

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 15M-14
10305

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-1H-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos. 0004030479,
Applicant for Modification of Various	)	0004193028, 0004193328,
Authorizations in the Wireless Radio Services	)	0004354053, 0004309872,
	)	0004314903, 0004315013,
Applicant with ENCANA OIL AND GAS (USA),	)	0004430505, 0004417199,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004419431, 0004422320,
MIDSTREAM, LP; PUGET SOUND	)	0004422329, 0004507921,
ENERGY, INC.; ENBRIDGE ENERGY	)	and 0004604962
COMPANY, INC.; INTERSTATE POWER)	
AND LIGHT COMPANY; WISCONSIN)	
POWER AND LIGHT COMPANY;)	
AND DIXIE ELECTRIC MEMBERSHIP)	
CORPORATION, INC.)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

MEMORANDUM OPINION AND ORDER

Issued: April 22, 2015

Released: April 22, 2015

Preliminary Statement

1. This *Memorandum Opinion and Order* addresses multiple misconducts of Warren Havens (“Mr. Havens”) as well as that of companies that Mr. Havens owns, manages, and/or controls (“the Havens companies”).¹ All companies were designated parties to this proceeding.

2. The rulings herein strike the Motion for Summary Decision on Issue G (“Motion for Summary Decision”), filed on October 27, 2014 by Havens’ companies Environmental LLC

¹ The Havens companies are: Environmental LLC; Verde Systems LLC; Intelligent Transportation and Monitoring Wireless LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; and V2G LLC.

("Environmental") and Verde Systems LLC ("Verde"), and joined by Mr. Havens. The Motion for Summary Decision is found to be filed in bad faith and to be a violation of *Order*, FCC 14M-22, released July 15, 2014, which barred further motions for summary decision. The Presiding Judge concludes that he must certify such deliberate transgressions, together with an account of Mr. Havens' history of disruptive disregard of orders and otherwise contemptuous behavior, to the Commission for determination as to whether a separate proceeding should be designated to decide whether Mr. Havens and his companies qualify to hold Commission licenses.

3. The rulings herein also bar Mr. Havens and the Havens companies from future participation in this proceeding as a consequence of their contemptuous and disruptive conduct.

Unauthorized Motion for Summary Decision

4. On July 15, 2014, in *Order*, FCC 14M-22, the Presiding Judge held that he would not consider further motions for summary decision.² He had already heard three unsuccessful motions that had left significant questions of fact to be heard, and he determined that it would not be efficient to consider a fourth.³ Thereafter, on October 27, 2014, Environmental and Verde, joined by Mr. Havens, defiantly filed a Motion for Summary Decision. The motion blatantly ignored the Presiding Judge by failing to even acknowledge his earlier prohibitive directive.

5. At a subsequent prehearing conference held on November 4, 2014, the Presiding Judge deferred requests of the other parties to dismiss the unauthorized motion. Rather, the Presiding Judge entertained argument by Environmental, Verde, and Mr. Havens that a hearing was unnecessary because the site-based authorizations that remain at issue in this proceeding will be canceled regardless of the Presiding Judge's decision on Issue G.⁴ To facilitate matters, the Presiding Judge asked the parties whether they would be willing to engage in universal motion practice instead of going to hearing on Issue G.

6. After consultation among counsel, the Enforcement Bureau ("Bureau") and Maritime Communications/Land Mobile, Inc. ("Maritime") agreed to have the Presiding Judge entertain the Havens motion, as well as oppositions and countermotions to be filed within three weeks of the release of an order suspending the hearing scheduled for December 9, 2014.⁵ Environmental and Verde, on the other hand, took the position that the December 9 hearing should not be rescheduled while their motion was under consideration because, from their perspective, it would not be unduly burdensome for Maritime and the Bureau to prepare a response while preparing for hearing.⁶ Environmental and Verde also argued that the Bureau and Maritime should not be permitted to file countermotions because the Commission's Rules and policy allow only one motion for summary decision.⁷ Mr. Havens echoed the "one motion"

² *Order*, FCC 14M-22 at 3 (rel. July 15, 2014).

³ *Id.*

⁴ See Motion for Summary Decision at 16-17; see also ENL-VSL Proposed Discovery Schedule at 5 (filed Oct. 9, 2014) ("Under this decision tree there is only one branch . . . where a hearing on issue (g) is anything other than a waste of time and money. And the . . . branch is perilously thin to the point of being non-existent.").

⁵ See Joint Status Report Concerning Summary Decision Motions Practice on Issue (G) at 3 (filed Nov. 7, 2014).

⁶ ENL-VSL Response Regarding Suspension of the Hearing Schedule at 2 (filed Nov. 7, 2014).

