

**Before the
Federal Communications Commission
Washington DC 20554**

June 21, 2018

To: Chief of the Wireless Bureau, and Mobility Division staff

By: Electronic Filing in the “MC Matters” (defined below):

On ULS: Application File Nos.: 0001082495 - 2548, 0002303355, 0003796473, 0004030479, 0004136453, 0005552500, 0007603776 - 779 (and associated other FNs) (and associated Call Signs)

On ECFS: EB Docket 11-71, WT Docket 13-85

Re: Havens legal standing in MCLM (Maritime)-Choctaw matters:
[1] Havens removal to federal court of receivership legal action.
[2] MCLM-Choctaw waiver and judicial estoppel of its joint position.

Supplement to Havens filings in the “MC Matters” in support of acceptance of the Havens position that he has legal standing in the MC Matters, and ramifications thereof.

Warren Havens, the undersigned (“Havens”) submits this filing in multiple matters listed below (“MC Matters”). Havens has submitted and has pending petitions or requests before the Bureau and Division in matters listed below involving alleged-valid FCC licenses of Maritime Communications/ Land Mobile LLC (sometimes called “MCLM”) and/or its alleged-valid license-assignee Choctaw Telecommunications / LLC (and related “Choctaw” legal entities) (together, “Choctaw”).

“MC Matters” --

1. *Petition for Reconsideration*, by Warren Havens and Polaris PNT PBC, filed March 16, 2018 (Errata filed March 17, 2018), regarding certain assignment applications of MCLM and Choctaw, and FCC Order, DA 18-147.
2. *Appeal of Order of Dismissal, FCC 17M-35, and Underlying Decisions and Actions in EB Docket No. 11-71*, by Warren Havens, filed October 30, 2017, in Docket No. 11-71, regarding Judge Sippel’s Order of Dismissal terminating Docket No. 11-71.
3. *Appeal of Order of Dismissal, FCC 17M-35, and Underlying Decisions and Actions in EB Docket No. 11-71*, by Polaris PNT PBC, filed October 30, 2017, in Docket No. 11-71, regarding Judge Sippel’s Order of Dismissal terminating Docket No. 11-71.
4. *Motion for Declaratory Ruling Regarding Standing*, by Warren Havens and Polaris PNT PBC, filed August 16, 2017, with the Federal Communications Commission, in Dockets 11-71 and 13-85 and under various File Numbers listed in the caption,

regarding various Maritime Communications/Land Mobile LLC FCC licensing matters and actions.

5. *Petition for Reconsideration, or in the Alternative for Relief under §§ 1.41, 1.2 and Other Rules*, by Warren Havens and Polaris PNT PBC, filed August 25, 2017, with the Federal Communications Commission, in Dockets 11-71 and 13-85 and under various File Numbers listed in the caption, regarding various Maritime Communications/Land Mobile LLC FCC licensing matters and actions.
6. *Petition to Dismiss, Petition to Deny, or in the Alternative §1.41 Request*, filed by Warren Havens, et al., on February 3, 2017, regarding MCLM renewal application File Nos. 0007603776—779 and associated extension requests.
7. *Petition for Reconsideration and Review Under Communications act §405 and FCC Rule §1.106, Under §1.41 and the Public Interest, and Under Constitutional Due Process*, filed by Warren Havens et al., on June 12, 2017, regarding Mobility Division Order, DA 17-450, and MCLM renewal application File Nos. 0007603776—779 and associated extension requests (Errata Copy filed June 13, 2017).
8. *Petition for Reconsideration Including on New Facts and to Find Order Void and for Alternative Relief*, filed by Warren Havens et al., on February 6, 2017, regarding Mobility Division Order, DA 17-26, and various MCLM applications, FCC File Nos. 0001082495-2548, 0002303355, 0003796473, 0004030479, 0004136453, etc. (Errata and Supplement filed February 7, 2017)
9. *Request for Stay and Request for Arbitration*, filed by Warren Havens, et al., on July 27, 2017, regarding various FCC proceeding matters involving MCLM, Choctaw, the Licenses, etc., including DA 17-26, File Nos. 0005552500, etc. and its associated Reply filed August 21, 2017 (the “Stay Request”).
10. *Supplement to: Petition for Reconsideration of Warren Havens of FCC 16-172 Based on New Facts Submitted in Advance with Request to Accept (Supplement to “Petition-1”)*, filed by Warren Havens, et al., on July 21, 2017, regarding WT Docket 13-85, FCC 16-172, etc. (the “Supplement”)
11. *Conditionally Submitted Opposition to Motion to Strike*, filed by Warren Havens et al., on February 22, 2017, regarding MCLM’s *Motion to Strike and/or Dismiss as Defective Petitions for Reconsideration of FCC 16-172; Request for Imposition of Sanctions; and Petition for Expedited Investigation* (filed February 2, 2017), regarding Commission Order on Reconsideration and Memorandum Opinion and Order, FCC 16-172.

- And in other pending matters on ULS and ECFS submitted by or involving Warren Havens that also involve Maritime and/or Choctaw or licenses in the name of Maritime or Choctaw.

Placed in this filing below is the text of an email of June 20, 2018 from Havens to certain Division staff attorneys and attorneys for Maritime and Choctaw in the MC Matters. The text of the attached email is place below in formal, double-spaced pleading format but is otherwise the same as the text in email. Attached hereto are the two attachments referenced and included with the email.

[The rest of this page is intentionally left blank.]

-- Start of email text--



Warren Havens <wrrnvns@gmail.com>

Havens legal standing in MCLM-Choctaw matters: [1] Havens removal to federal court of receivership legal action. [2] MCLM-Choctaw waiver and judicial estoppel of its joint position

Warren Havens <wrrnvns@gmail.com>

Wed, Jun 20, 2018 at 9:31 PM

To: Scot Stone <Scot.Stone@fcc.gov>, Richard Arsenault <Richard.Arsenault@fcc.gov>

Cc: "O'Connor, Mary" <moconnor@wbklaw.com>, Bob Keller <rjk@telcomlaw.com>, warren havens <wrrnvns@gmail.com>

To Mr. Stone, Mr. Arsenault, and relevant FCC Division and Bureau staff:

A copy of this email's substance with its attachments will be placed in the File Numbers and Call Signs of the below-defined "MC Matters."

This email is the most efficient means to first present the following in these multiple MC Matters to FCC staff and Maritime and Choctaw via their counsel. (See below End Note [1].)

[1] Havens legal standing in MCLM-Choctaw matters: Havens removal to federal court of receivership legal action

The following pertains to the Maritime-Choctaw ("MC") assertions and Division findings that I lost or lacked legal standing in my various pending challenges to Maritime and Choctaw licensing action matters (the "MC Matters"), due to the California Receivership "pendente lite."

I assert below that those MC assertions and Division findings are now reversed -- by action of law -- on the basis of the removal to federal court I provided notice of below, on June 16 (even if they are correct in the first place, which clearly is not so under US Supreme Court holdings [2]).

As Attachment-1 hereto, I attach a copy of my Notice of Removal together with my associated notice thereof to the California Court of Appeal (regarding the many pending appeals from the underlying state court receivership action listed in the caption). These have federal

and state court stamps to show they are officially lodged in these courts, of which FCC staff may take notice.

(1) The assertion position of Maritime and Choctaw, and a similar finding by Division staff, to date, is that I lost, or that I lack, legal standing due to this California Receivership that caused (clearly unlawfully, I assert, under FCC and other law) a Receiver to obtain transfer of control from me (on a "pendente lite" basis) in the FCC licenses of receivership licensee legal entities that hold [AMTS](#) and other FCC licenses (in each of which I am the sole or majority owner- the Receivership did not change that). [3]

(2) I have presented to the FCC in these MC Matters case authority, including from the US Supreme Court, as to why I did not lose or do not lack legal standing. While I don't in large part repeat those here, see my brief notes in [2] below.

However, even if the MC assertions and Division findings noted above are correct, I assert that the below noticed removal of the Receivership state court action to federal court has reversed and mooted, by action of law, the MC and Division positions -- because when the state court action was removed to federal court, the authority of the Receiver, who was solely an agent or officer of the court in that action, was automatically lost, and with that, the control in the receivership licensee entities and licenses reverted to the pre- Receivership controlling interest which, as shown in FCC records, is Warren Havens (myself).

(3) However, in addition, a party may obtain legal standing in the middle of a pending civil proceeding. In fact, that is the MC and Division position: that the Receiver took over the control of licenses and legal standing I had, in the middle of the seminal proceedings in the MC Matters including docket 11-71. Now, under this removal to federal court, that reverts back to

me by action of law. The law includes and is based upon 28 USC 1446(d) (as the Notice of the Removal addresses on page 26) (italics added below):

28 U.S. Code § 1446 - Procedure for removal of civil actions. [...]
(d) Notice to Adverse Parties and State Court.— Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, *which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.*

(4) Thus, even if prior to the removal the MC and Division positions were correct -- asserting that legal standing resides only with the controlling interest, recognized by the FCC, in competing licenses and licensee entities -- I show herein that at the time of and after the removal, the jurisdiction and control of the subject licensees and licenses by the state court and its Receiver reverted to me under action of law, on an "involuntary" basis, subject to FCC approval. [4].

[2] Havens legal standing in MCLM-Choctaw matters: MCLM-Choctaw waiver and judicial estoppel of its joint position

(1) I am the Appellant before the US Fifth Circuit Court in the case: *Warren Havens v. Maritime Communications/Land, et al.*, Number: 17-60742. See Attachment-2 hereto, the current docket sheet.

(2) As the FCC knows, in year 2017 it granted an assignment to Choctaw of all of the Maritime FCC licenses. This grant, while not under a final FCC order at this time (as the MCLM Chapter 11 bankruptcy plan requires to be effective), nonetheless is the FCC decision to date, and by this decision these licenses have been held by and in the name of Choctaw since the date of this grant in year 2017.

(3) Thus under the MC position noted in [1] above, Maritime lost legal standing when it assigned all its licenses to Choctaw. Nevertheless, Maritime is an active party in its Fifth Circuit

case. See Attachment-2 hereto. To enter an appearance and participate in this Circuit Court case, Maritime necessarily asserts legal standing. And all of the Maritime filings in this case are joint filings with Choctaw as shown in the Appellee filings in this docket.

(4) Thus, Maritime-Choctaw waived, and is subject to judicial estoppel, their joint (and any several) assertions noted above that I lost or lacked legal standing due to loss of control of licenses. Loss of all ownership and control, in this case of the assignment of all of the Maritime licenses, includes but is more than loss of control in my case (even if that were permanent, and not conditional and subject to challenges, as in my case).

Based upon each of the above new developments -- [1] and [2] -- the FCC should reverse its position that I do not have legal standing in these MC Matters. I request that the FCC does that.

Again, as noted above, I will place a copy of the contents of this email and its attachments, and may add associated matter, in ULS filings under the relevant application file numbers and Call Signs of the MC Matters.

Respectfully submitted,

/s/

Warren Havens
2649 Benvenue Ave
Berkeley CA 94705
Cell phone (510) 914 0910

End Notes

[1] As to parties involved in that Receivership, I addressed them below, and they are not parties to these MC Matters. Thus, I do not include them on this email.

[2] I cited various Supreme Court cases and holdings in my briefs in the MC Matters, including:

(1) *FCC v. Sanders*, 309 U.S. 470 (1940) (and lower court decisions citing *Sanders*): ("Section 402(b) of the [Communications] Act provides for an appeal to the Court of Appeals of the District of Columbia (1) by an applicant for a license or permit, or (2) 'by any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.'[....] Congress had some purpose in enacting § 402(b)(2). It

may have been of opinion that one likely to be financially injured by the issue of a license would be the only person having a sufficient interest to bring to the attention of the appellate court errors of law in the action of the Commission in granting the license. It is within the power of Congress to confer such standing to prosecute an appeal.") An owner of a licensee entity has 402(b)(2) standing, even if not the current person in control of the subject licenses, etc.; and

(2) *Sprint v APCC*, 554 U.S. 269 (2008) (which contains lists and summaries of other US Supreme Court and lower court decision in support): (a receiver, trustee, shareholders and others may be assignees or assignors, and may be title holders or beneficial interest holders - and they all have sufficient legal interest, if that in fact exists in the legal case at issue).

Also, legal standing is first determined when a legal challenge is filed before a court or an administrative agency authority. Even if the filer challenger later loses standing to assert a new claim, if the challenger had standing (in brief, a redressible material interest adversely affected) at the time the challenge was raised, that is not lost later lost (unless lawfully assigned in full). In this regard, I had legal standing when docket 11-71 commenced, and that is the basis of docket 13-83 and all of the now pending MC Matters. Thus, on this basis alone, I argue that I did not lose legal standing.

