

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 Of Various)	FRN: 001358779
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, <i>Et al.</i>)	0004193328, 0004354053, etc.
()	

To: Marlene Dortch, Secretary. Attn: the Commission

Interlocutory Appeal Under § 1.301(a)^[*]

The undersigned (“Havens”) hereby appeals under §1.301(a) including but not limited to §1.301(a)(2) aspects of the January 8, 2014 Order FCC 14M-3 (“M3”) (Exhibit 3) of ALJ Sippel (the “ALJ”) that purports to memorialize aspects of the ALJ bench order at the prehearing conference of 1-17-14 (“1-17 Hearing”) (the “M3 Appeal”). The M3 and MC Appeal relate to my two pending §1.301(a) appeals and the ALJ orders involved, and to 14M-3 attached hereto (Exhibit 4), which I plan to appeal in part under §1.301(a)¹ and the other Exhibits hereto: *Please first see* the below Appended Exhibits list and *defined terms* therein *then return here*.

Initially, it is remarkable and revealing that in this proceeding, Maritime is permitted to label core evidence of public AMTS CMRS license construction and operation—and lack thereof—as highly confidential, and the FCC protects that in the face of FOIA requests submitted by Havens, and the Enforcement Bureau (“EB”) labors to allow Maritime to keep licenses that has for decades warehoused spectrum by spoiling evidence, yet the FCC’s ALJ and

[*] Since this appeal is from an Order in the ECFS docket 11-71, I am submitting this to the Secretary under this docket on ECFS. / Also, even if (see herein) M3 was released and effective on its internally stated date, 1-17, this Appeal is timely under §1.45 due to 1-20 and 1-21 being FCC “holidays.”

¹ A series of ALJ actions including, *inter alia*, those outlined in part in my §1.301(a) appeals in this proceeding may provide sound basis for a motion to disqualify under §1.245, and if I file such a motion, I may ask to consolidate the pending §1.301(a) appeals with the motion.

EB spend their time (the public's time and expense) in interloping prying into, with no legal basis even asserted, the communications between Havens and non-representative legal counsel. Where there is "smoke[screens], there is fire," and it is this fire that is the real issue.²

I request the Commission to overrule and vacate M3 since: **(1)** It upholds the ALJ's demands in FCC 13M-1 ("M1") that legal counsel who assisted Havens (on non-representative basis in this case) disclose information protected under attorney-client "Privileges" defined by Havens in Exhibit 2, that are clearly established in law (as to rights of Havens and related duties of counsel), and where the ALJ cited and effectively admitted (in the 1-17-14 prehearing) to having no FCC or other law that supported these demands, and for other reasons given in my pending §1.301(a) appeal relating to M1 and given below.³ **(2)** It results from the ALJ imposition on Havens not only of a demand to attend the 1-17 Prehearing (see M1) (for no legal reason given—see above), but it conducted the Prehearing for an undisclosed purpose which it fulfilled: a decision on the rights and liabilities of Havens (and, per M1, even of the SkyTel

² Havens recently filed a complaint against the FCC in the US District Court, Northern District of California, Case No. C14-0404 MEJ, for declaratory and injunctive relief to disclose this improperly hidden information and to enjoin the Hearing until that is done. Havens intends to place a copy in docket 11-71.

³ Including: M3 and M1 were not served on Havens assisting counsel (including since they are not parties to or counsel in this hearing), and the ALJ's assertion of release of Orders by private-company emails, first stated in M4, is contrary to law. Said attorneys are not subject to FCC rules or the ALJ authority in this proceeding under any FCC rules or any cited authority. The ALJ only hinted at the 1-71 Prehearing, after Havens objected to the ALJ giving no legal authority in M1 for the Prehearing and the demand in M1, for the first time, that he had concerns as to "ghostwriting" based on some case precedents he could not or would not cite. If the Commission chooses to initiate proper rulemaking as to any such concerns, it can do so, but the ALJ showed no authority place demands, expenses and delays on Havens and his assisting counsel, for his concerns he could not define or reveal in his written Orders, or even orally at the 1-17 Prehearing. The modern trend, and the clear directive of the ABA (e.g., see Exhibit 8 below), it to find net benefits to "ghostwriting" and other "unbundled" legal services. The modern age involves educated non-attorney persons with immediate access via the Internet and services such as Lexis to legal information sufficient for effective self representation for which various "unbundled" services of attorneys can provide complementary information to improve the self representation. It was Havens self representation, aided in various ways by legal counsel from time to time, and these online legal information sources, that produced the "petitions" that were the seminal cause of and cited in the HDO, FCC 11-64, that is the basis of this proceeding.

