

**Before the
Federal Communications Commission
Washington, DC 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: June 6, 2014

Released: June 9, 2014

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 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 Havens repeatedly has filed administrative challenges to that sanction. In this latest attempt,³ he challenges a Commission-level decision issued on November 26, 2013, that upholds the sanction (*Commission Review Order*).⁴

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

² See *id.* at 2763, para. 19.

³ Petition for Reconsideration, Request under Section 1.2, and Request under Section 1.41 (Dec. 26, 2013) (PFR); see also *infra* para. 5 (liberally construing Havens' pleading as a challenge to the Commission's prior approval sanction).

⁴ *Warren C. Havens*, Memorandum Opinion and Order, 28 FCC Rcd 16261 (2013) (*Commission Review Order*). Havens addresses his pleading "To: Office of the Secretary," "Attn: Chief, Wireless Bur[e]au." It is unclear from that heading whether he intends to direct his pleading to the Commission or the Bureau. Regardless of his intent, we exercise our discretion to address it at the Commission level. See 47 C.F.R. § 1.106(a)(1) (providing that "petitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission," except in specified circumstances when it is permissible, but not required, for the staff to dismiss or deny such petitions); see also *infra* note 26 (citing authorities that support the Commission's discretion to address matters within the staff's delegated authority).

II. BACKGROUND

2. In the *Commission Review Order*, we addressed a pleading that Havens filed in September 2012, which he initially designated a “Petition for Reconsideration” of a staff-level order⁵ but later sought to characterize, in the alternative, as a “conditional” application for review.⁶ Based on the case’s protracted procedural history and our determination that the public interest favored bringing these administrative proceedings to a close, we exercised our discretion to treat his pleading as an application for review,⁷ which we denied.⁸

III. DISCUSSION

3. Havens frames his present challenge as a petition for reconsideration of the *Commission Review Order* and a request for a declaratory ruling;⁹ in the alternative, he requests informal Commission action under 47 C.F.R. § 1.41.¹⁰

4. Havens’ pleading is not a model of clarity. Based on the lone reference he includes to any specific portion of the *Commission Review Order*,¹¹ one could reasonably take the view that his only objection to the *Commission Review Order* is that we did not there reach two particular arguments raised in his September 2012 pleading that go to the merits of his underlying license applications.¹² Under that view, his pleading would be subject to the Commission’s prior approval sanction, requiring him to obtain the agency’s permission to file.¹³ Alternatively, however—giving Havens the benefit of the most liberal possible treatment—one could construe his pleading to raise a broader procedural challenge to the method by which we reached our decision in the *Commission Review Order* to uphold the prior approval sanction: At least arguably, one could interpret Havens to contend, on a general level, that the Commission should not have treated his September 2012 pleading as an application for review (despite that he himself submitted an erratum characterizing that pleading as a “conditional” application for review)¹⁴ and should instead have allowed the Bureau to address it.¹⁵ Under this more liberal reading of his pleading, Havens is challenging the sanction itself and need not obtain prior agency approval to do so.¹⁶

⁵ *Warren C. Havens*, Memorandum Opinion and Order, 27 FCC Rcd 10128 (Wireless Telecomms. Bur. 2012) (*Bureau Dismissal Order*); see *Commission Review Order*, 28 FCC Rcd at 16264–65, para. 12 n.35.

⁶ *Commission Review Order*, 28 FCC Rcd at 16264–65, para. 12 n.35.

⁷ See *id.*

⁸ See *id.* at 16265–67, 16270, paras. 13–17, 21.

⁹ See PFR at paras. 1–2.

¹⁰ See *id.* at para. 3.

¹¹ See *id.* at para. 1 (citing *Commission Review Order*, 28 FCC Rcd at 16265, para. 13 & n.39).