There are many other sound legal-standing factual and legal showings I submitted in the MC Matters, and the only Commission determinations are and remain on my side: [FCC 11-64](#), directly on point, and [FCC 16-172](#) (long after the Receivership commenced) that addressed me as a party in that decision, and listed me as a party in the present tense, and would not have done so had I lost legal standing.

[3] But there was no transfer of control of my rights to manage these entities in the "pendente lite" litigation - I asserted this in the MC Matters, and no person has suggested or shown otherwise.

[4] See, e.g., the issues in the petition for reconsideration I submitted for Skybridge Spectrum Foundation of the FCC grant of a transfer of control application by the subject Receiver after she first took control, and to seek transfer of control not from the controlling interest (myself) but from the licensee entities.

See also: UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO. In re: MIDWAY GOLD US INC. et al., Debtors, Case No. 15-16835 MER, Chapter 11: NOTICE OF DEBTORS' OBLIGATIONS PURSUANT TO LICENSES ISSUED AND REGULATED BY THE UNITED STATES FEDERAL COMMUNICATIONS COMMISSION (underlining added)

1. The United States of America, on behalf of the Federal Communications Commission ("FCC"), hereby provides notice that [...]

4. Specifically, and without limitation, the FCC's regulations at 47 C.F.R. 1.948 and 310(d) of the Communications Act of 1934, as amended (47 U.S.C. §310(d)), require a Licensee to seek and obtain FCC approval in connection with a transfer of a License or a proposed transfer of control of the Licensee, whether any such transfer is voluntary or

involuntary or direct or indirect, and irrespective of whether the transferee possesses any other FCC license or authorization.

[....]

6. The United States respectfully requests that any order issued by the Bankruptcy Court regarding the sale, transfer or assignment of any of the Licenses include the following language:

Notwithstanding any other provision of this Order or any other Order of this Court, no assignment of any rights and interests of MDW in any federal license or authorization issued by the Federal Communications Commission ("FCC") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent provided by law.

7. If in lieu of transferring control of a License pursuant to 11 U.S.C. §363, the Debtors or MDW file a plan of reorganization seeking to transfer control of a License or to transfer control of MDW, the United States respectfully requests that the confirmation order include the following language:

No provision in the Plan or this Order relieves MDW or the reorganized MDW from its obligations to comply with the Communications Act of 1934, as amended, and the rules, regulations and orders promulgated thereunder by the Federal Communications Commission ("FCC"). No transfer of control of MDW, or transfer of control of the License or any other federal license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory approval for such transfer of control or transfer of license or authorization pursuant to applicable FCC regulations. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such transfer, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority.

Date: January 8, 2015
Respectfully submitted,
JOHN F. WALSH United States Attorney

From: **Warren Havens** <wrnvns@gmail.com>

Date: Sat, Jun 16, 2018 at 11:23 AM

Subject: Notice of removal of state court receivership action to federal court / Fwd: Leong v. Havens - FCC license WJ2XIU and FCC application file no. 0008200765

To: Scot Stone <Scot.Stone@fcc.gov>, Charles Mathias <charles.mathias@fcc.gov>

Cc: David DeGroot <DDeGroot@sheppardmullin.com>, Brian Weimer

<BWeimer@sheppardmullin.com>, Paul Kirsch <paul@scklegal.com>, "james@scklegal.com" <james@scklegal.com>, Richard Osman <rosman@bfesf.com>, Steve Coran <scoran@lrmansenter.com>, warren havens <wrrnvns@gmail.com>

Mr. Stone and Mr. Mathias,

Notice of new event regarding FCC licensing and jurisdiction - removal of state court receivership action to federal court

This is notice of a recent event pertaining to the below email of May 22, and that involves FCC licensing matters and a transfer of jurisdiction.

I copy here certain attorneys since they are counsel to parties in the removed state court action, and in related matters of the email to you on May 22, below.

The California court Receivership legal action (*Leong v Havens et al.*) (with Susan Uecker, as the Leong picked Receiver) has been removed to the US District Court for Northern California, case 18-cv-03603-EDL (Judge Elizabeth D. Laporte).

Attached (via Google Drive) are:

- [1] the Notice of Removal to the US District Court.
- [2] the assigned US District Court Judge's initial orders.

The removal to a US District Court of a state court action -- (here, a state court receivership alleging to lawfully hold FCC licenses) -- automatically effects the removal of the subject action to the federal court, in its entirety, for future proceedings pursuant to 28 U.S.C. § 1446(d). See *Ely Valley Mines, Inc. v. Hartford Accident & Indem. Co.*, 644 F.2d 1310, 1315 (9th Cir. 1981).

Background

The below email of May 22 is from David DeGroot of the Sheppard Mullin law firm, legal counsel to Susan Uecker, a California State Court governed Receiver shown in FCC records (see [a] below), as you know. This below email copies Brian Weimer also of the Sheppard Mullin firm, also counsel to this Receiver.

Ms. Uecker, the Receiver, was selected, obtained and has been sustained solely by Arnold Leong (the "Leong Receiver"). It is a one-person private (not a state or federal) party receivership.

Mr. Leong is represented by legal counsel including Messrs. Kirsch, Robinson and Osman, attorneys in San Francisco, and Steve Coran, an attorney in Washington DC, who I add here. I understand you are also aware of Mr. Leong, his counsel, and their filings before the FCC in support of the Receiver and alleged one Receivership of multiple FCC licensee companies. As Mr. Coran (and I, and others) reported to the FCC, Mr. Leong alleges to have an "oral partnership" with me since about year 1998 by which he "co-controls" -- with no FCC approval-

- all of the FCC licenses I applied for and obtained since year 1998 directly or via any legal entity.

(At all times, I have disputed and continue to dispute that, and have refuted it extensively under: parole evidence; showing it is void under FCC law; federal and state law time bars; judicial, arbitral and other estoppel; Leong and counsel criminal violations under 28 USC §1519; and under other bases. I also oppose the Receivership as unlawful under state and federal, including FCC law in the California Superior and Appeal Courts, in federal court actions, and have also done so before the FCC. I maintain all those positions, and seek equitable and damage relief.)

Below, Mr. DeGroot, for the Leong Receiver, addressed the FCC via you two re the State Court order obtained by Mr. DeGroot for the Leong Receiver that ordered the following (see [a] below):

"Havens is hereby ordered to withdraw the FCC Application (FCC file no.0008200765) and to cancel the Berkeley License (WJ2XIU)."

Mr. DeGroot, the attorney for the Leong Receiver, by addressing you for the federal FCC, must have meant that he expected the FCC to assist (see [b] below) the Leong Receiver in getting my compliance with the subject order of the "State FCC" -- that is, the State's position that it may trump the FCC as to FCC licensing -- if I did not comply with the demands of his letter to me which he attached below, to comply with the State FCC Order attached to the letter. California is still, officially, part of the United States, thus federal law supremacy applies, commencing with U.S. CONST. art. VI, cl. 2, and including FCC jurisdiction and preemption. See e.g., [a] below.

Please let me know if you have any questions or items to raise regarding these matters.

Respectfully submitted,

/s/ **Warren Havens**

2649 Benvenue Ave.
Berkeley CA 94704
Phone 510. 914. 0901

- - - - -
Notes

[a] Among authorities cited in the attached Notice of Removal:

Kidd v FCC, 427 F.3d 1 (D.C. Cir. 2005). As cited in *Stolz v FCC*, 882 F.3d 234 (DC Cir. 2018) (copy at: <https://www.leagle.com/decision/infco20180216199>) :

...*Kidd Communications v. FCC*, 427 F.3d 1 (D.C. Cir. 2005), rendered the involuntary transfer unlawful.

[....]
...[In Kidd...a state court ordered the involuntary filing with the FCC of an application for assignment of a broadcast license. *Kidd*, 427 F.3d at 3.... We held that the FCC's asserted desire "to accommodate the [state] court [order]" for its own sake was unlawful. "[T]he Commission is not obliged to accommodate a state court's decision that is contrary to Commission policy * * * [and] the public interest determinations [are left] to the Commission." Id. at 6.

Radio Station WOW v. Johnson, 326 U.S. 120; 65 S. Ct. 1475. In particular, with regard to a State Court ordering that an FCC licensee or applicant take action the State dictates, the US Supreme Court reinforced the Commission's exclusive authority over license transfer matters under Section 310(d) in *Radio Station WOW v. Johnson*, 326 U.S. 120; 65 S. Ct. 1475. In that case, the Court nullified a state court's order that an assignee of a license must "do all things necessary" to secure the return of the license to its original holder based on a state-law proceeding and decision. The Court stated:

To be sure, the Communications Commission's power of granting, revoking and transferring licenses involves proper application of those criteria that determine "public convenience, interest, or necessity." § 307 (a), 48 Stat. 1064, 1083, 47 U. S. C. § 307 (a). But insofar as the Nebraska [State] decree orders the parties "to do all things necessary" to secure the return of the license, it hampers the freedom of the Society not to continue in broadcasting and to restrict itself, as it properly may, to its insurance business. Equally does it prevent WOW from opposing a return to the Society, or, as the United States suggests, from seeking another license of its own. These are restrictions not merely upon the private rights of parties as to whom a State court may make appropriate findings of fraud. They are restrictions upon the licensing system which Congress established. It disregards practicalities to deny that, by controlling the conduct of parties before the Communications Commission, the court below reached beyond the immediate [state law] controversy and into [FCC licensing] matters that do not belong to it.

[b] Attorneys cc'ed here including at Sheppard Mullin and Mr. Coran, have testified in the Leong- Uecker state court action and the related arbitration (shown in the written records) that they have engaged in various communications with FCC staff, including at your Division of the Wireless Bureau to get such assistance. Their testimony, if true, unambiguously describes impermissible and seriously prejudicial ex parte communications to get or attempt to get FCC actions that violate clear holdings of the US Supreme Court and DC Circuit that apply, including those cited in Note '[a]' above. The May 22 email below included me and thus is not ex parte; however, many other testified to communications were, and call for actions by appropriate FCC staff.

In this regard, the above-noticed US District Court case may involve seeking subpoenas from FCC staff. I believe that the following would apply. "Touhy regulations" under the U.S. Supreme Court's decision in *United States ex rel. Touhy v. Regan*, 340 U.S. 462 (1951), and the Federal Housekeeping Statute, 5 U.S.C. § 301, which authorizes agencies to adopt regulations regarding "the conduct of [their] employees . . . and the custody, use, and preservation of [agency] records, papers, and property."

///

[....]

--

kemur nú, eitt líf með lögum skal land vort byggja, griðastaðir, eigi með ólögum eyða í jörðu

attachments

**1. [COA filed] Appellant (Havens) Notice to Cal COA of Removal of Underlying
ise copy.pdf**
686K

2. 17-60742 Docket.pdf
5K

-- End of email text--

Respectfully submitted,



Warren Havens
2649 Benvenue Avenue
Berkeley CA 94704
Phone: 510 914 0910

June 21, 2018

ATTACHMENT - 1

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE**

Arnold Leong

Plaintiff and Respondent,

v.

Warren Havens

Defendant and Appellant.

Pending Appeal Case Nos.

Consolidated: A150785, A151903,
A151848, A151865, A151903,
A151978, A151979

Consolidated: A149113, A151294,
A151980

A152835, A153035, A154121,
A154122, A154124, A154125

Appeals From Decisions and Orders of
The Superior Court of California, County of Alameda
Hon. Frank Roesch, Judge.

Underlying Case: 2002-070640

APPELLANT'S

*NOTICE OF REMOVAL OF THE UNDELYING CASE
TO UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA*

District Court Case: 3:18-cv-03603-EDLF
Filed June 15, 2018

Warren Havens
2649 Benvenue Avenue
Berkeley California 94704
Phone: 510 914 0910
Self-represented (*pro se*)

June 19, 2018

Appellant hereby gives notice that on June 15, 2018 he filed a Notice of Removal of the underlying case, captioned above, in the United States District Court for the Northern District of California. The case number of the removed case is 3:18-cv-03603-EDLF as is stated in the caption above.

Attachment 1 hereto is a true and correct copy of the Notice of Removal, without its extensive exhibits (the Notice and its exhibits are on the federal court PACER system).

This notice is given so that this Court may consider and take those actions that may be required or prudent under its own motion, or under any later motion that a party hereto may properly submit. This notice is also given to meet any requirement or deemed requirement imposed upon Appellant in law or equity.