⁷ *Id.* at 2.

argument in his own filing.⁸

7. The positions taken by Environmental and Verde are inconsistent and self-serving. These companies had “joined” Mr. Havens in supporting the initial designation of Issue G,⁹ yet have inconsistently taken the position that any hearing on the issue would be a “sham,” a “charade,” and “an abuse of process,”¹⁰ which is itself inconsistent with their view that the hearing on Issue G should not be postponed to determine if it is necessary. They have argued that there is no undue burden in requiring opposing parties to respond to the Motion for Summary Decision while they prepare for hearing, yet have insisted that it would be too burdensome for them to oppose a countermotion or cross motion,¹¹ which they claim would be identical to one they had already opposed. Environmental and Verde also argue that it would be wasteful to consider a new request for summary decision authored by Maritime and the Bureau. This argument is hypocritical as the Motion for Summary Decision was itself barred as wasteful by *Order*, FCC 14M-22. Nonetheless, with gratuitous impudence, Environmental, Verde, and Havens pled as though that *Order* did not exist, a disregard that maligns the authority of the Presiding Judge even to manage this case.

8. Environmental, Verde, and Mr. Havens have flaunted and disregarded other rulings on summary decision procedures. Earlier, in his Opposition to Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G, filed December 16, 2013, Mr. Havens argued that parties may only submit one summary decision motion.¹² The Presiding Judge held on June 17, 2014, that the filing of multiple motions for summary decision is not prohibited by the Commission’s Rules but the authorization is left to the discretion of a presiding officer.¹³ Environmental, Verde, and Mr. Havens now attempt to reargue the issue.¹⁴ They fail to distinguish, or even cite, the Presiding Judge’s prior *Order* rejecting their argument. They both ignore a prior ruling and care not that they are yet again rearguing a settled matter. Once more, these parties conduct themselves not as officers of the court, but as renegades that impinge on case management by disregarding clearly understandable rulings.

9. Yet putting aside such unacceptable conduct, the Presiding Judge is most concerned with false or misleading statements Environmental and Verde have made to support their positions. Environmental and Verde stated that the Bureau informed them that it would submit a motion for summary decision identical to the motion that was jointly filed with Maritime on December 2, 2013.¹⁵ The Bureau denied this statement as incorrect. The Bureau had merely represented that it would file a countermotion and argue for the same legal

⁸ Response to Oral Orders at 2-4 (filed Nov. 7, 2014).

⁹ *Maritime Communication/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520, 6525 n.21 (2011) (“HDO”).

¹⁰ ENL-VSL Proposed Discovery Schedule at 6-7.

¹¹ ENL-VSL Response Regarding Suspension of the Hearing Schedule at 3.

¹² Opposition to Joint Motion of Enforcement Bureau & Maritime for Summary Decision on Issue G at 39 (filed December 16, 2013).

¹³ *Memorandum Opinion and Order*, FCC 14M-18 at 11 ¶ 28 (rel. June 17, 2014).

¹⁴ ENL-VSL Response Regarding Suspension of the Hearing Schedule at 2; Response to Oral Orders at 2-4.

¹⁵ ENL-VSL Response Regarding Suspension of the Hearing Schedule at 2-3.

conclusions that were sought in the December 2013 motion.¹⁶ At no time did the Bureau represent that it did or would rely on identical facts or file an identical motion.¹⁷ Indeed, the Bureau has never acted in such a cavalier fashion in this proceeding. Yet in their reply, Environmental and Verde did not attempt to correct their misstatement of the Bureau's position or assert that the Bureau is mistaken. Instead, they argued that referring to the Bureau's position as "identical" is a "fair description" because the Bureau sought to argue for the same legal conclusions, without regard to whether the fact pattern was different.¹⁸

10. After considering such a misleading misrepresentation, it is determined that it does not come close to being a fair description. It is elementary that two motions filed at different times can seek the same relief and not be identical. This is particularly true where, as in this proceeding, additional discovery has occurred that found new facts since the first motion was filed. And so, Environmental and Verde grossly mischaracterized the Bureau's proposed countermotion. Further, the offending statement by Environmental and Verde was not made to characterize a pleading, but made to misinform the Presiding Judge of the Bureau's admitted and documented position. Reporting to the Presiding Judge that the Bureau would file an identical summary decision motion when the Bureau made no such assertion was not a "fair description," but a falsehood that amounted to a statement that was intended to mislead the finder of fact.

11. Finally, in their Response Regarding Suspension of the Hearing Schedule, Environmental and Verde assert that they went to considerable expense to oppose the summary decision motion jointly filed by Maritime and the Bureau on December 2, 2013.¹⁹ This statement is also false or misleading. Environmental and Verde did not submit oppositions to that motion. They could not have done so, as they could not participate in this proceeding at that time because as corporations they lacked counsel.²⁰

Pleadings that Violate Commission Rules

12. Mr. Havens, Environmental, and Verde, are found to have violated Section 1.52 of the Commission's Rules. That rule states that by signing a pleading, counsel represents "that he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay."²¹ A party who is not represented by an attorney is also required to sign and verify their pleadings.²² Mr. Havens, Environmental, and Verde could not have reasonably believed that there was good ground to support its filing because their Motion for Summary Decision was disallowed by *Order*, FCC 14M-22. Thus, regardless of its merits, it would not be considered. Similarly, those parties could not have reasonably believed that there was any ground to support their argument that parties may only file one summary decision motion. As stated above, that argument had already been rejected in *Memorandum Opinion and Order*, FCC 14M-18. In addition, the false or misleading statements made by

¹⁶ Enforcement Bureau's Motion to Strike ENL-VSL's and Mr. Havens' Summary Decision Status Reports at 2 ¶ 2 (filed Nov. 10, 2014).

