

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

In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	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)	

MEMORANDUM OPINION AND ORDER

Adopted: August 2, 2013

Released: August 5, 2013

By the Commission:

I. INTRODUCTION

1. By this memorandum opinion and order, we deny the “Appeal under Rule § 1.301(a) And Request to Submit Supplemented Oversized Appeal Pleading,” filed May 21, 2013 (as corrected May 22, 2013), by Warren Havens (Havens), on behalf of himself and six affiliated companies¹ (Appeal/Request).

¹ These companies are: Skybridge Spectrum Foundation, Environmental LLC, Intelligent Transportation and Monitoring Wireless LLC, Verde Systems, LLC, Telesaurus Holdings GB, LLC, and V2G LLC. (collectively the SkyTel companies). See HDO, *infra* note 3, 26 FCC Rcd at 6548 ¶ 71. Havens is the president of each of the SkyTel companies. See Appeal/Request at 3.

Havens seeks interlocutory review of a procedural ruling (the Ruling) by Chief Administrative Law Judge Richard L. Sippel (ALJ) refusing to allow Havens to represent the SkyTel companies in this hearing proceeding.² We find that Havens has shown no error in the ALJ's Ruling. We further find that Havens has not shown good cause to file a supplement to his appeal that would exceed the page limit for interlocutory appeals specified in the Commission's rules.

II. BACKGROUND

2. Proceedings below. In this hearing proceeding (EB Docket No. 11-71), the Commission designated issues against a company called Maritime Communications/Land Mobile, LLC (MCLM), to determine whether its wireless radio licenses should be revoked and its related wireless radio applications should be denied.³ The designated issues include whether MCLM failed to disclose its real-parties-in-interest, whether MCLM made misrepresentations or lacked candor, whether MCLM committed rules violations, and whether certain of MCLM's license cancelled for failure to construct or operate.⁴ Havens and the SkyTel companies are each parties to the MCLM Proceeding.⁵

3. The ALJ subsequently stayed the MCLM proceeding, with the exception of one issue, so that the Commission could consider whether MCLM should be permitted to transfer its authorizations pursuant to the Commission's *Second Thursday* doctrine.⁶ Litigation of the remaining issue, "Issue (g)," has proceeded through the discovery phase, and MCLM's Motion for Summary Decision on that issue is currently pending.⁷ Issue (g) concerns the question of whether some of MCLM's licenses have cancelled.

4. In his Ruling, the ALJ found that, during the course of the proceeding, changes and bifurcations in the representation of Havens and the SkyTel companies had caused difficulties. The original notice of appearance filed in the MCLM Proceeding indicated that Havens and the SkyTel companies were all represented by the same attorney.⁸ The ALJ found, however, that, at various times thereafter, Havens had attempted to: (1) represent himself, (2) speak for some of the SkyTel companies (with an attorney speaking for the others), and (3) speak for all of the SkyTel companies. In addition, the ALJ found that counsel for the SkyTel companies had on occasion attempted to speak for Havens.⁹ According to the ALJ, this

² See *Order*, FCC 13M-11 (May 14, 2013) (Ruling). Havens also refers to two earlier rulings: *Order*, FCC 13M-9 (May 1, 2013) and *Order*, FCC 13M-8 (May 1, 2013), but his appeal is untimely as to these orders, the content of which is, in any event, reflected in the Ruling.

³ See *Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520 (2011) (HDO). We will refer to EB Docket No. 11-71 as the "MCLM Proceeding."

⁴ See HDO, 26 FCC Rcd at 6547 ¶ 62.

⁵ See *supra* note 1.

⁶ See *Order*, FCC 13M-6 (Mar. 31, 2013). See also *Public Notice*, DA 13-569 (Mar. 28, 2013). Under the *Second Thursday* Doctrine, a bankrupt licensee in hearing may sell its stations where alleged wrongdoers would not benefit from the sale and the proceeds would be used to reimburse innocent creditors. See *Second Thursday Corp.*, 22 FCC 2d 515, *recon. granted*, 25 FCC 2d 112 (1970).

⁷ See *Maritime Communications/Land Mobile, LLC's Motion for Summary Decision on "Issue G,"* filed May 8, 2013.

⁸ See Notice of Appearance, filed May 6, 2011.

⁹ See Ruling at 5.

situation has resulted in confusion and delay of the proceeding. In an earlier order, the ALJ found that the situation was aggravated by Havens' questionable insistence that he and the SkyTel companies, which he manages and controls, have distinct interests.¹⁰

5. In response to these concerns, the ALJ placed conditions on the representation of Havens and the SkyTel companies. The ALJ held that Havens could participate *pro se* provided that he filed a notice of appearance so that the record reflects with absolute clarity Havens' intent to participate *pro se*.¹¹ The ALJ required the SkyTel companies to obtain legal representation, and barred Havens from representing them.¹²

6. Appeal. Havens seeks to appeal the ALJ's Ruling under 47 C.F.R. § 1.301(a). Havens relies on two provisions of that section permitting an immediate appeal as of right of an ALJ's interlocutory ruling:

If the presiding officer's ruling denies or terminates the right of any person to participate as a party to a hearing proceeding, such person, as a matter of right may file an appeal of that ruling.¹³

A ruling removing counsel from the hearing is appealable as a matter of right, by counsel on his own behalf or by his client. . . .¹⁴

7. In his Appeal/Request, Havens contends that the Ruling effectively terminates his right and that of the SkyTel companies to participate as a party in the MCLM Proceeding. He further contends that the Ruling effectively removes counsel for the SkyTel companies, inasmuch as the Ruling prohibits Havens from representing the SkyTel companies and interferes with the companies' ability to obtain alternate counsel by speculating without foundation that Havens was responsible for the loss of previous outside counsel.¹⁵ In Havens' view, there is no reason why he cannot represent the SkyTel companies, despite the fact that he is not an attorney. According to Havens, the Commission treated him like an attorney in an earlier proceeding in which he was found to have filed frivolous pleadings in violation of 47 C.F.R. § 1.52, which on its face applies to attorneys.¹⁶ Havens also asserts that he complied with 47 C.F.R. § 1.22, which

¹⁰ See *Order*, FCC 12M-52 (Nov. 15, 2012) at 3.

¹¹ See Ruling at 3. Havens filed the notice of appearance required by the Ruling. See *Further Notice of Appearance with Reasons*, filed May 23, 2013, by Havens. The ALJ previously directed Havens to explain why he chooses to represent himself. See FCCM-8 at 2. In his Ruling, the ALJ clarified that providing an explanation was optional and not a condition to Havens' ability to represent himself. See Ruling at 3 n.9.

¹² See Ruling at 3-4, *clarifying* FCC 13M-8 at 2. In an earlier order, the ALJ had directed Havens and counsel for the SkyTel companies to coordinate their participation. To the extent Havens and the SkyTel companies took identical positions, they were required to file joint pleadings. To the extent they differed, they were permitted to file separate pleadings covering the issues on which they disagreed and giving reasons why they could not agree. See FCC 12M-52 at 4.

¹³ See 47 C.F.R. § 1.301(a)(1).

¹⁴ See 47 C.F.R. § 1.301(a)(5).

¹⁵ See Appeal/Request at 2.

¹⁶ See Appeal/Request at 3; *Warren Havens*, 26 FCC Rcd 10888, 10892-93 ¶¶ 11-14 (2011), *modified*, 27 FCC Rcd 2756, 2759 ¶ 10 (2012).

requires persons acting in a representative capacity to show their authorization, by demonstrating that he, as their president, is authorized to represent the SkyTel companies.¹⁷ Havens characterizes the Ruling as imposing unlawful sanctions.¹⁸

8. Request to supplement. Section 1.301(c)(5) limits interlocutory appeals to five double-spaced pages.¹⁹ Although Havens asserts that the Commission should grant his appeal based on his existing filing,²⁰ he requests permission to file a supplement consisting of 20 pages of text plus appended material.²¹ According to Havens, the additional material is necessary because the ALJ's decisions are long and complex and not fully summarized in the Ruling, and Havens cannot present his case in sufficient detail without submitting additional material. Havens stresses the important role he has played in prosecuting allegations against MCLM.

III. DISCUSSION

9. Appeal. We deny Havens' Appeal/Request. We find that the Ruling is appealable as a matter of right pursuant to Section 1.301(a)(5), to the extent it prohibits Havens from representing the SkyTel companies.²² We find, however, that Havens has shown no reason to disturb the ALJ's Ruling on this issue. Because the scope of Section 1.301(a)(5) is limited to specific identified issues -- i.e., issues regarding the removal of Havens as counsel -- we decline to address in an interlocutory appeal Havens' suggestion that various rulings by the ALJ might be erroneous in other respects, as indicated by his "attachment 2."²³

10. Pursuant to 47 C.F.R. § 1.21(d), "a duly authorized corporate officer or employee . . . *in the discretion of the presiding officer*, may appear and be heard on behalf of the corporation in an evidentiary hearing proceeding." (emphasis added). In adopting this provision, the Commission concluded that the presiding officer was in the best position to weigh the factors pertinent to whether a non-attorney should be permitted to represent a corporation, including the qualifications of the corporate officer, the financial resources of the corporation, and the likelihood of delay and burden on the other parties.²⁴ Further, in giving the ALJ discretion to permit a corporate officer to represent the corporation, we are mindful that Section 1.21(d) represents an exception to the judicially recognized principle that corporations generally

¹⁷ See Appeal/Request at 3.

¹⁸ See *id.* at 3-4.

¹⁹ See 47 C.F.R. § 1.301(c)(5).

²⁰ See Appeal/Request at 4.

²¹ See *id.* at 4.

²² The Ruling does not deny or terminate the right of any person to participate as a party in the hearing within the scope of Section 1.301(a)(1). It merely places conditions on the parties' participation.

²³ See *infra* paragraph 15.

