Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC  20554

In the Matter Of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

EB Docket No. 11-71

File No. EB-09-IH-1751

Participant in Auction No. 61 and Licensee of
Various Authorizations in the Wireless Radio Services

FRN: 0013587779

Applicant for Modification of Various
Authorizations in the Wireless Radio
Services

Application File Nos.

0004030479, 0004144435,
0004193028, 0004193328,
0004354053, 0004309872,
0004310060, 0004314903,
0004315013, 0004430505,
0004417199, 0004419431,
0004422320, 0004422329,
0004507921, 000453701,
0004526264, 0004636537,
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 MEMBERSHIP CORP., INC.;
ATLAS PIPELINE—MID CONTINENT, LLC;
DENTON COUNTY ELECTRIC COOPERATIVE,
INC., d/b/a COSERV ELECTRIC; and
SOUTHERN CALIFORNIA REGIONAL RAIL
AUTHORITY

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

ENL-VSL REPLY TO MARITIME OPPOSITION
TO PETITION SEEKING RECONSIDERATION
OF APRIL 22, 2015 ORDER ON THE BASIS OF MISTAKE

Environmental LLC and Verde Systems LLC (together “ENL-VSL”) hereby reply to the
Maritime Communications/Land Mobile, LCC (“Maritime”) opposition (“Opposition”) to ENL-VSL’s Petition for Reconsideration (“Recon Petition”) of your Honor’s April 22, 2015 Order (“Order”).
The Recon Petition argues that the aspect of the Order that refers to the Commission character issues against Mr. Havens and the Havens-managed companies (“Havens”) as a result of bad faith violations of the Summary Decision Rule is the result of not remembering an oral ruling made during a prehearing conference.\(^1\) Maritime incorrectly argues that the Order is interlocutory and therefore not subject to reconsideration.

I. Responses to Maritime’s Opposition

A. The Summary Decision Rule Demonstrates that the Character Referral Is Ultra Vires, Not Interlocutory

Maritime claims that the Order is interlocutory from the Maritime proceeding because it relies on the Commission’s Summary Decision Rule, 47 C.F.R. §1.251(f), “a regulation specifically governing the summary decision procedures in the context of an ongoing hearing.” Opposition, at 2. Any complexity in applying the reconsideration and appeal rules to the Order arises solely because the Order is not authorized by the Summary Decision Rule, not because the Summary Decision Rule makes the character referral interlocutory.

The Order asks the FCC to consider initiating a new proceeding against Havens:

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. (Emphasis supplied.)

This is not authorized by Section 1.251(f) (3). That provision only authorizes an ALJ to request addition of an issue against a party in a proceeding before him:

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\(^1\) The Recon Petition does not seek reconsideration of that aspect of the ruling excluding Havens and the Havens-managed companies from the Maritime proceeding (“exclusion issue ruling”).
If, on making such determination [of an improper motion for summary decision], the presiding officer concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, he will 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. (Emphasis supplied.)

By way of background, the Summary Decision Rule was adopted in the context of comparative hearings and the “addition of an issue” against a “party” acted as a demerit in the comparative hearing with regard to the party’s radio license application at issue in the hearing.\(^2\) In this case, Havens has no radio license or application at issue in the proceeding. Thus, there is no license or application to which the purported referral relates. The Summary Decision Rule is not, and never was intended to be, a catch-all rule that permitted an ALJ to make a character referral that put radio licenses that are not under examination by him, under a cloud.

Second, the referral is simply inconsistent with the Rule, as is evidenced by the history of its adoption. As originally adopted, the rule authorized summary decision motions as of right up to twenty days before a hearing started and prohibited them after a hearing began. \textit{Id}. But at the request of the FCC Bar Association, the rule was amended to allow summary decision motions even after the hearing started, with Judicial approval.\(^3\) In this case, the summary decision motion was filed more than 20 days before the hearing, did not cause any change in the hearing schedule, and was authorized by the Presiding Judge. Accordingly, the character referral is inconsistent with the very purpose and history of the rule.


B. Other Arguments

Maritime also argues that the Order is interlocutory because it relies upon Section 1.243 which Maritime (correctly) notes allows an ALJ to regulate the conduct of a hearing. Opposition at 2. However, this is irrelevant as the Order relies upon the Summary Decision Rule for the character referral.

Lastly, Maritime argues the Order is not final because the Order is merely a recommendation to the Commission (“[t]he Presiding Judge has merely certified the matter for consideration and determination by the Commission”). Opp. at 2. This is accurate, but irrelevant to the question of whether Havens violated the Summary Decision Rule and whether the Summary Decision Rule permits the character referral.

II. Conclusion

For the foregoing reasons, and for the other reasons pled in this case, the Order erred and should be reconsidered and withdrawn.

Respectfully submitted,

/s/
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June 11, 2015
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has on this 11th day of June, 2015, arranged to be mailed by first class United States mail copies of the foregoing Reply to:

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