Before the
Federal Communications Commission
Washington, D.C. 20554

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

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

STATUS REPORT

Maritime Communications/Land Mobile, LLC ("Maritime") and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, "Choctaw") hereby submit this status report to inform the Presiding Judge that the Commission has reconsidered its *Memorandum Opinion and Order* ("*Order*")[1] and granted Maritime and Choctaw relief pursuant to the *Second Thursday* doctrine.[2] A copy of the decision is attached.

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[1] *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Memorandum Opinion and Order, 29 FCC Rcd 10871 (2014).

[2] *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession,* Order on Reconsideration and Memorandum Opinion and Order, FCC 16-172 (rel. Dec. 15, 2016). Warren Havens filed an untimely petition for reconsideration

The Presiding Judge stayed the hearing pending resolution of petitions for reconsideration of the *Order*. The Commission's grant of reconsideration clears the way for resolution of Issue (g) in this proceeding and termination of the hearing in all other respects. Findings of Fact already have been filed by all parties in the proceeding.[3] Importantly, Choctaw, Maritime, and the Enforcement Bureau all agree that operations at the following site-based stations have ***not*** been permanently discontinued: WHG750, WRV374 (Locations 14, 15, 16, 18, 25, 33, 35 and 40), and KAE889 (Locations 4, 20, 30, 34, and 48). Choctaw and Maritime presented evidence that two additional KAE889 Locations (3 and 13) have not been permanently discontinued.

For the foregoing reasons, the undersigned urge the Presiding Judge to lift the stay and move forward with resolution of Issue (g). Choctaw contacted the Enforcement Bureau and was informed that the Bureau has no objection to this submission or lifting the stay as requested.

Respectfully submitted,

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January 23, 2017

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of this decision. Although the petition is dated January 17, 2017 – the last day permitted for filing a petition for reconsideration, the text of the petition expressly states that it was not timely filed on that date.

[3] The Enforcement Bureau moved to strike the Proposed Findings of Fact submitted by Environmental LLC and Verde Systems, LLC as violative of Commission rules and the Presiding Judge's instructions. Enforcement Bureau's Motion to Strike, EB Docket No. 11-71 (filed Apr. 15, 2015). On April 22, 2015, the Presiding Judge barred Mr. Warren Havens and the companies he controls (including Environmental LLC and Verde Systems, LLC) from future participation in this proceeding "as a consequence of their contemptuous and disruptive conduct." Order, FCC 15M-14 (rel. Apr. 15, 2015).

ATTACHMENT

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION Application to Assign Licenses to Choctaw Holdings, LLC	)	WT Docket No. 13-85 FCC File No. 0005552500
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC Applications to Modify and to Partially Assign License for Station WQGF318 to Southern California Regional Rail Authority	)	FCC File Nos. 0004153701 and 0004144435
	)	
Application for New Automated Maritime Telecommunications System Stations	)	FCC File No. 0002303355
	)	
Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing	)	EB Docket No. 11-71 File No. EB-09-IH-1751 FCC File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 00044317199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962

ORDER ON RECONSIDERATION AND MEMORANDUM OPINION AND ORDER

Adopted: December 14, 2016 **Released: December 15, 2016**

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. We have before us several petitions for reconsideration of the Commission's September 10, 2014, *Memorandum Opinion and Order* (*MO&O*)[1] in this proceeding, as well as related pleadings.[2] In the *MO&O*, the Commission rejected a request by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession (MCLM)[3] and Choctaw Holdings, LLC (Choctaw)[4] to obtain relief under the

[1] *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Memorandum Opinion and Order, 29 FCC Rcd 10871 (2014) (*MO&O*).

[2] The parties and pleadings referenced herein are identified in the Appendix.

[3] We use the term "MCLM" to refer to the company both pre-bankruptcy and as a debtor-in-possession after it filed for Chapter 11 protection under the United States Bankruptcy Code.

[4] Choctaw is a limited liability company comprised of four of MCLM's creditors and created after MCLM filed for bankruptcy protection.

Commission's *Second Thursday* doctrine that would have permitted the processing of an application to assign all of MCLM's licenses to Choctaw (Choctaw Application),[5] in furtherance of a Bankruptcy Court approved Plan of Reorganization (Plan), notwithstanding the pendency of an FCC hearing to determine whether MCLM has the basic qualifications to be a Commission licensee.[6] The Commission, however, did grant, in part, an alternative request that MCLM and Choctaw had made in the event the Commission were to deny their *Second Thursday*-based request for assignment of all of the licenses to Choctaw. The alternative request involved various pending applications for assignments of some MCLM spectrum to the Southern California Regional Rail Authority (SCRRA) and to a number of electric, gas, and oil companies. Based on the public interest in facilitating SCRRA's deployment of positive train control (PTC) by December 31, 2015, pursuant to the Rail Safety Improvement Act of 2008,[7] the Commission removed from the hearing the application to assign spectrum from MCLM to SCRRA,[8] but it declined to remove other assignment applications from the hearing despite the proposed assignees' assertion of similar public interest considerations.[9] As discussed below, we find that changed circumstances—the discharge in bankruptcy of Donald DePriest, an alleged real-party-in-interest in MCLM—arising after the adoption of the *MO&O* warrant reconsideration of the *MO&O* and support granting *Second Thursday* relief.[10] We therefore grant the MCLM and Choctaw petitions for reconsideration. This decision also terminates the hearing as to MCLM's basic qualifications,[11] eliminates the need to address the merits of

[5] FCC File No. 0005552500 (filed Jan. 23, 2013, amended Jan. 25, 2013) (Choctaw Application).

[6] *See Maritime Communications/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 (2011) (*HDO*).

[7] Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008) (RSIA). On October 29, 2015, Congress extended the PTC deadline by three years, until December 31, 2018. *See* Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73 § 1302, 129 Stat. 568, 576 (2015).

[8] FCC File No. 0004144435 (filed Mar. 11, 2010, amended Oct. 20, 2015, and June 8, 2016) (SCRRA Assignment Application). On September 14, 2016, the SCRRA Assignment Application was granted by the Wireless Telecommunications Bureau (WTB), as were associated requests for rule waivers to facilitate the use of the spectrum for PTC. *See Maritime Communications/Land Mobile, LLC and Southern California Regional Rail Authority File Applications to Modify License and Assign Spectrum for Positive Train Control Use, and Request Part 80 Waivers*, Order, 31 FCC Rcd 9826 (WTB MD 2016). The Commission also removed from the hearing an application filed by MCLM to modify the portion of the license for Station WQGF318 that was to be assigned to SCRRA. *See MO&O*, 29 FCC Rcd at 10875, n.34. The modification application, FCC File No. 0004153701 (filed Mar. 8, 2010, amended Aug. 30, 2011), proposed to modify the regulatory status of the spectrum to be assigned to SCRRA so that it can be used for PTC operations. It was also granted on September 14, 2016. We refer to the assignment and modification applications together as the SCRRA Applications.

[9] *See MO&O*, 29 FCC Rcd at 10883-87, paras. 31-38.

