

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND MOBILE, LLC</b>	)	EB Docket No. 11-71
	)	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 Authorizations in the Wireless Radio Services	)	
	)	Application File Nos. 0004030479,
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	)	0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537 & 0004604962

**MARITIME’S OPPOSITION TO  
SUPPLEMENT TO INTERLOCUTORY APPEALS**

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Dated: September 30, 2015

## TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	2
I. THE EVH SUMMARY DECISION MOTION WAS UNAUTHORIZED.	3
II. THE ENFORCEMENT BUREAU’S CONDUCT WAS PROPER AND DID NOT, IN ANY EVENT, JUSTIFY EVH’S ABUSE OF PROCESS.	5
III. EVH WAS NOT IMPROPERLY EXCLUDED FROM “SETTLEMENT” DISCUSSIONS.	8
IV. THE PRESIDING JUDGE PROPERLY REFERRED NUMEROUS INSTANCES OF EVH MISCONDUCT TO THE COMMISSION.	10
V. EVH ENGAGED IN A PATTERN OF ABUSE OF PROCESS.	11
VI. THE PRO SE STATUS OF MR. HAVENS DOES NOT JUSTIFY THE BEHAVIOR OF HIM OR HIS ENTITIES.	14
CONCLUSION	17

## SUMMARY

The question before the Commission is the Presiding Judge's certification and referral of numerous instances of abuse of process by Warren C. Havens and various entities controlled by him, both during the course of the captioned proceedings, especially but not limited to the evidentiary trial on Issue G. Allegations of wrongdoing by Maritime, as charged in the hearing designation order or otherwise, are not relevant to the matter at hand. Neither a sincere belief that Maritime is guilty of wrongdoing, nor frustration surrounding the prosecution of the charges justify the kind of abusive and disruptive behavior and tactics cited by the Presiding Judge. The contention that the Enforcement Bureau abdicated its prosecutorial obligations is misplaced, and would in any event not be an excuse for abuse of process. The Presiding Judge's order and the underlying record show serious and repeated instances of abuse of process, dilatory tactics, and bad faith. Moreover, there is evidence showing that this is consistent with a pattern of misconduct engaged in by Mr. Havens and his licensee entities in other Commission proceedings and elsewhere, including in federal court. The record before the Commission constitutes at least a prima facie case, presenting substantial questions of material fact whether Mr. Havens and the entities controlled by him possess the requisite basic qualifications to retain Commission licenses. An evidentiary hearing if warranted under 47 U.S.C. §§ 309(e) and 312(c).

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**MARITIME’S OPPOSITION TO  
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Maritime Communications/Land Mobile, LLC (“Maritime”), by undersigned counsel, hereby submits its opposition to the *Supplement to Interlocutory Appeals* (“*EVH Supplement*”) filed on September 11, 2015, by Warren Havens and six entities controlled by him.<sup>1</sup> The *EVH Supplement* addresses the *Memorandum Opinion and Order* (FCC 15M-14; rel. Apr. 22, 2015) (hereinafter, “*MO&O*”), whereby Chief Administrative Law Judge Richard L. Sippel certified to

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<sup>1</sup> The Havens-controlled entities are Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation LLC, Telesaurus Holdings GB LLC, and V2G LLC. In this pleading, the acronym “EVH” will be used to refer collectively to Environmental LLC, Verde Systems LLC, and Mr. Havens, the three who actively participated in the trial on Issue G. It is Maritime’s position, however, that for purposes of this proceeding, all six of the entities are alter-egos of Mr. Havens.

the Commission numerous specified instances of misconduct by EVH and the other Havens entities “for determination as to whether the facts warrant the designation for hearing of issues as to their qualifications to hold Commission licenses,” *id.* at ¶ 25, excluded EVH from further participation in the captioned hearing proceeding, *id.* at ¶ 26, and dismissed EVH’s October 27, 2014, *Motion for Summary Decision on Issue G*. The Presiding Judge’s action was fully warranted and amply supported by the record in this proceeding.

### **PRELIMINARY STATEMENT**

EVH devotes a substantial portion of its brief to allegations and complaints concerning Maritime. But neither the order under consideration nor this pleading cycle is about Maritime. The issues regarding Maritime, both relating to Issue G as well as others, are before the Presiding Judge and the Commission. The question currently before the Commission is whether the conduct of EVH warrants its exclusion from the Maritime proceeding and an evidentiary evaluation of its own basic qualifications. Accordingly, no attempt will be made to respond to each and every one of EVH’s allegations and accusations against Maritime. While a one or more of the more egregious mischaracterizations will be corrected, Maritime’s silence as to any particular allegation against it should not be considered an admission or concession.

