

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

In re )

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

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

Participant in Auction No. 61 and Licensee of )  
Various Authorizations in the Wireless Radio )  
Services )

Applicant for Modification of Various )  
Authorizations in the Wireless Radio Services )

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

Applicant with **ENCANA OIL AND GAS (USA), )  
INC.; DUQUESNE LIGHT COMPANY; DCP )  
MIDSTREAM, LP; JACKSON COUNTY )  
RURAL MEMBERSHIP ELECTRIC )  
COOPERATIVE; PUGET SOUND ENERGY, )  
INC.; ENBRIDGE ENERGY COMPANY, )  
INC.; INTERSTATE POWER AND LIGHT )  
COMPANY; WISCONSIN POWER AND )  
LIGHT COMPANY; DIXIE ELECTRIC )  
MEMBERSHIP CORPORATION, INC.; )  
ATLAS PIPELINE – MID CONTINENT, LLC; )  
DENTON COUNTY ELECTRIC )  
COOPERATIVE, INC., DBA COSERV )  
ELECTRIC; AND SOUTHERN CALIFORNIA )  
REGIONAL RAIL AUTHORITY )**

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

**ENFORCEMENT BUREAU’S OPPOSITION  
TO WARREN HAVENS’ REQUEST UNDER SECTION 1.301(b)**

1. On December 2, 2013, the Enforcement Bureau (Bureau) and Maritime Communications/Land Mobile, LLC (Maritime) jointly filed a motion for summary decision related to Issue (g) of the HDO (Joint Motion).<sup>1</sup> On June 17, 2014, the Presiding Judge granted

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<sup>1</sup> See Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G, filed on Dec. 2, 2013.

summary decision on the timely construction of sixteen facilities licensed to Maritime.<sup>2</sup> In addition, the Presiding Judge rejected the Bureau and Maritime's December 2, 2013 joint stipulation in which Maritime had agreed to modify its authorizations to delete 73 licensed facilities and rescinded an earlier *Order* deeming Issue (g) moot for 80 other facilities that had been identified in an earlier joint stipulation.<sup>3</sup> The recent *Order* thereby puts at issue for trial the timely construction and operational status of licensed facilities that the Wireless Bureau has already cancelled or for which Maritime has already sought cancellation. On June 24, 2014, Mr. Havens filed a request under Section 1.301(b) of the Commission's rules, seeking an interlocutory appeal of the Presiding Judge's June 17 *Order*.<sup>4</sup> The Acting Chief, Enforcement Bureau (Bureau), by his attorneys, herein opposes Mr. Havens' request for an appeal.

2. Mr. Havens' Section 1.301(b) Request appears to challenge the Presiding Judge's conclusion that the 16 site-based facilities addressed in the Joint Motion were timely constructed.<sup>5</sup> In their Joint Motion, the Bureau and Maritime relied on the Commission's findings in *Waterway Communications System, Inc.* (Watercom Order),<sup>6</sup> *Mobex Network Services (Mobex I)*,<sup>7</sup> and *Mobex Network Services (Mobex II)*,<sup>8</sup> to demonstrate that the 16 remaining site-based authorizations were timely constructed.<sup>9</sup> In his opposition to the Joint Motion, Mr. Havens suggested that the Presiding Judge should disregard these orders, *inter alia*,

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<sup>2</sup> See *Order*, FCC 14M-18 (ALJ, rel. Jun. 17, 2014) at 18, ¶ 50.

<sup>3</sup> See, e.g., *id.* at 25, ¶ 71. The Presiding Judge also denied summary decision on the question of permanent discontinuance because "[s]ignificant factual questions still need to be resolved as to whether service will resume at the licensed facilities." *Id.* at 22, ¶ 61.

<sup>4</sup> See Havens' Request Under §1.301(b) Regarding and Comments on FCC 14M-18, errata copy, filed on June 24, 2014 (Havens' Section 1.301(b) Request).

<sup>5</sup> See *id.* at 2-3.

