

Before the
Federal Communications Commission
Washington, DC 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: November 25, 2013

Released: November 26, 2013

By the Commission:

I. INTRODUCTION

1. In 2012, the Commission sanctioned Warren C. Havens for having abused the Commission’s processes by filing frivolous and repetitive pleadings involving certain license applications for Automated Maritime Telecommunications System (AMTS) stations.1 Specifically, the Commission’s March 2012 order (Sanctions Order) directed Havens to seek and obtain prior approval from the Wireless Telecommunications Bureau (Bureau) before filing any further pleadings in connection with the specified AMTS license applications.2

2. Havens sought reconsideration of the Sanctions Order. Acting under delegated authority, the Bureau dismissed his petition for reconsideration for procedural defects under Section 1.106(p) of the Commission’s rules.3 That rule authorizes the staff to deny or dismiss a petition for reconsideration of a Commission action that “plainly do[es] not warrant consideration by the Commission”4—for example, when the petition for reconsideration relies on arguments that have been fully considered and rejected by the Commission within the same proceeding or raises arguments that could have been raised earlier in the

1 Warren C. Havens, Memorandum Opinion and Order, 27 FCC Rcd 2756 (2012) (Sanctions Order).

2 See id. at 2763, para. 19.

3 47 C.F.R. § 1.106(p); see Warren C. Havens, Memorandum Opinion and Order, 27 FCC Rcd 10128, 10128, para. 1 (Wireless Telecomms. Bur. 2012) (Bureau Dismissal Order).

4 47 C.F.R. § 1.106(p).

proceeding but were not.<sup>5</sup> In dismissing Havens' petition for reconsideration, the Bureau found that his claims fell within those categories of arguments.<sup>6</sup>

3. Havens now seeks review of the 2012 order dismissing his petition for reconsideration (*Bureau Dismissal Order*).<sup>7</sup> Because the Bureau properly dismissed his petition for reconsideration under Section 1.106(p), we reject Havens' challenge and affirm the Bureau's decision.

## II. BACKGROUND

4. The long history of this proceeding is chronicled in several previous orders,<sup>8</sup> and we summarize below only the history most relevant here.

5. In February 2000, Havens applied for certain AMTS licenses in Texas and Colorado.<sup>9</sup> The Bureau dismissed Havens' applications in 2000 and 2001,<sup>10</sup> and Havens has been challenging their dismissal ever since.

6. On December 30, 2004, Havens filed a petition for reconsideration in which he challenged a November 29, 2004, staff order that denied his requests for the Commission to process his AMTS license applications under a newly adopted geographic licensing regime and forbear from applying the site-based coverage requirement previously in effect.<sup>11</sup> In a supplement to the petition for reconsideration, Havens requested, in the alternative, that the Commission treat his petition for reconsideration as an "informal request for Commission action" pursuant to Section 1.41 of the Commission's rules and address his arguments in that context.<sup>12</sup>

7. Because Havens filed his petition for reconsideration beyond the thirty-day period prescribed by 47 U.S.C. § 405(a), the staff in February 2005 dismissed it as untimely.<sup>13</sup> Although Havens has never disputed that the petition violated the statutory time limit for petitions for reconsideration of Commission action, he has persistently maintained that the Commission should have excused his tardiness and considered his petition anyway.<sup>14</sup> In his initial challenge to the February 2005 decision

---

<sup>5</sup> See *id.* § 1.106(p)(2), (3).

<sup>6</sup> See *Bureau Dismissal Order*, 27 FCC Rcd at 10130, para. 7.

<sup>7</sup> As discussed further below, see *infra* notes 39, 66 and accompanying text, certain of Havens' arguments also challenge Commission and staff decisions in the underlying AMTS licensing proceeding, which has long since terminated, see *infra* note 38. We reject those arguments as well; they are not relevant to Havens' challenge of the *Bureau Dismissal Order*, see *infra* para. 13, and they do not warrant our consideration under 47 C.F.R. § 1.41, see *infra* para. 20.

<sup>8</sup> E.g., *Warren C. Havens*, Third Order on Reconsideration, 26 FCC Rcd 10888, 10888–90, paras. 2–6 (2011) (*Third Order on Reconsideration*); *Warren C. Havens*, Memorandum Opinion and Order, 23 FCC Rcd 3210, 3210–12, paras. 2–5 (2008) (*2008 Review Order*).

<sup>9</sup> See *2008 Review Order*, 23 FCC Rcd at 3210, para. 2.

<sup>10</sup> See *Sanctions Order*, 27 FCC Rcd at 2756, para. 2.

