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

FCC 12M-52

09466

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	)	
	)	Application File Nos.
Applicant for Modification of Various Authorizations in the Wireless Radio Services	)	0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, and 0004604962
	)	
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	)	

ORDER

Issued: November 15, 2012 **Released: November 15, 2012**

Mr. Warren Havens, a designated party in this proceeding, now seeks to represent himself *pro se*. Initially, Mr. Havens was represented by qualified counsel, who simultaneously represented related corporate parties that he manages and controls.[1] Until recently, Mr. Havens had a close working relationship with a subsequent counsel who represented only three of the

[1] The parties are Environmental, LLC; Intelligent Transportation and Monitoring Wireless, LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB, LLC; Verde Systems, LLC; and V2G, LLC (collectively referred to as "SkyTel").

entities he controlled, Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC and Verde Systems, LLC (collectively "SkyTel-O"). This close working relationship suggested that counsel, retained by Havens to represent for SkyTel-O, was indirectly representing Mr. Havens. This presented no concern, as their interests in this case appeared to coincide. However, this peculiar arrangement raised the question as to whether allowing Mr. Havens to represent his own personal interests while counsel represented his corporate interests amounted to a form of joint representation that the Commission has disallowed.[2] To gain a better focus on the facts, Mr. Havens was ordered to show how his personal interests in this proceeding differed from the interests of the SkyTel entities being represented by counsel.[3] Shortly after the order, the circumstance of representation again changed. On October 3, 2012, counsel for SkyTel-O withdrew all representation. Presently, neither Mr. Havens nor the SkyTel entities have informed the Presiding Judge that they have acquired legal representation. Therefore, in the absence of counsel, any harm that the *Black Television Workshop* line of cases intended to resolve, such as a party having multiple "bites at the apple,"—once *pro se* and then through a corporate attorney—is not present here as Mr. Havens and his companies are bereft of counsel.

But, that is not to say that now Mr. Havens may engage in unbridled *pro se* representation. Precedent establishes that the "*right [of an individual] to represent himself is not so absolute that it must be recognized when to do so would disrupt the court's business.*"[4] Disruption can occur by a party causing delay and confusion.[5] Courts recognize that problems with trial management are more likely to arise in cases where a single party is opposed by multiple parties, requiring a presiding judge to act in order to prevent any duplication and minimize unfairness.[6] The Commission has emphasized the need for presiding judges to have discretion to manage multiparty FCC hearings in order to serve the interests of efficiency and expediency.[7] This case is shown to meet the model, indeed may be the optimal model, of a situation where there is a need for closer case management in order to protect and insure both Commission and public interests.

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[2] *In the Matter of Black Television Workshop of Los Angeles, Inc.,* Memorandum Opinion and Order, MM Docket No. 88-420, 7 FCC Rcd 6868 (1992) (an individual party is not allowed to simultaneously exercise the rights of self-representation and corporate representation by counsel).

[3] *See Memorandum Opinion and Order,* FCC 12M-44, September 25, 2012, at 5 ¶ 18. Mr. Havens his responded to the *Memorandum Opinion and Order* in his October 3, 2012 in *Warren Havens Comments on FCC 12M-44.* For starters, this pleading was tardy and improperly filed. Order FCC12-M-44 required Mr. Havens to file his response by October 2, 2012. Mr. Havens filed his response electronically and distributed courtesy copies on October 3, 2012. He also failed to include a proof of electronic filing receipt with those courtesy copies as required by *Order* FCC 12M-43, also released on September 25, 2012. Additionally, his pleading contained numerous proofreading marks that made it cumbersome to read. However, although improperly filed, Mr. Havens' pleading is being considered as a matter of discretion in order to accommodate this one time procedural lapse, and to accommodate any difficulties parties may have encountered in their first attempt at electronic filing. It is also timely to address the continuing questions concerning Mr. Havens' legal representation so that, hopefully, it need not be addressed again. However, all parties are cautioned that future lapses in adhering to the electronic filing guidelines set out in *Order* FCC 12M-43 may not be so accommodated.

[4] *United States v. Private Brands*, 250 F.2d 554, 557 (2nd Cir. 1957) (emphasis added).

[5] *Id.*

[6] *O'Reilly v. New York Times Co.,* 692 F.2d 863, 869-70 (2nd Cir. 1982) (multiple arguments expected when multiple parties have multiple interests.

[7] *Cf. In re Applications of Warren Price Communications Inc. et al.*, Memorandum Opinion and Order, 4 FCC Rcd 1992, 1992 ¶ 4 (1989) (quoting *Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419, 419 ¶ 3 (1986)).

Mr. Havens already has caused substantial delay and confusion on questions having nothing to do with the merits of this complex litigation. It is at times difficult to identify where Mr. Havens' participation in this proceeding ends and where SkyTel's participation begins and *vice versa*. SkyTel-O's former counsel even raised Mr. Havens' personal objections to Maritime's proposed glossary of terms while claiming not to represent him.

