

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

**FCC 14M-11
09973**

In the Matter of)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND 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)	
)	
Applicant for Modification of Various Authorizations in the Wireless Radio Services)	Application File Nos.
)	0004030479, 0004144435,
)	0004193028, 0004193328,
)	0004354053, 0004309872,
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 MEMBERSHIP CORPORATION, INC.;)	0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, and 0004604962
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)	

ORDER

Issued: April 2, 2014

Released: April 2, 2014

Warren Havens, a designated party in this case, requests permission to appeal rulings of the Presiding Judge in *Order*, FCC 14M-9, released March 12, 2014 (“Judge’s request for information”), under Section 1.301(b) of the Commission’s rules.¹ His request is denied.

¹ Errata Request Under § 1.301(b) (filed March 18, 2014).

Request for Information as Finding of Deficiency

Under *Order*, FCC 14M-9, and in accordance with Commission rules of practice and the Administrative Procedure Act, additional relevant information was sought by the Presiding Judge from Maritime Communications Land/Mobile, LLC (“Maritime”) in connection with his forthcoming ruling on the joint motion for summary decision submitted by Maritime and the Enforcement Bureau (“Bureau”).² Mr. Havens suggests that a request for additional information that a Presiding Judge deems necessary for deciding a summary decision motion finds *ipso facto* that the motion is “deficient and defective.”³ Therefore, he argues that merely asking Maritime to provide additional relevant information after its motion is filed effectively permits Maritime to file an additional motion for summary decision. Also, according to Mr. Havens, Maritime should not be granted any time to submit the judicially required information because the deadline for filing such motions under the Presiding Judge’s scheduling orders has passed. He believes that *Order*, FCC 14M-9, was effectively a major change to the Presiding Judge’s past scheduling orders, and thus raises a new and novel issue for interlocutory appeal.

Section 1.301(b) of the Commission’s Rules provides that:

*appeals from interlocutory rulings of the presiding officer shall be filed only if allowed by the presiding officer. Any party desiring to file an appeal shall first file a request for permission to file appeal. . . The request 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. The presiding officer shall determine whether the showing is such as to justify an interlocutory appeal and . . . his ruling is final*⁴

No new or novel questions of law or policy are raised by *Order*, FCC 14M-9. In making his arguments, Mr. Havens fails to acknowledge the discretion the Presiding Judge may exercise in adjudicatory matters to request additional information that is needed to render an adjudicative decision and allow parties sufficient time to submit that information.⁵ This discretion was exercised in *Order*, FCC 14M-9. No new or novel questions of law or policy are raised by the routine exercise of the Presiding Judge’s most basic and clearly established judicial powers.

The Presiding Judge cannot accept Mr. Havens’ flawed view that Maritime has been allowed to file an additional motion for summary decision. Requesting additional facts and legal argument related to a motion does not reject that motion. The motion remains pending and is supplemented by the requested information so that the Presiding Judge may make an informed ruling supported by a complete record and a clear statement of the legal arguments advanced by the parties. By responding to a presiding officer’s request for additional information, a party

² See 47 C.F.R. § 1.243(g) (Presiding Judge may require memoranda on any question on which the Presiding Judge is required to rule); see also, 47 C.F.R. § 1.251(d) (Presiding Judge may order continuances to provide time to seek evidence).

³ Errata Request Under § 1.301(b) at 1.

⁴ 47 C.F.R. § 1.301(b) (emphasis added).

⁵ See *supra* note 2; see also 47 C.F.R. § 1.243(j) (Presiding Judge may take action and make decisions in conformity with the Administrative Procedure Act).

does not file a new motion. Prior deadlines set by the Presiding Judge for purposes other than providing the requested information are irrelevant to the validity of *Order*, FCC 14M-9.