<sup>11</sup> See *id.* at 2757, paras. 3–4; *Warren C. Havens*, Order on Reconsideration, 20 FCC Rcd 3995, 3995, para. 1 (Wireless Telecomms. Bur. Pub. Safety and Critical Infrastructure Div. 2005) (*2005 Order*); see also *Warren C. Havens*, Order, 19 FCC Rcd 23196 (Wireless Telecomms. Bur. Pub. Safety and Critical Infrastructure Div. 2004) (*November 2004 Order*).

<sup>12</sup> 47 C.F.R. § 1.41; see *2005 Order*, 20 FCC Rcd at 3997, para. 6 n.22 ("In the last sentence of the Supplement, Havens requests, in the alternative, that the petition for reconsideration be treated as an informal request for Commission action pursuant to Section 1.41 of the Commission's Rules.")

<sup>13</sup> See *id.* at 3996–97, para. 6.

<sup>14</sup> Havens claims that when he e-mailed the petition to his counsel on the afternoon it was due, a technical glitch in his counsel's e-mail system prevented counsel from receiving the petition until too late to meet the Commission's filing deadline. See Request for Leave at 1–2 (Dec. 30, 2004).

denying his petition, he argued not only that the staff should have excused the statutory deadline, but also that, even if his petition was untimely, the staff should have considered his arguments under Section 1.41 of the Commission's rules.<sup>15</sup> The Bureau rejected that argument, however,<sup>16</sup> and Havens did not invoke Section 1.41 in his subsequent application for review.<sup>17</sup>

8. After the Commission denied Havens' application for review in 2008 (*2008 Review Order*),<sup>18</sup> Havens continued to press the Commission to grant his AMTS license applications in two separate petitions for reconsideration.<sup>19</sup> The Commission denied the first of those petitions,<sup>20</sup> and the staff summarily dismissed the second.<sup>21</sup>

9. Havens then filed yet another petition for reconsideration.<sup>22</sup> In what was at that point the fourteenth order in the licensing proceeding (*Third Order on Reconsideration*),<sup>23</sup> the Commission denied Havens' petition and sought to address the drain on agency resources from his "irrelevant and/or repetitious arguments" and "abusive . . . pleadings."<sup>24</sup> The Commission proposed to sanction Havens by requiring that "Havens (or any person or entity acting on behalf of Havens) . . . obtain prior approval before filing any future pleadings involving the [contested AMTS] license applications."<sup>25</sup> The Commission made clear, however, that the proposed sanction would apply narrowly, covering only submissions related to the specific AMTS license applications there at issue.<sup>26</sup> Furthermore, because the

---

<sup>15</sup> See *Warren C. Havens*, Order on Further Reconsideration, 21 FCC Rcd 3553, 3556, para. 7 (Wireless Telecomms. Bur. 2006) (*2006 Order*) ("Havens argues that the Division could and should have ruled on his request under Sections 1.2 and 1.41 . . . of the Commission's Rules, upon finding that the petition for reconsideration was filed beyond the thirty-day deadline."); see also *id.* at 3556, para. 7 n.32 ("Havens also requests such relief in the present petition, if reconsideration is not granted.").

<sup>16</sup> See *id.* at 3556, para. 7 ("As the Division explained in its November 29, 2004 action, however, such relief is not available because the above-captioned applications are no longer pending." (citing *November 2004 Order*, 19 FCC Rcd at 23199–200, paras. 9–10)).

<sup>17</sup> See Application for Review at 4–5 (May 4, 2006) (arguing that the Commission had authority to waive the thirty-day filing deadline for petitions for reconsideration, but not that the staff should have treated Havens' late-filed petition for reconsideration as an informal request for Commission action under Section 1.41 of the Commission's rules); *id.* at 5–6 (arguing without invoking Section 1.41 of the Commission's rules that his petitions remained "pending" and that, "[u]nder the standards" articulated in *Improving Public Safety Communications in the 800 MHz Band Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Memorandum Opinion and Order, 20 FCC Rcd 10463, 10465–66, paras. 8–9 (Acting Gen. Counsel 2005), "fundamental fairness" required the Commission to rule on the merits of the arguments in his late-filed petition for reconsideration).

<sup>18</sup> See *2008 Review Order*, 23 FCC Rcd at 3212–13, paras. 7–8.

<sup>19</sup> See Petition for Reconsideration Based on New Facts (Feb. 16, 2010) (February 2010 PFR); Petition for Reconsideration of the *Memorandum Opinion and Order* Based on New Facts (Mar. 28, 2008) (March 2008 PFR).

<sup>20</sup> See *Warren C. Havens*, Order on Reconsideration, 25 FCC Rcd 511 (2010) (*2010 Order*).

<sup>21</sup> See *Warren C. Havens*, Order on Further Reconsideration, 25 FCC Rcd 2123 (Wireless Telecomms. Bur. Mobility Div. 2010).

<sup>22</sup> See Petition for Reconsideration (Apr. 5, 2010).