While Appellant does not hereby submit a motion or request, he submits that federal case authorities, including from the United States Supreme Court, indicate that a removal of a state court action, as in the case at issue here (the underlying case and these appeal cases captioned above), has or may an effect upon pending state court appeals of orders and decisions in the underlying removed state court action. See, e.g., 960 F.2d 512 (5th Cir. 1992), *Meyerland Co., and William M. Adkinson, Debtors. Federal Deposit Insurance...*, a state court receivership¹ case² (some paragraph spaces, bolding, and text in brackets are added):

¹ The underling case, captioned above, is also a state court receivership case.

² The long cite is: *In the Matter Of: Meyerland Co., and William M. Adkinson, Debtors. Federal Deposit Insurance Corp. As Manager of the Fslic Resolution Fund as **Receiver***

While it is black letter law that "Congress may not expand the jurisdiction of the federal courts beyond the bounds established by the Constitution," *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 491, 103 S. Ct. 1962, 1970, 76 L. Ed. 2d 81 (1983), **the power of Congress to authorize removal of cases on appeal has been repeatedly affirmed**. See *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 349, 4 L. Ed. 97 (1816) ("Congress ... may authorize removal either before or after judgment.")[....]

[....]

In *Murray v. Ford Motor Co.*, 770 F.2d 461 (5th Cir.1985), removal was effected while a timely motion to **set aside** a default judgment was pending in the state trial court. The state court had not received the removal notice and had entered a default judgment after the removing party failed to appear in court. Pursuant to Rule 60(b)(1) **we allowed the state judgment to be set aside**.

Similarly, in *Beighley v. Federal Deposit Ins. Corp.*, 868 F.2d 776 (5th Cir.1989), motions to vacate the judgment and for a new trial were still pending in the state trial court when the suit was removed.

In *Northshore Development, Inc. v. Lee*, 835 F.2d 580 (5th Cir.1988), we interpreted 12 U.S.C. § 1730(k)(1) (repealed) to permit **removal after entry** of a state trial court damages award; the FSLIC was seeking **Rule 60(b)** relief. We have also permitted a district court on removal to **set aside** a default judgment against a [Federal] Jones Act defendant. *Azzopardi v. Ocean Drilling & Exploration Co.*, 742 F.2d 890 (5th Cir.1984).

The **Ninth Circuit** has permitted a district court on removal to **set aside** a default judgment ... on a state law claim. *Butner v. Neustadter*, 324 F.2d 783 9th Cir.1963). In *Munsey v. Testworth Laboratories, Inc.*, 227 F.2d 902 (6th Cir.1955), the Sixth Circuit did likewise.

Removal in these cases did not require or result in a disruption of the established federal procedural practices.

for Continental Savings Association v. Meyerland Co., and William Adkinson, 960 F.2d 512 (5th Cir. 1992)]

Respectfully submitted,

[Signature by TrueFiling]

Warren Havens, pro se

Dated June 19, 2018

ATTACHMENT - 1

Warren Havens, *pro se*
2649 Benvenue Avenue
Berkeley, CA 94704
Phone: 510. 914. 0910
Email: wrnvnns@gmail.com

FILED

JUN 15 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDL

ARNOLD LEONG

Plaintiff,

v.

WARREN HAVENS et al.,

Defendants.

Case No.

C18-3603

NOTICE OF REMOVAL

28 U.S.C. § 1441

28 U.S.C. § 1442 (a) (1)-(2) and

28 U.S.C. 1443, conditionally

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION:

Defendant Warren Havens hereby removes Case No. 2002-070640 pending in the
Superior Court of California for the County of Alameda (the "Action") to the United States
District Court for the Northern District of California, Oakland Division (the "District Court")¹
pursuant to 28 U.S.C. §§ 1331, 1367, 1441, 1442 and 1446, and other federal law cited below,
and shows as follows:

¹ This Division has a related pending case. See footnote 2 and Section 8.

The Defendant also hereby acts to remove to the District Court the arbitration proceeding under the American Arbitration Association (“AAA”) that is related and integral to the Action, AAA case no. 74-20-0500-1055 - *Leong v Havens et al.*, that involves the Defendant as the principal named respondent (the “Arbitration”) on the basis of federal preemption in accord with case authority (from this District Court) shown below.

Contents

1.	The Initial and Amended Current State Court Complaints.....	3
2.	The Current-Complaint Based Receivership, Sent to Arbitration	3
3.	The 28 U.S.C. § 1446(b)(3) “paper[s] from which it may first be ascertained that the case is one which is or has become removable”	5
4.	This Removal is Timely	10
5.	This Removal is Proper as to Venue and Federal Question Jurisdiction for Removal Purposes, and the Three Bases of Removal	11
	(1) Removal Under § 1441	12
	(2) Removal under § 1442(a)(1)-(2)	15
	(3) Removal under § 1443 (Conditionally).....	19
6.	This Removal is Based on Plaintiff’s Actions: Plaintiff Is the Real Party in Interest and De Facto Control	21
7.	There is Only One Defendant Here, Under § 1441, and Under §§ 1442(a)(1)-(2) and 1443 Only One is Needed.....	24
8.	Notice of Related District Court Action	26
9.	Removal of the Related Arbitration, and Related	26
10.	Notices, Removal Effect, and Other Matters	29
-	Conclusion	31
-	Certificate of Service	32

The grounds for removal are the following.

The Defendant filing this notice has not waived rights to this removal action.

1The Initial and Amended Current State Court Complaints

As initial background: In year 2002, the Plaintiff, Arnold Leong (who purports to reside in Reno Nevada) filed a complaint against Defendant Warren Havens, who resides in Berkeley California in the Superior Court of California, County of Alameda (the "State Court") (the "Initial Complaint") (the "Action"). The Action was ordered to Arbitration by the State Court in year 2003. In year 2005, the Plaintiff filed an arbitration proceeding before the American Arbitration Association ("AAA") (the "Arbitration"). In year 2015, the Plaintiff purported to amend his 2002 complaint (see above), which was then in Arbitration, in the State Court, and he obtained permission from State Court to do so (the "Current Complaint") (herein, a continuation of the "Action").

A true and correct copy of the Initial Complaint in the Action is Attachment 1 hereto. A true and correct copy of Current Complaint in the Action is Attachment 2 hereto.

In his Current Complaint, Leong alleges an "oral partnership" by which he (at least) co-controls the nationwide FCC licenses that is contrary to the corporate organizational documents, all FCC license applications and grants, and other parole evidence that state the defendant Havens solely has *de jure* and *de facto* control. Defendant Havens at all times has disputed in full these, and the other, Leong claims under his Initial and Current Complaints.

2The Current-Complaint Based Receivership, Sent to Arbitration

As further background: The Plaintiff Leong, substantially based upon his Current Complaint, obtained from and maintains to this day a receivership "*pendente lite*" by orders of the State Court over the property of the legal-entity Defendants in the Action with injunctive

provisions that Defendant Havens may not “interfere” with the receiver’s actions (the “Injunction”).² The material property are radio-spectrum licenses, with combined nationwide geographic coverage for interstate commerce, issued by the Federal Communications Commission (“FCC”) (the “FCC Licenses”).³ The Plaintiff is the real party in interest in the Receivership with *de facto* control over the FCC Licenses, and the Injunction, under the relevant FCC rules and precedents (and other law), since he is the sole party who obtained and who may dismiss the Receivership over the FCC Licenses and the Injunction.

Herein, the terms “Receiver” and “Receivership” include Plaintiff Arnold Leong as the real party in interest and the *de facto* person in control as described above.

After the State Court, at the request of Plaintiff Leong, entered the order commencing the receivership in November 2015, it then, upon his further request, compelled his Current-Complaint case in full to arbitration in December 2015. The Federal Arbitration Act governs because the assets at issue in the dispute, nationwide FCC licenses, and the licensee defendant legal entities, involve interstate commerce (see above). Under this Act, the State Court retained vestigial jurisdiction.⁴ Nevertheless, the Receiver been and remains active to sell off the assets, the FCC licenses, as Leong seeks in in his case sent to arbitration, notwithstanding that no award

² The pending Case No. 17-cv-06772-PJH, *Warren Havens v. Xavier Becerra, Attorney General of California* in this District Court is a pending federal civil-contempt habeas action regarding an alleged violation of this Injunction.

³ See, e.g., www.terranaux.com.

⁴ “Once a court grants the petition to compel arbitration...the trial court retaining merely a vestigial jurisdiction” *Brock v. Kaiser Foundation Hospitals* (1992) 10 Cal.App.4th 1790, 1796. “Absent an agreement to withdraw the controversy from arbitration,...no judicial act is authorized. [Citation.]” *Swab Financial, LLC v. E*Trade Securities* (2007) 150 Cal.App.4th 1181, 1200.

1 in Leong's favor has been issued in arbitration for such sales under his claim of (at least) co-
 2 control of the licenses (see above).

3
 4 The 28 U.S.C. § 1446(b)(3) "paper[s] from which it may first be
 5 ascertained that the case is one which is or has become removable"

6 On May 16, 2018 the Receiver, by her attorney, filed in the State Court (and thereafter
 7 served on Defendant Havens) a motion with a proposed order that sought an Order from the State
 8 Court that Havens take action to case his wholly owned company, Polaris PNT PBC, a Delaware
 9 statutory Public Benefit Corporation, to permanently give up (1) a new FCC license to test
 10 advanced wireless equipment in several radio-spectrum bands, and (2) a license-application to
 11 provide advanced-wireless services to Yosemite National Park and persons and things within and
 12 near the Park ("the Motion to Bar FCC License Actions"). Havens submitted an Opposition to
 13 the Motion to Bar FCC License Actions. The State Court granted the Motion to Bar FCC
 14 License Actions" (the "State Order Granting Motion to Bar FCC License Actions
 15

16
 17 A true and correct copy of this Motion with its proposed order is Attachment 3 hereto, a
 18 true and correct the copy of this Order (the same as proposed) is Attachment 5, and a true and
 19 correct copy of the transcript is Attachment 6.

20 This Motion to Bar FCC License Actions alleges (text in brackets added):

21 Havens has recently encumbered [Receivership entities'] estate[s] property [the
 22 FCC licenses described above] by obtaining an experimental [FCC] license in
 23 Berkeley, CA, for his entity Polaris PNT PBC ("Havens/ Polaris"), and has
 24 attempted to do so by applying through Havens/Polaris for a commercial [FCC]
 [radio-] spectrum license... that would encumber more estate spectrum.[....]

25 The Berkeley License – Havens [via his company Polaris PNT PBC] obtained
 26 the Berkeley License on April 4, 2018 from the FCC's Office of Engineering and
 27 Technology [....]
 28

1 The FCC Application – [O]n or about May 7, 2018, Havens submitted an
2 application for a commercial license from the FCC []... Havens/Polaris proposes
3 to operate within a 65-mile radius...which includes Yosemite National Park. [...]
4 [...]

5 Havens may assert, as he has in correspondence (see Ex. 6), that this Court
6 lacks jurisdiction to order Havens to withdraw the FCC Application and cancel
7 the Berkeley License. Such an assertion would be incorrect....The same would
8 hold true for any argument that this Court's action would interfere with the
9 arbitration....

10 [...]

11 The Receiver therefore requests that this Court enter the accompanying
12 proposed order....

13 The Motion's Proposed Order includes:

14 Havens is hereby ordered to withdraw the FCC Application (FCC file no.
15 0008200765) and to cancel the Berkeley License (WJ2XIU).

16 The transcript of the hearing on the Motion (Attachment 5 hereto) includes the following.

17 (Mr. DeGroot below is the attorney for the Receiver, and Mr. Osman is the attorney for Plaintiff
18 Leong (de facto controller of the Receivership).⁵ Text in brackets is added.

19 [P. 8]

20 MR. DeGROOT: ... to sum up...It's as if Dr. Jekyll was the subject of the Court's
21 order and Dr. Jekyll comes in and tells that the Court that the Court can't order
22 Mr. Hyde around. In this instance, we have Mr. Havens acting through an entity
23 that he dominates, which is called Polaris, applying for FCC licenses that are
24 proposing or --

25 THE COURT: He's proposing to compete against the receivership....
26 [...]

27 ⁵ No legal counsel for any of the Receivership entities' estates was present. The plaintiff Leong
28 and the Receiver have not secured for the estates of any receivership legal entities legal counsel
to protect the interests of the estates and their beneficiaries. Instead, they use these estates' funds
for the legal actions of the Receiver, and payment of her attorney's fees (primarily Mr. DeGroot
and his associates in his law firm Sheppard Mullin) in defense of challenges by Defendant
Havens, a beneficiary of all of the estates, and for actions under Leong's claims sent to
arbitration with no decision to date by any arbitrator.

