

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

In re)	
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71
	)	File No. EB-09-01-1751
Participation in Auction No. 61 and Licensee	)	FRN: 001358779
Of Various Authorizations in the Wireless)	
Radio Services)	
)	
Applicant for Modification of Various	)	App. FNs 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028,
Applicant with ENCANA OIL AND GAS	)	0004193328, 0004354053,
(USA), INC.; DUQUESNE LIGHT	)	0004309872, 0004310060,
COPANY; DCP MIDSTREAM, LP;	)	0004314903, 0004315013,
JACKSON COUNTY RURAL,	)	0004430505, 0004417199,
MEMBERSHIP ELECTRIC	)	0004419431, 0004422320,
COOPERATIVE; PUGET SOUND	)	0004422329, 0004507921,
ENERGY, INC.; INTERSTATE	)	0004153701, 0004526264,
POWER AND LIGHT COMPANY;	)	0004636537, 0004604962.
WISCONSIN POWER AND LIGHT)	
COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE – MID CONTINENT,)	
LLC; DENTON COUNTRY ELECTRIC)	
COOPERATIVE, INC., DBA COSERV)	
ELECTRIC; AND SOUTHERN)	
CALIFORNIA REGIONAL RAIL)	
AUTHORITY)	

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

Appeal under Rule §1.301(a)¹

And

Request to Submit Supplemented Oversized Appeal Pleading

Introduction. The undersigned individually and collectively (together, “Petitioners” or “SkyTel”) submit this appeal under and for purposes of rule section 1.301(a)(1) and (5) with regard to the Judge’s rulings FCC 13M-11 (“M11”), and preceding rulings that M11 deals with and relies on including 13M-8 (“M8”) and FCC 13M-9 (“M9”) (all these rulings collectively, the

¹ This replaces the hard-copy filing filed earlier on May 21, 2013. Rule 1.301 specifies filing of this Appeal with the office of the Secretary and service on parties to the proceeding. Hearing rules prescribe filings by parties with the Secretary, however, in this proceeding the Judge established filings to the Secretary via filings on ECFS. Thus, this Appeal is filed on ECFS. This replacement filing has corrections and additional text.

“Rulings”) (the “Appeal”). Herein, “MCLM” and “Maritime” mean the same, the “Judge” means Judge Sippel, “EB” means the FCC Enforcement Bureau, “Havens” means Warren Havens (the signer of this pleading, who is one party within the SkyTel parties), and “Hearing” means the formal hearing under docket 11-71.

These Rulings frustrate, ridicule, speciously misstate, and effectively "terminate[] the right of" each of the SkyTel parties "to participate as a party to a hearing proceeding," and also are " ruling removing counsel from the hearing, as mean in FCC rule section 1.301(a)(1) and (5) (said termination and removal together, the “Party Sanctions”). See Attachment 1 hereto. M11 states, on one place, that Havens can participate pro se, under certain conditions, and that the other SkyTel entities (a nonprofit Foundation and LLCs) are allowed to participate if they obtain counsel, and meet other conditions that are found in contradictory statements by the Judge in the Rulings. However, the Rulings actually state and show otherwise, are not in accord with applicable FCC rules, impose conditions not permitted by any FCC rule in the circumstance, and frustrate and effectively terminate the participation of the SkyTel entities, and also effectively remove and bar counsel for SkyTel.²

² Counsel in a formal hearing is the person representing a legal entity, and need not be an attorney at law licensed in the District of Columbia (or elsewhere). Herein, we mean by “counsel” under this rule both Havens and attorneys at law. In this case, the Rulings effectively terminate Havens as counsel to the other SkyTel entities, and frustrates those entities from obtaining legal counsel by unsupported and false speculation that it is the fault of Havens for the termination of past legal counsel in this Hearing, which conflicts with the information provide by Havens and the past counsel as to conflicts that caused these terminations (conflicts not caused by Havens or other SkyTel entities). While the Judge may not believe Havens, he has no sound basis to speculate otherwise, especially when he could have taken up Havens’ offer of in camera review of relevant communications between Havens and said past legal counsel. This action by the Judge—publicly flogging Havens as a person that is cause of loss of counsel (who the Judge has indicated as acting properly, with no basis—he does not know the attorneys dealings with the client, or in the Hearing as to evidence available, etc.)— i.e., a bad client—causes, as the Judge surely knows, serious problems as to other attorneys considering representation. It reduces those that may reasonably be available, drives up the financial costs and terms, and increases time to interview and find new counsel. This is exaggerated by the Rulings requirement that any new legal counsel SkyTel gets must be the last—must remain through the end of the Hearing (as long

