

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; ET AL.	)	0004636537, 0004604962.

To: Marlene Dortch, Secretary. Attn: the Commission

Request to Accept and

Supplement to Interlocutory Appeal Under Section 1.301(a), Errata Copy

Request to Accept: The undersigned (“Havens”) Requests that this Supplement be accepted since it presents the Commission’s public-interest determination of timely filing on ECFS *by midnight*. Havens does not believe an ALJ has authority to breach a Commission determination, especially in the circumstance and with the result at issue in this appeal.

Supplement. In establishing ECFS, the Commission determined (emphasis added):

A. In this Order, we amend Parts 0 and 1 of our Rules .... The electronic comment filing system (ECFS) is now operational .... H. As we have noted, we strongly encourage the public to utilize the ECFS system to file comments electronically....

[On page 10:] 1. Filing Deadline Issues. In the Notice we proposed, at least initially, to keep the same filing deadline (5:30 p.m. eastern time) for electronic comments as we currently have for paper comments.<sup>51/</sup> Some commenters agree that we should retain the status quo.<sup>52/</sup> Other commenters suggested that because the ECFS will be accessible 24 hours a day through the Internet, the filing deadline should be pushed back until midnight.<sup>53/</sup> Other parties indicated that the date and time electronic comments are received by the Commission, whenever that occurred, should govern,<sup>54/</sup> that is, comments would be received at all times but if received after 5:30 p.m. on a business day, would be deemed to be filed the next business day. Electronic filing makes it technically possible for us to extend

our filing deadline later in the day, and we wish to encourage electronic filing. We will therefore permit electronic comments filed via the ECFS to be made until midnight of the date due. Our rules will be amended accordingly.

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51/ 12 FCC Rcd at 5156, citing 47 C.F.R. § 1.7. 52/ NECA Comments at 5-6. See AT&T Reply Comments at 5-6 (urging rejection of midnight cut-off). 53/ BellSouth Comments at 3-4; U S West Comments at 3 (suggesting midnight deadline); Crawford Comments at 8 (suggesting midnight deadline). 54/ GTE Comments at 6-7 (suggesting the date and time received); Edgewood Comments at 2 (agreeing that date received is the appropriate date); OCC Comments at 4 (day received). One commenting party suggested the date sent. Bell Atlantic/NYNEX Comments at 4-5.

*In the Matter of Electronic Filing... Report and Order*, FCC 98-56, Rel. April 6, 1998.

Only the Commission has authority from Congress to make its rules:

Section 201(b) of that Act empowers the Federal Communications Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions.” Ch. 296, 52 Stat. 588, codified at 47 U.S.C. §201(b)....

*City of Arlington v. FCC*, 133 S. Ct. 1863; May 20, 2013.<sup>1</sup> In Part 0 of the Commission’s rules, various powers are delegated to Bureaus and Offices, but not authority to make and amend rules or the underlying public interest determinations. In this determination, presented above, the Commission *encouraged* use of EFCS including by allowing filing by midnight, and specifically considered and rejected a 5:30 pm deadline, and since electronic filing up to midnight was *practical* (“technically possible”) and obviously make no difference to any other party (filing by midnight, the alternative of 5:30 pm that was rejected).<sup>2</sup>

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<sup>1</sup> Section provides in pertinent part: “47 USC § 201 - Service and charges .... The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.”

<sup>2</sup> This determination also reveals why, in ECFS filing confirmations given to filers, and in the posting of filings in a docket on ECFS, no time of day of the filing is listed: it does not matter for the good, public-interest reasons the Commission determined.

Respectfully submitted,

/s/



Warren Havens

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January 7, 2013

## CERTIFICATE OF SERVICE

The undersigned certifies that he has on this 7<sup>th</sup> day of January, 2014 caused to be served by first class United States mail copies of the foregoing Request to Accept and Supplement to:

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/ s / [Electronically signed. Signature on file.]

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Warren Havens