## I. THE EVH SUMMARY DECISION MOTION WAS UNAUTHORIZED.

One of the several instances of abuse of process cited by the Presiding Judge was EVH's unauthorized submission of a summary decision motion.<sup>2</sup> An order entered on July 15, 2014, included the following admonition:

The parties are cautioned that the Presiding Judge will not entertain a further motion for summary decision. As three summary decision motions have been filed and considered in this proceeding and substantial issues of fact still remain to be heard, the Presiding Judge does not see how efficiency could be served by a fourth motion.<sup>3</sup>

In contravention of this directive, EVH submitted a motion for summary decision on October 27, 2014, barely one week before the scheduled evidentiary admissions session in the case—a session for which the Presiding Judge and the other parties were preparing and at which they would have to address more than 17,000 pages of exhibits that had been tendered by EVH.<sup>4</sup>

EVH now contends that the motion was authorized by an informal oral statement uttered by the Presiding Judge at an October 1, 2014, prehearing conference. At that session, EVH expressed surprise and consternation that the Enforcement Bureau had designated principals of

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<sup>2</sup> *ENL-VSL Motion for Summary Decision on Issue (g)*, filed on October 27, 2014.

<sup>3</sup> Order (FCC 14M-22; rel. July 15, 2014) at 3. Such action is expressly authorized by Section 1.251(h) of the Rules which provides, in pertinent part, that the Presiding Judge “may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay.” 47 C.F.R. § 1.215(h).

<sup>4</sup> EVH claims timeliness because the motion was filed more than 20 days prior to start of the hearing. *Id.* at p. 1. Apart from the fact that the motion was barred by the July 15 order, however, it was filed only four days before the admissions session. An evidentiary hearing actually begins with the admissions session when evidence, both pre-filed testimony and documents, is first received into the record.

Maritime as Issue G witnesses.<sup>5</sup> This culminated in the following exchange between the Presiding Judge and counsel for EVH:

MR. STENGER: I don't see how Your Honor can allow [the] hearing to go forward on that basis and then we're going to have a later hearing where the Bureau is going to challenge the qualifications of [Maritime principals]. How can the Government have a hearing later on ... 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.

JUDGE SIPPEL: Well, you're free to file any motion you care to as long as you do it in a professional manner.<sup>6</sup>

This was *not* a discussion about summary decision motions, but rather the threatened motion to strike the Enforcement Bureau's Issue G case. The judge's statement was not a rescission of the July 15 order, but rather the courtroom equivalent of the colloquial response to a threat with: "Well, do what you have to do!" That this is the sense in which the statement was uttered is confirmed by the exasperation expressed in the judge's very next statement: "I mean we're wasting so much time here. This is murdering. You're killing me."<sup>7</sup>

EVH's argument is therefore not credible, but more important, it is utterly disingenuous. If EVH truly believed that the judge had authorized the filing by his October 1 oral statement, why did it not so state in its motion for summary decision? Even more telling, EVH did not even invoke the October 1 colloquy in its opposition to the Enforcement Bureau's request to strike the

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<sup>5</sup> EVH's claim of surprise is not credible. The Bureau's direct case was consistent with the position it had adopted since the December 2, 2013, joint summary decision motion. Insofar as the Bureau had the burden of proof, it should be expected, and in no way surprising, that it would present testimony of persons with personal knowledge of the construction and operations of the facilities, including Maritime principals.

<sup>6</sup> Tr. 1127.

<sup>7</sup> *Id.*

summary decision motion on the grounds that it violated the July 15 order.<sup>8</sup> The theory that the Presiding Judge authorized the motion by his October 1 oral statement is nothing more than a post-hoc rationalization dreamed up by EVH only after being sanctioned.