¹⁷ *Id.*

¹⁸ ENL-VSL Opposition to Motion to Strike Status Reports at 2.

¹⁹ ENL-VSL Response Regarding Suspension of the Hearing Schedule at 3.

²⁰ *See Order*, FCC 13M-8 at 2 (rel. May 1, 2013).

²¹ 47 C.F.R. § 1.52.

²² *Id.*

Environmental and Verde in that filing were willfully made in violation of Section 1.52.

13. Section 1.251(f)(1) of the Commission's Rules authorizes the Presiding Judge to enter a determination upon the record that a motion for summary decision has been presented in bad faith or solely for the purpose of delay, or that such a motion is patently frivolous.²³ The Motion for Summary Decision under consideration here was submitted in bad faith and is patently frivolous. As found above, there is no credible ground to support a filing that was prohibited by an earlier *Order*. The arguments made in the motion and its related filings transparently show that Environmental, Verde, and Mr. Havens did not engage with other parties in good faith deliberations to avoid what many, including Environmental, Verde, and Mr. Havens, had expressed to be an unnecessary hearing. The Havens-related parties were unwilling to consider a universal resolution of Issue G by combined motion practice. Rather, Environmental, Verde, and Mr. Havens embarked on a fruitless strategy of ignoring an *Order* barring further summary decision motions so that only they may have their motion considered.²⁴ *Order*, FCC 14M-22 stands as written. The pending Motion for Summary Decision filed by Environmental and Verde, joined in by Havens, is deemed to be frivolous and to have been submitted in bad faith. It will not be considered on its merits and shall be struck as frivolous.²⁵

A Pattern of Harassing E-mails

14. Mr. Havens has carried out a pattern of harassment of the Presiding Judge and his advisory staff. On November 3, 2014, by e-mail, Mr. Havens asked the Presiding Judge's staff if he could attend by speakerphone the Evidence Admission Session to be held the following day. After consulting the Presiding Judge, his advisory staff denied the request. It was then explained to Mr. Havens that the complexities of this admission session required his presence. More importantly, the Presiding Judge had previously ruled that Mr. Havens must personally attend all prehearing conferences and related proceedings.²⁶ In his reply later that afternoon, Mr. Havens disregarded the ruling and again demanded authorization to attend the session by speakerphone, or a written explanation as to why his request was being denied. At the direction of the Presiding Judge, advisory staff did not respond further to Mr. Havens' communiques.

15. On November 5, 2014, the day following the admission session, Mr. Havens, *ex parte*, sent an e-mail to the Office of Administrative Law Judges' ("OALJ's") advisory attorney, without copying the Presiding Judge. Mr. Havens requested that the Presiding Judge issue instructions as to what filings were due from the parties that attended the admission session the prior day. At the Presiding Judge's direct, staff sent an e-mail to the case distribution list urging Mr. Havens to seek the information from counsel for Environmental and Verde, who had participated in the admission session and who was working closely with Mr. Havens. Mr. Havens responded that evening, disregarding the Presiding Judge's directives. Mr. Havens "shouted" in bold, italicized letters that he "asked again" for his requests to be fulfilled. On November 6,

²³ 47 C.F.R. § 1.251(f)(1).

²⁴ In addition, the record suggests that the Motion for Summary Decision was part of a strategy of burdening opponent parties prior to hearing. See discussion *infra* ¶¶ 18(f)-(h).

²⁵ See 47 C.F.R. § 1.52 ("If the original of a document is not signed or is signed with intent to defeat the purpose of this section . . . it may be stricken as sham and false, and the matter may proceed as though the document had not been filed.").

²⁶ *Order*, FCC 12M-52 at 4 (rel. Nov. 15, 2012).

OALJ replied via staff e-mail. Mr. Havens was again advised that a written summary of the admission session was not needed because counsel for Havens' companies had been present could report what had transpired to Mr. Havens. Mr. Havens' further demands and arguments were not acknowledged. Mr. Havens also was barred from communicating with OALJ on this matter, as his repetitive missives were disrupting review of more than 440 unreviewed exhibits that Environmental, Verde, and Mr. Havens had submitted. Mr. Havens persisted in ignoring the Presiding Judge's e-mail embargo e-mailing further demands for written explanations of rulings. Mr. Havens insisted on being advised on whether he had been ordered to stop communicating on these time-worn topics. He redundantly argued against the prior ruling, using vituperative rhetoric to diminish the Presiding Judge's authority.²⁷ He boldly threatened OALJ with a lawsuit under the Federal Tort Claims Act. Again, on November 7, Mr. Havens vented on the record, personally making a barely veiled threat to lodge a *Bivens* action against the Presiding Judge and his staff.²⁸ After exhausting such ineffective, theatrical intimidations, Mr. Havens used an interlocutory appeal under Section 1.301(a) to redirect his callous conduct up the "chain of command."

