

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: Chief Administrative Law Judge Richard Sippel

Request to Accept   
and Opposition and Response to  
Enforcement Bureau's<sup>1</sup> Motion for Leave and Associated Reply

The undersigned (“Havens” or “I”) submit the following in relation to the Enforcement Bureau (“EB”) filing on December 23, 2013 styled “Motion for Leave to File a Reply to Mr. Havens Opposition” (the “EB Motion”) and the EB’s “Reply to Mr. Havens’ Opposition to Joint Motion for Summary Decision” (the “EB Reply”).<sup>2 3 4</sup> This is timely filed.<sup>5</sup> Also, since the EB

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<sup>1</sup> See Exhibit 1 hereto. The EB, Maritime (herein in places, “M”) and Choctaw will not state whether this “Reply” was by EB alone, without authority from Maritime and Choctaw, and related matters. The ramifications are discussed below.

<sup>2</sup> In preparing this filing, I have used assistance of current counsel (see notices of limited appearance filed yesterday by Mr. Ruhl, Anzenberger and Chen) as well as past counsel (attorneys going back to the early part of last decade when I commenced actions challenging the licenses now under “issue (g).” In addition, for years I have done my own legal research under a Lexis account and by using additional sources. This assistance and these sources are used by me to improve my presentations which is responsible for a *pro se* party, and not barred by any FCC rule or any other applicable law I am aware of, after considerable research.

[\*] This Errata copy has errata corrections as shown. This will be filed on EFCS and served 1-7-14.

Reply supports the preceding filings by Maritime and Choctaw that oppose the Havens filings of December 2, this Havens Response Opposition and Response also addresses those positions of Maritime and Choctaw. (They cannot soundly object, since the EB Reply challenges my oppositions, thus I can “reply” and oppose their oppositions.)

Maritime *lost* its motion for *summary decision* in year 2013, then tied something else. It filed with the EB on December 2 a joint motion with EB to resolve issue (g) by *settlement*, just as they told the Judge in their several scheduling requests. But since there was <sup>no</sup> basis for that in legal procedure (or in substance) (see my preceding oppositions, and below), this *was dressed in the guise of yet another* try at summary decision—but Maritime had no right to try again, and the EB simply jumped ship, contradicts itself, and abrogates its duties under the HDO, FCC 11-64 and argues in mockery of procedural and substantive law. Still not satisfied, they (the EB as the signer) filed the unauthorized Reply. I respond herein.

#### Request to Accept

I request that the ALJ Sipple (the “ALJ” or “Judge”), accept the below Havens Opposition and Response for the following reasons: (i) First, the Judge set a schedule (which EB and

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<sup>3</sup> Continuing from preceding footnote: As discussed in a Limited Appearance filed on January 6, 2014, the law firm of Copeland Cook has, from time to time, provided certain discrete and limited advice, input, and/or assistance to Havens regarding, primarily, certain bankruptcy issues and questions related to the FCC Proceeding and certain filings therein. Copeland Cook has provided such discrete, and limited in scope, advice, input, and/or assistance to Havens in connection with the instant filing. Havens has not retained or authorized Copeland Cook or any of its attorneys to serve as Havens’ and/or SkyTel’s general, “representative counsel” in the FCC Proceeding; and neither Copeland Cook nor any of its attorneys are at this time appearing in the FCC Proceeding in that capacity.

<sup>4</sup> Continuing from preceding two footnotes: In addition, with regard to the Limited Appearance filed on January 6, 2014 by James Chen: the same note applies as in the preceding footnote as to Copeland Cook, but as to issues and questions, apart from those for which Copeland Cook provided assistance to Havens, of which Mr. Chen from time to time has provided limited advice to Havens.

<sup>5</sup> See §§ 1.45(b) (oppositions to any motion, petition or request may be filed within 10 days) and 1.4(h) (if the filing being responded to was served by mail, and the response is due in 10 days or less, add three days to the 10 days excluding holidays). Applying these rules, the instant filing is due today, January 7, 2014. In protest, I filed this (the original filing) prior to 5:30 pm East time: see my pending request under §§ 1.301(a) and (b).