As to the Presiding Judge's concern that EVH made false or misleading statements regarding its discussions with the Bureau about a proposed joint summary decision motion,<sup>9</sup> EVH engages in a semantic quibbling to justify its use of the word "identical."<sup>10</sup> But given the plethora of other abuse of process, delay, and bad faith fully documented in the record and summarized in the Presiding Judge's order, there is at a minimum a substantial question of material fact regarding EVH's statements and their intent, and whether this is one more part of a pattern. That is sufficient for this to be included in an evidentiary hearing.<sup>11</sup>

## **II. THE ENFORCEMENT BUREAU'S CONDUCT WAS PROPER AND DID NOT, IN ANY EVENT, JUSTIFY EVH'S ABUSE OF PROCESS.**

The bulk of the *EVH Supplement* is devoted to a repeated theme that EVH's is warranted by its surprise at the Bureau having unexpectedly "changed sides" in the litigation. Thus, paraphrasing late comedian Flip Wilson's famous tagline, EHV's defense is: "The Bureau made me do it!" Setting aside the sophomoric impropriety of attempting to justify one's own bad behavior by alleging wrongdoing by others, the premise is wrong. The Bureau has not "switched sides," nor has the Bureau done anything improper in its prosecution of Issue G.

EVH appears to be suffering from the misapprehension that a designation for hearing is an order of execution to be blindly carried out by the Enforcement Bureau and the Presiding

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<sup>8</sup> See *Enforcement Bureau's Motion to Strike EVH's Motion for Summary Decision on Issue (G)*, filed Oct. 28, 2014; and *ENL-VSL Opposition to Motion to Strike*, filed Nov. 7, 2014.

<sup>9</sup> *MO&O* at ¶ 9,

<sup>10</sup> *EVH Supplement* at pp. 16-17.

<sup>11</sup> 47 U.S.C. § 309(e).

Judge as a purely ministerial act. The Communications Act says otherwise. FCC enforcement hearings—which are not the Kangaroo Court EVH advocates—do not always result in a finding adverse to the accused applicant or licensee. A hearing designation order merely indicates that there are substantial questions of fact requiring exploration at an evidentiary hearing.<sup>12</sup> In license revocation hearings, the burden of proceeding and the burden of proof are on the Commission, not the accused licensee.<sup>13</sup> The test is not what the hearing designation order alleges, but what appears from the evidence developed.

Even in civil litigation where parties pursue purely private interests, they must base their assertions on a good faith assessment of what the actual evidence will support. The Bureau is additionally charged with assessment of the public interest. It is entirely proper and acceptable practice for the prosecuting bureau, upon review of the evidence developed in discovery, to conclude that a summary decision in favor of the charged applicant or licensee is warranted on one or more of the designated issues.<sup>14</sup>

The incumbent facilities held by Maritime at the time of designation were comprised of approximately 181 location, channel block combinations. In the course of discovery and discussions with the Bureau, Maritime eventually agreed to voluntarily cancel all but sixteen such facilities. Just over 90 of these voluntarily cancelled stations were either ancillary facilities not subject to Issue G or incumbent facilities that were wholly subsumed (duplicated) by

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<sup>12</sup> *Id.*

<sup>13</sup> 47 § U.S.C. § 312(d).

<sup>14</sup> *Ellis Thompson Corp.*, Summary Decision of Administrative Law Judge Joseph Chachkin, 10 F.C.C.R. 12554 (ALJ 1995) (designated unauthorized transfer of control issue resolved in licensee's favor by summary decision based on prosecuting bureau's assessment of record developed in discovery)

geographic licenses held by Maritime.<sup>15</sup> Of the remaining 89 facilities, after discussions with the Bureau, Maritime decided to abandon plans to resume operations at 73 of them. The Bureau was satisfied, based on information obtained in discovery, that the record supported a finding that these sixteen facilities had not been permanently discontinued.<sup>16</sup> Maritime may potentially prevail on Issue G as to only 16 of the approximately 180 facilities with which it entered the hearing. The others have been terminated based on stipulations negotiated by the Enforcement Bureau. This is hardly the work of bureaucrats who have abdicated their duty and gone to the other side.

Moreover, contrary to EVH's misunderstanding, none of this affects the basic qualifications issues in the hearing as to both the geographic licenses and the remaining 16 incumbent licenses. According to EVH, the "settlement" on Issue G

clearly expressed the Bureau's view that the continued misrepresentations of Maritime and its predecessors did not amount to a character issue disqualifying Maritime from holding FCC licenses, the character issue designated for hearing in paragraph 62(h) of the HDO.<sup>17</sup>

Without conceding any, much less continued, alleged misrepresentations, the stated concern is misplaced. As the Presiding Judge has explained more than once, "determinations as to whether Maritime is qualified to hold Commission licenses have no bearing on the resolution of Issue G, which requires only a determination of 'whether the licenses for any of Maritime's site-based

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<sup>15</sup> These facilities were largely addressed in Maritime's Motion for Partial Summary Decision on Issue G, filed August 31, 2012. See *Memorandum Opinion and Order* (FCC 13M-16; rel. Aug. 14, 2013).

