC.; DUQUESNE LIGHT COMPANY; DCP)	0004422320, 0004422329, 0004507921,
MIDSTREAM, LP; PUGET SOUND)	and 0004604962
ENERGY, INC.; ENBRIDGE ENERGY)	
COMPANY, INC.; INTERSTATE POWER)	
AND LIGHT COMPANY; WISCONSIN)	
POWER AND LIGHT COMPANY; DIXIE)	
ELECTRIC MEMBERSHIP CORPORATION,)	
INC.)	

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S OPPOSITION
TO ENL-VSL PETITION FOR RECONSIDERATION**

Background

1. On April 22, 2015, the Presiding Judge issued *Order*, FCC 15M-14, excluding Warren Havens and Environmental, LLC and Verde Systems, LLC (ENL-VSL) from participating as parties in the above-captioned proceeding, striking a motion for summary decision filed by Mr. Havens and ENL-VSL (Summary Decision Motion), and certifying to the Commission the question of whether the facts warrant the designation for hearing of issues as to the character qualifications of Mr. Havens, ENL-VSL, and Mr. Havens' other companies to hold

Commission licenses.¹ In part, the Presiding Judge's certification of questions concerning Mr. Havens' (and others') qualifications was based on the Presiding Judge's conclusion that Mr. Havens and ENL-VSL had filed the Summary Decision Motion in bad faith.² On April 29, 2015, Mr. Havens and ENL-VSL filed separate interlocutory appeals of *Order*, FCC 15M-14, challenging, *inter alia*, the Presiding Judge's rulings regarding the Summary Decision Motion.³

2. With its interlocutory appeal to the Commission still pending, ENL-VSL has now filed with the Presiding Judge a Petition for Reconsideration of *Order*, FCC 15M-14, again challenging the Presiding Judge's conclusion that Mr. Havens and ENL-VSL filed the Summary Decision Motion in bad faith.⁴ In this Petition, ENL-VSL seeks reconsideration of the Presiding Judge's "finding that a motion for summary decision was filed in bad faith"⁵ and "the subsequent referral to the Commission for further review of that finding of bad faith."⁶ For the reasons set forth below, the Chief, Enforcement Bureau (Bureau), by his attorneys, herein respectfully opposes ENL-VSL's Petition.

Bureau's Opposition

3. In *Order*, 15M-14, the Presiding Judge ruled that Mr. Havens' and ENL-VSL's Summary Decision Motion was filed in bad faith, in part, because the Presiding Judge had

¹ See *Memorandum Opinion and Order*, FCC 15M-14 (Apr. 22, 2015), at 13-14, ¶¶ 25-27.

² See, e.g., *id.* at 2-3, ¶¶ 4-7.

³ See, e.g., ENL-VSL Interlocutory Appeal as of Right, filed Apr. 29, 2015 (ENL-VSL's Interlocutory Appeal), at 3; Mr. Havens, who controls ENL-VSL, filed a separate interlocutory appeal arguing generally that *Order*, 15M-14, "should be overturned as inaccurate as to its factual allegations, arbitrary and capricious, and an abuse of discretion." [Havens] Interlocutory Appeal, filed Apr. 29, 2015; see also [Havens] Errata, filed Apr. 30, 2015.

⁴ See Petition for Reconsideration of April 22, 2015 Order on the Basis of Mistake ("Petition"), filed May 22, 2015 (Petition). Mr. Havens did not join the Petition.

⁵ Petition at 1.

⁶ Petition at 2.

previously “held that he would not consider further motions for summary decision”⁷ and because the Summary Decision Motion “blatantly ignored the Presiding Judge by failing even to acknowledge his earlier prohibitive directive.”⁸ ENL-VSL’s sole argument in the Petition is that, despite the previous *Order* prohibiting additional motions for summary decision, the Presiding Judge “explicitly authorized” ENL-VSL to file a motion for summary decision during the October 1, 2014 prehearing conference.⁹ ENL-VSL hinges its Petition on the Presiding Judge’s statement that “you’re free to file any motion you care to as long as you do it in a professional manner”¹⁰ – which ENL-VSL concedes was made in response to a remark by counsel for ENL-VSL threatening to file a motion to strike the Bureau’s case.¹¹

4. As the record plainly shows, however, there was no discussion of whether ENL-VSL would be authorized to file an additional summary decision motion. Rather, when read in the context in which it was made, the Presiding Judge’s comment reflects nothing more than the Presiding Judge’s attempt to move the proceeding along after counsel for ENL-VSL had challenged the Bureau’s ability to proceed with its case on the remaining Issues designated for hearing. For example:

Mr. Stenger: How can the Government have a hearing later on in March or April or May about the basic qualifications and challenge these people when the Government, in December, is going to be putting them on the stand as their witnesses? I don't understand how that's going to work. I really think that on October 28th, I may have to file a motion to strike the Government's entire case.¹²

⁷ *Memorandum Opinion and Order*, FCC 15M-14, at 2, ¶ 4 (citing *Order*, FCC 14M-22 (ALJ, rel. Jul. 15, 2014) at 3)).