[10] Donald DePriest is also the sole stockholder of Wireless Properties of Virginia, Inc., which is the licensee of commercial Educational Broadband Service licenses WQCP982 and WQGK277. We note that Warren Havens and associated entities have filed an application for review, petition for reconsideration, and petition to deny challenging the character qualifications of Wireless Properties of Virginia, Inc. *See* Application for Review, Warren C. Havens et al. (filed June 6, 2008); Petition for Reconsideration, Warren C. Havens et al. (filed June 6, 2008); Petition to Deny, or in the Alternative, Section 1.41 Request, Warren C. Havens et al. (filed Mar. 13, 2015). Our action today is without prejudice to our further consideration of the character qualifications of Donald DePriest and Wireless Properties of Virginia, Inc., either on our own motion or in connection with the pending pleadings.

[11] In addition to designating issues regarding MCLM's basic character qualifications, the *HDO* designated an issue as to whether any of MCLM's site-based licenses had terminated automatically under the Commission's rules due to non-construction or permanent discontinuance of operation. *See HDO*, 26 FCC Rcd at 6546, para. 61. The *MO&O* denied MCLM's request for waivers of the Commission's construction and permanent discontinuance-of-service rules, which, if granted, would have resolved this issue and, in conjunction with *Second Thursday* relief, allowed all of MCLM's licenses, site-based as well as geographic, to be assigned to Choctaw. *See MO&O*, 29 FCC Rcd at 10887, para. 39. No party has requested reconsideration of the denial of the waiver requests. Consequently, although our grant of *Second Thursday* relief extends to the three still-active site-based licenses held by MCLM—

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the other pending petitions for reconsideration of the *MO&O*,[12] and paves the way for MCLM's remaining licenses to be assigned to qualified third parties, with the proceeds benefitting innocent creditors of MCLM. We also deny an application for review filed by Warren Havens and associated entities seeking Commission review of an action by the Wireless Telecommunications Bureau's Mobility Division (Division) denying petitions for reconsideration of orders by the Division and its predecessor.[13]

II. BACKGROUND

2. In the 2005 Automated Maritime Telecommunications System (AMTS)[14] auction (Auction 61), MCLM was the high bidder for four licenses. MCLM initially claimed eligibility for a 35% bidding credit as a very small business, but failed to count the revenues of (or even to mention) Donald DePriest, the husband of MCLM's nominal sole principal, Sandra DePriest, which were required to be included in MCLM's bidding credit eligibility showing by operation of the Commission's "spousal affiliation rule."[15] In an amendment that MCLM was directed to file, it disclosed Mr. DePriest's revenues for the first time, and the additional revenues identified by MCLM at that time rendered MCLM eligible for only a 25% bidding credit as a small business.[16] Over a period of years following the issuance of the four licenses to MCLM, MCLM's responses to pleadings filed against it and to letters of inquiry issued by the Wireless Telecommunications Bureau (WTB) and the Enforcement Bureau (EB), coupled with other information adduced by Commission staff investigation, led the Commission to find that there were substantial and material questions of fact as to whether MCLM had been entitled even to a 25% bidding credit, and whether it had obtained the bidding credit through misrepresentation, lack of candor, and related rule violations. The Commission accordingly designated MCLM for hearing on its basic character qualifications on April 19, 2011.[17]

3. In the years before it was designated for hearing, MCLM filed several applications to partition and disaggregate portions of its AMTS licenses to a number of gas, oil, and electric companies (CII Companies)[18] and to SCRRA. Due to the ongoing challenges, fact-gathering, and investigation

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those for stations KAE889, WHG750, and WRV374—as well as its geographic licenses, that relief does not resolve the designated issue regarding the construction and operational status of MCLM's site-based stations., Accordingly, we do not order the hearing to be terminated entirely. The assignment of the site-based licenses to Choctaw, and any subsequent assignments of them from Choctaw to third parties, is without prejudice to a subsequent determination that they have canceled automatically due to a failure to construct or a permanent discontinuance of operation.

[12] *See infra* paras. 18-20.

[13] *See infra* para. 21.

[14] AMTS is allocated spectrum in the 217/219 MHz band that, although initially intended primarily for maritime communications, may now be used for service on land, including private land mobile radio service, under certain conditions. *See* 47 CFR §§ 80.123, 80.385(a)(2); *MariTEL, Inc. and Mobex Network Services, LLC*, Report and Order, 22 FCC Rcd 8971 (2007), *subsequent history omitted.*

[15] 47 CFR § 1.2110(c)(5)(iii)(A).

[16] MCLM was awarded the license with a 25% bidding credit, but was cautioned that its representations in connection with Auction 61 remained subject to further inquiry and possible enforcement action. *See Maritime Communications/Land Mobile, LLC*, Order on Reconsideration, 22 FCC Rcd 4780 (WTB MD 2007).

[17] The *HDO* found that there were substantial and material questions of fact as to whether MCLM had misrepresented or failed to fully disclose the nature of Mr. DePriest's role in MCLM; whether MCLM had failed to fully disclose all of Mr. DePriest's attributable holdings and revenues under the Commission's auction rules; and whether MCLM had otherwise engaged in misrepresentation, lack of candor or other misconduct in connection with its Auction 61-related filings. *See HDO*, 26 FCC Rcd at 6521, 6534-45, paras. 2, 35-58.

[18] As used here, the term "CII Companies," with "CII" the acronym for "Critical Infrastructure Industry," generally refers to all of the proposed assignees of MCLM spectrum (other than SCRRA) listed in the *HDO*, whose applications remain pending, plus the Shenandoah Valley Electric Cooperative (SVEC), a proposed assignee whose
(continued....)

during this period, the processing of those assignment applications was precluded under the Commission's *Jefferson Radio* policy, which generally prohibits the assignment of a license while basic qualifications issues raised against the licensee remain unresolved, and thus serves as a deterrent to licensee misconduct.[19]

4. The SCRRA Assignment Application stated that SCRRA intended to use the spectrum it would acquire from MCLM to implement a PTC system to comply with the federal statutory requirement to complete such implementation by December 31, 2015.[20] In footnote 7 of the *HDO* (Footnote 7), the Commission invited SCRRA and MCLM to submit a showing as to whether the public interest in facilitating SCRRA's acquisition of spectrum for PTC warranted removing the SCRRA Assignment Application from the hearing.[21] SCRRA and MCLM did so.[22] The CII Companies, while supporting the removal from the hearing of the SCRRA Assignment Application pursuant to Footnote 7, argued that their intended uses of MCLM-assigned spectrum also would bring significant public safety benefits and that they were in other respects similarly situated to SCRRA (in, for example, their need for the spectrum, their difficulty in acquiring it elsewhere, and their good faith dealings with MCLM) such that they should be given the same opportunity to show why their applications should be removed from the hearing.[23]

5. In August 2011, MCLM filed for bankruptcy in the United States Bankruptcy Court, Northern District of Mississippi (Bankruptcy Court).[24] MCLM then informed the parties to the hearing and the presiding Administrative Law Judge that it intended to invoke the *Second Thursday* doctrine to terminate the hearing.[25] The *Second Thursday* doctrine creates an exception to the *Jefferson Radio* policy that, notwithstanding that issues regarding the licensee's basic qualifications are unresolved, permits grant of a license assignment application if the licensee is in bankruptcy, the assignment will benefit innocent creditors of the licensee, and the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from favorable action on the application or only derive a minor benefit which benefit is outweighed by equitable considerations in favor of innocent creditors.[26] The *Second Thursday* doctrine is rooted in the Commission's duty to accommodate federal bankruptcy

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application was filed after adoption of the *HDO*. Depending on context, however, it may also refer in places to only a subset of those applicants.