<sup>16</sup> Even on that score, however, the Bureau later changed its position, and at trial endorsed only fourteen of the sixteen facilities in question. Moreover, the Bureau and Maritime are not in total agreement as to the legal rationale underlying the proposed finding of non-permanent discontinuance.

<sup>17</sup> *EVH Supplement* at 10.

AMTS stations have canceled automatically for lack of construction or permanent discontinuance of operation.”<sup>18</sup>

### **III. EVH WAS NOT IMPROPERLY EXCLUDED FROM “SETTLEMENT” DISCUSSIONS.**

According to EVH, the December 2, 2013, joint submissions by Maritime and the Enforcement Bureau, namely, the *Joint Motion of Enforcement Bureau and Maritime For Summary Decision* (“*Joint Summary Decision Motion*”) and the accompanying joint stipulation

evidenced a compromise ‘settlement’ between the Bureau and Maritime which must have resulted from lengthy discussions and negotiations between them. *But it was a settlement reached without Mr. Havens.*”<sup>19</sup>

Any exclusion of EVH was self-imposed, rendering this argument somewhat akin to invoking one’s status as an orphan to mitigate culpability for patricide.

The facts are simple and straightforward. Maritime and the Bureau, in consultation with Choctaw, initiated discussions to explore the possibility of resolving Issue G without further litigation. The inclusion of EVH in these discussions was complicated by the fact that certain information to be shared and discussed was subject to confidentiality. Although the operative *Protective Order*, FCC 11M-21 (Jul. 20, 2011), provides for the sharing of confidential information with legal counsel, neither Mr. Havens nor his entities were at that time represented by legal counsel. In a good faith attempt to include Mr. Havens, Maritime proposed that he execute a nondisclosure agreement for purposes of the talks. He declined to do so.

Notwithstanding that refusal, Maritime still invited Havens to participate in a preliminary

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<sup>18</sup> *Memorandum Opinion and Order*, FCC 13M-16 at ¶ 21 n.66 (Aug. 14, 2013). The hearing designation order also notes that Issue G is about whether stations have automatically terminated, without regard to the basic qualifications issues. *Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520, 6547 n.163 (2011). This is indeed why the Presiding Judge did not stay Issue G pending consideration of the request for Second Thursday relief.

<sup>19</sup> *EVH Supplement* at 10 (emphasis added).

conference call, scheduled for September 16, 2013.<sup>20</sup> Havens was provided with the call-in number and access code needed to participate in the conference call, either by himself or with legal counsel, according to his desire.<sup>21</sup> Despite these overtures, Havens voluntarily elected not to participate. Maritime, the Enforcement Bureau, and Choctaw continued their discussions. On November 6, 2013, Maritime once again invited Havens to participate. Maritime requested that he execute a nondisclosure agreement or, alternatively, that he and/or his entities retain legal counsel subject to the *Protective Order*.<sup>22</sup> Havens voluntarily elected not to participate.

Mr. Havens argued that he had no “meaningful” opportunity to participate in negotiations because the *Protective Order* precluded his access to certain documents. But confidentiality of settlement discussions and negotiations is the general rule, rather than the exception. This is codified in the Federal Rules of Evidence which make information obtained in settlement discussions inadmissible.<sup>23</sup> As the Presiding Judge has previously stated, “Havens could have access to [confidential documents] by retaining (and keeping) qualified legal representation,”<sup>24</sup> but he stubbornly refused to secure counsel, despite repeated orders to do so.<sup>25</sup> Even so, Maritime has bent over backward in a good faith effort to include Havens and his entities in the settlement discussions notwithstanding his self-imposed restrictions. Neither Maritime nor the

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<sup>20</sup> See *Joint Summary Decision Motion* at n.1 & Exhibit 1.

<sup>21</sup> See September 13, 2013, email message from undersigned counsel for Maritime to Warren Havens, copy appended as Attachment No. 1 to *Maritime’s Response to Havens-SkyTel Motions Per Order 13M-19* (filed December 16, 2013).

<sup>22</sup> See *Joint Summary Decision Motion* at n.1 & Exhibit 2.

<sup>23</sup> See Fed. R. Evid. 408(a). Maritime’s confidentiality concerns were validated when Havens placed into the public record materials that were clearly marked “Confidential – Pursuant to FRE 408(a) – For Settlement Purposes Only.” See *Havens First Motion* at Exhibit 1, p. 6.

