

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**MARITIME COMMUNICATIONS/LAND MOBILE, LLC
Debtor**

**CHAPTER 11
CASE NO. 11-13463-JDW**

**ANSWER AND RESPONSE OF DEBTOR TO EMERGENCY
MOTION FOR WITHDRAWAL OF COUNSEL**

COMES NOW, Maritime Communications/Land Mobile, LLC (the "Debtor"), and files this its Answer and Response to the *Emergency Motion for Withdrawal of Counsel* (the "Motion") filed herein by Copeland, Cook, Taylor & Bush, P.A. ("CCTB") and in support thereof would respectfully show as follows, to-wit:

1. Debtor has no objection to the Motion, and notes that CCTB has zealously represented its client in this case.
2. Debtor is concerned, however, about what happens after the Motion is granted (assuming the Court sees fit to grant the Motion). CCTB is the latest in a long string of lawyers who have attempted to represent the "SkyTel" (as defined in the Motion) entities but have subsequently determined it was in their best interest to withdraw as counsel for those entities.
3. This situation has occurred in proceedings before the Federal Communications Commission (the "FCC") on several occasions, and Warren Havens ("Mr. Havens") has attempted to represent himself, pro se in those proceedings, but while continuing to (directly or indirectly) represent the corporate entities that are among the SkyTel entities.
4. While the FCC has been more than patient (in the Debtor's view) with Mr. Havens' efforts at pro se representation, that patience is rapidly eroding due to Mr. Havens' abuse of the system as will be set forth in detail hereinafter.

5. Mr. Havens has apparently had assistance of counsel in “ghost writing” his papers filed before the FCC. Attached, incorporated by reference and marked as Exhibit “A” is an Order issued by the FCC Administrative Law Judge on January 8, 2014, commenting upon the fact that Mr. Havens had retained four (4) attorneys to assist his participation in the FCC proceeding, thus causing questions to arise about his pro se representation. The Administrative Law Judge required the identified attorneys to appear at a show cause hearing and explain their role(s) and representation of Mr. Havens.

6. The pre-hearing conference was held on January 17, 2014, in the FCC proceeding and the Administrative Law Judge issued an Order on January 17, 2014, a copy which is attached, incorporated by reference and marked as Exhibit “B” which, among other things, overruled all of Mr. Havens assertions of attorney-client privileges for the self-explanatory reasons set forth in the Order.

7. Mr. Havens takes liberties with ex parte contact that the FCC has had to deal with and it is anticipated Mr. Havens will continue along that path if he is allowed to proceed pro se in this Court. Attached, incorporated by reference and marked as Exhibit “C” is a January 28, 2014 Order from the Administrative Law Judge in which he notes, on Page 2: “After 4:00 P.M. on January 27, 2014, Mr. Havens informed the Presiding Judge by email that he was not asking for an extension of the time for appeal. Rather, Mr. Havens was asking for the Presiding Judge to exercise his discretion to make his January 17 ruling effective on a later date...” While the Administrative Law Judge does not take issue with this ex parte contact, he apparently felt some obligation to respond to it and take time to address the “issues” raised by Mr. Havens in the ex parte contact, along with a hair-splitting request for additional time to file papers that was promptly overruled and denied.

8. Mr. Havens continues to file multiple, cumulative and duplicative papers before the FCC that request the same relief over and over again. On January 30, 2014, the Administrative Law

Judge issued an Order that is attached, incorporated by reference and marked as Exhibit "D". The Administrative Law Judge noted Mr. Haven's pro se filings in the first full paragraph on Page 3 of this Order. In his conclusion, the Administrative Law Judge noted that in the future he would consider only arguments that can be identified and understood from reading and reviewing a single pleading, without reference to other pleadings that Mr. Havens may have filed.

9. Mr. Havens apparently thinks that it is his prerogative to leave voice mails with the Administrative Law Judge's staff. In an Order issued January 27, 2014, a copy of which is attached, incorporated by reference and marked as Exhibit "E", the Administrative Law Judge apparently felt compelled to respond to voice mails Mr. Havens left with the Administrative Law Judge's staff. The result was a suspension of the calendar while Judge Sipple dealt with the ex parte contract.

10. Finally, the Administrative Law Judge issued an Order on February 26, 2014, a copy which is attached, incorporated by reference and marked as Exhibit "F" which was a thorough rehashing of Mr. Havens' continued filings that resulted in the following conclusion: "Mr. Havens' Requests to Appeal are frivolous on the merits, and transparent as an effort to delay this proceeding by miring it in meretricious, meritless appeals and requests to appeal. Remember that we are all well aware that the Joint Motion for Summary Decision on issue G... was filed more than two (2) months ago on December 2, 2013, and is ripe for decision. Thereafter, possibly in an effort to delay a judgment day, Mr. Havens systematically challenges routine exercises of the Presiding Judge's authority in making rudimentary interlocutory rulings, no matter how axiomatic or generic the supporting authority relied upon in the rulings."

Thereafter, the Administrative Law Judge denied Mr. Havens' requested relief and found that his earlier pleadings should remain struck.

11. The FCC has also been exasperated with Mr. Havens. It issued a Memorandum Opinion and Order on March 12, 2012, a copy which is attached, incorporated by reference and marked as Exhibit "G" that Mr. Havens must request permission to file further pleadings as detailed in the Order in light of the frivolous filings he had made with respect to various papers before the FCC.

12. In summary, the Debtor believes that this Court will be faced with the same problems that the FCC has suffered through with respect to filings by Mr. Havens that are frivolous, lack merit and seek merely to delay judgment, while abusing his pro se status and leaving voice mails for the Court's personnel, submitting ex parte email requests for "clarification", filing multiple, cumulative pleadings rehashing the same issues and related offensive and inappropriate conduct.

13. Accordingly, the Debtor requests that any order allowing CCTB to withdraw requires Mr. Havens and the corporate "SkyTel" entities to secure replacement counsel before being allowed to file pleadings or otherwise participate in this case, no later than twenty (20) days from the entry of the order allowing the withdrawal.

14. Other grounds to be assigned.

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully prays that upon a hearing hereof, this Honorable Court will enter its order recognizing the objections set forth herein and condition withdrawal upon appropriate procedures for future litigation conduct in this case. The Debtor prays for general relief in the premises.

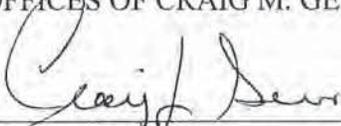
DATED, this the 19th day of March, 2014.

Respectfully submitted,

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

By Its Attorneys

LAW OFFICES OF CRAIG M. GENO, PLLC

By: 
Craig M. Geno

OF COUNSEL:

Craig M. Geno; MSB No. 4793
Jarret P. Nichols; MSB No. 99426
LAW OFFICES OF CRAIG M. GENO, PLLC
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P. O. Box 3380
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601-427-0048 - Telephone
601-427-0050 - Facsimile

CERTIFICATE OF SERVICE

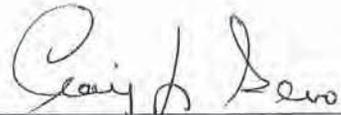
I, Craig M. Geno, do hereby certify that I have caused to be served this date, via electronic filing transmission and/or U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

Sammye S. Tharp, Esq.
Office of the United States Trustee
Sammye.S.Tharp@usdoj.gov

William H. Leech, Esq.
bleech@cctb.com

Danny E. Ruhl, Esq.
druhl@cctb.com

THIS, the 19th day of March, 2014.



Craig M. Geno

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND 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 Authorizations in the Wireless Radio Services	)	Application File Nos.
	)	0004030479, 0004144435,
	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
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 MEMBERHIP CORPORATION, INC.; ATLAS PIPELINE-MID CONTINENT, LLC; AND SOUTHERN; CALIFORNIA REGIONAL RAIL AUTHORITY	)	0004310060, 0004314903,
	)	0004315013, 0004430505,
	)	0004417199, 0004419431,
	)	0004422320, 0004422329,
	)	0004507921, 0004153701,
	)	0004526264, and 0004604962
)	
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service)	

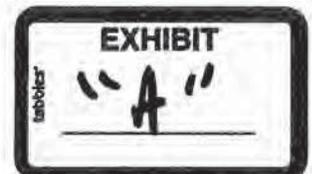
ORDER

Issued: January 8, 2014

Released: January 8, 2014

Conference Called

1. A prehearing conference **IS SET** for 10:00 a.m. on Thursday, January 16, 2014, in the Office of Administrative Law Judges' Courtroom (TW-A363) at Commission



Case 1:13-cv-01163-NPO Document 1-1 Filed 03/19/14 Entered 03/19/14 16:00:09 Desc Main Document 4, Page 8 of 38

counsel who sent a letter dated January 14, 2014, in *Memorandum Opinion and Order*, FCC 13M-22,⁴ **SHALL PRESENT THEMSELVES** at the prehearing conference.⁵ Also, counsel for Maritime and the Enforcement Bureau shall appear in person. Attendance of any other party is optional.

Background

3. Since Mr. Chen's withdrawal as Havens' and the SkyTel entities' counsel in 2013, Mr. Havens has represented that he has not secured counsel for this proceeding. These representations affected the Presiding Judge's rulings on motions to Mr. Havens' benefit. Yet it was recently disclosed that Mr. Havens retained at least four attorneys since May 2013 to assist his participation in this proceeding. Questions necessarily arise about Mr. Havens' *pro se* representations and counsel's failure to disclose their participations at the time they were retained.⁶ Also, counsel's submitted descriptions of the scope of their assistance raise additional questions or need further explanation. Therefore, full discussion on the subject of Mr. Havens' representations *pro se* and via counsel in this proceeding is required at this time.

4. Attorneys identified above shall appear and each shall be prepared to explain fully the nature, scope, and objective of their representation of Mr. Havens and/or the SkyTel entities in this proceeding.

5. Each attorney shall also be prepared to specify the date he was retained to represent Mr. Havens and or/his affiliated companies, to state whether he was retained for all purposes or for agreed selective assistance, and to explain the scope and objective of each such assistance.

6. Each attorney shall be prepared to explain and describe how each task was assigned, to whom it was assigned, by whom it was assigned, and the scope and objective of any instructions given in connection with each assignment.