Maritime requested) that allowed certain motions on Dec. 2, 2013 and oppositions thereto on December 16 (but no replies) -- giving the “last word” to the opposition party. The EB Reply was, in substance, an attempt to supplement and remedy defects in the EB-M Motion of December 2, 2013 and I should be permitted a “last word” response thereto.<sup>6</sup> (ii) Second, the EB Reply, rather than doing what it asserts -- remedying Havens’s “obsur[ing] the relevant facts and law” – does just that, and it is in the public interest to allow me to remedy that improper cloud. (iii) Third, for a small measure of relief as to the improper and prejudicial action by the Judge in dismissing my opposition.<sup>7</sup> (iv) And for a more full, complete and *accurate* record in this long proceeding.<sup>8</sup>

### Opposition and Response

In the following, I oppose and respond to the EB Motion and the EB Reply (the “Havens Opposition and Response”). Initially, the EB Motion by Ms. Kane contains no *substance*, only a bald assertion that Havens’s December 16 Opposition (further to my December 2 initial opposition) “obscures the relevant facts and law”-- because she says so-- which indicates that

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<sup>6</sup> EB and Maritime lobbied effectively to dismiss my initial, Dec. 2 opposition to the EB-M Motion of earlier that day, on a false assertion as to required *timing*, but then EB filed the subject EB Reply that was not permitted in the scheduling Order. This undercuts the EB and Maritime rants about my opposition allegedly being late, after close of business, when it did not matter at all as the full Commission stated (see my Supplement filed today to my request under §1.301(b)). If EB and Maritime had any real concerns (“in the public interest” credible under §1.52 for “officers of the court”) about timing, they would not have filed the EB Reply to try to fix their Motion, and *with no hint even offered* as to why their far-out-of-time EB Reply should be accepted on a timing basis, or any other basis, except: just since they say so. Or since the EB says so, *tellingly without* Maritime ~~absent~~ as a joint filer. See Exhibit 1 below, and the Opposition and Response below, on this point.

<sup>7</sup> I discuss this in my pending requests under §§ 1.301(b) and (a).

<sup>8</sup> Subject to endless accommodations to Maritime, Choctaw and the EB, including three motions for summary decision, and motions for extraordinary relief submitted before or via the Wireless Bureau with the Maritime application to assign all its licenses to Choctaw (seeking, inter alia, that the 11-71 hearing including in “issue (g)” be terminated. There is not good cause shown, or even hinted at, as to why these repeated and conflicting attempts should be accommodated.

there is actually no public-interest justification for the EB Reply.<sup>9</sup> However, it is useful for the Judge to consider both the EB Reply and this Opposition and Request, along with Havens's recently filed request under Section 1.301(b) to the Judge including the Supplement thereto that I filed today, since this provides a more full record.<sup>10</sup>

- I -

*Concerning the EB's Reply to Havens' Bankruptcy Arguments.* \*

Instead of attempting to rebut the actual bankruptcy arguments raised in the Havens-SkyTel First Motion Under Order 13M-19 (the "Havens Motion"), filed December 2, 2013, and in the Havens Opposition to the EB-MCLM Joint Motion (purportedly for summary decision) (the "Havens Opposition"), filed December 16, 2013, the EB first wrongly suggests that those arguments would only apply to consent orders (when, in fact, they would apply with equal force to the EB-MCLM Limited Joint Stipulation to the extent that is ultimately construed as something other than a consent order/settlement or a part thereof), and then merely cites to p. 3 of Choctaw's December 16 Response to the Havens Motion (the "Choctaw Response") and to ¶¶ 5-6 of Maritime's December 16 Response to the Havens Motion (the "Maritime Response"). See EB Reply at p. 3, nn. 5 and 6.

The Choctaw and Maritime Responses, however, utterly fail to address, much less rebut, the well-reasoned arguments Havens set forth in his Motion and Opposition, including Havens' argument that the EB-MCLM Joint Motion, alone or in combination with the EB-MCLM Limited Joint Stipulation submitted therewith, either (a) constitutes or seeks to effect a material,

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<sup>9</sup> What the "public interest" is, not clear in the Communications Act, but my pro se belief is that it cannot <sup>be</sup> "since I say so."