16. Then, in a manufactured *cause célèbre*, on December 11, Mr. Haven e-mailed Bureau counsel regarding the announcement by counsel for Environmental and Verde at hearing that he had learned that there was a bench warrant issued for Steve Calabrese, a witness who was to appear and testify for Environmental, Verde, and Mr. Havens. In a barely intelligible screed, Mr. Havens accused Bureau counsel of "spending large amounts of taxpayer funds to defend violation of FCC law [sic], and depriv[ing] [Mr. Havens and his] companies' rights under the Constitution and subsidiary law to defend the law, and our lawful FCC licenses and business [sic]."²⁹ Mr. Havens threatened to "pursue economic and other remedies," demanded documents from the Bureau in bold red letters, and implied that counsel for the Bureau had filed with criminal intent a false police report. Mr. Havens added his unsupported conclusion that the Bureau was conspiring to obstruct justice.

17. Mr. Havens was designated a party in the HDO. As a party, whether participating through counsel or *pro se*, Mr. Havens is obligated to obey a presiding judge's orders and adhere to courtroom decorum. Yet his conduct has been consistently contumacious and disrespectful. Mr. Havens cavalierly refuses to even acknowledge rulings. He does not properly utilize available appeal procedures. Instead, *con fuerza*, he attempts to verbally intimidate. He demands changes to rulings to suit his own needs using bold script; he meritlessly accuses the Presiding Judge of improper conduct; he threatens the Presiding Judge and his staff with legal action; and he accuses Enforcement Bureau counsel of criminal conduct. In these ways, Mr. Havens' shows crude contempt for the Presiding Judge, Bureau counsel, the Commission, and the Commission's Rules and processes. In any venue, real or imagined, such conduct would not be tolerated.

²⁷ E.g.: "Perhaps as government authorities [sic] you do not understand the private sector and its laws, but in any case, government cannot abuse these. . . . These matters are all clear in the record of this proceeding and in FCC licensing records. [*The Presiding Judge stating otherwise is false, improper, wastes public resources, is prejudicial, and interferes with my rights and the rights of the LLCs I manage, including economic interests.*"] (emphasis added).

²⁸ Response to Oral Orders at 2.

²⁹ E-mail from Mr. Havens to Michael Engel and Pamela Kane (dated Dec. 11, 2014).

Disruptive, Prejudicial Conduct by Havens and His Companies

18. The instances of unacceptable conduct described above are not isolated. These are only the most recent in a pattern of disruptive and contemptuous conduct by Mr. Havens and the Havens companies that have been thus far tolerated to keep the proceeding somewhat on track. Other incidents of note that can readily be recalled include:

- (a) During the hearing on Issue G, Mr. Havens sought access to exhibits that were designated confidential under this proceeding's Protective Order. He argued that they were already made public in a bankruptcy proceeding, that Maritime made no attempt to meet its burdens under the Protective Order, and that he was entitled to confidential information as a *pro se* party.³⁰ The Presiding Judge ruled that Mr. Havens had slept on his rights and that the relief sought would not be granted at such a late stage.³¹ Environmental and Verde then requested a status conference on the subject of whether the exhibits sought by Mr. Havens, as well as others, should be publicly released.³² The Presiding Judge rejected the request as frivolous and in violation of Section 1.52 of the Commission's Rules, holding that there could be no grounds for granting the relief in light of earlier rulings.³³
- (b) Mr. Havens filed a motion seeking to strike the direct cases of Maritime and the Bureau, citing his own version of the "law of the case" doctrine.³⁴ The Presiding Judge rejected this motion as "a thinly veiled, and equally thinly reasoned, argument for summary decision in [Mr. Havens'] favor,"³⁵ that "brazenly disregards" an earlier

³⁰ Memo on Documents Alleged Confidential Under the Protective Order But Lawfully in the Public Domain (filed Dec. 10, 2014).

³¹ *Order*, FCC 14M-44 at 4 (rel. Dec. 19, 2014).

³² ENL-VSL Request for a Status Conference to Make Records Public (filed Jan. 14, 2015).