Claims of Prejudice

Mr. Havens then shifts to a different tact. He insists that:

[*Order*, FCC 14M-9,] provides major relief to [Maritime and the Bureau] and major prejudice to [Havens] It constructively assists a party in this contested cause, by suggesting a legal standard the Judge may apply involving plans of Maritime to operate the subject AMTS spectrum at the alleged stations, without providing any good cause therefore. It effectively denies [Havens'] December 16, 2013 opposition of the motion, without providing any reason therefor. [sic]⁶

These claims are all baseless. A mere request for additional information from a party does not constructively assist one party to the disadvantage of another, let alone provide any party with relief. Mr. Havens faces no prejudice, as *Order*, FCC 14M-9, grants him an opportunity to respond to the facts or legal argument sought from Maritime and the Bureau. Mr. Havens' belief that a simple request for additional information should be read as a complete denial of his lengthy opposition to the pending summary decision motion is patently ridiculous. No reasoning was provided for the denial of his opposition *because it has not been denied*. His opposition, like the pending motion for summary decision, has not yet been ruled upon.

Having considered all of these arguments, Mr. Havens still has failed to show how any of his positions raise a "new or novel question of law or policy" under Section 1.301(b) that would justify an interlocutory appeal to the Commission.

Denial of Counsel Claims

Next, Mr. Havens argues that *Order*, FCC 14M-9:

interferes with [Havens'] pending interlocutory appeals of past orders of Judge Sippel before the Commission including on the issue of effective removal of [Havens'] assisting counsel, on the basis of which [Havens] believe[s] rule section 1.301(a)(5) applies as to adjournment.⁷

Mr. Havens has not explained how a request for additional information interferes with his pending appeals, which primarily focus on arguments related to attorney-client privilege and the alleged termination of his right to participate in this proceeding. Thus, he has again failed to demonstrate that *Order*, FCC 14M-9, raises new or novel questions of law or policy.

Section 1.301(a)(5) of the Commission's rules provides that in the event of a ruling removing counsel from a hearing, the presiding officer will adjourn the hearing for such period as is reasonably necessary for the client to secure new counsel and for counsel to familiarize

⁶ Errata Request Under § 1.301(b) at 2.

⁷ *Id.*

herself with the case.⁸ The Presiding Judge has not removed Mr. Havens' counsel, nor has he "prevent[ed] counsel from assisting Mr. Havens, nor from vigorously participating."⁹ Mr. Havens has not made any showing that the Presiding Judge has by any order or ruling, oral or written, removed or "effectively removed" any attorney who has been representing him in this matter. No counsel has identified any removal, alleged or actual, that was ordered by the Judge. The Presiding Judge will not adjourn this proceeding based upon a ruling that does not exist.

Conclusion

In *Order*, FCC 14M-7, it was concluded that a prior Request to Appeal filed by Mr. Havens was "frivolous on the merits, and transparent as an effort to delay this proceeding by miring it in meretricious, meritless appeals and requests to appeal."¹⁰ Again, Mr. Havens wastes the Presiding Judge's time and that of his staff by "challeng[ing] routine exercises of the Presiding Judge's authority in making rudimentary interlocutory rulings, no matter how axiomatic or generic the supporting authority relied upon in the rulings."¹¹ Mr. Havens' reading of *Order*, FCC 14M-9, is transparently calculated to gin up yet another justification upon which he can hang an interlocutory appeal which cannot succeed, and thereby further slow this proceeding. His bizarre characterization of the *Order* as rife with hidden rulings and secret findings is fictitious and unsupportable by any facts, circumstantial evidence, or rational analysis. His filing is frivolous and therefore must be denied.

Rulings

IT IS ORDERED for reasons stated above that the Errata Request Under §1.301(b) filed by Warren Havens on March 18, 2014, fails to raise any "new or novel question of law or policy" under 47 C.F.R. §1.301(b) and **IS HEREBY DENIED**.

IT IS FURTHER ORDERED that since no counsel has been removed from the case by the Presiding Judge, the Errata Request Under §1.301(b) filed by Warren Havens on March 18, 2014, fails to show there was any removal of an attorney representing Mr. Havens under 47 C.F.R. § 1.301(a)(5), and **IS HEREBY DENIED**.

FEDERAL COMMUNICATIONS COMMISSION¹²



Richard L. Sippel
Chief Administrative Law Judge

⁸ 47 C.F.R. 1.301(a)(5).

⁹ *Order*, FCC 14M-7 at 5.

¹⁰ *Id.* at 8.

¹¹ *Id.*

¹² Courtesy copies of this *Order* are e-mailed on issuance to each counsel and Mr. Havens.