¹ Commission Headquarters is located at 445 12th Street SW, Washington, DC 20554.

² Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC, and Verde Systems, LLC, and V2G LLC.

³ James Ming Chen of Technology Law Group, LLC; Danny E. Ruhl and Timothy J. Anzenberger of Copeland, Cook, Taylor & Bush, P.A.

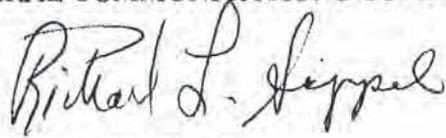
⁴ Neil S. Ende of Technology Law Group, LLC.

⁵ Mr. Havens' participation in this Prehearing Conference is required, but he is permitted to participate by telephone. He must inform the Presiding Judge's staff on or before January 14, 2014, if he intends to participate by telephone or in person. If he opts to participate by telephone, he will be given instructions on how to participate at that time. He shall bear any costs that arise in connection with this form of participation. Counsel are not permitted to participate by telephone.

⁶ See Fed.R.Civ.P. 11(a); 47 CFR § 1.52.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁷



Richard L. Sippel
Chief Administrative Law Judge

⁷ Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 14M-3

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with ENCANA OIL AND GAS (USA),	)	0004310060, 0004314903,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004315013, 0004430505,
MIDSTREAM, LP; JACKSON COUNTY	)	0004417199, 0004419431,
RURAL MEMBERSHIP ELECTRIC	)	0004422320, 0004422329,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004507921, 0004153701,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004526264, and 0004604962
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERHIP CORPORATION, INC.;)	
ATLAS PIPELINE-MID CONTINENT, LLC;)	
AND SOUTHERN; CALIFORNIA REGIONAL)	
RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

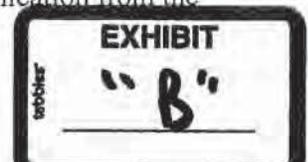
ORDER

Issued: January 17, 2014

Released: January 17, 2014

In the prehearing conference held January 17, 2014, Warren Havens repeatedly asserted attorney-client privilege ("privilege") with respect to questions directed to him and counsel associated with him in this proceeding.

To successfully assert that a communication subject to privilege, a party must establish (1) the existence of an attorney-client relationship; (2) the existence of a communication from the



client to his or her attorney; (3) that the communication is legally related; and, (4) that there is an expectation of confidentiality as to that communication.¹

When asked to present qualifying factual circumstances surrounding Mr. Havens' relationships and communications with counsel, Mr. Havens repeatedly asserted privilege with respect to such circumstances. Generally, Mr. Havens did not assert privilege with regard to the specific questions asked, but consistently referred to a pre-emptive, blanket assertion of privilege that he made in his letter to the Presiding Judge dated January 15, 2014, and his Motion For Relief Regarding Order FCC 14M-1 ("Motion") filed that same day.² In other instances, Mr. Havens failed to assert privilege at all. Rather, Mr. Havens, who asserts that he is participating *pro se*, refused questions presented to him by the Presiding Judge regarding not only the factual circumstances supporting his assertion of attorney-client privilege, but also whether he was invoking privilege at all, until such time that he is represented by an attorney.

Mr. Havens and related counsel, current and former, have refused to provide the necessary unprotected information that would be used in order to assert any of the elements of an attorney-client privilege assertion. Accordingly, Mr. Havens' claims of attorney-client and other privilege **ARE OVERRULED**.³

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁴



Richard L. Sippel
Chief Administrative Law Judge

¹ *WWOR-TV, Inc.*, 5 FCC Rcd 6261, 6262 ¶ 11 (1990).

² In his Motion, Mr. Havens claims that he and the SkyTel parties, which he has from time to time claimed not to represent in this proceeding, are "fully [protected by] attorney-client communication and relation [sic] privileges." Motion at 2 ¶ 2. At the prehearing conference of January 17, 2014, Mr. Havens asserted that the protection he sought was much broader than attorney-client privilege. The Presiding Judge will not consider such an ill-defined, blanket assertion of "[privileges] as to communications, work product, confidentiality, and other matters," Motion at 2 n.5, that were not raised by Mr. Havens or any of his counsel with respect to particular questions asked in the January 17, 2014, prehearing conference.

³ Additional support for this ruling can be found in the forthcoming transcript of the prehearing conference. Further questioning by the Presiding Judge is withheld until all interlocutory appeals of this *Order* to the Commission are resolved.

⁴ Courtesy copies of this *Order* are e-mailed on issuance to each counsel and to Mr. Havens.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 14M-5

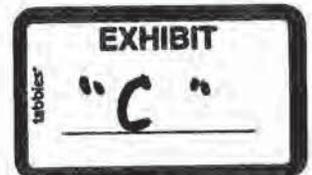
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MARITIME COMMUNICATIONS/LAND)	File No. EB-09-IH-1751
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ORDER

Issued: January 28, 2014

Released: January 28, 2014

On January 17, 2014, the Presiding Judge released *Order*, FCC 14M-3, overruling the unsupported and overly broad claims of attorney-client privilege made by Warren Havens in a prehearing conference held on the morning of even date. After 5:00 pm on the same day, Mr. Havens filed his Objections, Requests and Clarifications Regarding the Prehearing under Order FCC 14M-1 (the "Order"). In that filing, Mr. Havens requested:



That the date from which the 5 days for an interlocutory appeal under rule section 1.301(a) will run, as to your ruling at the prehearing conference of today, will be the date of the latter of: (i) the date upon which you release the ruling in an Order filed on ECFS and served on myself (and others you believe it should be served upon), and (ii) the date upon which the of today's [sic] prehearing transcript (approved as to accuracy by the persons that spoke, and made final) is made available to me by proper notice and service. As to '(ii)': I cannot draft or submit any such appeal without said final transcript.¹

The Presiding Judge reads this text as constituting a request to grant an extension of the date for filing an appeal of right. The request was denied because the Presiding Judge lacks authority to extend the five day filing window for appeal to the Commission.² This denial was communicated to Mr. Havens first by e-mail on January 22 and later by order that was released by e-mail on January 27.

After 4:00 pm on January 27, Mr. Havens informed the Presiding Judge by e-mail that he was not asking for an extension of the time for appeal. Rather, Mr. Havens was asking for the Presiding Judge to exercise his discretion to make his January 17 ruling effective on a later date. Mr. Havens argues that he cannot draft and submit an appeal "without the transcript, and reasonable time after [he] gets it." He requests that the Presiding Judge's ruling on attorney-client privilege take effect on January 28 instead of on January 17. That would allow Mr. Havens more time to prepare his appeal.

Order, FCC 14M-3

Mr. Havens is correct that the Presiding Judge has the authority to set the effective date of his rulings. However, the appeal window does not commence on the effective date of his ruling. Section 1.301(c)(2) unambiguously states that "Appeals filed under paragraph (a) of this section shall be filed within 5 days *after the order is released or (if no written order) after the ruling is made.*"³ *Order, FCC 14M-3*, was released on January 17, so the filing window must be measured within five days as the rule provides.

Mr. Havens has not argued that *Order, FCC 14M-3*, should be re-released on a later date. To do so would make no sense. The Presiding Judge ruled upon claims of privilege as they were asserted by Mr. Havens and so-called "assisting counsel" in open court. Mr. Havens, assisted by counsel, had full opportunity to present argument in support of privilege. Instead, they chose to assert vague, incipient privileges in a manner that approached the inscrutable. Amazingly, Mr. Havens and counsel were unwilling to share even basic foundational facts. Additional time would be unlikely wear away that stonewall.

The Commission should review the Presiding Judge's ruling as soon as possible. A speedy resolution benefits the Enforcement Bureau and Maritime Communications, as

¹ Objections, Requests and Clarifications Regarding the Prehearing under Order FCC 14M-1 (the "Order") at 3.

² See *Order, FCC 14M-4*.

³ 47 C.F.R. § 1.301(c)(2) (emphasis added).

it ensures that their pending Joint Motion for Summary Decision on Issue G is considered and ruled upon without further delay. An immediate review of the decision would also benefit Mr. Havens, who was so eager for a rapid Commission ruling on the issue of attorney-client privilege that he initially filed for appeal on January 15, two days before the conference.

Request for Additional Time

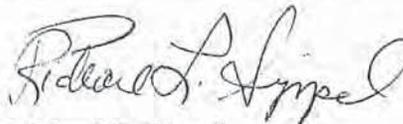
Mr. Havens' request seems to be an attempt to end run the established deadline in order to gain additional time. Mr. Havens has had the full five days allowed by Section 1.301(c)(2) of the Commission's rules. He also has had four additional days due to Martin Luther King, Jr.'s Birthday; an unrelated weather-related Commission closure; and a resulting additional weekend. Mr. Havens, with assistance of counsel, had eleven days to prepare an appeal, which is more than ample time.⁴

Mr. Havens asserts that he cannot draft or submit an appeal without the transcript. However, on January 22, Mr. Havens was informed by e-mail and his counsel was informed by telephone as to how to obtain an expedited copy of the transcript. Mr. Havens in fact acquired the transcript on Friday, January 24.⁵ Thus, Mr. Havens has had access to the transcript for three full days. His request simply amounts to a plea for extra time to "prepare a more effective appeal,"⁶ not as an expediency to meet an unexpected negative event.⁷

Accordingly, the Presiding Judge denies Mr. Havens' request.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁸



Richard L. Sippel
Chief Administrative Law Judge

⁴ Further, Mr. Havens was informed of the Presiding Judge's ruling on his request for additional time by e-mail on January 22, which was the first day on which the Commission was operating following his filing. If Mr. Havens was truly pressed for time, he could have clarified his request to the Presiding Judge immediately, rather than wait until one day before the deadline.

⁵ E-mail from Warren Havens (January 27, 2014).

⁶ *Id.*

⁷ Mr. Havens states that he cannot appeal without a "final transcript." *Id.* Presumably, he is referring to a transcript that is "approved as to accuracy by the persons that spoke and made final" as he previously mentions. *Id.* The Presiding Judge has not established any process for "approving" and "finalizing" a transcript, nor does he see the need for one. The transcript that Mr. Havens has acquired from the court reporting company is sufficient for purposes of preparing his appeal. Errors in the transcript, should any exist, will be noted and corrected as they arise.

⁸ Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 14M-6

In the Matter of)	EB Docket No. 11-71
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MARITIME COMMUNICATIONS/LAND)	File No. EB-09-IH-1751
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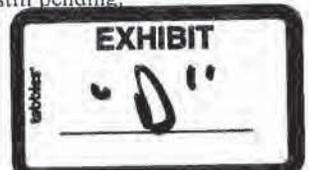
ORDER

Issued: January 30, 2014

Released: January 30, 2014

On January 15, 2014, Warren Havens filed a Request under Section 1.301(b) ("Request").¹ This Request petitions the Presiding Judge to permit Mr. Havens to appeal a series of issues related to rulings made in *Order*, FCC 14M-1, released January 8, 2014. However, the Request does not specify any issues that he wishes the Presiding Judge to rule upon. Remarkably, it contains no argument at all. Instead, it expects the Presiding Judge to somehow

¹ This filing differs from Mr. Havens' December 27, 2013, which was styled the same, and which is still pending.



divine Mr. Havens' issues and arguments by looking to an appeal filed with the Commission under Section 1.301(a) of the Commission's rules.² It is established Commission policy that "requests requiring action by an administrative law judge shall not be combined in a pleading with requests for action by the Commission."³ This in itself is sufficient reason to deny Mr. Havens' Request. In the interest of completeness, however, the substantive merits of Mr. Havens' Request are examined below.

Havens' Appeal under Section 1.301(a)

To put this matter in context, Mr. Havens' appeal to the Commission requests review of *Order*, FCC 14M-1, in which the Presiding Judge ordered counsel to appear in a prehearing conference and answer questions related to the terms and scope of legal services they provide or provided to Mr. Havens.⁴ Mr. Havens believes that simply by holding a conference, the Presiding Judge is:

- (i) ... "effectively den[ying] or terminat[ing] the right [of Havens] to participate as a party to a hearing proceeding, § 1.301(a)(1), including by imposing "sanctions" and burdens not authorized by any source of law, including the Commission's rules and orders,
- (ii) requir[ing] testimony or the production of documents over objection based on a claim of privilege, § 1.301(a)(2), and
- (iii) [raising] new or novel question(s) of law or policy and that the Order (Orders in this case) is such that error would be likely to require remand and should the appeal be deferred and raised as an exception.⁵

Section 1.301(b)

[A]ppeals from interlocutory rulings of the presiding [judge] shall be filed only if allowed by the presiding [judge]. Any party desiring to file an appeal shall first file a request for permission to file appeal. . . The request shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. The presiding [judge] shall determine whether the showing is such as to justify an interlocutory appeal and, in accordance with his determination, will either allow or disallow the appeal or modify the ruling. If the presiding officer allows or disallows the appeal, his ruling is final⁶

Mr. Havens asserts that the Presiding Judge's *Order* raises new or novel issues of law. But he fails to identify what issue he believes to be new or novel, and he fails to demonstrate

² Mr. Havens' Interlocutory Appeal Under Section 1.301(a) (filed January 15, 2014).

³ 47 C.F.R. § 1.44(b).

⁴ *Order*, FCC 14M-1 (January 8, 2014)

⁵ Mr. Havens' Interlocutory Appeal Under Section 1.301(a) at 2 (punctuation modified for clarity).

⁶ 47 C.F.R. § 1.301(b).

how any issue is new or novel. If Mr. Havens intends to suggest that it is novel for a Presiding Judge to require counsel to attend a prehearing conference to answer pre-viewed questions limited to nature and scope of assistance of counsel provided to a party, he is in error.⁷

It must be noted that Mr. Havens has once benefitted from asserting *pro se* participation.⁸ He now seeks the same benefit again, *albeit* under a new fact pattern.⁹ However, it was disclosed earlier this month that legal counsel has assisted Mr. Havens since May 2013, including on August 14, 2013, a date on which the Presiding Judge made a finding, now discovered to be erroneous, that Mr. Havens did not have counsel.¹⁰ Under such circumstances, it has become necessary for the Presiding Judge to inquire as to the nature and scope of Mr. Havens' admitted assistance of counsel. In other words, before any benefit may be allowed again to Mr. Havens for his asserted *pro se* status, it is essential that the Presiding Judge examine Mr. Havens' relationships with counsel. There certainly is nothing new or novel in a judge asking for non-privileged foundational information from a *pro se* party and his "assisting" legal counsel in testing an argument that the *pro se* party has raised. If a nominally *pro se* party believes foundational information on the scope and nature of attorney representations are protected by attorney-client privilege, counsel assisting would be expected to correct the client's error. Accordingly, for all the above reasons, Mr. Havens' request for interlocutory appeal under Section 1.301(b) is denied.

Conclusion

In this proceeding, Mr. Havens has, at times, failed to develop his arguments in his immediate pleadings, but rather referred to arguments he has made in prior pleadings filed elsewhere for unrelated purposes. It is directed that Mr. Havens and/or his "assisting" counsel, will hereafter explicate in immediate pleadings every argument requested for the Presiding Judge's consideration. Otherwise, the Presiding Judge would have to navigate imposing, labyrinthine networks of references and cross-references, often leaving the fact-finder to speculate as to the contours of argument(s) that Mr. Havens, *pro se* and/or "assisted" by counsel, is attempting to make. Therefore, be advised, in the future the Presiding Judge will consider only those arguments that can be identified and understood from reading and reviewing a single

⁷ *U.S. v. Legal Services for New York City*, 249 F.3d 1077, 1081 (D.C. Cir. 2001) ("Courts have consistently held that the general subject matters of clients' representations are not privileged Nor does the general purpose of a client's representation necessarily divulge a confidential professional communication, and therefore that data is not generally privileged."); *Westhemeco Ltd. v. New Hampshire Ins. Co.*, 82 F.R.D. 702, 707 (S.D.N.Y. 1979) (citing *Colton v. U.S.*, 306 F.2d 633 (2d Cir. 1962)) ("Inquiries into the 'general nature of the legal services performed' do not invade the area protected by the attorney-client privilege because they 'do not call for any confidential communication.'"); *U.S. v. Kovel*, 296 F.2d 918, 923-24 (2d Cir. 1961) (the nature of the advice and assistance sought forms "the very factual basis which . . . was needed to determine whether the privilege existed."); *Walker v. American Ice Co.*, 254 F. Supp. 736, 738-39 (D. D.C. 1966) ("[T]he rule as to privileged communications does not exclude evidence as to the instructions or authority given by the client to the attorney to be acted upon by the latter."); *Genentech, Inc. v. U.S. Int'l Trade Comm'n*, 122 F.3d 1409, 1415 (Fed. Cir. 1997) ("Generally disclosure of confidential communications or attorney work product to a third party . . . constitutes a waiver of privilege as to those items.")

⁸ See *Memorandum Opinion and Order*, FCC 13M-16.

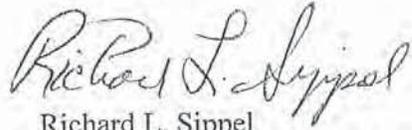
⁹ Havens' Opposition to Joint Motion of Enforcement Bureau & Maritime for Summary Decision on Issue G at 104-05.

¹⁰ *Memorandum Opinion and Order*, FCC 13M-16 at n.63.

pleading, without reference to other pleadings. For emphasis, be further advised that any argument that cannot be found within the four corners of a pleading will not be considered.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION¹¹



Richard L. Sippel
Chief Administrative Law Judge

¹¹ Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 14M-4

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with ENCANA OIL AND GAS (USA),	)	0004310060, 0004314903,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004315013, 0004430505,
MIDSTREAM, LP; JACKSON COUNTY	)	0004417199, 0004419431,
RURAL MEMBERSHIP ELECTRIC	)	0004422320, 0004422329,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004507921, 0004153701,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004526264, and 0004604962
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE-MID CONTINENT, LLC;)	
AND SOUTHERN; CALIFORNIA REGIONAL)	
RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

ORDER

Issued: January 27, 2014

Released: January 27, 2014

Request to Extend Appeal Window

In a filing made late on January 17, 2014, Warren Havens requested that the Presiding Judge extend the five day window for the appeal of interlocutory rulings under 1.301(a) until five



days after the January 17 “prehearing transcript (approved as to accuracy by the persons that spoke, and made final) is made available to [Mr. Havens] by proper notice and service.”¹

Appeals made under Section 1.301(a) of the Commission’s Rules are reviewed by the Commission as a matter of right. Just as the Presiding Judge cannot decide whether or not the Commission should review such appeals, he also lacks the authority to alter such an appeal’s filing window, which is codified at Section 1.301(c)(2) of the Commission’s Rules. Therefore, Mr. Havens’ request must be denied.

As for the transcript of the prehearing conference of January 17, if Mr. Havens wishes an expedited copy of the transcript at his own expense, he or his counsel can make a request directly of the court reporting company utilized by the Commission for the prehearing conference, *i.e.*, Neil R. Gross & Co., Inc., telephone number (202) 234-4433.² If any party believes it has discovered a glaring error in the transcript, it must bring that error to the attention of the Presiding Judge and the other participants.

Request to Strike

Mr. Havens also requests that the Presiding Judge strike statements made by Robert Keller, counsel for Maritime Communications/Land Mobile, LLC (Maritime), at the January 17, 2014 conference because, according to Havens, they were “not within the subject of *Order*, FCC 14M-1.”³ This request is also denied. At the prehearing conference, Mr. Keller urged the Presiding Judge to focus on the pending Joint Motion for Summary Decision and stated his intent file a motion regarding Mr. Havens’ representation in the coming days. Maritime is entitled to make relevant arguments to the Presiding Judge in an open conference as to the issues that Maritime believes should be resolved in prehearing proceedings.

Clarifications

A.

On January 22, 2014, Mr. Havens left a voicemail message for the Presiding Judge’s staff asking for clarification on how the Presiding Judge “serves copies of his orders on [Mr. Havens] as a *pro se* [litigant].” Unlike a litigant, the Presiding Judge is not required to “serve” copies of his orders upon parties. Rather, the Presiding Judge “issues” orders and “releases” them to the parties, to counsel, and to the rest of the public.⁴ In this proceeding, the Presiding Judge has chosen to directly e-mail orders to the parties’ counsel and to Mr. Havens as a *pro se* party.⁵ As

¹ Objections, Requests and Clarifications Regarding the Prehearing under Order FCC 14M-1 (the “Order”) at 3. It is noted here that there is no set time within which a party must receive a proofed transcript, *i.e.* there is no applicable “proper notice and service” of a proofed conference transcript.