³³ *Order*, FCC 15M-7 (rel. Feb. 25, 2015) ("[Environmental and Verde] not only cite Mr. Havens' previously rejected motion at length in support of their Request; they also explicitly incorporate that same rejected motion by reference. They make no attempt to distinguish their Request from the rejected Havens motion and fail even to acknowledge the existence of *Order*, FCC 14M-44." (citations omitted)). On March 4, 2015, counsel for Environmental and Verde filed ENL-VSL Explanation in Response to FCC 15M-7, insisting that the earlier request was made in good faith. In that filing, counsel argues that it was reasonable to read *Order*, FCC 14M-44, as only denying relief to Mr. Havens *pro se* to avoid disruption of the hearing, but not foreclosing Environmental and Verde from filing challenges to designations of confidentiality after the declaration to the Protective Order was signed by their counsel and the hearing was completed. ENL-VSL Explanation in Response to FCC 15M-7 at 2. Further, he argues that the request by Environmental and Verde was based on Section 0.459 of the Commission's Rules while Mr. Havens' request was based on the Freedom of Information Act. *Id.* These arguments are sophomoric post-hoc justifications for a frivolous motion. The Presiding Judge was unambiguous in *Order*, FCC 14M-44, holding that it was too late to challenge the confidentiality of direct exhibits, particularly since the confidentiality designations as to those documents have stood unchallenged for over a year. *Order*, FCC 14M-44 at 4. If Environmental and Verde were sincere in their belief that the *Order* left the door open for further challenges to the confidentiality of direct exhibits under the Protective Order, they would have distinguished their request from that of Mr. Havens. Instead, they only became concerned with the Presiding Judge's *Order* after the fact when counsel was warned that disciplinary action may be considered. As Environmental and Verde have a demonstrated history of disregarding prior rulings, it would be the height of foolishness to grant them any benefit of the doubt in this instance.

³⁴ Response to Motion to Strike and Motion to Strike and Preclude Based on the "Law of the Case" Doctrine (filed Dec. 3, 2014).

³⁵ *Order*, FCC 14M-40 at 2 (rel. Dec. 4, 2014).

ruling that no further summary decision motions will be entertained.³⁶

- (c) Maritime reported that licenses previously stipulated to be canceled could not be removed from the Commission's Universal Licensing System due to a technical issue, but assured the parties that the licenses were canceled by the Presiding Judge's order.³⁷ The Presiding Judge said that he was satisfied with Maritime's report on the current status of the licenses.³⁸ Nonetheless, Environmental, Verde, and Mr. Havens requested by e-mail that Maritime be required to file a status report reflecting compliance with the Joint Stipulation filed on September, 11, 2014. The Presiding Judge rejected the motionless request as procedurally improper. He also rejected it as meritless since the matter had been resolved to his satisfaction.³⁹ He prohibited any further filings on the subject.⁴⁰
- (d) In *Order*, FCC 14M-24, the Presiding Judge ordered the parties to propose dates certain in 2014 for hearing preparation deadlines and a hearing date on Issue G.⁴¹ Instead, Environmental, Verde, and Mr. Havens disregarded the *Order* without explanation and arbitrarily proposed a hearing calendar with variable dates that set the hearing well into 2015.⁴² Counsel for Environmental and Verde, who had made a recent appearance, was cautioned against making filings that violated Section 1.52 of the Commission's Rules.⁴³
- (e) Environmental, Verde, and Mr. Havens requested that the Presiding Judge cancel the hearing on Issue G scheduled for December 9, 2014,⁴⁴ after that proposal had been rejected at a conference held one week earlier.⁴⁵
- (f) Environmental, Verde, and Mr. Havens unreasonably burdened OALJ, the Presiding Judge, the Enforcement Bureau, the other parties, and counsel by "dumping" more than 444 unscreened exhibits constituting over 17,000 pages as their direct case. Review of these pages revealed that the direct case could not have been prepared in good faith. Most exhibits lacked relevance, were repetitive, or were otherwise

³⁶ *Id.* See also *Order*, FCC 14M-40 at 3 ("It is evident that Mr. Havens, Environmental, and Verde are engaged in a concerted pattern of wasting the time of the Presiding Judge, other counsel, and other parties with their frivolous motions. Furthermore, it is incomprehensible that Mr. Havens could argue that opposing parties' arguments are repetitive and waste time when he and complicit counsel have repeatedly brushed aside the Presiding Judge's rulings, while contemptuously rearguing settled issues and matters any time it has suited them.").

³⁷ Tr. 1190.

³⁸ Tr. 1191.

³⁹ *Order*, FCC 14M-39 (rel. Dec. 3, 2014).

⁴⁰ *Order*, FCC 14M-42 (rel. Dec. 8, 2014).

⁴¹ *Order*, FCC 14M-24 at 3 (rel. July 29, 2014).

⁴² *Order*, FCC 14M-25 at 2-3 (rel. Aug. 11, 2014) ("[T]he proposal is a mess of convoluted and confusing deadlines, unnecessary motions, and proposed delays with no timely filed justification. It actually defies the Presiding Judge's aim to establish firm dates that will allow this proceeding to finally move forward.").

⁴³ *Id.* at 4 ("In this one instance, the Presiding Judge will attribute the proposal that Mr.[James] Stenger submitted on behalf of [Environmental and Verde] to his recent entry into the case and lack of familiarity with the history of this proceeding rather than an intentional effort to delay the hearing on Issue G.").

⁴⁴ ENL-VSL Proposed Discovery Schedule at 2.

⁴⁵ Tr. 1111, 1122.

useless.⁴⁶ Environmental and Verde casually conceded that many of their exhibits were not relevant,⁴⁷ but made no effort to weed out inapplicable or duplicative exhibits. Nor was there any effort made to show the relevance of each document after being ordered to do so.⁴⁸ As Maritime and the Bureau objected to irrelevant exhibits, Environmental, Verde, and Mr. Havens stupefied the proceeding by making no effort to respond to specific objections or confess any error.