<sup>10</sup> I am alone in advocating a more full record, and strongly disagree with the Judge, EB and Maritime that central evidence should be kept out of this Hearing, as I discussed in my filings of December 2 and 16 in opposition to the EB-M Motion in support of a settlement. After decades of this, and the full Commission HDO, one would think that the last thing for any person to advocate or decide is to hide, reject, or avoid critical evidence.

\* Additional bankruptcy related matters are within section II.

post-confirmation modification of the plan, and therefore requires, among other things discussed in the Opposition, bankruptcy court approval after notice and a hearing; or (b) constitutes a settlement which, under Fed. R. Bankr. Pro. 9019 and related law, requires bankruptcy court approval after notice and a hearing. See e.g. Havens Opposition, pp. 27-34.

For example, the Choctaw Response simply cites to a memorandum written by Choctaw's bankruptcy counsel, which does not cite, much less discuss, any case law, any provisions of the bankruptcy code, or any other law. This memorandum is hardly authoritative. The Choctaw Response merely states "the Bankruptcy Court recognized that 'the Court's ruling and orders herein are contingent on what the FCC ultimately decides regarding the subject FCC licenses and the Debtor's rights to hold and/or transfer same.'" See Choctaw Response at p. 3 citing Confirmation Order, at pp. 11-12. While several provisions of the Confirmation Order and Bankruptcy Plan are contingent on FCC approval, this carefully selected line in the Confirmation Order does not grant Maritime and Choctaw the authority to modify the plan without complying with the bankruptcy code and related law. Indeed, the Confirmation Order itself provides that "any modifications of the Plan must comply with 11 U.S.C. § 1127." See Confirmation Order at 5. Accordingly, if the EB-MCLM Joint Motion, alone or in combination with the EB-MCLM Limited Joint Stipulation, constitutes a modification of the Plan, such modification must be approved by the bankruptcy court after notice and a hearing.

Maritime's Response, in turn, is equally deficient. Indeed, Maritime simply cites to a self-serving declaration of Maritime's bankruptcy counsel. Like Choctaw's memorandum, Maritime's declaration fails to cite any authority. And neither the Choctaw memorandum nor the Maritime declaration even attempt to rebut Havens' arguments.

- II -

*Concerning EB's other assertions.*

A. First, my Dec16 Opposition contained, contrary to EB, a long section on

sufficient facts in dispute as to why the Maritime stations that EB and Maritime seek to keep are subject to automatic termination for failure to construct and keep in operation under relevant law.

Also, the EB Reply asserts that the suggested settlement is in the interest of Havens-managed LLCs that hold AMTS geographic A block licenses, but EB has no authority to speak for those companies, and Maritime and EB have succeed in removing those entities from this proceeding (subject to their and Havens protests, including as reversible error). Havens assertions are clear and have been stated, including that all of the Maritime site-based (and geographic) licenses are invalid and void: there is nothing to give up and nothing to trade. You cannot settle with dead licenses, long ago terminated by action of law.

In addition, as indicated in Exhibit 1 hereto, the EB in the EB Reply does not directly speak for Maritime or Choctaw, which is telling and raises questions, since the only issue is the joint EB-Maritime motion. *The Judge should inquire as to why the EB did not get Maritime and Choctaw to verify and sign the EB Reply.*

**B.** Without support, the Enforcement Bureau dismisses as irrelevant Havens's argument that the Motion for Summary Decision is actually a Motion for a Consent Order. Closer examination of the Commission's Rules demonstrates that there are only so many paths to settling a case, and the Enforcement Bureau, or any other arm of the Commission, must adhere to the paths laid out by those rules.

Section 1.94(f) of the Commission's Rules, 47 C.F.R. § 1.94(f), part of the Rules' procedures governing consent orders provides: "(f) The provisions of this section shall not alter any existing procedure for informal settlement of any matter prior to designation for hearing (*see, e.g., 47 U.S.C. 208*) or for summary decision after designation for hearing." Through this provision, the Commission contemplated three ways to settle a case. Section 1.94(f) identifies two alternatives to the consent order process prescribed in §§ 1.93-.94: (1) "informal settlement of any matter *prior to designation for hearing*" and (2) "summary decision *after designation for*

hearing" (emphases added). Closer examination of these three paths for settlement demonstrates that the consent order procedures of 47 C.F.R. §§ 1.93-.94 must govern the proposed settlement between the Enforcement Bureau and Maritime.

