

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

In the matter of:	
ORDER OF DISMISSAL, by ALJ Richard Sippel	FCC 17M-35
In and regarding:	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services	EB Docket No. 11-71 File No. EB-09-IH-1751
Applicant for Modification of Various Authorizations in the Wireless Radio Services	
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 CORPORATION, INC.; ATLAS PIPELINE-MID CONTINENT, LLC; DENTON COUNTY ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC; AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	Application File Nos. ¹ 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004315903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service	
AMTS Site-Based Licenses of Maritime Communications/Land Mobile LLC (now held by Choctaw Holdings LLC)	Call Signs KAE889, WRV374 and WHG750
Maritime Communications/Land Mobile LLC's Second Thursday Application	Docket No. 13-85

To: Marlene H. Dortch, Secretary. Attn: The Commission

**APPEAL OF ORDER OF DISMISSAL, FCC 17M-35
AND UNDERLYING DECISIONS AND ACTIONS IN EB DOCKET 11-71**

Polaris PNT PBC
2649 Benvenue Ave, Berkeley, CA 94704
Phone 510. 914 0910
October 27, 2017

¹ Some dismissed after Docket 11-71 commenced.

Pursuant to FCC Rule §1.302 and other relevant law, as a party with legal interest and standing, Polaris PNT PBC, a Delaware Public Benefit Corporation controlled by Warren Havens (“Havens”) (“Polaris” or “Appellant”) submits this Appeal of (i) the *Order of Dismissal*, **FCC 17M-35**, released September 28, 2017, by Administrative Law Judge Richard L. Sippel (“Sippel” or “ALJ Sippel”) (herein, the “Sippel Termination Order” or the “Order”) that terminated the case against Maritime Communications/Land Mobile LLC (“Maritime”) in the captioned proceeding 11-71, and (ii) of underlying decisions and actions in the proceeding: (a) the decisions and actions that Havens and/or other “Skytel” parties objected to (by objections, oppositions, and other challenges) in the proceeding, where the objections were not satisfied, and (b) other decisions and actions that are explained herein and in the concurrently filed Havens Appeal of the matters captioned above ("Havens Appeal").

Polaris joins in the Havens Appeal, and in addition, states the following:

As shown earlier in FCC proceedings, Polaris asserts that it has Standing and Interest in this matter, first, by means of an assignment of litigation claims from Havens to Polaris of some of Havens claims in the matters of this Petition, under the holdings of the US Supreme Court in *APCC Servs., Inc. v. AT&T Corp.*, 254 F. Supp. 2d 135, 137 (D.D.C. 2003).² This assertion is supported by the Havens Declaration below.

FCC rule § 1.203 provides:

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. Where any decision rests on official notice of a material fact not appearing in the record, any party shall on timely request be afforded an opportunity to show the contrary.

Appellant submits that the record in this proceeding does not support the decisions appealed from herein. The opportunity to make this showing does not appear to be limited to

² .E.g., see Havens and Polaris filing regarding DA 1768, February 17, 2017.

this opening brief in this Appeal: the standard stated is “on timely request” not “in an appeal under § Rule §1.302. Polaris thus requests that Commission grant this opportunity, and provide a schedule for Appellant to respond.

Polaris references herein the Polaris and Havens joint and coordinated showings of legal standing in their challenge pleading filed before the FCC (Commission, Wireless Bureau and Mobility Division of Wireless Bureau) in this year 2017, as to the Applications listed in the caption above and the dockets listed. There is no need to repeat those specific showings in the matters captioned above, again herein, since they are discreet showings with no need to sift through broader text to extract them. In specific, the reference includes the Havens-Polaris request for declaratory ruling on this standing issue identified in the Havens-Polaris memo in support their notice of appeal of FCC 17M-35, and also identified here: MOTION FOR DECLARATORY RULING REGARDING STANDING, EXPEDITED ACTION REQUESTED dated and filed August 16, 2017. Copy filed in docket 11-71.