- (g) In a similar show of disdain, Environmental, Verde, and Mr. Havens requested the Presiding Judge to order the appearance of more than thirty witnesses, *sine* proffering the required written testimony and after the deadline for presenting their written direct case had passed.⁴⁹ These witnesses exceeded by tenfold the number of witnesses that Environmental, Verde, and Mr. Havens had disclosed prior to deadline.
- (h) The *seriatim* filing of frivolous motions by Environmental, Verde, and Mr. Havens prompted the Presiding Judge to take the unusual measure of excusing non-Havens counsel from responding, while barring further motion practice *sine die*.⁵⁰ Such contemptuous conduct, when taken with the conduct described in subparagraphs (f) and (g), raises inescapable questions of whether Environmental, Verde, and Havens abused the Commission's Rules and process with premeditation by strategically burdening opposing parties at such times as to maliciously interfere with preparation for hearing. The Presiding Judge concludes that additional inquiry into these practices would be warranted.
- (i) Environmental, Verde, and Mr. Havens undermined efforts to assemble a joint stipulation that would have made significant concessions to Mr. Havens and his companies and that would have saved considerable time. They refused to agree on rudimentary background facts without proffering credible reasons or alternatives.⁵¹
- (j) Environmental, Verde, and Mr. Havens made repeated requests for additional time to complete their discovery,⁵² yet failed to engage in any meaningful discovery at times when discovery was reopened.
- (k) There have been multiple occasions when Mr. Havens has taken conflicting positions in successive pleadings.⁵³

⁴⁶ See *Order*, FCC 14M-34 at 4-5 (rel. Nov 14, 2014).

⁴⁷ ENL-VSL and Havens Direct Case Exchange at 3 (filed Sept. 16, 2014).

⁴⁸ *Order*, FCC 14M-30 at 2 (rel. Oct. 1, 2014). The Bureau described the resulting table of exhibits as demonstrating "little or no effort to comply with the Presiding Judge's directive," with errors that made it "effectively useless." Enforcement Bureau's Written Objections to EVH's Direct Case Exhibits at 3-4 (filed Oct. 29, 2014). After his independent review, the Presiding Judge agrees with this assessment.

⁴⁹ ENL-VSL Witness Notification at 2-6 (filed Sept. 30, 2014).

⁵⁰ *Order*, FCC 14M-38 (rel. Dec 3, 2014).

⁵¹ *Order*, FCC 14M-31 at 3-4 (rel. Oct. 9, 2014).

⁵² *Order*, FCC 14M-27 at 4 (rel. Aug. 21, 2014) ("The circumstances . . . are the predictable result of inadvertent or intentional inaction."); *Memorandum Opinion and Order*, FCC 13M-22 at 4-6 ¶¶ 8-14 (rel. Dec. 19, 2013); *Memorandum Opinion and Order*, FCC 13M-10 (rel. May 7, 2013).

⁵³ See, e.g., *Order*, FCC 14M-23 at 6 (rel. July 15, 2014).

- (l) Mr. Havens has filed more than half a dozen meritless interlocutory appeals under Section 1.301(a) of the Commission's Rules. All of Mr. Havens' interlocutory appeals that have been ruled upon by the Commission have been dismissed.⁵⁴
- (m) Mr. Havens has filed multiple frivolous interlocutory appeal requests with the Presiding Judge under Section 1.301(b) of the Commission's Rules.⁵⁵ Mr. Havens has repeatedly attempted to challenge the Presiding Judge's basic judicial powers, such as the Presiding Judge's authority to ask parties for additional information related to a motion,⁵⁶ his authority to require Mr. Havens to identify his counsel,⁵⁷ and his authority to set deadlines.⁵⁸ Once, Mr. Havens disrespectfully filed an interlocutory appeal that contained no argument at all.⁵⁹
- (n) Mr. Havens represented for several months that he was participating *pro se* while simultaneously receiving advice and assistance from undisclosed attorneys. This dishonest tomfoolery caused the Presiding Judge to unwittingly find that Mr. Havens lacked counsel.⁶⁰ Yet, all the while, Mr. Havens and his conspiring counsel failed to alert the Presiding Judge that the finding was erroneous and therefore flawed. Instead, Mr. Havens reaped the benefits of an erroneous ruling that he both instigated and knew was factually baseless. Yet he continued to make misleading statements about his *pro se* status.⁶¹ Mr. Havens only revealed the extent of the legal assistance he was receiving when ordered to do so by the Presiding Judge.⁶² These events raise significant questions as to whether Mr. Havens lacked candor, purposefully misrepresented his legal representation, and/or abused the historic practice of *pro se* representation, and the Commission's *pro se* practice policies. The Presiding Judge concludes that these facts and circumstances are sufficiently shown in the current record and believes that these matters should be reviewed by the Commission to determine if enforcement action is warranted.

⁵⁴ See *Maritime Communications/Land Mobile, LLC*, Memorandum Opinion and Order, FCC 14-149 at 6 ¶ 15 (rel. Oct. 14, 2014). Mr. Havens has filed for reconsideration of those dismissals. Petition for Reconsideration and in the Alternative Request under § 1.41 (filed Nov. 13, 2014).

⁵⁵ See *Order*, FCC 14M-11 at 4 (rel. April 2, 2014) ("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 filing is frivolous and therefore must be denied."); *Order*, FCC 14M-7 at 8 (rel. Feb. 26, 2014) ("Mr. Havens' Requests to Appeal are frivolous on the merits, and transparent as an effort to delay this proceeding by miring it in meretricious, meritless appeals and requests to appeal. . . . [P]ossibly in an effort to delay a judgment day, Mr. Havens systematically challenges 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.").

⁵⁶ *Order*, FCC 14M-11 at 2.

⁵⁷ *Order*, FCC 14M-7 at 3-4, 7-8.

⁵⁸ *Order*, FCC 14M-7 at 5-7.

⁵⁹ *Order*, FCC 14M-6 at 1 (rel. Jan. 30, 2014).

⁶⁰ *Memorandum Opinion and Order*, FCC 14M-18 at 12 ¶ 31 (rel. June 17, 2014).

⁶¹ *Id.*

⁶² *Memorandum Opinion and Order*, FCC 13M-22 at 3 ¶ 6.

- (o) Mr. Havens claimed a pride of authorship of a more than 100-page-long opposition to a summary decision motion. A read of the filing convincingly suggests that it was drafted by an experienced lawyer. The Havens opposition argued that Mr. Havens was entitled to special treatment as a *pro se* litigant. The Presiding Judge believes that the convincing probability was that Mr. Havens' pleading was "ghostwritten" by counsel, which raises substantial questions as to whether Mr. Havens misrepresented its authorship and his *pro se* status in order to deceive the Presiding Judge and the Commission into believing that he was entitled to an unwarranted *pro se* benefit.⁶³ When Mr. Havens' attorneys were asked to provide more information on authorship of the opposition, the attorneys in question "lawyered-up" and baselessly claimed an unfounded attorney-client privilege on all matters.⁶⁴ This matter also should be reviewed by the Commission to determine whether further investigation or enforcement action is warranted.
- (p) Mr. Havens refused to participate in a conference on the record that was held to answer questions about his participation in this proceeding. He stated on speakerphone from California that he would not participate because he did not have counsel, even though counsel that he had retained was present at the conference.⁶⁵ Meanwhile, he continued to take the position that he was participating *pro se*.⁶⁶ The business of the conference was derailed. It quickly morphed into an unfunny version of the classic "Who's on First?" routine.
- (q) Mr. Havens abused the Presiding Judge's tendency to be lenient when parties narrowly miss filing deadlines. Mr. Havens failed to meet a deadline, then used the unauthorized additional time to respond to pleadings that were timely filed at the deadline.⁶⁷
- (r) Mr. Havens repeatedly violated rulings that he was not authorized to represent any companies that he owns, controls, or manages, including Environmental and Verde.⁶⁸
- (s) Mr. Havens and the Havens companies, including Environmental and Verde, caused confusion and delay by repeatedly raising questions as to the nature of their legal representation.⁶⁹ Such confusion necessitated issuing guidelines simply to manage their participation as parties in this case.

⁶³ Relatedly, Mr. Havens plagiarized a significant portion of a later filing from an article published in the Florida State University Law Review. *Order*, FCC 14M-40 at 3.

⁶⁴ *See Order*, FCC 14M-3 (rel. Jan. 17, 2014).

⁶⁵ Tr. 1017-1021.

⁶⁶ Tr. 991, 1020.

⁶⁷ *Id.* at 3 ¶ 5.

⁶⁸ *Order*, FCC 13M-11 at 3 (rel. May 14, 2013) ("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.").

⁶⁹ *Id.* at 5 ("From the very beginning of this proceeding, the line between Mr. Havens and the SkyTel entities was murky because he is the president of each of the entities and he often chooses to speak for those entities. Confusion crept in when Mr. Havens decided that he would attempt to personally represent a portion of the SkyTel companies.

19. In sum, the above facts and circumstances illustrate behavior with which the Presiding Judge, non-offending counsel, and non-offending parties, have had to contend in this proceeding. Mr. Havens and the Havens companies have repeatedly disregarded and violated orders; intentionally ignored and misused deadlines; abused Commission hearing procedures; wasted time and resources of the Presiding Judge, the Enforcement Bureau, and opposing private parties with his frivolous and, at times, misleading pleadings and arguments; frequently taken inconsistent or incoherent positions; and has acted in ways to disrupt this proceeding. Such conduct has been insulting of the Commission and prejudicial to this proceeding.