1 MR. DeGROOT: ... It's ...some geography in which we [the Receiver and Leong]
2 have [FCC] licenses, he's [Havens is] proposing to broadcast over signals that we
3 have a right to broadcast on...

4 [P. 9]

5 he's ... encumbering our licenses....
6 [...]

7 THE COURT: All right. Mr. Osman, do you have any argument?

8 MR. OSMAN: ... I have nothing to add.

9 THE COURT: Mr. Havens,... Why should you be obtaining licenses in your
10 separate company's name that encroach about licenses held by the receivership?

11 [P. 11]

12 MR. HAVENS: ... [T]here are two different matters. One is the experimental
13 license. [Second] That license application is under...[FCC] rule, 90.2509 [*sic*, the
14 rule is 90.259]....
15 [...]

16 THE COURT: Does your application for that license encroach upon licenses held
17 by the receivership?

18 MR. HAVENS: Under FCC law, it does not.
19 [...]

20 [P. 12]

21 I'm doing nothing but what has been done hundred[s] of times by other companies
22 with no one ever succeeding at the FCC ... arguing that it's an encumbrance to --
23 or interference with their paid-for high-power license....
24 [...]

25 [P. 13]

26 The licensure I'm seeking for Yosemite Park is to help the park on a nonprofit
27 basis. Polaris is a public benefit corporation. I'm not seeking to even make money
28 on it.
29 [...]

30 [P. 14]

31 ...[O]n the experimental license.... Right or wrong, if the receiver tells me, don't
32 use on your experimental license on any of the spectrums in the receivership
33 licenses. fine. Give me the letter; I won't do it. But... under -- the license
34 application for Yosemite Park, that is under that particular FCC rule, which I
35 argue to here, is a fact. It's being used around the country by all kinds of
36 companies. The full [FCC] commission determined that those types of low-power
37 secondary licenses simply will not be ever deemed interfering with the high-
38 powered paid-for licenses.
39 [...]

1 [P. 15]

2 MR. DeGROOT: So what we have here is, the FCC is willing to grant ... to
3 people, secondary licenses [under FCC rule §90.259], but we're not talking about
4 the Tuolumne Water Company here. We're talking about Mr. Havens.... Polaris
5 [owned by Havens] has a secondary license [application] [...near] Mariposa,
6 California [to serve Yosemite National Park]....
7 [...]

8 [P. 17]

9 ... [I]t seems to me to be complete -- it just is mischief Mr. Havens could go
10 anywhere else. He can find some other geography. He can find some other
11 frequency....

12 MR. HAVENS: May I briefly respond, your Honor?

13 THE COURT: If you can do it in a paragraph or less.

14 MR. HAVENS: ... Mr. DeGroot is ...asking you to make a decision contrary to
15 FCC authority and rules. I don't think you should.

16 [P. 18]

17 THE COURT: It appears to me that ...both the Berkeley [FCC] license and... the
18 FCC license in Mariposa [covering Yosemite National Park]... have an impact,...
19 and my ruling is that.... You must cancel the Berkeley license, and you must
20 withdraw the FCC application to set up ... operation in Mariposa County....

21 [P. 19]

22 MR. HAVENS: ... may I make a comment?

23 THE COURT: At this point I'm going to call the next case.

24 MR. OSMAN [Attorney for Plaintiff Leong]: Thank you for your time, your
25 Honor.

26 THE COURT: I'll sign the order, and we'll process it today.

27 (End of proceedings at 4:47 PM.)

28 After the State Court signed on May 17, 2018 the Order granting the Motion to Bar FCC
License Actions, on May 22, 2018 the attorney for the Receiver, David DeGroot, sent an email to
the FCC staff personnel that had authority over the above-described Havens-Polaris FCC
experimental license, and Havens-Polaris FCC license application to serve Yosemite National

1 Park, attaching a copy of a letter from DeGroot to Havens, also dated May 22, that, in turn,
2 attached a copy of this Order: true and correct copies of these are in Attachment 7 hereto.

3 These Motion papers -- the motion and its attached Proposed Order, the written transcript
4 of the motion hearing, the resultant signed Order, and the email to FCC staff (with its
5 attachments noted above) (together, the "Motion Papers") -- on their face describe Defendant's
6 (via his company Polaris PNT PBC's) new FCC license and new license application, and the
7 actions of the Receiver (that under *de facto* control of Plaintiff Leong, as described above) to bar
8 these and any other such Havens FCC licensing actions before the FCC by the Defendant Havens
9 that the Receiver deems to be "encumbering our licenses" -- the FCC licenses the Receiver, her
10 attorneys, and Leong believe they control under State Court authority above or beyond FCC
11 jurisdiction, rules and decision making on FCC licensing matters: herein, the "Leong-Receiver
12 Claims and Actions to Bar Havens in FCC Licensing."
13

14 Prior to these Motion Papers, the subject Leong State Court Action (defined above) did
15 not contain, in the texts of the Leong Initial Complaint, the Leong Current Complaint, or other
16 papers by or for Leong, the Leong-Receiver Claims and Actions to Bar Havens in FCC
17 Licensing.
18

19 These Havens-Polaris FCC licensing actions are under the exclusive federal jurisdiction
20 of the FCC (under FCC licensing rules, and the governing parts of the Federal Communications
21 Act.
22

23 These Leong-Receiver Claims and Actions to Bar Havens in FCC Licensing under the
24 Moving Papers violate, and deprive Havens of rights under, the Federal Communications Act
25
26
27
28

1 and other Acts of the U.S. Congress, and parts of the U.S. Constitution: see §5 below, and are
 2 preempted by federal law as discussed below.

3 These defined Motion Papers are the proper basis of this removal to the District Court
 4 under its federal subject matter jurisdiction.
 5

6 4
 7 This Removal is Timely

8 This Removal of the State Court Action to this coterminous District Court is proper, as to
 9 timing, under 28 U.S.C. § 1446(b)(3) which provides that “a notice of removal may be filed
 10 within thirty days after receipt by the defendant, through service or otherwise, of a copy of an
 11 amended pleading, motion, order or other paper from which it may first be ascertained that the
 12 case is one which is or has become removable.” The Motion to Bar FCC License Actions was
 13 filed on May 16, 2018 (and then served on Havens) which is less than thirty days of the date of
 14 this notice of removal under 28 U.S.C. §§ 1441 and §1442 (a)(1)-(2)⁶ (and conditionally under
 15 1443).
 16
 17
 18

19 ⁶ The Ninth Circuit held in *Durham v. Lockheed*, 445 F.3d 1247 (2006):

20 ...[T]he [U.S.] Supreme Court has mandated a generous interpretation of the
 21 federal officer removal statute [28 USC 1442]... : "...to be liberally construed..."
 22 *Colorado v. Symes*, 286 U.S. 510, 517, 52 S.Ct. 635, 76 L.Ed. 1253 (1932).
 [Citing additional Supreme Court cases]....

23[R]emoval rights under section 1442 are much broader than those under
 24 section 1441....[R]emovals under section 1441 are subject to the well-pleaded
 25 complaint rule, while those under section 1442 are not. Compare *Louisville &*
 26 *Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152, 29 S.Ct. 42, 53 L.Ed. 126
 27 (1908), with *Acker*, 527 U.S. at 431, 119 S.Ct. 2069. Whereas all defendants must
 28 consent to removal under section 1441, see *United Computer Sys.*, 298 F.3d at
 762, a federal officer or agency defendant can unilaterally remove a case under
 section 1442, see *Ely Valley Mines, Inc. v. Hartford Accident & Indem. Co.*, 644
 F.2d 1310, 1315 (9th Cir.1981).

5

This Removal is Proper as to Venue and Federal Question Jurisdiction
for Removal Purposes, and the Three Bases of Removal

The United States District Court for the Northern District of California is the proper place or venue to file this Notice of Removal under these removal statutes because it is the federal district court that embraces the place where the original state court action was filed and is pending.

As initially discussed above, there is clearly federal question jurisdiction because the State Court Action's "Motion Papers" described above on their face concern FCC licensing actions and thus the Federal Communications Act, FCC rules, the jurisdiction of the FCC, and federal preemption under FCC exclusive jurisdiction; and in addition (but not essential for this removal action to be proper), the assets in the State Court Action's Receivership are primarily FCC licenses. This federal question jurisdiction is also shown in other parts of this notice of removal.

As the U.S. Supreme Court emphasized in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) at page 346: "Perhaps no judicial action calls for a more cautious exercise of discretion than the appointment of a receiver by a court of equity, especially where the enterprise to be administered relates to important public interests," and as described herein, the sole purpose of FCC licensing under the Federal Communications Act is for the public interest, convenience and necessity (47

Mindful of these differences....[w]hen the defendant receives enough facts to remove on any basis under section 1441, the case is removable.... But ...we extend section 1442's liberal interpretation to section 1446....defendant's thirty days to remove commence when the plaintiff discloses sufficient facts for federal officer removal, even if the officer was previously aware of a different basis for removal.

U.S.C. §309(a)). The actions of the Receiver, and Plaintiff Leong as the real party in interest and control, in and by the Motion Papers (see above) are the opposite of what the US Supreme Court emphasized above, and Defendant Havens clearly alleged as much in his Opposition to the Motion (Attachment 4 hereto) and preceding email objections (attached to the Opposition).

As captioned above, this removal is under these statutes: (1) 28 U.S.C. § 1442(a)(1)-(2); and (2) 28 U.S.C. § 1441; and (3) 28 U.S.C. 1443 conditionally. Removal under any of these is sufficient. The Defendant(s) removal-action rights and protections under these three are not entirely the same, and thus each is asserted as valid basis for this removal action. Each is discussed below.

(1) Removal Under 28 U.S.C. § 1441

Removal is proper under 28 U.S.C. § 1441 because, as first stated in § 3 above, on the face of all the Motion Papers (defined above) -- federal subject matter jurisdiction is clear under the relevant Federal Acts and the Defendant rights thereunder. This is asserted in Defendant Havens's Opposition to the Motion to Bar FCC License Actions, a copy of which is Attachment 4 hereto, including the following text. In the following text, numbers in brackets added to indicate several Federal Acts involved: [1] and [2] are clear by said facial reading --and that is sufficient for removal under this statute -- and [3] and [4] flow from [1] and [2] under the Motion Papers.

[1]

...Capital Service, Inc. v. Labor Board, 347 U.S. 501 (1954) (on cert to the Ninth Circuit)... 28 U.S. C. §1337... US District Court... jurisdiction of... "civil action or proceeding" arising under an Act of Congress "regulating commerce." P. 347 U. S. 504, and (b)... within the meaning of 28 U.S.C. § 2283.... Pp. 347 U. S. 504-506.

[2]

... FCC licensing cases by the US Supreme Court and Circuit Courts with the same essential core principles that a federal agency or entity (board, commission or other) in exercise of its powers under exclusive jurisdiction cannot be subject to restraining or other interfering action by a state court, or an agent of as state court like a receiver. These include decisions of the US Supreme Court and Circuit Courts cited in the emails that are attached to my Declaration below including: (1) *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946), (2) *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945), (3) *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 14, 62 S. Ct. 875, 86 L.Ed. 1229 (1942). (4) *Kidd v. FCC*, 427 F.3d 1 (D.C. Cir. 2005), (5) *In re FCC (and NextWave)* 217 F.3d 125 (2nd Cir. 2000). (6) *Global NAPs, Inc. v. FCC*, 247 F.3d 252 (D.C. Cir. 2001), cert. denied, 122 S.Ct. 808 (2002)- which is related to FCC decisions: *In the Matter of Bell Atlantic et al. v Global NAPs, FCC Order on Reconsideration*, FCC 02-127 (2002) Atlantic-Delaware, Inc., et al. v. Global NAPs, Inc., Memorandum Opinion and Order, 15 FCC Rcd 12946 (1999)...., Order on Reconsideration, 15 FCC Rcd 5997 (2000).
[....]

[....] [T]he Supreme Court has recognized that under the FCA [the [Federal Communications Act] the division of authority between these "spheres" requires that "no court can grant [or deny] an applicant an authorization which the Commission has refused." *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 14, 62 S. Ct. 875, 86 L.Ed. 1229 (1942). Under the FCA, it is the FCC and not the courts that "must be satisfied that the public interest will be served by . . . the license." *FCC v. WOKO, Inc.*, 329 U.S. 223, 229, 67 S. Ct. 213, 91 L.Ed. 204 (1946).[...]