<sup>23</sup> See 26 FCC Rcd at 10888, para. 1.

<sup>24</sup> *Id.* at 10892, para. 11; see *id.* at 10892, para. 12.

<sup>25</sup> *Id.* at 10892, para. 12.

<sup>26</sup> See *id.* at 10893, para. 14.

proposed sanction would be “a serious step,” the Commission gave Havens an opportunity to show cause why it was unwarranted.<sup>27</sup>

10. Havens responded through counsel on August 29, 2011. He argued that the Commission lacked authority to impose the proposed sanction and that the proposed sanction was unwarranted on the facts of this case.<sup>28</sup> In its subsequent *Sanctions Order*, the Commission rejected those arguments and adopted its earlier proposal to require Havens to request and obtain the Bureau’s permission before filing any further pleadings with respect to the contested AMTS license applications.<sup>29</sup> To prevent any possible confusion as to the sanction’s narrow scope, however, the Commission modified the wording of the request for prior approval that it required Havens to submit.<sup>30</sup> Whereas the originally proposed language stated that Havens would be required seek permission to file “further documents,”<sup>31</sup> the Commission clarified in the *Sanctions Order* that Havens need only seek prior approval “to file further documents relating to or in connection with Application File Nos. . . . 852997-853009 and 853010-853014.”<sup>32</sup>

11. On April 11, 2012, Havens filed a petition for reconsideration of the Commission’s *Sanctions Order*.<sup>33</sup> The Bureau dismissed Havens’ petition for reconsideration as procedurally defective under Section 1.106(p) of the Commission’s rules, finding that the Commission had fully considered and rejected several of his arguments at an earlier stage of the proceeding and that his remaining arguments were new and should have been raised sooner.<sup>34</sup>

### III. DISCUSSION

12. Havens now seeks review of the Bureau’s decision to dismiss his petition for reconsideration of the *Sanctions Order*. He has filed two pro se submissions that are virtually identical in substance, but which he seeks to distinguish as a matter of Commission procedure. We treat the first of his submissions as an application for review of the *Bureau Dismissal Order*.<sup>35</sup> Havens styles his second

---

<sup>27</sup> *Id.* at 10893, para. 15.

<sup>28</sup> *See Sanctions Order*, 27 FCC Rcd at 2758–62, paras. 8, 10–12, 14, 16–17 (summarizing Warren Havens’ Response to FCC 11-116 (Aug. 29, 2011)).

<sup>29</sup> *See id.* at 2762, para. 18.

<sup>30</sup> *See id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 2763, para. 19; *see id.* at 2762–63, para. 18. The full statement that the Commission required from Havens was the following: “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. [*sic*] 852997-853009 and 853010-853014, Havens submits this request.” *Id.* at 2763, para. 19.

<sup>33</sup> Petition for Reconsideration of March 12, 2012 Memorandum and Opinion (Apr. 11, 2012) (April 2012 PFR).

<sup>34</sup> 47 C.F.R. § 1.106(p); *see Bureau Dismissal Order*, 27 FCC Rcd at 10128, 10130, paras. 1, 7.

<sup>35</sup> The heading of this pleading characterizes it as a “Petition for Reconsideration.” *See* Petition for Reconsideration of MO&O, 12-1376 of August 21, 2012 (Sept. 20, 2012) (AFR). In a subsequent “errata” filing, however, Havens attempted to amend that heading to frame his submission as a petition for reconsideration or, in the alternative, a “conditional” application for review. *See* Errata Copy Petition for Reconsideration of MO&O, 12-1376 of August 21, 2012 and Conditional Application for Review (Sept. 28, 2012). Consistent with the Commission’s admonition to Havens, on an earlier occasion, against seeking to amend an earlier submission beyond its filing deadline, *see Third Order on Reconsideration*, 26 FCC Rcd at 10893, para. 15, we here address Havens’ timely filed pleading, not the errata version. The two pleadings are not materially different, however. Considering the errata version would not have affected our analysis or conclusions and, in the interest of concluding this lengthy proceeding, we treat Havens’ September 20, 2012, “petition for reconsideration” as an application for review. *Cf.* 47 C.F.R. § 1.106(a)(1) (providing that the Commission may address petitions for reconsideration of “final actions taken pursuant to delegated authority”); *USA Teleport, Inc.*, Order on Review, 28 FCC Rcd 525, 525, para. 1 n.2 (2013)

(continued....)

submission as an informal request for Commission action under Section 1.41 of the Commission's rules, which allows parties to seek Commission action informally when the rules do not otherwise require formal procedures.<sup>36</sup> We address both pleadings below.<sup>37</sup>

13. **Application for Review.** As an initial matter, it bears mention that Havens' underlying AMTS licensing proceeding has long since terminated.<sup>38</sup> On application for review, Havens can only properly challenge the *Bureau Dismissal Order*, which is limited in scope to the Commission's prior approval sanction. The *Bureau Dismissal Order* does not concern either the merits of Havens' underlying license applications or the Commission's refusal to entertain the untimely petition for reconsideration that Havens filed in December 2004. Accordingly, in deciding the application for review, we need not consider arguments that Havens raises concerning the latter issues.<sup>39</sup> The remainder of Havens' arguments we reject for the reasons set forth below.