Foiled Case Management

20. The Presiding Judge has taken steps throughout this proceeding to regulate the behavior and misbehaviors of Mr. Havens and the Havens companies in an effort to keep this proceeding moving on a reasonable schedule. For the benefit of Mr. Havens, the Presiding Judge crafted guidelines governing Mr. Havens' attempts at *pro se* participation in order to minimize confusion and delay caused by the murky relationships between Mr. Havens and the Havens companies.⁷⁰ The Presiding Judge even found it necessary to place requirements on Mr. Havens' filings to make them understandable and less disruptive.⁷¹ He has ruled on Mr. Havens' pleadings substantively even though there was often a procedural basis for striking his pleadings forthwith.⁷² And the Presiding Judge has deliberately overlooked some violations of his orders so as not to distract from the issues designated for hearing that eventually must be decided.⁷³

21. Yet despite these efforts, Mr. Havens and the Havens companies continue to disrupt. In a final attempt to balance Mr. Havens' disruptions while maintaining his status as a party to this proceeding, the Presiding Judge ruled that Mr. Havens must submit his Proposed Findings of Fact on Issue G through counsel.⁷⁴ However, upon further review, the Presiding Judge believes that such case regulation will be ineffective. As the case's history demonstrates, the Havens companies have disrupted this proceeding beyond repair, engaging in contemptuous conduct even when represented by counsel. Several attorneys have represented Mr. Havens or the Havens companies in the course of this proceeding, but not one has successfully restrained Mr. Havens' disruptive influence. Enough is enough. The only option remaining is to remove Mr. Havens and his companies from this proceeding.

Conclusions

22. Due to the disruptive and contemptuous conduct of Mr. Havens and the Havens companies, a single issue has taken more than a year to litigate. Now that the Issue G phase is concluding, the Presiding Judge must turn to the remaining issues regarding Maritime's

Additional perplexity was added when counsel for the other SkyTel entities attempted to raise claims on Mr. Havens' behalf. Mr. Havens even recently attempted to represent *all* of the SkyTel entities himself." (footnotes omitted)).

⁷⁰ See Order, FCC 12M-52.

⁷¹ See, e.g., Order, 14M-6 at 3-4.

⁷² See, e.g., Order, FCC 13M-9; Order, FCC 13M-10.

⁷³ Order, FCC 13M-11 at 3.

⁷⁴ Order, FCC 14M-44 at 2-3.

qualifications as a Commission licensee. If Mr. Havens and his companies were to continue to be part of this proceeding, one can only conclude that there will be more delays and disruptive conduct. As such conduct cannot be tolerated, the Presiding Judge, at this time—some might say “finally”—finds the removal of Mr. Havens and his companies from this proceeding to be necessary.

23. The Commission Rules provide that upon determining that a motion for summary decision was presented in bad faith or solely for the purpose of delay, if the Presiding Judge concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, he is authorized to certify the matter to the Commission with his findings and recommendations for a determination as to whether the facts warrant addition of an issue as to the character qualifications of that party.⁷⁵ The Presiding Judge finds that Mr. Havens and the Havens companies not only filed their Motion for Summary Decision in bad faith, but also engaged in patterns of egregious behavior that he believes warrant a separate proceeding in which several issues as to the character qualifications of Mr. Havens and the Havens companies to hold Commission licenses are examined. Accordingly, the Presiding Judge certifies this matter to the Commission.

24. Similarly, Section 1.243(f) of the Commission’s Rules authorizes the Presiding Judge to regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings.⁷⁶ As described above, Mr. Havens and the Havens companies have engaged in a pattern of contemptuous conduct that has repeatedly disrupted this proceeding. Accordingly, Mr. Havens and the Havens companies are excluded from any future participation in this proceeding.

Orders

25. **IT IS ORDERED** that conduct described above of Warren Havens; Environmental LLC; Intelligent Transportation and Monitoring Wireless LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; Verde Systems LLC; and V2G LLC **IS CERTIFIED** to the Commission for determination as to whether the facts warrant the designation for hearing of issues as to their qualifications to hold Commission licenses.

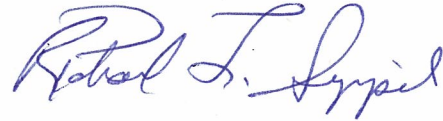
26. **IT IS FURTHER ORDERED** that, based on the conduct described above, Warren Havens; Environmental LLC; Intelligent Transportation and Monitoring Wireless LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; Verde Systems LLC; and V2G LLC **ARE DISQUALIFIED AND EXCLUDED** from further participation in this proceeding.

⁷⁵ 47 C.F.R. § 1.251(f)(3).

⁷⁶ 47 C.F.R. § 1.243(f). *See also Comuni-Centre Broadcasting v. FCC*, 856 F.2d 1551, 1556 (D.C. Cir. 1988) (affirming ALJ’s dismissal of a party for its pattern of dilatory conduct that interfered with the orderly conduct of the proceeding).

27. **IT IS FURTHER ORDERED FOR CAUSE**, as described above, that the Motion for Summary Decision on Issue G filed by Environmental and Verde and joined by Warren Havens, **IS STRUCK AND DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION⁷⁷

A handwritten signature in blue ink that reads "Richard L. Sippel". The signature is written in a cursive style with a large initial "R".

Richard L. Sippel
Chief Administrative Law Judge

⁷⁷ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and to Mr. Havens.