BEFORE THE FEDERAL COMMUNICATIONS COMM1SSION
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, *Et al.*	)	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) -(**1**) (re party rights), -(**2**) (re claim of privilege) and -(**5**) (re removing counsel) aspects of the January 8, 2014 Order FCC 14M-6 ("M6") of ALJ Sippel (the "ALJ") ("M6 Appeal"). *First see* the below Appended Exhibits list and *defined terms* therein *then return here.* M6 purports to respond to the substance of my Section 1.301(b) request related to FCC 14M-1 ("M1") ("301(b) Request"). This M6 Appeal is related to my pending interlocutory appeals related to M1 ("Pending Appeals") including regarding FCC 14M-3 ("M3") ("M3 Appeal") which also related to FCC 14M-5 and 14M-5. FCC M-1 through FCC M-6 ("M1-6") are related, as is this M6 Appeal along with my Pending Appeals of aspects of M1-5 (together the "M1-6 Appeals").[1]

Section 1**.** I first comment on filings of earlier today by the counsel to Jim Chen ("Chen Counsel") and the Enforcement Bureau ("EB") since they reflect and in part respond to M6, and since M1-6 are related. (i) The EB filing should be stricken since it is not and opposition, but a motion asking the Commission to adopt a position that is not in the subject of M1-5, which is the

[*] This is submitted on EFCS. See item 11 in M3 Appeal exhibits list below.

[1] As indicated in M3 Appeal, I may file, and currently plan to file reasonably soon a motion to disqualify under §1.245 and expect, from the ALJ decisions to date, it to be denied which I would expect to appeal the Commission and request these §1.301(a) Appeals related to M1-6 be consolidated or subsumed with the §1.245 appeal, if said §1.301(a) Appeals are not yet decided (or even if decided, they have additional meaning as part of the larger history I cannot submit under §1.301(a) but can submit under the contemplated §1.245 appeal.

demands of M1. The ALJ did not issue demands *except in M1*: e.g., he stated at the 1-17-2014 hearing (the "Hearing") that he was not issuing demands, but asking questions, and that the answers were not even testimony. In this EB "opposition," the EB is laboring to redeem the glaring threshold defects in M1-6, which only supports my case in the M1-6 Appeals.[2] [3] [4] I also object to the Chen Counsel filing (which was fully independent of my participation or advance knowledge), initially since it, like the EB, but in more subtle fashion at ¶6, suggests a cure to M1-6. But there is no cure for the past unlawful actions: see above, unless at least until those are first admitted and fixed (see above). If, then, there is some other, lawful, procedure, that is another matter, but that is not a topic for a filing addressing my §1.301(a) appeal: only "oppositions" are permitted. The counsel to Mr. Chen assert in this non-opposition at ¶5 that the "only issue" is my "pro se status," and at ¶6 that the "inquiry be confined to … Mr. Havens… pro se" but that is obviously incorrect. The M1-6 affair began with the ALJ in M1 alleging as his sole legal authority FCC rule §1.52 and FRCP rule 11, each of which pertain to attorneys that

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[2] A fair summary of the EB positions is: the ALJ went too far in M1, and did not rectify that at the Hearing, *but let's start over*, and more narrow tailor set of information that can be demanded that may not violate attorney-client communication privileges, including as to rule 1.6 confidentiality and work product. I do not agree with that, but the point here is: If the ALJ wants to admit M1, the Hearing, and related actions were unlawful, and start over, he can do that. But EB has no right in an "opposition" for any such revisionary, remedial ALJ-proxy attempt.

