June 1, 2015

Via Email

Jonathan Sallet, Esq.
General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Further to Confidential Settlement Offer

Dear Mr. Sallet:

We were requested to address the *ex parte* rules with regard to the confidential settlement offer that we made on May 28, 2015 (“Settlement Offer”), on behalf of our client Mr. Warren Havens with regard to the certain matters raised in the Order of Judge Sippel of April 22, 2015, in FCC 15M-14 (“Order”).

The Order does two things. It excludes Mr. Havens from further participation in docket 11-71. We are not proposing a settlement of that issue at this time. Therefore, to the extent that issue would invoke *the ex parte* rules, because it relates to an on-going proceeding in which there are parties, it is not relevant to our analysis here.

The Order recommends that the Commission consider designating for hearing Mr. Havens’ qualifications, not in existing proceeding docket 11-71, but in some new proceeding to be commenced in the future. That is the only issue we seek to address at this time. At present, there is no such proceeding and are no parties to any such proceeding.

The *ex parte* rules state that a “restricted proceeding” includes, “all proceedings that have been designated for hearing.” *See* Section 1.1208. Since no proceeding has been designated for hearing against Mr. Havens or any of his companies, there is no “restricted proceeding” under the rules.

Furthermore, even if there were a restricted proceeding, there is no “party” for us to serve with our presentation. The *ex parte* rules define a party as, “In a proceeding designated for hearing, any person who has been given formal party status.” *See* Section 1.1202(d)(4). No one has been given party status as to any future proceeding with regard to Mr. Havens.
The analysis above is confirmed by recent correspondence from FCC counsel for Arnold Leong, which acknowledges that there is no FCC proceeding for which the *ex parte* rules apply.

As you are aware, on May 29, 2015 Steven E. Coran wrote to you, advising that Leong is in possession of our Settlement Officer. Mr. Coran’s letter is not docketed in any FCC proceeding, thus confirming our analysis that there is no proceeding to which *ex parte* rules apply.

Mr. Coran’s letter goes on to ask the FCC to not accept Haven’s Settlement Offer because it will interfere with Leong’s state court request for a receiver (it “is a desperate attempt to subvert the court's jurisdiction over the civil case and the imminent appointment of a receiver”).

This reveals that Leong’s true intention in the California case is not to protect the radio licenses from harm that might arise from Commission action, but to intimidate a California state court judge into appointing a receiver out of fear that the Commission might summarily harm the radio licenses controlled by Mr. Havens.

Obviously the Commission has no precedent for cancelling licenses based upon the litigation strategies of a licensee. And, frankly, were the Commission to take the position that licenses can be compromised based upon behavior not related to the licenses themselves or as a result of felony convictions as provided for in the Commission’s character qualifications policy statements, it would be introducing a new and untested complexity into the established licensing scheme. However Mr. Coran’s letter appears to be suggesting that the Commission should take exactly that kind of action, in order to best promote Leong’s chances for a receivership in the California action. That is a radical measure; not a conserving one.

In accordance with the above, we are not serving this letter on any party to any proceeding, unless and until the General Counsel’s office has concluded that our analysis as set forth herein is incorrect.

Respectfully submitted,

Dana Frix
James Stenger