

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re	
FCC Consent to Choctaw Holdings LLC (“Choctaw”)	Public Notice No. 13947, 04/03/2019
Assignment of AMTS Licenses to PTC-220 LLC	File Nos.: 0008527475, 0008527617, 0008527687, 0008530247
Call Signs: WQGF315, WQGF316, WQGF317, WQGF318	

ERRATA COPY*

PETITION TO REVOKE LICENSES
AND REVERSE CONSENT
UNDER 47 USC §312, 47 USC §405, AND 47 CFR §1.41

(FILED CONCURRENTLY WITH BUT NOT DEPENDING ON
AN INFORMAL COMPLAINT UNDER 47 USC §208)

To: The Office of the Secretary

Attn: The Chief, Wireless Telecommunications Bureau

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

May 3, 2019

May 4, 2019 - Errata copy

* (2) Additional text in blocks. (2) Deletions in strikethrough text. (3) Page margins and caption layout changed. (4) “And Reverse Consent” added to the title - it is part of the original content.

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Petitioners (defined below) submit this petition for various relief regarding the above-captioned licenses (the “Licenses”) and assignment applications (the “Applications”) including the above-captioned consent to the applications (the “Consent”) subject of the Public Notice captioned above, on April 3, 2019.

1. Petitioners. Warren Havens (“Havens”), with the Polaris PNT Group of companies Petitioner controls (“Polaris”) ¹ (together, “Petitioners”), submit this petition (the “Petition”) for their own interests, and not for any other party. ²

2. Challenge and primary relief sought. This Petition challenges and seeks revocation of (or other form of invalidation of) all of the AMTS licenses held currently or in the past in the names of (1) Choctaw Holdings LLC (~~“Choctaw”~~) listed in the caption above and any controlled or controlling affiliate (“Choctaw”), and (2) Maritime Communications/ Land Mobile LLC, including as a Debtor in Possession in its chapter 11 bankruptcy case, and any ~~affiliate and~~ any controlled or controlling affiliate (“Maritime” or “MCLM”), and this Petition challenges and

¹ Polaris PNT PBC, Polaris PNT 1, PB LLC, Polaris PNT 2, PB LLC, Polaris PNT 3, PB LLC, each a Delaware domiciled entity (see FCC 18-168 proceedings).

² These interests include that Havens solely represents in the arbitration proceedings that are the litigation subject or “lite” of the “receivership pendente lite” that, at this time, involves the following FCC licensees: Environmental LLC, Environmental-2 LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC, and V2G LLC (sometimes called in FCC proceedings the “Havens Companies” or “SkyTel” companies). This Petition is not in the name of the just listed companies ~~and is~~ or submitted for the Receiver of that receivership, Susan Uecker, or the party that obtained and sustains and can discharge the ~~+~~ Receiver, who has defacto control of the receivership, Arnold Leong. In addition, the Receiver has not pursued, in the receivership, claims regarding Choctaw or Maritime. (~~“MCLM”~~).

seeks reversal (or other form of invalidation) of the Consent, and the qualifications of PTC 220 LLC (“PTC 220”) as assignee of the spectrum in the assignment application.

3. Initial substantive basis of the Petition. Initially, the basis is first shown in the challenges that Havens filed regarding the MCLM short and long forms in Auction 61, and what Havens asserts as the “ultra vires rule change” the FCC devised to grant to MCLM licenses in that auction, over the bids of several of the SkyTel companies,³ based upon the legal counsel and representation at the time by Hogan & Hartson-- principally by attorney David Martin, and secondarily Michele Farquhar, as shown in FCC public records. These challenges, and related or derivative challenges, remain pending.

4. Attorney conflicts and issues. Petitioners note that PTC 220 ~~LLC~~ is represented by attorney David Martin including with regard to the subject Assignment Applications. In this regard: Attorneys are under legal ethics rules, and under rules the FCC purports to enforce as to requirements imposed on attorneys acting before the FCC, including 1.17, 1.24 and 1.52, and are deemed to be “officers” of the court and federal agencies they act before. It is the position of Petitioners, that Mr. Martin and Mrs. Farquhar and others at Hogan & Lovell (formerly, Hogan & Hartson) cannot take any position regarding the subject Licenses, MCLM (and its assignee Choctaw), and the subject Applications, that is contrary to their Auction 61 legal representations, without violating legal ethics, the cited FCC rules, and their duties to Petitioners as past legal counsel, and ultimately to the public interest that is the sole ultimate purpose of FCC licenses and the Communications Act.