The confusion is exacerbated now that SkyTel-O's counsel has withdrawn. At his request, Mr. Havens was not required to appear at conferences based on his plea that his management of the business of the SkyTel entities came first. This was permitted as an accommodation when there was counsel for SkyTel-O present who assumed responsibility solely for assisting Mr. Havens, as an attorney should as an officer of the court. Even so, Mr. Havens caused confusion by frequently interrupting counsel and the Presiding Judge. Now that Mr. Havens lacks the assistance of counsel, it is likely that the disruptions will intensify.

Mr. Havens has continuously represented that he is constantly tending to business in his office. Yet, Mr. Havens' role in this proceeding has been muddled as he has in the past and is currently representing SkyTel entities in express violation of the Presiding Judge's orders directing Mr. Havens to obtain counsel. The need to address from time to time the tangled relationships between Mr. Havens and the SkyTel entities and counsel has wasted the Commission's time and the cooperating parties' time. It also has disrupted focus on complex substantive issues which will remain through trial, findings and decision.

With Mr. Havens *pro se* and with SkyTel entities having counsel simultaneously, there are likely to be more duplicative pleadings, possibly more discovery requests, as well as duplicative evidentiary and trial brief submissions as this proceeding moves forward. Pleadings thus far presented have not provided an observable distinction between their respectively held positions. There has been no showing or argument that the goals and legal strategies of Mr. Havens and the SkyTel entities differ or should differ, in any material respect for purposes of their contributions to this proceeding. The confusion over legal representation has made the interests of SkyTel entities and Mr. Havens even more indistinguishable. Mr. Havens' attempts to differentiate himself from the SkyTel entities[8] are confusing, repetitive, and in the final analysis, unpersuasive. Fancied legal distinctions between corporations and Mr. Havens are neither significant nor relevant. There is no showing that aims of those managed and controlled corporations are separate and distinct from the interests of their day-to-day manager, Warren Havens. Differences in personal interests that he argues are too vague and generalized for convincing that Mr. Havens has any personal interest differing from those of SkyTel for purposes of this proceeding. It therefore is appropriate to request retention of counsel by Mr. Havens for the SkyTel entities, who would simultaneously serve as counsel for Warren Havens, thereby avoiding duplication, confusion and delay.[9]

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[8] *Warren Havens Comments on FCC 12M-44* at 5-6.("The SkyTel legal entities have separate FCC licenses and other assets, ownership... and activities. They chose their own legal counsel as they see fit.... I have separate financial resources and time from what I commit to managing and interests in SkyTel legal entities.... Skybridge Spectrum Foundation is a non-profit entity.... Under law, it cannot be managed for or undertake commercial activity and has clearly separate 'interests' from the for-profit companies I manage, and myself personally.")

[9] There are court cases that are persuasive that Mr. Havens could represent himself *pro se*, separately from SkyTel. *See O'Reilly.*

Conclusions and Rulings

It is found here that past participations by Mr. Havens individually, with SkyTel entities represented by counsel, have caused confusion and delay. Therefore, it is considered here that specific directions be assigned to Mr. Havens' participation in this proceeding. These are:

I

- The SkyTel entities shall immediately retain legal representation in accordance with the Presiding Judge's *Order* FCC 12M-16 at 3-5.

- Mr. Havens shall either share counsel with the SkyTel entities, or personally file a Notice of Appearance representing that he chooses to represent only himself *pro se,* and giving reasons for proceeding *pro se. S*hould Mr. Havens choose for good reason to proceed *pro se*:

II

- Mr. Havens and counsel for the SkyTel entities shall coordinate their participations in this proceeding.

- To the extent that Mr. Havens and SkyTel entities take identical positions, counsel and Mr. Havens shall submit joint pleadings.

- To the extent that Mr. Havens and SkyTel entities may differ, they may each submit individual pleadings, so long as those pleadings address only issues on which SkyTel counsel and Mr. Havens cannot agree, giving reasons why they cannot agree. Portions of pleadings which are agreed must be presented as one document in a separate pleading.

- As a *pro se* litigant, Mr. Havens will not be permitted to access confidential information under the Protective Order.

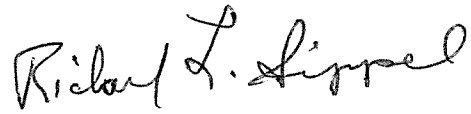
- Mr. Havens *pro se* must personally attend all future prehearing conferences and proceedings and each day of hearings.

These conditions for *pro se* representation, will reduce the confusion witnessed in previous bifurcated representations, and should reduce any need for duplicitous pleadings and papers.[10]

[10] It is noted these conditions for an imperfect joint representation, are discretionary. The Commission has recognized SkyTel entities and Mr. Havens as separate parties. See HDO at 30. Commission Rule 1.243, insures authority of presiding judges to regulate the course of hearings, and to take actions in conformity with the Administrative Procedure Act (APA). *Compare Commission rule* 47 C.F.R. § 1.243 and APA at 5 U.S.C. 1556 Conditions set here for *pro se* participation are necessary in light of past failures to comply with the Presiding Judge's orders requiring counsel. Once Mr. Havens retains counsel for the SkyTel, he will be permitted to participate *pro se* in this proceeding, requiring personal attendance at all proceedings.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION[11]



Richard L. Sippel
Chief Administrative Law Judge

[11] Courtesy copies of this *Order* were sent on issuance by e-mail to each counsel and to Mr. Warren Havens.