(Continued from previous page) \_\_\_\_\_  
(treating as an application for review a pleading styled as an "Answer" to a bureau-level memorandum opinion and order that denied reconsideration of an earlier bureau-level forfeiture order); *John F. Williams v. Sw. Bell Tel. Co.*, Memorandum Opinion and Order, 2 FCC Rcd 7429, 7429, para. 1 n.1 (1987) (treating a pleading "styled as a petition for reconsideration before the full Commission" as an application for review in the interest of expeditiously rendering a final, appealable order in light of the petitioner's stated intention to pursue further review in federal court).

<sup>36</sup> 47 C.F.R. § 1.41; see Petition for a New Case under Section 1.41, and under the First and Fifth Amendment in Relation to the MO&O, 12-1376 of August 21, 2012 and All Previous Decisions by the FCC Relating to the Captioned Applications (Sept. 20, 2012) (Informal Request). Eight days after initially filing his informal request on September 20, 2012, Havens submitted a materially identical "errata" version of that pleading. See Errata Copy Petition for a New Case under Section 1.41, and under the First and Fifth Amendment in Relation to the MO&O, 12-1376 of August 21, 2012 and All Previous Decisions by the FCC Relating to the Captioned Applications (Sept. 28, 2012). As with Havens' application for review, see *supra* note 35, we here address Havens' initial pleading, not his subsequent submission of errata. The two pleadings are not materially different, however, and our analysis and conclusions set forth in this order would not change were we to address the errata version.

<sup>37</sup> We find no need to rule on either of the "requests for permission to file" that Havens submitted together with his application for review and informal request for commission action. See *Bureau Dismissal Order*, 27 FCC Rcd at 10130, para. 6.

<sup>38</sup> See *Sanctions Order*, 27 FCC Rcd at 2760, para. 12 (explaining that "the effect of [the Commission's 2008 Review Order] was to terminate [the] license-application proceeding").

<sup>39</sup> Cf. *Third Order on Reconsideration*, 26 FCC Rcd at 10892, para. 11 (describing Havens' pattern of raising arguments not bearing on the relevant legal issue as a basis for proposing the prior approval sanction); *2010 Order*, 25 FCC Rcd at 513, para. 5 (refusing at an earlier stage of this proceeding to consider exhibits concerning the merits of Havens' underlying applications or other previously settled issues, rather than the legal question at hand). The application for review raises five such arguments. First, Havens contends that the Commission was required to reach the merits of his December 2004 petition for reconsideration in the "public interest." See AFR at 3, 6-7. Second, he argues that the Commission should have considered the December 2004 petition for reconsideration as an informal request for Commission action pursuant to Section 1.41 of the Commission's rules. 47 C.F.R. § 1.41; see AFR at 3, 6-7. Third, Havens asserts that the Commission "violated [his] Fifth Amendment equal rights," *id.* at 3, by which we understand him to mean that in dismissing his AMTS applications, the Commission applied a coverage rule that it did not apply to other AMTS applicants and licensees, see *id.* at 5. Fourth, Havens contends that the Commission had no basis to reject his AMTS applications because its "continuity of coverage" requirement had no effect at the application stage. See *id.* at 5, Exhibit 1. Fifth, based on a "glossary of terms" requested by the Administrative Law Judge in a separate proceeding to which Havens is a party, Havens argues that the FCC did not understand the regulation that it applied to reject his AMTS applications. See *id.* at 5, Exhibit 3.

Even if the above arguments were properly before us, they would not persuade us to grant the application for review. As to the first three arguments, Havens has not demonstrated that the public interest required consideration of his December 2004 petition for reconsideration; consideration of that petition pursuant to Section 1.41 of the Commission's rules was unwarranted on the facts of this case, particularly given the availability of

(continued....)

14. Previously Raised Arguments. Havens argues that the Commission's sanction was "*ultra vires*," and that it violates his First Amendment (petition and speech) and Fifth Amendment (property) rights.<sup>40</sup> He raised essentially the same arguments in his April 2012 petition for reconsideration,<sup>41</sup> and in the *Bureau Dismissal Order*, the Bureau rejected them as procedurally defective: the Fifth Amendment argument because it was a new argument that Havens could have presented sooner,<sup>42</sup> the First Amendment argument because the Commission had considered and rejected it at an earlier stage of this proceeding,<sup>43</sup> and the *ultra vires* argument in part on both of those grounds.<sup>44</sup> We agree with the Bureau that these issues did not warrant further consideration by the Commission. Because the Bureau properly dismissed them as plainly not warranting Commission consideration under Section 1.106(p), we deny Havens' application for review with respect to these arguments.