In addition, these Rulings' contain other decisions (in addition to the Party Sanction) that, along with the above noted also conflict with applicable FCC law,³ and are arbitrary and capricious, and against the purposes of the Commission in this Hearing as reflected in the Hearing Designation Order, FCC 11-64. SkyTel hereby appeals those parts of the Rulings also, and those parts are intertwined in the part of the Rulings that effectively terminate participation of SkyTel entities and their counsel.

Attachment 2 below illustrates the reasons for this Appeal.

Havens can represent the SkyTel legal entities in the Hearing including as counsel. The Commission found Havens to be equivalent to legal counsel in the so-called Havens "sanction" orders by applying to him rule section 1.52, and commenting in a revised "sanction order" (that removed any real action), FCC 12-26, that the "sanction" was "...to 'ensure that those professionals, on whom the [agency] relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence,' " (citing case authority). Thus, Havens is able to act as "counsel" in this Hearing for the SkyTel legal entities. In addition, rule section 1.22, Authority for Representation, provides that "Any person, in a representative capacity, transacting business with the Commission, may be required to show his authority to act in such capacity." Havens showed to the Commission scores of times, never rejected, that he is the chief officer, President, of each SkyTel legal entity. 5 USC 558 defines a sanction as "(10) "sanction" includes the whole or a part of an agency— (A) prohibition,

as the client remains in the Hearing), and must represent all of the SkyTel entities including Havens, unless (in one of the recent Rulings' in their saga of changes) Havens demonstrates the obvious under law and existing FCC rulings: that Havens and each SkyTel legal entity are different, and need not act together at all times in this Hearing or otherwise.

³ Including the rule cited by the Judge in the seminal Ruling also cited in R11: see item '[10]' in Attachment 2 below. Havens specifically responded to that in several pleadings, explaining that the rule does not provide what the Judge asserts: that he cannot participate pro se as an individual, or that he cannot represent the SkyTel legal entities: that is up to the discretion of the Judge and he did not use said discretion. Havens showed his qualification, and the Commission has also described it as discussed in part herein.

requirement, limitation, or other condition affecting the freedom of a person; ... (G) taking other compulsory or restrictive action," and provides that "[a] sanction may not be imposed . . . except within jurisdiction delegated to the agency and as authorized by law." 5 U.S.C. §558(b). Administrative Law Judges do not have inherent contempt powers, nor can they avail themselves of the sanctions in Rule 11 or Rule 37 of the Federal Rules of Civil Procedure. *U.S. v. Nu Look Cleaners*, 1 OCAHO 274 at 10-11 (12/5/90). We respectfully submit that the Judge has exceeded his authority in the Party Sanctions repeatedly and clearly.

Request to Submit Supplemented Oversized Appeal Pleading. Section 1.301 allows only five pages for this Appeal. SkyTel parties request permission to submit a supplement Appeal with 20 pages of pleading text, not including appended material. The reason is that the Rulings are long and complex and are not fully summarized or accurately represented in M11 and the immediately preceding Rulings that M11 most directly responds to. Unless SkyTel is permitted to properly set forth this history, it cannot sufficiently present its case on appeal. SkyTel believes its case should be granted even without this supplemented pleading, however, without grant of this request, SkyTel cannot present with sufficient detail and evidence this case, and the public interest would be disserved. SkyTel entities are the entities the Commission noted in the HDO FCC 11-64 as the "petitioners" that were the seminal cause of the HDO and brought to the FCC the majority of the facts, and associated law, that is at issue in this Hearing. The Judge's Rulings stand as contrary to the public interest that is clearly shown in SkyTel history of the underlying matters in this Hearing, both as to the site based licenses ("issue (g)" in the HDO and this Hearing) and the geographic licenses awarded to Maritime in Auctions 61.⁴