However, out of an abundance of caution, and for convenience of FCC staff, Polaris includes herein, as the Attachment hereto, a copy of this declaratory ruling request, and Polaris references and incorporates the text of this Attachment herein.

For the reasons above, in this brief and in the Havens Appeal in which Polaris joins, the relief requested herein should be granted.

Respectfully submitted, October 30, 2017,

POLARIS PNT PBC, by



Warren Havens,
Its President
Contact information is on the Caption page.

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing was prepared by me and that the factual statements and representations contained herein known to me are true and correct.



Warren Havens

October 30, 2017

ATTACHMENT

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

<p><i>In re</i></p> <p>Maritime Communications/ Land Mobile LLC, (Alleged) DIP (“<i>MCLM</i>”) and Choctaw Holdings LLC (“<i>Choctaw</i>”) interdependent proceedings and decisions (the “<i>MCLM-Choctaw Case</i>”):</p> <ul style="list-style-type: none">(a) MCLM Internal transfer of control;(b) Completion of disclosure of DE ‘bidder-size’ attributable gross revenues in auction 61 and related annual DE filings;(c) “Second Thursday” decision;(d) Renewal applications: WQGF315, -316, -317, -318 (the “<i>Licenses</i>”);(e) Extension request applications (to extend/waive the Licenses’ construction/buildout deadline);(f) Assignment applications: to assign the Licenses to Choctaw;(g) Assignment of pending MCLM license-sale assignment applications to Choctaw;(h) Interlocutory order suspending prosecution of MCLM-Choctaw in 11-71 (“<i>Sippel Order</i>”);(i) Challenges pending (and stated as reserved) against W. Havens individually in co-geographic AMTS-competitive licensing.	<p>Dockets 11-71, 13-85</p> <ul style="list-style-type: none">(a) No application submitted.(b) Disclosures not completed. Annual DE filings never made.(c) FCC 16-172(d) FNs: 0007603776, -777, -778, -779(e) FNs: 0007603776, -777, -778, -779(f) FN: 0005552500(g) No application submitted. Public Notice # 12484 (08/02/2017): File Nos. 0004030479¹(h) FCC 15M-14(i) AMTS site-based license applications (dismissed, pending on appeal), Auction 87 ‘paging’ licenses results, 220 MHz licenses and extensions, “Leong”-alleged co-control (withdrawn without prejudice), and other.
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MOTION FOR DECLATORY RULING REGARDING STANDING

EXPEDITED ACTION REQUESTED

To: Office of the Secretary
Attn: Chief, Wireless Telecom Bureau

Warren Havens, and Polaris PNT PBC
2649 Benvenue Ave, Berkeley CA 94704
(510) 914 0910

August 16, 2017

¹ And: 0004193328, 0004430505, 0004507921, 0004604962, 0005224980, 0006967374.

MOTION FOR DECLATORY RULINGS REGARDING STANDING
EXPEDITED ACTION REQUESTED

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Introductory Matters and the Standing Controversy

The movant petitioners herein are captioned above: Warren Havens (“Havens”) and Polaris PNT PBC (“Polaris”) (together, “Petitioners”). “MLCM” and “Choctaw” are defined in the caption above. Herein, “Havens” also includes Polaris with regard to any action after the end of year 2016 in the MCLM-Choctaw Case (unless some use of “Havens” shows otherwise).

The “MCLM-Choctaw”² Case is defined in the caption above. The components of the MCLM-Choctaw Case are listed in the caption above, and are interrelated and interdependent as the FCC flings and pleadings in the MCLM-Choctaw Case show.