15. Also as in his April 2012 petition for reconsideration,<sup>45</sup> Havens asserts that the Commission's prior approval sanction violates his right to due process.<sup>46</sup> In the *Bureau Dismissal Order*, the Bureau rejected Havens' due process argument on the basis that he could have raised it when the Commission, in the *Third Order on Reconsideration*, specifically afforded him an opportunity to respond to the proposed sanction before it was imposed.<sup>47</sup> We have reviewed Havens' response to the *Third Order on Reconsideration* and determined that although he did utter the phrase "due process,"<sup>48</sup> he did so only in passing, without otherwise articulating any due process argument. Under the circumstances, we think the Bureau reasonably invoked Section 1.106(p)(2) of the Commission's rules to reject Havens' due process argument as one that could have been presented previously but was not.<sup>49</sup> We deny the application for review as to Havens' due process argument on that basis, and also, in the alternative, because the argument as presented in the application for review is wholly conclusory.<sup>50</sup>

(Continued from previous page) \_\_\_\_\_

"formal procedures" governing requests for reconsideration, 47 C.F.R. § 1.41, *see* 47 U.S.C. § 405(a); 47 C.F.R. § 1.106; *see also infra* paras. 18–20; and Havens has not demonstrated any equal protection violation. The final two arguments fail as well, because Havens never presented them to the Bureau as required by our rules. *See* 47 C.F.R. § 1.115(c) ("No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.").

<sup>40</sup> *See* AFR at 3–4, 8–9.

<sup>41</sup> *See* April 2012 PFR at 4, 6, 14, 17–19.

<sup>42</sup> *See Bureau Dismissal Order*, 27 FCC Rcd at 10130, para. 7 & ns.17, 18 (citing 47 C.F.R. § 1.106(p)(2), which provides for summary dismissal of petitions for reconsideration raising arguments that could have been presented previously to the Commission or its staff but were not).

<sup>43</sup> *See id.* at 10130, para. 7 & n.16; *see also Sanctions Order*, 27 FCC Rcd at 2760, para. 12 & n.27 (explaining the Commission's basis for rejecting Havens' First Amendment argument).

<sup>44</sup> *See Bureau Dismissal Order*, 27 FCC Rcd at 10130, para. 7 & n.17.

<sup>45</sup> *See* April 2012 PFR at 11–12, 13.

<sup>46</sup> *See* AFR at 3.

<sup>47</sup> *See Bureau Dismissal Order*, 27 FCC Rcd at 10130, para. 7 & n.17.

<sup>48</sup> Warren Havens' Response to FCC 11-116 at 3 (Aug. 29, 2011).

<sup>49</sup> 47 C.F.R. § 1.106(p)(2); *see Bureau Dismissal Order*, 27 FCC Rcd at 10130, para. 7 & ns.17, 18.

<sup>50</sup> *See* AFR at 3 (invoking the term "due process" only in passing, without explaining how Havens contends the Commission violated due process, let alone citing supporting facts or legal authorities); *cf. Qwest Corp. v. FCC*, 482 F.3d 471, 478 (D.C. Cir. 2007) (refusing to consider a claim that the court concluded was not "presented well enough to satisfy [47 U.S.C.] § 405(a)," particularly given the court's admonition in earlier cases that "the Commission 'need not sift pleadings and documents to identify arguments that are not stated with clarity by a petitioner'" (quoting *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279 (D.C. Cir. 1997)); *Request for Review of a Decision of the Universal Service Administrator by Integrity Communications, Ltd. Corpus Christi, TX*, 27 FCC Rcd

(continued....)

16. **Procedural Arguments.** In addition, we reject two procedural arguments that Havens raises in the application for review. First, Havens contends that the Bureau lacked authority to decide a petition for reconsideration that was addressed to the full Commission and challenged a Commission-level order.<sup>51</sup> We disagree. The Commission has authorized its bureaus to dismiss or deny petitions for reconsideration that “plainly do not warrant consideration by the Commission.”<sup>52</sup> Havens’ April 2012 petition for reconsideration met the criteria for consideration at the bureau level.<sup>53</sup>

