

Skybridge Spectrum Foundation (“SSF”)
Debtor in Chapter 11, US Bankruptcy Court, Delaware, Case No. 16-10626
and
Warren Havens

**Petition for Expedited Declaratory Ruling
Regarding § 1.251(f)(3)**

To: Office of the Secretary
Attn: The Commission
Filed: On ULS under “lead” call signs for the SSF licenses in each radio service*

Contents

Section	Page
1 Introduction: SSF, the rule §1.251(f)(3) (the “Rule”), and its application in FCC 15M-14 (the “Sippel Order”).	3
2 The petition for expedited declaratory ruling.	5
3 The proposed rule §1.251 without the Rule §1.251(f)(3), and the final rule §1.251 in which the Rule §1.251(f)(3) was added.	6
4 The Rule was enacted without the required public notice and comment under 5 U.S. Code § 553 - Rule making: There was a complete failure of any public notice and comment, and no good cause for this failure was given at that time, or at any time.	7
5 Federal agency rules promulgated without the required public notice and comment under 5 U.S. Code § 553 are void and nullities: Thus, the Rule is void and a nullity.	9
6 Since the Rule is void and a nullity, the question posed to the Commission on qualifications of SSF, Havens (and others) in FCC 15M-14 (the “Sippel Order”) under the Rule is void and a nullity, and must be vacated.	11
7 While vacating the Rule is required, in addition, doing so will mitigate unlawful, grave and increasing adverse affects upon SSF, its licenses and public interest uses of the licenses in support of federal agencies, and to docket 11-71 including to ALJ Sippel, the Commission, and all parties to the proceeding.	12
8 While vacating the Rule and the Sippel Order question is required, doing so is needed to prevent serious chilling and frustration of the purpose of Congress in allowing parties with standing to challenge a license application under 47 U.S.C. §309(d).	12
9 Conclusion	15

* WQHU548, WQID629, WQMV416, WQMV418, WQMV514, and WQVT526.

Appendix

- | | | |
|---|--|----|
| 1 | SSF organizational documents: SSF purposes and legal restrictions as a nonprofit IRC §501(c)(3) foundation for public interest wireless. | 17 |
|---|--|----|

Exhibits

- | | | |
|---|--|----|
| A | The rule §1.251 as proposed (without Rule §1.251(f)(3)), and as finalized when the Rule §1.251(f)(3) was added: a side-by-side chart, followed by the <i>NPRM</i> and <i>R&O</i> . | 20 |
| B | Side-by-side chart showing that the APA rule section at issue, § 553, is materially identical now as compared to when it was when first enacted. | 33 |
| C | Examples of Receiver Susan Uecker's and of Arnold Leong's ¹ statements that the Sippel Order (defined above) is the cause of the receivership over SSF and a cause of the SSF bankruptcy. | 34 |

[The rest of this page is intentionally left blank.]

¹ As indicated herein, and in other recent FCC filings by SSF (some noted herein), Arnold Leong is the person who obtained the state court the receivership; who selected Receiver Susan Uecker as receiver; and who, under provisions of the state-court issued Receivership Order (that Leong's counsel drafted) is in effective control of the receivership including its current defense in the SSF bankruptcy case. As SSF has elsewhere presented to the FCC and the subject state court, and will be further pursuing, Leong procured the receivership by use of false assertions that are also illegal, preempted and void under FCC law and exclusive jurisdiction, shown in compelling evidence including serial signed writings and admissions under oath by Leong, and evidence and admissions from third parties including legal counsel to Leong and his "partners" in several state court legal actions.

1. Introduction, the rule §1.251(f)(3) (the “Rule”), and petition for expedited declaratory ruling (the “Request”).

This petition is submitted by Skybridge Spectrum Foundation (“SSF”) and Warren Havens individually.² SSF is currently in chapter 11 bankruptcy as captioned above.³ SSF holds FCC licenses nationwide in the M-LMS, MAS, AMTS and Part 22 Paging services. SSF, commenced in 2006, is a nonprofit corporation tax exempt under I.R.C. §501(c)(3) formed and operated under IRS law as a “private operating foundation” to provide and promote wireless in the public interest, focusing on precision Position, Navigation and Timing for smart and safe transportation and energy systems, environment monitoring and protection, and other critical forms of radio location and communication. Appendix 1 below describes the mission and legal restrictions of SSF to pursue these. See also SSF materials at www.terranautox.com.

The SSF mission and restrictions, initially stated in its organizational documents and in its application to the IRS for tax exemption (that was granted) involve joint venture plans and developments with certain LLCs and others (the “SSF JV Plan”).⁴ SSF and Warren Havens are each subject to the “Sippel Order” and the “Rule” discussed herein. This Petition is submitted by each of SSF and Warren Havens and it is also submitted to protect the SSF JV Plan that involves property and interests of SSF in its bankruptcy.

² Warren Havens and SSF file this petition together for convenience, but may later separately submit filings related to this petition. Each was designated by the Commission a separate party in the HDO FCC 11-64 that commenced docket 11-71 in which the Sippel Order arose based on the subject Rule, and each are separately subject to the Sippel Order and its application of the subject Rule. Neither SSF nor Havens petitions herein for any other entity. *Herein, where text indicates that SSF is subject to the Rule and to the Sippel Order, the same applies to Warren Havens individually.*

³ See discussion in the *SSF Petition for Reconsideration, to Deny, and for Other Relief* regarding the transfer of control applications submitted by Susan Uecker, Receiver, File Nos. 0007061847 and 0007067613.

⁴ In the SSF bankruptcy, as found on the US Courts PACER system, SSF describes the SSF JV Plan: see Docket No. 30, the “Declaration of Warren C. Havens in Support of the Debtor’s Chapter 11 Petition and Requests for First Day Relief.”

The subject rule is §1.251(f)(3) (the “**Rule**”):

1.251 Summary decision.

* * * *

(f) 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.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, he will certify the matter to the Commission with his findings and recommendations, for consideration under § 1.24.

(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.

The Rule is cited by the FCC Chief Administrative Law Judge Richard Sippel in one of two of his orders in FCC 15M-14 (the “Sippel Order”) as follows (emphasis added):⁵

23. The Commission Rules provide that upon determining that a motion for summary decision was presented in bad faith or solely for the purpose of delay, if the Presiding Judge concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, he is authorized to 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. 75/ The Presiding Judge finds that Mr. Havens and the Havens companies not only filed their Motion for Summary Decision in bad faith,⁶ but also engaged in patterns of egregious behavior that he believes warrant a **separate**

⁵ The following footnotes reflect unexplained major changes to this Rule §1.251(f)(3), as applied in this Order, that are directly at odds with this Rule’s purpose explained in §1.251(f) and explained by the Commission when adding this rule section (as discussed below). SSF points to these as-applied problems not the basis of this declaratory ruling request, but for purposes in Section 7 below, in sum, a rule enacted without public notice and comment is prone to be a ill-formed and unknown rule that lends itself to this sort of improper change and application.

⁶ Actually, the motion was prepared, signed and filed by attorney James Stenger of Chadbourne & Parke, and the Order is silent on this fact and why the Judge did not invoke §1.251(f)(2).

proceeding⁷ in which several issues as to the character qualifications of Mr. Havens and the Havens companies **to hold Commission licenses** are examined. Accordingly, the Presiding Judge certifies this matter to the Commission.

* * * *

25. IT IS ORDERED that conduct described above⁸ of Warren Havens;... Skybridge Spectrum Foundation;... and...IS CERTIFIED to the Commission for determination as to whether the facts **warrant the designation for hearing**⁹ of issues as to their qualifications **to hold Commission licenses**.¹⁰

75/ 47 C.F.R. § 1.251(f)(3).

This Sippel Order is the cause of a state-court receivership over SSF which, in turn, is a cause of its chapter 11 bankruptcy (see Exhibit C below) and the Receiver's stoppage, waste and attempts to liquidate its entire private-operating-foundation plans and developments to use its nationwide licenses in the public interest. This has already caused grave irreparable damages to SSF and the public interest.

2. The petition for expedited declaratory ruling.

For reasons demonstrated below, SSF and Havens each petition, under FCC rule §1.2, 47 C.F.R. §1.2, that the Commission find, declare and order that:

Rule §1.251(f)(3) is void and a nullity, and the Sippel Order (defined above) is thus also void and a nullity, because the Rule was enacted without public notice and comment required in 5 U.S. Code § 553 and without good cause for this failure of public notice and comment.

Reasons for expediting a decision on this petition, as requested, are presented in various sections including 1, 7 and 8.

⁷ This changes the rule: see footnote 9.

⁸ This allegation is clearly *false* that Skybridge Spectrum Foundation ("SSF") was part of the alleged conduct under § 1.251(f)(3): an alleged unauthorized motion for summary decision prepared, signed and filed by attorney James Stenger of the Chabourne & Parke law firm. Judge Sippel did not explain why he applied this rule to SSF and the other entities that were not active in this proceeding and did not have any role in the subject motion.

⁹ Judge Sippel *changed* the Rule language from its actual language-- "**addition of an issue**" -- to "**designation for hearing**" with no explanation why.

¹⁰ Judge Sippel *added* to the Rule: "to hold Commission licenses" with no explanation why.

3. The proposed rule §1.251 without the Rule §1.251(f)(3), and the final rule §1.251 in which the Rule §1.251(f)(3) was added.

The NPRM proposed rule §1.251 without the Rule §1.251(f)(3)—and the final rule §1.251 in which the Rule §1.251(f)(3) was added—are both described by the Commission in: In the Matter of Summary Decision Procedures, *Report and Order*, FCC 72-310, 34 F.C.C.2d 485; Rel. April 12, **1972**, a copy of which is included in Exhibit A hereto. Exhibit A also has a side-by-side chart of the proposed and final rule §1.251.

As seen in Exhibit A, in the R&O FCC 72-310 the Commission simply adds the Rule §1.251(f)(3)—i.e., adds subsection (f)— with no prior public notice and comment, as follows (emphasis and text in brackets added):

1. A **notice of rule making** in this proceeding, **proposing** the adoption of procedures for the summary decision of adjudicatory hearing cases, **was released** on February 4, **1971** (FCC 71-105, 36 F.R. 2799). The **proposed rule** read as follows:

§ 1.251 Summary decision.

- (a)[see Exhibit A]
- (b)[see Exhibit A]
- (c)[see Exhibit A]
- (d)[see Exhibit A]

2. Comments **on the proposal** were filed by the following organizations:

10.... To confirm and emphasize the presiding officer's broad authority in such matters and to provide guidance concerning the proper conduct of the proceeding prior to hearing, **we are adopting two new** provisions. **Section 1.251(f)** deals with the presiding officer's full authority to **control the use and prevent abuse** of the summary decision procedures, and sets out specific procedures for invoking sanctions in the event of such abuse. Section 1.248(b)(2) provides....

15. Editorial changes. Changes in the proposed rules **other than those discussed above** encompass minor changes in wording, rearrangement of provisions and addition of cross references, and **do not appear to require comment** or explanation.

17. In view of the foregoing, IT IS ORDERED that Part 1, the Rules of Practice and Procedure, is amended as set forth in the Appendix hereto....

APPENDIX

4. Section 1.251 is added to read as follows:

§ 1.251 Summary decision.

(a) [see Exhibit A]

(b) [see Exhibit A]

(c) [see Exhibit A]

(d) [see Exhibit A]

(e) [see Exhibit A]

(f) 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.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, he will certify the matter to the Commission, with his findings and recommendations, for consideration under § 1.24.

(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.

4. The Rule was enacted without the required public notice and comment under 5 U.S. Code § 553 - Rule making: There was a complete failure of any public notice and comment, and no good cause for this failure was given at that time, or at any time.

For the following reasons, the Rule was enacted without the required public notice and comment under 5 U.S. Code § 553 - Rule making: There was a complete failure of any public notice and comment, and no good cause for this failure was given at that time, or at any time.

First, as shown in Exhibit B below, 5 U.S. Code § 553 is materially identical at this time, and at the time of the Rule §1.251(f)(3) was enacted, as this Code section was at the time the Administrative Procedures Act was enacted as Public Law 404 by the 79th Congress.

The Rule violates 5 U.S. Code § 553 for reasons explained by the Third Circuit in *United States v. Reynolds*, 710 F.3d 498 (November 2012), on remand from the Supreme Court of the United States (March 2013) (emphasis added):

...”[W]e reverse an agency's decision when it 'is not supported by substantial evidence, or the agency has made a clear error in judgment.'” *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372, 390 (3d Cir. 2004) (quoting *AT&T Corp. v. F.C.C.*, 220 F.3d 607, 616, 343 U.S. App. D.C. 23 (D.C. Cir. 2000)). The Interim Rule cannot withstand review under this standard.

Notice and comment may be waived "when the agency **for good cause finds** (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B).

Here, the Government's burden is heavy because the Attorney General completely failed to provide notice and comment. We conclude that the Government cannot carry that burden. First, as with most "**complete failure**" situations, the Government has not shown that the purposes of notice and comment have been satisfied. The Interim Rule was never "tested via exposure to diverse public comment," *Prometheus Radio Project*, 652 F.3d at 449. There **was never an opportunity** for Reynolds--or **any other interested party--to provide meaningful comments** relating to the substance of the rule. This also means that interested parties never had the "opportunity to develop evidence in the record" to enable more effective review. *Id.* Any suggestion that the post promulgation comments to the Interim Rule can satisfy these purposes misses the point. See *Sharon Steel Corp. v. EPA*, 597 F.2d 377, 381 (3d Cir. 1979) ("We hold that the period for comments after promulgation cannot substitute for the prior notice and comment required by the APA.").

The failure to satisfy these purposes is especially troubling because the Attorney General's decision to issue the Interim Rule undermines the very essence of why notice and comment is required. "[T]he **essential purpose of according § 553 notice and comment opportunities is to reintroduce public participation and fairness to affected parties** after governmental authority has been delegated to unrepresentative agencies." *Dia Nav. Co., Ltd. v. Pomeroy*, 34 F.3d 1255, 1265 (3d Cir. 1994). **Notice and comment "avoid[s] the inherently arbitrary nature**

of unpublished ad hoc determinations." *Morton v. Ruiz*, 415 U.S. 199, 232, 94 S. Ct. 1055, 39 L. Ed. 2d 270 (1974). Here, the lack of an opportunity for anyone to comment on the Interim Rule means that there was never a reintroduction of public participation "after governmental authority [had] been delegated to [an] unrepresentative agenc[y]." *Dia Nav.*, 34 F.3d at 1262. And **without public participation, all that is left before an agency promulgates a rule is the agency's ipse dixit that its determination will not be arbitrary** and that it is fair to affected parties.

The Government cannot show therefore that the promulgation of the Interim Rule has satisfied the purposes of notice and comment. Like other "**complete failure" situations**, the process used to promulgate **the rule was completely devoid of the "exchange of views, information, and criticism between interested persons and the agency"** that ensures well-reasoned and fair rules. *Prometheus Radio Project*, 652 F.3d at 449.

See also *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706-07 (D.C. Cir. 2014)

(rejecting agency's good cause claim as unsupported by the administrative record).

5. Federal agency rules promulgated without the required public notice and comment under 5 U.S. Code § 553 are void and nullities: Thus, the Rule is void and a nullity.

For the following reasons, federal agency rules promulgated without the required public notice and comment under 5 U.S. Code § 553 are void and nullities: Thus, the Rule §1.251(f)(3) is void and a nullity.

In *In the Matter of The Commercial Mobile Alert System*, DA 13-280, 28 FCC Rcd 1460 (February 2013), the FCC discussed case authority on what *can* be changed without public notice and comment, citing, *inter alia*, *South Carolina v Block (US DOA)*:

3. The revisions adopted in this Order and set forth in the attached Appendix merely change the name of the commercial mobile alert service regulated under Part 10 of our rules. These revisions are thus ministerial, non-substantive, and editorial. Accordingly, we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. n6/

n6/ See 5 U.S.C. § 553(b)(3)(B) (stating that notice and comment procedures do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement for reasons therefore in the rules issued) that notice and public procedures thereon are . . . unnecessary"). The "unnecessary" exception to the APA's notice and comment requirement is "confined to those situations in which the administrative rule is a routine determination, insignificant in nature

and impact, and inconsequential to the industry and to the public." *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755, 344 U.S. App. D.C. 382 (D.C. Cir., 2001) (quoting *South Carolina v. Block*, 558 F.Supp. 1004, 1016 (D.S.C. 1983), and citing *Texaco v. FPC*, 412 F.2d 740, 743 (3d Cir., 1969)); see also Amendment of Parts 12 and 90 of the Commission's Rules Regarding Redundancy of Communications Systems: Backup Power; Private Land Mobile Radio Services: Selection and assignment of frequencies, and transition of the Upper 200 channels in the 800 MHz Band to EA licensing, 26 FCC Rcd 15453, 15454 P 6 (PSHSB, OMD 2011) ("The rule amendments adopted . . . are ministerial, nonsubstantive, editorial revisions . . . and we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose" (citing 5 U.S.C. § 553(b)(3)(B)).

In *South Carolina v. Block*, 558 F.Supp. 1004, 1016 (D.S.C. 1983), cited by the FCC above, the court explains (emphasis added):

In this action the plaintiffs seek a declaratory judgment that a "determination" made by the Secretary of Agriculture of the United States... is in fact a regulation, promulgated without prior notice and without opportunity for public comment as required by the Administrative Procedure Act, 5 U.S.C. § 551 et seq. and is therefore violative of the Due Process Clause of the Fifth Amendment to the United States Constitution.

The argument which this Court finds most persuasive is the contention that the Secretary's imposition of the deduction violates the Administrative Procedure Act...**to give notice that he proposed** to levy this deduction and **allow** a reasonable opportunity **for public comment** on his proposed action before he proceeded. They contend that this is required by **5 U.S.C. § 553**.