From Exhibit 2 to the Opposition (Attachment 4 hereto) is Defendant Havens' email to Plaintiff Leong and to Susan Uecker, the Receiver that Leong de-facto controls [see above]:

[....]
Unless you email to me...an unequivocal withdrawal with prejudice of ... the "Leong-Uecker Position"...I intend to proceed with legal action...before a US District Court and the FCC....under

[2]
... the Federal Communications Act [....]

[3]
... the Sherman Act, §1 (unlawful restraint of interstate commerce)

[4]
... 42 U.S.C. Section 1983... (... the Receiver... and Leong, do not have immunity)

The actions of the Receiver (that includes Plaintiff Leong, see above) under the Motion to Bar FCC License Actions constitute Unconstitutional takings of personal property under the

1 Fifth Amendment of the United States Constitution made applicable to States under the
 2 Fourteenth Amendment. *Hornes v. U.S. Dept. of Agriculture*, 135 S. Ct. 2419 (2015) (on writ to
 3 the Ninth Circuit). Fifth Amendment “takings” apply to FCC licenses. *Alpine PCS, Inc. v.*
 4 *United States*, 878 F.3d 1086 (Fed. Cir. 2018): “we conclude that, as relevant to Alpine’s quest
 5 for relief under the Takings Clause, the Communications Act provides ‘a ready avenue to bring
 6 [a] takings claim...”⁷

8 As initially discussed above, these actions under the Motion Papers are also preempted by
 9 federal law. For example, see the Ninth Circuit decision *Telesaurus v Power*, 623 F.3d 998
 10 (State tort law action may not be used to reexamine or reassess the Federal Communications
 11 Commission's licensing determinations. State law actions that have an effect on or of regulating
 12 entry into the wireless market - obtaining and using FCC licenses - are expressly preempted by
 13 the Federal Communication Act § 332(c)(3)(A).) The Motion Papers could not more clearly
 14 effect, by the absolute bar imposed, obtaining and using FCC licenses to enter the wireless
 15 market.
 16
 17
 18
 19
 20
 21

22 ⁷ Also applicable is the U.S. Supreme Court holdings in *Champlain Refining v. Corporation*
 23 *Commission*, 286 U.S. 210 (52 S.Ct. 559, 76 L.Ed. 1062): ((i) Threatened enforcement of state
 24 law which contravenes the U.S. Federal Constitution will be enjoined, if necessary effectually to
 25 protect *property rights and rights of persons* against injuries otherwise irremediable. (ii) In suit
 26 to enjoin enforcement of oil proration orders and to restrain prosecution of *state court*
 27 *receivership* proceedings, question of validity of statutory provision for receivership held
 28 properly presented, though [State] Attorney General had dismissed receivership suit. (iii)
 Provision for *receivership* of oil property in case of oil operator's violation of provisions of act
 prohibiting waste and authorizing proration *held void* as penal provision, and as giving
insufficient information as to conduct penalized.)

1 (2) Removal under § 1442(a)(1)-(2)

2 Removal is also proper under § 1442(a)(1)-(2) because each of the prongs for removal
3 under this statute's subsections are satisfied as shown below in ¶¶ A-D.

4 Removal under § 1442 by a federal officer, or - as in this case- someone acting under a
5 federal officer, for an act under color of office is an absolute right; the court does not have
6 discretion. *Malone v. Longo*, 463 F. Supp. 139, 141 (E.D.N.Y. 1979) (citing *Willingham v.*
7 *Morgan*, 395 U.S. 402, 406 (1969)); see also *United States v. Penney*, 320 F. Supp. 1396, 1397
8 (D.D.C. 1970).

9 Removal is permitted even where the federal official's conduct is found to be misconduct,
10 provided that the misconduct was committed under "color of office." *Logemann v. Stock*, 81 F.
11 Supp. 337, 339 (D. Neb. 1949). However, in this case defendant denies any misconduct.

12 Subject matter jurisdiction is granted to the district court under § 1442. *Falls Riverway*
13 *Realty, Inc. v. City of Niagara Falls*, 754 F.2d 49, 55 (2d Cir. 1985) (citing *Willingham*, 395 U.S.
14 at 406).

15 Claims that would not be independently removable may be heard by the federal court
16 even if the basis for removal jurisdiction is dropped from the proceedings. *Watkins v. Grover*,
17 508 F.2d 920, 921 (9th Cir. 1974); see also *IMFC Prof'l Servs. of Fla., Inc. v. Latin Am. Home*
18 *Health, Inc.*, 676 F.2d 152, 159 (5th Cir. 1982).

19 A defendant who meets the removal requirements under § 1442 may remove the suit to a
20 federal court even when the plaintiffs pleadings do not raise a federal question. *Alsup v. 3-Day*
21 *Blinds, Inc.*, 435 F. Supp. 2d 838, 844 (S.D. Ill. 2006) (quoting *Ryan v. Dow Chem. Co.*, 781 F.
22 Supp. 934, 939 (E.D.N.Y. 1992)). It is irrelevant whether the plaintiff could have initially sued
23

1 the defendant in federal court under the asserted cause of action. *Special Prosecutor of N.Y. v.*
2 *U.S. Attorney for S.D.N.Y.*, 375 F. Supp. 797, 801 (S.D.N.Y. 1974).

3 Removal under § 1442 removes the entire case to the federal court, even if there are other
4 defendants who could not have removed the action. *Dillon v. Miss. Military Dep't.*, 23 F.3d 915,
5 918-19 (5th Cir. 1994). However, in addition, Havens asserts that he acts for the other
6 defendants, the legal-entity defendants, as explained above.

7 Dismissal of the federal officer from a removed case does not divest the district court of
8 jurisdiction unless no personal jurisdiction existed over the officer. *IMFC Profl Servs. of Fla.,*
9 *Inc. v. Latin Am. Home Health, Inc.*, 676 F.2d 152, 159 (5th Cir. 1982).

10 Under § 1442, a defendant must show: (A) it was a "person" (B) "acting under" the
11 United States, its agencies, or its officers (C) that has been sued "for or relating to any act under
12 color of such office" (the office in '(2)'), and (D) has a colorable federal defense to the plaintiff's
13 claim. In sum --

14 (A) Defendant Havens is clearly a "person" since he is a natural person.

15 (B) Defendant Havens is directly "acting under" a U.S. Agency, the Federal
16 Communications Commission and its officers: FCC staff persons that review, process, grant,
17 regulate and police the FCC license and license application at issue (the ones directly subject of
18 the Motion Papers, and those in the future Havens may pursue which the Motion Papers allege
19 will not be permitted under State law and the State Court). In sum --

20 The FCC staff that screen, issue, regulate, and police the licenses and licensees are
21 federal officers executing these tasks, and FCC licensees carry out the tasks under these federal
22

1 officers, under liability of civil and criminal enforcement actions if the licensee violates terms
2 and conditions of the licenses.

3 FCC licenses are "grants"⁸ and have grant conditions - the duties and limitations noted
4 above: some in the relevant license rules and others by special conditions placed on certain
5 licenses.
6

7 The primary mandate in the Federal Communications Act of 1934, as amended (the
8 "FCA"), is "to maintain the control of the United States over all the channels of radio
9 transmission; and [by radio spectrum licensing] to provide for the use of such channels, but not
10 the ownership thereof,⁹ by persons for limited periods of time, under licenses granted by Federal
11 authority." 47 U.S.C. 301. The FCA establishes the Federal Communications Commission (FCC
12
13

14
15 ⁸ 47 U.S. Code § 307 - Licenses

16 (a) Grant. The Commission, if public convenience, interest, or necessity will be
17 served thereby, subject to the limitations of this chapter, shall grant to any
18 applicant therefor a station license provided for by this chapter.

19 ⁹ This is reflected in the FCA as follows:

20 47 U.S.C. §304 - "Waiver by license of claims to particular frequency or of electromagnetic
21 spectrum" - provides:

22 No station license shall be granted by the Commission until the applicant therefor
23 shall have waived any claim to the use of any particular frequency or of the
24 electromagnetic spectrum as against the regulatory power of the United States
25 because of the previous use of the same, whether by license or otherwise.

26 47 U.S.C. §309 (h) - "Form and conditions of station licenses" - provides:

27 Such station licenses as the Commission may grant shall be in such general form
28 as it may prescribe, but each license shall contain, in addition to other provisions,
a statement of the following conditions to which such license shall be subject: (1)
The station license shall not vest in the licensee any right to operate the station
nor any right in the use of the frequencies designated in the license beyond the
term thereof nor in any other manner than authorized therein; (2) neither the
license nor the right granted thereunder shall be assigned or otherwise transferred
in violation of this chapter;....

1 or Commission) and vests it with the authority to issue radio licenses upon its determination that
 2 doing so will serve the "public interest, convenience, and necessity." 47 U.S.C. 309(a). The
 3 FCC, for Congress, has a comprehensive licensing regime of rules and procedures to carry out
 4 these mandates -- under FCC exclusive jurisdiction, in which a State cannot interfere -- by
 5 delegating to qualified licensees duties and limitations on how they must use the public radio
 6 spectrum.
 7

8 Congress has determined that the FCC issue radio licenses and govern licenses and
 9 licensees to achieve an end it would have otherwise used its own internal agents to carry out.
 10 While the federal departments of defense, transportation, energy, agriculture, and others obtain
 11 their own radio spectrum authorizations (licenses) and build and operate wireless networks for
 12 their own operations, they do that through the National Telecommunications and Information
 13 Administration (part of the Department of Commerce),¹⁰ Congress enacted FCA and established
 14 the FCC to issue and govern radio licenses for the private sector, and state and local
 15
 16
 17

18 ¹⁰ This is reflected in the FCA in 47 U.S.C. §305 - "Government owned stations" - which
 19 provides:

20 (a) Frequencies; compliance with regulations; stations on vessels. Radio stations
 21 belonging to and operated by the United States shall not be subject to the
 22 provisions of sections 301 and 303 of this title [the FCA] [*]. All such
 23 Government stations shall use such frequencies as shall be assigned to each or to
 24 each class by the President. All such stations, except stations on board naval and
 25 other Government vessels while at sea or beyond the limits of the continental
 26 United States, when transmitting any radio communication or signal other than a
 27 communication or signal relating to Government business, shall conform to such
 28 rules and regulations designed to prevent interference with other radio stations
 and the rights of others as the Commission may prescribe.

[*] In the FCA: 47 U.S.C. § 301 concerns "License for radio communication or transmission of energy," and 47 U.S.C § 303 concerns "Powers and duties of Commission" (the Federal Communications Commission).

1 governments, but the goal is the same-- to use the public radio spectrum -- a federal resource --
2 for the "public interest, benefit and convenience" (47 U.S.C. §309(a)).

3 (C) Defendant Havens has directly been sued "for or relating to any act under color of
4 such office" (the office in '(2)' by the by the Motion and also is placed under the ongoing threat of
5 further suit actions under the rational end decision in the Motion Papers.
6

7 (D) Defendant Havens has "a colorable federal defense" (he alleges a compelling
8 defense) to the plaintiff's claim. He provided it in his opposition to the Motion and restates it
9 herein. This includes exclusive FCC jurisdiction and preemption. Preemption is a common
10 defense that has been held to qualify as a "colorable federal defense" under § 1442. See *Watson*
11 *v. Philip Morris Cos., Inc.*, 420 F.3d 852, 862 (8th Cir. 2005), *Magnin*, 91 F.3d at 1429. Federal
12 preemption arises from the operation of the Supremacy Clause of the United States Constitution.
13 See U.S. CONST. art. VI, cl. 2.
14

15 (3) Removal under § 1443 (Conditionally)
16

17 Removal also appears, to this *pro se* party, in good faith, to be proper by a colorable
18 argument under 28 U.S.C. 1443 due to the legal developments summarized below. It is
19 submitted conditionally on that basis, and not on an ascertained clearly sound basis.