<sup>24</sup> *Memorandum Opinion and Order*, FCC 13M-10 at ¶ 7 (May 7, 2013),

<sup>25</sup> *E.g.*, *Order*, FCC 12M-52 (Nov. 15, 2012); *Order*, FCC 12M-16 (Mar. 9, 2012); *Order*, FCC 13M-8 (May 1, 2013); *Order*, FCC 13M-11 (May 14, 2013).

Bureau has done anything improper here. Havens excluded himself from the discussions and EVH may not now be heard to complain about his own voluntary choice.

#### **IV. THE PRESIDING JUDGE PROPERLY REFERRED NUMEROUS INSTANCES OF EVH MISCONDUCT TO THE COMMISSION.**

The Presiding Judge cited numerous other examples of harassment and abuse of process by EVH,<sup>26</sup> resulting in what the judge described as “foiled case management.”<sup>27</sup> EVH questions the Presiding Judge’s authority to refer these other matters to the Commission. Section 1.251 of the Commission’s Rules governs summary decision motions. Subsection (f) provides in pertinent part:

The presiding officer may take any action deemed necessary to assure that summary decision procedures are not abused. He may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay.

(1) Should it appear to the satisfaction of the presiding officer that a motion for summary decision has been presented in bad faith or solely for the purpose of delay, or that such a motion is patently frivolous, he will enter a determination to that effect upon the record.

...

(3) If, on making such determination, the presiding officer concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, he will certify the matter to the Commission, with his findings and recommendations, for a determination as to whether the facts warrant addition of an issue as to the character qualifications of that party.<sup>28</sup>

According to EVH, this authorization and instruction do not include the patterns of egregious behavior or other misconduct not directly related to summary decision motions, thus invalidating the Presiding Judge’s certification.

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<sup>26</sup> See, e.g., Section V, pp. 11-14, below.

<sup>27</sup> *MO&O* at ¶¶ 14-21.

<sup>28</sup> 47 C.F.R. § 1.251(f).

EVH's reading is too narrow. The Presiding Judge outlines numerous examples of abuse of process designed to disrupt and delay the captioned proceedings, of which the unauthorized summary decision motion is only one part. This pattern of misconduct together with abuse of the summary decision process, thus warranting their inclusion in a Section 1.251(f)(3) referral. But even if the other misconduct is treated as entirely separate from the summary decision process, certification to the Commission is still proper. To be sure, Section 1.251(f)(3) provides that the presiding officer "will certify" abuses of the summary decision process to the Commission. But neither that provision nor any other rule or policy preclude the Presiding Judge from referring other types of misconduct and abuse coming to his attention. Moreover, the Commission's mandate to act in the public interest precludes it from ignoring questions regarding the qualifications of a licensee based on procedural technicalities.

#### **V. EVH ENGAGED IN A PATTERN OF ABUSE OF PROCESS.**

The *MO&O* states that EVH

unreasonably burdened OALJ, the Presiding Judge, the Enforcement Bureau, the other parties, and counsel by "dumping" more than 444 unscreened exhibits constituting over 17,000 pages as their direct case. Review of these pages revealed that the direct case could not have been prepared in good faith. Most exhibits lacked relevance, were repetitive, or were otherwise useless.<sup>29</sup>

EVH's responds, without any support, that "the exhibits were carefully selected and assembled and were prepared in good faith."<sup>30</sup> This is not supported by the record. Many of the exhibits were copies of pleadings containing legal argument, copies of discovery requests (not responses), copies of orders and opinions, etc., none of which has any factual or evidential value, regardless

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<sup>29</sup> *MO&O* at ¶18(f).

<sup>30</sup> *EVH Supplement* at p. 22.

of their questionable relevance. EVH even included virtually the entire transcript of a nine day antitrust trial in New Jersey, making no effort to excerpt parts arguably relevant to Issue G.<sup>31</sup>

EVH attempts to justify this by noting that at least 50 of the proffered exhibits were ultimately admitted into evidence.<sup>32</sup> Even if EVH's "statistics" are accepted, nearly 90% of its exhibits were rejected. The more telling measure is that of the 17,000 pages dumped by EVH, only 461 pages, or less than three percent, were admitted.<sup>33</sup>

