

MAR 12 2014

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

Federal Communications Commission
Office of the Secretary

In re)	
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	EB Docket No. 11-71
)	File No. EB-09-IH-1751
)	FRN: 0013587779
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)	Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
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)	

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

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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.

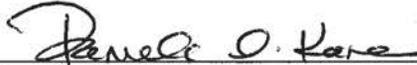
⁸ *Id.*

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,
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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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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:

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