² Mr. Haven and counsel were provided with notice of this ruling via e-mail on January 22, 2014.

³ *Id.*

⁴ See 47 C.F.R. § 1.4(b)(2).

⁵ The Presiding Judge’s decision to release orders via e-mail benefits the parties by providing them with immediate, actual notice of his rulings on the release date. He refers to these e-mails as “courtesy copies” as a matter of convention. This reference should not be read to indicate that their release by the Presiding Judge and subsequent

soon as possible thereafter, the Presiding Judge's orders are archived on the Commission's Electronic Comment Filing System to inform non-party members of the public, and the media, of the contents of the orders.

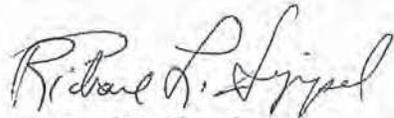
B.

On January 24, 2014, Mr. Havens left another voicemail that was confirmed by e-mail: the Presiding Judge's staff was asked for clarification on the description of items due to the Presiding Judge on February 7, 2014 under *Order*, FCC 13M-19. The subsequent filing of the Joint Motion for Summary Decision on Issue G now requires the Presiding Judge and his staff to "thoroughly evaluate the myriad of factual and legal matters presented by [the Enforcement] Bureau and Maritime, as well as those submitted in Mr. Havens' opposition papers and in the other parties' responses."⁶ Therefore, while the summary decision motion is under advisement, the procedural hearing calendar set in *Order*, FCC 13M-19, must be suspended. Accordingly, the Presiding Judge ordered the calendar suspended in *Memorandum Opinion and Order*, FCC 13M-22.

Accordingly, no filings are due on February 7, or on any of the other dates set in *Order*, FCC 13M-19. Such procedural dates will be reset in a future order, if necessary, after consultation with the litigating parties.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁷



Richard L. Sippel
Chief Administrative Law Judge

receipt by counsel and Mr. Havens lack legal significance. Any counsel assisting Mr. Havens have been added, and will continue to be added, to the distribution list following their filing of Special or Limited Notices of Appearance.

⁶ *Memorandum Opinion and Order*, FCC 13M-22 at 2 ¶ 2.

⁷ Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 14M-7

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with ENCANA OIL AND GAS (USA),	)	0004310060, 0004314903,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004315013, 0004430505,
MIDSTREAM, LP; JACKSON COUNTY	)	0004417199, 0004419431,
RURAL MEMBERSHIP ELECTRIC	)	0004422320, 0004422329,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004507921, 0004153701,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004526264, and 0004604962
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE-MID CONTINENT, LLC;)	
AND SOUTHERN; CALIFORNIA REGIONAL)	
RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

ORDER

Issued: February 26, 2014

Released: February 26, 2014

Preliminary Statement

On December 19, 2013, the Presiding Judge issued *Memorandum Opinion and Order*, FCC 13M-22 (“*MO&O*”), in response to several motions made by Warren Havens and out of concern about the nature of unspecified legal assistance provided to Mr. Havens by unidentified



counsel, a circumstance first disclosed in a footnote to those motions.¹ In rulings, the Presiding Judge struck Mr. Havens' December 2, 2013, pleadings due to untimely filing and denied his motions based on additional substantive grounds. The Presiding Judge also ordered Warren Havens' "assisting" counsel to file a Notice of Appearance on or before January 6, 2014.²

On December 27, 2013, Mr. Havens filed a "Request [to appeal] under Section 1.301(b)" ("Request"). Three days later, Mr. Havens filed an additional "Request [to appeal] under Section 1.301(b) of 12-30-13" ("Request of 12-30"). He filed a third pleading titled Request to Accept and Supplement to Request under Section 1.301(b) on January 7, 2014 ("Request of 1-7," "Request," "Request of 12-30," and "Request of 1-7," together termed "Requests to Appeal"). For reasons set forth below, Mr. Havens' Requests to Appeal are denied.

A.

Timing of Requests to Appeal

Section 1.301(b) of the Commission's rules requires that parties request an appeal of an interlocutory order within five days of that order's release.³ The *MO&O* was issued and released on Thursday, December 19, 2013. So, allowing for the Christmas holiday, all requests to appeal were due on Friday, December 27, 2013.⁴ In a prior order, the Presiding Judge had directed that "[a]ll filings in this proceeding shall be due on their designated submission dates at close of business (5:30 pm EST) unless otherwise indicated."⁵ The Presiding Judge also ruled in a prior order that Mr. Havens would be strictly held to filing deadlines due to his exploitations of the Presiding Judge's prior discretionary disposition to consider his late submissions.⁶ In this instance, Mr. Havens filed his Request at 5:33 PM on December 27. He then filed his Request of 12-30 three calendar days after the December 27 deadline and filed an additional supplement eight calendar days after that.⁷ These untimely and unauthorized filings were made over twelve calendar days. Accordingly, Mr. Havens' Requests to Appeal must be denied.

Perhaps in anticipation of this ruling, Mr. Havens argues that the release date of the *MO&O* is actually December 20, rather than December 19, because the 20th is when the document was posted on the Commission's Electronic Comment Filing System ("ECFS").⁸ It is well established that in the case of non-rulemaking documents, the date on which public notice

¹ Havens-SkyTel First Motion Under Order 13M-19 To Reject Settlement, Proceed with the Hearing. [sic] and Provide Additional Relevant Discovery; Havens-SkyTel Additional Motions Under Order 13M-19.

² The *MO&O*, as issued, incorrectly states that the Notice of Appearance was due on or before January 6, 2013.

³ 47 C.F.R. § 1.301(b).

⁴ See 47 C.F.R. § 1.4(g) (computation of time from "release date").

⁵ Order, FCC 12M-55 at 2 n.2.

⁶ *MO&O* at 3 ¶ 5.

⁷ Mr. Havens is to be lauded for seeking authorization to file his Request of 1-7. However, that filing cannot be accepted. The explanation Mr. Haven gives as to why the filing should be accepted is that it presents authority that supports his arguments. Request of 1-7 at 1. Mr. Havens provides no reason why this authority could not have been included in Mr. Havens' initial Request. To allow a supplemental filing solely because it bolsters a party's arguments, with no explanation as to why the substance of the filing could not be submitted earlier, would render the Presiding Judge's deadlines meaningless.

⁸ Request of 12-30 at n.*.

of the action is given is the release date.⁹ Therefore, Mr. Havens is incorrect because the date on which a document is available on ECFS, noted in ECFS as the posting date, does not control the release date. The Presiding Judge released the *MO&O* to the parties in this proceeding by e-mail on the stated "Released" date of December 19. Counting from the next day after release (i.e. Friday, the 20th), Mr. Havens had five days, excluding Christmas day, to file his request. He failed to do so and filed late on December 27, after the 5:30 pm deadline. Thus, Mr. Havens' late submissions need not be considered.

However, in the interests of completeness of the record and fairness for Mr. Havens, the merits of Mr. Havens' Requests to Appeal are considered and ruled upon below.

B.

Havens' Requests to Appeal under Section 1.301(b)

Section 1.301(b) of the Commission's Rules provides that:

*appeals from interlocutory rulings of the presiding officer shall be filed only if allowed by the presiding officer. Any party desiring to file an appeal shall first file a request for permission to file appeal. . . The request shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. The presiding officer shall determine whether the showing is such as to justify an interlocutory appeal and . . . his ruling is final . . .*¹⁰

Mr. Havens seeks permission to appeal to the Commission three issues arising from the Presiding Judge's *MO&O*, which is denied for each.

Havens' Assisting Counsel

The first appeal request challenges the Presiding Judge's order requiring that Mr. Havens' unidentified "assisting counsel" file Notices of Appearance. Section 1.243(f) of the Commission's rules grants the Presiding Judge the authority to manage its litigation, and to that end, take steps to regulate the course of the proceeding.¹¹ An essential aim of such regulation is to ensure that the Presiding Judge and the parties have knowledge as to the identities of the participants in a Commission proceeding, the capacities in which they participate, and the purposes and scope of their participation. If such information is not obtained through disclosure, a proceeding may face substantial delays. Parties may serve pleadings on the wrong individuals; critical participants may be inadvertently omitted from prehearing conferences; arguments may arise at any time as to the scope of parties' representation that may later be disclosed or discovered; conflicts may be overlooked; and settlement opportunities may be missed.

⁹ 47 C.F.R. § 1.4(b)(2).

¹⁰ 47 C.F.R. § 1.301(b) (emphasis added).

¹¹ 47 C.F.R. § 1.243(f).

Here, on December 19, 2013, the date of the *MO&O*'s release, the Presiding Judge had just learned that Mr. Havens, a *pro se* litigant, was in some way being assisted by unidentified counsel, which is a highly unusual occurrence in Commission litigation. Obviously, the Presiding Judge had no idea as to the identity of such counsel, or the scope of counsel's participation. Also obviously, the scope and nature of representations are significant to evaluating the truth of Mr. Havens' *pro se* assertions. Earlier in this proceeding, the alternating representations of the SkyTel entities, sometimes *pro se* by Mr. Havens and other times by identified counsel, led to confusion and delay. So this time, the Presiding Judge deemed it necessary to immediately resolve questions in order to avoid additional confusion and delay.¹² The Presiding Judge justifiably exercised his authority under Section 1.243(f) in requiring Mr. Havens' counsel to self-identify so that the nature and scope of their roles in this proceeding could be understood.¹³ This uncontroversial exercise of judicial power falls clearly within the authority delegated to any presiding judge and fails to raise any new or novel question of law or policy. After twenty five plus years on the bench, the Presiding Judge is still unaware of any case in which a trial judge, by merely requiring counsel to self-identify, was questioned, reversed, or remanded.