[19] *See, e.g., Jefferson Radio Corp. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964); *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981).

[20] *See* RSIA, note 7, *supra*.

[21] *See MO&O*, 26 FCC Rcd at 6523, n.7 ("Given the potential safety of life considerations involved in the positive train control area..., we will, upon an appropriate showing by the parties, consider whether, and if so, under what terms and conditions, the public interest would be served by allowing the [SCRRA Assignment Application] to be removed from the ambit of this Hearing Designation Order").

[22] *See* SCRRA Showing Pursuant to Footnote 7 (filed May 9, 2011); MCLM Showing Pursuant to Footnote 7 and Statement in Support (filed May 12, 2011).

[23] *See MO&O*, 29 FCC Rcd at 10875-76, 10885, paras. 13, 34 & n.36 and pleadings cited therein.

[24] *In re Maritime Communications/Land Mobile, LLC*, No. 11-13463-DWH (Bankr. N.D. Miss.). The Commission was among the creditors filing a proof of claim, seeking payment in the amount of $6,315,635.65 to recoup the 25% bidding credit awarded to MCLM in Auction 61 ($1,955,000) plus interest ($642,635.65), and the maximum forfeiture to which MCLM is potentially liable for violations of Commission rules ($3,718,000).

[25] *See* Maritime's Motion to Defer All Procedural Dates (filed Aug. 1, 2011 in EB Docket No. 11-71).

[26] *See, e.g., Second Thursday Corp.*, Memorandum Opinion and Order, 22 FCC 2d 515, 516, para. 5, *recon. granted in part*, Memorandum Opinion and Order, 25 FCC 2d 112 (1970).

law when doing so will not unduly interfere with the Commission's public interest responsibilities under the Communications Act of 1934, as amended.[27]

6. On January 11, 2013, the Bankruptcy Court confirmed MCLM's proposed Plan of Reorganization (Plan), which called for MCLM to assign all of its licenses to Choctaw and for Choctaw to prosecute the pending assignment applications by stepping into the shoes of MCLM as the assignor to the CII Companies and SCRRA, and then to assign the remainder of the MCLM licenses to parties as yet unidentified, with the proceeds to be used to repay all of MCLM's creditors.[28] On January 23, 2013, MCLM and Choctaw filed the Choctaw Application as a first step in effectuating the Plan. They accompanied the application with a request for *Second Thursday* relief, claiming, *inter alia*, that the individuals suspected of wrongdoing, Donald and Sandra DePriest, would have no role with Choctaw and would receive no cognizable benefit from the assignment of MCLM's licenses to Choctaw.[29]

7. In the *MO&O*, the Commission denied the request for *Second Thursday* relief because it found that the MCLM-Choctaw proposal did not satisfy one of the criteria for such relief. Specifically, the Commission determined that the applicants had failed to demonstrate that individuals suspected of misconduct would derive no benefit from favorable action on the Choctaw Application or only a minor benefit which is outweighed by the equities favoring innocent creditors of MCLM.[30] The Commission noted that "the proceeds from the assignment of MCLM's spectrum licenses to third parties would be more than enough to repay MCLM's creditors in full," and that, as a consequence, granting *Second Thursday* relief could effectively extinguish much if not all of Mr. DePriest's liability under his obligations arising from his personal guarantees of loans to MCLM.[31] It reasoned that allowing a suspected wrongdoer to evade a potential liability conservatively estimated to be $8 million[32] was inconsistent with *Second Thursday* precedent.[33] Because this deficiency in MCLM's and Choctaw's proposal was sufficient by itself to warrant rejection of *Second Thursday* relief, the Commission did not address other arguments raised by commenters as to why such relief should not be granted,[34] although, as discussed below, we address those arguments here.

8. Choctaw, MCLM, and other commenters assert that it was error to deny *Second Thursday* relief solely on the basis of the potential elimination of Donald DePriest's secondary liability to some of MCLM's creditors,[35] and further argue that, in any event, developments occurring after the release of the

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[27] *See, e.g., LaRose v. FCC*, 494 F. 2d 1145, 1146-48 & n.2 (D.C. Cir. 1974) (*LaRose*).

[28] *See Order Confirming Plan of Reorganization*, Case No. 11-13463-DWH (Bankr. N.D. Miss. Jan. 11, 2013) (*Confirmation Order*), attached as Exhibit B to the Choctaw Application. The Bankruptcy Court has also granted MCLM's motion to allow the Commission's claim in the full amount of $6,315,635.65. *See Order Granting Motion for Allowance of Claim No. 81-1 Filed by the Federal Communications Commission*, Case No. 11-13463-DWH (Bankr. N.D. Miss. Aug. 25, 2016).

[29] *See* Choctaw Application at Description of Transaction, Public Interest Statement and *Second Thursday* Showing. WTB issued a Public Notice inviting additional pleadings and comments regarding the Choctaw Application, as well as the *Second Thursday* request and related matters. *See Comment Sought on Application to Assign Licenses under Second Thursday Doctrine, Request for Waiver and Extension of Construction Deadlines and Request to Terminate Hearing*, Public Notice, WT Docket No. 13-85, 28 FCC Rcd 3358 (WTB 2013).

[30] *See MO&O*, 29 FCC Rcd at 10878, para. 20.

[31] *Id.* at 10880, para. 23.

[32] The Commission noted that some commenters had asserted that Mr. DePriest's liability on personal loan guarantees, although estimated to be about $8 million by Mrs. DePriest in hearing testimony, was actually $11 million or more. *Id.* at 10880, n.64.

[33] *Id.* at 10879-80, paras. 22-23.

[34] *Id.* at 10878, n.56.

[35] *See, e.g.*, Choctaw Petition at 5, 9-12; MCLM Petition at 3-5.

MO&O—the involuntary personal bankruptcy of Donald DePriest and the expected discharge of his secondary liability to the MCLM creditors—have negated the Commission's rationale for denying such relief.[36] In November 2015, MCLM and Choctaw separately filed supplements to their petitions for reconsideration[37] to report that, on October 27, 2015, the Bankruptcy Court presiding over Mr. DePriest's personal bankruptcy entered an order[38] that discharged Mr. DePriest of his liability on the personal guarantees he made to MCLM's lenders. They argue that Mr. DePriest's personal discharge in bankruptcy establishes that there is no longer any reason to deny *Second Thursday* relief based on a concern that such relief would benefit the DePriests.[39]

III. DISCUSSION

9. We conclude that the discharge in bankruptcy of Donald DePriest's secondary liability to MCLM's creditors is a changed circumstance occurring after the adoption of the *MO&O* that warrants reconsideration of the denial of *Second Thursday* relief to MCLM and Choctaw. That discharge eliminates the basis for the Commission's denial of *Second Thursday* relief—that such relief would allow Donald DePriest to escape his secondary liability—and we discern no other reason in the record before us to deny such relief.[40]

10. Mr. DePriest's debts, including his obligations on his personal guarantees of loans to MCLM, were extinguished by the order of the court presiding over his personal bankruptcy. MCLM and Choctaw assert that, as a consequence, there is no longer any possibility that Mr. DePriest will benefit directly or indirectly from a grant of *Second Thursday* relief because the loan guarantees he made to MCLM's creditors are no longer enforceable.[41] We agree that the Commission's conclusion in the

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[36] *See, e.g.*, Choctaw Petition at 2, 7-8; MCLM Petition at 6-9.