entities that were not parties in the proceeding at the time, under the ALJs preceding rulings barring Havens from representing them), without notice that any such hearing for a decision would take place, and did not permit him to obtain legal counsel for said hearing and decision, contrary to the Administrative Procedures Act as I cited. See H2, H2, H3, and H4. M5, released today, continues this. (3) M3, M4, and M5 all take the position, contrary to H3 Request 1, that record of the 1-17 Prehearing is not a FCC record, but that Havens must buy the record, and on an expedited basis if he is to have the record for this appeal. That is contrary to the APA in 5 USC §556(e).⁴ The ALJ Office failed to make available the transcript under this statute. At the 1-17 Hearing, the ALJ commenced by saying no testimony would be taken, thus, there is no basis for the bench ruling or M3 under 5 USC §556.⁵

To reduce the need for restating what is in the relevant record, for the foundation herein, I first refer to and incorporate herein the Exhibits hereto, including therein my presentation of facts and legal arguments in support of the just-stated request in the instant M3 Appeal: both those submitted in response to M1 before the 1-17 Prehearing. As these show, ALJ in M3 avoided and mischaracterized principal aspects of my filings H1 and H2 (see also my related filing, H4, as to the further mischaracterizations in M4). Based upon this foundation, I further present the following:

See M1, Exhibit 1 below. See the underlined parts of ¶¶ 4-7:⁶ these emphatic demands go to

⁴ 5 USC §556 (e): “The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties.” (Emphasis added.)

⁵ 5 USC §556(d):”A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.” (Emphasis added.)

⁶ The Order commands (emphasis added):

...full discussion on the subject of Mr. Havens' representations pro se and via counsel.... explain fully the nature, scope, and objective of ... representation ...

the heart of attorney-client privilege, work-product, and confidentiality: the defined "Privileges" in "H1." These are summarized by the ABA in Exhibit 8 below. Under the rights noted herein, this information demanded in 14M-1 is client confidential, involves attorney work product for the client, and seeks attorney-client privileged information. "The attorney-client privilege protects confidential communications made between clients and their attorneys when the communications are for the purpose of securing legal advice or services." *In re Lindsey*, 332 U.S. App. D.C. 357, 158 F.3d 1263 at 1267 (1998) ("Lindsey"). The Order emphatically, repeatedly, and in detail seeks this protected information. I object to the Order improperly intruding on these protected rights and causing major costs, loss of time and opportunities, and other damages. For these reasons, I ask that you grant the relief sought herein.

1. As I explain in H1, as to M1 (emphasis in original) (irrelevant footnotes deleted):

2. The information required under the Order³ from the Limited Counsel (defined below) that relate to me and the SkyTel entities *is fully subject to attorney-client communication and relation privileges* (together, "Privileges"),^{5/} and I have made clear to each attorney called to testify at the hearing under the Order now set for this Friday (the Hearing) and their firms ("Limited Counsel") that I fully assert the Privileges, with no waivers or exceptions, regarding myself and all companies I manage (often called "SkyTel entities").

5/ As to communications, work product, confidentiality, and other matters.

2. I repeated at the 1-71 Prehearing my H1 assertions:

3. The ALJ ruled from the bench as shown in Exhibit 2 and prior that showed that he had no FCC rule, or other law, as the basis of 14M-1 and the Prehearing, and this entire affair as to what is and is not subject to attorney-client "Privileges." Please read the "revised" copy that has my margin annotations and highlights. These show the real nature of 14M-1, the resulting Prehearing, the bench ruling and related 14M-3, and the reasons for this Appeal. I specifically

purposes...for... assistance,... scope and objective of each such assistance.... how each task was assigned, to whom..., by whom..., and the scope and objective of any instructions... with each assignment.... explain and describe each pleading... prepared or assisted in preparing;... each paragraph of each pleading that he prepared or assisted in.... each paragraph of each pleading known or believed to have been prepared by Mr. Havens or some other person....

as that you read this fully as part of this Appeal, but *not* if, by that reading, you find that this Appeal is oversized and defective.