Regulations, statutes, and constitutions are formal written documents. They represent careful, elaborate efforts to set down firm rules, in writing, to constrain official action and to prevent abuse of discretion by government. Every word, every provision exists for a reason, and every component of every formal legal instrument must be given effect. *Expressio unius est exclusio alterius*. E.g., *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993). The text, structure, and overall architecture of the Commission's rules deserve It simply defies reason that the Commission would outline such a specific consent order procedure in § 1.94 and impose such limitations on the procedure in § 1.93, including the requirement that consent orders advance the public interest and the limitation preventing the use of consent orders to resolve the basic qualifications of a licensee, if the Commission or its Bureaus could ignore those procedural (§ 1.94) and substantive (§ 1.93) limitations whenever they proved inconvenient, as they evidently prove in this instance to the Enforcement Bureau.

Section 1.94(f) reinforces this clear implication of the structure of the Commission's rules and Havens's view of § 1.93. "[P]rior to designation for hearing," § 1.94(f) contemplates *informal* settlement as an option. The designation of a matter for hearing changes the situation. The issuance of a hearing designation order leaves two paths for resolving a dispute short of full adjudication. One is indeed the summary decision process of § 1.251. But that is an adversarial provision, one in which the Enforcement Bureau must retain its core prosecutorial function. This is what is meant by 47 C.F.R. § 0.111(b)'s charge that the EB "[s]erve as trial staff in formal hearings conducted pursuant to 5 U.S.C. 556 regarding applications, revocation, forfeitures and other matters designated for hearing."

If the Enforcement Bureau wishes to resolve a case by settlement rather than prosecution

after designation for hearing, the consent order provisions of 47 C.F.R. §§ 1.93-.94 constitute the only remaining option. If the EB or any other Bureau of the Commission wants to negotiate a settlement with a party after a matter has been designated for hearing, as opposed to litigating it (whether in full or in truncated form via the summary decision procedure), then that settlement must undergo through the consent order procedures of §§ 1.93-.94. As Havens's motions of December 2 and December 16, 2013, demonstrate, the Bureau cannot satisfy § 1.93 as a *substantive* matter. The Bureau cannot satisfy § 1.94 as a *procedural* matter.

A Supreme Court case interpreting the constitutional limits on federal bankruptcy law illustrates the structural significance of 47 C.F.R. §§ 1.93-.94. In *Railway Labor Executives' Assn. v. Gibbons*, 455 U.S. 457 (1982), the Supreme Court entertained a challenge to the federal rail reorganization act that restructured several failing and failed railroads in the northeast corridor, including the Rock Island Line. The RLEA argued that the reorganization statute was unconstitutional because it failed the uniformity requirement of article I, § 8, clause 4 of the Constitution, which gave Congress the power "[t]o establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States." Clause 4 gives the power to pass "laws on the subject of bankruptcy," but conditions that power that such laws (and, for that matters, the nation's "rule of naturalization") be "uniform ... throughout the United States." For its part, article I, § 8, clause 3 empowers Congress to pass laws "regulating commerce among the several States." There is no doubt that bankruptcy affects interstate commerce. The interstate commerce power of clause 3 omits the pesky, inconvenient "uniformity" requirement. Consequently, the proponents of rail reorganization argued that even if that statute failed to satisfy the uniformity requirement of clause 4's bankruptcy provision, it could be upheld as a legitimate exercise of Congress's clause 3 power to regulate interstate commerce.

No. *Gibbons* was absolutely clear on this point:

[It cannot be] argue[d] that Congress may enact bankruptcy laws pursuant to its power under the Commerce Clause. Unlike the Commerce Clause, the Bankruptcy Clause itself contains an affirmative limitation or restriction upon Congress' power: bankruptcy laws must be uniform throughout the United States. Such uniformity in the applicability of legislation is not required by the Commerce Clause. *Hodel v. Indiana*, 452 U.S. 314, 332 (1981); *Secretary of Agriculture v. Central Roig Refining Co.*, 338 U. S. 604, 616 (1950) (distinguishing the Commerce Clause from Art. I, § 8, cl. 4). Thus, if we were to hold that Congress had the power to enact nonuniform bankruptcy laws pursuant to the Commerce Clause, we would eradicate from the Constitution a limitation on the power of Congress to enact bankruptcy laws.