20 The U.S. Supreme Court has narrowly interpreted the scope of 28 U.S.C. § 1443, such as
21 in *State of Georgia v. Rachel*, 384 U.S. 780, 86 S. Ct. 1783, 16 L. Ed. 2d 925 (1966), to be
22 limited to racial "equal civil rights."¹¹
23

24
25 ¹¹ In this regard, see: R. M. McKeithen, *Removal of Civil Rights Cases -- Recent Developments*,
26 44 N.C. L. Rev. 380 (1966) that discusses 28 U.S.C. § 1443:

27 The source of the conflict as to the meaning of the statute is the vague and
28 ambiguous wording given to it by its original drafters and those who recodified it

1 However, subsequently, the scientific definition of “race” has become questionable, and
 2 the U.S. Supreme Court’s case holdings on government action to promote race equality has
 3 shifted to equality of non-racial disparities and diversities. Also, in year 1995, the U.S. Supreme
 4 Court in *Adarand Constructors, Inc. v. Peña* placed requirements on any government action to
 5 attempt to remove barriers on a race-related basis. In *Adarand*, the court ruled that all race-
 6 conscious government action had to be analyzed under strict scrutiny review and must be
 7 narrowly tailored to further a compelling government interest. Thus, in order to pass regulations
 8 or laws that would encourage diversity of ownership of broadcast media, the FCC would have to
 9 provide evidence that could pass the strict scrutiny standard. Under *Adrand* holdings, the FCC in
 10 its 2003 Notice of Proposed Rulemaking determined types of diversity the agency had a
 11 compelling interest to promote and regulate: (1) minority and female; (2) program; (3) outlet; and
 12 (4) viewpoint, but it did not continue with race-related diversity initiatives.¹²

17
 18 into the Revised Statutes of 1875. [...] Though the intended scope of this
 19 provision is uncertain- the pertinent legislative history materials being of little
 20 assistance- the broad purpose was to repudiate the *Dred Scott* Case.^{7/} [Footnote:
 21 *7/ Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857)].

22 ¹² To verify and expand on the above, the following is from an FCC Report "History of the
 23 Broadcast License Application Process" by KPMG, November, 2000. Copy at:
 24 https://transition.fcc.gov/opportunity/meb_study/broadcast_lic_study_pt1.pdf

25 [underlining and text in brackets added]:

26 In ...*Bechtel*, 10 F.3d 875 (D.C. Cir. 1993), the D.C. Circuit Court f...
 27 effectively eliminated gender and race [FCC licensee] ownership and employment
 28 policies.... [¶¶]....

[In] *Adarand and U.S. v. Virginia* ... 515 U.S. 200 (1995)...., the [U.S.]
 Supreme Court held that any federal program that uses racial or ethnic criteria
 ...must serve a compelling governmental interest such as remedying past
 discrimination and must be narrowly tailored to serve that interest.... [and] any
 racial distinctions employed by ... government “must be analyzed by the

Thus, it appears that a valid modern interpretation and application of 28 U.S.C. 1443 -- including for the FCC licensing actions at issue here -- should not be restricted to *racial* "equal civil rights," but should extend to all equal civil rights also -- as a plain reading of the text suggests -- including rights under 42 U.S.C. § 1983 which Defendant Havens alleges (see above) are clear in the text of the Motion Papers and are violated by the subject Motion to Bar FCC License Actions and the resultant Order.

6

This Removal is Based on Plaintiff's Actions:
Plaintiff is the Real Party in Interest and De Facto Control

Defendant presents below several factual showings and legal arguments to support that Plaintiff Leong is the real party in interest and in *de facto* control of the Receivership (and Receiver's actions) in State Court Action including the Motion Papers that give rise to this removal in the relevant 30-day period, as discussed above:

(1) First: The Receivership (which, as noted above, is the only activity in the State Court Action since the Leong Current Complaint was sent to arbitration) was solely obtained by Leong as the sole plaintiff, and is solely maintained by him for his benefit. The State is not a plaintiff or a party, nor is any private party but for Leong. As in any court action by a sole private plaintiff, that plaintiff has the right to dismiss the action, or to continue with the action. He is thus in *de facto* control of any special relief said sole plaintiff obtained in the action,

reviewing court under strict scrutiny," ...overruling the standard of review...in *Metro Broadcasting*. [¶¶....]

Conclusion.Continuous changes.... The 1960s and the 1970s saw an increase in minority and gender policies....Since this date...the constitutionality of minority and gender ownership policies have become more uncertain and can be implemented only under more rigorous circumstances.

1 including a receivership *pendente lite*, as Leong asserts he has lawfully obtained in the subject
2 State Court Action.

3 (2) Second: The Removal is based on the Havens recent FCC license and license
4 application, subject of the Motion Paper as described above, and the Motion Papers also assert
5 that these Havens FCC licensing actions "encumber" the FCC licenses under current control of
6 the Receiver. Thus, FCC law on who is the real party in interest, and in de facto control, is of
7 central relevance. In this regard, Section 310(d) of the Federal Communications Act (47 U.S.C.
8 § 310(d)) deals with (and prohibits) *de facto*, as well as *de jure*, transfers of control without
9 Commission approval. See *Lorain Journal Co. v. FCC*, 351 F.2d 824, 828 (D.C. Cir. 1965), cert.
10 denied, 383 U.S. 967 (1966). The phrase "real party-in-interest" is used in connection with
11 pending applications, while "de facto control" is used in connection with a licensed station. In
12 either case, the pertinent concern is whether someone other than the named applicant or licensee
13 is in control. See *Arnold L. Chase*, 5 FCC Rcd 1642, 1648 n.5 (1990). The test for determining
14 whether an individual is a real-party-in-interest in an application is whether that individual "has
15 an ownership interest or is or will be in a position to actually or potentially control the operation
16 of the station." *High Sierra Broadcasting, Inc.*, 96 FCC 2d 423, 427 (Rev. Bd. 1983). Here, in
17 the subject State Court Action, in Plaintiff Leong's Current Complaint, and in all actions and
18 times thereafter to this day (and in the Arbitration- see above), Leong clearly alleges that he has,
19 under the above FCC standard "an ownership interest or is or will be in a position to actually or
20 potentially control the operation of the station" (in the FCC licenses, which also called "stations"
21 in common FCC terminology). Thus, Leong is a real party in interest and *de facto* control, as
22 described above, and since is the sole party that sought and maintains the State Court Action that,
23
24
25
26
27
28

1 after the case was sent to arbitration near the end of year 2015, is solely action of the
 2 Receivership, Leong is the sole real party in interest and facto control of the Receivership and
 3 the licenses under the Receiver's control, and in the Motion (and the other Motion Papers).

4
 5 (3) Third: In fact, to this day, Plaintiff Leong has admitted to and takes legal actions
 6 in the State Court and in related appeals in the California Court of Appeal --(and in related
 7 actions, before the FCC, and before two federal courts in Delaware)-- as sole the real party in
 8 interest *and de facto* control of the Receivership.¹³ He is thus judicially estopped to now assert
 9 otherwise (if he were to do so in response to this removal action). A recent example is the Leong
 10 Application for Extension, on form APP-006 in the California Court of Appeal regarding Appeal
 11 Cases A150785 (consolidated with others) filed June 12, 2018 by "Respondent Arnold Leong", a
 12 copy of which is Attachment 8 hereto. This includes on page 2:

14 8.[...] 5. Other issues have arisen that may result in the receiver, and real party in
 15 interest, filing a motion ... [...] I declare under penalty of perjury... above is true
 16 and correct. [Signed by R. Osman, attorney for Plaintiff Arnold Leong].

17 The only active party in the subject State Court Action (including aspects in the subject appeals)
 18 other than Defendant Havens, is Plaintiff Leong, and he is the above-noted "real party in interest"
 19 that "may...[with] the receiver...[be] filing a motion..." Also, he filed this Application stating that
 20 he is the "Respondent." Only a party in interest can be the respondent in an appeals case.

21 Further, as indicated above, Leong is also acting as the sole real party in interest and de
 22 facto control in the State Court Action Receivership in three federal forums (i) before the FCC
 23

24
 25 ¹³ Since late in year 2015, when by motions of Plaintiff Leong, the Receivership was
 26 commenced and right after that the Plaintiff's Current Complaint was compelled to arbitration in,
 27 there is no action in the State Court Action but for the Receivership (and that, under the Federal
 28 Arbitration Act, should have been but was not stayed, as indicated above).

(various pleadings to attempt to act for and support his obtained Receiver- sometimes on his own without a related pleading by the Receiver), and (ii) in two federal courts in the State of Delaware: (a) the U.S. Bankruptcy Court in the chapter 11 bankruptcy case of the Receivership entity Skybridge Spectrum Foundation in year 2016 (see, e.g., Attachment 9 hereto, a pleading by the Foundation), and (b) the US District Court in an appeal of a procedural dismissal of that chapter 11 bankruptcy case (see, e.g., Attachment 10 hereto - the docket sheet).¹⁴

7
There is Only One Defendant Here, Under § 1441,
and Under §§ 1442(a)(1)-(2) and 1443 Only One is Needed

§1441 provides:

28 U.S. Code § 1441 - Removal of civil actions

[...]

(c) Joinder of Federal Law Claims and State Law Claims.—

(1) If a civil action includes—

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute,

the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

Under §1441(c)(2), Defendant Havens is the only defendant in the State Court Action “against whom a claim described in paragraph (1)(A) has been asserted,” which is, as set forth

¹⁴ Attachments 9 and 10 are on the federal court PACER system and can easily be verified. Defendant request the court take judicial notice of these documents for the limited purpose of this notice of removal’s Section 6 above.

1 above, the claims in the Motion. The Motion claims clearly were asserted only against Havens.
2 Thus, removal under § 1441 solely by Defendant Havens is proper.

3 Also Havens is the sole defendant in the State Court action to which the Motion (and the
4 other Motion Papers) were served: the legal-entity defendants were not served. In this regard,
5 for almost a century the Ninth Circuit has held that the parties who have not been served the
6 relevant paper(s) and their matter(s) that give rise to the right to remove the case to a federal
7 district court, need not join or consent to removal. *Cnty. Bldg. Co. v. Maryland Cas. Co.*, 8 F.2d
8 678, 679 (9th Cir. 1925) (“[D]efendants over whom the court has not acquired jurisdiction [as to
9 the such relevant papers and matters] may be disregarded in removal proceedings, and that the
10 defendants who have been summoned [or served] must of necessity be allowed to exercise their
11 right of removal.”); *Salveson v. W. States Bankcard Ass’n*, 731 F.2d 1423, 1429 (9th Cir. 1984)
12 (“Our circuit rule is that a party not served need not be joined; the defendants summonsed can
13 remove by themselves.”).¹⁵
14
15
16
17

18
19 ¹⁵ While the above should be dispositive, Defendant Havens also asserts here that if one were to
20 consider whether these legal-entity defendants may be deemed “effectively” served since the
21 motion is in the name of the Receiver over these legal-entity defendants, the Defendant asserts
22 that would not be correct for several reasons: (i) first, a Receiver of a receivership is under law
23 distinct from any legal entity which has assets or aspects in a receivership, and the Receiver has
24 acted on this basis, for example, in accepting and acting upon subpoenas obtained by Plaintiff
25 Leong from the Arbitrator in the Arbitration (see above) directed to each of the defendant legal
26 entities during the receivership, sent to their Delaware legal-process representative (the CT
27 Corporation) which delivered these to the Receiver who then acted upon them; and (ii) Plaintiff
28 Leong, the admitted party in interest in the Receivership and the Receiver’s actions (see above)
who had *de facto* controlling interest as well (see above) did not arrange to serve the Motion (and
other Motion Papers) on the legal-entity defendants -- either in the State Court Action (that under
law had to be stayed since the entire Leong amended Current Complaint was compelled to
Arbitration and the arbitration Leong then filed was in fact proceeding) or in the Arbitration
where Defendant Havens, alone, has control of and arranges for legal representation of each of

Thus, under § 1441, Defendant Havens by himself properly submits this notice of removal to cause removal of the State Court Action case.

§ 1442(a)(1)-(2) and § 1443 by their text and by case law never require more than one defendant to properly remove a state court case. Thus, under these two sections, as well as under §1441, Defendant Havens by himself properly submits this notice of removal to cause removal.

8
Notice of Related District Court Action

The following case also arises from the subject State Court Action and has relation to matters in this notice of removal: the federal civil-contempt habeas case: *Warren Havens Petitioner, v. Xavier Becerra, Respondent*, Case No. 17-cv-06772-PJH in the U.S. District Court, Northern District of California, Oakland Division -- the same court and division to which this notice it submitted.

9
Notices, Removal Effect, and Other Matters

(1) A copy of this Notice will be filed promptly with the Clerk of the Alameda County Superior Court. That filing will automatically effect the removal of the subject action to this Court, in its entirety, for future proceedings pursuant to 28 U.S.C. § 1446(d). See *Ely Valley Mines, Inc. v. Hartford Accident & Indem. Co.*, 644 F.2d 1310, 1315 (9th Cir. 1981).