But Mr. Havens believes that there is "no basis in law or equity" for the order because occasions of "alleged past 'confusion' created by Havens's [sic] and SkyTel entities' participation in cases on a *pro se* basis" was resolved.¹⁴ To "use a settled matter as the basis to impose a sanction," he argues, "is a new and novel expansion of authority" that warrants immediate appeal.¹⁵ Not so. Mr. Havens is incorrect in arguing that the basis for the order was confusion that was already resolved. Rather, the basis for the order was the recent revelation that unknown counsel were assisting Mr. Havens while he was simultaneously representing in Commission pleadings that he was participating *pro se*. Those representations of *pro se* participation were not wholly accurate. The record of a proceeding requires the names of counsel and clarification of counsel's role so as to inform the Presiding Judge and the parties and to avoid any confusion or delay. Section 1.243(f) of the Commission's rules empowers the Presiding Judge to mitigate confusion in representation.¹⁶ Mr. Havens laments that the other parties to this proceeding were not also required to file Notices of Appearance.¹⁷ But that is because their identity was disclosed from the start by their earlier Notices of Appearance and by signing their names to pleadings. The roles of counsel for the other parties were made clear. To require "ghost" attorneys to come out from hiding and file appearances at a minimum corrects confusion and serves the Commission's goal of transparency.

¹² *MO&O* at 3 ¶ 6. Unfortunately, the role that Mr. Havens' now known counsel play in his participation appears significant but remains clouded, in light of Mr. Havens baselessly asserting attorney-client privilege and directing counsel to refuse to answer even bland foundational questions that do not ask for any disclosures of confidences. See *Order*, FCC 13M-3; *cf. also* Prehearing Conference of January 17, 2014 at Tr. 993-94 and *passim*.

¹³ *MO&O* at 3 ¶ 6.

¹⁴ Request at 2 (italics added).

¹⁵ *Id.*

¹⁶ In addition, in his Opposition to Joint Motion of Enforcement Bureau & Maritime for Summary Decision of Issue G (Opposition), Mr. Havens' seeks benefits normally afforded to "true blue" *pro se* litigants. Opposition at 104-05. Mr. Havens' disclosures raise a factual issue regarding the appropriateness of granting him those benefits, as had been done in the past. Requiring counsel to identify so that significant fact issue can be examined falls squarely within the Presiding Judge's authority to rule upon questions of evidence. See 47 C.F.R. § 1.243(d).

¹⁷ Request at 3 n.6.

Further, Mr. Havens' characterization of the Presiding Judge's order as a "sanction" is uninformed, implausible, and wrong. The order merely required his counsel to provide non-privileged, factual information that would inform the Presiding Judge of the identities and scope of all participants in this case. This is hardly a sanction. Mr. Havens even asserts that the requirement that counsel identify themselves "imposes time and cost on the *pro se* party."¹⁸ These questioned rulings place absolutely no burden on Mr. Havens. He only needed to take time to inform his unidentified counsel, who could not be notified through the proceeding's service list, about the rulings. It is very likely that Mr. Havens as a matter of course provides counsel with all rulings as they are made so that counsel may provide him with competent legal services and advice he requires. Same day notification of counsel by Mr. Havens can be readily accomplished in seconds with the click of his computer's mouse at little or no cost.

Mr. Havens also makes the dramatic argument that the *MO&O* "places a chill and cloud on the party's participation and attempt to use assisting counsel to improve his participation."¹⁹ He fails to explain how the *MO&O* "chills" participation. It seems to be a baseless charge. It would be irrational for Mr. Havens to become discouraged from participating here simply because the Presiding Judge has asked unidentified "assisting" counsel to step out of the shadows and clarify the nature and scope of their legal "assistance." This is especially so since it was Mr. Havens himself who raised his *pro se* status as an issue, knowing that it needs examination by the Presiding Judge.²⁰

The order directing Mr. Havens' unidentified counsel to identify themselves does not prevent Mr. Havens from still participating as a *pro se* party. Nor does it prevent counsel from assisting Mr. Havens, nor from vigorously participating. Counsel complied with the order to file Notices of Appearance more than a month ago. Mr. Havens and his counsel continue to participate in this proceeding without evidencing any chilling effect that can be related to the *MO&O*.²¹ Thus, Mr. Havens' request to appeal the issue of identification of his counsel is denied.

Striking Havens' Untimely Filing

Mr. Havens now seeks permission from the Presiding Judge to appeal an order striking Havens' December 2, 2013, pleadings as untimely. Mr. Havens appears to argue that the Presiding Judge erred in striking his pleadings in their entirety because the majority of his arguments were unrelated to substantive motions that were due on December 2, but were related to *responses* to substantive motions that were due later on December 16.²² Mr. Havens argues that by striking his pleadings the Presiding Judge exercised a "new and novel, and impermissible, unbridled authority."²³ To grant his request for appeal on a ruling that is hardly "new," let alone "novel," would only add to the already wasted time and expense of this overly litigated case.

¹⁸ *Id.* at 3 (italics added).

¹⁹ *Id.*

²⁰ See Opposition at 104-05.

²¹ The only observable "chill" on counsel's participation was caused by Mr. Havens, who instructed counsel that they must refuse to answer normal *voir dire* questions posed by the Presiding Judge.

²² Request at 2 n.3.

²³ *Id.* at 2.

Parties Warned to File Timely

By *Order*, FCC 12M-55, released over one year ago on December 5, 2012, the Presiding Judge instructed all parties that “[a]ll filings in this proceeding shall be due on their designated submission dates *at close of business (5:30pm EST)* . . .”²⁴ In a later *Order*, FCC 13M-19, the Presiding Judge set a deadline of December 2, 2013 for filing all substantive motions regarding matters related to Issue G.²⁵ Mr. Havens filed his pleadings between 11:51 pm and 11:59 pm on that date, nearly six and one half hours beyond the prescribed time, thus making them untimely.²⁶ In considering whether to accept those pleadings notwithstanding their untimeliness, the Presiding Judge concluded that strong remedial action was appropriate because “Mr. Havens exploited the Presiding Judge’s generous flexibility on filing deadlines when he used additional time not available to the other parties to significantly respond to pleadings to which he should not yet have had access.”²⁷ Thus, the Presiding Judge found it appropriate to strictly enforce the deadline as to Mr. Havens’ untimely December 2 pleadings and filings thereafter.

Unfair Advantage to File Late

Striking these pleadings was necessary to ensure that Mr. Havens did not gain an advantage by using unauthorized extra time to improve his pleading with information made available only to him “after hours” and thereby gain an unfair advantage. Far from being “impermissible [and] unbridled,” such remedial action to strike tardy filings is appropriate and falls squarely within the Presiding Judge’s authority to regulate the proceeding.²⁸ Far from such action being new or novel, the Presiding Judge merely followed Commission precedents repeatedly striking or dismissing Mr. Havens’ pleadings due to his failure to comply with pleading requirements.²⁹ Further, the issue that Mr. Havens seeks to appeal is now moot because the Presiding Judge did not bar Mr. Havens from resubmitting his arguments at the appropriate time, a remedy that Mr. Havens has exercised profusely.³⁰ Thus, Mr. Havens’ request to appeal the striking of his December 2 pleadings is denied.

Equally Applied Deadlines

Mr. Havens seeks appeal of the Presiding Judge’s determination that he “was subject to an alleged ALJ Order that *all pleadings* in this proceeding must be filed by 5:30 PM Eastern Time.”³¹ He argues that the setting of an equal time requirement is “an artificial imposition and with no benefit, imposed only on Havens, and thus is also part of the Order’s new and novel

²⁴ *Order*, FCC 12M-55 at 2 n.2 (emphasis added).

²⁵ *Order*, FCC 13M-19 at 2.

²⁶ *MO&O* at 3 ¶ 5.

²⁷ *Id.*

²⁸ 47 C.F.R. § 1.243(f).

²⁹ *Cf. Warren C. Havens*, Order on Reconsideration, DA 14-121 at 6 ¶ 19 (WTB Mobility 2014); *Skybridge Spectrum Foundation Warren Havens on Request for Inspection of Records*, Memorandum Opinion and Order, FCC 13-120, 28 FCC Rcd 13539, 13543 ¶ 10 (2013); *Warren C. Havens*, Order on Further Reconsideration, 21 FCC Rcd 3553, 3555 ¶ 5 (WTB 2006).

³⁰ *See* Opposition.

³¹ Request at 2 (emphasis added).

expansion of authority.”³² Mr. Havens also tactfully asserts a fall-back argument that since ECFS mechanically allows filing until midnight, he should be permitted to file at any time of day.³³ He also asserts that the Presiding Judge’s staff gave him permission to file his pleading of December 16 after 5:30 pm.³⁴

Authority to set deadlines is an essential tool for a Presiding Judge to regulate proceedings. There is nothing unusual about any judicial officer setting a deadline. The Presiding Judge set the 5:30 pm EST deadline in order to provide certainty to the parties of filing deadlines and thereby avoid any confusion that could arise due to time differences or uncertainties.³⁵ The same deadline applies to all parties.³⁶ No “new” or “novel” issue arises when a presiding judge exercises authority to set filing deadlines.³⁷ Mr. Havens has cited no authority for his position that ECFS’s acceptance of filings after the close of business trumps an earlier time certain deadline set by the Presiding Judge.

Havens’ Sanctions Argument

Mr. Havens asserts that the Presiding Judge’s *MO&O* raises new and novel issues of law in that it “effectively ‘denies or terminates the right ...[of Havens] ... to participate as a party to a hearing proceeding,’” and imposes sanctions though “sanctions cannot be applied but when authorized by agency law, and no FCC law authorizes the above.”³⁸ In support of this position, Mr. Havens relies on the Administrative Procedure Act at 5 U.S.C. § 558(b), which states that “[a] sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.”

As previously held, ordering counsel to self-identify is not a sanction. This meritless argument is thus rejected. Even if viewed as a sanction, Mr. Havens’ argument fails. Mr. Havens asserts his erroneous position with assumedly first-hand knowledge of precedent that it is frivolous. Mr. Havens raised a strikingly similar argument before the Commission in a situation involving a sanction.³⁹ The Commission squarely rejected this argument, holding that:

³² *Id.* at 3.

³³ *Id.* at 4.

³⁴ *Id.* The Presiding Judge has not yet ruled on any aspect of Mr. Havens’ December 16, 2013, filing and will not do so here.