455 U.S. at 468-69.

We face a comparable interpretive situation here. The Commission's rules lay out three ways to resolve a dispute short of full-blown hearing and adjudication. *See* 47 C.F.R. § 1.94(f). One is informal settlement *before* designation. After designation, the Commission or one of its Bureaus may use adversarial process to end a case via summary decision under § 1.251. But settlement after designation requires resort to the consent order process laid out in §§ 1.93-.94. To allow a half-baked settlement-by-summary-decision motion makes a mockery of the substantive requirements of § 1.93 (inasmuch as a proposed consent order must satisfy the public interest and must not implicate the licensee's basic qualifications), to say nothing of the procedural requirements of § 1.94. The Supreme Court refused to write "uniformity" out of the U.S. Constitution and thereby to erase a fundamental limit on federal bankruptcy law.

Likewise, the presiding officer should refuse EB and Maritime's invitation to bypass §§ 1.93-.94 and the limitations that the Commission has set on consent orders as the exclusive vehicle for settling cases before it after designation for hearing.

**C.** In addition, the EB asserts that Havens' argument that the Motion for Summary Decision is actually a Motion for a Consent Order is irrelevant. The EB does not, however, adequately explain why the Joint Motion is a proper request for summary decision or why Havens argument is irrelevant. Instead, the EB merely states—in a conclusory fashion—that the Joint Motion “does not seek approval of a proposed settlement of Issue(g) . . . .” *See* Reply at p.

2 ¶ 3. Interestingly, however, the EB then specifically argues that “Issue (g) should be deemed moot as to the deleted facilities,” because “the Bureau and Maritime filed a limited stipulation in which Maritime [has] agreed to file applications to delete from its licenses authority for 73 site-based facilities . . . .” See Reply at p. 3 ¶ 3. The EB then states that “the Joint Motion does not seek summary decision concerning these deleted authorities.” Motion at p. 3 ¶ 3. Essentially, by the EB’s own characterization, the Joint Motion is not seeking summary decision as to the vast majority of Maritime’s authorizations; instead, Maritime and the EB are jointly seeking an Order approving a joint stipulation that Maritime will turn over for cancellation 73 of its authorizations and that, accordingly, Issue (g) need not go forward as to these licenses. It appears then, under the EB’s own characterization, that the Joint Motion is nothing more than a settlement.

**D.** Further, based on a prior Order of the Presiding Judge (13M-16) finding Issue (g) to be moot as to facilities subject to a previously entered stipulation between the EB and Maritime in the bankruptcy case (to which Havens objected), the EB asserts that Issue (g) should similarly be deemed moot as to the 73 facilities subject to the currently proposed Limited Joint Stipulation. See Reply at p. 3 ¶ 3. However, that assertion is mistaken, including because the prior stipulation, and resulting Order, did not, based on when they were entered into, implicate the requirements which must be met in order to obtain approval of post-confirmation material modifications of bankruptcy plans.

**E.** The EB also argues that Havens failed to provide a “basis for disregarding the Commission’s previous orders that the 16 remaining site-based facilities were timely constructed.” See Reply at p. 5 ¶ 6. In his December 16 Filing, Havens reasserted the same arguments that the EB originally made concerning the timely construction of these licenses—essentially, that the Wireless Bureau’s decisions did not specifically rule on the issue of timely construction as to certain authorizations and that those decisions are not binding on the timely construction issues in this proceeding. To rebut this argument, the EB appears to simply walk

back their own previous argument: “[T]he Bureau’s earlier response was based on a misunderstanding that the Mobex decisions did not identify the licenses at issue and thus could not affirmatively demonstrate timely construction . . . .” See Reply at p. 8 ¶ 11.

Respectfully submitted,

/s/

Warren Havens  
2509 Stuart Street, Berkeley CA 94705  
510 841 2220, 848 7797

January 7, 2014

## EXHIBIT 1

Underlining and italics in original. Highlights added.