EVH further attempts to justify the volume of exhibits because its case was prepared in anticipation of needing to address all of the incumbent AMTS facilities, not just the sixteen remaining after the joint stipulation relied upon in Maritime's direct case. *EVH Supplement* at pp. 22-23. But even before the joint stipulation, summary decision had already been granted on the construction aspect of Issue G, and Maritime had acknowledged that most of the sites other than the sixteen had ceased providing end user AMTS services in 2007.<sup>34</sup> The joint stipulation

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<sup>31</sup> See Trial Exhibits Index submitted by EVH on September 16, 2014. Exacerbating the dumping of 17,000 pages of exhibits was the failure to provide any sponsoring witnesses. In fact, EVH proffered only three direct case witnesses, and two of these explicitly stated in their pre-filed written testimony that they had no personal knowledge regarding the construction or operation of Maritime's facilities, *i.e.*, the proffered witnesses could say nothing at all relevant to Issue G. See *ENL-VSL and Havens Direct Case Exchange*, filed on September 16, 2014.

<sup>32</sup> See *Order on Evidentiary Rulings* (FCC 14M-34; rel. Nov. 14, 2014).

<sup>33</sup> *Id.* at pp. 22-23.

<sup>34</sup> Contrary to EVH's misrepresentation, *EVH Supplement* at p. 2, Maritime did *not* admit that the facilities had been permanently abandoned in 2007. Maritime has consistently stated that end user services had been temporarily discontinued with the intention of later resuming operations. Maritime stated that its later decisions to permanently discontinue all but the sixteen sites were taken (a) on or shortly before the May 31, 2012, Limited Joint Stipulation Between Enforcement Bureau and Maritime, as to the subsumed stations, and (b) on or shortly before the December 2, 2013, Limited Joint Stipulation Concerning Issue (g). EVH may argue for an earlier date, but it is improper, unprofessional, and unethical for EVH and its legal counsel to continue falsely attribute such an admission to Maritime. This point has been repeated so many times that it is difficult to view the continued mischaracterizations as anything other than willful and bad faith misrepresentation.

permanently cancelling the other locations was filed on September 11, 2014, before the submission of EVH's direct case.<sup>35</sup> Even if EVH did not have time to modify its exhibits in light of the stipulation, it could have at least acknowledged the stipulation and provided an indication of which exhibits were no longer relevant. Moreover, a substantial part of EVH's direct case went not to Issue G and the stipulated sites, but rather to the basic qualifications issues that EVH certainly knew were not to be litigated in the December 2014 hearing.<sup>36</sup>

While the parties were still struggling to parse through the mountains of paper, EVH then asked that the Presiding Judge compel the appearance of more than thirty additional witnesses.<sup>37</sup> *MO&O* at ¶ 18(g). This was a full two weeks *after* the deadline for submission of direct case exhibits, yet there was no accompanying pre-filed testimony, nor even a proffer of testimony. There was only a cursory, at best, identification of who most of these witnesses were, and in some cases not even that.<sup>38</sup> In conjunction with all of this, EVH also engaged in the “*seriatim* filing of frivolous motions,”<sup>39</sup> prompting the Presiding Judge to observe: “Such contemptuous conduct, when taken with the [dumping of 17,000 pages of exhibits] raises inescapable questions of whether [EVH] abused the Commission's Rules and process with premeditation by

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<sup>35</sup> Joint Stipulation Between the Enforcement Bureau and Maritime on Discontinuance of Operations of Previously Stipulated Site-Based Facilities, filed September 11, 2014.

<sup>36</sup> Joint Stipulation Between the Enforcement Bureau and Maritime on Discontinuance of Operations of Previously Stipulated Site-Based Facilities, filed September 11, 2014.

<sup>37</sup> ENV-VSL Witness Notification, filed September 30, 2014.

<sup>38</sup> For example, the list included “[a] representative of the State of New Jersey to be identified by Maritime/Pinnacle.” *Id.* at p. 5. So not only was EVH delinquently springing witnesses on the other party, it was even requiring the other parties to identify the witnesses for it.