MCLM-Choctaw assert that Petitioner Havens has no legal standing to take actions before the FCC in the MCLM-Choctaw Case, as he has (the “Standing Issue”). Havens strongly disagrees, shown in his pleadings in the MCLM-Choctaw case, and in his pleadings in the MCLM-Choctaw bankruptcy case which is the main foundation used by MCLM-Choctaw for

² Petitioner Havens position, in his FCC filings regarding MCLM and Choctaw before the FCC in the captioned matters, is that MCLM was always substantially or largely controlled by the persons that own Choctaw, and after the MCLM Chapter 11 Plan was approved by the bankruptcy Court, was subject to Choctaw de facto control, impermissibly taken without FCC approval. For these and other reasons, herein, the term “MCLM-Choctaw” refers to these interdependent relations, and the use of MCLM or Choctaw also refers to these relations.

obtaining FCC licensing orders they have sought, components applications of which are listed in the caption above.

This major ongoing disagreement creates a case in controversy that is the basis of the Motion for Declaratory rulings (the “Motion”). The Motion is submitted under FCC rule §1.2(a) (which calls for a “motion”) and the Administrative Procedure Act §5 USC §554(e): Full texts are provided in Endnote [1] below. Declaratory rulings are often used in the subject AMTS radio service. See Endnote [2] below.

Expedited action is requested because the matters pending in the Two Case are substantial in extent of the FCC licensed spectrum involved, and have been pending for substantial time and should be decided soon, and FCC addressing of the questions posed herein will facilitate the pending decisions. Given 90-day time limit in 47 USC §405, regarding petitions for reconsideration, and the fact that petitions for reconsideration are the majority of the component actions in the MCLM-Choctaw Case, *Petitioners request the FCC act upon this Motion in under 90 days.*

Havens Has Standing

I reference and incorporate herein my presentation asserting fact and law in support of my position that I do have standing in the MCLM-Choctaw Case presented primarily in my year 2017 filings in the MCLM-Choctaw Case. There is no need to repeat those here.

Those cite to, *inter alia*, *FCC v. Sanders Brothers*, 309 U.S. 470, also cited in *Granik v. FCC*, 234 F.2d 682 (D.C. Cir. 1956) (“*Granik*”) below. I add here text from *Granik* which demonstrates my standing case, *even if restricted only to standing based on my ownership in the receivership entities, and should be dispositive.*

In brief, in *Granik*, the D.C. U.S. Circuit Court of Appeals held that parties who had demonstrated claims to *ownership interest in* a FCC licensed station facility and license, for that

reason along, *possessed standing* to file challenges to the license applications. More specifically, the *Granik* decision, applicable here, includes the following (underlining and numbers in brackets added) (bracketed items discussed after the quoted text):

[1] We think Granik and Cook had standing to protest under section 309[] and to petition for reconsideration under section 405. By contract they had secured an interest in Esch's **ownership** of the license. [2] The proceedings on Esch's application to the Commission were calculated to lead to Commission action inconsistent with appellants' interests, [3] which were known to the Commission. [4] Indeed, the action of the Commission granting the assignment application amounted to approval of transfer of the station license to intervenor notwithstanding Esch was shown, *prima facie*, to have contracted to apply to the Commission for assignment of the license to appellants. [5] Under any ordinary construction of sections 309[] and 405 appellants were parties in interest, persons aggrieved, or persons whose interests were adversely affected by this action of the Commission. See *United States v. Storer Broadcasting Co.*, 76 S.Ct. 763; *Columbia Broadcasting System v. United States*, 316 U.S. 407, 62 S.Ct. 1194, 86 L.Ed. 1563. [*Granik* case quotes continued below.]

The Petitioners' position in the MCLM-Choctaw Case has all of the above components [2], [3], [4] and [5]: In sum: Petitioner Havens [1] has “**interest...ownership**” in the receivership entities, discussed in the Havens past pleadings in the MCLM-Choctaw Case (*note*: these ownership interest matters are further discussed near the end below), [2] the subject licensing applications in the MCLM-Choctaw Case “were calculated to lead to Commission action inconsistent with appellants’ [Petitioners’] interests,” which [3] “were known to the Commission.” [4] “Indeed, the action of the Commission in granting the assignment [and other] application[s] [were]... notwithstanding... [Petitioners’] *prima facie*... license” showing of ownership interest in the subject receivership licenses, including those that were the basis of the Commission making Havens (and the receivership entities) each parties with standing to prosecute MCLM (later MCLM-Choctaw) in the OSC HDO FCC 11-64 and docket 11-71, later expanding to include docket 13-85. Thus, *Petitioners have standing* as the Circuit Court found in [1] above, reversing the Commission, for reasons detailed in [5] above: “Under any ordinary

construction of sections 309[] and 405 [the Petitioners] appellants were [and are] parties in interest, persons aggrieved, or persons whose interests were adversely affected by this action of the Commission.”