[3] Also, EB comments including in ¶7 are spurious since (i) As I told the ALJ at the Hearing, I stand by my disclosures of use of assisting counsel: they were not concessions or admissions, but notices of my positive actins to improve my pleadings and participation, and as I stated at the same time, a step at getting representative counsel. (ii) And of course I can use in any pleading, any material from any source already before the FCC (or otherwise public), including Mr. Chen's past memo: the issue is not if I can use it, but is it accurate and relevant: *and as to that, EB has no complaint*. It is *frivolous* to assert a privilege waiver attaches to use of any such *public* documentation, or to assert that it use is "brazen[ly]" wrongful. Nor does EB know if the cited Chen memo was by Chen or in large part by Havens. In fact, if EB bothered to learn of AMTS "construction" authorities, it would have seen (i) Havens's pro se pleadings on this topic before the Wireless Bureau for years earlier had materially the same facts and arguments as in the Chen memo, and (ii) Havens's "glossary" memo to the ALJ on this subject.

[4] Why the EB is taking such unsupportable positions, and using an "opposition" to act as proxy doctor for the ALJ, should be investigated. A review if the EB support of Maritime, and using secret information that cannot be lawfully hidden and refusing core evidence EB ordered Havens to get, that he did get, will show why.

sign and present pleadings, and the ALJ slightly indicated, and only after my repeated demands for the legal basis of M1 and the Hearing, the he had a vague concern as to "ghostwriting" (which as an attorney issue, not *pro se* client issue) based on court precedents he could or would not identify, but told assisting counsel that he bet they knew about: These were *threats* to my assisting counsel, and they were unlawful, since they did not apply to assisting counsel, and the ALJ could not even attempt to show they apply. In this filing, Mr. Chen's counsel try to revise the actual history and problem. *The Chen filing, like the EB filing, support my case*: by (i) using pleadings only available for "oppositions," (ii) to suggest new-ideas cures (and (iii) to incorrectly suggest their represented parties are only commenters, not subjects or causes), they both highlight the problem that has gone way too far and caused irrevocable and serious damages. I repeatedly tried to ward this off and mitigate (see H1, H2 [many places in the transcript I highlighted], H3, and H4: all provided to the ALJ, EB and Mr. Chen). If the Commission accepts their suggested new-idea remedies, it will be an admission that the ALJ in M1-M5 violated law, and for that I will seek a remedy, if needed, in a court appeal. See also footnote 1.

Section 2**.** Initially, M6 asserts procedural errors but that is not very relevant here since the Order purports to address the substance.[5] As to substance, M6 appears to be an attempt to justify M1 and M3 (and as noted above, EB and Mr. Chen key off the ALJ's M6: a comparative reading, and the timing, makes this apparent). This fails, first since the ALJ cannot order any "sanction" (as meant in the Administrative Procedures Act) (discussed in the Pending Appeals) with no explained lawful basis, only to later reveal a basis. In that regard, M6, after M1-5, are akin to: an attempt to justify *after* complaints are lodged, as to a preceding unlawful search and seizure *without cause*. That further fails since M6 uses misrepresentation and other defective assertions in its attempts: see Section C below.

[5] Briefly, if the ALJ could not "divine" the meaning, then he could not respond on the substance, and the 302(b) Request did not "combine" a pleading to the ALJ and the Commission, but referenced one in the other, which is permissible, efficient and common practice.

Section 3. M6 misrepresentation and spurious assertions. (1) M6 asserts as a fact on p. 3 that I benefitted from asserting pro se representation, but as I stated in the "H" filings (see Exhibit list below), including at the Hearing (see H2) that is false, as shown in the ALJ denial of the merits of the subject motion for summary decision. (2) M6 asserts as a fact on p. 3 that the "it was disclosed [only] earlier this month that legal counsel has assisted Havens…." That is also false, and I stated that also in the H filings, including at the Hearing. I further demonstrate that by the Attachment hereto (summary chart of the history of my informing the ALJ as to assisting counsel, and even his citing this as justification for grant of my proposed scheduling order). (3) M6 uses spurious terminology including: writing as if there is no difference in undefined assisting counsel that presents and signs no pleadings and makes no oral presentations, and representative counsel of record, where that is under FCC rules different, and obvious different.