[37] We have before us a Motion for Leave to Supplement Petition for Reconsideration filed by MCLM on November 6, 2015, and a Motion for Leave to Supplement Petition for Reconsideration filed by Choctaw on November 9, 2015. The supplemental filings provide important new information that could not have been provided before the deadline for filing petitions for reconsideration of the *MO&O*, and bear on a critical question. We therefore find good cause to accept the supplemental filings in the interest of having as complete a record as possible upon which to base our decision here, and accordingly grant both motions. *See* 47 CFR § 1.106(f).

[38] *See In re Donald R. DePriest*, Discharge of Debtor, Case No. 14-13522-JDW (Bankr. N.D. Miss. Oct. 27, 2015), attached as Exh. 1 to Choctaw Supplemental Petition and Attach. No. 1 to MCLM Supplemental Petition.

[39] *See, e.g.*, MCLM Supplemental Petition at 2; Choctaw Supplemental Petition at 2-3.

[40] Skytel challenges MCLM's and Choctaw's standing to seek reconsideration of the *MO&O*. *See* Skytel Opposition at 10-15. We find this argument to be meritless. The *MO&O* specifically addressed the merits of filings by MCLM and Choctaw, and its denial of their requests had an immediate, direct, and concrete adverse effect on the applicants that would be redressed by granting their petitions for reconsideration. Skytel's arguments nominally directed to MCLM's and Choctaw's standing actually address the substantive merits of their arguments rather than their right to be heard. Its citation to *SunCom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386, 1388 (D.C. Cir. 1996), for the proposition that "an entity whose asserted interests are based on FCC discretion cannot meet that burden [of establishing standing]," *see* Skytel Opposition at 10, is inapposite, as the reason for denying standing in that case was that the petitioner was not the licensee of, and had no present connection to, the licenses in question, a circumstance that readily distinguishes that case from the instant one. Skytel also separately filed an "Initial Reply to Opposition to Petitions for Reconsideration" on October 31, 2014, and a "Further Reply to Opposition to Petitions for Reconsideration," on November 5, 2014. These pleadings are subject to dismissal as unauthorized because the Rules authorize the filing only of replies, not initial replies or further replies. *See* 47 CFR § 1.106(h). We have nonetheless exercised our discretion to review the pleadings and we find them to be without merit.

[41] *See* Choctaw Petition at 7-9, Reply at 2-3; MCLM Petition at 6-8, Reply at 2-3. No party offers any rebuttal to this argument. EB, which is serving as trial staff in the hearing proceeding against MCLM, *see* para. 2, *supra*, initially argued that the involuntary bankruptcy of Donald DePriest does not warrant reconsideration of the *MO&O* because "[i]t is purely speculative ... whether the Bankruptcy Court will in fact discharge Mr. DePriest's obligation to the guarantees at issue...." *See* EB Opposition at 3. EB now agrees with the applicants, however, that with the

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MO&O, that the possibility that Mr. DePriest would realize a benefit from a grant of *Second Thursday* relief by escaping liability on his guarantees to MCLM lenders precludes such relief, is no longer valid due to the subsequent discharge of those obligations.[42]

11. This does not, however, put an end to our *Second Thursday* analysis. Parties opposing the *Second Thursday* request also argued that the Plan represents an "inside deal" between the DePriests and the Choctaw principals; that a suspected wrongdoer would have an impermissible continuing role with respect to the licenses; that *Second Thursday* relief is not appropriate where, as has been alleged here, the bankruptcy filing is for the primary purpose of invoking *Second Thursday* and thereby circumventing the *Jefferson Radio* policy; and that *Second Thursday* relief should not be available where, as here, no bankruptcy trustee or receiver has been appointed.[43] Now that MCLM's and Choctaw's *Second Thursday* request is no longer subject to rejection for the reason relied upon in the *MO&O*, we address these additional arguments.[44]

12. We conclude that these additional arguments do not support a denial of *Second Thursday* relief. The common concerns underlying all of the arguments are, in essence, that the effectuation of the applicants' *Second Thursday* proposal would result in an undue benefit to the DePriests and/or Choctaw at the expense of MCLM's other creditors, would countenance and encourage gamesmanship by parties seeking to escape the limitations imposed by *Jefferson Radio*, and thus cause these parties to be unfit to receive the benefits of *Second Thursday* relief as innocent creditors. Our review of the record in this proceeding persuades us that these concerns are unfounded.

13. The record supports the applicants' assertions that the Plan was the result of good faith, arm's length negotiations intended to fairly compensate all of MCLM's creditors, rather than a collusive inside deal between the DePriests and Choctaw.[45] The federal bankruptcy process is intended to generally

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discharge of his debts in the involuntary bankruptcy proceeding, "Mr. DePriest could not receive any benefit from being relieved of the obligation to pay these debts if the Commission granted MCLM and Choctaw's request for Second Thursday relief," and adds that, in light of this changed circumstance, "the Bureau suggests that reconsideration of the [*MO&O*] is now appropriate." *See* EB Response at 3.

[42] *See LaRose*, 494 F.2d at 1149 (reversing denial of *Second Thursday* relief where suspected wrongdoers were judgment-proof); *Davis Broadcasting Company, Inc.*, Memorandum Opinion and Order, 67 FCC 2d 872, 875, para. 9 (1977) (concluding that the possible reduction of a suspected wrongdoer's secondary liability as a guarantor of certain promissory notes was of "minimal importance," and did not preclude *Second Thursday* relief, because the wrongdoer "has been adjudged a bankrupt leaving his creditors with little or no recourse against him on any of his outstanding obligations"); *Oyate, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 6759, 6762, para. 23 (1988) (finding that potential benefit to accused wrongdoer did not preclude *Second Thursday* relief because supplemental filings indicated that wrongdoer's liabilities greatly exceeded his assets); *Pyle Communications of Beaumont, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8625, 8626, para. 7 (1989) (although *Second Thursday* relief might indirectly benefit suspected wrongdoers by reducing their liability to third parties, "this benefit does not preclude the transaction because the [wrongdoers'] debts will still exceed their assets and they will continue to be subject to the bankruptcy court").

[43] *See MO&O*, 29 FCC Rcd at 10878, n.56.