.... Congress has set controls on administrative agencies action is the Administrative Procedure Act. And perhaps the most significant provision of that Act is **section 553**, with its requirement that administrative agencies conduct themselves through rule-making in which the public is allowed and indeed invited to participate.

The various findings which I have made in canvassing the merits of the plaintiffs' case compel me to the conclusion that the Secretary has **violated the Administrative Procedure Act**. As such, the Secretary's imposition of the assessment is a nullity. **It is a void act. It has no force of law.** *National Labor Relations Board v. Wyman-Gordon Company*, 394 U.S. 759, 763-66, 89 S. Ct. 1426, 1428, 22 L. Ed. 2d 709 (1969) (plurality opinion); *Buschmann v. Schweiker*, 676 F.2d 352 (9th Cir.1982); *Mobil Oil Corporation v. Department of Energy*, 610 F.2d 796, 804 (Em.App.1979); *United States Steel Corporation*, supra, 595 F.2d at 210; *National Tour Brokers Association v. United States*, 192 U.S. App.

D.C. 287, 591 F.2d 896 (D.C.Cir.1978); *Shell Oil Company v. Federal Energy Administration*, 574 F.2d 512 (Em.App.1978); *Joseph v. U.S. Civil Service Commission*, 180 U.S. App. D.C. 281, 554 F.2d 1140 (D.C.Cir.1977); *Anderson v. Butz*, 550 F.2d 459, 462 (9th Cir.1977); *Pickus v. United States*, 165 U.S. App. D.C. 284, 507 F.2d 1107 (D.C.Cir.1975); *United States v. Finley Coal Company*, 493 F.2d 285 (6th Cir.), cert. denied, 419 U.S. 1089, 95 S. Ct. 679, 42 L. Ed. 2d 681 (1974); *Lewis-Mota v. Secretary of Labor*, 469 F.2d 478 (2d Cir.1972); *Wagner Electric Company v. Volpe*, supra; *Texaco, Inc. v. Federal Power Commission*, supra, 412 F.2d at 745; *Hotch v. United States*, 212 F.2d 280 (9th Cir.1954); *Carter v. Blum*, 493 F. Supp. 368, 372 (S.D.N.Y.1980); *Dow Chemical Company v. Consumer Product Safety Commission*, 459 F. Supp. 378, 390-91 (W.D.La.1978); *Hall v. Equal Employment Opportunity Commission*, 456 F. Supp. 695, 701 (N.D.Cal.1978); *Shell Oil Co. v. Federal Energy Administration*, 440 F. Supp. 876 (D.Del.1977); *Percy v. Brennan*, 384 F. Supp. 800 (S.D.N.Y.1974); *City of New York v. Diamond*, supra; *Kelly v. Department of Interior*, supra; *Pharmaceutical Manufacturers Association v. Finch*, 307 F. Supp. 858 (D.Del.1970); *National Motor Freight Traffic Association, Inc. v. United States*, 268 F. Supp. 90 (D.D.C.1967) (three judge court), aff'd per curiam, 393 U.S. 18, 89 S. Ct. 49, 21 L. Ed. 2d 19 (1968); *Seaboard World Airlines, Inc. v. Gronouski*, 230 F. Supp. 44 (D.D.C.1964); *Graham v. Lawrimore*, 185 F. Supp. 761 (E.D.S.C.1960), aff'd 287 F.2d 207 (4th Cir.1961).

The deduction imposed by the Secretary is **void**.

In the 1970 supplement to his Administrative Law Treatise, Professor Kenneth Culp Davis stated emphatically: "Rule-Making Procedure Is One Of The Greatest Inventions of Modern Government." (K. Davis, Administrative Law Treatise § 6.15 (Supp.1970)). **This is true only where the rule-making process is observed, so that the administrator allows those who are interested in or will be affected by his action to make their comments before he makes his decision.**

6. Since the Rule is void and a nullity, the question posed to the Commission on qualifications of SSF, Havens (and others) in FCC 15M-14 (the "Sippel Order") under the Rule is void and a nullity, and must be vacated.

This is clear for reasons given above.

7. While vacating the Rule is required, in addition, doing so will mitigate unlawful, grave and increasing adverse affects upon SSF, its licenses and public interest uses of the licenses in support of federal agencies, and to docket 11-71 including to ALJ Sippel, the Commission, and all parties to the proceeding.

This is clear for reasons given herein, and including in the dockets and matters described herein pending before the FCC.

8. While vacating the Rule and the Sippel Order question is required, doing so is needed to prevent serious chilling and frustration of the purpose of Congress in allowing parties with standing to challenge a license application under 47 U.S.C. §309(d)

Congress established and the DC Circuit Court explained Section 309(d) to help advance the public interest sole ultimate purpose of FCC licensing. This is reflected in *United Church of Christ v. FCC*, 359 F.2d 994 (1996) (emphasis added):

It is important to remember that the cases allowing standing to those falling within either of the two established categories have emphasized that standing is accorded to persons not for the protection of their private interest but only **to vindicate the public interest.**

"The Communications Act of 1934 did not create new private rights. The purpose of the Act was to protect the public interest in communications. By § 402(b) (2), Congress gave the right of appeal to persons 'aggrieved or whose interests are adversely affected' by Commission action. * * * **But these private litigants have standing only as representatives of the public interest.** *Federal Communications Commission v. Sanders Radio Station*, 309 U.S. 470, 477, 642, 60 S. Ct. 693, 698, 84 L. Ed. 869, 1037." *Associated Industries of New York State, Inc. v. Ickes*, 134 F.2d 694, 703 (2d Cir. 1943), vacated as moot, 320 U.S. 707, 64 S. Ct. 74, 88 L. Ed. 414 (1943), quoting *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 14, 62 S. Ct. 875, 86 L. Ed. 1229 (1942).

The theory that the Commission can always effectively represent the listener interests in a renewal proceeding without the aid and participation of ... **representatives fulfilling the role of private attorneys general** is one of those assumptions we collectively try to work with so long as they are reasonably adequate. When it becomes clear, as it does to us now, that it is no longer a valid assumption which stands up under the realities of actual experience, neither we nor the Commission can continue to rely on it. The gradual expansion and evolution of concepts of standing in administrative law attests that experience rather than logic or fixed rules has been accepted as the guide.

.... By process of elimination **those ... willing to shoulder the burdensome and costly processes ...in a Commission proceeding are likely to be the only ones "having a sufficient interest" to challenge** a renewal application. The late Edmond Cahn addressed himself to this problem in its broadest aspects when he said, "Some consumers need bread; others need Shakespeare; others need their rightful place in the national society -- **what they all need is processors of law who will consider the people's needs more significant than administrative convenience.**" *Law in the Consumer Perspective*, 112 U.Pa.L.Rev. 1, 13 (1963).

This needed public-interest purpose of Congress in providing rights and a process to petition against license applications under 47 USC §309(d) (and thus, to seek reconsideration under §405 as well, when a §309(d) petition is denied) has practical effect by formal hearings commenced by the Commission if it grants a §309(d) petition (as explained in §309(d) referring a hearing described in §309(e)).

This is all under direct and serious attack by the Rule §1.251(f)(3), especially as applied in the Sippel Order (see above), since it means that, as in this case, the petitioner in the public interest can end up with its own licenses put at risk by a FCC judge that uses this *ultra vires* Rule not to control the hearing (which is its purpose, show herein), but to attack the successful petitioner and prosecutor in the public interest and under the goals of the Commission's HDO at issue.

The instant SSF case of abuse under this Rule is extreme and should be outlined: (1) SSF successfully petitioned in the public interest under §309(d), along with Havens (and others): see the Commission's HDO and OSC, FCC 11-64, that commenced proceeding 11-71 in which the Sippel Order was issued. (2) Then, SSF and Havens (among others) voluntarily took up the prosecution of that case for the Commission for years at their own expense. (3) Then, in a later stage of the proceeding they succeed in the prosecution, achieving FCC recovery of AMTS spectrum nationwide by MCLM finally admitting that its 3-plus motions for summary decision were bogus, since its stations were automatically terminated up to years before by abandonment that MCLM kept hidden). (4) SSF is a nonprofit public-interest FCC licensee and entity to begin with, which places it directly in accord with Congress's and the FCC's purpose of the above noted petitioning and prosecution rule. (5) SSF did not even take part in the prosecution stage that involved the summary decision motion the Judge found in violation of the Rule §1.251(f)(3). (6) And, while punishing SSF for its proper roles in the public interest outlined above, *by improper changes to (see section 1 above) and misuse of this Rule, §1251(f)(3), Judge Sippel*

*took no action of any kind against MCLM for its brazen violation of the Rule, §1251(f)(3) by its three (or more) summary decision motions seeking to keep its nationwide collection of AMTS site-based licensed stations that it admitted, after these motions were filed and failed (only by the resistance of the SSF Affiliates), it abandoned and which thus had automatically terminated for up to years in the past (which alleged abandonment was, per MCLM, with consent of its so-called “innocent creditors”).*¹¹

There is little that can be conceived that can trump this case, summarized above, that is more unlawful, arbitrary and capricious, and inequitable both as to protected private interests of due process and property under the Fifth Amendment, and as to the public interest that is the sole basis of the Communication Act.