³⁵ In his January 7, 2014, Supplement to Response, Mr. Havens argues that the Presiding Judge “breach[es] a Commission determination” that permits the electronic filing of comments until midnight of the date due. Mr. Havens’ Request to Accept and Supplement to Request under Section 1.301(b) at 1-2 (citing *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322, 11331 ¶ 19 (1998)). Mr. Havens is reminded that this is not a notice and comment rulemaking proceeding, and thus the Report and Order he cites is not applicable.

³⁶ “All filings in this proceeding shall be due on their designated submission dates at close of business (5:30pm EST) unless otherwise indicated . . .” Order, FCC 12M-55 at 2 n.2 (emphasis added).

³⁷ See 47 C.F.R. § 1.243(f).

³⁸ Request at 3.

³⁹ *Warren C. Havens*, 27 FCC Rcd. 2756, 2758 ¶ 8 (2012) (“Havens [erroneously] contends that imposition of the proposed sanction [for making frivolous or repetitive filings in Commission proceedings] violates 5 U.S.C. § 558(b), which states that a ‘sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.’”).

As the Commission has long recognized, '[a]n agency is not powerless to prevent an abuse of its processes,' and it 'need [not] allow the administrative process to be obstructed or overwhelmed by captious or purely obstructive protests.' In the Communications Act, this principle is reflected in the broad provisions of sections 4(i) and 4(j). Section 4(i) states that the Commission 'may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.' Section 4(j) provides that the Commission 'may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.' In similar fashion, section 303(r) provides that the Commission may '[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act.' *The courts have recognized that an inherent part of an agency's ability to manage its proceedings and execute its functions is the ability to impose sanctions to 'protect the integrity of its own processes.'*⁴⁰

Yet, Mr. Havens now argues that this issue is new and novel. Mr. Havens does not at all discuss the Commission precedent concerning himself and his related entities and the similar fact pattern under consideration in this proceeding. He does not even disclose the existence of adverse authority with his name in the case captions. Mr. Havens should not be permitted to waste the time of the Commission with arguments that it has already visited and rejected.

Conclusion

Mr. Havens' Requests to Appeal are frivolous on the merits, and transparent as an effort to delay this proceeding by miring it in meretricious, meritless appeals and requests to appeal. Remember that we are all aware that the Joint Motion for Summary Decision on Issue G ("Joint Motion") was filed more than two months ago on December 2, 2013, and is ripe for decision. Thereafter, possibly in an effort to delay a judgment day, Mr. Havens systematically challenges routine exercises of the Presiding Judge's authority in making rudimentary interlocutory rulings, no matter how axiomatic or generic the supporting authority relied upon in the rulings.

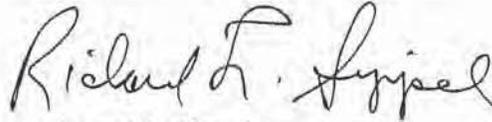
Rulings

Accordingly, based on the foregoing and in the discretion of the undersigned Presiding Judge, **IT IS ORDERED** that Mr. Havens' Requests to Appeal *Memorandum Opinion and Order*, FCC 13M-22, released December 19, 2013, **ARE DENIED**.

⁴⁰ *Id.* at 2758-59 ¶ 9 (footnotes and internal quotation marks omitted) (emphasis added).

IT IS FURTHER ORDERED that Warren Havens' pleadings filed on December 2, 2013, **REMAIN STRUCK**.

FEDERAL COMMUNICATIONS COMMISSION⁴¹

A handwritten signature in black ink that reads "Richard L. Sippel". The signature is written in a cursive style with a large initial 'R'.

Richard L. Sippel
Chief Administrative Law Judge

⁴¹ Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.

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

In the Matter of)	
)	
WARREN C. HAVENS)	
)	
Applications to Provide Automated Maritime	)	File Nos. 852997-853009
Telecommunications System Stations at Various)	
Locations in Texas, and)	
)	
Applications to Provide Automated Maritime	)	File Nos. 853010-853014
Telecommunications System Stations at Chaffee,)	
Aspen, Colorado Springs, Copper Mountain, and)	
Leadville, Colorado)	

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 2012

Released: March 12, 2012

By the Commission:

I. INTRODUCTION

1. In this order, we adopt with certain modifications our proposal to sanction Warren C. Havens for making frivolous filings in connection with the above-captioned license applications (hereinafter, the "Applications"), which were filed over a decade ago. Under the sanction we adopt today, Havens (or any person or entity acting on behalf of Havens) must obtain the prior approval of the Wireless Telecommunications Bureau before filing further pleadings with respect to the Applications. As described below, we modify our proposal to reflect more accurately the narrow focus of the sanction we impose today.

II. BACKGROUND

2. We summarize here the long history of this proceeding, which is set forth in detail in the *Third Order on Reconsideration*.¹ In 2000 and 2001, the staff dismissed the above-captioned Automated Maritime Telecommunications System (AMTS) license applications from Havens because they did not meet the coverage requirements in Section 80.475(a) of the Commission's rules, as then in effect.² Havens filed multiple petitions for reconsideration and an application for review of the dismissal orders, which were all denied by the staff and the Commission. Havens then appealed to the United States Court of Appeals for the District of Columbia Circuit, which administratively terminated his suit in 2007.³

¹ *Warren C. Havens*, Third Order on Reconsideration, 26 FCC Rcd 10888 (2011) ("*Third Order on Reconsideration*").

² See *Warren C. Havens*, Order, 15 FCC Rcd 22296 (WTB PSPWD 2000); *Warren C. Havens*, Order, 16 FCC Rcd 2539 (WTB PSPWD 2001).

³ *Havens v. FCC*, Nos. 02-1315, 02-1316 (D.C. Cir. filed Oct. 16, 2002).



3. After the Commission adopted geographic licensing for AMTS and eliminated the site-based coverage requirements in Section 80.475(a),⁴ Havens requested that the dismissed Applications be processed pursuant to the new geographic coverage rules and requested forbearance from the site-based coverage requirements. The staff denied his requests in the *2004 PSCID Order*.⁵

4. Havens then filed a petition for reconsideration of that order beyond the statutory 30-day filing window for seeking reconsideration. See 47 U.S.C. § 405(a) (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order ... complained of.”). Finding Havens’ untimely reconsideration petition barred by section 405(a), the staff dismissed it.⁶ Havens subsequently filed, in turn, a petition for reconsideration of the *2005 Dismissal Order* with the staff, an application for review with the Commission, and a petition for reconsideration with the Commission. In three separate orders, culminating in the *2010 Order on Reconsideration*, first the staff and then the Commission concluded that Havens had failed to demonstrate why he should be excused from the consequences of his failure to file a timely petition for reconsideration of the *2004 PSCID Order*.⁷

5. In the *2010 Order on Reconsideration*, the Commission noted that the Applications had at that time been the subject of 12 orders at the staff and Commission levels. It accordingly stated that it planned to give no further consideration to the matter and directed the staff to dismiss summarily any subsequent pleadings filed by Havens or related parties in this proceeding.⁸ Havens and related parties nonetheless petitioned for reconsideration of the *2010 Order on Reconsideration*. After the staff summarily dismissed that petition in accordance with the Commission’s directive,⁹ Havens filed yet another petition for reconsideration of the staff’s action. The Commission dismissed that reconsideration petition in the *Third Order on Reconsideration*, which again rejected Havens’ claim that he had provided a valid basis for excusing his failure to satisfy section 405(a)’s filing deadline.

6. The *Third Order on Reconsideration* also proposed to sanction Havens on the basis of a finding that Havens had “abused the Commission’s processes in this proceeding” by filing “frivolous and repetitive” pleadings after the Commission had addressed and rejected his claims in the *2008 MO&O*.¹⁰ Under the proposed sanction, Havens would be required to obtain prior approval before filing any future pleadings involving the Applications. To request such approval, Havens would be required to include a cover page to any proposed filing clearly labeled “Request for Permission to File” that contains the following statement: “Pursuant to previous findings by the FCC that Warren C. Havens has abused Commission processes, and requiring Havens to request permission of the Wireless Telecommunications Bureau to file further documents, Havens submits this request.” Under the proposal, Havens would also have to certify that the claim or claims he wishes to present are not frivolous or made in bad faith. We

⁴ See *Amendment of the Commission’s Rules Concerning Maritime Communications*, Second Memorandum Opinion and Order and Fifth Report and Order, 17 FCC Rcd 6685, 6702-03 ¶ 37 (2002), *recon. granted in part and denied in part*, Third Memorandum Opinion and Order, 18 FCC Rcd 24391 (2003).

⁵ See *Warren C. Havens*, Order, 19 FCC Rcd 23196 (WTB PSCID 2004) (“*2004 PSCID Order*”).

⁶ See *Warren C. Havens*, Order on Reconsideration, 20 FCC Rcd 3995, 3996-97 ¶ 6 (WTB PSCID 2005) (“*2005 Dismissal Order*”).

⁷ *Warren C. Havens*, Order on Further Reconsideration, 21 FCC Rcd 3553, 3555 ¶ 5 (WTB 2006); *Warren C. Havens*, Memorandum Opinion and Order, 23 FCC Rcd 3210, 3212-13 ¶ 7 (2008) (“*2008 MO&O*”); *Warren C. Havens*, Order on Reconsideration, 25 FCC Rcd 511, 513 ¶¶ 5-6 (2010) (“*2010 Order on Reconsideration*”).

⁸ See *2010 Order on Reconsideration*, 25 FCC Rcd at 513 n.22.

⁹ *Warren C. Havens*, Order on Further Reconsideration, 25 FCC Rcd 2123, ¶ 1 (WTB MD 2010) (“*2010 Summary Dismissal Order*”).

¹⁰ *Third Order on Reconsideration*, 26 FCC Rcd at 10888 ¶ 1; see *id.* at 10892-93 ¶¶ 11-15.

provided Havens an opportunity to respond to the proposed sanction; on August 29, 2011, Havens, through counsel, submitted his response. Warren Havens' Response to FCC 11-116 (Aug. 29, 2011) (Havens Response).¹¹

III. DISCUSSION

7. Havens makes two principal arguments against the proposed sanction. Havens first argues that the Commission lacks the authority to impose sanctions on parties who make frivolous or repetitive filings in Commission proceedings. Next, he argues that the proposed sanction is unwarranted on the facts of this case. We address each of these arguments in turn.