⁴ Further, SkyTel entities should be granted this request since they have a pending Application for Review before the Commission as the lawful high bidders in Auction 61 for the licenses awarded to Maritime by its use of undeserved bidding credits, and SkyTel entities have pending petitions under reconsideration that also challenge all of the MCLM site based licenses: none of these petition proceedings, each under 47 USC §§309(d) and 405, were granted by the

Respectfully submitted,

/s/
Warren Havens
Individually and for SkyTel legal entities
(previously defined in this case, and in the
Rulings)

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Dated: May 21, 2013

HDO, FCC 11-64 and thus are not in this Hearing. While not in this Hearing, SkyTel entities are attempting to participate in this Hearing to mitigate delay, confusion and damages to themselves and the public interest, by this Hearing proceeding on one track as to all of these MCLM licenses, while these other proceedings proceed before the Wireless Bureau and the full Commission. That is, the more the SkyTel entities are frustrated and cut of out of this Hearing, the more will be left to proceed with in these other proceedings. In any case, SkyTel entities do not waive their rights to complete these other proceedings independent of this Hearing.

Emphasis added:

§ [1.301](#) Appeal from presiding officer's interlocutory ruling; effective date of ruling.

(a) Interlocutory rulings which are appealable as a matter of right. Rulings listed in this paragraph are appealable as a matter of right. An appeal from such a ruling may not be deferred and raised as an exception to the initial decision.

(1) If the presiding officer's ruling denies or terminates the right of any person to participate as a party to a hearing proceeding, such person, as a matter of right, may file an appeal from that ruling.

(2) If the presiding officer's ruling requires testimony or the production of documents, over objection based on a claim of privilege, the ruling on the claim of privilege is appealable as a matter of right.

(3) If the presiding officer's ruling denies a motion to disqualify the presiding judge, the ruling is appealable as a matter of right.

(4) Rulings granting a joint request filed under § [1.525](#) without terminating the proceeding are appealable by any party as a matter of right.

(5) A ruling removing counsel from the hearing is appealable as a matter of right, by counsel on his own behalf or by his client. (In the event of such ruling, the presiding officer will adjourn the hearing for such period as is reasonably necessary for the client to secure new counsel and for counsel to familiarize himself with the case).

Underlining added, and numbers and items in [brackets] added.

M11 text	Appeal comment (illustrative of Appeal component)
<p><u>From page 3</u></p> <p><i>C. Clarification on Required Notice of Appearance</i></p> <p>Mr. Havens has asked for clarification on why he is required by <i>Order</i>, FCC 13M-8 to file a Notice of Appearance if he wishes to proceed <i>pro se</i>? He alleges that "[h]is appearance was made and has been accepted, and his participation allowed, to some degree." This account is inaccurate. While on some occasions the Presiding Judge specifically asked Mr. Havens to make some contributions to this case, such as assisting in the creation of a glossary of terms, [1] <u>Mr. Havens has never been officially accepted as a <i>pro se</i> participant</u>, [2] <u>given his serial acquisition and loss of counsel</u>.</p> <p>To the contrary, the Presiding Judge has spent a great deal in time and resources advising Mr. Havens [3] to stop pretending that he was a licensed attorney. Mr. Havens represented the SkyTel <u>entities in [3] direct contravention of the Presiding Judge's orders</u> and [4] Commission rules for several months. Mr. Havens has been repeatedly told that he was <u>in violation of the Commission's rules in attempting such representation of the SkyTel corporate entities</u> and has repeatedly been ordered to cease his attempts to do so.' The Presiding Judge has permitted pleadings personally penned by Mr. Havens <u>only to the extent that Mr. Havens was specifically asked to provide facts</u> related to his personal knowledge of the Automated Maritime Telecommunications System industry or the Presiding Judge found it necessary to overlook Mr. Havens' rule violations with the hope that the merits of this case might proceed forthwith.</p> <p>The coming and going of Mr. Havens' prior</p>	<p>[1] The Full Commission made Havens a party "officially" and no one filed a petition for reconsideration of that. See FCC 11-64. The Judge has not authority to disregard that. Havens has repeatedly asserted this in pleadings responding to and rule on in the Rulings.</p> <p>[2] The Judge is showing and acting under prejudice, and false speculation on this and many other similar comments he makes in the Rulings that "Havens" is the cause of loss of counsel. Nor does he show who any loss is a good cause of the Party Sanctions.</p> <p>[3] Havens never represented or "pretended" anything of the sort. This false statement shows prejudice and is prejudicial.</p> <p>[4] It is the Rulings that contravene applicable rules. See below. The only applicable allow the Judge to permit a non-attorney to be counsel-representative of a legal entity in a formal Hearing, and Havens showed his qualification before the Hearing (he person that, pro se, filed the "petitions" of the Skytel "Petitioners" the Commission described in the HDO, and further in this Hearing.</p>