17. In addition, Havens challenges the *Bureau Dismissal Order* on the basis of 47 U.S.C. § 405(a), which he argues required the Commission to decide his April 2012 petition for reconsideration within ninety days.<sup>54</sup> Havens misapprehends the statute. Where Section 405(a) directs the Commission to decide petitions for reconsideration “within ninety days,” that directive only covers petitions that “relate[] to an instrument of authorization granted without a hearing.”<sup>55</sup> Because Havens’ April 2012 petition for reconsideration was not such a petition, he has no basis to contend that the *Bureau Dismissal Order* was untimely.<sup>56</sup>

18. **Informal Request for Commission Action.** Under Section 1.41 of the Commission’s rules, “[e]xcept where” the rules elsewhere require “formal procedures,” parties may request Commission action “informally.”<sup>57</sup> In effect, Section 1.41 ensures that seeking Commission action does not become an exercise in code pleading, and it offers an avenue of recourse to parties who might otherwise have none.<sup>58</sup> The Commission regularly declines to consider “informal” requests for Commission action under Section

(Continued from previous page) \_\_\_\_\_  
772, 782, para. 24 n.91 (2012) (citing authorities that address the obligation of a party seeking review to fully set forth its arguments, including by identifying supporting facts and legal authorities).

<sup>51</sup> See AFR at 5 (“The Bureau erred in deciding [a]n appeal that was addressed to the Commission.”); *id.* at 6 (“Nothing in the [*Bureau Dismissal Order*] states the Commission delegated to the WTB the [task] . . . under 1.106(p) to respond to the Recon and dismiss it. Therefore, there is no delegation of authority shown in the Order by the Bureau to act on this matter presented to the Commission.”); see also *id.* (invoking 47 U.S.C. § 405 for the proposition that “the authority that made the order and received the recon is to decide on the recon”).

<sup>52</sup> 47 C.F.R. § 1.106(p). With limited exceptions that do not include petitions for reconsideration of the kind at issue here, Congress has authorized the Commission to “delegate any of its functions.” 47 U.S.C. § 155(c)(1).

<sup>53</sup> See 47 C.F.R. § 1.106(p)(2) (delegating authority to decide petitions for reconsideration that “[r]ely on facts or arguments which have not previously been presented to the Commission and which do not meet the [narrow] requirements” for reconsideration set forth in 47 C.F.R. § 1.106(b)(2), (b)(3), or (c)); *id.* § 1.106(p)(3) (delegating authority to decide petitions for reconsideration that “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding”).

<sup>54</sup> See AFR at 6.

<sup>55</sup> 47 U.S.C. § 405(a).

<sup>56</sup> See *2006 Order* at 3555–56, para. 6.

<sup>57</sup> 47 C.F.R. § 1.41.

<sup>58</sup> See, e.g., *Petition to Revoke the License of National Broadcasting Co.*, Memorandum Opinion and Order, 16 FCC 2d 947, 948, para. 5 n.3 (1969) (explaining that “neither the Communications Act nor the Commission’s rules” set forth a formal procedure for seeking revocation of a broadcast license, and thus that the Commission has addressed petitions for revocation pursuant to Section 1.41); *accord Radio Para La Raza*, Memorandum Opinion and Order, 40 FCC 2d 1102, 1102, para. 1 n.1 (1973); see also *Paging Systems, Inc. Assignor*, Order on Reconsideration, 23 FCC Rcd 7458, 7460–62, 7463–64, paras. 5–6, 9–10 (Wireless Telecomms. Bur. Broadband Div. 2008) (upholding the staff’s earlier decision to “exercise[] its discretion to consider the allegations raised by [Havens and related entities] as an informal complaint” under Section 1.41 of the Commission’s rules, even though those allegations were insufficient to make a *prima facie* showing that the Havens parties had standing to pursue a formal “petition to deny” the adverse parties’ application for assignment of a broadband license), *application for review dismissed as moot, Warren C. Havens*, Letter, 24 FCC Rcd 13776 (Wireless Telecomms. Bur. Broadband Div. 2009).

1.41 when there are formal procedures available to the requesting parties.<sup>59</sup> Although formal procedures do not preclude the Commission from considering arguments under Section 1.41 in every case,<sup>60</sup> Section 1.41 is not an invitation to dilatoriness or gamesmanship in presenting arguments to the Commission. In particular, as the Commission and staff have explained to Havens and his companies on several previous occasions, Section 1.41 is not a vehicle to evade the procedural requirements of 47 C.F.R. § 1.106.<sup>61</sup> That is especially true with respect to the 30-day filing deadline set forth in Section 1.106(f), which is statutorily mandated and which the D.C. Circuit has admonished the Commission to strictly enforce.<sup>62</sup>