Petitioners maintain all rights to undertake proceeding for such violations, including a motion to disqualify before the FCC, including as related to the Licenses and the Applications.

³ E.g., see *Skybridge v FCC*, No. 10-71808, 9th Cir.

Havens ~~and Petitioners~~ never granted to Mr. Martin, Ms. Farquhar or their law firm any conflict waiver.

5. Petitioners' Legal Standing. Petitioners have shown, in the Related Pending Proceedings (defined and listed below) and in other FCC proceedings, that they have ample legal standing to submit this Petition. An additional showing of legal standing is provided in Exhibit 1 hereto, a recently filed petition for writ of certiorari Petitioner Havens filed before the US Supreme Court regarding the MCLM-Choctaw bankruptcy and licenses: legal standing is a core issue in this writ petition. The discussion of US Supreme Court and Third Circuit holdings on legal standing are, in particular, pointed to and referenced and incorporated herein.

6. The Petition is under Commission authority and practice.

The Commission, in MO&O FCC 94-165, 9 FCC Rcd No, 15 (In re Authorization of CONN-2 RSA) found (underlining added):

Before us now are Warner's Application for Review of the CONN-2 Order, her Motion to Revoke CONN-2's authorization for market 3S8A, which she filed pursuant to Section 312(a) of the Act,^{7/} and the responsive pleadings.

fn7/ Section 312(a) of the Act provides that

[t]he Commission may revoke any station license or construction permit . . . because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application

Section 312 of the Act gives the Commission discretion to decide whether to institute revocation proceedings. See *City of Kerrville v. Dugosh Flying Service, Inc.*, 99 FCC 124, 126 (1984); *Puerto Rican Media Action and Educational Council, Inc. v. Educational Broadcasting Corp.*, 51 FCC 2d 1178, 1179 (1975); *Radio Para La Raza*, 40 FCC 2d 1102 n.1 (1973). Requests for revocation are treated as informal requests for Commission action pursuant to Section 1.41 of the Rules.

[....]

fn 15/ In its oppositions to Warner's Applications for Review, Danbury asserts that Warner lacks standing to file her Motions to Revoke. For the reasons outlined supra at note 7, we concur

with the Division's finding that the Commission does not recognize motions to revoke. We also concur with the Division's decision to treat Warner's motions as informal requests for Commission action under Section 1.41 of the Rules.

The preceding is cited in various subsequent FCC decisions. See also Danbury, 6 FCC Rcd. 4186, 4188 n.2 (1991), and Southern, DA 00-1334.

7. Reasons to revoke the Licenses, and to reverse the Consent

(1) First see § 3 above.

(2) Petitioners have shown in the following “Related Pending Proceedings”

good cause to Revoke the licenses and reverse the Consent. (Additional reasons are given below). The primary “Related Pending Proceedings” involving the Licenses are listed below, but also include all other pending proceedings where Petitioners challenge the Licenses, including the proceeding in Exhibit 1 (referenced above). The following are referenced and incorporated herein in pertinent part (all or most all parts are pertinent).

Petition for Reconsideration of FCC 16-172, filed 1/18/17 by Warren Havens and Polaris PNT PBC.

Petition for Reconsideration Based on New Facts of FCC 16-172, filed 1/18/17 by Warren Havens and Polaris PNT PBC.

Petition for Reconsideration of DA 17-450, filed 6/12/17 by Warren Havens and Polaris PNT PBC, regarding renewal and extension applications of Maritime (now Choctaw) geographic AMTS licenses

Petition for Reconsideration of Notice of Consummation of Assignment of Authorization application between Maritime and Choctaw, File No. 0007841134, filed 8/25/17 by Warren Havens and Polaris PNT PBC

Petition for Reconsideration of DA 18-147, filed 3/16/18 by Warren Havens and Polaris PNT PBC, regarding assignment applications by Maritime originally, and then Choctaw, to certain third parties.