The court further explained these matters, and related reasons that Congress meant under §§309 and 405 of the Communications Act to recognize (and encourage use of) said party-participation interest and standing. Continuing from *Granik*:

[6] Although the Florida courts have jurisdiction to decide the private rights of the parties, the Commission of course retaining ultimate jurisdiction over the license, appellants' position in the private litigation does not remove them from a position of standing also under the Communications Act to challenge action under it adverse to their interests. [7] The transactions with respect to the station and its license are relevant to the Commission's determination whether the public interest, convenience and necessity would be served by grant of Esch's application for assignment of the license to intervenor. See section 310[] of the Act, 47 U.S.C.A. § 310[]. Good faith and fair dealing bear upon the public interest. And appellants are the persons to present the facts to the Commission. Thus through their private interest they represent a factor affecting the public interest, even though their private interest considered alone is not for Commission determination. *Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U.S. 470, 477, 642, 60 S.Ct. 693, 84 L.Ed. 869, 1037; *Scripps-Howard Radio, Inc., v. Federal Communications Commission*, 316 U.S. 4, 14, 62 S.Ct. 875, 86 L.Ed. 1229; *United States v. Storer Broadcasting Co.*, 76 S.Ct. 763. [8] If anything more were required, and we think it is not, standing arises also by reason of the likelihood of injury to appellants because of the effect the Commission's action might have upon the Florida litigation. *Cf. Greenville Television Co. v. Federal Communications Commission*, 95 U.S.App.D.C. 314, 221 F.2d 870. The state court in determining what relief, if any, should be accorded appellants might well be influenced by the Commission's decision respecting assignment of the license. For example, in deciding whether it should exercise its equitable power to grant appellants' request for specific performance and an injunction the state court might be influenced by the fact that the Commission had approved assignment of the license to another, or that such assignee had begun operating the station. Conversely, the court's decision as to the rights and obligations of the parties before it might influence the decision of the Commission affecting some or all of the same parties. This is not to say that either court or Commission may cross the jurisdictional lines separating them, but only that in exercising their respective jurisdictions each might be affected by action of the other in a matter having much of common concern. The stake of

appellants in the facilities of the station and in the license seems to us to reach a status comparable to the economic interest which gave standing in *Sanders*. In fact their stake includes an economic interest, though not that of a competitor as in *Sanders*.

[9] The Commission may never receive an application from Esch for assignment of the license to appellants. But we cannot be certain of this, especially because the Commission, after hearing appellants, might not approve an assignment to intervenor. [10] And in any event appellants are entitled to be heard on the question whether the public interest would be served by granting Esch's application for assignment of the license to intervenor. [11] This question does not depend alone upon the qualifications of intervenor, but in part upon the facts bearing upon the proposed assignment by Esch. The public interest cannot be disassociated from those facts so as to preclude their consideration by the Commission at the behest of parties affected by them in a special manner. [1], [5], [12] The meaning of 'party in interest' and 'person aggrieved or whose interests are adversely affected' is broad enough to include appellants in the novel circumstances here presented. They have a tangible, substantial and particular interest in the subject matter of the Commission proceedings.

Reversed and remanded.