Section 4. The preceding gives rise to the following:[6] (1) As to §1.301(a)(2): (re party rights): M6, attempting to justify M1 (more broadly M1-M5) is constructive denial or termination of my party right to participate in the subject 11-71 proceeding, and is unlawful and in bad faith, for reasons in the Pending Appeals, amplified by the objections re M6 herein. (2) As to §1.301(a)(2): (re claim of privilege): M6, attempting to justify M1 (more broadly M1-M5) requires testimony or the production of documents, over objection of claim of privilege (an "(a)(2) Ruling"), and is unlawful and in bad faith, for the following reasons. M1 contained orders that impose requirements, and M3 (the order from the Hearing under M1) was a ruling: these each and at least together constitute an (a)(2) Ruling. The M3 Appeal (and preceding

[6] The actions objected to in the M1-6 Appeals may be within the scope of the Federal Torts Claims Act since, among other reasons: 28 U.S.C. § 2680 exceptions may not apply where statutes, policy, or mandatory regulations dictate the actions of employees, yet the action deviates. Berkovitz v. United States, 108 S.Ct. 1954 (1988); Shuler v. United States, 2008 WL 2728932 (D.C. Cir.). Also, where abuse of process or malicious prosecution is committed by federal investigative or law enforcement officers, sovereign immunity is waived. 28 U.S.C. § 2680(h). The FCC Office of General counsel has ruled that proceeding 11-71 is a law enforcement proceeding. See the Havens v. FCC court action described in the M3 Appeal.

Pending Appeal) challenged M1 and M3 as clearly ordering or requiring information that is confidential and privileged under attorney-client relations and communications, which was repeatedly asserted and stated as objections. M6 attempts to justify M1 and M3 (in the guise or at least form of a response to the 1.301(b) Request) and thus is a further assertion of the subject M1 and M3 (or more broadly M1-5) (a)(2) Ruling. However, that fails for reasons given herein, and as with the EB and Chen filings noted above, only suggest my case is sound. (3) As to §1.301(a)(2): (re removal of counsel): M6, attempting to justify M1 (more broadly M1-M5) is constructive removal of counsel, and is unlawful and in bad faith, since (i) is equates non-representative counsel as the same as representative counsel and then (ii) it imposes conditions on my use of said counsel that are lawful, constructively preventing me from contracting, retaining and using counsel under lawful market conditions. Without revealing any privileged information, it is clear that where a legal authority, in this case the ALJ, threatens legal counsel with violations of and sanctions under FCC rule §1.52 and Rule 11, and demands they turn over clearly confidential and privileged information, and suggests that they have waived privileges (see foonote in M6) when they made clear they have not (in the 1-17-2014 Hearing), this is constructive barring or removal of counsel. It is unlawful for reasons I presented in the M3 Appeal. M6 avoids that actual facts and issues I raised, including that M1 demands repeatedly that assisting counsel disclose the objective, purpose, instructions involved in each document, down to paragraph level, etc. It a flagrant attack on core attorney client relation and communication protections as to privilege, work product, and confidentiality. These unlawful actions, complained of herein as to M6 (that is the last ramification of and attempt to justify M1-5) drive away counsel, and is constructive removal and bar to counsel, whether assisting or representative counsel.

Respectfully submitted,

/s/

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

February 4, 2014

Attachment

The below items commence with their date, as filed on ECFS, then the EFCS filing identification (provided by ECFS when the file is downloaded), and relevant excerpts. *All excerpts are verbatim* (no paraphrasing).[7] This is based on initial review and is not exhaustive. It more than demonstrates the point in the Appeal text.

Underlining added (but the text to commence is plain text, since it was imported that way into Excel to organize).

As of early January 13, 2014, with an assistant, I have had the files on EFCS reviewed from most recent back to 10-2-1012 for purposes of this Exhibit. This is more than sufficient time for the purposes of this filing (to which this is an Exhibit).