Conditional Petition for Reconsideration of *Memorandum Opinion and Order*, FCC 18-168, filed December 31, 2018 by Warren Havens, Polaris PNT PBC, et al, related to, *inter alia*, ***Appeal of Order of Dismissal***, FCC 17M-35, filed 10/30/17 by Warren Havens, regarding ALJ Sippel Docket 11-71 Termination Order that was dismissed by FCC 18-168.

(3) Additional reasons to revoke the Licenses and reverse the Consent ~~is~~ are shown in Petitioners' challenge filings on file at the FCC, and before the US Court of Appeals for the District of Columbia Circuit (in cases 18-1339, and 18-1343) of FCC 18-186, a Commission order in docket 11-71. Copies of these Petitioners' filings are in docket 11-71 involving MCLM and Choctaw and affiliated entities. These Petitioners' filings are also referenced and incorporated herein in pertinent parts that describe or show (1) legal standing of Petitioners and (2) why their challenges in 11-71, and in the Related Pending Proceedings, of MCLM and Choctaw and the Licenses were valid. As to legal standing, the Commission in FCC 18-168 kept open and reopened these challenges, to the extent that the Commission's delegated authorities believed that, and acted upon their beliefs that, Petitioner Havens had lost legal standing (and for such reasons ~~did~~ not properly consider, rule on and describe in rulings the substance of the Havens challenges). FCC 18-168 kept open or reopened these past proceedings by the defined "non adjudicatory" "inquiry" to take place and that had not time limits.⁴

(4) Also see § 9 below.

⁴ Havens's challenged ~~to~~ some aspects of FCC 18-168 but major aspects were in his favor and no party challenged those and they are final. ~~to~~ FCC 18-168 included:

We therefore refer the matters arising in this proceeding [11-71 proceeding] to a separated Enforcement Bureau team to conduct an appropriate inquiry, in conjunction with any other matters not discussed in this order that may come to its attention and bear on the basic qualifications of Havens and his companies to be licensees. If, based on that inquiry, the Enforcement Bureau team determines that there are character qualifications questions, it may recommend that Havens's authorizations and/or applications be designated for hearing.

At paragraphs 78-85, the FCC discusses and refers to other proceedings involving Havens as grounds for justifying ALJ Sippel's sanctions against Havens and the companies in which he is majority owner and/or controller. Those include AMTS licensing matters going back to year 2000, Auction 87 proceeding, Maritel, Inc. matters, certain court litigation outside of the FCC, the California court receivership proceeding, ALJ Sippel's "*Termination Order*", etc.

8. The Applications do not show any public interest as alleged. Assignment of more PTC Spectrum to PTC 220 is not justified in the Applications or in ~~the~~ FCC records regarding PTC, or in industry sources. This is an issue~~d~~ in some of the pending related proceedings involving railroad PTC, and in docket 11-79. This includes the proceedings of *Maritime Communications/ Land Mobile, LLC*, Order, 31 FCC Rcd 9826 (WTB MD 2016), *recon. pending* - this is a pending challenge by Havens.

9. FCC Decisions to Grant Assignment of Choctaw's Licensed Spectrum to Third Parties, including by the Consent, Will Result in Payments to Oliver Phillips, ~~and Thus Is~~ Counter to FCC 14-133, Because Wrongdoers Namely Donald DePriest and Sandra DePriest, Will Benefit^[*]

In *Memorandum Opinion and Order*, FCC 14-133, 29 FCC Rcd 10871 (13), the FCC denied "[Second Thursday]" relief to *Maritime Communications/Land Mobile LLC* because its bankruptcy plan would benefit wrongdoers, namely Donald DePriest and Sandra DePriest. See e.g. FCC 14-133 at footnote 56:

Having concluded that the Second Thursday request should be denied because of the potential financial benefit to the DePriests....

And at paragraph 40:

The Choctaw Application is not eligible for Second Thursday relief because granting the Choctaw Application would likely afford the DePriests a significant financial benefit by releasing Mr. DePriest from his personal guarantees of loans to MCLM.