counsel, Mr. Havens' attempts to impermissibly represent the SkyTel corporate entities, and a period of [5] possibly impermissible bifurcated representation have [6] burdened the record in this case. If Mr. Havens intends to continue *pro se*, it must be ensured that the record reflects Mr. Havens decision with absolute clarity. The simple filing of a Notice of Appearance is the best way to conclusively show Mr. Havens' goal, as it provides certainty and places no burden on Mr. Havens. Such a Notice of Appearance will make it clear that Mr. Havens intends to represent himself [6] (and only himself), thereby informing the parties that they are to serve Mr. Havens personally with all pleadings.⁹

Footnotes

7. *Id.* at 2.
8. *Order*, FCC 12M-52 at 3 (November 15,2012).
9. The Presiding Judge [7a] additionally required in *Order*, FCC 13M-8 that Mr. Havens provide the reasons for his decision to continue *pro se* as part of his Notice of Appearance. The Presiding Judge sought this information so he and all parties might understand why Mr. Havens' has decided to forgo benefit of counsel in what has turned out to be a complex multiparty litigation. The Presiding Judge still seeks this information, but [7b] now merely requests it, rather than requires it. If Mr. Havens chooses to refuse to provide such clarification, he will not be barred from continuing *pro se*. [The next page of M11 reverses this.]

From page 4

Havens shall personally file a Notice of Appearance representing that he chooses to participate in this proceeding pro se. [8] He shall include in the Notice his reasons for proceeding pro se. // FN 11. *Order*, FCC 13M-8 at 2....
* * *

[9] The previous *Order* was in error to the extent that it may have unintentionally suggested otherwise.

* * * *

[5] “possibly impermissible” is not the basis of any legitimate ruling.

[6] To the contrary, Havens and the SkyTel entities he represents were the seminal cause of the Hearing, and in addition, brought to this Hearing evidence this Judge first Ordered that they bring to this Hearing (which has cost them over \$100,000 and counting in legal, professional copying and other costs), and then after repeated pleadings before the Judge (and to the Enforcement Bureau staff in this Hearing), would not lift a finger to obtain. This is critical evidence in this Hearing—issue (g) and all other issues. This could not be more contrary to the public interest in such a Hearing.

[7a], [7b] Attorneys put difficult admissions in footnotes. Here, the Judge admits a mistake, but these have gone on in the Rulings from the start of the Hearing as to the Party Sanctions. But in any case, this is reversed on the next page.
* * * *

[8] This contradicts [7b].

[9] There are years of contradictions, error and the like. It is prejudicial, and contributes to the effective termination and removal that is the Party Sanctions appealed herein.

<p>Footnote</p> <p>10. The essential directive is that [10] the SkyTel entities must acquire licensed counsel or they will not be permitted to continue participating in this proceeding. <i>See Order</i>, FCC 12M-16 at 3-4 (March 9, 2013) (the SkyTel entities must be represented by licensed counsel as the Presiding Judge has not approved Mr. Havens' appearance on their behalf under Section 1.21(d) of the Commission's Rules).</p>	<p>[10] This cited Ruling did not follow the only applicable rule at all. Havens and the SkyTel Entities demonstrated this. The Judge's refrain, is to simply cite his on decision that never, from the start, had a basis in the applicable rule, its standard, or purpose.</p>
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The above is illustrative only. The records of the Rulings and the SkyTel parties (Havens and the SkyTel entities) related pleadings, further demonstrate the problems illustrated above that support this Appeal.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 21, 2013, I caused a true copy of the foregoing filing in FCC docket 11-71 to be served by USPS first class mail (with courtesy email copies, using emails of record) to:

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/s/

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