---

<sup>59</sup> See, e.g., *Motorola, Inc.*, Order on Reconsideration, 26 FCC Rcd 16581, 16585, para. 9 n.31 (2011) (“dismiss[ing] as unauthorized” a request filed by several entities affiliated with Havens that the Commission treat a petition for reconsideration “in the alternative” as an informal request for Commission action under Section 1.41), *petition for reconsideration dismissed*, 27 FCC Rcd 13520 (Wireless Telecomms. Mobility Div. 2012), *limited appeal dismissed*, 28 FCC Rcd 4239 (Wireless Telecomms. Bur. Mobility Div. 2013); *Maritel, Inc. and Mobex Network Services, LLC*, Second Memorandum Opinion and Order, 26 FCC Rcd 16579, 16580, para. 3 n.10 (2011) (“We . . . dismiss as unauthorized [the Havens] Petitioners’ request . . . that [their] pleading be accepted under Section 1.41 . . . If viewed as a Section 1.41 request, Petitioners’ submission should have been formally filed as a petition for further reconsideration, which, for the reasons specified herein, would have been subject to dismissal.”); see also *Application of Spartan Radiocasting Co., Asheville, N.C.*, Memorandum Opinion and Order, 45 FCC 1495, 1496, para. 5 (1964) (stating that a “formal procedure set forth in the [Commission’s] Rules,” pursuant to which the requesting party could have filed a petition for reconsideration of the Commission’s decision to designate its application for a hearing, “preclude[d] reliance on Section 1.41”).

<sup>60</sup> See, e.g., *Application of RKO General, Inc. (Assignor) to GTH-101, Inc. (Assignee) for Assignment of License of Station WOR-TV, Secaucus, New Jersey*, 1 FCC Rcd 1081, 1082, para. 6 (1986) (invoking Section 1.41 to consider a request for dismissal or designation for hearing of a license assignment application that was untimely under Section 73.3584(a) of the Commission’s rules for filing formal petitions to deny); see also *Cal. Metro Mobile Commc’ns, Inc. v. FCC*, 365 F.3d 38, 43–44 (D.C. Cir. 2004) (“PG&E’s petition [to revoke the license at issue] was filed approximately one year after the time for filing a petition for reconsideration had expired and therefore it could not be treated as a petition for reconsideration. We see nothing impermissible, however, in the Commission’s treating it as an informal request for action. Moreover, the Commission could not have been clearer that, in modifying [the] license, it acted on its own motion and pursuant to section 316 of the Act and section 1.87(a) of its rules.” (citations omitted)).

<sup>61</sup> See, e.g., *Motorola, Inc.*, 26 FCC Rcd at 16584, para. 8 n.30 (“[W]e deny Petitioners’ requests that the instant petitions, if not grantable as petitions for reconsideration, be treated as informal requests under Section 1.41 of the Commission’s rules, 47 C.F.R. § 1.41. Petitioners previously have been informed that a party cannot evade the procedural requirements of Section 1.106 by concurrently requesting the same relief under Section 1.41.” (internal quotation marks omitted)); *Paging Sy[s]tems, Inc.*, Order, 21 FCC Rcd 7225, 7227, para. 8 (Wireless Telecomms. Bur. Pub. Safety and Critical Infrastructure Div. 2006) (“[W]e dismiss Havens’s petition for reconsideration or alternative relief setting aside the grant of an extension of time for PSI to file an opposition to the petition to deny. Grant of an extension of time is an interlocutory action. Section 1.106 of the Commission’s rules specifically prohibits petition[s] for reconsideration of interlocutory actions. That Havens alternatively requested relief under Section 1.41 of the Rules does not exempt the petition from dismissal, for a party cannot evade the procedural requirements of Section 1.106 by concurrently requesting the same relief under Section 1.41.” (citations omitted)).

<sup>62</sup> See, e.g., *V.I. Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (*Virgin Islands*) (“Although section 405 does not absolutely prohibit FCC consideration of untimely petitions for reconsideration, we have discouraged the Commission from accepting such petitions in the absence of extremely unusual circumstances.” (citing *Reuters, Ltd. v. FCC*, 781 F.2d 946, 951–52 (D.C. Cir. 1986)); *accord 21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199–200 (D.C. Cir. 2003); see also 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, decision, report, or action complained of.”). For example, “difficulties with lawyers do not absolve one of the responsibility for complying with the statutory filing deadline.” *Freeman Eng’g Assocs., Inc. v. FCC*, 103 F.3d 169, 183 (D.C. Cir. 1997)); see *Virgin Islands*, 989 F.2d at 1237 (holding that “miscommunications within [the petitioner’s law] firm” were not “extenuating circumstances” sufficient to warrant FCC consideration of the petitioner’s day-late petition for reconsideration); see also *2008 Review Order*, 23 FCC Rcd at 3212–13, para. 7.