Under the approved bankruptcy plan of *Maritime*, Choctaw will use funds from sales, operations or leases of AMTS spectrum pay off the creditors of *Maritime*. The subject assignments represent a significant sale of nearly half of Choctaw's (formerly *Maritime's*) AMTS geographic spectrum and will result in funds that can be used to pay *Maritime's* creditors. However, as court

[*] See Endnote.

records show, one of the largest creditors of Maritime is Oliver Phillips (approximately \$6 million), whose debt is solely attributable to a judgment he got in a suit against Donald DePriest personally. That is not in the public interest and is contrary to FCC 14-133. Oliver Phillip’s judgment against Donald DePriest had nothing to do with Maritime or Maritime’s business; however, as Petitioners have shown, but the FCC has failed to recognize, Maritime improperly assumed that debt of Donald DePriest. Petitioners believe the record before the bankruptcy court, FCC and in the *Phillips v. DePriest* court suit, show that there was no lawful reason for Maritime to assume DePriest’s debt to Phillips, other than to benefit DePriest as an undisclosed controlling interest and owner of Maritime. Any payment of Phillip’s debt by or via Choctaw, using funds from sale of FCC licenses, is completely contrary to the findings in FCC 14-133 and ‘Second Thursday’ premises.

The FCC must commence an investigation of Oliver Phillip’s claim against Maritime, to determine if it is valid against Maritime, or as public court records make entirely clear it is entirely debt of Donald DePriest personally for non-Maritime business matters, since any payment of Phillip’s debt can only be a benefit to Donald DePriest, and would be contrary to the public interest and allow wrongdoers to benefit since Phillip’s debt was never proper debt of Maritime. The FCC has jurisdiction and authority to not allow payment of Phillip’s claim that is solely attributable to Donald DePriest per the public court record.

Further, the FCC never determined who were “innocent creditors” as only the FCC could do through a proper fact-finding hearing, for its Second Thursday policy. ~~and~~ The principal ~~to~~ basis for the Commission’s grant of Second Thursday relief in late 2016, which allowed ~~the consummation of the A~~ assignment of the Licenses from ~~between~~ MCLM ~~and~~ to Choctaw, is so that Choctaw can use the license sales ~~assets~~ to pay “innocent” creditors under the Bankruptcy Plan. Therefore, until the FCC determines who are the “innocent creditors” (which has never been done ~~by the FCC~~), then the FCC should reverse the Consent and reject any notice of consummation

of the subject assignments Applications. Without doing that, the FCC cannot provide Second Thursday relief because Choctaw is able to dispose of Llicenses ~~and spectrum~~ to pay off debts of creditors and others who may not be “innocent” at all, and in fact there is clear factual evidence of that in the record already regarding many of MCLM’s creditors. (See, e.g., (i) Havens’s s appeals and replies regarding DA 17-450, including Petitioners’ July 14, 2017 Reply re: DA 17-450 at its footnote 6, which discusses Phillips’ court judgment not mentioning any debt against MCLM, but solely against Donald DePriest for non-MCLM business matters (Errata version filed); and (i) the Havens’s petition to deny filed against Choctaw assignments at its pages 14-15 ~~(petition to deny~~ filed August 16, 2017 ~~by Warren Havens, et al.,~~ regarding Public Notice No. 12484, and File Nos. 0004030479, etc.): t These show that Oliver Phillips is not an innocent creditor and how any payment of his sizeable debt assumed by MCL -- (approximately \$6 million, making him one of the single largest creditors -- by Choctaw or MCLM is (1) a direct benefit to Donald DePriest, a known wrongdoer. (Phillips’ debt was only debt of Donald DePriest and had nothing to do with MCLM—that is evident from Phillips’ suit against DePriest and the court’s judgment in favor of Phillips, where all the Phillips debt with Donald DePriest is related to non-MCLM matters—see Petitioners’ July 14, 2017 reply regarding File Nos. 0007603776, etc. at its footnote 6) ; and (2) is indirect benefit to Sandra DePriest, as his spouse. That type of benefit to a wrongdoer is not permitted under the FCC’s Second Thursday policy and that is why the FCC must ~~now on~~ ~~reconsideration rescind or suspend its~~ reverse the e Consent ~~until it~~ and determine if Phillip’s debt is valid debt of Maritime or not: (easily available public court records make clear it is not valid debt of Maritime: see the Havens’s petitions).

