

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

FCC 13M-11
09654

In the Matter of)) MARITIME COMMUNICATIONS/LAND) MOBILE, LLC)) Participant in Auction No. 61 and Licensee of) Various Authorizations in the Wireless Radio) Services)) Applicant for Modification of Various) Authorizations in the Wireless Radio Services)) Applicant with ENCANA OIL AND GAS (USA),) INC.; DUQUESNE LIGHT COMPANY, DCP) MIDSTREAM, LP; JACKSON COUNTY) RURAL MEMBERSHIP ELECTRIC) COOPERATIVE; PUGET SOUND ENERGY,) INC.; ENBRIDGE ENERGY COMPANY,) INC.; INTERSTATE POWER AND LIGHT) COMPANY; WISCONSIN POWER AND) LIGHT COMPANY; DIXIE ELECTRIC) MEMBERHIP 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)	EB Docket No. 11-71 File No. EB-09-IH-1751 FRN: 0013587779 Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, and 0004604962
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ORDER

Issued: May 14, 2013

Released: May 14, 2013

On May 9, 2013,¹ Warren Havens submitted a Request for Clarification, for Consent to Appeal, and for Additional Time To Supplement (“Request”).² For the reasons stated below, Mr.

¹ The deadline under Section 1.301 of the Commission’s rules elapsed on May 8th. 47 CFR § 1.301(b). The Commission’s Electronic Comment Filing System indicates that Mr. Havens filed his Request at precisely midnight, moments into May 9. Mr. Havens’ pleading will not be rejected as untimely solely as a matter of discretion. Perhaps Mr. Havens’ watch was running a few seconds behind. However, it is expected that he will obtain a

Havens' request for consent to appeal and request for additional time to supplement his filing are denied. The requested clarification on *Order*, FCC 13M-8 is provided below.

A. Request for Consent to Appeal

Mr. Havens requests the Presiding Judge's permission to appeal interlocutory *Orders*, FCC 13M-8 and 13M-9 under Section 1.301(b) of the Commission's rules. Section 1.301(b) of the Commission rules requires that a request to appeal an interlocutory order "shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception."³ Mr. Havens does not attempt to make such showing in his filing. For this reason, Mr. Havens' request for consent to appeal **IS DENIED**.

B. Request for Time to Supplement

Mr. Havens requests that he have until May 15, 2013, to further supplement his request for consent to appeal. He has not demonstrated good cause for an extension to be granted. In requesting more time, Mr. Havens notes that the five day deadline "is the shortest time period in FCC rules" and that he needs additional time to supplement his Request.⁴ In setting the rule, the Commission has determined that a short period is sufficient to allow a party to read an order, determine if an appeal "presents a new or novel question of law or policy," and form an opinion on whether an order is "likely to require remand should the appeal be deferred."⁵ The Presiding Judge will not attempt to rewrite the Commission's rules *ultra vires* in order to satisfy Mr. Havens.

Mr. Havens has also indicated that he was unable to submit a more detailed Request because his resources are stretched thin by upcoming deadlines that he must meet in other proceedings.⁶ The Presiding Judge is inclined to grant only reasonable extensions that assist a party to avoid scheduling conflicts provided the party makes the same request in the conflicting proceeding(s) and provided that the party requests an extension as soon as the conflict can be identified. Mr. Havens failed to immediately inform the Presiding Judge that a timely request for appeal could not be filed due to known deadlines in other proceedings. Instead, Mr. Havens submitted a Request to the Presiding Judge at the eleventh hour that failed to make even a *prima facie* argument for consent to appeal. In this context, Mr. Havens is not asking for a reasonable extension of the filing deadline to accommodate his needs—he's asking for an unjustified mulligan. Under such circumstances, no additional time to supplement will be allowed. Mr. Havens' request for time to supplement his pleading **IS DENIED**.

properly set timepiece before his next midnight filing. It is recommended that Mr. Havens safely submit future pleadings before close of business to avoid the risk of untimely filing.

² On May 10, 2013, Maritime Communications/Land Mobile, LLC ("Maritime") submitted Comments on Mr. Havens' Request. However, "[p]leadings responsive to [requests to appeal an interlocutory order] shall be filed only if they are requested by the presiding officer." 47 CFR § 1.301(b). The Presiding Judge has not requested the responsive filings, and so Maritime's Comments will not be considered.

³ 47 CFR § 1.301(b).

⁴ Havens' Request at 3.

⁵ 47 CFR § 1.301(b).

⁶ Havens' Request at 3-4.

C. Clarification on Required Notice of Appearance

Mr. Havens has asked for clarification on why he is required by *Order*, FCC 13M-8 to file a Notice of Appearance if he wishes to proceed *pro se*.⁷ He alleges that “[h]is appearance was made and has been accepted, and his participation allowed, to some degree.” This account is inaccurate. While on some occasions the Presiding Judge specifically asked Mr. Havens to make some contributions to this case, such as assisting in the creation of a glossary of terms, Mr. Havens has never been officially accepted as a *pro se* participant, given his serial acquisition and loss of counsel.