¹¹ For reasons outlined above, and reasons shown in the pending SSF interlocutory appeal of the Sippel Order including the permitted supplemental pleadings (which also refer to the pending petition for reconsideration of the Sippel Order presented to Judge Sippel by Havens, and others), these actions by the Judge are not supportive of qualification to remain in the case under rule § 1.245 (a) or (b).

9. Conclusion

For the reasons given, this petition for expedited declaratory relief should be promptly granted.

Respectfully submitted,

Skybridge Spectrum Foundation, by

/ s /

Warren Havens,
President, and Director and Member¹²

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(510) 848 7797, 914 0910

Respectfully submitted,

/ s /

Warren Havens,
As an individual
(Same contact information as above.)

April 5, 2016

¹² SSF plans to seek permission of the bankruptcy court to employ FCC-practice legal counsel including to pursue this Petition, if needed, along with action before the court to compel Susan Uecker, Receiver and her agent or co-controller Arnold Leong, to turn over to SSF its cash and other property under bankruptcy law. (While SSF is in chapter 11 bankruptcy, prior thereto, SSF became subject to a state-court receivership under Receiver Uecker procured and controlled by Mr. Leong. See the SSF petition challenging the Receiver's transfer of control application File No. 0007061847 and the opposition for the Receiver by Leong.)

Declaration of Warren Havens,
the President, Director and Member of SSF

For Skybridge Spectrum Foundation, I, Warren Havens, hereby declare, under penalty of perjury, that the foregoing filing, including the appended materials, was prepared pursuant to my direction and control and that all the factual statements and representations of which I have direct knowledge contained herein are true and correct.

This Declaration was on executed April 5, 2016.

/ s /

Warren Havens

Appendix 1

Regarding SSF's nonprofit purposes and legal restrictions, and violation thereof by the receivership, contrary to the public interest underlying the subject FCC licenses

Skybridge Spectrum Foundation: Tax-exempt Entity Purposes, Public Stakeholders and Legal Restrictions

1. The nonprofit POF purpose of SSF and its public stakeholders, and the legal restrictions imposed on SSF by I.R.C. law is noted above. This is first contained in the SSF Articles of Incorporation filed with the State of Delaware on December 27, 2006 (the "Articles"), reflecting the principal I.R.C. requirement (emphasis added):

3.1. The Corporation is organized exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The Corporation's purposes include, without limitation, providing programs, education, and research that promote public safety, environmental protection, and the preservation and sound use of scarce public resources. The Corporation may, as permitted by law, engage in any and all activities in furtherance of, related to, or incidental to these purposes which may lawfully be carried on by a corporation formed under the laws of Delaware and which are not inconsistent with the Corporation's qualification as an organization described in Section 501(c)(3) of the Internal Revenue Code.

....

3.3. It is the intention of the Corporation to be exempt from income taxes as an organization described in Section 501(c)(3) of the Internal Revenue Code. Accordingly, notwithstanding any other provision of this Certificate of Incorporation:

A. The Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code;

B. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation;

C. In the event of the liquidation, dissolution or winding up of the Corporation (whether voluntary, involuntary or by operation of law), the Corporation's property or assets shall not be conveyed or distributed to any trustee, officer, employee or member of a committee of, or person connected with, the

Corporation, or any other private individual, nor to any organization created or operated for profit; but, after deducting all necessary expenses of liquidation, dissolution or winding up, as the case may be, all the remaining property and assets of the Corporation shall be distributed in furtherance of the corporate purposes of the Corporation to one or more organizations as shall then qualify under Section 501(c)(3) of the Internal Revenue Code, or to the federal government, or a state or local government, for a public purpose, in each case as the Board of Trustees of the Corporation shall determine; and

2. The Bylaws of SSF, and the SSF granted application for IRS recognition of tax exemption under I.R.C. §501(c)(3) based upon the SSF Articles and Bylaws, provide the same restrictions stated above from the SSF Articles of Incorporation and contain further purpose definition and restrictions: From the Bylaws:

ARTICLE 2

Statement of Purposes

The corporation is organized solely for charitable, scientific, and educational purposes including, but not limited to, providing advanced technical and social research and development, public-infrastructure deployments, related education and other programs that promote public safety, environmental protection, and the preservation and sound use of scarce public resources, and that lessen the charitable public-purpose burdens of government, including, but not limited to, by obtaining and using nationwide radio frequency "spectrum" licensed or authorized by the Federal Communications Commission, the National Telecommunications Information Agency and other Federal agencies, and, based on said spectrum, developing and deploying critical forms of free or at-cost public-interest wireless systems and services. This includes research, development, and deployment of wireless systems and services nationwide for "Intelligent Transportation Systems" and natural-environment monitoring and protection systems, in response to calls for nonprofits organizations to do so by, and to further the goals and programs of, Federal, State, and local government agencies in the United States of America.

In sum, there is a critical shortfall of advanced public-interest wireless systems in the United States for the purposes just described: they are not pursued or economically feasible by commercial wireless operators, and are insufficiently pursued by government agencies themselves, resulting in a critical need for private nonprofit organizations to engage in the programs described above, as recognized by said agencies. While for several decades widely discussed by said agencies as important goals, and modestly deployed to date, there are not yet any major regional or nationwide Intelligent Transportation Systems and environmental monitoring systems in the United States, each of which depend on advanced, secure wireless systems dedicated to these critical public purposes. Many of the techniques involved are only recently becoming feasible and reside mostly in the private sector, and the social consciousness and demands needed for

wide-scale acceptance are now compelling. The corporation was formed to diligently pursue these goals and deployments, and meet or contribute to meeting this shortfall, over the long term in cooperation with and support of said agencies.

The corporation may, as permitted by law, engage in any and all activities in furtherance of, related to, or incidental to these purposes which may lawfully be carried on by a corporation formed under the laws of Delaware and which are not inconsistent with the corporation's qualification as an organization described in Section 501(c)(3) of the Internal Revenue Code or corresponding section of any future tax code.

The above requirements and restrictions are imposed under IRS law, and State law.

The receivership over SSF, however, was procured and is maintained by and solely for the private benefit of Arnold Leong, a private individual, and that is unlawful under these requirements and restrictions.

Mr. Leong is described elsewhere herein including Exhibit C.

As explained above, the receivership resulted from the Sippel Order which is based in the Rule, § 1.251(f)(3), and the *ultra vires* changes made to the Rule by Judge Sippel as he applied it, and applying it to SSF which *had no participation in* the motion for summary decision filed by an attorney for other entities.

///

Exhibit A

The rule §1.251 as proposed (without Rule §1.251(f)(3)), and as finalized when the Rule §1.251(f)(3) was added: a side-by-side chart, followed by the *NPRM* and *R&O*

Immediately below is the chart. The *NPRM* and the *R&O* are attached below.

NPRM, FCC 71-105, 27 F.C.C.2d 426, Feb. 1971.

R&O, FCC 72-310, 34 F.C.C.2d 485, April 1972.

3. Section 1.251 is added to read as follows:

4. Section 1.251 is added to read as follows:

"B 1.251 Summary decision.

§ 1.251 Summary decision.

"(a) Any party to an adjudicatory proceeding may move, with or without supporting affidavits, for a summary decision in his favor upon all or any of the issues set for hearing. The motion for summary decision shall be filed at least 20 days prior to commencement of the hearing.

(a) Any party to an adjudicatory proceeding may move for summary decision of all or any of the issues set for hearing. The motion shall be filed at least 20 days prior to the date set for commencement of the hearing. The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.

Within 14 days after the motion is filed, any other party may file opposing affidavits or countermove for summary decision. The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law.

(b) Within 14 days after a motion for summary decision is filed, any other party to the proceeding may file an opposition or a countermotion for summary decision. A party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine issue of material fact for determination at the hearing, that he cannot, for good cause, present by affidavit or otherwise facts essential to justify his opposition, or that summary decision is otherwise inappropriate.

"(b) The presiding officer may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise, admissions, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

"(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

"(d) When a motion for summary decision is made and supported, as provided in this section, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or as otherwise provided in this section, that there is a genuine issue of fact for determination at the hearing. However, if it appears from the affidavits of a party opposing the motion for summary decision that he cannot, for good cause shown, present by affidavit facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or may make such other order as is just."

(d) The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the proof, and to the need for cross examination, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision. If it appears from the affidavits of a party opposing the motion that he cannot, for good cause shown, present by affidavit or otherwise facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or make such other order as is just.

