

FEB 11 2014

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC Office of the Secretary

In re )  
)  
**MARITIME COMMUNICATIONS/LAND** )  
**MOBILE, LLC** )  
)  
Participant in Auction No. 61 and Licensee of )  
Various Authorizations in the Wireless Radio )  
Services )  
)  
Applicant for Modification of Various )  
Authorizations in the Wireless Radio Services )  
)  
Applicant with **ENCANA OIL AND GAS (USA),** )  
**INC.; DUQUESNE LIGHT COMPANY; DCP** )  
**MIDSTREAM, LP; JACKSON COUNTY** )  
**RURAL MEMBERSHIP ELECTRIC** )  
**COOPERATIVE; PUGET SOUND ENERGY,** )  
**INC.; ENBRIDGE ENERGY COMPANY,** )  
**INC.; INTERSTATE POWER AND LIGHT** )  
**COMPANY; WISCONSIN POWER AND** )  
**LIGHT COMPANY; DIXIE ELECTRIC** )  
**MEMBERSHIP CORPORATION, INC.;** )  
**ATLAS PIPELINE – MID CONTINENT, LLC;** )  
**DENTON COUNTY ELECTRIC** )  
**COOPERATIVE, INC., DBA COSERV** )  
**ELECTRIC; AND SOUTHERN CALIFORNIA** )  
**REGIONAL RAIL AUTHORITY** )

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Application File Nos. 0004030479,  
0004144435, 0004193028, 0004193328,  
0004354053, 0004309872, 0004310060,  
0004314903, 0004315013, 0004430505,  
0004417199, 0004419431, 0004422320,  
0004422329, 0004507921, 0004153701,  
0004526264, 0004636537,  
and 0004604962

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

**ENFORCEMENT BUREAU'S OPPOSITION TO MR. HAVENS'  
INTERLOCUTORY APPEAL**

1. On January 30, 2014, the Presiding Judge issued *Order*, FCC 14M-6, in which he denied Mr. Havens' request to file an interlocutory appeal concerning certain aspects of the earlier *Order*, FCC 14M-1, because Mr. Havens had failed to substantiate a basis for the appeal.<sup>1</sup>

<sup>1</sup> See *Order*, FCC 14M-6 (ALJ, rel. Jan. 30, 2014).

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Mr. Havens filed an interlocutory appeal of *Order*, FCC 14M-6, on February 4, 2014.<sup>2</sup> The Chief, Enforcement Bureau (Bureau), by her attorneys, herein responds to Mr. Havens' appeal.

2. There are several procedural grounds upon which the Commission should strike Mr. Havens' latest appeal from the record. First, *Order*, FCC 14M-6, is not appealable as a matter of right. Section 1.301(a) of the Commission's rules (Rules) enumerates only five categories of interlocutory rulings that are appealable as a matter of right.<sup>3</sup> Despite Mr. Havens' assertions to the contrary, *Order*, FCC 14M-6, does not deny or terminate his right to participate as a party (Section 1.301(a)(1)); rule on a claim of privilege (Section 1.301(a)(2)); or remove his counsel from the hearing (Section 1.301(a)(5)). It simply recognizes that Mr. Havens failed to assert any basis for why he should be permitted to appeal the Presiding Judge's earlier *Order*, FCC 14M-1.<sup>4</sup>

3. Second, to the extent that Mr. Havens' latest appeal "comments on" and "object[s] to" Mr. Chen's and the Bureau's submissions responding to Mr. Havens' interlocutory appeal of *Order*, FCC 14M-3, it is an improper reply that is not permitted as a matter of right under the Rules.<sup>5</sup> Section 1.301(c)(7) of the Rules specifically states that "[r]eplies shall not be permitted, unless the Commission specifically requests them."<sup>6</sup> The Commission has made no such request here.

4. Third, Mr. Havens' appeal exceeds the applicable five-page limit.<sup>7</sup> Beyond the five pages of text, Mr. Havens includes additional argument in the "Attachment" to his appeal.

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<sup>2</sup> See Havens' Interlocutory Appeal Under Section 1.301(a), filed on February 4, 2014 (Havens' Appeal).

<sup>3</sup> See 47 C.F.R. § 1.301(a).

<sup>4</sup> See *Order*, FCC 14M-6.

<sup>5</sup> Mr. Havens erroneously argues that both Mr. Chen's and the Bureau's submissions "reflect and in part respond to" *Order*, FCC 14M-6. Havens' Appeal at 1. Each of these submissions responded to Mr. Havens' earlier appeal directed to *Order*, FCC 14M-3 (ALJ, rel. Jan. 17, 2014), and not to *Order*, FCC 14M-6.

<sup>6</sup> 47 C.F.R. § 1.301(c)(7).

<sup>7</sup> See 47 C.F.R. § 1.301(c)(5).

This “Attachment” thus constitutes more than just factual support for his legal arguments.<sup>8</sup> Thus, under Section 1.48 of the Rules, Mr. Havens’ appeal is clearly “greater than permitted” and should not be considered.<sup>9</sup>

5. Moreover, Mr. Havens’ appeal is moot. He purports to be appealing an *Order* – FCC 14M-6 – which denies him the right to file an interlocutory appeal of the Presiding Judge’s earlier *Order*, FCC 14M-1.<sup>10</sup> However, Mr. Havens filed an interlocutory appeal with the Commission challenging *Order*, FCC 14M-1, contemporaneously with his request to the Presiding Judge to file such an appeal.<sup>11</sup> He also included additional arguments concerning this *Order* in his subsequent interlocutory appeal of *Order*, 14M-3.<sup>12</sup> Thus, he has already had more than ample opportunity to be heard on this matter.

6. Indeed, this is the third appeal Mr. Havens has filed concerning *Order*, FCC 14M-1, which instructed Mr. Havens’ counsel to be prepared to identify, among other things, the nature of their representation of Mr. Havens and each pleading they had prepared or assisted in preparing.<sup>13</sup> Yet, Mr. Havens still offers no legal support for his allegations that this *Order* improperly demands disclosure of information protected by the attorney-client privilege. In contrast, the Bureau (and the Presiding Judge) have demonstrated that these inquiries do not seek privileged information.<sup>14</sup> The Commission should thus deny Mr. Havens’ multiple appeals

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<sup>8</sup> See 47 C.F.R. § 1.48(a) (distinguishing materials that factually support a pleading from other materials).

<sup>9</sup> See *id.* (when materials other than affidavits, statements, tables of contents and summaries of filings, and those that factually support a pleading are submitted with a pleading, those materials are considered in determining the length of the pleading).

<sup>10</sup> See, e.g., Havens’ Appeal at 1.

<sup>11</sup> See Havens’ Interlocutory Appeal Under Section 1.301(a), filed on January 15, 2014.

<sup>12</sup> See Havens’ Interlocutory Appeal Under Section 1.301(a), filed on January 28, 2014.

<sup>13</sup> See *Order*, FCC 14M-1 (ALJ, rel. Jan. 8, 2014). Section 1.301(c)(2) of the Rules requires that an appeal under paragraph (a) be filed within 5 days after the order is released. See 47 C.F.R. § 1.301(c)(2). Any filing containing argument in support of an appeal of *Order*, FCC 14M-1, filed beyond January 15, 2014, should be rejected as untimely.

<sup>14</sup> See Enforcement Bureau’s Opposition To Mr. Havens’ Interlocutory Appeal, filed on February 4, 2014, at 4-5; *Order*, FCC 14M-6, at 3.

directed to this *Order*.

7. The Commission's rules plainly set out the conditions pursuant to which interlocutory appeals are permitted and the timing within which such appeals should be filed. Mr. Havens should not be allowed to needlessly delay resolution of the issues designated for hearing by filing repetitive and untimely appeals of an *Order* he did not have the right to appeal.<sup>15</sup> The Bureau urges the Commission to act expeditiously in denying Mr. Havens' appeals so that the underlying proceeding can move forward without further delay.

Respectfully submitted,  
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February 11, 2014

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<sup>15</sup> See, e.g., *In the Matter of Warren Havens*, 26 FCC Rcd 10888 (2011) (sanctioning Mr. Havens for pursuing irrelevant and/or repetitious arguments).

**CERTIFICATE OF SERVICE**

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 11th day of February, 2014, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MR. HAVENS' INTERLOCUTORY APPEAL" to:

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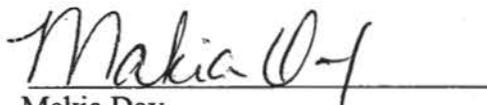
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