To the contrary, the Presiding Judge has spent a great deal in time and resources advising Mr. Havens to stop pretending that he was a licensed attorney. Mr. Havens represented the SkyTel entities in direct contravention of the Presiding Judge’s orders and Commission rules for several months. Mr. Havens has been repeatedly told that he was in violation of the Commission’s rules in attempting such representation of the SkyTel corporate entities and has repeatedly been ordered to cease his attempts to do so.⁸ The Presiding Judge has permitted pleadings personally penned by Mr. Havens only to the extent that Mr. Havens was specifically asked to provide facts related to his personal knowledge of the Automated Maritime Telecommunications System industry or the Presiding Judge found it necessary to overlook Mr. Havens’ rule violations with the hope that the merits of this case might proceed forthwith.

The coming and going of Mr. Havens’ prior counsel, Mr. Havens’ attempts to impermissibly represent the SkyTel corporate entities, and a period of possibly impermissible bifurcated representation have burdened the record in this case. If Mr. Havens intends to continue *pro se*, it must be ensured that the record reflects Mr. Havens’ decision with absolute clarity. The simple filing of a Notice of Appearance is the best way to conclusively show Mr. Havens’ goal, as it provides certainty and places no burden on Mr. Havens. Such a Notice of Appearance will make it clear that Mr. Havens intends to represent himself (and only himself), thereby informing the parties that they are to serve Mr. Havens personally with all pleadings.⁹

D. Clarification on Pro Se Representation

Mr. Havens takes issue with the requirement that the SkyTel entities obtain counsel if they are to continue participating in this proceeding. He reads *Order*, FCC 13M-8 to “*impose[] on pro se participation a requirement the pro se party spend his personal time and funds, or*

⁷ *Id.* at 2.

⁸ *Order*, FCC 12M-52 at 3 (November 15, 2012).

⁹ The Presiding Judge additionally required in *Order*, FCC 13M-8 that Mr. Havens provide the reasons for his decision to continue *pro se* as part of his Notice of Appearance. The Presiding Judge sought this information so he and all parties might understand why Mr. Havens’ has decided to forgo benefit of counsel in what has turned out to be a complex multiparty litigation. The Presiding Judge still seeks this information, but now merely requests it, rather than requires it. If Mr. Havens chooses to refuse to provide such clarification, he will not be barred from continuing *pro se*.

otherwise causes, legal entities to take an action to benefit the pro se party and enable him to participate pro se."¹⁰ If this is Mr. Havens' interpretation, clarification clearly is necessary.

There are two steps outlined in *Order*, FCC 13M-8 that, taken together, inform Mr. Havens and the SkyTel entities what they must do to continue participating in this proceeding.

- *Mr. Havens shall immediately retain legal representation for the SkyTel entities, as he is not authorized to represent those companies. If Mr. Havens fails or refuses to obtain qualified counsel for the SkyTel entities, those entities will not be allowed to participate in this proceeding any further, until such time that they do obtain counsel. Any future motion in which Mr. Havens attempts to represent the SkyTel entities will be struck with respect to arguments made on their behalf.*
- *Havens shall personally file a Notice of Appearance representing that he chooses to participate in this proceeding pro se. He shall include in the Notice his reasons for proceeding pro se.*¹¹

These two steps are intended to be read as independent requirements for the participation of the SkyTel entities and Mr. Havens, respectively.¹² The previous *Order* was in error to the extent that it may have unintentionally suggested otherwise. Stated more simply, if one party meets the requirements placed upon it, it will be permitted to continue participating in this proceeding regardless if the others chose not to continue. A single SkyTel entity, represented by counsel, can continue in this proceeding, even if the other SkyTel entities fail to obtain counsel and Mr. Havens fails to file the required Notice of Appearance. Mr. Havens, once he has filed a Notice of Appearance, may continue *pro se*, even if the SkyTel entities are unable or unwilling to acquire counsel.

E. Clarification on Appeal Rights

Mr. Havens asserts that he is unclear on whether the Presiding Judge's *Orders* "find that Warren Havens was never, and is not, a party with rights to participate on a pro se basis."¹³ So

¹⁰ Havens' Request at 2-3 (emphasis added). Mr. Havens is the president each of the SkyTel companies. He has repeatedly held himself out to represent the SkyTel companies in this proceeding. Whenever SkyTel has sought new counsel, Mr. Havens has indicated that he has been the individual leading the search. Accordingly, *Order*, FCC 13M-8 was issued under the reasonable assumption that it would be Mr. Havens would lead any search for counsel for the SkyTel entities. His sudden insistence that acquiring counsel for the SkyTel entities would require use of his personal time and funds is bewildering. Regardless, it is acceptable for a SkyTel employee other than Mr. Havens to lead the search for counsel. The essential directive is that the SkyTel entities must acquire licensed counsel or they will not be permitted to continue participating in this proceeding. *See Order*, FCC 12M-16 at 3-4 (March 9, 2013) (the SkyTel entities must be represented by licensed counsel as the Presiding Judge has not approved Mr. Havens' appearance on their behalf under Section 1.21(d) of the Commission's Rules).

¹¹ *Order*, FCC 13M-8 at 2 (May 1, 2013) (footnotes omitted and emphasis added).