19. Here, Havens' informal request for Commission action effectively seeks (1) full Commission review of the *Bureau Dismissal Order*,<sup>63</sup> (2) review or reconsideration of the Bureau's February 2005 order denying him leave to late-file his December 2004 petition for reconsideration,<sup>64</sup> and of subsequent orders affirming that decision;<sup>65</sup> and (3) reconsideration of the staff's November 2004 order that declined to grant his underlying AMTS license applications.<sup>66</sup> In essence, Havens seems to ask the Commission for a "do-over"—that is, for the Commission to go back to the very beginning of the now-terminated AMTS licensing proceeding to process and grant his rejected license applications, overturning thirteen years' worth of carefully considered Commission and staff decisions on the licensing process and subsequent prior approval sanction.

20. Havens' reliance on Section 1.41 in this context is misplaced. The Commission's rules provide formal procedures both for seeking full Commission review of orders issued on delegated authority<sup>67</sup> and for seeking reconsideration of Commission actions.<sup>68</sup> Those were the proper procedures for Havens to invoke for the relief he seeks here, and Havens has repeatedly invoked those procedures in both this proceeding and the underlying AMTS licensing proceeding. With respect to the *Bureau Dismissal Order*, Havens has pursued an application for review and we have considered and rejected his arguments in that context.<sup>69</sup> Similarly, as to the Bureau's decision denying Havens leave to late-file his December 2004 petition for reconsideration and the underlying November 2004 order that declined to grant his AMTS license applications, the Commission has already considered and rejected Havens' arguments in deciding his multiple petitions for reconsideration and his May 2006 application for review.<sup>70</sup> Section 1.41 is not a vehicle for disappointed license applicants to sidestep Commission procedures and erase past Commission decisions reached consistent with those procedures, particularly

---

<sup>63</sup> The request for informal action challenges the *Bureau Dismissal Order* insofar as Havens contests the Commission's prior approval sanction. See Informal Request at 3–7 & Appendix.

<sup>64</sup> *2005 Order*, 20 FCC Rcd 3995.

<sup>65</sup> See, e.g., *2008 Review Order*, 23 FCC Rcd at 3213, para. 8 (denying Havens' application for review of the Bureau's order that denied reconsideration of the February 2005 order). The informal request for Commission action effectively seeks reconsideration of this line of orders by challenging the Commission's refusal to excuse the untimeliness of Havens' December 2004 petition for reconsideration. See Informal Request at 3, 7.

<sup>66</sup> The informal request for Commission action effectively seeks reconsideration of the staff's November 2004 order by arguing that the Commission should give renewed consideration to, and grant, his underlying applications. See Informal Request at 2–3 (arguing for "a 'new trial', [sic] that is, [a] processing over, from the start, [of] the captioned applications"); see also *id.* at 5 ("[T]he FCC has now made clear that it had no basis to reject my applications captioned above . . ."); *supra* note 39 (describing in greater detail Havens' arguments on the merits). In advancing those arguments, Havens seeks the same relief that he sought in his untimely filed December 2004 petition for reconsideration. See Petition for Reconsideration (Dec. 30, 2004).

<sup>67</sup> See 47 C.F.R. §§ 1.104(b), 1.115.

<sup>68</sup> See *id.* §§ 1.104(b), 1.106; see also 47 U.S.C. § 405(a).

<sup>69</sup> See *supra* paras. 13–17.

<sup>70</sup> See generally *2008 Review Order*, 23 FCC Rcd 3210; *2006 Order*, 21 FCC Rcd 3553; *2005 Order*, 20 FCC Rcd 3995. We note that the Commission's *2008 Review Order* did not address the theory that the staff should have considered the arguments of Havens' late-filed petition for reconsideration pursuant to Section 1.41 of the Commission's rules. See generally *2008 Review Order*, 23 FCC Rcd 3210. The Commission had no cause to do so, given that Havens did not invoke Section 1.41 in his application for review, see *supra* note 17 and accompanying text, and Havens' subsequent petitions for reconsideration did not challenge that aspect of the Commission's order, see generally Petition for Reconsideration (Apr. 5, 2010); February 2010 PFR; March 2008 PFR. The Commission did reject Havens' theory that fundamental fairness required a merits decision on the arguments in his late-filed petition for reconsideration, see *2008 Review Order*, 23 FCC Rcd at 3213, para. 7 n.27, and we take this opportunity in addition to reject the notion that the Commission was required to reach the merits of those arguments under a theory that Havens' underlying AMTS license applications were still "pending."

when an applicant has taken full advantage of those procedures beyond the point of abuse and nonetheless seeks to revisit yet again decisions in which the Commission has repeatedly rejected the applicant's position. We therefore dismiss Havens' informal request for Commission action.

#### IV. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), that the September 20, 2012, application for review of Warren C. Havens in the above-captioned matter is **DENIED**.

22. **IT IS FURTHER ORDERED**, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, that Warren C. Havens' informal request for Commission action dated September 20, 2012, in the above-captioned matter is **DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary