

Before the
Federal Communications Commission
Washington, D.C. 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: August 21, 2012

Released: August 21, 2012

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In an order released March 12, 2012, the Commission sanctioned Warren C. Havens ("Havens") for "abus[ing] the Commission's processes" by filing "frivolous and repetitive" pleadings in connection with certain license applications for authority to construct and operate Automated Maritime Telecommunications System ("AMTS") stations.1 Specifically, the Commission in the Sanctions Order required Havens, or any person acting on his behalf, to obtain prior approval from the Wireless Telecommunications Bureau ("Bureau") before filing any further pleadings in the specified license proceedings.2 Havens has filed a petition for reconsideration of the Sanctions Order, accompanied by a "Request for Permission to File."3 For the reasons set forth below, we find that the Sanctions Order did not require Havens to obtain prior approval to file his petition for reconsideration. We nonetheless dismiss his petition for reconsideration as procedurally defective under section 1.106(p) of the Commission's rules.4

1 Warren C. Havens, Memorandum Opinion and Order, 27 FCC Rcd 2756, 2757 (¶ 6) (2012) ("Sanctions Order") (quoting Warren C. Havens, Third Order on Reconsideration, 26 FCC Rcd 10888 (¶ 1) (2011)) ("Third Order on Reconsideration").

2 See id. at 1 (¶ 1).

3 Warren C. Havens, "Petition for Reconsideration of March 12, 2012 Memorandum and Opinion" [sic] (Apr. 11, 2012) ("Reconsideration Petition"); Warren C. Havens, "Request for Permission to File" (Apr. 11, 2012) ("Request").

4 47 C.F.R. § 1.106(p).

## II. BACKGROUND

2. Havens has been challenging the Commission's denial of his applications for certain AMTS licenses for more than a decade.<sup>5</sup> On July 22, 2011, the Commission released its fourteenth order relating to those license applications. The order was the agency's fifth dismissal of Havens' challenges to the Commission's dismissal of a Havens reconsideration petition in the licensing proceedings. Havens acknowledged that he had filed his petition after the 30-day deadline prescribed by section 405(a) of the Communications Act.<sup>6</sup> In that order, the Commission dismissed Havens' fifth challenge to the agency's dismissal of a Havens reconsideration petition in the licensing proceedings, concluding that Havens had abused the Commission's processes by filing frivolous and repetitive pleadings and proposed to sanction Havens by prohibiting him, or any person acting on his behalf, from filing further pleadings in the licensing proceedings without prior approval of the Bureau.<sup>7</sup>

3. On August 29, 2011, Havens filed a response in opposition to the proposed sanction.<sup>8</sup> In his response, Havens asserted, *inter alia*, that the proposed sanction violated his rights under the First Amendment, that the sanction was unjustified, and that nothing in the Administrative Procedure Act, the Communications Act, or the Commission's regulations gave the agency the authority to impose the sanction.

4. After reviewing Havens' response, the Commission, in its *Sanctions Order*, adopted with minor modifications its proposal to sanction Havens. The Commission held that the broad authority Congress conferred on the agency by sections 4(i), 4(j), and 303(r) of the Communications Act to manage its proceedings and execute its functions empower the agency "to impose sanctions 'to protect the integrity of its own processes.'"<sup>9</sup> The Commission rejected Havens' contention that the sanction violates his constitutional First Amendment rights, explaining that "[t]he First Amendment does not entitle a party to file frivolous and repetitive administrative pleadings in agency proceedings, any more than it allows a party to file such pleadings in a judicial forum."<sup>10</sup> The Commission also explained in detail the reasons for its conclusion that Havens had filed frivolous and repetitive pleadings in the licensing that warranted the imposition of sanctions.<sup>11</sup>

5. On April 11, 2012, Havens filed a petition for reconsideration of the *Sanctions Order*. In his petition, Havens argues that (1) the sanction is unjustified because Havens had a right to file multiple pleadings with the agency; (2) the sanction is unduly punitive; (3) the sanction violates his due process rights; (4) the sanction is an unconstitutional taking of property without just compensation; (5) the FCC acted unlawfully in imposing the sanction on entities that Havens controls; (6) the sanction is *ultra vires*; (7) the sanction violates his First Amendment rights; and (8) the sanction is arbitrary, capricious, and

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<sup>5</sup> The lengthy history of this licensing proceeding is set forth in the *Third Order on Reconsideration*, 26 FCC Rcd 10888.

<sup>6</sup> *See id.* See 47 U.S.C. § 405(a).

<sup>7</sup> *See Third Order on Reconsideration*, 26 FCC Rcd 10888.

<sup>8</sup> "Warren Havens' Response to FCC 11-116" (Aug. 29, 2011). At the same time he filed that response, Havens submitted a "summar[y] of previously presented matters" he had raised in the underlying licensing proceeding, reiterating arguments relating to the merits of his AMTS license applications and his claims of agency malfeasance. "Statement of Warren Havens in Support of Havens' Response to FCC 11-116" at 1 (Aug. 29, 2011).

<sup>9</sup> *Sanctions Order*, 27 FCC Rcd at 2758 (¶ 9) (quoting *Touche Ross & Co. v. SEC*, 609 F.2d 570, 582 (2d Cir. 1979)).

<sup>10</sup> *Id.* at 2760 (¶ 12).

<sup>11</sup> *See id.* at 2761-62 (¶¶ 14-17).

contrary to the public interest.<sup>12</sup> Attached to Havens' reconsideration petition is a "Request for Permission to File."<sup>13</sup>

### III. DISCUSSION

6. We find no need to rule on Havens' "Request for Permission to File" because the *Sanctions Order* does not require Havens to obtain prior approval to file his reconsideration petition. The *Sanctions Order* requires Havens to obtain prior Bureau approval only "before filing further pleadings with respect to the [specified license applications]."<sup>14</sup> Because Havens' petition seeks reconsideration of imposition of sanctions, not reconsideration of a decision relating to his license applications, no prior agency approval is required.

7. For different reasons, however, we find that Havens' petition should be dismissed for procedural defects. Section 1.106(p) authorizes the Bureau summarily to dismiss petitions for reconsideration that "plainly do not warrant consideration by the Commission."<sup>15</sup> Several arguments Havens presents in his reconsideration petition, such as his claims that the sanction violated the First Amendment, and that the sanction is unjustified, are duplicative of arguments that Havens raised in response to the *Third Order on Reconsideration* and which the Commission rejected in the *Sanctions Order*. Section 1.106(p)(3) specifies that issues that "[r]ely on facts or arguments which have been fully considered and rejected by the Commission within the same proceeding" do not merit agency consideration.<sup>16</sup> Although Havens also raises a number of new arguments in his reconsideration petition,<sup>17</sup> each of those new issues involve matters that Havens previously could have raised in his response to the *Third Order on Reconsideration* but did not do so. Section 1.106(p)(2) provides for summary dismissal of "arguments that could have been presented previously to the Commission or its staff but were not."<sup>18</sup> We therefore dismiss Havens' petition for reconsideration under section 1.106(p).

### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 405(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 405(a), and section 1.106 of the

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<sup>12</sup> Reconsideration Petition at 2-19.

<sup>13</sup> Request at 1.

<sup>14</sup> *Sanction Order*, 27 FCC Rcd at 2756 (¶ 1).

<sup>15</sup> 47 C.F.R. § 1.106(p).

<sup>16</sup> 47 C.F.R. § 1.106(p)(3). See *Qwest Commc'ns Co. v. N. Valley Commc'ns, LLC*, Order on Reconsideration, 26 FCC Rcd 14520, 14522 (¶ 5) (2011) (quoting *S & L Teen Hosp. Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900 (¶ 3) (2002)) ("It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.")

<sup>17</sup> Examples of these new arguments are Havens' claims (1) that the sanction is unduly punitive, (2) that the sanction violates his due process rights, (3) that the sanction unconstitutionally takes property without just compensation, and (4) that the FCC unlawfully extended the sanction to companies that Havens controls. Havens also raises some new matters in support of his claims that the sanction is arbitrary and capricious, contrary to the public interest, and *ultra vires*.

<sup>18</sup> *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606 (2011) (adopting 47 C.F.R. § 1.106(p)). See *Royce International Broadcasting Co.*, Memorandum Opinion and Order, 26 FCC Rcd 9249 (¶ 2) (2011) (Aud. Div., MMB) (The Commission's "[r]ules and precedent clearly provide that [the agency] will not consider petitions for reconsideration which rely on facts or theories that could have been presented earlier in the proceeding.")

Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Warren C. Havens on April 12, 2012 IS DISMISSED.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman  
Chief  
Wireless Telecommunications Bureau