¹² However, there exists a caveat. If some further aspect of the representation of Mr. Havens and the SkyTel entities is found to result in confusion or an impermissible bifurcated representation, the Presiding Judge will revisit and modify the arrangement as authorized by 47 CFR § 1.243(f), if necessary.

¹³ *Id.*

now Mr. Havens asks for clarification as to whether he might appeal *Orders*, FCC 13M-8 and 13M-9 as a matter of right under Section 1.301(a) of the Commission's rules.¹⁴

Section 1.301(a)(1) of the Commission's rules provides that "[i]f 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 from that ruling."¹⁵ This Section is not applicable here as Mr. Havens' right to participate in this proceeding has not been denied or terminated.¹⁶ To make it perfectly clear, Mr. Havens has been explicitly and repeatedly authorized to participate *pro se*, subject to certain limitations that have become necessary to regulate the case.¹⁷ Also, the Presiding Judge has recognized that the *Hearing Designation Order* names Mr. Havens and the SkyTel entities as separate parties to this proceeding.¹⁸

It is the actions of those parties, not the Presiding Judge, that have obfuscated any distinctions that may exist between them. From the very beginning of this proceeding, the line between Mr. Havens and SkyTel entities was murky because he is the president of each of the entities and he often chooses to speak for those entities.¹⁹ Confusion crept in when Mr. Havens decided that he would attempt to personally represent a portion of the SkyTel entities.²⁰ Additional perplexity was added when counsel for the other SkyTel entities attempted to raise claims on Mr. Havens' behalf.²¹ Mr. Havens even recently attempted to represent *all* of the SkyTel entities himself.²² Mr. Havens and the SkyTel entities had so obfuscated the lines that separate them that some confusion and delay resulted.²³ The Presiding Judge used his authority under Commission rules to strengthen his control over the proceeding,²⁴ directing the SkyTel entities to find legal representation as required by Commission rules and permitting Mr. Havens to participate *pro se* subject to guidelines designed to mitigate further confusion and delay.²⁵

¹⁴ Havens' Request at 2.

¹⁵ 47 CFR § 1.301(a)(1).

¹⁶ Mr. Havens' view that he has been blocked from participation in this proceeding is belied by his own admission that "his participation allowed, to some degree." Havens' Request at 2.

¹⁷ *Cf. Order*, FCC 13M-8; *Order*, FCC 12M-52.

¹⁸ *Order*, FCC 12M-52 at 4 n.10 ("The Commission has recognized [the] SkyTel entities and Mr. Havens as separate parties.").

¹⁹ *Cf. Havens' Request to Permit Bankruptcy Counsel and Other Counsel to Appear at Status Conference by Telephone* (filed March 12, 2012) ("Respectfully Submitted, March 8, 2012 [by] Warren C. Havens, Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC, and Verde Systems, LLC, and V2G LLC (together, 'SkyTel'); By: [signature] Warren Havens President of each of the SkyTel entities.").

²⁰ It remains unclear why Mr. Robert Jackson was retained to represent Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC, and Verde Systems, LLC, but Mr. Havens continued to impermissibly think he could represent Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC, and V2G, LLC.

²¹ *See Order*, FCC 12M-52 at 3.

²² *Cf. Havens' Revised and Supplemented Request to Extend Discovery Period and for Other Relief* (filed March 1, 2013) ("Warren Havens, the undersigned ('Havens'), for SkyTel entities . . .").

²³ *Order*, FCC 12M-52 at 3.

²⁴ 47 CFR § 1.243(f).

²⁵ *Order*, FCC 12M-52 at 4.

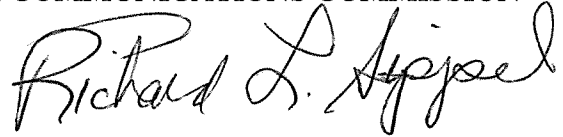
F. Clarification Summary and Conclusion

Accordingly, reading *Order*, FCC 13M-8 to conclude that “Warren Havens was never, and is not, a party with rights to participate on a pro se basis” is incorrect and completely inconsistent with both the text of the *Order*, the Hearing Designation Order, and the history of this proceeding. Not only has Mr. Havens been explicitly recognized as a party, but the Presiding Judge has expended substantial time and resources to ensure that Mr. Havens and the SkyTel entities are clearly identified as separate parties going forward. Mr. Havens has been repeatedly presented with ample opportunity to participate *pro se*, albeit with certain limitations that have been deemed necessary for the smooth operation of this proceeding.

As the old adage goes, you can lead a horse to water, but you cannot make it drink. Similarly, the Presiding Judge can grant Mr. Havens’ request for an opportunity to participate *pro se*, but he cannot make Mr. Havens take it. If Mr. Havens intends to continue to participate in this proceeding, he has been instructed as to what he must do next. This proceeding will continue, with or without Mr. Havens and/or with or without some or all of the SkyTel corporate entities.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION²⁶

A handwritten signature in black ink that reads "Richard L. Sippel". The signature is written in a cursive, flowing style.

Richard L. Sippel
Chief Administrative Law Judge

²⁶ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and to Mr. Havens.