The Petitioners' position in the MCLM-Choctaw Case has all of the above components shown in brackets [6] to [12]: In sum: [6] As the subject bankruptcy court properly stated in the Chapter 11 Plan Order, its decisions do not decide matters under FCC jurisdiction, and appellant Havens position in that court litigation does not affect Havens' position and standing before the FCC; [7] above clearly applies: only Havens (and several companies he controlled)³ brought to the FCC and ended up prosecuting – for the Commission—its OSC HDO case against MCLM (later MCLM-Choctaw) under FCC 11-64 and its docket 11-71 and later docket 13-85. The Enforcement Bureau gave up its prosecutor role under allege “prosecutorial discretion” which

³ As shown in FCC records, this Havens control has not been subject to an application for transfer of control that lists Havens as the transferor.

added to the conflicts in this MCLM-Choctaw case.⁴ [8] This clearly applies also, indeed, the MCLM Chapter 11 Plan and Plan Order are based on this. [9], [10], and [11] also clearly apply in this matter of Havens standing in this MCLM-Choctaw case and Havens standing in it and exercise of his standing rights by his challenge pleadings. [12] - meeting legal standing criteria or standards, applies here also, for the same reason that [1] and [5] apply as discussed above.

Regarding the DC Circuit Court's citing to 47 USC §§ 309 (regarding petitions to deny) and 405 (regarding petitions for reconsideration): these lead to §402(b) (seeking review from the Circuit Court). Each of these interrelated, interdependent sections of the Communications Act have the same standing criteria, test, or standard that the Circuit Court discussed above in *Granik* and the same Court and the US Supreme Court applied in the cases cited in *Granik*, above. When Congress establishes law that permits petitions to a government agency, and after a final agency decision, to seek review before a federal Circuit Court of Appeal, that is the sole standing standard. There is no extraneous general "Article III" standing standard.

The following supports and further explains *Granik*: As I have presented in a recent pleading in the MCLM-Choctaw Case, see: Evan Tsen Lee & Josephine Mason Ellis, "The Standing Doctrine's Dirty Little Secret," Northwestern University Law Review Vol. 107, No. 1 (2012)⁵ (the "Law Review Standing Article") (underlining and text in brackets added):

ABSTRACT— For the last forty years... the federal courts have consistently permitted Congress to relax or altogether eliminate those requirements in many "procedural rights" cases—ones in which a federal statute creates a right to have government follow a particular procedure, including to provide judicial review of agency decisions. [T]he Case or Controversy Clause of Article III means different things in different types of litigation. In one "tier"—cases where Congress has made it clear that it has created procedural rights that may be

⁴ The point in this Motion of the discussion of FCC conflict, mostly in Endnote [3] below, is that the conflict supports Havens *having, and the need for his exercising*, the demonstrated Havens standing in this MCLM-Choctaw Case. *Indeed, this appears to explain the clearly incorrect findings of the Wireless Bureau Mobility Division in the year-2017 MCLM-Choctaw Case decisions thus far (captioned above).*

⁵ Copy at: <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1084&context=nulr>

vindicated in court without meeting the usual injury, causation, and redressability requirements— [including in 47 USC 402 (list of licensing actions that may be brought to the Circuit Court, and the same before the FCC prior to court review)] the plaintiff should merely be required to show that he or she falls within the “zone of interests” the statute aims to protect. In all other cases—the other “tier”—existing Article III standing requirements would apply. [...]

[T]here are indeed two different levels of the standing doctrine—one for traditional common law review (under, for instance, the “general directives” of the Constitution) and another for cases in which Congress has granted a procedural right to review. [...] Thus... the Supreme Court treats the standing requirements differently in procedural rights cases—Congress really may grant standing to litigants even without their having to show an injury-in-fact.

The legal analysis and conclusions in the quote above are extensively supported with citations to case and other authorities, in the Law Review Standing Article: I reference and incorporate herein the Law Review Standing Article, including to include those citations.