<sup>39</sup> *MO&O* at ¶ 18(h). This is a pattern of conduct by Mr. Havens and his entities that plays out beyond this hearing proceeding in other matters before the Commission. See, e.g., *Warren C. Havens*, 27 FCC Rcd 2756 (2012) (sanctions imposed for frivolous, repetitive filings by Havens and his entities).

strategically burdening opposing parties at such times as to maliciously interfere with preparation for hearing.”<sup>40</sup>

## **VI. THE PRO SE STATUS OF MR. HAVENS DOES NOT JUSTIFY THE BEHAVIOR OF HIM OR HIS ENTITIES.**

A motif running throughout the *EVH Supplement* is that the misconduct and abuses complained of by the Presiding Judge should be excused because Mr. Havens was acting pro se and therefore entitled to deference. This defense ignores the fact that, in many instances, the misconduct was by or in concert with legal counsel.<sup>41</sup> Furthermore, the argument is a kind of circular reasoning, because a substantial portion of the abuses and misconduct with which EVH is charged stem precisely from Mr. Havens’s abuse of his pro se status. This includes such things as Mr. Havens claiming exemption for the Protective Order because of his pro se status;<sup>42</sup> making “repeated requests for additional time to complete ... discovery, yet fail[ing] to engage in any meaningful discovery at times when discovery was reopened”;<sup>43</sup> Mr. Havens seeking latitude due to his ostensibly pro se status while actually being assisted by undisclosed legal counsel;<sup>44</sup> convincing evidence indicating that Mr. Havens, while ostensibly acting pro se, had

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<sup>40</sup> *Id.* at ¶ 18(h).

<sup>41</sup> For example, the unauthorized summary judgment motion and the dumping of 17,000 pages of exhibits were done by legal counsel.

<sup>42</sup> *MO&O* at ¶ 18(a).

<sup>43</sup> *Id.* at ¶ 18(j). This is strikingly similar to behavior for which a federal court sanctioned a Havens entity, Verde Systems, LLC, citing its “fail[ure] to perform ‘an inquiry reasonable under the circumstances’ and to possess ‘evidentiary support’ for its factual contentions or to identify those contentions that would ‘likely have evidentiary support after a reasonable opportunity for further investigation or discovery.’” *Telesaurus VPC, LLC v. Power*, 888 F. Supp. 2d 963, 974 (D. Ariz. 2012), quoting FED. R. CIV. P. 11(b), (b)(3).

<sup>44</sup> *Id.* at ¶ 18(n).

one or more major pleadings “ghostwritten” by a lawyer;<sup>45</sup> Mr. Havens having plagiarized a large portion of a pro se pleading from a law review article;<sup>46</sup> Mr. Havens’s refusal to cooperate with the Presiding Judge’s legitimate effort to determine what lawyers were assisting Mr. Havens;<sup>47</sup> and Mr. Haven’s repeated violation of the Presiding Judge’s orders expressly prohibiting him from representing his entities.<sup>48</sup>

Self-representation in formal hearing proceedings is not a “right.” In hearing proceedings, a principal may represent a corporate party (or similar legal entity) only at the discretion of the presiding judge.<sup>49</sup> In this proceeding, the presiding judge has repeatedly ruled that the entities controlled by Mr. Havens must be represented by duly licensed legal counsel.<sup>50</sup>

Mr. Havens nonetheless claimed an independent right as an individual party to represent himself. The presiding judge had, as a matter of discretion, permitted Mr. Havens to act pro se from much of the proceedings, but this discretionary deference was conditioned on Mr. Havens demonstrating that his personal interests are non-identical, separate, and distinct from those of his entities.<sup>51</sup> To date, Mr. Havens has not satisfied this condition. Mr. Havens merely utters the tautology that he and his companies are separate legal entities, a point that no one disputes. Mr. Havens has at times made nebulous statements about different purposes or business objectives, but in addition to being vague, this is beside the point. To justify dual representation,

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<sup>45</sup> *Id.* at ¶ 18(o).

<sup>46</sup> *Id.* at n.63.

<sup>47</sup> *Id.* at ¶ 18(p).

<sup>48</sup> *Id.* at ¶ 18(r).

<sup>49</sup> 47 C.F.R. § 1.21(d).

<sup>50</sup> *E.g.*, *Memorandum Opinion and Order* (FCC 12M-16; rel. March 9, 2012), citing, *inter alia*, *Black Television Workshop of Los Angeles, Inc.*, 7 FCC 2d 6868, 6870 (1992).

<sup>51</sup> *Memorandum Opinion and Order* (FCC 12M-44; rel. Sept. 25, 2012) at ¶¶ 15-18.

Mr. Havens must show not only that he has a separate legal interest from that of his entities, but that the cited interest is one legally cognizable in the context of this FCC proceeding. In other words, it must be an interest being adjudicated in the hearing.

