

Subject: re EB Opposition to Havens Interloc Appeal of FCC 14M-7 / Re: 3 12 14 EB Docket No. 11-71
Maritime Communications/Land Mobile

Date: Wednesday, March 12, 2014 12:19:14 PM PT

From: eitt líf. koma nú. griðastaðir <warren.havens@sbcglobal.net>

To: Pamela Kane <Pamela.Kane@fcc.gov>, Brian Carter <Brian.Carter@fcc.gov>, 'cole@fhhlaw.com' <cole@fhhlaw.com>, 'czdebski@eckertseamans.com' <czdebski@eckertseamans.com>, 'feldman@fhhlaw.com' <feldman@fhhlaw.com>, 'mjp@catalanoplache.com' <mjp@catalanoplache.com>, 'ajc@catalanoplache.com' <ajc@catalanoplache.com>, 'richards@khlaw.com' <richards@khlaw.com>, 'Bob Keller' <rjk@telcomlaw.com>, 'Sheldon, Jeffrey' <jsheldon@lb3law.com>, 'rkirk@wbklaw.com' <rkirk@wbklaw.com>, 'livingston@khlaw.com' <livingston@khlaw.com>, 'Jimmy Stobaugh (jstobaugh@telesaurus.com)' <jstobaugh@telesaurus.com>

CC: Austin Randazzo <Austin.Randazzo@fcc.gov>, Richard Sippel <Richard.Sippel@fcc.gov>, Mary Gosse <Mary.Gosse@fcc.gov>

A copy of this email, with the EB Opposition it addresses attached, will be filed in the docket on EFCS, and served on the actual parties by US mail. See Note below.*

Ms. Kane and Mr. Carter:

Re: Enforcement Bureau's Opposition to Havens Interlocutory Appeal of FCC 14M-7

In your Opposition to my interlocutory appeal filed regarding aspects of FCC 14M-7 circulated today by the below email (the "Interlocutory Appeal") (the "Opp"), you include the following:

"Moreover, Mr. Havens repeated certain of these same arguments in his later-dated December 16, 2013 filing - which has not been stricken from the record. Thus, he has had ample opportunity to be heard on the matters addressed in his December 2nd motions."

[Emphasis added.]

The Enforcement Bureau ("EB") is a party in this proceeding representing the Commission under FCC 11-64. I understand that the EB pleadings, including the Opp, is subject to FCC rules 47 USC §§ 1.52 and 1.24. In addition, it is well established in case law that the FCC and other federal agencies must follow their own rules. See, e.g., *SEC v Chenery Corp*, 318 US 80.

In this regard, under these rules (or otherwise): How can you in good-faith assert that I have "had ample opportunity to be heard" by my Dec 16 filing, when (i) you have asserted repeatedly to me directly (in emails, with Mr. Keller in support and on the emails), and to Judge Sipple in pleadings, that my Dec 16 filing is late and must be dismissed (filed after 5:30 pm) and you succeeded with that as to the Dec 2 filing, and when (ii) the Judge has indicated that also (the alleged 5:30 pm deadline, and need to strictly enforce it even on dispositive pleadings and even as to a pro se party-- obviously my filing and timing was pro se), as the instant Interlocutory Appeal, that you opposed by the Opp, noted. See FN 1 below.

While EB-Maritime effectively, it seems to me, accepted my Dec 2 filing, and the Dec 16 filings-- since EB-Maritime responded to the substance of those filings in portions of your Dec 16 filing (opposing my Dec 2 filing), and your later filing submitted with a request to accept (replying to and opposing my Dec 16 filing), and you have not sought to delete those portions-- you have maintained

your position that my Dec 2 and Dec 16 filings were late, even where the Dec 2 filing was clearly 13 days early as to the majority portion was was an initial opposition.

That is, since you own argument, and the Judge's acceptance of it to date, is that *any* filing (at least by me) after 5:30 pm on the due date -- (or, by the Judge, on EB requests, even on any day even long before the due date of the subject pleading; and even after a proper request for reconsideration [to which FCC 14M-7 responded and denied])-- must be stricken, *your statement above appears to lack candor and be an attempt to mislead the Commission.*

If you do not respond to this, I will note that in a filing or filings I plan to make to the Commission associated with the matters of this email.

* Note re inclusion of parties. Since the matters of this involves parties other than the EB, I have kept them on this email. More specifically:

(i) The other parties include Maritime and its pleadings, including the joint motion for a settlement (posed as a motion for summary decision which the Judge apparently today found as deficient), and many of the other parties that seek to obtain or retain, by acquisition or lease, site-based AMTS spectrum from Maritime. The matters of this email pertain to all of these parties interests. I thus include them here.

(ii) Also, there is a long history to the matters in this email. As shown in our past email exchanges, you regularly refuse or cut off direct communications with me on matters that I believe should be issues parties should try to work out on meet-and-confer basis. Thus, I reasonably believe that further one-one-one attempts will be a waste of time. This is a further reason that, this time, in this email, I include the other parties.

(iii) I also include these other parties (other than EB and Maritime) *since they have not, to date, taken the EB and Maritime side as to my Dec 2 and Dec 16 Oppositions being late.* While I believe it is too late for any of them to do that now, on the other hand, the ALJ gives great flexibility to parties in this hearing (all except the pro se party, myself) (thus, dual standards), e.g. most recently Order FCC 14M-9, of today, that effectively finds the EB-Maritime joint motion of Dec 2, 2013 defective, but appears to allow yet another chance at settlement/ summary decision (this will be the fourth, by my recollection). Thus, by including these other parties here, they may consider attempting a late-submitted position as to these issues under this apparent flexibility standard. (I may oppose those on procedure and substance, but that is another matter.)

Sincerely,

/ s /

Warren Havens

FN1. The Interlocutory Appeal included (emphasis added):

I filed on December 16, 2013 a further Opposition. This was the due date under the ALJ's scheduling order. I filed it after consultation with the ALJ offices as to filing procedure, including filing by midnight, and attached that communication to this further Opposition. But in M7, the ALJ indicates, by my reading, that he will reject this further Opposition also, alleging that since it was filed after 5:30, it is untimely. Since the instant filing deals with avoidance by the ALJ of matters, to cause prejudice, I note here that the ALJ Order to require pleadings on ECFS, allows filing by standard EFCS procedure, which is by midnight. See Exhibit 1 below.

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Cc: Austin Randazzo <Austin.Randazzo@fcc.gov>; Richard Sippel <Richard.Sippel@fcc.gov>; Mary Gosse <Mary.Gosse@fcc.gov>;
Brian Carter <Brian.Carter@fcc.gov>
Sent: Wednesday, March 12, 2014 10:37 AM
Subject: 3 12 14 EB Docket No. 11-71 Maritime Communications/Land Mobile

Enclosed please find a courtesy copy of a pleading filed by the Enforcement Bureau with the Commission earlier today.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington , D.C. 20554
202-418-2393

MAR 12 2014

Federal Communications Commission
Office of the Secretary

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

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 February 26, 2014, the Presiding Judge issued *Order*, FCC 14M-7, in which he denied Mr. Havens’ request to file an interlocutory appeal concerning certain aspects of an earlier *Order*, FCC 13M-22, because Mr. Havens had failed to substantiate a basis for the

appeal.¹ Mr. Havens filed an interlocutory appeal of *Order*, FCC 14M-7, on March 6, 2014.²

The Chief, Enforcement Bureau (Bureau), by her attorneys, herein opposes Mr. Havens' appeal.

2. On December 19, 2013, the Presiding Judge issued *Order*, FCC 13M-22,³ striking from the record two motions filed by Mr. Havens on December 2, 2013 because there were not timely filed.⁴ Specifically, the Presiding Judge struck Mr. Havens' "First Motion Under Order 13M-19 to Reject Settlement, Proceed with the Hearing, and Provide Additional Relevant Discovery" and Mr. Havens "Additional Motions Under Order 13M-19" because, in filing these motions, Mr. Havens ignored an earlier *Order* that "[a]ll filings in this proceeding shall be due on their designated submission dates at close of business (5:30pm EST)"⁵ and instead, submitted his filings more than six hours later, between 11:51 and 11:59pm.⁶ In upholding this *Order*, the Presiding Judge noted that this delay allowed Mr. Havens "to improve his pleading[s] with information made available"⁷ to him by the timely filing of the other parties' pleadings. The Presiding Judge concluded that striking Mr. Havens' pleadings was necessary to ensure that he did not "gain an unfair advantage"⁸ from his late filing.

3. 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.⁹ Mr. Havens suggests that in upholding the Presiding Judge's earlier *Order* striking his December 2, 2013 filings, *Order*, FCC 14M-7, "denies or terminates" his right to participate as a party, thereby invoking

¹ See *Order*, FCC 14M-7 (ALJ, rel. Feb. 26, 2014).

² See Havens' Interlocutory Appeal Under § 1.301(a), filed on March 6, 2014 (Havens' Appeal).

³ See *Order*, FCC 13M-22 (ALJ, rel. Dec. 19, 2013).

⁴ See *id.* at 3, ¶ 5.

⁵ See *Order*, FCC 12M-55 (ALJ, rel. Dec. 5, 2012), at n.2.

⁶ See *Order*, FCC 13M-22, at 3, ¶ 5.

⁷ *Order*, FCC 14M-7, at 6.

⁸ *Id.*

⁹ See 47 C.F.R. § 1.301(a).

the first of the five categories.¹⁰ However, despite Mr. Havens' assertions to the contrary, the Presiding Judge has not denied or terminated Mr. Havens' right to participate as a party. Indeed, Mr. Havens' appeal ignores the fact that, at the same time the Presiding Judge struck Mr. Havens' motions, he evaluated "the merits of certain aspects of"¹¹ these motions and issued a substantive ruling.¹² Moreover, Mr. Havens repeated certain of these same arguments in his later-dated December 16, 2013 filing – which has not been stricken from the record. Thus, he has had ample opportunity to be heard on the matters addressed in his December 2nd motions.

4. The Commission's rules plainly set out the conditions pursuant to which interlocutory appeals are permitted. Mr. Havens' appeal has not met any of these conditions. The Bureau thus urges the Commission to act expeditiously in denying Mr. Havens' latest appeal so that the underlying proceeding can move forward without further delay.

Respectfully submitted,
P. Michele Ellison
Chief, Enforcement Bureau



Pamela S. Kane
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Brian J. Carter
Attorney
Investigations and Hearings Division
Enforcement Bureau

¹⁰ See Havens' Appeal at 1.

¹¹ Order, FCC 13M-22, at 3, ¶ 5.

¹² See *id.* at 3-9, ¶¶ 5-26.

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(202) 418-1420

March 12, 2014

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 12th day of March, 2014, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MR. HAVENS' INTERLOCUTORY APPEAL" to:

The Honorable Richard L. Sippel
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Makia Day

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The undersigned certifies that he has on this 12th day of March, 2014 caused to be served by first class United States mail copies¹ of the foregoing filing to:

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¹ The email addresses herein are not for purposes of service of this pleading.

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

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