(e) If all the issues (or a dispositive issue) are determined on a motion for summary decision, no hearing will be held. The presiding officer will issue a Summary Decision, which is subject to appeal or review in the same manner as an Initial

Decision. See §§ 1.271-1.282. If some of the issues only (including no dispositive issue) are decided on a motion for summary decision, or if the motion is denied, the presiding officer will issue a Memorandum Opinion and Order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeal from interlocutory rulings is governed by § 1.301.

[There was no subsection **‘(f)’** (including ‘(f)(3)’ or anything like it in the NPRM or the proposed rule in the NRPM.]

(f) 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.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, he will certify the matter to the Commission, with his findings and recommendations, for consideration under § 1.24.

(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.

In the Matter of SUMMARY DECISION PROCEDURES

Docket No. 19141

RELEASE-NUMBER: FCC 71-105

FEDERAL COMMUNICATIONS COMMISSION

27 F.C.C.2d 426; 1971 FCC LEXIS 2244

February 4, 1971 Released; Adopted February 3, 1971

CORE TERMS: reconsideration, presiding officer, discovery, genuine issue, party opposing, same manner, countermotion, evidentiary, requesting, reply, competent to testify, personal knowledge, material fact, revoked, interlocutory, affirmatively, designating, designation, recommended, continuance, entertained, admissible, officially, designated, simplify, expedite, revised, noticed, affiant

ACTION:

NOTICE OF PROPOSED RULEMAKING

JUDGES: BY THE COMMISSION

OPINION:

¶4261 1. Summary decision procedures. Notice is hereby given that the Commission is considering the adoption of new procedures providing for the summary decision of adjudicatory hearing cases. The proposed rule is very much like a model rule adopted (as Recommendation 20) at the Fourth Plenary Session of the Administrative Conference of the United States, held June 2 and 3, 1970. n1 Similar procedures have been used with much success in the Federal District Courts since 1938.

2. The purpose of summary decision procedures is to simplify and expedite the conduct of hearing proceedings by resolving some or all of the issues, without a formal hearing, on the basis of evidentiary materials obtained after the case is designated for hearing. Such materials include affidavits submitted with a motion for summary decision (or with an opposition or countermotion), materials obtained by discovery or otherwise, admissions, and matters officially noticed. Affidavits shall be made on personal knowledge, shall set forth facts admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Summary decision is granted if such materials, with the pleadings, show as to any or all of the issues that there is "no genuine issue as to any material fact and that a party is entitled to summary decision." Before issuing his ruling on the motion the presiding officer may set the matter for argument and may call for the submission of proposed findings of fact, conclusions of law, briefs, or memoranda of law. If all of the issues are determined on a motion for summary decision, no hearing is held; the presiding officer issues his decision, which is subject to appeal or review in the same manner as an initial decision. If some (but not all) of the issues are determined on a motion for summary decision, or if the motion is denied, the presiding officer will issue a Memorandum Opinion and Order, interlocutory in character, and the hearing will proceed on the remaining issues. The appeal of such orders is governed by Section 1.301 of the Rules of Practice and Procedure. In some ¶4271 instances, it should be noted, the

disposition of one issue on a motion for summary decision may dispose of the case as a whole, as where it is found that the applicant is not financially qualified. The use of summary decision procedures can expedite and simplify hearing proceedings, save the parties considerable expense and inconvenience, and permit those concerned to concentrate on those matters (if any) upon which a full hearing is required.

3. Section 1.251 provides that a motion for summary decision may be filed at least 20 days before the date set for hearing. Normally, but not necessarily, the motion would be filed after discovery and prehearing procedures, whereby the parties have obtained materials and information used in support of the motion. In requiring that the motion be filed at least 20 days prior to hearing, our purpose is to avoid the undue disruption of arrangements made for the attendance of parties and witnesses at the hearing which would result from submission of a "last-minute" motion.

4. Within 14 days after a motion for summary decision is filed, any other party may file an opposition or a countermotion for summary decision. The opposition or countermotion must be supported by affidavit or by other evidentiary materials, in the same manner as the motion, and shall not rely upon mere allegations or denials. An opposition may show that there is a genuine issue of fact for determination at the hearing. In the alternative, however, a party opposing summary decision may show, in the same manner, that he is unable, within the 14 days or without further proceedings, to make the required showing; and in such circumstances the presiding officer may "deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or make such other order as is just."

5. Collateral provisions. If summary decision procedures are adopted, they will replace present procedures providing for reconsideration and grant without hearing. Under such procedures (now set out in § 1.111 of the Rules), an applicant may petition for reconsideration of an order designating his application for hearing and ask that the application be granted without further proceedings. Under the proposed procedures, he would instead move for summary decision. The motion would be acted on by the presiding officer, who could take into consideration evidentiary materials other than affidavits and is generally better able than the Commission to cope with voluminous factual materials which may be adduced in support or in opposition to such a motion. n2 This change would involve the revocation of § 1.111 and the amendment of § 1.106(a), which deals generally with petitions for reconsideration. Provision for reconsideration of a designation order would be retained (in § 1.106(a)) insofar as the petition for reconsideration related to an adverse ruling with respect to petitioner's participation in the hearing. Other provisions of § 1.106(a) have been re-written in the interest of clarity and accuracy. Section 1.267(a), as set forth in the Appendix, merely contains a cross-reference to the proposed summary decision procedures.

n2 However, comments are requested as to whether petitions for reconsideration of a designation order should be allowed where matters of basic policy are presented.

[*428] 6. Authority for adoption of the rules set forth in the attached Appendix is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

7. Pursuant to procedures set forth in Section 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments in this proceeding on or before March 16, 1971, and reply comments on or before March 26, 1971. All relevant and timely comments and reply comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into account other relevant information before it in addition to the specific comments invited by this Notice. In particular, we would note that members of the Commission's Procedure Review Committee will be pleased to discuss summary decision procedures with any interested person. In accordance with Section 1.419 of the Rules and Regulations, 47 CFR 1.419, an original and 14 copies of all comments and reply comments shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION, BEN F. WAPLE, Secretary.

APPENDIX:

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The headnote of § 1.106 and the text of § 1.106(a) are revised to read as follows:

"§ 1.106 Petitions for reconsideration.

"(a) Petitions requesting reconsideration of a final Commission action will be acted on by the Commission. Petitions requesting reconsideration of a final decision of the Review Board will be acted on by the Board or certified to the Commission (see § 0.361 (b) and (c) of this chapter). Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained.

* * *

§ 1.111 [Revoked]

2. Section 1.111 is revoked.

3. Section 1.251 is added to read as follows:

"§ 1.251 Summary decision.

"(a) Any party to an adjudicatory proceeding may move, with or without supporting affidavits, for a summary decision in his favor upon all or any of the issues set for hearing. The motion for summary decision shall be filed at least 20 days prior to commencement of the hearing. Within 14 days after the motion is filed, any other party may file opposing affidavits or countermove for summary decision. The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law.

"(b) The presiding officer may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise, admissions, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

"(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

"(d) When a motion for summary decision is made and supported, as provided in this section, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or as otherwise provided in this section, that there is a genuine issue of fact for determination at the hearing. However, if it appears from the affidavits of a party opposing the motion for summary decision that he cannot, for good cause shown, present by affidavit facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or may make such other order as is just."

4. Section 1.267(a) is revised to read as follows:

"§ 1.267 Initial and recommended decision.

"(a) Except as provided in §§ 1.251 and 1.274, the presiding officer shall prepare an initial (or recommended) decision, which shall be transmitted to the Secretary of the Commission. The Secretary will make the decision public immediately and file it in the docket of the case.

The R&O with the final rule, in which the “Rule” 1.251(f)(3) was added.

In the Matter of SUMMARY DECISION PROCEDURES

Docket No. 19141

RELEASE-NUMBER: FCC 72-310

FEDERAL COMMUNICATIONS COMMISSION

34 F.C.C.2d 485; 1972 FCC LEXIS 1868; 24 Rad. Reg. 2d (P & F) 1715

April 12, 1972 Released; Adopted April 5, 1972

CORE TERMS: presiding officer, discovery, prehearing, reconsideration, commencement, completion, designation, genuine issue, proposed rule, material fact, dispositive, summary judgment, continuance, designated, certify, party opposing, full authority, moving party, appropriately, designating, officially, noticed, genuine issue of material fact, evidentiary hearing, personal knowledge, subject to appeal, undisputed facts, good cause shown, facts essential, grant a motion

ACTION:

REPORT AND ORDER

JUDGES: BY THE COMMISSION: CHAIRMAN BURCH CONCURRING AND ISSUING A STATEMENT IN WHICH COMMISSIONER WILEY JOINS; COMMISSIONER ROBERT E. LEE ABSENT.

OPINION:

[*485] 1. A notice of rule making in this proceeding, proposing the adoption of procedures for the summary decision of adjudicatory hearing cases, was released on February 4, 1971 (FCC 71-105, 36 F.R. 2799). The proposed rule read as follows:

§ 1.251 Summary decision.