This review shows, among other things, that :

(1) Even though not required by any rule or ruling (including FCC law or DC rules for attorney conduct), *I notified the ALJ (and parties) as early as Oct 2, 2012, and number of times thereafter and also long before the filings in December 2013, that I intend to find and use advising counsel, as apart from representation, and to act pro se with said advising counsel.*

(2) There were no objections raised by the ALJ (or any party) to this (what I note in item '(1)' above). In fact, the ALJ recognized this - what I noted in '(1)' above – in August 2013, long before my December 2013 filings (subject of the "Order" at issue here), and it was even a reason he indicated in granting my proposed case schedule.

Oct 2, 2012
11-71 10-02-2012 havens (3 of 3) 7022027161
Subject: Fw: EB 11-71 (FCC 12M-19)
By W. Havens

I intend to use legal counsel in administrative and Constitutional law, for advice and/or representation, for the appeal and this potential related relief- but I do not have to. Maintaing pro se rights is essential, including to have healthy relations with counsel, to fill in gaps of counsel is

[7] Text excerpts from the original PDF documents in OCR (optical character recognition) were copied and pasted into an Excel sheet for review. From there, relevant text was placed into this Word document. It is possible that in the OCR copying made errors, although this rarely happens. If a PDF is of poor quality, it is more likely to happen (e.g., to translate the letter "L" into the number "1" or the like).

relieved or withdraws, to save money when needed, and for other good cause. Constitutionally protected rights are not subject to extrinsic good cause in their exercise and defense, but there are many apparent ones in this case."

Nov 29, 2912
11-71 11-29-2012 Havener Law Firm 7022073003
NOTICE OF APPEARANCE
By James M. Chen

Notice is hereby given that the undersigned will appear as counsel to Warren Havens (as an individual); Environmental, LLC; Intelligent Transportation and Monitoring Wireless, LLC; Verde Systems, LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; and V2G LLC in the above-captioned proceeding. The appearance of the undersigned as counsel should not be construed as a waiver or modification by Mr. Havens of arguments he has made and actions taken *pro se*, or the right, if he later chooses to exercise it, to further *pro se* participation.

February 14, 2013
11-71 02-14-2013 W Havens for Skytel entities 7022121546
Notice of Discharge of Previous Counsel And Related Matters
By Warren Havens

I am seeking new counsel for advice and representation, as appropriate. Until I obtain new representation, I will continue *pro se* as I commenced in my recent two filings.7 I may also submit, in this public Hearing and docket, factual information for the Judge's consideration as I have in the past.

Feb. 20, 2013
11-71 02-20-2013 W. Havens and SkyTel entities 7022123190
*Supplement and Errata * to Initial Opposition to Maritime's 2.7.2013 Motion to Strike ("2-7 Motion") and Alternative Opposition ("2-7 Opposition") and Request for Sanctions*
By Warren Havens

The WB and EB Bureaus, ending in the full Commission in HDO FCC 11-64, eventually for the most part agreed, and the Commission based this HDO largely upon Havens' *pro se* research, pleadings and tenacity from long before Auction 61 up to the time of this HDO. Havens always had legal counsel, when if needed. But the actual history shows that Havens (with other SkyTel staff) succeeded in this almost entirely on a *pro se* basis, and this was recognized by the Commission.

Mar. 21, 2013
11-71 03-21-2013 W. Havens and SkyTel entities 7022133458
Subject: Re: FCC/ OALJ rquest for information

By Warren Havens

I am seeking new counsel for advice and representation, as appropriate. Until I obtain new representation, I will continue *pro se* as I commenced in my recent two filings.7 I may also submit, in this public Hearing and docket, factual information for the Judge's consideration as I have in the past.

May 14, 2013
11-71 05-14-2013 Office of Administrative Law Judges 7022313717
ORDER
By ALJ Sippel

See Order, 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).

May 24, 2013
11-71 05-24-2013 Warren Havens 7022417030
Further Notice of Appearance with Reasons
By Warren Havens

That Notice, following the rule above, is a notice that a party, in this case myself, will appear, not that an attorney will appear. This rule does not require that, once I have filed a timely and proper notice of appearance, as I did, that I must use the attorney who filed the notice to represent me in the hearing, or that if I do commence to use that or another attorney as representative, but discontinue the representation of the attorney (or several in succession), that I will have to appear again as a "party in interest" by fling another notice "in person or by attorney."