[44] On February 12, 2016, at Commission staff request, Choctaw filed a [Second] Supplement to Petition for Reconsideration (Second Supplement), which addresses these arguments. The request was made in the interest of having as complete a record as possible to inform our decisions in this matter, and we accordingly grant Choctaw's accompanying Motion for Leave to Supplement Petition for Reconsideration.

[45] *See Kola, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 14297, 14308 para. 20 (1996) (claim by opponent of *Second Thursday* relief that beneficiary of license assignment was not a truly innocent creditor rejected because opponent "presented no evidence to support his speculation as to [the beneficiary's] collusion or other alleged lack of innocence"). The Second Supplement includes a Declaration from Patrick Trammell, the Chairman and Chief Executive Officer of Choctaw, attesting that "Donald and Sandra DePriest played no role in developing or negotiating the Reorganization Plan submitted to and approved by the MCLM Bankruptcy Court...." Declaration of
(continued....)

preclude any such collusion, and opposing parties have presented no factual or legal basis to collaterally attack the Bankruptcy Court's determination in this case that the Plan meets the good faith requirement of the Bankruptcy Code.[46] We place great weight on the Court's determination that "[t]he solicitation for acceptances of the Plan was conducted in good faith and in a thorough manner, pursuant to this Court's prior order, was made of all creditors, gave all such creditors a fair and adequate opportunity to accept the Plan and was in compliance with Section 1129 of the Bankruptcy Code."[47]

14. We also find nothing in the record that would cause us to question Choctaw's representation that neither Donald nor Sandra DePriest played a role in negotiating the Plan, will have any role with respect to the licenses assigned to Choctaw, or benefit from the assignment.[48] MCLM and Choctaw affirmatively represented in the Choctaw Application that the DePriests would have no such role, and, in response to the petitions to deny the application, included a Supplemental Declaration from Patrick Trammell with their opposition, attesting, *inter alia*, that the DePriests "will receive no compensation or other direct benefit as a result of the proposed transaction and will not receive proceeds from any future sales and assignments of the Licenses by Choctaw to third parties; ... have not had, nor will they have, any role with Choctaw...; [and] will play no future role with respect to the licenses...."[49] Furthermore, although Donald and Sandra DePriest each filed claims as creditors of MCLM, the Plan precludes any payment to them, and the Confirmation Order expressly decrees that "Don DePriest, Sandra DePriest, and any entities under their ownership and/or control shall not participate in, nor shall they receive any recovery or distributions made by the Administrative Agent/Liquidating Agent under or in connection with the Plan."[50]

15. The record also establishes that the creditors of MCLM who would benefit from the proceeds obtained from assignment of the licenses are innocent creditors. None of the creditors has been accused of wrongdoing, either in the *HDO* or otherwise. Choctaw asserts, without contradiction in the record, that "there was extensive testimony before the Bankruptcy Court on the issue of innocent creditors,"[51] and we give great weight to the Bankruptcy Court's findings that the Plan represents a good faith effort to benefit innocent creditors of MCLM without unfair discrimination.[52] And although some of MCLM's spectrum holdings will be assigned to third parties in the immediate future in order to repay the creditors, Choctaw also represents that it intends to operate stations authorized under the geographic

(Continued from previous page)
Patrick Trammell, dated Feb. 11, 2016, Attachment C to Second Supplement. We can discern nothing in the record that would contradict that representation, made under penalty of perjury.

[46] *See* 11 U.S.C. § 1129(a)(3) (providing that a bankruptcy court shall not confirm a plan unless the plan "has been proposed in good faith and not by any means forbidden by law"). Choctaw also notes that it and another party submitted competing proposals to the Bankruptcy Court, and the entire creditor group reviewed both plans and selected the Choctaw plan based on positive votes from "an overwhelming majority of the creditors *from each and every class*." *See* Second Supplement at 6 (emphasis in original).

[47] *See Confirmation Order* at 2.

[48] *See* Second Supplement at 5, 8-9 & Attach. C (Trammell Declaration).

[49] *See* Reply Comments and Opposition to Petitions to Deny, filed May 30, 2013, by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, (Choctaw Opposition) at Exh. B (Supplemental Declaration). The Supplemental Declaration further represents that "[n]either Sandra and Donald DePriest nor any entity with which they are affiliated will have any involvement with the Licenses through any future sales and assignments of the Licenses by Choctaw to third parties...." *Id.*

[50] *See Confirmation Order* at 11.

[51] *See* Choctaw Opposition at 15.

[52] *See, e.g., Confirmation Order* at 3.

MCLM licenses, and that it has already obtained bids from multiple engineering and construction firms toward that end.[53]

16. The record also indicates that MCLM filed for bankruptcy because it lacked the resources to conduct day-to-day operations and was unable to repay creditors, rather than for the primary purpose of evading the *Jefferson Radio* policy.[54] The Bankruptcy Court, which is better positioned than the Commission to assess the legitimacy of MCLM's bankruptcy filing, concluded that the Plan is based on "the valid business judgment of the Debtor,"[55] and there is nothing in the record that would cause us to question that determination.[56] Finally, we reject assertions that the absence of a trustee or receiver should render a bankrupt licensee ineligible for *Second Thursday* relief. Under the Bankruptcy Code, a debtor-in-possession, like a trustee or receiver, owes a fiduciary duty to creditors.[57] As Choctaw notes, moreover, in this case there is also a Court-appointed independent Liquidating Agent to oversee the claim process and protect all of MCLM's creditors, including unsecured creditors.[58]

17. Based on the current record, we find, in sum, that the applicants' proposal warrants *Second Thursday* relief.[59] MCLM and Choctaw have fulfilled their obligation to establish that the proposed transaction satisfies all of the *Second Thursday* criteria: that MCLM is in bankruptcy; that the creditors of MCLM are innocent of any misconduct; that the proposed assignment pursuant to the Bankruptcy Court-approved Plan will benefit those innocent creditors of MCLM, including the unsecured creditors; that the individuals charged with misconduct, the DePriests, will have no part in the operations of the stations authorized under the assigned licenses; and that the DePriests will derive no benefit from

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[53] *See* Second Supplement at 4-5.

[54] *Id.* at 9.

[55] *See Confirmation Order* at 4.

[56] We also agree that any allegation that MCLM's claimed need for bankruptcy protection was entirely spurious must be evaluated in light of Donald DePriest's subsequent involuntary bankruptcy. *See* Second Supplement at 9-10. *See also* WorldCom, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 26484, 26499, para. 21 (2003) (holding that "operating under bankruptcy law generally imposes substantial short-term and long-term burdens on the bankrupt company that provide more than an adequate disincentive to the use of bankruptcy to evade accountability to the Commission").

[57] *See, e.g.*, 11 U.S.C. § 1107(a) (specifying debtor-in-possession's duties); *In re Insilco Technologies, Inc.*, 480 F.3d 212, 215 n.3 (3rd Cir. 2007) (a debtor-in-possession "is bound by all of the fiduciary duties of a bankruptcy trustee"); *In re Jehan-Das, Inc.*, 91 B.R. 542, 546 (Bankr. W.D. Mo. 1988) (a debtor-in-possession "is not free to deal with [estate] property as [s]he chooses, but holds it in trust for the benefit of creditors, standing in the shoes of a trustee 'in every way'") (citations omitted).

