

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

In the Matter of )  
 )  
Warren Havens ) FOIA Control No. 2014-664  
 )  
On Request for Inspection of Records )

ORDER

Adopted: March 27, 2019

Released: March 27, 2019

By the General Counsel:

I. INTRODUCTION

1. By this Order, we dismiss as unauthorized the Protective Petition for Reconsideration of MO&O, 18-154, Regarding FOIA Control No. 2014-664 (Petition), filed November 30, 2018, by Warren Havens (Havens). Havens seeks reconsideration of a Memorandum Opinion and Order granting in part and denying in part his Application for Review of an Enforcement Bureau decision ruling on the above-captioned Freedom of Information Act (FOIA) request.<sup>1</sup> We find that Havens’s Petition fails to meet the prerequisites for seeking reconsideration of an order denying an application for review.

II. BACKGROUND AND DISCUSSION

2. Havens’s FOIA request seeks documents submitted in connection with the Enforcement Bureau’s direct case in EB Docket No. 11-71, an enforcement proceeding involving Maritime Communications/Land Mobile, LLC (Maritime). After review proceedings described in detail in the Commission Order, the Commission determined that the dispositive issue is whether the documents responsive to Havens’s FOIA request are confidential for purposes of FOIA Exemption 4.<sup>2</sup> The Commission Order upheld, with a few exceptions, the Enforcement Bureau’s Decision finding that the documents are confidential and therefore exempt from disclosure. The Commission directed the Enforcement Bureau to release the few documents found not to be confidential because they had been made public in court litigation.

3. Havens’s Petition disputes three findings made in the Commission Order. These findings are that (1) Havens provided no evidence that other documents had lost their confidential status by being publicly disclosed in court litigation;<sup>3</sup> (2) the subject documents contain competitively sensitive (*i.e.*, confidential) business and financial information;<sup>4</sup> (3) Havens’s former status as a party to the Maritime proceeding did not give him any right to grant of his FOIA request.<sup>5</sup>

4. The Commission’s rules provide that a petition for reconsideration of an order denying an

<sup>1</sup> *Warren Havens*, Memorandum Opinion and Order, FCC 18-154 (Oct. 31, 2018) (Commission Order).

<sup>2</sup> 5 U.S.C. § 552(b)(4). The exemption covers “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

<sup>3</sup> Petition at 4, para. 2

<sup>4</sup> *Id.* 4, para. 3.

<sup>5</sup> *Id.* at 5, para. 4.

application for review will be entertained only under limited circumstances.<sup>6</sup> The rule provides that the petition must rely either on facts or arguments that relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission, or on facts or arguments that were unknown to petitioner until after the last opportunity to present them to the Commission, and which could not through the exercise of ordinary diligence have been learned prior to such opportunity.

5. Havens's Petition does not rely on new or newly discovered facts or circumstances. It is therefore subject to dismissal by the staff as repetitious.<sup>7</sup>

### III. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED, pursuant to the authority delegated by 47 CFR § 0.251(b)(4), that the Protective Petition for Reconsideration of MO&O, 18-154, Regarding FOIA Control No. 2014-664, filed November 30, 2018, by Warren Havens, IS DISMISSED as unauthorized.

FEDERAL COMMUNICATIONS COMMISSION

Thomas M. Johnson, Jr.  
General Counsel

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<sup>6</sup> 47 CFR § 1.106(b)(2).

<sup>7</sup> 47 CFR § 1.106(b)(3). Havens states that his Petition was filed on a "protective" basis. Petition at 1-3. By this, he means that he is filing to preserve his right to file a further petition for reconsideration upon the completion of further proceedings involving his FOIA request. However, the Commission's Order does not provide for any further proceedings. It merely directs the Enforcement Bureau to disclose non-exempt documents.