(a) Any party to an adjudicatory proceeding may move, with or without supporting affidavits, for a summary decision in his favor upon all or any of the issues set for hearing. The motion for summary decision shall be filed at least 20 days prior to commencement of the hearing. Within 14 days after the motion is filed, any other party may file opposing affidavits or countermove for summary decision. The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law.

(b) The presiding officer may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise, admissions, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) When a motion for summary decision is made and supported, as provided in this section, a party

opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or as otherwise provided in this section, that there is a genuine issue of fact for determination at the hearing. However, if it appears from the affidavits of a party opposing the motion for summary decision that he cannot, for good cause shown, present by affidavit facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance [1486] to permit affidavits to be obtained or discovery to be had, or may make such other order as is just.

2. Comments on the proposal were filed by the following organizations:

(1) The Committee for Review of Commission Procedures of the Federal Communications Bar Association (FCBA Committee). n1

n1 The views of the FCBA Committee are its own and not necessarily those of the FCBA or of its Executive Committee.

(2) The Administrative Law Section of the American Bar Association (ABA).

(3) The GTE Service Corporation (GTE).

GTE also filed reply comments. All participants in the proceeding favor the adoption of summary decision procedures. Each suggests that the proposed rule be modified in a number of respects or that the precise meaning of its provisions be clarified. The final rules, whose provisions vary in content and arrangement from those proposed, are set out in the attached Appendix. Suggestions made in the comments and changes in the proposed rule are discussed below.

3. Standard for grant or denial of a motion for summary decision. Each of the participants asks for clarification of the following standard for grant or denial of a motion of summary decisions, set out as paragraph (b) of the proposed rule:

(b) The presiding officer may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. Comment is in particular directed to the concluding passage, "and that a party is entitled to summary decision." The FCBA Committee asks that the Commission state the intended meaning and scope of that passage. The ABA suggests that the provision be deleted or that it be re-written to make its meaning clear. GTE, on the other hand, stresses the importance of the provision, as indicating that "the presiding officer has the necessary discretion to deny a motion for summary decision notwithstanding superficial satisfaction of the literal requirement that there be 'no genuine issue as to any material fact,'" and urges that this be made clear by the Commission, both in this narrative statement and by modification of the rule.

4. The standard set forth in the proposed rule is the same as that set out as Section 2 of Administrative Conference Recommendation No. 20 and closely parallels the third sentence of Rule 56(c) of the Federal Rules of Civil Procedure, which reads as follows:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (*Italics supplied.*)

[1487] On its fact, the meaning of the underlined passage is unambiguous: If the motion is to be granted, the moving party must, of course, show that the facts as established entitle him to judgment as a matter of law. As a matter of practice, however, the passage has been given additional significance. Thus, though Rule 56(c) provides that where the required showing is made, "the judgment sought shall be rendered forthwith," Federal judges have exercised broad discretion in denying a motion for summary judgment where the required showing was made but application of the rule was considered inappropriate due to the nature of the case or of circumstances surrounding the request.

5. The standard for action on a motion for summary decision proposed herein is essentially the same as the standard prescribed by Rule 56(c), as construed by the courts. Differences in wording follow from the

fact that the Commission renders "decisions" rather than "judgments" and that its decisions reflect policies of its own making as well as statutory and case law. We wish to make it clear, as GTE requests, that the presiding officer has broad authority to go forward with a hearing, regardless of the showing made, if the nature of the proceeding and of circumstances surrounding the request persuade him that a hearing is desirable. We have, accordingly, modified the standard for grant or denial of a motion for summary decision. The final provision (set out in § 1.251(d)) reads as follows:

The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the proof, and to the need for cross-examination, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision.

We would note that this provision does not provide for "judgment forthwith" but rather that the presiding officer "may grant" the motion. Further, reference to "a party" rather than "the moving party" leaves open the possibility, however remote, that the facts established may show that a party other than the moving party is entitled to summary decision.

6. To elucidate further, we quote and endorse the following passage from Professor Gellhorn's study, "Summary Judgment in Agency Adjudication," n2 at page 30:

n2 Ernest Gellhorn, "Summary Judgment in Agency Adjudication," April 1, 1970, a report for the Committee on Agency Organization and Procedure of the Administrative Conference of the United States. Professor Gellhorn's study has been considered by the Commission in this proceeding, and we believe it will be useful to practitioners and members of the staff many of whom have had no previous experience with summary decision procedures. The study has been printed in "Recommendations and Reports of the Administrative Conference of the United States." Vol. 1, at p. 543. Copies of the study will soon be available from the FCC's Information Officer. See also, Gellhorn and Robinson, "Summary Judgment in Administrative Adjudication," 84 Harv. L. Rev. 612, January 1971.

The function of [a] summary decision rule, in its broadest application, is to avoid a useless hearing. It promotes decisions on the merits without a trial where no genuine issue of material fact exists. More narrowly, it is designed to operate as a pretrial determination of what material facts do exist without substantial controversy and what material facts are actually and in [*488] good faith controverted. The party moving for summary decision has the burden of establishing through a written record that no triable issue exists; and he has this burden even with respect to issues upon which the opposing party would have the burden at the hearing. The moving party's papers should be carefully scrutinized, while the opposing party's papers, if any, should be treated with considerable indulgence. In determining whether to grant the motion, the presiding officer should give due weight to the need for cross-examination (which is unavailable to test affidavit evidence), to the general desirability of demeanor testimony, to the opposing party's access to proof, and to the desirability of full exploration at an evidentiary hearing. [Citation omitted.] Professor Gellhorn further notes that courts will deny a motion for summary judgment, even though the request is technically within the rule's coverage, where, for example, the evidence is exclusively within the moving party's domain (Study, at p. 4) or where the litigation is complex (ibid., at pp. 4, 12). In the latter respect, we would note that some of the issues in a complex proceeding may be appropriate for summary decision, though the case as a whole is not. Courts also will deny a motion for summary decision where the disputed issue involves the evaluation of conceded facts in terms of legal or policy consequences (Study, at pp. 5-6, 12). n3 Professor Gellhorn also notes that a motion for summary decision should not in fairness be used against parties who appear without counsel (Study, at p. 11). We would temper this observation by noting that parties normally appear without counsel in only the simplest of cases, in which they have personal knowledge of all matters of fact, and that in such cases, the capability of a party to understand and respond to a motion for summary decision may, in fairness, be left to the discretion of the presiding officer. In Commission practice, finally, summary decision may well be useful, though the hearing is expected to consume little time (see Study, contra, at p. 11), since extensive travel by principals, witnesses and attorneys to the place of hearing could thus be avoided, and delay attributable to problems in scheduling hearings would be eliminated.

n3 Assuming that the basic facts are conceded (A did X to B, for example), expert or character testimony may still be appropriate to determine whether A was acting in accordance with accepted industry or community practices, was acting in good faith, or for base or worthy motives. In such circumstances, summary decision of the basic facts would be appropriate, but a hearing on the inferences to be drawn from them or as to the ultimate findings of fact would also be appropriate.

7. Time for filing motion. The proposed rule (§ 1.251(a)) provided that the motion for summary decision must be filed at least 20 days prior to commencement of the hearing and that an opposition or countermotion must be filed within 14 days after the motion is filed. n4 The FCBA Committee and the ABA state that inadequate time is allowed under the rules for the preparation of affidavits and the discovery of materials which would be submitted in support of a motion for summary decision. The FCBA Committee suggests that the time restrictions be relaxed. The ABA suggests that the presiding officer be given discretion as to the time for filing the motion.

n4 Similar provisions appear in the final rule at § 1.251 (a) and (b).

[*489] 8. We note initially that the time of the first prehearing conference and of the first hearing session are set by the Chief Hearing Examiner in an order issued shortly after a proceeding is designated for hearing. The prehearing conference will hereafter be scheduled approximately four weeks after designation, with the hearing to commence six weeks after the conference. The total period (70 days) allows ample time in many cases to prepare for the hearing. This scheduling would also provide ample time (50 days) in many cases for preparation of a motion for summary decision. It is appreciated, on the other hand, that the time allowed would be inadequate in some cases, particularly those involving extensive and contested use of the discovery procedures.

9. The solution of the timing problem, however, does not call for allowing a motion for summary decision to be filed less than 20 days prior to the hearing, but for adjustment of the hearing date to provide an adequate period prior to hearing for completion of collateral procedures (e.g., discovery) and submission of a motion for summary decision. As indicated in the Notice of Proposed Rule Making, our purpose in requiring the motion to be filed at least 20 days prior to hearing is, "to avoid undue disruption of arrangements made for the attendance of parties and witnesses at the hearing which would result from submission of a 'last-minute' motion." (Notice, at para. 3). If prehearing proceedings are conducted in the orderly manner intended, there is no need to sacrifice this provision.