[58] *See, e.g.*, Second Supplement at 4, 11. A number of MCLM's creditors, including unsecured creditors, have filed comments in the docket supporting the MCLM-Choctaw proposal and request for *Second Thursday* relief. *See* Letter from Derek F. Meek, Burr Forman LLP, on behalf of the Official Committee of Unsecured Creditors, to the FCC (Nov. 6, 2014); Comment by James L[.] Teel (Nov. 6, 2014); Letter from David S. Shelton to FCC (Nov. 11, 2014); Letter from Justin Y. Shelton to FCC (Dec. 19, 2014).

[59] We emphasize that we are not here granting any of the subject assignment applications but only removing the *Jefferson Radio* policy as an impediment to their processing. WTB shall process the applications in accordance with the Commission's regulations and policies. We note that the Choctaw Application proposes to assign to Choctaw all of the spectrum currently held by MCLM, including the spectrum that MCLM also proposes to assign to the CII Companies. We anticipate that WTB, upon making the requisite public interest finding under Section 310(d) of the Act, 47 U.S.C. § 310(d), will grant the Choctaw Application prior to processing any of the applications assigning spectrum to the CII Companies, and then, after Choctaw files and WTB processes the notification of consummation of the assignment to Choctaw, that the applications assigning spectrum to the CII Companies will be amended to substitute Choctaw for MCLM as the assignor. That procedure would be consistent with our decision here and our expectation regarding the processing of all of the subject applications, but we note that WTB retains discretion to address such timing and logistical issues under its existing delegated authority.

favorable action on the Choctaw Application that might outweigh the equitable considerations favoring MCLM's creditors. In granting *Second Thursday* relief here, we act in accordance with the Commission's duty to accommodate bankruptcy law and the decisions of bankruptcy courts, while discharging the Commission's own public interest responsibilities, including to protect the integrity of its auction procedures.[60]

18. With this grant of *Second Thursday* relief and the consequent termination of the hearing on MCLM's license qualifications, the *Jefferson Radio* policy is no longer an obstacle to the processing of any of the pending assignment applications. Our grant of reconsideration on the *Second Thursday* issue does not require that we revisit the Commission's decision to remove the SCRRA Applications (a contingency provided for in Footnote 7 of the *HDO*),[61] but even if we were to grant reconsideration on that point, the SCRRA Applications, like the other applications covered by this decision, would nonetheless be removed from the hearing by virtue of our grant of *Second Thursday* relief. Therefore, we find that it is unnecessary to further address arguments regarding the propriety of the Commission's decision in the *MO&O* to remove the SCRRA Applications, and the SCRRA Applications alone, from the hearing. In the *HDO*, as noted *supra*, the Commission invited SCRRA and MCLM to submit a showing as to whether the public interest in facilitating SCRRA's acquisition of spectrum for PTC warranted removing the SCRRA Applications from the hearing. The CII Companies argued that their intended uses of MCLM-assigned spectrum also would bring significant public safety benefits and that they should be given the same opportunity to show why their applications should be removed from the hearing.[62] In the *MO&O*, the Commission granted relief to the extent of removing the SCRRA Applications from the hearing, but declined to extend similar relief to the CII Companies.[63]

19. The CII Companies seek reconsideration of the decision to exclude them.[64] The relief the CII Companies seek is, in essence, to be treated the same as SCRRA, *i.e.*, to allow their applications to be

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[60] *See LaRose*, 494 F. 2d at 1147 n.2. Although the assignment to Choctaw of the three remaining site-based licenses is subject to a possible subsequent determination that they have cancelled automatically under the Commission's construction or permanent discontinuance-of-service rules, maintaining this contingency is not in derogation of our duty to accommodate the Bankruptcy Court. The *Confirmation Order* states that "the Court is not attempting through its orders or otherwise to superimpose this Court's rulings or judgments on the FCC" and recognizes that "the Court's rulings and orders herein are contingent on what the FCC ultimately decides regarding the subject FCC licenses and the Debtor's rights to hold and/or transfer same...." *See Confirmation Order* at 11-12.

[61] *See HDO*, 26 FCC Rcd at 6523, n.7. As earlier noted, *see* paragraph 1 & note 8, *supra*, the SCRRA Applications were granted on September 14, 2016. Nothing in the instant decision is intended to disturb those grants.

[62] *See MO&O*, 29 FCC Rcd at 10875-76, 10885, paras. 13, 34 & n.36, and pleadings cited therein. The CII Companies also petitioned for reconsideration of the *HDO* because of their exclusion. In the *MO&O*, the Commission dismissed those petitions as impermissibly seeking reconsideration of an interlocutory order. *See MO&O*, 29 FCC Rcd at 10885-86, para. 35, *citing* 47 CFR § 1.106(a)(1).

[63] *See MO&O*, 29 FCC Rcd at 10878-87, paras. 20-38.

[64] *See, e.g.*, DEMCO Petition at 4-6, 11-20; Enbridge Petition at 11-21; SVEC Petition at 2-12. The CII Companies also argue that the Commission erred in dismissing their petitions for reconsideration of the *HDO*. *See* DEMCO Petition at 10; Enbridge Petition at 10-11 (both arguing that the Commission misconstrued Section 1.106(a)(1) by failing to recognize that forcing a party to participate in a hearing, as here, is just as much "an adverse ruling" as is excluding a party from a hearing, and thus equally availing of the rule's "adverse ruling" exception to the prohibition of petitions for reconsideration of an interlocutory ruling). The record also includes letters from several non-parties supporting the CII Companies' petitions. *See* Letter from American Petroleum Institute, National Rural Electric Cooperative Association, National Rural Telecommunications Cooperative, Energy, Telecommunications and Electrical Association, Electric Institute, and Utilities Telecom Council to the Hon. Tom Wheeler, Chairman, FCC (Oct. 31, 2014), Letter from Mark Crosby, President/CEO, Enterprise Wireless Alliance, to the Hon. Tom Wheeler, Chairman, FCC (Nov. 15, 2014), Letter from James Bradford Ramsey, General Counsel, National Association of Regulatory Utility Commissioners, to the Hon. Tom Wheeler, Chairman, FCC (Dec. 2, 2014), Letter from Samuel R. Brumberg, Association Counsel, Virginia, Maryland & Delaware Association of Electric

(continued....)

processed without protracted delay, notwithstanding the issues regarding MCLM's basic character qualifications. Our grant of *Second Thursday* relief accomplishes this goal, so further consideration of how the policies of *Jefferson Radio* might otherwise apply to the CII Companies' applications would serve no purpose and would require an unnecessary expenditure of agency resources.[65] We accordingly deny their petitions for reconsideration.[66]

20. Skytel seeks reconsideration of the removal of the SCRRA Applications.[67] Here, too, however, the grant of *Second Thursday* relief obviates the need to expend administrative resources to address Skytel's arguments. The Skytel petitions for reconsideration challenge the substantive and procedural propriety of removing the SCRRA Applications from the hearing pursuant to Footnote 7.[68] But the grant here of *Second Thursday* relief provides an exception to the *Jefferson Radio* impediment to processing the SCRRA Applications. Thus, no purpose would be served by addressing Skytel's arguments; even if those arguments were deemed to have merit, the ultimate outcome would not change.[69]

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Cooperatives, to the Hon. Tom Wheeler, Chairman, FCC (Mar. 12, 2015), Letter from David Porter, Chairman, Railroad Commission of Texas, to the Hon. Tom Wheeler, Chairman, FCC (Aug. 17, 2015).