Mr. Havens and his entities do not have separate grounds for their standing as parties in this proceeding. Both Mr. Havens and his entities were made parties because they were “petitioners,” having filed petitions to deny the above-captioned assignment of license applications also designated in this proceeding. Specifically, the Commission ordered that each of the “entities shall be made parties to this hearing in its capacity as a petitioner to one or more of the captioned applications.”<sup>52</sup> Standing rests on alleged encumbrances and similar co-channel conflicts between authorizations held by the Havens entities on the one hand and Maritime on the other. But Mr. Havens personally holds no licenses, and thus does not, as an individual, have any such licensing conflicts with Maritime. Whatever standing Mr. Havens has is derived from the standing of his entities. Any unrelated separate interests Mr. Havens may conjure up are within the scope of the Commission’s jurisdiction or, at the very least, were not the basis on which he was made a party to this hearing proceeding.

Because his interests are aligned with those of his entities, and because his entities were required to be represented by legal counsel, Mr. Havens’s pro se activities were proscribed by the principle enunciated in *Black Television Workshop of Los Angeles, Inc.*<sup>53</sup>

Against that backdrop, for EVH to assert that the Presiding Judge did not afford sufficient deference to Mr. Havens’s pro se status is absurd and incongruous with the record. The judge has been patient to a fault. If there has been any abuse of discretion on the part of the Presiding Judge

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<sup>52</sup> *Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520, 6549 ¶ 72 (2011).

<sup>53</sup> 7 FCC 2d 6868, 6870 (1992)..

in this regard, it has been in favor of Mr. Havens, *i.e.*, in the judge's repeatedly allowing Mr. Havens to continue his pro se activities despite the failure to comply with the specified conditions, and notwithstanding the repeated abuses of that leniency listed above.

Thus, EVH's assertion that Mr. Havens's conduct was within appropriate bounds for a pro se litigant,<sup>54</sup> simply cannot be squared with the record in this proceeding. Almost laughable, were the adverse effects of Mr. Havens's conduct not so substantial, is the suggestion that rather than ejecting Mr. Havens and EVH from these proceedings, the Presiding Judge "had available the significantly-less-extreme remedy of insisting that Mr. Havens hire, and participate only through, counsel."<sup>55</sup> The Presiding Judge *did* direct Mr. Havens to retain legal counsel, repeatedly!<sup>56</sup> One must wonder how often and for how long the judge is expected to rely on the less extreme remedy while it is continually ignored, flaunted, and abused. Suffice it to say, the record is clear that pro se status will not excuse the misconduct of Mr. Havens and his entities.

## CONCLUSION

The record overwhelmingly supports the Presiding Judge's findings of serious and repeated abuse of process by EVH, and there is further information showing that this is a pattern of misconduct that extends beyond the hearing proceeding to other Commission matters and even to other forums. The outstanding issues against Maritime are not relevant to this matter. The accusations that the Enforcement Bureau was somehow derelict in its prosecutorial duties are lacking in record support and, in any event, do not justify the serious and repeated

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<sup>54</sup> *EVH Supplement* at p. 24.

<sup>55</sup> *Id.*

<sup>56</sup> *E.g.*, Order, FCC (12M-7; rel. Jan. 27, 2012); Order (FCC 12M-16, rel. Mar. 9, 2012); Order (FCC 12M-25, rel. May 21, 2012); Order (FCC 12M-52, rel. Nov. 15, 2012); Order (FCC 13M-8, rel. May 1, 2013).

misconduct of EVH. Mr. Haven's pro se status is not an excuse for his behavior or that of his entities and their attorneys, especially not when gross and repeated abuse of his pro se status is part and parcel of the misconduct. On this record, there is clearly a substantial and material question of fact whether Mr. Havens and his entities have willfully and repeatedly engaged in misconduct calling into question their qualifications to remain Commission licensees.

WHEREFORE, it is respectfully requested that the Commission initiate an evidentiary hearing to determine (a) whether licenses held by Mr. Havens and/or any entities controlled by him should be revoked, 47 U.S.C. § 312(a); (b) whether any pending applications of Mr. Havens and/or any entities controlled by him should be denied, 47 U.S.C. § 309(e); and (b) whether any other appropriate sanctions should be imposed. It is further respectfully requested that Maritime be made a party to any such proceeding.

Respectfully submitted,

By:   
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Dated: September 30, 2015

## CERTIFICATE OF SERVICE

I, Robert J. Keller, counsel of record for Maritime Communications/Land Mobile, LLC, hereby certify that I have on this 30th day of September, 2015, caused copies of the foregoing document to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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