¹² See *Commission Review Order*, 28 FCC Rcd at 16265, para. 13 & n.39 (declining to reach arguments that the Commission’s “‘continuity of coverage’ requirement had no effect at the application stage,” and that “the FCC did not understand the regulation that it applied to reject his AMTS applications,” on the basis, first, that those arguments were beyond the proper scope of Havens’ challenge to the *Bureau Dismissal Order*, and, second, that Havens had not presented them earlier in the proceeding).

¹³ See *Sanctions Order*, 27 FCC Rcd at 2763, paras. 19–20.

¹⁴ See *Commission Review Order*, 28 FCC Rcd at 16264–65, para. 12 n.35.

¹⁵ See PFR at paras. 1–2. For example, in the “petition for reconsideration” portion of his pleading, Havens asks that the Bureau “pass[] upon” arguments raised in his September 2012 pleading that the Commission resolved in the *Commission Review Order*. See *id.* at para. 1. Similarly, in Havens’ request for a declaratory ruling, he seeks a statement “that the FCC cannot, at any level, take a pleading that is properly presented by its substance and labeling as a request to a Bureau, and turn it into a request to another part of the FCC, where the result of that is to make or

(continued....)

5. Together with his pleading, Havens has submitted a request for permission to file. As we have explained, it would be well within the Commission's discretion to construe his pleading as confined to the merits of his underlying license applications, in which case it would fall within the ambit of the "prior approval" sanction.¹⁷ Consistent with the Commission's effort at earlier stages of this proceeding, however, to afford Havens ample opportunity to raise concerns regarding the sanction,¹⁸ we exercise our discretion to construe his pleading liberally, interpreting it to challenge the procedural validity of our decision in the *Commission Review Order* to treat his September 2012 pleading as an application for review. Accordingly, we dismiss as unnecessary Havens' request for permission to file.¹⁹

6. Even giving Havens the benefit of this very liberal treatment, none of his present assertions at all undermines our decision to treat his earlier pleading as an application for review.²⁰ In particular, we reject Havens' contention that he was entitled to have the Bureau address arguments concerning the merits of his underlying AMTS license applications and the Commission's refusal, years earlier, to entertain an untimely petition for reconsideration in his licensing proceeding.²¹ Those arguments were beyond the scope of Havens' challenge to the prior approval sanction;²² the Bureau could not have reached them any more than the Commission.²³ Moreover—and fundamentally—a party's decision to direct its pleading to a particular bureau or office, as Havens claims to have done here,²⁴

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deem it defective since it was then not before the right part of the FCC." *Id.* at para. 2. (As explained further below, *see infra* para. 6, that is not what occurred here.)

¹⁶ *See, e.g., Bureau Dismissal Order*, 27 FCC Rcd at 10130, para. 6 (explaining that the *Sanctions Order* "requires Havens to obtain prior . . . approval only 'before filing further pleadings with respect to the [specified license applications],' not to challenge the sanction itself (second alteration in original)).

¹⁷ *See supra* para. 4.

¹⁸ *See, e.g., Warren C. Havens*, Third Order on Reconsideration, 26 FCC Rcd 10888, 10893, para. 15 (2011) (characterizing the proposed sanction as a "serious step" that the Commission "do[es] not take lightly," and giving Havens an opportunity to respond before adopting the sanction).

¹⁹ *See supra* note 16 and accompanying text.

²⁰ *See Commission Review Order*, 28 FCC Rcd at 16264–65, para. 12 n.35; *see also Application of Regionet Wireless License, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 21269, 21269, para. 1 n.1 (2002) (treating as an application for review "an application for review and a petition for reconsideration [that Havens filed] in a single joint pleading directed to the Commission and the Bureau"), *aff'd sub nom. Havens v. FCC*, 424 Fed. Appx. 3 (D.C. Cir. 2011) (per curiam); *Application of Sacramento Community Radio, Inc. for a Construction Permit for a New Noncommercial Educational FM Station Sacramento, California*, Memorandum Opinion and Order, 8 FCC Rcd 4067, 4067, para. 1 n.1 (1993) (treating as an application for review a pleading styled as a "Petition for Reconsideration" of the staff's denial of an earlier petition for reconsideration).