The above=presented Congressional-established procedural-rights "tier" of standing under the Communications Act, including the associated case and other authorities, are also relevant to this Motion, for other reasons, including that the Motion is not moot regarding the MCLM-Choctaw bankruptcy.⁶

In this regard: The MCLM-Choctaw Chapter 11 Plan, as approved in the Plan Order of the subject Bankruptcy Court, *is based on* FCC procedural rights discussed above, including under the discussed FCC-proceeding sections 309, 405 and 402 of the Communications Act. That Chapter 11 Plan, as approved in the Plan Order, has text describing the procedural "finality" requirement with regard to the needed FCC decisions under that FCC-proceeding law. This description, including in the “definitions” in the Plan, sets forth the well-known standard in litigation which applies in FCC adjudication matters as summarily noted by the Third Circuit in *Council Tree v FCC*, 503 F.3d 284 (2007):

⁶ Even if it was alleged as moot under that bankruptcy case, Petitioners assert that it would not be moot for FCC law and procedure purposes.

An agency order is non-final as to an aggrieved party whose petition for reconsideration remains pending before the agency. *West Penn Power Co. v. EPA*, 860 F.2d 581, 583 (3d Cir. 1988).

Petitioners are each an “aggrieved party” in the MCLM-Choctaw Case as shown above. In addition, the MCLM-Choctaw Case is based on FCC “agency order[s] [that are] “non-final as to an aggrieved party [Petitioners] whose petition[s] for reconsideration remains pending before the agency,” the FCC. Said Petitioner petitions, submitted with clear legal standing as shown above, cause those MCLM-Choctaw case Orders, in the matters captioned above, to be “non-final.” They cannot be “final” for MCLM-Choctaw as the applicants in the Orders, but “non-final” for the challenger Petitioners; otherwise, the challenges would be no meaning of the legal standing, and the rights under the standing.

Thus, the posed Standing case in controversy is not moot.

The following further discusses the ownership interests noted above including under items [1] and [5]:

The Havens past pleadings in the MCLM-Choctaw Case state and explain this ownership of Havens, at all times and that remains to this day. It is clearly shown in FCC records including in auction licensing filings. The past pleadings also show the sound legal reasons why these legal entities in which Havens holds the noted ownership interests, filed claims against MCLM and eventually MCLM-Choctaw⁷ in the MCLM-Choctaw Case, which include, *inter alia*, that the geographic AMTS licenses issued to MCLM must be found as void *ab initio*, or otherwise found invalid such as by revocation or rescission, and then as the final

⁷ And against Mobex, the predecessor of MCLM regarding the site-based AMTS licensed stations (and associated alleged assets) Mobex assigned to MCLM, including under WRV374: In the MCLM-Choctaw case, Havens alleged position, which remains to this time, includes that the liability of Mobex passed on to MCLM along with the assignment of the alleged licenses and other assets, and in addition, that Mobex is an affiliate of MCLM including for Auction 61 bidding-credit licensing and post-licensing purposes.

result awarded to the lawful high bidders in Auction 61, two of the licensee entities in which Havens holds the noted ownership interest, in accord with controlling precedent including.⁸ /⁹ /¹⁰ If Havens prevails in current challenges to the MCLM-Choctaw case—where this standing controversy is pending-- then the above may result, and this will benefit the noted Havens ownership interest. That benefit to Havens will accrue regardless of who may control the subject licensee entities in which Havens holds the ownership interests.

The Commission's OCS HDO FC 11-64 described in substantial detail the background of the above-noted Havens claims and why Havens (and the noted licensee entities in which he has interest and that stand to directly obtain the "final result") have sound legal interest and standing to have made and to pursue, under the HDO, those claims. That continues to this day for Havens.

⁸ The void *ab initio* claims involve, *inter alia*, MCLM violations and cheating in and related to Auction 61 in using false bidding credits, making false certifications and statements on the false bidding credits in the forms 175 and 601 to enter the auction, and apply or post-auction license grants, and in other pleadings including responses to FCC investigation inquiries.

