

Skybridge Spectrum Foundation
Warren Havens¹
Member, Director, President and Assignee

Friday April 29, 2016

To: Office of the Secretary
Federal Communications Commission

Attn: The Commission

Filed: Via electronic filing in the docket listed below.²

Re: Docket 11-71, FCC 15M-14 and pending Appeals

Skybridge Spectrum Foundation, as already explained to the FCC, filed for chapter 11 bankruptcy.³ The case is pending and Skybridge Spectrum Foundation is the debtor in possession (herein, “SSF”) with attendant authority including to submit applications and requests to the FCC, as it does herein.⁴

This letter addresses an aspect of interlocutory Order FCC 15M-14 of Judge Sippel (the “Sippel Order”). The Sippel Order (1) removed entities from the proceeding (only three of which were active parties) (the “Removal”) and (2) referred a question on “qualification” to the Commission for its consideration (the “Referral”).

For one clear procedural reason already in the SSF pending appeals of the Sippel Order, SSF submits and requests that the Commission immediately rule that SSF is not subject to the Removal or the Referral.

A Supplement to Interlocutory Appeals of the Sippel Order was filed on 9-11-2015 (the “Supplement”), under written advance approval by the Office of General Counsel (as the due date, page length, permitted reply, etc.), by attorney Jeff Blumenfeld for SSF, Warren Havens (as

¹ This is filed by Warren Havens for SSF, rather than by an attorney for SSF, since the Receiver has refused to turn over to SSF its property including cash needed to pay an attorney for such matters. SSF has filed in the bankruptcy case a motion to compel turn over. The Commission, in the HDO FCC 11-64 that commenced docket 11-71, found Havens to be qualified as a party due to years of pleadings before the Wireless Bureau he presented for himself, SSF and the LLCs noted herein.

² A certificate of service and mailing will be separately prepared and filed.

³ In the US Bankruptcy Court, Delaware, Case No. 16-10626 (CSS), commenced on March 11, 2016.

⁴ Upon the filing of a chapter 11 petition, the debtor becomes the debtor-in-possession. 11 U.S.C. § 1101(1). The debtor-in-possession has all of the rights and powers and is obligated to perform all of the functions and duties of a chapter 11 trustee, including operating the debtor’s business. 11 U.S.C. §§ 1107(a), 1108. Indeed, that is the fundamental presumption underlying chapter 11. See, e.g., In re Princeton Square Associates, L.P., 201 B.R. 90, 95 (Bankr. S.D.N.Y. 1996). “Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor’s business.” 11 U.S.C. § 1108.

an individual party) and LLCs managed by Havens, all of which were subject of the Sippel Order.

In footnote 3, the Supplement explains that only VSL (Verde Systems LLC) and ENL (Environmental LLC) participated in the Hearing that the Sippel Order described as, in some ways, objectionable—not SSF (or other LLCs), and that is entirely clear in the record of this proceeding.⁵

Further, in the Reply filed by attorney Blumenfeld for SSF (and Havens and the LLCs) to the oppositions filed against the Supplement, at footnote 2, the Reply argues, in support of the relief requested, that it is clearly arbitrary and capricious for the sanctions in the Sippel Order (the Referral⁶ and the Removal) to be applied to any entity but for the active licensee entities, ENL and VSL, again, since (for this threshold reason alone) the non-active entities were not a participants in matters the Sippel Order criticized.⁷

Because SSF was not a participant in the matters criticized in the Sippel Order, the Order cannot lawfully be applied to SSF under both fundamental due process reasons, and under the rule cited by Judge Sippel as basis for the Referral, §1.251(f)(3), which provides (emphasis added):

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.

⁵ SSF has direct and indirect LLC-member-interest property, lease property, and contract and other rights and interests in ENL, VSL and other LLCs subject of the Sippel Order and also subject of its pending bankruptcy proceeding. Also, for its benefit, SSF provided certain claims assignments to Havens.

⁶ Under the federal Administrative Procedures Act, the Referral may be considered a sanction even if it does not require action by the Commission and does not impose any direct adverse affect.

⁷ The Sippel Order is also factually in error and otherwise improper for other reasons, including as to ENL and VSL, as explained in the appeal pleadings filed by Mr. Blumenfeld, the Chadbourne law firm, and Havens. In addition, see the Declaratory ruling request submitted by Havens on 4-5-2016 showing why the rule cited in the Sippel Order as the basis of the Referral is *ultra vires* and void, and asking the FCC to declare that and thus find the Sippel Order void on that basis.

(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.

For reasons given above, since the Sippel Order Removal and Referral cannot be applied to SSF as a non-participant, SSF submits and requests that the Commission immediately rule that SSF is not subject to the Removal or the Referral.

The immediate ruling is needed since SSF is in bankruptcy, and a threshold issue raised by the Receiver and Mr. Leong (identified above) in the bankruptcy, in contesting the bankruptcy, involves the Sippel Order as applied to SSF. But for this application to SSF, there would be no receivership over SSF and no contest on this issue in the bankruptcy. This has already caused SSF serious and increasing injury prior to and in the bankruptcy.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Warren Havens".

Warren Havens
President, and sole Member and sole Director,
Skybridge Spectrum Foundation