MCLM, Choctaw, Donald and Sandra DePriest and Oliver Phillips -- *and their counsel* -- have “pulled a fast one” on the FCC to get Second Thursday relief to pay ~~off~~ Phillips’ debt, ~~which~~ ~~is debt~~ owed solely by Donald DePriest and unlawfully assumed by MCLM. ~~(+)~~ The DePriests

~~continue to maintain Donald DePriest~~ he is not an owner or controller of MCLM, but MCLM's assumption of Phillip's debt solely attributable to Donald DePriest shows clearly that is not true ~~(among other evidence showing this)~~. The FCC should correct that error ~~upon reconsideration~~ and find MCLM, Choctaw and the DePriests lack character and fitness to be Commission licensees for trying to dupe the FCC on Oliver Phillips' debt ~~(among other reasons shown in the Relevant Pending Proceedings)~~. That ~~would be consistent with~~ is called for by the Commission's prior decision, FCC 14-133, denying Second Thursday relief because it would afford ~~large~~ benefit to the DePriests. This Phillips debt issue ~~is basis~~ calls for the FCC to ~~reconsider or suspend its~~ reverse the ~~e~~ Consent ~~upon reconsideration is sufficient for the FCC to undo its other decisions~~ including under Section 1.106(c)(2), ~~including undoing or modifying reversing F~~ to reverse FCC 16-172, and ~~for the FCC to~~ determine innocent creditors as required by its Second Thursday policy, but which was never done and thus resulted in this major oversight due to MCLM, the DePriests' and Choctaw's lack of candor and misrepresentation regarding Oliver Phillips, ~~via their counsel~~.⁵

10. PTC-220 LLC Counsel's Position Was That Subject AMTS Spectrum Was Invalid Due to Maritime Communications/Land Mobile LLC Cheating in Auction No. 61

See section 3 above. This position was correct and is shown in the Related Pending Proceedings.

⁵ As explained herein, Choctaw had to have knowledge of this Phillips creditor issue. Choctaw and its counsel could read and understand Phillips Proof of Claim and the his court judgment to know that there was no sound basis for MCLM to accept Phillips' debt as its own.

Conclusion

For the reasons given, this Petition should be granted.

Respectfully submitted,

May 3, 2019,

/s/

Warren Havens

Warren Havens, an individual

Warren Havens, President of each Polaris Group entity (see footnote above)

Contact information is on the caption page.

Email: wrrnvns@gmail.com⁶

End Note.

By this Petition's sections and arguments on the "Second Thursday" policy, Petitioners maintain and do not waive their preceding *primary* positions that this policy cannot lawfully be applied to excuse cheating to obtain geographic spectrum licenses -- cheating the lawful high bidders and their interest holders in competitive bidding -- contrary to provisions of the Communications Act including Section 309(j) and the 1996 Telecom Reform Act based on increased competition and deregulation.

⁶ Call first to enable email to me.

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

May 3, 2019

Exhibit 1

Exhibit 1 is at this link:

<https://medium.com/@wrrnvns/legal-standing-in-bankruptcy-vs-at-the-fcc-in-a-us-supreme-court-writ-illustration-of-lazy-4412455b681d>

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on May 3, 2019:[*]

(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 (Note: most of the addresses used for Assignees below are the assignee contact information off of the Applications on FCC ULS):

Parties served

Wilkinson Barker Knauer, LLP
ATTN Mary N. O'Connor
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Robert J. Keller
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Washington, DC 20033-0428
(Counsel to MCLM/ MCLM DIP)

Hogan Lovells US LLP
ATTN David Martin
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(Counsel to PTC 220 LLC)

Others, with potential interest, to be provided email notification of filing of this Petition in dockets 11-71, and 13-85.

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[*] 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.

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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, ^[**] 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

Errata Copy Note

This Errata copy contains in full the original filing. Only the errata copy will be filed in dockets 11-71 and 13-83, and emailed to the “Others” persons above, to the extent those persons’ current emails can be found. The Errata copy will be mailed to the “Parties” listed above on the day it is filed under the captioned Applications and Licenses.

[**] The FCC Office of General Counsel informed me in writing (which I retained) regarding others’ filings concerning MCLM relief proceedings that I was served in this fashion. Since then, I have understood that this applies to me as well. If OGC has a different standard, it can make that clear and public.