²⁴ See *Amendment of § 1.21 Participation By Corporate Officers And Employees On Behalf Of The Corporation*, 34 FCC 2d 602 ¶ 3 (1972). Additionally, the Commission rules give ALJs the broad authority to "[r]egulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings." See 47 C.F.R. § 1.243(f). See also 5 U.S.C. § 556(c) (powers of administrative law judges).

must be represented in litigation by an attorney.²⁵ Accordingly, we would overturn the ALJ's Ruling only if we concluded that it reflected an abuse of discretion.²⁶

11. Here, we find that the record amply supports the ALJ's Ruling that Havens should not be permitted to represent the SkyTel companies. The ALJ found that Havens' on-and-off attempts to represent the SkyTel companies have caused confusion and delay on questions having nothing to do with the merits of this complex litigation.²⁷ We find that the ALJ acted reasonably in concluding that he and the parties should not have to spend time and effort puzzling over who did or should represent the SkyTel companies and that action was necessary to resolve the situation. In particular, the ALJ's Ruling reasonably serves to alleviate the confusion caused by Havens' representation that the SkyTel companies act independently of him by clarifying when and if the SkyTel companies have interests different from Havens.²⁸ We therefore find no abuse of discretion.

12. Havens' further arguments on the issues before us are also without merit. Havens' argument based on Section 1.52 is misplaced. According to Havens, the Commission treated him like an attorney in an earlier proceeding in which he was found to have filed frivolous pleadings in violation of 47 C.F.R. § 1.52, which on its face applies to attorneys. Havens ignores the Commission's clarification subsequent to the imposition of sanctions on him that the Commission's inherent authority to regulate its processes permitted the Commission to impose sanctions on non-attorneys as well as attorneys for filing frivolous pleadings. Thus, as clarified by the Commission, the sanctions against Havens were not premised on his being the equivalent of an attorney.²⁹ Moreover, the sanctions were not imposed in this hearing matter, and, as noted, the ALJ's decision here was based on the facts and history of this case.

13. Havens also argues that Section 1.22³⁰ allows him to represent the SkyTel companies. But, by its clear text, Section 1.22 does not address whether a non-attorney, even with authorization, may properly represent a corporation in a hearing matter. It is thus irrelevant here.

14. Finally, Havens cites *U.S. v. Nu Look Cleaners of Pembroke Pines, Inc.*, 1 OCAHO 274 (Dec. 5, 1990) for the proposition that ALJs do not have inherent contempt powers or the authority to enforce

²⁵ See, e.g., *Talasila, Inc. v. U.S.*, 240 F.3d 1064, 1066-67 (Fed. Cir. 2001) (a corporation may only be represented by an attorney); *Powerserve Int'l, Inc. v. Lavi*, 239 F.3d 508, 514 (2d Cir. 2001) (a corporation may not be represented by a person who is not an attorney).

²⁶ The abuse of discretion standard takes into account that administrative law judges must be given broad discretion to regulate the course of a proceeding to achieve the effective and expeditious dispatch of Commission business. See *Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419 ¶ 3 (1986).

²⁷ See Ruling at 5.

²⁸ Havens characterizes as "obvious" that "Havens and each SkyTel legal entity are different, and need not act together at all times in this Hearing or otherwise." See Appeal/Request at 3 n.2. Havens previously stated: "[t]he Judge has no authority, nor does the Commission to disrespect corporate existence and distinctions [by requiring Havens and the SkyTel companies to hire the same attorney]. . . . They choose their own legal counsel as they see fit." See Warren Havens Comments on FCC 12M-44, filed October 2, 2012 at 5.

²⁹ See *Warren C. Havens*, 27 FCC Rcd at 2759 ¶ 10.

³⁰ Section 1.22 states: "Any person, in a representative capacity, transacting business with the Commission, may be required to show his authority to act in such capacity."

Rules 11 and 37 of the Federal Rules of Civil Procedure. This decision of the U.S. Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer, has no precedential significance in our proceedings and does not appear relevant to the questions before us, since the Ruling disallowing Havens from representing the SkyTel companies did not exercise contempt powers or impose sanctions.

15. Request to supplement. We also deny Havens' request to supplement his appeal. The only issue within the scope of a permissible interlocutory appeal is the ALJ's decision to prohibit Havens from representing the SkyTel companies. Five pages suffice for this purpose. Havens' desire to engage in a broad discussion of the ALJ's other rulings and dicta is inconsistent with the narrow scope of interlocutory review authorized by Section 1.301. Section 1.301 establishes a narrow exception to the general principle that the review of an ALJ's procedural rulings should be deferred until review of the disposition of the case on the merits. This general approach serves to prevent disruption of the hearing, strengthen the ALJ's authority, and conserve Commission resources.³¹ The narrow grounds for interlocutory review specified by Section 1.301(a) and the five-page limit serve these ends by sharply focusing appeals as of right on matters warranting interlocutory review. We therefore deny Havens' request to file a supplemental appeal.

IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED, That the "Appeal under Rule § 1.301(a) And Request to Submit Supplemented Oversized Appeal Pleading," filed May 21, 2013, by Warren Havens, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Secretary

³¹ See *Amendment of Parts 0 and 1 of the Commission's Rules and Regulations*, 26 FCC 2d 331, 332-33 ¶ 6 (1970) (explaining rule amendments regarding interlocutory review).