4. Notwithstanding the bench ruling and representation thereof in M3 being at odds with the actual stated position of Havens in H1 and H2 (as reflected in H3), the fact is that (i) M1 demanded the Privileged information, (ii) the 1-17 Prehearing sought that in various ways, and did do in front of other parties, competitors and proceeding adversaries of Havens (counsel of all other parties the ALJ invited and who attended), and (ii) *M3 upheld that in full*. The Limited Counsel for the most part properly refused at the Prehearing and prior thereto, to breach their duties to Havens, and expressed that extensively at the Prehearing.⁷

5. See exhibits 10, 7, and 6. The ALJ did not provide me sufficient time for this Appeal, and he had discretion to do so. Further, the ALJ and FCC did not make available to me the transcript as required under 5 USC §556, but required that I buy a expedited copy. I thus reserve the right to amend and supplement this filing.

See Exhibit 11. This Appeal filing on ECFS was permitted by the office of Secretary.

Respectfully submitted,

/s/

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

January 28, 2014

⁷ Prior to this Prehearing, and at the Prehearing, Havens expressed objection to certain disclosures made by Limited Counsel Neil Ende, at the Prehearing Havens expressed certain objections (which the ALJ in large part sustained) as to certain suggestions by Limited Counsel as to how Havens may act (suggesting certain “in-camera” presentations on issues in M1 to the ALJ, certain actions Havens make take on appeal to the Commission, etc.). Havens maintains these objections.

Appendix

Exhibits list

- Exhibit 1 M1. *ALJ's FCC 14M-1* (“**M1**”) requiring certain attorney-client information of non-representative counsel assisting Havens, and setting the 1-17-14 “prehearing conference” for this purpose, requiring Havens to attend, etc. (“1-17 Prehearing”).
- Exhibit 2 H1. *Havens's “Motion for Relief Regarding Order FCC 14M-1...,”* errata copy, filed 1-15-14 (this was also Appendix A in the Havens §1.301(a) appeal of FCC 14M-1) (“**H1**”).
- Exhibit 3 H2, etc. Transcript excerpts of the 1-17 Prehearing. Havens statements herein called “**H2.**” Note: There is a “*Revised*” version uploaded after the first version.
- Exhibit 4 H3. Havens's “Objections, Requests, and Clarifications Regarding the Prehearing under Order **FCC 14M-1**” (errata copy), filed 1-17-14 (“**H3**”).
- Exhibit 5 M3. *ALJ's FCC 14M-3* (“**M3**”), “Released” 1-17-14, purporting to memorialize the ALJ bench order, at the 1-17-14 “prehearing conference.”
- Exhibit 6 M4. *ALJ's FCC 14M-4* (“**M4**”) “Released” 1-27-14, purporting to respond to Havens's 1-17 filing (Exhibit 2 above)
- Exhibit 7 H4. Havens's email request to ALJ of 1-27-14 responding to 14M-4 and asking ALJ to respond to what he *actually* requested in his 1-17 filings, as to the effective date of Order **14M-3**. (“**H4**”)
- Exhibit 8 American Bar Association Formal Opinion 07-446 “Undisclosed Legal Assistance to Pro Se Litigants,” May 5, 2007.
- Exhibit 9 From ABA, on Professional Conduct Rule 1.6: commenting on the related: attorney-client privilege, work-product doctrine, and rule of confidentiality (as indicated in H1, H2, H3, and defined in H1 ad the “Privileges”).
- Exhibit 10 M5. ALJ's FCC 14M-5. Denies H4. Alleges that assertion of the Privileges before and at the 1-17 Prehearing was “inscrutable” and a “stonewall,” etc. Alleges 1 business day of access to transcript is sufficient (where the FCC did not provide it, in the first place- it was the FCC's hearing imposed on Havens: FCC has a duty under APA to make the record).
- Exhibit 11 Declaration re FCC Office of Secretary confirms that filing this Appeal to the Commission on EFCS in docket 11-71 is permissible.

CERTIFICATE OF SERVICE

The undersigned certifies that he has on this 28th day of January, 2014 caused to be served by first class United States mail copies of the foregoing Appeal to:

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Chief Administrative Law Judge
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/ s / [Electronically signed. Signature on file.]

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