(2) Pursuant to 28 U.S.C. §1446(a), the described "copy of all process, pleadings, and orders served upon such defendant" are submitted herewith, in bound volumes. These

those legal entity defendants; and (iii) other reasons that can be given if Plaintiff Leong files a motion to remand, in response thereto.

documents are submitted in paper copies because the Defendant filing this notice of removal is not an attorney at law and is not permitted to use the court's ECF electronic filing system.¹⁶

In this regard, in compliance with the District Court's Local Rule 79-5(b), after this notice of removal establishes a case in the District Court, Defendant can seek a sealing order under this rule, or proceed under the exception in this rule (regarding 79-5(c), to submit documents from the State Court Action that sealed in that Action (a minor percentage). Or those may be provided under 29 U.S.C. §§ 1447 or 1449.

(3) Pursuant to 28 U.S.C. § 1446(d), a notice to adverse party of removal to federal Court, together with a copy of this Notice of Removal and other appropriate removal-related documents, will be served timely upon counsel for Plaintiff Arnold Leong (with a courtesy copy provided to the counsel for the Receiver, Susan Uecker), and the required notice of this removal will be also be timely filed with the clerk of the Superior Court for the County of Alameda.

(4) By filing this Notice of Removal, Defendant Havens does not waive and reserves rights he may properly pursue including, among others, to seek to compel arbitration, to defenses and/or objections.

(5) For purposes of this removal notice and action, Defendant Havens requests that the court consider and apply the standards explained by the US Supreme Court:¹⁷

27. The Supreme Court has held that pro se complaints are subject to “less stringent standards than formal pleadings drafted by lawyers” and should be liberally construed in the plaintiff’s favor. *Hughes v. Rowe*, 449 U.S. 5, 9

¹⁶ Defendant intends, after a case is established under this removal action, to submit a motion for permission to file under the ECF system. He has is familiar with electronic filings, and has right to electronically file in other federal courts and before the FCC.

¹⁷ From: *Section 1983 Litigation. Second Edition*. Martin A. Schwartz. Touro College, Jacob D. Fuchsberg Law Center. Kathryn R. Urbonya. The College of William and Mary School of Law.

(1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Accord *Erickson v. Pardus*, 127 S. Ct. 2197 (2007). District courts should read the pleadings of a pro se plaintiff “liberally” and “interpret them to raise the strongest arguments that they suggest.” *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir. 1994). Accord *McPherson v. Coombe*, 174 F.3d 276, 280 (2d Cir. 1999). However, pro se status does not exempt a party from compliance with procedural rules. *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983).

The U.S. Supreme Court also held in *Turner v. Rogers*, 387 S. Ct. 142 that Due Process protections within the United States Constitution provide basis for the policy of *pro se* leniency.

(6) This notice of removal is executed and submitted under F.R.C.P. 11. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

(7) If any question or issues arises as to the propriety or sufficiency of the removal of the subject State Court Action, Defendant Havens respectfully requests the opportunity to provide appropriate filings,¹⁸ oral argument, and to conduct discovery in support of his positions.

¹⁸ See, e.g., *Walton v. Bayer Corp.*, 643 F.3d 994, 999 (7th Cir. 2011) and *Countryman v. Farmers Ins. Exch.*, 639 F.3d 1270, 1272 (10th Cir. 2011) (permitting reasonable cures, after filing of notice of removal and expiration of the thirty-day removal period).

Removal of the Related Arbitration, and Related

(1) As initially noticed above, Defendant Havens herein asserts the right, for reasons given in section '(3)' below, to remove the pending Arbitration (defined above) under the American Arbitration Association ("AAA") to the District Court along with the State Court Action.

(2) In this regard, Defendant intends to pursue this Arbitration removal in subsequent filings with the District Court if the AAA and/or the other real parties involved (Mr. Leong, the Plaintiff in the State Court Action, and the Claimant in the Arbitration, and any of his affiliates or others that share control of his Arbitration positions and actions) object to removal of the Arbitration and the related planned motion to compel, described next below. Defendant Havens also intends to request the District Court to compel Leong and his affiliates to an arbitration under the actual written arbitration agreement Leong signed with Havens, which may involve the AAA and the AAA arbitrator involved (the actual arbitration agreement do not specify those, but if the parties agree they may be involved), but which in any case could draw upon proper evidence, developed to date, in the Arbitration under the AAA.

(3) The action to remove the Arbitration is based on the law in the following District Court decision: *Abe Building v Board of Trustees*, US District Court, N.D. Cal. Case No. C 03-03958 CRB, *Memorandum And Order*, November 18, 2003 ("Abe v Board"); copy attached herewith. This decision provides the following (underlining and text in brackets added):

[Page 1]

This lawsuit arises out of an arbitration in which plaintiff was ordered to reimburse the defendant trust fund for benefits allegedly improperly paid to certain of plaintiff's employees. Defendants removed the action to this Court on

the ground that the Court has federal jurisdiction under the Labor Management Relations Act ("LMRA").

[Page 6]

The complete preemption doctrine applies to state court claims that arise under section 301 of the Labor Management Relations Act ("LMRA"), that is, claims that are founded directly on rights created by a collective bargaining agreement, or claims substantially dependent on an analysis of a collective bargaining agreement. *Id.* at 394. Thus, if Able Maintenance's [state law] breach of contract claim is founded on rights created by a cba, or is substantially dependent on an analysis of a cba, the complete preemption doctrine applies and this action was properly removed.

[Page 7]

The plaintiff is a signatory to a number of collective bargaining agreements ("cbas") with various local unions; the cbas are contracts between employers and labor organizations within the meaning of section 301 the LMRA.

[Page 10]

The gravamen of plaintiff's complaint is that the arbitration award is invalid and must be vacated for a variety of reasons. The Court has jurisdiction of such a claim under the LMRA. Accordingly, the motion to remand is DENIED.

Applying *Abe v Board* to the Arbitration: As asserted above, the basis for removal of the State Court Action is the group of Motion Papers (defined above). The actions of Leong (the Plaintiff in the State Court Action and the Claimant in the Related Arbitration) in the Motion Papers, described above (and subsequent matters related to the Motion Papers), are preempted by the Federal Communications Act and FCC exclusive jurisdiction. While in the removal action set forth herein, "complete" preemption, as was found in the *Abe v Board* case, is clearly *not* needed for proper removal under any bases, only ordinary preemption,¹⁹ the holdings in *Abe v*

¹⁹ "Complete preemption" is only needed for removal under §1221 where the papers that are the basis of the removal, under the "well pleaded" rule, do not reveal a basis to remove to a U.S. District Court under diversity or federal question jurisdiction. See, e.g., *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983). Here, the Motion Papers clearly reveal federal question jurisdiction as described herein.

1 *Board* cited above clearly apply: an arbitration can be removed to a US District Court when the
2 arbitration Claimant's claims involve matters under federal agency preemption.

3 (4) The process for removal of an arbitration does not appear to be directly described
4 in 28 U.S.C. including when and how the relevant documents from the arbitration are to be
5 submitted to the District Court. Defendant plans to address these matters, for the Court's
6 decision, after and apart from this notice of removal, and along with Defendants planned further
7 actions described in this section 9 above.

8
9
10 Conclusion

11 For the foregoing reasons, the Defendant respectfully submits and requests (1) that the
12 subject civil State Court Action and be, and is hereby, removed to this United State District
13 Court for the Northern District of California, Oakland Division, and that this Court assume
14 jurisdiction of the Action, (2) that, under the conditions stated above, this Court accept the action
15 herein to remove the Related Arbitration, and that this Court assume jurisdiction of the Related
16 Arbitration, and (3) that this Court enter such other and further orders as may be necessary to
17 accomplish the requested removals and promote the ends of justice;
18

19
20 Respectfully submitted,

21 

22 Warren Havens,
23 Defendant, *pro se*
24 2649 Benvenue Avenue
25 Berkeley, CA 94704
26 Phone: 510. 914. 0910
27 Email: wrnvn@gmail.com

28 June 15, 2018

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 15th day of June, 2018, I caused to be served by First Class US Mail postage prepaid the above document and its affixed attachments on the following persons at the following addresses:

Richard Osman
Bertrand, Fox et al.
2749 Hyde Street
San Francisco, CA 94109
(Attorney for Plaintiff Arnold Leong in the State Court Action)

David DeGroot²⁰
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111
(Attorney for Susan Uecker, the Receiver in the State Court Action)

The above-listed persons are also served, in the same US Mail envelop, a DVD with copies in PDF format of the papers from the State Court Action provided to the U.S. District Court (in paper form as the Court requires of the pro se Defendant) described in the above document.



Warren Havens
2649 Benvenue Avenue
Berkeley CA 94704
Phone (510) 914 0910

²⁰ By this service, Defendant Havens does not admit or suggest that the Receiver is or may become a party in the removed case in the U.S. District Court.

ATTACHMENT - 2

General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 17-60742 Warren Havens v. Maritime Communications/Land, et al Appeal From: Northern District of Mississippi, Aberdeen Fee Status: Fee Paid	Docketed: 11/03/2017
Case Type Information: 1) Bankruptcy 2) District Court 3)	
Originating Court Information: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-180 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 09/25/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-181 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 09/25/2013 Date NOA Filed: 11/01/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-182 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 09/25/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-183 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 09/25/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-184 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 09/25/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-190 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 10/09/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-191 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 10/09/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-192 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 10/09/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> District: 0537-1 : 1:13-CV-193 Originating Judge: Sharion Aycock, Chief Judge Date Filed: 10/09/2013 Date NOA Filed: 11/02/2017 </div> <div style="width: 45%; text-align: right;"> Date Rec'd COA: 11/02/2017 </div> </div>	

District: 0537-1 : [1:13-CV-194](#)**Originating Judge:** Sharion Aycock, Chief Judge**Date Filed:** 10/09/2013**Date NOA Filed:**

11/02/2017

Date Rec'd COA:

11/02/2017

Prior Cases:

None

Current Cases:

	Lead	Member	Start	End
Related	17-60741	17-60742	11/03/2017	

Panel Assignment: Not available

WARREN HAVENS
Appellant

Warren Havens
Direct: 510-914-0910
Email: wrrnvn@gmail.com
Fax: 510-740-3412
[NTC Pro Se]
Polaris PNT. Attn. W. Havens
2649 Benvenue Avenue
Berkeley, CA 94704

v.

MARITIME COMMUNICATIONS/LAND MOBILE L.L.C.
Appellee

Craig M. Geno, Esq.
Direct: 601-427-0048
Email: cmgeno@cmgenolaw.com
Fax: 601-427-0050
[COR LD NTC Retained]
Law Offices Craig M. Geno, P.L.L.C.
587 Highland Colony Parkway
Ridgeland, MS 39157-0000

CHOCTAW TELECOMMUNICATIONS, L.L.C.
Appellee

Erno David Lindner
Direct: 423-209-4206
Email: elindner@bakerdonelson.com
Fax: 423-752-9633
[COR LD NTC Retained]
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
Suite 1900
633 Chestnut Street
Republic Centre
Chattanooga, TN 37450

In the Matter of: MARITIME COMMUNICATIONS/LAND MOBILE, L.L.C.,

Debtor





















WARREN HAVENS,

Appellant











v.