10. The presiding officer has full authority to alter the dates initially set for the prehearing conference and the hearing. It may often turn out that the initial prehearing conference specified in the Chief Hearing Examiner's order is the "preliminary" conference, and that further conferences and a change in the hearing date will be required in order to accommodate the needs of time for discovery and for the filing of a motion for summary decision. Discovery procedures, properly utilized, are completed prior to the prehearing conference, so that counsel attending the conference, having at their disposal the facts obtained through discovery, can with confidence enter into stipulations, work toward simplification of the issues, exchange exhibits, and list witnesses to be called. Where it appears that extensive use will be made of discovery, it is appropriate for the presiding officer to call, or for counsel to request, a preliminary conference in which counsel outline their plans for discovery and the presiding officer formulates a schedule for its completion and sets a date, following completion of discovery, for the prehearing conference. n5 Subsequent adjustment of the schedule is appropriate as the need appears. The motion for summary decision is most appropriately filed after the conference and at least 20 days prior to hearing. Counsel intending to file such a motion can appropriately make their intention known and can ask that the date set for hearing be adjusted to allow adequate time for preparation of the motion. We [*490] note in this respect that the presiding officer can elect to proceed with the hearing rather than grant a motion for summary decision, that he may properly indicate in advance his disinclination to grant such a motion, and that a request for delay of the hearing may appropriately be denied in such circumstances. If a motion for summary decision is filed, the presiding officer has full authority to extend the time for filing an opposition or countermotion and should, of course, defer the hearing pending his action on the motion. In short, because the presiding officer has full authority to set the date of the conference and the hearing, there is no need by rule to relax the time restrictions for submission of a motion for summary decision. To confirm and emphasize the presiding officer's broad

authority in such matters and to provide guidance concerning the proper conduct of the proceeding prior to hearing, we are adopting two new provisions. Section 1.251(f) deals with the presiding officer's full authority to control the use and prevent abuse of the summary decision procedures, and sets out specific procedures for invoking sanctions in the event of such abuse. Section 1.248(b)(2) provides that a reasonable period prior to commencement of the hearing shall be allowed for the orderly completion of all prehearing procedures, including discovery, and for the submission and disposition of all prehearing motions. It provides further, as appropriate, for a preliminary prehearing conference, to formulate a schedule for the completion of prehearing procedures and to set a date for commencement of the hearing.

n5 We do not mean to suggest that any greater or lesser use should be made of the discovery procedures than at present, but only that when, in the judgment of the presiding officer, the use of discovery will contribute to the proper conduct of the proceeding, an adequate period (usually prior to the prehearing conference) should be allowed for its completion. Moreover, we would again stress, as we did upon adoption of the discovery rules, that, "When the discovery procedures are invoked, parties and counsel are expected to direct themselves with energy to their successful completion and to take extraordinary measures, if necessary, to avoid undue delay in commencement of the hearing." (11 FCC 2d 185, 192)

11. The FCBA Committee suggests that a motion for summary decision should be allowed after commencement of the hearing, for good cause shown, and subject to the presiding officer's refusal to entertain the motion. It suggests that such motions might appropriately be received during a continuance of the hearing or following the submission of evidence on a dispositive issue.

12. It is our judgment that the motion for summary decision should be filed once, prior to hearing, and not otherwise, and that the possibility of repeated motions as the hearing progresses, during continuances or otherwise, should be precluded. The possibility of avoiding unnecessary hearing sessions in a few cases is outweighed by the potential for delay in many cases attending the submission and consideration of repeated motions for summary decision. Nor do we think that the availability of such procedures should turn on the fortuitous circumstance of a continuance being ordered for other reasons at the precise stage of the hearing at which a motion is considered appropriate. The question as to whether the presiding officer should rule on a dispositive issue following submission of evidence on that issue, with further proceedings conditioned on that ruling, is properly resolved when the proceeding is designated for hearing, at which point the Commission will determine whether to order a separate hearing on the dispositive issue or a full hearing on all issues, and will phrase the issues accordingly. Where an evidentiary hearing has been held on a dispositive issue, moreover, it would appear that the presiding officer [491] should receive proposed findings and issue an initial (rather than a summary) decision. n6

n6 We do intend to consider, in a separate proceeding, procedures under which a party could move for decision at the close of any other party's case. However, such procedures would be substantially different from those governing a motion for summary decision.

13. Petition for reconsideration of an order designating a proceeding for hearing. In the Notice of Rule Making, we proposed to substitute summary decision procedures for current procedures (§ 1.111) under which an applicant may petition for reconsideration of an order designating his application for hearing and ask that the application be granted without further proceedings. The FCBA Committee supports this proposal generally but suggests that the right to petition for reconsideration be retained where "only a question of Commission policy is involved, and it is apparent that an evidentiary hearing is not required for determination of that particular policy question." There is some merit in this suggestion. The presiding officer does not make policy but rather implements policies made by the Commission. Nor is he authorized to terminate a hearing ordered by the Commission on the ground that it is not required by Commission policy. It is possible for the Commission to err as to policy in designating an application for hearing and for policy to change following designation in such a way as to obviate the need for hearing. A party should not, in such circumstances, be forced to go through a full evidentiary hearing before having an opportunity to raise the policy issue. Thus, procedures for presenting such questions to the Commission prior to hearing should be provided. However, we are not prepared to provide for reconsideration of any "question of policy." Access to the Commission prior to hearing should be limited to circumstances involving an apparent policy error or

change and should not, as the FCBA Committee suggests, encompass the presentation of arguments favoring a change in policy which would obviate the need for hearing.

The term "question of policy", moreover, is insufficiently definitive and would do little to limit the submission of petitions for reconsideration of designation orders. For these reasons, we have decided on an alternative procedure, set out in the Appendix in § 1.106(a)(2). This section provides that a party may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at designation or adopted since designation, and undisputed facts, a hearing should be held, and provides for certification of the policy question to the Commission upon a finding of substantial doubt. This procedure is available to any party to a case designated for hearing and is not limited to applicants seeking grant without hearing. While affording access to the Commission in a limited number of circumstances where a hearing may be wasteful, the procedure should limit access, as intended, to a small number of unusual cases.

14. Other suggestions. In accordance with suggestions made in the comments, we have, in § 1.251(e), specified the nature of the presiding officer's opinion and provisions for appeal of his ruling. If the presiding officer's ruling on a motion for summary decision terminates the proceeding, he will issue a Summary Decision, which is subject to appeal or review in the same manner as an Initial Decision. If the [*492] presiding officer denies the motion or disposes of less than all of the issues without terminating the proceeding, he will issue a Memorandum Opinion and Order, interlocutory in character, which is subject to appeal, with his consent, under § 1.301. It is also suggested that the Commission reserve the right to specify, in the designation order, that summary decision procedures shall not be utilized in a particular case. We are of the opinion that the Commission has the necessary authority to vary its procedures for a particular case, within statutory limits, with reasonable advance notice to the parties, and that a special provision in this respect as to the availability of summary decision procedures is unnecessary.

15. Editorial changes. Changes in the proposed rules other than those discussed above encompass minor changes in wording, rearrangement of provisions and addition of cross references, and do not appear to require comment or explanation.

16. Authority for adoption of the rules set forth in the attached Appendix is contained in Section 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j) and 303(r).

17. In view of the foregoing, IT IS ORDERED that Part 1, the Rules of Practice and Procedure, is amended as set forth in the Appendix hereto, and that this proceeding is terminated. The new procedures shall apply to cases designated for hearing on or after May 19, 1972.
FEDERAL COMMUNICATIONS COMMISSION, BEN F. WAPLE, Secretary.

CONCUR BY:

BURCH

CONCUR:

CONCURRING STATEMENT BY CHAIRMAN BURCH, IN WHICH COMMISSIONER WILEY JOINS

I concur in the action taken by the Commission and support the adoption of these new procedures, designed to expedite and improve our adjudicatory processes.

I would have gone somewhat further and permit, in the rules now adopted, the filing of a motion for a summary decision during the course of the hearing, in a form similar to a motion for a directed verdict in civil litigation. However, I note with approval that the Commission's Report herein indicates that it proposes to institute rulemaking proceedings for the adoption of such procedures in the future.

APPENDIX:

Part 1 of Chapter I of Title 47 of the Code of Federal Regulation is amended as follows:

1. In § 1.106 the headnote and paragraph (a) are revised to read as follows:

§ 1.106 Petitions for reconsideration.

(a)(1) Petitions requesting reconsideration of a final Commission action will be acted on by the Commission. Petitions requesting reconsideration of a final decision of the Review Board will be acted on by the Board or certified to the Commission (see § 0.361 (b) and (c) of this chapter). Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained.

(2) Within the period allowed for filing a petition for reconsideration, any party to the proceeding may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at the time of designation or adopted since designation, and undisputed facts, a hearing should be held. If the presiding officer finds that there is substantial doubt, on established policy and undisputed facts, that a hearing should be held, he will certify the policy question to the Commission with a statement to that effect. No appeal may be filed from an order denying such a request. See also, §§ 1.229 and 1.251.

§ 1.111 [Revoked]

2. Section 1.111 is revoked.

3. Section 1.248(b) is revised to read as follows:

§ 1.248 Prehearing conferences; hearing conferences.