⁸ *Memorandum Opinion and Order*, FCC 15M-14, at 2, ¶ 4.

⁹ Petition at 3.

¹⁰ Petition at 3 (quoting Transcript of October 1, 2014 Prehearing Conference (Tr.) at 9-1127:9-10).

¹¹ See Petition at 3.

¹² Tr. at 9-1127: 2-8.

Judge Sippel: Well, you're free to file any motion you care to as long as you do it in a professional manner. I mean we're wasting so much time here. This is murdering. You're killing me. The Bureau is – I'm not going to do anything with – all the things that you're pointing to, we're not touching those this morning. We're not touching those today. We're trying to get dates and tasks assigned. We know what we're going to do with Issue (g). We don't know what we're going to do with the character issue....¹³

Indeed, there is nothing to suggest that the Presiding Judge intended to issue an “explicit” order allowing ENL-VSL to file a summary decision motion. For ENL-VSL to now suggest otherwise strains credulity.

5. In addition, in the Petition, ENL-VSL appears to narrowly interpret the Presiding Judge's “bad faith” ruling in *Order*, FCC 15M-14, as being limited to only whether the Summary Decision Motion was authorized. However, it appears that the Presiding Judge also concluded that the Summary Decision Motion was “presented in bad faith”¹⁴ because Mr. Havens and ENL-VSL included “false and misleading statements...[therein] to support their positions.”¹⁵ Yet, ENL-VSL's Petition is silent on that portion of the *Order*. Thus, to the extent ENL-VSL is seeking reconsideration of the Presiding Judge's “finding of bad faith,”¹⁶ ENL-VSL has failed to meet its burden of demonstrating why reconsideration of that finding is warranted.

6. Moreover, even if ENL-VSL were correct that (i) the Presiding Judge's statement at the October 1, 2014 prehearing conference amounted to an order allowing Mr. Havens and ENL-VSL to file the Summary Decision Motion, and (ii) the Presiding Judge's “bad faith” ruling in *Order*, FCC 15M-14, is based only on the conclusion that the Summary Decision Motion was unauthorized, striking those portions of the *Order* does not warrant reconsideration of the

¹³ Tr. at 9-1127: 9-22.

¹⁴ *Memorandum Opinion and Order*, FCC 15M-14, at 13, ¶ 23.

¹⁵ *Id.* at 3-4, ¶ 9.

¹⁶ Petition at 2.

Presiding Judge's referral to the Commission for further review of Mr. Havens' and ENL-VSL's character qualifications. As is evident from *Order*, FCC 15M-14, the Presiding Judge relied on more than Mr. Havens' and ENL-VSL's conduct with regard to the Summary Decision Motion as the basis for certifying the question of Mr. Havens' and ENL-VSL's character qualifications to the Commission. The Presiding Judge also relied on additional "egregious behavior" by Mr. Havens and ENL-VSL, including but not limited to, filing pleadings that violated Section 1.52 of the Commission's rules¹⁷ and "a pattern of disruptive and contemptuous conduct" during the proceedings.¹⁸ ENL-VSL's Petition does not address any of these additional bases upon which the Presiding Judge certified the question of ENL-VSL's qualifications to the Commission. As a result, ENL-VSL fails to meet the burden of demonstrating that reconsideration of the Presiding Judge's certification to the Commission is warranted.

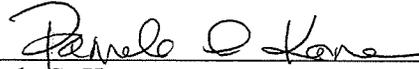
7. For the foregoing reasons, the Bureau respectfully opposes ENL-VSL's Petition.

¹⁷ *Memorandum Opinion and Order*, FCC 15M-14, at 4-5, ¶¶ 12-13.

¹⁸ *See id.* at 7-12, ¶¶ 18-19.

Respectfully submitted,

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June 1, 2015

CERTIFICATE OF SERVICE

Moris Martinez, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has on this 1st day of June, 2015, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO ENL-VSL PETITION FOR RECONSIDERATION" to:

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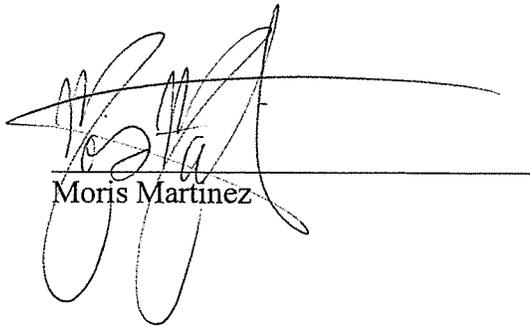
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