8. *Legal Authority.* Havens contends that imposition of the proposed sanction violates 5 U.S.C. § 558(b), which states that a "sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law."¹² According to Havens, "no statute from the [Communications Act] is cited in the [*Third Reconsideration Order*], nor does any exist, that supports the proposed sanction."¹³

9. We reject the contention that 5 U.S.C. § 558(b) precludes us from imposing a sanction for frivolous filings. As the Commission has long recognized, "[a]n agency is not powerless to prevent an abuse of its processes," and it "'need [not] allow the administrative process to be obstructed or overwhelmed by captious or purely obstructive protests.'"¹⁴ In the Communications Act, this principle is reflected in the broad provisions of sections 4(i) and 4(j). Section 4(i) states that the Commission "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." Section 4(j) provides that the Commission "may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."¹⁵ In similar fashion, section 303(r) provides that the Commission may "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act."¹⁶ The courts have recognized that an inherent part of an agency's ability to manage its proceedings and execute its functions is the ability to impose sanctions to "protect the integrity of its own processes."¹⁷ Section 558(b) does not apply to such

¹¹ Havens requested and was granted a one-week extension of time within which to file his response. Havens also filed, apparently *pro se*, a "Statement of Warren Havens in Support of Havens' Response to FCC 11-116" (Aug. 29, 2011) (Havens Statement). In addition, on September 9, 2011, Maritime Communications/Land Mobile, LLC filed comments in reply to Havens' response in which it urged the Commission to impose the proposed sanction, with certain modifications.

¹² Havens Response at 5-6.

¹³ *Id.* at 6.

¹⁴ *Radio Carrollton*, Memorandum Opinion and Order, 69 FCC 2d 1138, 1150 (1978) (quoting *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (1966) (brackets in original)).

¹⁵ 47 U.S.C. §§ 154(i), (j).

¹⁶ 47 U.S.C. § 303(r).

¹⁷ *Touche Ross & Co. v. SEC*, 609 F.2d 570, 582 (2d Cir. 1979); see also *Gonzalez v. Freeman*, 334 F.2d 570, 577 (D.C. Cir. 1964) ("We conclude that such a power [of debarment] is inherent and necessarily incidental to the effective administration of the statutory scheme."); *Atlantic Richfield Co. v. U.S. Dept. of Energy*, 769 F.2d 771, 794 (D.C. Cir. 1984) ("We think the broad congressional power to authorize agencies to adjudicate 'public rights' necessarily carries with it power to authorize an agency to take such procedural actions as may be necessary to maintain the integrity of the agency's adjudicatory proceedings."); see also *United Church of Christ*, 359 F.2d at 1005-06 (recognizing the Commission's 'inherent powers' to prevent the "administrative processes [from being] obstructed or overwhelmed by captious or purely obstructive protests.").

sanctions designed to protect the integrity of an agency's internal processes, but only to those designed to modify regulated entities' "primary conduct."¹⁸

10. Havens further contends that section 1.52 of the Commission's rules does not support the proposed sanction in this case because the rule imposes standards of conduct only on attorneys, not *pro se* applicants such as Havens.¹⁹ We need not – and do not – decide the reach of section 1.52 in this proceeding. As discussed above, we have authority under the Act, as well as under basic administrative law principles, to apply sanctions in order to ensure the integrity of Commission processes. Thus, to the extent that section 1.52 does not itself reach non-attorney misconduct, that does nothing to diminish our inherent authority under the Communications Act to sanction parties unrepresented by counsel who make frivolous filings in Commission proceedings. Moreover, our precedents make clear that the same standards for determining whether a filing is frivolous or repetitious may be applied whether the signatory is an attorney or a non-attorney. Thus, in the *1996 Public Notice*,²⁰ which we cited in the *Third Order on Reconsideration*, we "remind[ed] parties to our proceedings and their attorneys that our rules prohibit the filing of frivolous pleadings or pleadings filed for the purpose of delay in proceedings before the Commission or its staff. See, e.g., 47 U.S.C. § 1.52."²¹ We subsequently applied that principle to confirm the staff's authority to sanction an abusive *pro se* filer, without referring to section 1.52.²² Accordingly, even if section 1.52 does not directly authorize sanctions on *pro se* filers who make frivolous filings, the standard set forth therein can inform the exercise of our inherent authority to impose sanctions under sections 4(i) and 4(j) of the Communications Act.²³

11. Havens also argues that 47 C.F.R. § 1.106(p), which authorizes the staff to dismiss petitions for reconsideration that plainly do not warrant consideration by the Commission, represents the exclusive remedy that we may impose on abusive filers.²⁴ We disagree. The purpose of that provision is to delegate to the staff the authority to dismiss reconsideration petitions filed with the FCC that do not warrant the attention of the full Commission.²⁵ The rule does not address, much less limit, the Commission's authority to sanction parties who submit frivolous filings.

¹⁸ See *American Bus Ass'n v. Slater*, 231 F.3d 1, 7 (D.C. Cir. 2000) (distinguishing sanctions subject to section 558(b) from sanctions that are "designed to 'ensure that those professionals, on whom the [SEC] relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence.'" (quoting *Touche Ross*, 609 F.2d at 582).

¹⁹ Havens Response at 6-7.

²⁰ *Commission Taking Tough Measures Against Frivolous Pleadings*, Public Notice, 11 FCC Rcd 3030 (1996) ("*1996 Public Notice*").

²¹ *Id.* at 3030.

²² See *Nationwide Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 5654, 5655 ¶ 5 (1998). The staff applied its sanction authority in *Alexander Broadcasting Company*, Memorandum Opinion and Order, 13 FCC Rcd 10355 (MMB 1998), which we cited in the *Third Order on Reconsideration*, 26 FCC Rcd at 10892 ¶ 12 n.33. We reject Havens' attempts to distinguish our precedent or limit them to their particular facts. See Havens Response at 7-9. Commission precedent confirms our broad authority to sanction parties who make frivolous filings; our exercise of such authority is not confined to situations that precisely mimic those that occurred in the past.

²³ Cf. *Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 307-08 (1989) ("Statutory provisions may simply codify existing rights or powers. Section 1915(d), for example, authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision.").

²⁴ Havens Response at 6.

²⁵ *Amendment of Certain of the Commissions Part 1 Rules of Practice & Procedure & Part 0 Rules of Commission Organization*, 26 FCC Rcd 1594, 1606 ¶ 27 (2011).

12. Finally, in addition to his statutory arguments, Havens suggests that the proposed sanction implicates the First Amendment because it affects his right to petition the agency.²⁶ Consistent with Commission precedent, *see Nationwide Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 5654, 5655 ¶ 5 (1998), we reject his undeveloped claim. The First Amendment does not entitle a party to file frivolous and repetitive administrative pleadings in agency proceedings, any more than it allows a party to file such pleadings in a judicial forum.²⁷ In this circumstance, it is evident that Havens has made frivolous and repetitive filings in this proceeding. The 2008 MO&O concluded that Havens had not shown that his failure to file a timely petition for reconsideration in 2005 presented an “extremely unusual circumstance” that would justify excusing the 30-day deadline in section 405(a) for filing such petitions.²⁸ The effect of that final order was to terminate this license-application proceeding. At that point, Havens could have appealed the decision to the D.C. Circuit.²⁹ He instead filed a petition for reconsideration of the 2008 MO&O with the Commission. In the 2010 Order on Reconsideration, we “dismiss[ed] the instant petition for reconsideration as repetitious” because Havens had “presented no grounds for reconsideration” of the 2008 MO&O. We further stated that the “above-captioned applications have now been the subject of twelve orders” at the agency, that “[w]e plan to give no further consideration to this matter, and that “the staff is hereby directed to dismiss summarily any subsequent pleadings filed by Havens or related parties with respect to these applications or the authority requested therein.”³⁰ Havens nonetheless returned twice more to the Commission, filing two additional petitions for reconsideration that do not call into question the correctness of our decision in the 2008 MO&O. In light of this history, we believe Havens would likely continue to make filings in this proceeding absent the injunction.³¹

13. This chronology of events makes clear that the Commission has afforded Havens a full and fair opportunity to demonstrate why he should be excused for missing the 30-day filing deadline under section 405(a), and he has failed to do so. Under these circumstances, we believe the broad discretion we have under the Communications Act to manage the agency’s docket would enable us to bar Havens from filing *any* future pleadings as to the Applications. Nevertheless, we take a narrower approach to the sanction in this case, allowing Havens an opportunity to make a showing that such future filing should be permitted. This preapproval requirement is not so onerous as to deny him meaningful access to this agency, *see In re Green*, 669 F.2d 779, 786-787 (D.C. Cir. 1981) (upholding pre-filing injunction that does not “preclude or even unduly burden Green from submitting a new and nonfrivolous

²⁶ Havens Response at 4-5.

²⁷ *See, e.g., Bill Johnson’s Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743 (1983) (“baseless litigation is not immunized by the First Amendment right to petition.”); *Tripati v. Beaman*, 878 F.2d 351, 353 (10th Cir. 1989) (“there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious”); *see also United States v. Kaun*, 827 F.2d 1144, 1153 (7th Cir. 1987) (“Frivolous FOIA requests are similarly not constitutionally protected.”); *Stelly v. Commissioner of Internal Rev.*, 804 F.2d 868, 870 (5th Cir. 1986) (upholding \$500 penalty for taking a frivolous position before the IRS).

²⁸ 2008 MO&O, 23 FCC Rcd at 3212-13 ¶ 7. As the D.C. Circuit has observed, “[a]lthough section 405 does not absolutely prohibit FCC consideration of untimely petitions for reconsideration, [the courts] have discouraged the Commission from accepting such petitions in the absence of extremely unusual circumstances.” *Virgin Islands Tel. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (holding that “the Commission’s refusal to entertain Vitelco’s petition for reconsideration was justified” where “Vitelco’s counsel freely admits that its tardiness was caused by miscommunications within the firm.”); *see also Freeman Eng’g Associates, Inc. v. FCC*, 103 F.3d 169, 183 (D.C. Cir. 1997) (“the fact that ACT ‘was in between communications counsel’ at the time the petition was due [does] not absolve one of responsibility for complying with the statutory filing deadline.”).