(b)(1) The presiding officer (or the Commission or a panel of commissioners in a case over which it presides), on his own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to or during the course of a hearing, or to submit suggestions in writing, for the purpose of considering any of the matters set forth in paragraph (c) of this section.

(2) Except as circumstances otherwise require, the presiding officer shall allow a reasonable period prior to commencement of the hearing for the orderly completion of all prehearing procedures, including discovery, and for the submission and disposition of all prehearing motions. Where the circumstances so warrant, the presiding officer shall, promptly after the hearing is ordered, call a preliminary prehearing conference, to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to formulate a schedule for their completion, and to set a date for commencement of the hearing.

4. Section 1.251 is added to read as follows:

§ 1.251 Summary decision.

(a) Any party to an adjudicatory proceeding may move for summary decision of all or any of the issues set for hearing. The motion shall be filed at least 20 days prior to the date set for commencement of the hearing. The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.

(b) Within 14 days after a motion for summary decision is filed, any other party to the proceeding may file an opposition or a countermotion for summary decision. A party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine issue of material fact for determination at the hearing, that he cannot, for good cause, present by affidavit or otherwise facts essential to justify his opposition, or that summary decision is otherwise inappropriate.

(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the proof, and to the need for cross examination, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision. If it appears from the affidavits of a party opposing the motion that he cannot, for good cause shown, present by affidavit or otherwise facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or make such other order as is just.

(e) If all the issues (or a dispositive issue) are determined on a motion for summary decision, no hearing will be held. The presiding officer will issue a Summary Decision, which is subject to appeal or review in the same manner as an Initial Decision. See §§ 1.271-1.282. If some of the issues only (including no dispositive issue) are decided on a motion for summary decision, or if the motion is denied, the presiding officer will issue a Memorandum Opinion and Order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeal from interlocutory rulings is governed by § 1.301.

(f) 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.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, he will certify the matter to the Commission, with his findings and recommendations, for consideration under § 1.24.

(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.

5. Section 1.267(a) is revised to read as follows:

§ 1.267 Initial and recommended decision.

(a) Except as provided in §§ 1.251 and 1.274, or where the proceeding is terminated on motion (see § 1.302), the presiding officer shall prepare an initial (or recommended) decision, which shall be transmitted to the Secretary of the Commission. The Secretary will make the decision public immediately and file it in the docket of the case.

Exhibit B

Side-by-side chart showing that the APA rule section at issue, § 553, is materially identical now as compared to when it was when first enacted. The current version and PL 404 can be easily found online.

<p>Current: Administrative Procedures Act:</p> <p>§ 553. Rule making:</p> <p>(a) This section applies, according to the provisions thereof, except to the extent that there is involved –</p> <p>(1) a military or foreign affairs function of the United States; or</p> <p>(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.</p> <p>(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include –</p> <p>(1) a statement of the time, place, and nature of public rule making proceedings;</p> <p>(2) reference to the legal authority under which the rule is proposed; and</p> <p>(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except when notice or hearing is required by statute, this subsection does not apply -</p> <p>(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or</p> <p>(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.</p> <p>(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.</p> <p>* * * *</p> <p>(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.</p>	<p>79th Cong, Public Law 404, Administrative Procedures Act:</p> <p>Rule making</p> <p>SEC. 4. Except to the extent that there is involved</p> <p>(1) any military, naval, or foreign affairs function of the United States or</p> <p>(2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—</p> <p>(a) NOTICE.- General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include</p> <p>(1) a statement of the time, place, and nature of public rule making proceedings;</p> <p>(2) reference to the authority under which the rule is proposed; and</p> <p>(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply</p> <p>to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.</p> <p>(b) Procedures.— After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.</p> <p>* * *</p> <p>(d) Petitions. - Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.</p>
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Exhibit C

Examples of Receiver Susan Uecker's and of Arnold Leong's¹³ statements that the Sippel Order (defined above) is the cause of the receivership over SSF and a cause of the SSF bankruptcy.

But for the Sippel Order, SSF would not be subject to the Uecker-Leong receivership and the highly damaging ramifications caused to SSF, the public interest, and the integrity of FCC law and process.

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1. *Petition to Stay or Hold in Abeyance the Issuance of a Hearing Designation Order*, filed by Brian Weimer, FCC counsel to Susan L. Uecker, Receiver, on March 18, 2016, in Docket Nos. 11-71 and 13-85 (see e.g. the "petition's" text at sections 1 and 2);
 2. *Letter Request to Refund Application Fees Associated with Involuntary Transfer of Control of Assets and Entities Owned by Warren Havens to Court-Appointed Receiver*, filed by Brian Weimer, FCC Counsel to Susan L. Uecker, Receiver, on February 9, 2016, addressed to Marlene H. Dortch, Secretary of FCC, with attention to Office of Managing Director (see e.g. first two paragraphs of page 2).
 3. *Opposition to "Petition for Reconsideration, to Deny, and for Other Relief"*, filed by Stephen Coran, FCC counsel to Arnold Leong, on March 24, 2016, in Docket Nos. 11-71 and 13-85, and regarding File Nos. 0007061847 and 0007067613 (see e.g. second paragraph on pages 1 and 2, and footnotes 3 and 4).
 4. *Letter* dated May 20, 2015, and associated *Email* of May 20, 2015 and attachments, filed by Stephen Coran, FCC counsel to Arnold Leong, addressed to Roger Sherman, Chief WTB FCC and copied to Judge Sippel and other FCC staff, regarding, among other things, the Alameda County Superior Court case and Judge Sippel's Order, FCC 15M-14 (see e.g. paragraph 2 on page 1, and footnote 2, as well as the copies of attached court pleadings asserting FCC 15M-14 as basis for a receivership) (this Letter was attached as "Exhibit 4" to Skybridge's petition for reconsideration filed March 11, 2016, regarding File Nos. 0007061847 and 0007067613).
 5. *Emergency Motion of Receiver Susan L. Uecker for Relief from Stay and Excuse from Turnover to Allow Receiver to Renew Certain FCC Licenses*, filed by Eric D. Schwartz, et al.,

¹³ As indicated herein, and in other recent FCC filings by SSF (some noted herein), Arnold Leong is the person who obtained the state court the receivership; who selected Receiver Susan Uecker as receiver; and who, under provisions of the state-court issued Receivership Order (that Leong's counsel drafted) is in effective control of the receivership including its current defense in the SSF bankruptcy case. As SSF has elsewhere presented to the FCC and the subject state court, and will be further pursuing, Leong procured the receivership by use of false assertions that are also illegal, preempted and void under FCC law and exclusive jurisdiction, shown in compelling evidence including serial signed writings and admissions under oath by Leong, and evidence and admissions from third parties including legal counsel to Leong and his "partners" in several state court legal actions, and by other unlawful means including destruction and concealment of evidence and perjury.

attorneys for Susan Uecker, the Receiver in the SSF bankruptcy case, Case No. 16-10626 (CSS), In the United States Bankruptcy Court for the District of Delaware (see e.g. paragraph 14, on page 5)(a copy of this “Emergency Motion” was filed as “Exhibit A2” to SSF’s supplement to its MAS license renewal and extension applications, filed under lead Call Sign WQVT526).

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Certificate of Service

I, Warren Havens, certify that on this 5th day of April 2016, I caused to be served by placing into the USPS mail system with first- class postage affixed, unless otherwise noted, a copy of the foregoing filing, including any attachments and exhibits, to the following:¹⁴

Jonathan Sallet, Esq., General Counsel
Office of General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Linda Oliver, Esq., Associate General Counsel
Administrative Law Division
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Parties to the appeals of Order, FCC 15M-14:

Pamela Kane, Brian J. Carter, Michael Engel
Investigations and Hearing Division Enforcement Bureau
Federal Communications Commission
445 12th Street, SW – Room 4-C330
Washington, D.C. 20554

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

¹⁴ The below-listed persons, in addition to Administrative Law Judge Richard Sippel (the “ALJ”) and the FCC Enforcement Bureau, are counsel to parties in Docket No. 11-71.

Other parties in Docket 11-71: ¹⁵ ¹⁶

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Chevy Chase, MD 20815
Counsel for Pinnacle Wireless Corp.

/ s /

Warren Havens

¹⁵ The persons below, and those on the Statement of Mailing that follows, are not, as far as the undersigned understands, parties to the Sippel Order and appeals thereof (the Interlocutory appeal to the Commission by SSF and Havens, among others, and the petition for reconsideration to Judge Sippel by Havens, among others). SSF and Havens do not, by mailing these persons a copy of this petition, indicate or concede that these persons have standing to address the petition.

¹⁶ Others were parties in docket 11-71 at an earlier stage, but withdrew.

Statement of Mailing

On this 5th day of April 2016, I, Warren Havens, caused to be mailed by placing in the USPS mail system, with first- class postage affixed, unless otherwise noted, a copy of the foregoing filing, to the following:

David L. Hunt J.D., Inspector General
Federal Communications Commission
Office of Inspector General
445 12th Street, SW
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/ s /

Warren Havens