I (Havens) received no response to my last email below, of Jan. 3, 2014 at 12:07-12:13 pm.

----- Forwarded Message -----

**From:** eitt líf. koma nú. griðastaðir <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>  
**To:** Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>; Robert J. Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>; "Kirk, Robert" <[RKirk@wbklaw.com](mailto:RKirk@wbklaw.com)>  
**Cc:** Brian Carter <[Brian.Carter@fcc.gov](mailto:Brian.Carter@fcc.gov)>; Jimmy Stobaugh <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>; "O'Connor, Mary" <[moconnor@wbklaw.com](mailto:moconnor@wbklaw.com)>  
**Sent:** Friday, January 3, 2014 12:13 PM  
**Subject:** Re: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

I fixed typos below, and again add - This is not confidential.

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**From:** eitt líf. koma nú. griðastaðir <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>  
**To:** Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>; Robert J. Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>; "Kirk, Robert" <[RKirk@wbklaw.com](mailto:RKirk@wbklaw.com)>  
**Cc:** Brian Carter <[Brian.Carter@fcc.gov](mailto:Brian.Carter@fcc.gov)>; Jimmy Stobaugh <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>; "O'Connor, Mary" <[moconnor@wbklaw.com](mailto:moconnor@wbklaw.com)>  
**Sent:** Friday, January 3, 2014 12:07 PM  
**Subject:** Re: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

**Mr. Kirk,**

FYI, I got no out-of-office response from your email today.

**Ms. Kane, Mr. Keller and Mr. Kirk,**

(respectively, for the FCC Enforcement Bureau, Maritime, and Choctaw),

You appear to believe I am not a party, since you have duties to meet and confer with parties, but refuse that, except you initiate it.

However, I appreciate your taking the time to respond below; that you did not find any of my four questions unclear or irrelevant; and you do not dispute my positions in my 4 numbered items to you.

You now each inform me that you will not communicate on "such inquires." That is a change from your past position, and you give no reason for it.

When you put "such inquires" to me, regarding your asserted settlement negotiations, that was *your choice* (and for reasons found in the relevant FCC law as to settlements). Your settlement attempt is still pending.  
- When putting that to me, you did not say to me that you will only communicate on "such inquires" to me, if the Judge directs it.

- Rather, you told the judge that your alleged "negotiation" with me was relevant to your upcoming Dec 2 motion, and to your proposed schedule allowing on Dec 2 your "motion to resolve" by issue (g) by a settlement in negotiation.

- You also asserted to me at that time that the issues of what stations would be give up in settlement, if Maritime-Chocktaw can keep the rest, was confidential and I would have to sign a confidentiality agreement to get that information and be part of the settlement negotiation. I told you that cannot be confidential, and I was right- your Dec 2 settlement motion disclosed publicly this information.

- The above is objectionable, and the evidence shows that you mislead the ALJ.

In continuation of that, your refusals to meet and confer in the emails of today (also on matters of your settlement) is further objectionable, and I believe is contrary to existing orders of the ALJ and proper litigation practice. In addition, you cannot believe I should deal with you as to any settlement attempt, now or later, if you refuse "such inquires."

Thus, I will present the matters posed to the ALJ, and for the record on appeal, as needed.

Also, you do not know what the AMTS geographic-licensees legal entities I am President of think of matters going on in this hearing, since you succeeded in convincing the ALJ to not permit me to continue to represent them. Maritime already lost before the FCC (outside of this 11-71 procession) in attempts to deem these legal entities the same as "Havens." The ALJ treats them as different from Havens, as did you in arguing to the ALJ that Havens be barred from representing them.

- Those licensees intend to challenge a decision in this hearing, if adverse, including on the basis of wrongful termination of their participation, as you lobbied for and got.
- You would not respond to my question 3 below, in this regard.

Thanks again for your prompt responses.