<sup>6</sup> See *Waterway Communications System, Inc., Memorandum Opinion and Order* (FCC 87-373), 2 FCC Rcd 7317 (1987) (Watercom Order).

<sup>7</sup> *In the Matter of Applications of Mobex Network Services, LLC*, 19 FCC Rcd 24939 (WTB 2004).

<sup>8</sup> *In the Matter of Applications of Mobex Network Services, LLC*, 25 FCC Rcd 3390 (2010).

<sup>9</sup> See Joint Motion at 7-10. Specifically, the Joint Motion relied on the Watercom Order for the timely construction of authorization WHG750 and on the *Mobex* decisions for the timely construction of the remaining 15 (non-Watercom) site-based authorizations.

because they did not result from a fact-finding proceeding, did not review evidence from Maritime, and did not specify what was required for lawful construction.<sup>10</sup> In *Order*, FCC 14M-18, the Presiding Judge recognized that Mr. Havens had failed not only to appreciate that “not every factual dispute warrants resolution in a hearing,”<sup>11</sup> but also “to present any new, relevant facts that negate[d] the Commission’s determinations.”<sup>12</sup> As a result, the Presiding Judge saw no basis to disregard the Commission’s prior determinations on call signs WHG750, KAE889, WRV374, and WHG693, and concluded that these facilities had been timely constructed.<sup>13</sup>

3. In his Section 1.301(b) Request, Mr. Havens still has not identified any facts that negate the Commission’s findings in the Watercom Order or the *Mobex* decisions. In fact, he has done nothing more than reiterate the exact same arguments the Presiding Judge has already rejected.<sup>14</sup> As such, he offers no basis to appeal the Presiding Judge’s recent *Order* on the question of timely construction, and Mr. Havens’ request should be denied.

4. Mr. Havens’ Section 1.301(b) Request also appears to challenge the Presiding Judge’s authority to reject the Bureau and Maritime’s May 31, 2012 and December 2, 2013 joint stipulations in which Maritime had agreed to voluntarily cancel its authorizations for, or modify its authorizations to delete, 153 facilities.<sup>15</sup> While the Bureau takes no position on whether Maritime was authorized to enter into such stipulations in light of the pending bankruptcy proceeding, the Bureau recognizes that the Presiding Judge plainly has the authority, pursuant to the Commission’s rules, to act upon the parties’ joint stipulations.<sup>16</sup> Mr. Havens’ Section 1.30(b)

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<sup>10</sup> See, e.g., Havens Opposition to Joint Motion of Enforcement Bureau & Maritime for Summary Decision on Issue G, filed Dec. 16, 2013 (Havens Opposition) at 61-63.

<sup>11</sup> *Order*, FCC 14M-18, at 16, ¶ 45.

<sup>12</sup> *Id.*; see also *id.* at 16-17, ¶ 46.

<sup>13</sup> See, e.g., *id.* at 18, ¶ 50.

<sup>14</sup> See Havens’ Section 1.301(b) Request at 2-3.

<sup>15</sup> See *id.* at 3.

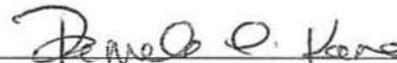
<sup>16</sup> See, e.g., 47 C.F.R. §§ 0.341 and 1.243(i).

Request has offered no basis to challenge this authority. Accordingly, he has offered no basis on which to appeal the Presiding Judge's ruling on the Bureau and Maritime's joint stipulations.

5. Based on the foregoing, the Bureau hereby respectfully requests that the Presiding Judge deny Mr. Havens' Section 1.30(b) Request.

Respectfully submitted,

Travis LeBlanc  
Acting Chief, Enforcement Bureau



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July 1, 2014

**CERTIFICATE OF SERVICE**

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau’s Investigations and Hearings Division, certifies that she has on this 1st day of July, 2014, sent by first class United States mail copies of the foregoing “ENFORCEMENT BUREAU’S OPPOSITION TO WARREN HAVENS’ REQUEST UNDER SECTION 1.301(b)” to:

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