

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

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

**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*.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> *Warren C. Havens*, Third Order on Reconsideration, 26 FCC Rcd 10888 (2011) (“*Third Order on Reconsideration*”).

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

<sup>3</sup> *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),<sup>4</sup> 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*.<sup>5</sup>

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.<sup>6</sup> 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*.<sup>7</sup>

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.<sup>8</sup> 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,<sup>9</sup> 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*.<sup>10</sup> 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

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<sup>4</sup> 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).

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

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

<sup>7</sup> *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*”).

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

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

<sup>10</sup> *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).<sup>11</sup>

### 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.”<sup>12</sup> 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.”<sup>13</sup>

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.’”<sup>14</sup> 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.”<sup>15</sup> 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.”<sup>16</sup> 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.”<sup>17</sup> Section 558(b) does not apply to such

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<sup>11</sup> 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.

<sup>12</sup> Havens Response at 5-6.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *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)).

<sup>15</sup> 47 U.S.C. §§ 154(i), (j).

<sup>16</sup> 47 U.S.C. § 303(r).

<sup>17</sup> *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."<sup>18</sup>

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.<sup>19</sup> 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*,<sup>20</sup> 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."<sup>21</sup> We subsequently applied that principle to confirm the staff's authority to sanction an abusive *pro se* filer, without referring to section 1.52.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup> The rule does not address, much less limit, the Commission's authority to sanction parties who submit frivolous filings.

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<sup>18</sup> 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).

<sup>19</sup> Havens Response at 6-7.

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

<sup>21</sup> *Id.* at 3030.

<sup>22</sup> 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.

<sup>23</sup> 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.").

<sup>24</sup> Havens Response at 6.

<sup>25</sup> *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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.”<sup>30</sup> 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.<sup>31</sup>

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

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<sup>26</sup> Havens Response at 4-5.

<sup>27</sup> *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).

<sup>28</sup> 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.”).

<sup>29</sup> *See* 47 U.S.C. § 402(b).

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

<sup>31</sup> 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.<sup>32</sup> 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.”<sup>33</sup> 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.’”<sup>34</sup> 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.”<sup>35</sup>

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).<sup>36</sup> 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,”<sup>37</sup> 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

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<sup>32</sup> Havens Response at 11-18.

<sup>33</sup> Havens Response at 9-11.

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

<sup>35</sup> 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.

<sup>36</sup> Havens Response at 11-13.

<sup>37</sup> *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.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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."<sup>42</sup> In that regard, we gave Havens clear notice in 2010 that "[w]e plan to give no further consideration to this matter,"<sup>43</sup> 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."<sup>44</sup> 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:

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<sup>38</sup> 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.

<sup>39</sup> Havens Response at 9-11.

<sup>40</sup> 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.").

<sup>41</sup> 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).

<sup>42</sup> *Third Order on Reconsideration*, 26 FCC Rcd at 10892 ¶ 13.

<sup>43</sup> *2010 Order on Reconsideration*, 25 FCC Rcd at 513 n.22

<sup>44</sup> *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 Havens<sup>45</sup> 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

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<sup>45</sup> 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).