²⁹ *See* 47 U.S.C. § 402(b).

³⁰ 2010 Order on Reconsideration, 25 FCC Rcd at 513 ¶ 6 & n.22.

³¹ We note that Havens never indicated, in response to the proposed sanction, that he would voluntarily cease filing reconsideration petitions with respect to the Applications.

complaint.”), nor does the current sanction preclude Havens from petitioning the Commission with respect to other matters unrelated to the Applications. In these circumstances, there is no basis to conclude that our limited sanction impinges the First Amendment.

14. *Appropriateness of Sanction.* Havens argues that the facts of these proceedings do not warrant the sanction proposed in the *Third Order on Reconsideration*. He contends that his filings are not a basis for a sanction because they presented *bona fide* arguments.³² He also contends that the number of filings he made in this proceeding is not sufficient to justify the imposition of a “pre-filing injunction.”³³ We generally reject Havens’ arguments and conclude that a sanction is appropriate. We conclude, however, that we should modify our proposed sanction to reflect more precisely the nature of Havens’ particular transgression in this case.

15. In the *Third Order on Reconsideration*, we concluded that Havens’ pleadings filed after the 2008 *MO&O* are “frivolous” because “they are ‘based on arguments that have been specifically rejected by the Commission’ or otherwise provide ‘no plausible basis for relief.’”³⁴ We noted that Havens’ asserted reason for his lateness—a technical problem that delayed the transmission of his filing to his counsel—does not present the type of circumstances that can excuse his failure to meet the statutory 30-day time limit for filing reconsideration petitions. Since then, Havens has filed three additional petitions for reconsideration, one after the 2008 *MO&O*, the second after the 2010 *Order on Reconsideration* (which had informed Havens that the Commission would issue no further orders on this matter and future pleadings filed by Havens would be summarily dismissed), and the last in response to the Bureau’s 2010 *Summary Dismissal Order*. In none of these filings did Havens present any reason for questioning our conclusion in the 2008 *MO&O* that his alleged technical difficulties in submitting his petition for reconsideration failed to provide a proper basis to excuse his failure to meet the statutory filing deadline. As we explained in the *Third Order on Reconsideration*, although Havens sought to justify these reconsideration petitions on the basis of alleged new facts, his filings “contained no *relevant* facts on the question whether his untimely 2005 petition for reconsideration was properly dismissed on procedural grounds.”³⁵

16. In his response, Havens reiterates his longstanding arguments that the Applications should be processed in light of the staff’s alleged misapplication of section 80.475(a).³⁶ He again fails, however, to demonstrate the relevance of these claims to the question of the timeliness of his 2005 reconsideration petition. Havens confirms that “the untimeliness (by one day) of [the late-filed reconsideration petition] was due to a technical problem beyond Havens’ control that delayed the electronic transmission of the Petition to his legal counsel,”³⁷ and the multiple Commission and staff orders in this proceeding have made clear that such technical difficulties do not excuse his failure to meet the statutory filing deadline. Havens’ repeated inability to present a non-frivolous basis for reconsidering

³² Havens Response at 11-18.

³³ Havens Response at 9-11.

³⁴ 26 FCC Rcd at 10892 ¶ 11 (quoting 1996 *Public Notice*, 11 FCC Rcd at 3030).

³⁵ 26 FCC Rcd at 10891 ¶ 9. The Commission quite reasonably found all three of Havens’ petitions for reconsideration filed after the 2008 *MO&O* to be frivolous. The last two – filed after the Commission stated it would issue no further orders and directed the staff to summarily dismiss any future pleading filed by Havens – are especially egregious examples of frivolous and repetitive pleadings that warrant sanction.

³⁶ Havens Response at 11-13.

³⁷ *Id.* at 14.

that conclusion confirms our determination in the *Third Order on Reconsideration* that Havens' repeated filings after the 2008 MO&O are frivolous.³⁸

17. Havens also contends that the sanction of a "pre-filing injunction" is inappropriate because the number of frivolous filings at issue here is below the level of frivolous filings at which various courts have imposed judicial pre-filing injunctions.³⁹ We conclude that the cases Havens relies upon do not support his contention that a sanction is unwarranted here. In several of those cases, unlike here, the court declined to impose a sanction because it concluded that the filings at issue were not frivolous.⁴⁰ Moreover, judicial pre-filing injunctions imposed against frivolous filers are typically far broader in scope, sometimes precluding the sanctioned party from making *any* filing in *any* federal court without the court's prior permission.⁴¹ By contrast, we narrowly tailored our proposed sanction so that it applies only to further filings Havens seeks to make "with respect to the above-captioned applications."⁴² In that regard, we gave Havens clear notice in 2010 that "[w]e plan to give no further consideration to this matter,"⁴³ and yet since that time Havens has filed additional reconsideration petitions in connection with the Applications. We see no reason why the Commission should be required to entertain even more reconsideration petitions by Havens before we can take action to bring finality to this long-running proceeding.

18. Although we thus conclude that Havens should be required to obtain approval prior to making any additional filings with respect to the Applications, we modify our proposal in one respect to reflect the narrow scope of our sanction. As originally formulated, our sanction would have required Havens to state in his request for approval that: "Pursuant to previous findings by the FCC that Warren C. Havens has abused Commission processes, and requiring Havens to request permission of the Wireless Telecommunications Bureau to file further documents, Havens submits this request."⁴⁴ We believe that the wording of this proposed statement can be more carefully tailored. For example, the proposed statement does not explicitly indicate that the sanction applies only to filings relating to the Applications, and not to filings in other Commission proceedings. For these reasons, we modify the wording to require Havens, in any request for approval to make additional filings in these proceedings, to state as follows:

³⁸ Havens' contention that repeated filings were necessary "because the Commission repeatedly declined to properly address [his] arguments on the merits" is baseless. See Havens Response at 16. The Commission addressed "the only relevant legal issue, which is whether Havens' petition for reconsideration was properly dismissed in 2005 as untimely filed." *Third Order on Reconsideration*, 26 FCC Rcd at 10892 ¶ 11. Likewise, Havens' contention that sections 1.106(b)(2), (c), and (p)(8) of our rules are relevant here is misplaced. See Havens Response at 16-17. Those rules in combination address the circumstances under which the staff may dismiss a petition for reconsideration; they do not excuse the failure to satisfy the statutory deadline for filing a petition for reconsideration.

³⁹ Havens Response at 9-11.

⁴⁰ See *In re Powell*, 851 F.2d 427, 431-433 (D.C. Cir. 1988) (concluding that none of the filings at issue were frivolous); *Speleos v. McCarthy*, 201 B.R. 325 (D.D.C. 1996) ("The bankruptcy court's finding that 'Speleos has a history of filing frivolous lawsuits,' however, is not supported in the record."); *Hobley v. KFC U.S. Properties, Inc.*, 2006 U.S. Dist. LEXIS 6246, at *22 (D.D.C. Jan. 31, 2006) ("Although . . . Hobley's complaints clearly lack merit, the Court cannot conclude that they rise to the level of frivolousness warranting injunctive relief.").

⁴¹ See, e.g., *Urban v. United Nations*, 768 F.2d 1497, 1500 (D.C. Cir. 1985) (enjoining Urban from "filing any civil action in this or any other federal court of the United States without first obtaining leave of that court"); *Green*, 669 F.2d at 787 (affirming injunction barring petitioner from "fil[ing] any civil action without leave of court."); see also *In re Martin-Trigona*, 592 F. Supp. 1566, 1568 (D. Conn. 1984) (issuing injunction requiring prior approval for filings in federal courts, agencies, and other fora).

⁴² *Third Order on Reconsideration*, 26 FCC Rcd at 10892 ¶ 13.

⁴³ 2010 *Order on Reconsideration*, 25 FCC Rcd at 513 n.22.

⁴⁴ *Third Order on Reconsideration*, 26 FCC Rcd at 10892 ¶ 13.

"Pursuant to Commission Memorandum Opinion and Order FCC 12-26 issued on March 12, 2012, requiring Havens to request permission of the Wireless Telecommunications Bureau to file further documents relating to or in connection with Application File Nos. File Nos. 852997-853009 and 853010-853014, Havens submits this request."

19. In light of the frivolous filings Havens has made with respect to the Applications, as well as the analysis set forth above, we hereby require that any future motion, pleading, or other document submitted by Havens⁴⁵ to the Commission or to any member of the staff with respect to the above-captioned applications shall include a cover page, which shall clearly be labeled "Request for Permission to File." The request shall include the following statement: "Pursuant to Commission Memorandum Opinion and Order FCC 12-26 issued on March 12, 2012, requiring Havens to request permission of the Wireless Telecommunications Bureau to file further documents relating to or in connection with Application File Nos. File Nos. 852997-853009 and 853010-853014, Havens submits this request."

20. In seeking leave to file, Havens must certify that the claim or claims he wishes to present are not frivolous or made in bad faith. The Wireless Telecommunications Bureau will deny permission to file abusive documents such as those that are frivolous, repetitive, irrelevant, obstructive, or that appear designed to cause harm in furtherance of a private interest. Failure to request permission to file as directed by the Commission will be deemed good and sufficient grounds for the Bureau to deny leave to file and to decline to consider the attached filing.

21. Finally, we advise Havens that, if he fails to request permission to file as directed by this order, or otherwise abuses the request-to-file process the Wireless Telecommunications Bureau will refer the matter to the Enforcement Bureau for possible sanctions, including monetary sanctions, for violation of this order.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), that this Memorandum Opinion and Order is hereby ADOPTED.

23. IT IS FURTHER ORDERED that a copy of this order shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Warren C. Havens at the address indicated in his pleadings to the Commission. A copy shall also be sent by Certified Mail Return Receipt Requested and First Class Mail to Havens' counsel who prepared his August 29, 2011 Response, Tamir Damari, Nossaman, LLP, 1666 K Street, NW, Suite 500, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁵ This sanction applies to filings submitted by and on behalf of Havens. We clarify that such filings include filings made by entities in which Havens has a controlling interest. See *2010 Order on Reconsideration*, 25 FCC Rcd at 511 ¶ 1 & n.2 (noting that Havens has filed pleadings in this proceeding under this own name and the name of related entities).