[65] The record in this case demonstrates some of the challenges that the Commission faces in applying *Jefferson Radio*. In particular, while the *Jefferson Radio* policy is grounded in the public interest in deterring misconduct by Commission licensees and protecting the integrity of the licensing process, the delay and uncertainty that result from a designation for hearing on character issues may make valuable spectrum unavailable for use and may adversely affect other important public interest goals of the Communications Act, as well as other federal statutes and policies. This case reflects multiple efforts to find a way to accommodate these competing interests, and ultimately changes in the underlying facts have allowed us to apply the well-established *Second Thursday* exception to all the licenses that remained designated for hearing. In future cases where established exceptions are unavailable, we may consider whether alternative mechanisms might accommodate the *Jefferson Radio* policy goals more efficiently, while also promoting other federal policies. As we discuss elsewhere in this decision, the D.C. Circuit recognized in *LaRose* that "[a]dministrative agencies have been required to consider other federal policies, not unique to their particular area of administrative expertise, when fulfilling their mandate to assure that their regulatees operate in the public interest." *See infra* para. 17, *citing LaRose*, 494 F.2d at 1147 n.2. *See also Tender Offers and Proxy Contests*, Policy Statement, 59 R. R. 2d 1536, 1537, para. 7 (1986), *appeal dismissed, Office of Communication of the United Church of Christ v. F.C.C.*, 826 F.2d 101 (D.C. Cir. 1987) (noting the Commission's objective to "implement procedures which fully accommodate, wherever feasible, other state and federal laws and policies concerning the governance of corporations" – specifically, time constraints associated with tender offers and proxy statements); *HDO*, 26 FCC Rcd 6520, 6523, para. 7, n.7 (performing similar balance of "public interest" under Communications Act with "potential safety of life considerations involved in the positive train control area" required by Congress to be implemented by passenger trains).

[66] *See AT&T Corporation v. Beehive Telephone Company, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 11641, 11642, n.9 (2002). Our grant of *Second Thursday* relief likewise removes any need to consider the argument that the Commission erred in dismissing the CII Companies' petitions for reconsideration of the *HDO*.

[67] *See, e.g.*, Skytel-2 Petition at 16-17.

[68] *See* Skytel-2 Petition at 16-21; Skytel Opposition at 7. They also largely discuss issues that are outside the scope of the *MO&O*. For example, Skytel makes arguments regarding the basic qualifications of MCLM and Mr. DePriest that are not germane to the question of whether the Commission should grant parties' requests for relief under Footnote 7 or *Second Thursday*, inasmuch as the propriety of such relief does not rest on a determination of the licensee's qualifications. *See, e.g.*, Skytel-2 Petition at 5-13 (reiterating arguments made in other proceedings that Donald DePriest is a real-party-in-interest to the MCLM Auction 61 application, and that MCLM failed to comply with the spousal affiliation rule); *see also* Skytel Opposition at 2-5 (arguing, *inter alia*, that MCLM is a "sham entity").

[69] Even if any of these issues had any relevance here, moreover, Skytel's petitions merely reiterate arguments already rejected by the Commission. We will not grant reconsideration "to debate matters upon which the Commission has already deliberated and spoken." *See* WWIZ, Inc., *Memorandum Opinion and Order*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967.

That is, even if we were to determine on reconsideration that the SCRRA Applications should not have been removed from the hearing pursuant to Footnote 7, the *Second Thursday* relief we are granting as an exception to the *Jefferson Radio* policy would have provided an independent basis for processing the SCRRA Applications. The Skytel petitions are accordingly denied.[70]

21. We also deny an application for review filed by Warren Havens and associated entities[71] seeking Commission review of an action by the Wireless Telecommunications Bureau's Mobility Division (Division) denying petitions for reconsideration of orders by the Division and its predecessor pertaining to the initial grant of the AMTS licenses to MCLM.[72] Insofar as the AFR argues that the Division should have disqualified MCLM or designated it for hearing because of misconduct, it is foreclosed by our decision here to grant *Second Thursday* relief to MCLM and Choctaw. This decision squarely rejects the proposition that it would accord with precedent and serve the public interest to continue a hearing on MCLM's qualifications and consider revocation of its licenses. In addition, the arguments in the AFR that are not related to MCLM's qualifications—arguments that Commission staff is biased against Warren Havens and violated his due process rights, and that the Division erred in not treating an amendment to MCLM's application (revising its attributable revenues upward) as a major amendment—are without merit.[73] Havens has repeatedly claimed that Commission staff is biased against him, and the Commission has repeatedly rejected those claims as unsubstantiated.[74] We find no merit in Havens's cursory claim that the Commission exercises its powers in an unconstitutionally broad manner.[75] Finally, the Division correctly explained that the MCLM amendment was a minor amendment under the Commission's Rules.[76]

IV. CONCLUSION AND ORDERING CLAUSES

22. As a result of changed circumstances based on events occurring after adoption of the *MO&O*, we conclude that it is now appropriate to terminate the pending hearing into MCLM's basic qualifications pursuant to the *Second Thursday* exception to the *Jefferson Radio* policy, and to permit the Choctaw Application to be processed.[77] The MCLM-Choctaw proposal warrants *Second Thursday* relief, and will permit a resolution of this matter that accommodates bankruptcy law, protects innocent creditors of MCLM, vindicates the integrity of the auction process, preserves an important deterrent to licensee misconduct, largely terminates a years-long hearing proceeding that has consumed significant administrative and applicant resources, and removes a cloud on valuable spectrum so it can be quickly put to use in the public interest.

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[70] Our denial of the Skytel petitions for reconsideration on these grounds obviates the need to consider whether they are procedurally defective. *See, e.g.*, SCCRA Motion to Dismiss at 1-8; SCRRA Reply at 2-3, *citing* 47 U.S.C. § 405. We therefore dismiss the SCRRA Motion as moot.

[71] See Application for Review, Warren C. Havens et al. (filed Apr. 9, 2007) (AFR).

[72] *Maritime Communications/Land Mobile, LLC*, Order on Reconsideration, 22 FCC Rcd 4780 (WTB MD 2007) (*Order*).

[73] *See* AFR at 4, 7-8, 16-18.

[74] *See, e.g., Mobex Network Services, LLC*, Memorandum Opinion & Order, 25 FCC Rcd 3390, 3395-96, para. 11 (2010).

[75] *See Intelligent Transportation and Monitoring Wireless LLC and AMTS Consortium, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7720, 7729-30, para. 25 (2012) (declining to address the argument).

[76] *See Order*, 22 FCC Rcd at 4785-86, para. 10.