Aug. 27, 2013
11-71 08-27-2013 Warren Havens (1 of 2) 7520940099
PROPOSED SCHEDULE From Warren Havens[*]
By Warren Havens

I intend to have, but have not yet fully secured, legal counsel for the hearing and some pre-hearing matters.

October 25, 2013
11-71 10-25-2013 Office of Administrative Law Judges 7520952399
ORDER
By ALJ Sippel

Mr. Havens' Motion states that this suspension of service prevented him or his prospective attorneys from accessing docket pleadings and orders in this case.

[Comment on above. This statement by the ALJ, above, makes clear that the ALJ understood what precedes this above (shown in the filings exceprts above): that my "prospective attorneys" were attorneys that I intended would be representative counsel, after an appearance. But that I also had active advising counsel, in this case, "accessing docket pleadings and orders." The ALJ was not objecting to the advising counsel above, but this was a cause of his granting my proposed schedule, the topic of the Order containing the above.]

Dec 3, 2013
11-71 12-03-2013 Havens 7520960084
Havens-SkyTel 1 First Motion Under Order 13M-19 To Reject Settlement, Proceed with the Hearing. and Provide Additional Relevant Discovery
By W. Havens

As previously reported, Havens expects to secure representative counsel for or before the hearing. In addition, Havens actions in this hearing on a pro se basis have been informed by assisting counsel as to procedure and substance.

Dec 3, 2013
11-71 12-03-2013 Warren Havens (2 of 2) 7520960081
Havens-SkyTel 1 Additional Motions Under Order 13M-19
By W. Havens

As previously reported, Havens expects to secure representative counsel for or before the hearing. In addition, Havens actions in this hearing on a pro se basis have been informed by assisting counsel as to procedure and substance.

[Multiple Items]. W. Havens submitted from December 2013 and a number of days afterward, errata copies of the Motions identified immediately above that had the same or materially same notice as in the excepts for the immediately above items.

Dec. 16, 2013
11-71 12-16-2013 havens 7520962901

HAVENS OPPOSITION TO JOINT MOTION OF ENFORCEMENT BUREAU & MARITIME FOR SUMMARY DECISION ON ISSUE G
By W. Havens

I do not waive any of my positions in this proceeding as to my right to use, or not use, representative legal counsel for myself and any or all SkyTel entities.

Dec. 30, 2013
11-71 12-30-2013 Havens (3 of 3) 7521064349
Request under Section 1.301(b) of 12-30-13
By W. Havens

Despite my reliance on assisting counsel, I do assert my right to participate in this proceeding on a *pro se* basis and ultimately do so participate

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Dec. 30, 2013
11-71 12-30-2013 Havens 7521064332
Interlocutory Appeal Under Section 1.301(a)
By W. Havens

Despite my reliance on assisting counsel, I do assert my right to participate in this proceeding on a *pro se* basis and ultimately do so participate.

Jan. 7, 2014
11-71 01-07-2014 Warren Havens 7521064867
*Request to Accept * and Opposition and Response to Enforcement Bureau's1 Motion for Leave and Associated Reply*
By W. Havens

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.

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.

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.

/ / /

Appendix
Exhibits list *to the "M3" Appeal, Errata copy. Kept for reference in this M4 Appeal.*

Exhibit 1 M1. *ALJ's* **FCC 14M-1** ("**M1**") requiring certain attorney-client information of non-representative ounsel 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 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 9 American Bar Association Formal Opinion 07-446 "Undisclosed Legal Assistance to Pro Se Litigants," May 5, 2007.

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 4th day of February, 2014 caused to be served by first class United States mail copies of the foregoing Appeal to:

The Honorable Richard L. Sippel
Chief Adminstrative Law Judge
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445 12th Street, S.W.
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/ s / [Electronically signed. Signature on file.]

Warren Havens