

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

In re)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	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	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with ENCANA OIL AND GAS (USA),	)	0004314903, 0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004417199, 0004419431, 0004422320,
MIDSTREAM, LP; JACKSON COUNTY	)	0004422329, 0004507921, 0004153701,
RURAL MEMBERSHIP ELECTRIC	)	0004526264, 0004636537,
COOPERATIVE; PUGET SOUND ENERGY,	)	and 0004604962
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

**JOINT MOTION TO STRIKE HAVENS' RESPONSE TO THE JOINT RESPONSE OF
THE ENFORCEMENT BUREAU AND MARITIME TO ORDER, FCC 14M-9**

1. On March 12, 2014, the Presiding Judge issued an Order requesting specific information from the Enforcement Bureau (Bureau) and Maritime Communications/Land Mobile, LLC (Maritime) concerning the operational status of certain of Maritime's site-based

authorizations.¹ On March 26, 2014, the Bureau and Maritime submitted a joint filing that addressed each of the Presiding Judge’s requests for information.² The Presiding Judge specifically limited the “[r]esponses by other parties...to the content of Maritime and the Enforcement Bureau’s filing[.]”³ Nevertheless, Mr. Havens’ April 9, 2014 response addresses far more than the content of the Bureau and Maritime’s March 26 submission. Accordingly, the Acting Chief, Enforcement Bureau, by his attorneys, and Maritime, herein move to strike Mr. Havens’ response.

2. In *Order*, FCC 14M-9, the Presiding Judge limited the scope of his inquiries to the second prong of Issue (g) – *i.e.*, whether the operations of Maritime’s site-based stations have been permanently discontinued. Specifically, the Presiding Judge requested further facts regarding the current operational status and plans for the future operations of Maritime’s site-based stations on which the Bureau and Maritime had sought summary decision.⁴ The Presiding Judge also requested that the Bureau and Maritime explain whether operations of a facility are permanently discontinued if “the spectrum authorized for use by [a] site-based license has been leased to, and is in use by, a third party”⁵ or “if [that facility’s] operation is restricted by the operations of other facilities.”⁶ It was to these very limited questions that the Bureau and Maritime responded in its March 26 filing.

3. Mr. Havens’ 62-page response to the Bureau and Maritime’s submission,

¹ See *Order*, FCC 14M-9 (ALJ, rel. Mar. 12, 2014).

² See Joint Response of the Enforcement Bureau and Maritime to Order, FCC 14M-9, filed on Mar. 26, 2014.

³ *Id.* at 2.

⁴ The Presiding Judge requested information concerning WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), WRV374-33 (One World Trade Center), WHG750, KAE889-4 (Rainier Hill), KAE889-13 (Portland), KAE880-20 (Mount Constitution), KAE889-30 (Gold Mountain), KAE889-34 (Capital Peak), and KAE889-48 (Tiger Mountain). See *Order*, FCC 14M-9, at 2.

⁵ *Id.*

⁶ *Id.*

however, is not limited to the narrow questions raised by *Order*, FCC 14M-9.⁷ Instead, Mr. Havens uses his Response as an additional opportunity to oppose the Bureau and Maritime’s joint motion for summary decision (Joint Motion). Not only does Mr. Havens repeat arguments he already raised in his December 16, 2013 opposition to the Joint Motion,⁸ but he argues for the first time that summary decision is improper because he contends that there is no permanent discontinuance standard in the AMTS rules and orders⁹ and because he has not been able to review “confidential” information that was produced to his previous counsel and on which the Bureau and Maritime relied in their Joint Motion.¹⁰ Mr. Havens also challenges the existence – and legitimacy – of the spectrum lease agreements upon which the Bureau and Maritime relied in their Joint Motion.¹¹ Mr. Havens had ample opportunity to raise these arguments in his original opposition to the Joint Motion. To the extent Mr. Havens chose not to do so, he should not be allowed a second-bite at the apple to do so now.

4. Neither the Bureau nor Maritime has been able to identify a single section in Mr. Havens’ Response that addresses only the limited content of the Bureau and Maritime’s March 26 filing. For that reason, the Bureau and Maritime respectfully request that Mr. Havens’ Response be stricken in its entirety.

⁷ See Havens Response to the Joint Response of the Enforcement Bureau and Maritime to Order, FCC 14M-9, filed on April 9, 2014 (Havens Response).

⁸ For example, in his Response, Mr. Havens argues that the Joint Motion is an improper stipulated settlement (*see, e.g., id.* at 6); Maritime’s site-based AMTS licenses were not timely constructed because they did not satisfy the continuity of service or coverage requirement in former Section 80.475(a) of the Commission’s rules (*see, e.g., id.* at 33-54); and additional discovery of third-party site-owners is necessary (*see, e.g., id.* at 8, 29).

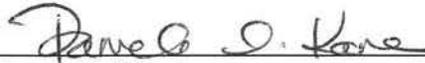
⁹ *See, e.g., id.* at 55-56.

¹⁰ *See, e.g., id.* at 9-10, 57-58. The Protective Order precludes disclosure of information designated “confidential” or “highly confidential” to a party. *See, e.g., Protective Order*, FCC 11M-21 (ALJ, rel. July 20, 2011) at ¶ 6.

¹¹ *See, e.g.,* Havens Response at 11-13. Mr. Havens argues that Maritime failed to file lease notifications for Pinnacle, Duquesne, and PSE and that the Commission must affirmatively “approve” spectrum leases. Neither of these assertions is correct. *See, e.g.,* File No. 0004149128 (Duquesne) which indicates a lease notification was filed for WHG750 on March 5, 2010; File No. 0004299951 (PSE) which indicates a lease notification was filed for KAE889 on June 28, 2010; and File Nos. 0004024426 and 0004131898 (Pinnacle) which indicate lease notifications were filed for WRV374 on November 2, 2009 and February 22, 2010, respectively. In addition, the Commission’s rules expressly state that “a licensee...and a spectrum lessee may enter into a spectrum manager leasing arrangement, without the need for prior Commission approval...” 47 C.F.R § 1.9020(a).

Respectfully submitted,

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April 16, 2014

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 16th day of April, 2014, sent by first class United States mail copies of the foregoing "JOINT MOTION TO STRIKE HAVENS' RESPONSE TO THE JOINT RESPONSE OF THE ENFORCEMENT BUREAU AND MARITIME TO ORDER, FCC 14M-9" to:

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