MARITIME COMMUNICATIONS/LAND MOBILE L.L.C.; CHOCTAW TELECOMMUNICATIONS, L.L.C.,

Appellee

11/03/2017	 12 pg, 106.29 KB	BANKRUPTCY CASE docketed. NOA filed by Appellant Mr. Warren Havens [17-60742] (MAS)
11/08/2017	 3 pg, 151.64 KB	INITIAL CASE CHECK by Attorney Advisor complete, Action: Case OK to Process. [8635569-2] Initial AA Check Due satisfied. Transcript order due on 11/24/2017 for Appellant Warren Havens [17-60742] (MAS)
11/13/2017	 1 pg, 90.8 KB	APPEARANCE FORM received from Mr. Craig M. Geno, Esq. for Maritime Communications/Land Mobile L.L.C. for the court's review. Lead Counsel? Yes. [17-60742] (Craig M. Geno)
11/14/2017		APPEARANCE FORM FILED by Attorney Craig M. Geno for Appellee Maritime Communications/Land Mobile L.L.C. in 17-60742 [17-60742] (LEF)
11/20/2017	 1 pg, 134.52 KB	APPEARANCE FORM <i>on behalf of Choctaw Telecommunications, LLC</i> for the court's review. Lead Counsel? Yes. [17-60742] (Erno David Lindner)
11/21/2017		CASE CAPTION updated. Appellee Choctaw Telecommunications, L.L.C. added to case. Reason: should have been added at case opening. [17-60742] (CB)
11/21/2017		APPEARANCE FORM FILED by Attorney Erno David Lindner for Appellee Choctaw Telecommunications, L.L.C. in 17-60742 [17-60742] (CB)
12/04/2017	 3 pg, 152.99 KB	UPDATED CASE PROCESSING NOTICE sent. [17-60742] (MAS)
01/04/2018	 2 pg, 98.26 KB	TRANSCRIPT ORDER received from Appellant Mr. Warren Havens advising transcript unnecessary as it is already filed. Transcript Order ddl satisfied [17-60742] (MCS)
01/04/2018		ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 1:13-CV-180, 1:13-CV-181, 1:13-CV-182, 1:13-CV-183, 1:13-CV-184, 1:13-CV-190, 1:13-CV-191, 1:13-CV-192, 1:13-CV-193, 1:13-CV-194. Electronic ROA due on 01/19/2018. [17-60742] (MCS)
01/11/2018		ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? Yes. Electronic ROA deadline satisfied. [17-60742] (DDL)
01/11/2018		SUPPLEMENTAL ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 1:13-CV-180, 1:13-CV-181, 1:13-CV-182, 1:13-CV-183, 1:13-CV-184, 1:13-CV-190, 1:13-CV-191, 1:13-CV-192, 1:13-CV-193, 1:13-CV-194. Supplemental Electronic ROA due on 01/26/2018 (This supplemental record should contain the bankruptcy court exhibits) [17-60742] (DDL)
01/30/2018		EXTENSION OF TIME GRANTED to the District Court to prepare the Supplemental Electronic ROA until 02/14/2018. Supplemental Electronic ROA deadline updated to 02/14/2018. [17-60742] (MCS)
02/21/2018		SUPPLEMENTAL ELECTRONIC RECORD ON APPEAL FILED. Electronic ROA deadline satisfied. [17-60742] (DDL)
02/21/2018	 4 pg, 148.33 KB	BRIEFING NOTICE ISSUED A/Pet's Brief Due on 04/02/2018 for Appellant Warren Havens. [17-60742] (DDL)
03/23/2018	 14 pg, 338.21 KB	MOTION filed by Appellant Mr. Warren Havens to extend time to file brief as appellant until 05/07/2018 [8735329-2]. [17-60742] (MCS)
03/26/2018	 1 pg, 131.99 KB	CLERK ORDER granting Motion to extend time to file appellant's brief to and including 5/7/18 filed by Appellant Mr. Warren Havens [8735329-2]. A/Pet's Brief deadline updated to 05/07/2018 for Appellant Warren Havens [17-60742] (MCS)
03/26/2018	 27 pg, 3.18 MB	RESPONSE/OPOSITION filed by Choctaw Telecommunications, L.L.C. and Maritime Communications/Land Mobile L.L.C. [8735477-1] to the Motion to extend time to file appellant's brief filed by Appellant Mr. Warren Havens in 17-60742 [8735329-2] [17-60742] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPOSITION filed by Choctaw Telecommunications, L.L.C. <i>Appellees' Joint Objection to Appellant's Motion for Extension of Time</i> [8735477-1] to the Motion to extend time to file appellant's brief filed by Appellant Mr. Warren Havens in 17-60742 [8735329-2] Date of Service: 03/26/2018 via US mail - Appellant Havens; email - Attorney for Appellees: Geno, Lindner. [17-60742] (Erno David Lindner)
04/27/2018	 6 pg, 161.42 KB	MOTION filed by Appellant Mr. Warren Havens for leave to file electronically as a pro se party [8763644-2]. Date of service: 04/27/2018 [17-60742] (MCS)
04/30/2018	 1 pg, 130.15 KB	CLERK ORDER denying Motion for leave for pro se to file electronically filed by Appellant Mr. Warren Havens. Pro se may refile after he has reviewed the 5th Circuit CM/ECF homepage. Pro se must certify that he has reviewed all the documents under the Reference and Training Sections. Pro se must also

certify he has completed all Electronic Learning Modules in the Training Section. [\[8763644-2\]](#) [17-60742] (MCS)

- 05/02/2018  MOTION filed by Appellant Mr. Warren Havens for leave to file electronically as a pro se party [\[8766922-2\]](#). Date of service: 05/02/2018 [17-60742] (MCS)
6 pg, 162.64 KB
- 05/03/2018  CLERK ORDER granting Motion for leave for pro se to file electronically filed by Appellant Mr. Warren Havens [\[8766922-2\]](#). [17-60742] (MCS)
2 pg, 263.5 KB
- 05/06/2018  DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the Test document only filed as an unopposed motion received from Appellant Mr. Warren Havens because the pro se appellant was granted leave to file electronically and was testing to see if he was able to file a document electronically. His appellant's brief and record excerpts were due on 5/7/18. [17-60742] (MCS)
2 pg, 146.63 KB
- 05/07/2018  RECORD EXCERPTS FILED by Appellant Warren Havens. Record Excerpts NOT Sufficient as they require The caption does not match to case caption and the record citation within the table of contents is not in proper format. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. Sufficient Record Excerpts due on 05/25/2018 for Appellant Warren Havens [17-60742]
387 pg, 4.24 MB
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellant Mr. Warren Havens. Date of service: 05/07/2018 via email - Appellant Havens; Attorney for Appellees: Geno, Lindner [17-60742] (Warren Havens)
- 05/07/2018  APPELLANT'S BRIEF FILED filed by Appellant Warren Havens. Brief NOT Sufficient as it requires: the Caption does not match the case caption. Additionally the Brief requires Table of Authorities needs to be in alphabetical order, and Record Citation are not in the proper format. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. A/Pet's Brief deadline satisfied. Sufficient Brief due on 05/25/2018 for Appellant Warren Havens.. Appellee's Brief due on 06/06/2018 for Appellees Choctaw Telecommunications, L.L.C. and Maritime Communications/Land Mobile L.L.C. [17-60742]
46 pg, 418.94 KB
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Mr. Warren Havens. Date of service: 05/07/2018 via email - Appellant Havens; Attorney for Appellees: Geno, Lindner [17-60742] (Warren Havens)
- 05/25/2018  OPPOSED MOTION filed by Appellant Mr. Warren Havens to extend time to return sufficient brief until 06/13/2018 at 11:59 pm [\[8785012-3\]](#). Date of service: 05/25/2018 via email - Appellant Havens; Attorney for Appellees: Geno, Lindner [17-60742] (Warren Havens)
8 pg, 184.25 KB
- 05/25/2018  DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the opposed motion for extension of time to make and submit corrections; declaration of Warren Havens in support of the motion, declaration of Dana Cole in support of the motion received from Appellant Mr. Warren Havens because the motion is unnecessary. The appellant previously filed a motion for extension of time to return sufficient brief and sufficient record excerpts. The court granted the motion to extend time. [17-60742] (MCS)
13 pg, 544.22 KB
- 05/29/2018  MOTION filed by Appellees Choctaw Telecommunications, L.L.C. and Maritime Communications/Land Mobile L.L.C. to strike the issues raised in the appellant's statement of issues in their entirety and appellant's statement of the case in its entirety [\[8786589-2\]](#), or alternatively, to dismiss the appeal [\[8786589-3\]](#). Response/Opposition due on 06/08/2018. [17-60742]
61 pg, 5.08 MB
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: MOTION filed by Appellee Choctaw Telecommunications, L.L.C. *Appellees' Joint Motion to Strike or in the Alternative Motion to Dismiss* to strike a portion of Appellant's brief [\[8786589-2\]](#). Date of service: 05/29/2018 via email - Appellant Havens; Attorney for Appellees: Geno, Lindner [17-60742] (Erno David Lindner)
- 05/29/2018  CLERK ORDER granting Motion to extend time to return sufficient brief and sufficient record excerpts filed by Appellant Mr. Warren Havens [\[8785012-3\]](#). Sufficient Brief deadline updated to 06/13/2018 for Appellant Warren Havens [\[8786891-2\]](#); Sufficient Record Excerpts deadline updated to 06/13/2018 for Appellant Warren Havens [17-60742] (MCS)
1 pg, 130.87 KB
- 05/30/2018  MOTION filed by Appellees Choctaw Telecommunications, L.L.C. and Maritime Communications/Land Mobile L.L.C. to extend time to file brief of appellee 30 days from the time this Court rules on the motion to strike portions of the appellant's brief and appellant files a sufficient brief [\[8787972-2\]](#). [17-60742]
8 pg, 17.95 KB
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: MOTION filed by Appellee Choctaw Telecommunications, L.L.C. *Appellees' Joint Motion to Extend Deadline to File Principal Brief* to extend time to file brief of appellee [\[8787972-2\]](#). Date of service: 05/30/2018 via email - Appellant Havens; Attorney for Appellees: Geno, Lindner [17-60742] (Erno David Lindner)

06/01/2018	 1 pg, 132.47 KB	CLERK ORDER granting joint Motion of appellees to extend time to file appellees' briefs 30 days from the time this Court rules on the motion to strike portions of the appellant's brief and appellant files a sufficient brief [8787972-2] . [17-60742] (MCS)
06/08/2018	 4 pg, 88.01 KB	RESPONSE/OPPOSITION filed by Warren Havens [8796366-1] to the Motion to extend time to file appellee's brief filed by Appellees Maritime Communications/Land Mobile L.L.C. and Choctaw Telecommunications, L.L.C. in 17-60742 [8787972-2] [17-60742] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Mr. Warren Havens <i>Appellant</i> [8796366-1] to the Motion to extend time to file appellee's brief filed by Appellees Maritime Communications/Land Mobile L.L.C. and Choctaw Telecommunications, L.L.C. in 17-60742 [8787972-2] Date of Service: 06/08/2018 via US mail - Appellant Havens; Attorney for Appellees: Geno, Lindner; email - Appellant Havens; Attorney for Appellees: Geno, Lindner. [17-60742] (Warren Havens)
06/09/2018	 5 pg, 179.43 KB	RESPONSE/OPPOSITION filed by Warren Havens [8796368-1] to the Motion to strike portion of brief filed by Appellees Maritime Communications/Land Mobile L.L.C. and Choctaw Telecommunications, L.L.C. in 17-60742 [8786589-2] . Response/Opposition deadline satisfied. [17-60742] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Mr. Warren Havens <i>Appellant</i> [8796368-1] to the Motion to strike portion of brief filed by Appellees Maritime Communications/Land Mobile L.L.C. and Choctaw Telecommunications, L.L.C. in 17-60742 [8786589-2] , Motion to dismiss appeal filed by Appellees Maritime Communications/Land Mobile L.L.C. and Choctaw Telecommunications, L.L.C. in 17-60742 [8786589-3] Date of Service: 06/08/2018 via US mail - Appellant Havens; Attorney for Appellees: Geno, Lindner; email - Appellant Havens; Attorney for Appellees: Geno, Lindner. [17-60742] (Warren Havens)
06/09/2018	 5 pg, 218.13 KB	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the Appellant's Opposition to the Appellee's Motion to Strike received from Appellant Mr. Warren Havens because the appellant filed a Errata Copy of Appellant's Opposition to Appellee's Motion to Strike on 6/9/18. [17-60742] (MCS)
06/13/2018	 472 pg, 10.04 MB	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the Sufficient Appellant's Brief and Sufficient Record Excerpts received from Appellant Mr. Warren Havens because the incorrect event was used to file the sufficient appellant's brief. The event is Proposed Sufficient Brief. Also, the sufficient record excerpts needs to be filed separately and using the event Proposed Sufficient Record Excerpts [17-60742] (MCS)
06/20/2018	 3 pg, 157.52 KB	COURT ORDER that appellees' opposed motion to strike the issues raised in the appellant's statement of issues in their entirety and appellant's statement of the case in its entirety is DENIED [8786589-2] ; IT IS FURTHER ORDERED that appellees' alternative opposed motion to dismiss the appeal is DENIED [8786589-3] . Judge(s): JES, JEG and JCH. [17-60742] (MCS)

Certificate of Service

The undersigned certifies that he has on June 21, 2018 he caused to be served by first class US Postal Service mail a copy of the above FCC filing including its attachments upon the following persons:

In current website records:

Mary O'Connor
Wilkinson Barker
1800 M Street, NW
Suite 800N
Washington, DC 20036
(Counsel to Choctaw)

Robert Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428 - Farragut Station
Washington, D.C. 20033-3428
(Counsel to Maritime)



Warren Havens