⁹ Similarly, if MCLM-issued site-based AMTS licensed stations (obtained from Mobex) that to this day are still listed in ULS as valid, are found automatically terminated (for lack of lawful construction and/ or for permanent discontinuance of lawful service operations), or revoked, rescinded or otherwise invalidated, then there will be a similar "final result"— here, that spectrum involved will "automatically revert" to the co-channel geographic AMTS licenses of the licensee entities in which Havens has the noted ownership interests.

¹⁰ Havens has shown that these lawful high bidders effectively overpaid for the licenses issued to MCLM from auction 87 and would not owe the FCC any sum upon those licenses being issued to them. In brief (as Havens showed in past pleadings), that involves the following: The lawful high bidders have a right to the licenses at their opening bid since MCLM was disqualified, under the facts and law (briefly discussed above), but they kept bidding up for many rounds on the licenses they did end up obtaining from that auction. That bidding-up was due to bidding by MCLM on those licenses, causing prices to increase. The lawful high bidders have a right the MCLM-issued licenses at the opening bid price because of the above noted MCLM disqualification under law. The opening bid price for all of the combined licenses: those issued to MCLM and those issued to the lawful high bidders, is less than that the lawful high bidders paid to the FCC for the licenses they obtained. Thus, they overpaid.

The legal basis for the above noted “final result” position has been often presented by Havens in his past pleadings in the MCLM-Choctaw Case including, *inter alia*, in discussing applicable court case precedents which Havens asserts are controlling. These include *Superior Oil*, 409 F.2d 1115, and *McKay*, 226 F.2d 35, and the relevant holding (not dicta) in *Biltmore v FCC*, 321 F.3d 155. Other case precedents, and discussion of the FCC ruled directly involved, including the Commission’s written decision as to the purpose and meaning of the core rule in the rulemaking decisions, are also in Havens past pleadings before the FCC including his pending petition under 47 USC 405 regarding Auction 87, which in turn draws up writ filings in the US Ninth Circuit Court of Appeals by the Nossaman law firm, related to Auction 87 and auctions back to Auction 61, discussing relevant authorities and analysis.

Conclusion

The Motion for Declaratory Ruling Should Be Granted

For reasons given above, the Commission should grant this Motion for the declaratory ruling Petitioners present above within the requested expedited time.

Respectfully submitted,

August 16, 2017,

/s/

Warren Havens

Warren Havens, an individual

Warren Havens,
President, Polaris PNT PBC (a Delaware Public Benefit Corporation)

Contact information is on the Caption page.

Email: wrrnvns@gmail.com¹¹

¹¹ A Party must call first to enable email to me.

Endnotes

[1] **FCC rule and APA sections on declaratory rulings:**

FCC rule: 47 CFR § 1.2 – Declaratory rulings

(a) The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

(b) The bureau or office to which a petition for declaratory ruling has been submitted or assigned by the Commission should docket such a petition within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice. Unless otherwise specified by the bureau or office, the filing deadline for responsive pleadings to a docketed petition for declaratory ruling will be 30 days from the release date of the public notice, and the default filing deadline for any replies will be 15 days thereafter.

[76 FR 24390 , May 2, 2011]

APA: 5 USC §554 – Adjudications

[. . . .]

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

[Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 384; Pub. L. 95–251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183.]

[2] **Regarding use of Declaratory Rulings in the AMTS radio service:**

In addition to FCC rule §1.2, other FCC regulations specify declaratory rulings as the appropriate procedural vehicle for addressing specific kinds of issues. *E.g.*, regarding the subject AMTS radio service, § 20.9(a) provides that “Any interested party may seek to overcome the presumption that a particular mobile radio service is a private mobile radio service by filing a petition for declaratory ruling challenging a mobile service provider’s regulatory treatment as a private mobile radio service.” And the FCC has issued many declaratory rulings at requests of MCLM, its predecessors in interest, and Havens, on matters in controversy regarding site-based and geographic AMTS licenses and related rules.

[3] **Regarding certain FCC “conflicts” to date (from footnote 4):**

As Havens has earlier asserted, there is a clearly apparent FCC conflict of interest at the foundation of, that runs through, and that appears to govern, thus far, this entire MCLM-Choctaw Case.