Sincerely,  
/s/

**Warren Havens**

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**From:** "Kirk, Robert" <[RKirk@wbklaw.com](mailto:RKirk@wbklaw.com)>  
**To:** eitt líf. koma nú. griðastaðir <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>  
**Cc:** Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>; Brian Carter <[Brian.Carter@fcc.gov](mailto:Brian.Carter@fcc.gov)>; Robert J. Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>; Jimmy Stobaugh <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>; "O'Connor, Mary" <[moconnor@wbklaw.com](mailto:moconnor@wbklaw.com)>  
**Sent:** Friday, January 3, 2014 10:50 AM  
**Subject:** Re: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

As indicated in my out of office message you are getting, I am not in the office. Choctaw will respond to your inquiries if directed to do so by the presiding judge.

Sent from my iPhone

On Jan 3, 2014, at 1:22 PM, "eitt líf. koma nú. griðastaðir" <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)> wrote:

Mr. Kirk?

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**From:** Robert J. Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>  
**To:** 'eitt líf. koma nú. griðastaðir' <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>  
**Cc:** 'Pamela Kane' <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>; 'Brian Carter' <[Brian.Carter@fcc.gov](mailto:Brian.Carter@fcc.gov)>; 'Jimmy Stobaugh' <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>; 'Robert Kirk' <[rjk@wbklaw.com](mailto:rjk@wbklaw.com)>  
**Sent:** Friday, January 3, 2014 10:11 AM  
**Subject:** RE: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

Maritime is under no obligation to respond to such inquiries, and it declines to do so. The record speaks for itself. If the Presiding Judge requires additional information, he will ask for it.

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Bob Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>  
PO Box 33428, Washington DC 20033  
Tel 202.656.8490 | Fax 202.223.2121

<image09b725.JPG>

**ROBERT G. KIRK**  
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2300 N STREET, NW  
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WASHINGTON, DC 20037-1128  
MAIN 202.783.4141  
DIRECT 202.383.3363  
FAX 202.783.5851  
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**From:** eitt líf. koma nú. griðastaðir [<mailto:warren.havens@sbcglobal.net>]  
**Sent:** Friday, January 03, 2014 1:03 PM  
**To:** Robert Keller; Robert Kirk  
**Cc:** Pamela Kane; Brian Carter; Jimmy Stobaugh  
**Subject:** Re: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

Mr. Keller, and Mr. Kirk,

Please respond to my four questions. I directed these to you independent of Ms. Kane.

Warren Havens

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**From:** Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>  
**To:** 'eitt líf. koma nú. griðastaðir' <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>; Robert Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>; Robert Kirk <[rkirk@wbklaw.com](mailto:rkirk@wbklaw.com)>  
**Cc:** Jimmy Stobaugh <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>; Brian Carter <[Brian.Carter@fcc.gov](mailto:Brian.Carter@fcc.gov)>  
**Sent:** Friday, January 3, 2014 9:44 AM  
**Subject:** RE: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

Mr. Havens:

The Enforcement Bureau already provided you with confirmation that as of 12:12 PM EST on December 23, 2013, the Bureau successfully filed its Motion for Leave to File with ECFS and that as of 12:14 PM EST it successfully filed its Reply with ECFS. We included these confirmations in our courtesy email on December 23. A copy of that same confirmation was also sent to Judge Sippel and his clerk at the same time.

With regard to your questions about the Motion for Leave to File a Reply and the Reply, the pleadings are clear on their face. If the Judge has questions concerning the substance, I am confident he will raise those with us.

Pamela S. Kane  
Deputy Chief -- Investigations & Hearings Division  
Federal Communications Commission  
202-418-2393

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**From:** eitt líf. koma nú. griðastaðir [<mailto:warren.havens@sbcglobal.net>]  
**Sent:** Friday, January 03, 2014 10:37 AM  
**To:** Pamela Kane; Robert Keller; Robert Kirk  
**Cc:** Jimmy Stobaugh; Brian Carter  
**Subject:** Re: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

I add to below.

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**From:** eitt líf. koma nú. griðastaðir <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>  
**To:** Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>; Robert Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>; Robert Kirk <[rkirk@wbklaw.com](mailto:rkirk@wbklaw.com)>  
**Cc:** Jimmy Stobaugh <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>; Brian Carter <[brian.carter@fcc.gov](mailto:brian.carter@fcc.gov)>  
**Sent:** Friday, January 3, 2014 6:37 AM  
**Subject:** Re: 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

I add to the below.