[77] As we have noted *supra*, we terminate the hearing only as to the basic qualifications issues, and not as to Issue (g), pertaining to whether any of MCLM's site-based licenses have cancelled automatically due to a failure to construct or a permanent discontinuance of operation. Our decision here is without prejudice to the resolution of Issue (g).

23. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, that the Petitions for Reconsideration filed by Maritime Communications/Land Mobile, LLC on October 14, 2014, and by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC on October 14, 2014, ARE GRANTED, and application FCC File No. 0005552500 SHALL BE PROCESSED in accordance with this *Memorandum Opinion and Order on Reconsideration* and the Commission's rules.

24. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, that the Motion for Leave to Supplement Petition for Reconsideration filed by Maritime Communications/Land Mobile, LLC, on November 6, 2015, the Motion for Leave to Supplement Petition for Reconsideration filed by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, on November 9, 2015, and the Motion for Leave to Supplement Petition for Reconsideration filed by Choctaw Telecommunications, LLC, and Choctaw Holdings, LLC on February 12, 2016 ARE GRANTED, and Maritime's Supplement to Petition for Reconsideration, filed by Maritime Communications/Land Mobile, LLC on November 6, 2015,the Supplement to Petition for Reconsideration filed by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, on November 9, 2015, and the Supplement to Petition for Reconsideration filed by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, on February 12, 2016, ARE ACCEPTED into the record of this docket.

25. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i),405(a), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, that the Petition for Reconsideration of Memorandum Opinion and Order, filed on October 14, 2014, by DIXIE Electric Membership Corporation, the Petition for Reconsideration of Memorandum Opinion and Order, filed on October 14, 2014 by Enbridge Energy Company, Inc., and the Motion of Shenandoah Valley Electric Cooperative for Reconsideration, or in the Alternative, Petition for Leave to Intervene, filed on October 8, 2014, by Shenandoah Valley Electric Cooperative ARE DENIED.

26. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, that the Petition for Reconsideration of Skytel-1 Entities filed on October 15, 2014, and the Petition for Reconsideration of Skytel-2 Entities filed on October 14, 2014, ARE DENIED.

27. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, that the Consolidated Motion to Dismiss Petitions for Reconsideration filed on October 29, 2014, by Southern California Regional Rail Authority IS DISMISSED as moot.

28. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), and section 1.115 of the Commission's Rules, 47 CFR § 1.115, that the Application for Review filed by AMTS Consortium LLC, Telesaurus VPC LLC, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation, and Warren Havens on April 9, 2007, IS DENIED.

29. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that the presiding Administrative Law Judge SHALL TERMINATE the hearing in EB Docket No. 11-71 with respect to the issues pertaining to the basic license qualifications of Maritime Communications/Land Mobile, LLC, without prejudice to the resolution of hearing issue (g).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

PARTIES, COMMENTERS AND PLEADINGS

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (Choctaw)
Petition for Reconsideration, filed 10/14/14 (Choctaw Petition)
Choctaw Request for Confidentiality, filed 10/14/14 (Choctaw Request)
Opposition to Petitions for Reconsideration, filed 10/24/14 (Choctaw Opposition)
Consolidated Reply to Oppositions to Choctaw's Petition for Reconsideration, filed 11/5/14 (Choctaw Reply)
Motion for Leave to Supplement Petition for Reconsideration, filed 11/9/15 (Choctaw Motion)
Supplement to Petition for Reconsideration, filed 11/9/15 (Choctaw Supplement)

DIXIE Electric Membership Corporation (DEMCO)
Petition for Reconsideration of Memorandum Opinion and Order, filed 10/14/14 (DEMCO Petition)
DEMCO Reply to Havens' Opposition to Petition for Reconsideration, filed 10/31/15 (DEMCO Reply)

Enbridge Energy Company, Inc. (Enbridge)
Petition for Reconsideration of Memorandum Opinion and Order, filed 10/14/14 (Enbridge Petition)
Enbridge Reply to Opposition to Petition for Reconsideration, filed 10/31/14 (Enbridge Reply)

Enforcement Bureau (EB)
Enforcement Bureau's Opposition to MCLM and Choctaw Petitions for Reconsideration, filed 10/24/14 (EB Opposition)
Enforcement Bureau's response to MCLM's and Choctaw's Motions for Leave to Supplement Their Petitions for Reconsideration, filed 11/12/15 (EB Response)

Maritime Communications/Land Mobile, LLC (MCLM)
Petition for Reconsideration, filed 10/14/14 (MCLM Petition)
Request for Confidential Treatment, filed 10/14/14 (MCLM Request)
Opposisition [sic] to Petitions for Reconsideration, filed 10/29/14 (MCLM Opposition)
Maritime's Consolidated Reply to Oppositions to Petition for Reconsideration, filed 11/5/14 (MCLM Reply)
Motion for Leave to Supplement Petition for Reconsideration, filed 11/6/15 (MCLM Motion)
Maritime's Supplement to Petition for Reconsideration (MCLM Supplement)

Shenandoah Valley Electric Cooperative (SVEC)
Motion of Shenandoah Valley Electric Cooperative for Reconsideration, or in the Alternative, Petition for Leave to Intervene [in EB Docket No. 11-71], filed 10/8/14 (SVEC Petition)

Southern California Regional Rail Authority (SCRRA)
Consolidated Motion to Dismiss Petitions for Reconsideration, filed 10/29/14 (SCRRA Motion to Dismiss)
Reply to "Opposition to Consolidated Motion to Dismiss Petitions for Reconsideration," filed 11/19/14 (SCRRA Reply)

Skytel[78]

Application for Review, filed 4/9/07 (AFR)

Petition for Reconsideration of Skytel-1 Entities, filed 10/15/14 (Skytel-1 Petition)

Petition for Reconsideration of Skytel-2 Entities, filed 10/15/14 (Skytel-2 Petition)

Explanation of Timely Filing, and Explanation of ECFS Problems on 10/14/14, and Conditional Request to Accept, filed 10/22/14 (Skytel Explanation)

Opposition to Petitions for Reconsideration, filed 10/24/14

Initial Reply to Opposition to Petitions for Reconsideration, filed 10/31/15 (SkyTel Reply)

Further Reply to Opposition to Petitions for Reconsideration, filed 11/5/15 (SkyTel Further Reply)

Opposition to Consolidated Motion to Dismiss Petitions for Reconsideration, filed 11/10/14 (Skytel Opposition to Motion to Dismiss)

[78] Skytel is a group of limited liability companies (LLCs) under the control of Warren Havens. To avoid confusion, we refer here to Havens and these LLCs, and also Havens-controlled predecessor LLCs, collectively as Skytel. For purposes of the petitions for reconsideration of the *MO&O*, Skytel-1 consists of Warren Havens, individually, Intelligent Transportation and Monitoring Wireless LLC, and Skybridge Spectrum Foundation; and Skytel-2 consists of Environmentel LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and V2G LLC.

CERTIFICATE OF SERVICE

I, Paula M. Lewis, hereby certify that on this 23rd day of January 2017, copies of the attached Status Report were served via email and first class mail to the following:

The Honorable Richard L. Sippel
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