The conflict is shown from the handling of Auction 61(including *sua sponte* waivers granted to avoid the Havens-demonstrated disqualifying cheating) never squarely addressed to this day, to a host of other *ultra vires* FCC actions rendering the decisions in favor of MCLM-Choctaw void *ab initio*.

As for “Prosecutorial discretion” (see text above referencing this Endnote): it concerns a government prosecutor authority decision to not, or not further, prosecute the party charged by the government, not a decision to “jump ships” and use public resources to defend the party accused.

As the FCC ALJ Richard Sippel stated at the beginning of the December 2014 trial of MCLM: that switch was unheard of. To this day, it is unexplained, probably since it is unexplainable by any valid legal standard. Yet, the Commission knows of and has gone along with this, as indicated, for example, in FCC 16-172 (the second, “Second Thursday” decision, captioned above) and in FCC 15M-14 (the “Sippel Order,” captioned above) to remove the only Commission prosecution team (Havens and the counsel he arranged for two entities he controlled) that ultimately acted-- and that had the major success in-- 11-71, and to levy false charges under an *ultra vires*, ALJ-changed rule §1.251(f)(3) (that was never enacted by the Commission with the required public notice and comment and is thus void in the first place).

The false removal and charges were to unlawfully protect MCLM-Choctaw, and could not be more against core duties of the Commission and its Enforcement Bureau under the Communications Act, FCC rules, case precedents of the US Supreme Court and DC Circuit Court (some cited herein), and the US criminal code under 18 USC: in 11-71 and earlier, MCLM destroyed and hid the vast majority of all the evidence and when Havens found it, the ALJ and Bureau would not accept and process it. Whatever the interest and causes involved, that appears to be aiding in criminal offenses under 18 USC §1519 (destruction, alteration, or falsification of records in Federal investigations and bankruptcy).

/ / /

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing was prepared pursuant to my direction and control and that the factual statements and representations therein known by me are true and correct.

/s/

Warren Havens

August 16, 2017

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on August 16, 2017:^[*]

(1) Caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing, including any exhibits or attachments, to the following:

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
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(Counsel to MCLM/ MCLM DIP)

Wilkinson Barker Knauer, LLP
ATTN Mary N. O'Connor
2300 N Street, NW, Suite 700
Washington, DC 20037
(Counsel to Choctaw)

(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed,^[**] provide notice and service to any party that has or may seek to participate in dockets 13-85 and 11-71 that extend to this filing.

/s/

Warren Havens

^[*] The mailed service copies being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

^[**] The FCC Office of General Counsel informed me regarding others' filings concerning MCLM relief proceedings that I was served in this fashion. I assume OCC does not apply a different standard to others. If OGC has a different standard, it can make that clear and public.

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on October 30, 2017: ^{[*]1/}

(1) Caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing to the following parties and other persons: ^{[*]2/}

Hon. Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

David Senzel
FCC Office of General Counsel
By email to: David.Senzel@fcc.gov

Pamela Kane
FCC Enforcement Bureau
445 12th Street, SW
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(Counsel for Puget Sound Energy, Inc.)

^{[*]1/} The mailed service copies being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

^{[*]2/} Appellants do not admit by including any person on this list that they are a proper party to any matter described in this filing. Some are included out of an abundance of caution.

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2028 Laguna Street
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(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed, ^{[*\]3/} provide notice and service to any party that has or may seek to participate in Dockets 13-85 and 11-71.

(3) Caused to be sent the foregoing filing via email to the following:
Office of the Inspector General
David Hunt, Inspector General, David.hunt@fcc.gov
Christopher Shields, agent, Christopher.shields@fcc.gov



Warren Havens

^{[*\]3/} The FCC Office of General Counsel informed me regarding others' filings concerning MCLM relief proceedings that I was served in this fashion. I assume OGC does not apply a different standard to others. If OGC has a different standard, it can make that clear and public.