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**From:** eitt líf. koma nú. griðastaðir <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>  
**To:** Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>; Robert Keller <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>; Robert Kirk <[rkirk@wbklaw.com](mailto:rkirk@wbklaw.com)>  
**Cc:** Jimmy Stobaugh <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>; Warren Havens <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>; Brian Carter <[brian.carter@fcc.gov](mailto:brian.carter@fcc.gov)>  
**Sent:** Friday, January 3, 2014 6:30 AM  
**Subject:** 11-71. Reply to Havens Dec 16 Opposition to E Bureau-Maritime Motion of Dec 2

*This is not confidential*

**Ms. Kane, Mr. Keller, and Mr. Kirk,**

I may use this email and your responses in a filing in this docket, 11-71. (I will object if you use truncated copies of any email exchange, as lack of candor: I refer to recent past uses in this regard as to the alleged 5:30 pm filing deadline on EFCS.)

I request that you candidly (as "officers of the court" and as representative counsel) respond to the below, **to minimize disputes before** the ALJ, Mr. Sippel on the matters posed below. The Motion (defined below) was a joint motion of the Enforcement Bureau ("EB") and Maritime. Later, Choctaw submitted limited support of the Motion, as well, and in any case has legal powers related to Maritime and the Maritime Issue-(g) licenses, under the Chapter 11 Plan as approved by the bankruptcy court.

If you do not respond to this email, then I will take the logical position that Maritime and Choctaw do not support the MFL and Reply, which indicates that the joint Motion is **no longer jointly** pursued by Maritime (and/or Choctaw) along with the EB.

**Ms. Kane,**

I refer here to your Dec. 23, 2013 dated Motion for Leave to permit a Reply and your Reply ("MFL" and "Reply"), to my further Opposition filed on Dec. 16 of the Joint Enforcement Bureau - Maritime Motion filed on Dec. 2, 2013 (the "Motion").

I plan to timely respond to the MFL and the Reply. In this regard, please let me know:

1. Were the MFL and Reply authorized at the time of filing, or afterward, by counsel to Maritime (Mr. Keller), and/or counsel to Choctaw (Mr. Kirk)? That is, the Motion was **joint**, and I ask if the MFL and Reply were also joint --- if Maritime does or does not agree with and support the MFL and Reply, and if Choctaw does or does not agree with and support the MFL and Reply.

2. Why did the Request and Reply not include Maritime as a submitting party? Also, why did it not include Choctaw?

3. The Reply discusses **alleged benefits to companies I manage** that hold geographic AMTS A-block licenses. **Do you take that position now that Warren Havens pro se participation in this hearing, in docket 11-71, is not for Warren Havens personally, but represents the interests of these companies?** If not, what is the basis of that allegation?

4. I need to calculate the due date for my contemplated response to your MFL and Reply. In this regard -

Please provide **proof** that the MFL and Reply were filed and on and **accepted by ECFS on Dec 23 by the time of the day** you allege applies to a filing in this docket to be filed on a day: **5:30 PM**.

If you allege, as you have in the past, that the proof of the time of day of your filings is your representation as an "officer of the court," **what authority do you have in support of that**, and where are your representations of this sort filed on ECFS associated with any filing? Can only "officers of the court" assert proof of time of filing? I am not an officer of the court.

How can you represent what ECFS accepted (it is a computer system, and has persons in back of it now and then, but a filer is not in control of this system or these persons).

**If you can not provide sound support for your position on matters I raise in this item 4 above, I do not see how you can assert that your RFL and Reply (or other) filings were filed at a particular time of day. Email of alleged already-filed filings is not used for service or proof of service under any FCC rules or applicable Order.**

**Mr. Keller,**

Please let me know Maritime's response to the first 3 numbered questions I pose above to Ms. Kane.

**Mr. Kirk,**

Please let me know Choctaw's response to the first 3 numbered questions I pose above to Ms. Kane.

Thank you each, and happy new year.

/s/

Warren Havens

2509 Stuart St., Berkeley CA 94705 / 510 848 7797

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 Opposition and...” to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554 (by hand, courtesy copy)  
Richard Sippel [Richard.Sippel@fcc.gov](mailto:Richard.Sippel@fcc.gov)  
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/ s / [Electronically signed. Signature on file.]

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Warren Havens