²¹ *See* PFR at paras. 1–2.

²² *See Commission Review Order*, 28 FCC Rcd at 16265, para. 13.

²³ In addition, as we recognized in the *Commission Review Order*, two of the arguments on which Havens relied—and the arguments about which he seems particularly concerned here, *see supra* para. 4 & note 12—were new arguments that Havens could and should have raised sooner. *See id.* at 16266, para. 13 n.39. Thus, although our decision did not depend on the point, we observed that 47 C.F.R. § 1.115(c) precluded us from granting an application for review on the basis of those arguments, *see Commission Review Order*, 28 FCC Rcd at 16266, para. 13 n.39. For the sake of completeness (once again, the point is not necessary to our decision), we note that 47 C.F.R. § 1.106(c) would similarly have precluded the Bureau from granting a petition for review based on Havens' newly raised arguments.

²⁴ *See* PFR at para. 1. *But see supra* note 4 (noting the ambiguity of the "address" of Havens' present pleading, which uses essentially the same language as his earlier pleading).

cannot foreclose the Commission from exercising its discretion to decide the matter itself.²⁵ Accordingly, we deny Havens' petition for reconsideration and his request for a declaratory ruling.²⁶

7. Having considered and rejected on the merits Havens' petition for reconsideration and request for a declaratory ruling, we dismiss his alternative informal request for Commission action.²⁷ In addition, we advise Havens that although we have here construed his pleading liberally,²⁸ he should not expect further administrative review of the sanction. Like the underlying licensing proceeding itself,²⁹ the Commission's sanction proceeding is now terminated.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the December 26, 2013, petition for reconsideration of Warren C. Havens in the above-captioned matter is **DENIED**.

9. **IT IS FURTHER ORDER ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i); Section 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e); and Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that Warren C. Havens' petition for declaratory ruling dated December 26, 2013, in the above-captioned matter is **DENIED**.

10. **IT IS FURTHER ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 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 December 26, 2013, in the above-captioned matter is **DISMISSED**.

11. **IT IS FURTHER ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that Warren C. Havens' request for permission to file dated December 26, 2013, in the above-captioned matter is **DISMISSED**.

²⁵ See, e.g., 47 U.S.C. § 155(c) (under which the Commission's delegation of authority is permissive); 47 C.F.R. § 0.5(c) (“[D]elegation of authority to a staff officer . . . does not mean that he will exercise that authority in all matters subject to the delegation. In non-hearing matters, the staff is at liberty to refer any matter at any stage to the Commission for action . . . and the Commission may instruct the staff to do so.”); *Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations*, Memorandum Opinion and Order, 17 FCC Rcd 14830, 14830, para. 2 (2002) (“[O]ur Rules permit the Commission to act on any matter and, as here, allow the staff to refer any matter to the Commission. Applicants and petitioners cannot claim surprise or unfairness when the Commission invokes these procedures.” (citation omitted)), *recon. denied*, 19 FCC Rcd 1603 (2004); see also 47 C.F.R. § 1.106(a)(1) (permitting referral to the Commission of petitions for reconsideration of “final actions taken pursuant to delegated authority”).

²⁶ See also 5 U.S.C. § 554(e) (conferring to an agency's “sound discretion” whether to issue a declaratory ruling).

²⁷ See *Commission Review Order*, 28 FCC Rcd at 16269, para. 20.

²⁸ See *supra* para. 5. Not only have we liberally interpreted Havens' pleading to fall outside the scope of the prior approval sanction, see *id.*, but we have entertained his challenge to a Commission order denying an application for review, which under the Commission's rules is appropriate only in limited circumstances, see 47 C.F.R. § 1.106(b)(2) (“Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present: (i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or (ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”).

²⁹ See *Commission Review Order*, 28 FCC Rcd at 16265, para. 13 (“Havens' underlying . . . licensing proceeding has long since terminated.”).

12. **IT IS FURTHER ORDERED**, for all of the reasons set forth above, that the above-captioned proceeding is now **TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary