

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

In the name of “Maritime Communications / Land Mobile LLC” Alleged Debtor-in-Possession:	
<u>Renewal Applications</u> : AMTS Licenses WQGF315, -316, -317, -318 (“Licenses”)	FNs: 0007603776, -777, -778, -779
<u>Extension Requests</u> : to extend/waive the Licenses’ construction/ buildout deadline	FNs: (no Form 601s submitted)
<u>Assignment Applications</u> : to assign the Licenses to Choctaw Holdings, LLC	FN: 0005552500
Proceedings under ECFS	Dockets 11-71 and 13-85
The “Case” defined herein: the above and interdependent proceedings and decisions	Above and other: in ULS, ECFS, FOIA and other proceedings

To: Office of the Secretary
Attn: Chief, Wireless Bureau
Filed: On ULS under the Licenses and FNs
And on ECFS under 11-71 and 13-85

REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION AND REVIEW
UNDER COMMUNICATIONS ACT §405 AND FCC RULE §1.106,
UNDER §1.41¹ AND THE PUBLIC INTEREST, AND
UNDER CONSTITUTIONAL DUE PROCESS^{2/3}

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July 14, 2017

¹ And under any other rule the FCC deems to apply including §1.115.

² The defined terms used herein have the same meaning they had in the petition for reconsideration.

³ §1.106 refers to §1.49, which pertains to pleading specifications, including length, and in subsection (e) instructs that electronic filings on ULS are subject to specifications in §22.6, which does not exist. Thus, it is questionable what page or word limit applies to such electronic ULS filings. Petitioners are experienced with electronic filings in court, including under FRCP, which set a pleading limit by total countable words, rather than page length. It appears the FCC may have intended something like that, but never enacted §22.6.

Petitioners hereby reply to the MCLM opposition to their Recon (the “Opposition” or “MCLM Opp”).⁴ Preliminary. The Order granted a two-year extension, more time than MCLM requested, which is outside waiver standards and outside the Division’s rationale given in Order, as discussed below. In addition, the Order then stated that the renewals applications for the Licenses and the application to assign the Licenses to Choctaw will be processed in accord with the granted extension.⁵ These are interrelated and interdependent matters.⁶ Even the Order concedes that these are related, interdependent matters, by stating the relief granted is related to and consistent with FCC 16-172 and putting into effect the relief granted by FCC 16-172. Thus, MCLM’s assertion that the FCC should ignore facts and arguments in the Recon related to, and affecting, FCC 16-172 is entirely wrong. Thus, the FCC 16-172 proceeding, as shown by Petitioners, was not final, but remained open to challenge due to its dependence on subsequent proceedings and decisions.

Unauthorized MCLM Filing. First, for reasons shown in the Petition and Recon, and in other filings by Havens and Polaris, MCLM’s Opposition should be summarily rejected or dismissed since MCLM has never accurately reported its ownership and control to the FCC or filed the required transfer of control application, as previously shown by Petitioners, and as is evident by

⁴ Scot Stone of the FCC granted an extension until today to file a reply. Separately, Havens will be submitting confidentially to FCC information supporting the extension grant, as requested by the FCC in its grant. This filing is made on behalf of only Havens, individually, and Polaris. Petitioners are submitting a separate reply to Choctaw’s opposition.

⁵ After the Order, the Bureau did process and grant the renewal applications and assignment to Choctaw. The subject Recon challenges the extension grant, the consequent grant of the renewal applications, and the consent to the assignment to Choctaw. The Recon and Petition further challenge the “Second Thursday” decision, FCC 16-172, because that decision had no meaning absent the grant of the extension, renewals, and assignment to Choctaw, and the Choctaw assignment, renewals and extension have no basis or foundation without the “Second Thursday” decision. That means FCC 16-172 remained open for challenge until those later FCC decisions.

⁶ Petitioners do not waive assertions that the Commission and Bureau did not properly respond to and dispose of the challenge filed by Havens (Havens as an individual challenging party, along with other “Skytel” parties, filed 5/9/13) the MCLM assignment application to Choctaw, as required under the Administrative Procedures Act, the Communications Act, and related FCC rules and precedents.

HDO FCC 11-64 and the FCC's own public records.⁷ That failure alone makes all of the FCC's actions with regard to MCLM *void ab initio*, because the FCC cannot grant licenses to, or extend relief to, an entity that has never disclosed accurately its ownership and control, including on Form 602.⁸ Any FCC acceptance of MCLM's Opposition and licensing applications in this context has been and continues to be highly prejudicial and damaging to Petitioners, and has resulted in unlawful, inequitable treatment and violation of Havens' rights under FCC rules, the Communications Act and the Constitution.

Standing. To opposition is incorrect. [1] First: See the Supreme Court case *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470; 60 S. Ct. 693 (emphasis added):

Section 402 (b) of the 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."

The petitioner insists that as economic injury to the respondent was not a proper issue before the Commission it is impossible that § 402 (b) was intended to give the respondent standing to appeal, since absence of right⁹ implies absence of remedy. This view would deprive subsection (2) of any substantial effect.

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. fn9/

fn. 9/ Compare *Interstate Commerce Commission v. Oregon-Washington R. Co.*, 288 U.S. 14, 23-25.

We hold, therefore, that the respondent had the requisite standing to appeal and to raise, in the court below, any relevant question of law in respect of the order of the Commission.

⁷ The Federal Government requires that parties dealing with the government and seeking government benefits or property provide extensive disclosures of real parties in interest, as for example required by FCC auction and license application forms, and the US Patriot Act.

⁸ Attorney Robert Keller has gone along with MCLM refusing to accurately report its ownership and control for years, in violation of §§1.17 and 1.52, and he should be sanctioned for doing so as an attorney practicing before the FCC.

⁹ In *Sanders*, unlike in the instant case, there was found an absence of a right, but still standing was found as this decision explains. *Where Congress provides for standing under defined conditions, the matter is settled if those standards are satisfied. In the instant case, under 402 as explained above, they easily are. If there are or are not additional bases of standing, that does not undermine that sufficient standing.*

Second: *Sanders*, above, a Supreme Court FCC case on standing, based the Communications Act Section 402 statute, is primary in the instant case presentation. However, the following in accord is also instructive. In administrative law cases, the Supreme Court found parties had standing when they suffered “injury in fact” to some interest, “economic or otherwise,” that is arguably within the zone of interest to be protected or regulated by the statute or constitutional provision in question ¹⁰-- *even* only political,¹¹ environmental, aesthetic, and social interests, when impaired, afford a basis for making attacks, with standing, upon governmental action.¹²

Also, in this Reply, while certain matters previously presented or referenced in the Recon or Petition regarding standing are further presented below, however, other assertions of standing previously made are not further presented below because they have not been refuted by MCLM (or Choctaw). Re: the MCLM Opposition at ¶3, MCLM asserts that Havens cited to an unofficial federal practice manual. However, Havens cited that for the direct authorities it discussed, which are further discussed below. Re: MCLM Opposition at ¶4, MCLM presents a straw man argument that Havens may have had past standing, but does not have current standing, and needs to show current standing, as if he has not done that, apparently because Havens has said there is no specific requirement to show standing at every point or moment in a proceeding. However, the Recon and

¹⁰ *Ass’n of Data Processing v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970). The “zone of interest” test is a prudential rather than constitutional standard. The Court sometimes uses language characteristic of the language. Thus, in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), the Court refers to injury in fact as “an invasion of a legally-protected interest,” but in context, here and in the cases cited, it is clear the reference is to any interest that the Court finds protectable under the Constitution, statutes, or regulations.

¹¹ 362 *Department of Commerce v. US House of Representatives*, 525 U.S. 316 (1999).

¹² E.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992); *Lujan v. National Wildlife Federation*, 497 U.S. 871, 885 (1991); *Duke Power Co. v. Carolina Environmental*, 438 U.S. 59, 72-74 (1978); *Village of Arlington v. Metropolitan Housing*, 429 U.S. 252, 261-263 (1977); *Singleton v. Wulff*, 428 U.S. 106, 112-113 (1976); *Warth v. Seldin*, 422 U.S. 490, 498-499 (1975); *O’Shea v. Littleton*, 414 U.S. 488, 493-494 (1974); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-618 (1973).

Petition made clear that Havens has current standing, giving a long list of particular reasons. Neither MCLM nor Choctaw have not effectively refuted those particular showings.

In addition, MCLM asserts Havens and Polaris hold no FCC license authorizations. First, that is not relevant to the showings of standing that Havens has submitted. Further, at no point in Havens' challenges to MCLM and its licenses has Havens held in his name AMTS or other licenses competitive with MCLM (with a minor exception at a past time regarding some licenses, not relevant here). The unquestionable essence of standing is not title and control of an asset subject to certain risks in the relevant proceeding, but whether the party has a stake at risk, whether that is current ownership, or a future stake being sought, or defense against the other party in the proceeding of an important right or asset, etc.¹³ MCLM further asserts that Petitioners have no pending actions that would be adversely affected, but that is a false, ineffective, conclusory statement, and Petitioners have shown otherwise in this proceeding and the related proceedings re: FCC 16-172 and DA 17-26.¹⁴ Havens has standing as an owner in those companies whose ownership is at risk in these proceedings, for the several reasons previously explained. These include, e.g., that ownership includes valuable litigation claims (including in agency proceedings), as well as currently held title to assets, and further reasons are explained below, presenting authorities regarding standing under the Administrative Procedures Act and Commission rules and proceedings, which includes rights of court review and appeal under 47 USC §402 which has a very broad standard of a party aggrieved that is separately stated and need not be a person currently holding an FCC license or a license application. MCLM also mispresents public-interest assertions

¹³ Under MCLM's assertion, Choctaw has no standing to submit any pleading or request to the Commission, and on the basis of judicial estoppel, the Bureau should reject all such Choctaw filings and positions. MCLM cannot have it both ways. The same of course applies to support MCLM procured from third parties such as so-called "critical-infrastructure", transportation and communication entities.

¹⁴ Havens previously cited relevant authority. E.g. *Helvey v. US...*, 81 Cal. App. 2d 647.

raised by Havens in his presentation of standing. Petitioners stand by their presentations on this point, and further explain them herein with additional authorities.

Havens obtained an assignment of legal proceeding claims held by receivership entities (the “Skytel” companies) prior to commencement of the receivership. That continues to this day. The assignment is valid under the US Supreme Court holdings in *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 289 (2008). For example, see in the court’s docket: (1) Docket for 16A42. Title: Havens, Applicant v. Mobex Network Services, LLC, et al., United States Court of Appeals for the Third Circuit App. (16A42) to extend time to file a petition for: Warren Havens; (2) Docket for 14A933. Title: Telesaurus VPC, LLC, nka Verde Systems, LLC, Applicant v. Randy Power, et al. United States Court of Appeals for the Ninth Circuit Application (14A933) to extend the time to file a petition for a writ of certiorari from Party name: Telesaurus VPC, LLC, nka Verde Systems, LLC. In the docket regarding this cert petition, Havens acted under the noted litigation-claims assignment in the initial extension request.

In addition, Petitioners have soundly asserted that both MCLM and the FCC have engaged in unlawful, prejudicial actions against the interests of Petitioners. These include, *inter alia*, unlawful actions by MCLM in and leading to proceeding Docket 11-71 and FCC 11-64, including concealment and destruction of evidence and obstruction of justice, including under 18 USC §1519, which also extends to its bankruptcy. And, which led to the Order of Judge Sippel, FCC 15M-14, which was the asserted basis in the motion for receivership resulting in the Receivership. That Sippel Order itself was clearly *ultra vires* under law, false under asserted facts, and negligent at best, as well as based upon a rule that the Sippel Order misquoted and changed, and that is void because the Commission never placed that rule, §1.251(f)(3), on Public Notice for comment, prior to adopting it, which is impermissible under the Administrative Procedures Act and the implementing regulations, and the relevant, controlling court precedents. There are other impermissible, prejudicial actions by MCLM and its agents, including Choctaw,

and FCC authorities that have also led to the receivership. In addition, the Enforcement Bureau has unlawfully exercised alleged “prosecutorial discretion,” to use FCC public resources to support MCLM against Petitioner Havens, who was acting as a proper prosecutor for the Commission in proceeding 11-71, under authority of the full Commission in FCC 11-64. Prosecutorial discretion does not extend to the government assisting one private party against another, as shown in relevant precedent. See, e.g., *Heckler v. Chaney*, 470 U.S. 821 and *New York State... v. FCC*, 984 F.2d 1209.

Because of the MCLM and FCC unlawful and prejudicial actions, briefly indicated above and extensively described by Petitioners for years in the MCLM related proceedings, neither MCLM nor the FCC may now assert that the results of their unlawful and prejudicial actions can support an argument of lack of standing. When a party, or a legal authority, is the cause of an alleged procedural defect in another party’s case, then they are estopped from validly asserting such positions under equitable estoppel principles including “unclean hands” and government *ultra vires* actions. It does not undercut standing, but gives rise to further basis for standing, until those unlawful actions are remedied, or are finally decided against the party asserting such unlawful, prejudicial actions. In this case, none of what Petitioners continue to assert here as such unlawful and prejudicial actions have been determined by final decision of a relevant authority. It does not appear that the FCC can be a proper authority given its various *ultra vires* actions. Instead, it appears that Petitioners have rights and may need to assert proper claims and remedies under the Tucker Act and under a writ or writs to a US Court. However, Petitioners do have rights to proceed before the FCC in requests under 47 USC §405, and implementing FCC rules, including the subject Recon.

In addition, as MCLM knows, and as Petitioners hereby inform the FCC, Petitioners remain active in the MCLM bankruptcy case before the bankruptcy court and US District Court in Mississippi. In this regard, see Exhibit A, the motion for rehearing by Havens before the US

District Court, filed July 12, 2017. Petitioners reference this motion for rehearing because it supports the subject Recon before the FCC.

In addition, Havens has shown that MCLM is challenging Havens' qualifications to be an FCC licensee or interest holder in an FCC licensee and that provides standing to Havens. Contrary to MCLM's assertions in its Opposition, MCLM did not withdraw its challenges as to Havens' qualifications with prejudice,¹⁵ but instead reserved them, and MCLM continues to challenge Havens' appeals of the Sippel Order, FCC 15M-14 and to support Judge Sippel's referral question, and MCLM has challenged Havens qualifications in an opposition to a request for stay filed by the Receiver and in raising challenges to Havens' qualifications related to allegations raised by Arnold Leong and asking the FCC to investigate Havens and Leong, based on Leong's allegations. Those MCLM pending challenges are evident in FCC records. MCLM has elected to do so as a Debtor-in-Possession, spending its time and resources and risking a counter challenge, outside of the scope of its Chapter 11 Bankruptcy Plan and authority, which MCLM chose to layer on top of its improper and unlawful prejudicial actions against Havens indicated above in Docket No. 11-71, resulting in the cited unlawful and *ultra vires* Sippel Order, FCC 15M-14. In the Recon and Petition, Havens cited authority that a party has standing in a legal proceeding to defend itself, and is entitled to pursue counterclaims (whether they previously existed or arose out of the defense).

Further, Petitioners have standing as shown in the Skybridge Spectrum Foundation bankruptcy case filed in the Delaware bankruptcy court, Case No. 16-10626 (CSS), currently on

¹⁵ The only meaning of MCLM's statement in Footnote 2 is that MCLM is defining the case and trying to mitigate the costs in the case by its alleged "good faith" gesture by it giving up claims against the receivership entities' licenses, which can only mean that MCLM is tying the receivership over the entities to this case. That supports Havens' claim that he has standing, because MCLM is attacking companies in which Havens has ownership and interest. Also, MCLM complains to FCC about not having resources due to litigation, but then files challenges against Havens and others not permitted by its Plan.

appeal before the US District Court, because the sole person authorized and pursuing that appeal for Skybridge is the member and president of Skybridge, Warren Havens. It is shown in this bankruptcy case in the initial petition, supporting declarations, and other pleadings, that Havens authorized and pursued the case for Skybridge, and there has been no change in that in the appeal stage currently pending before the District Court. That is known by the opposing parties, which are the Receiver, the California Receivership of the “Skytel” companies, including Skybridge, and the real-party-in-interest in the Receivership, Arnold Leong. The legal counsel for Skybridge has at all times, to this date, taken instructions from Havens, as the authorized person for Skybridge. The Skybridge bankruptcy case described assets and potential assets, including legal claims against MCLM and Choctaw, including in official Form 206 (Assets and Liabilities). The Skybridge bankruptcy appeal includes that the bankruptcy court’s dismissal decision was not simply incorrect as to relevant law, but for reasons given, is void. If Skybridge prevails on the appeal, where the Court agrees the dismissal is void, then the Skybridge bankruptcy would be resumed with no gap in the Havens control of Skybridge through its bankruptcy, which commenced in March 2016. In which case, actions contrary to the rights of Skybridge in bankruptcy (including the Automatic Stay and remedies against actions in violation, or contrary to, the Automatic Stay) would be found unlawful and void. In that case, Petitioners assert that Havens’ standing before the FCC to act for Skybridge from the date of filing of its bankruptcy petition in March 2016, would have continued without any gap. That cannot be determined at this time, but if those events do occur, then MCLM’s apparent position that Havens has definitively lost standing to act for Skybridge before the FCC due to the receivership, would be incorrect, and Petitioners further assert that FCC actions finding lack of standing of Havens to act for Skybridge in that period would also be incorrect and reversible or void.

Re: Waiver of Non-Waiver Rule. MCLM's argument at ¶9 is a strawman argument because it is characterizing Petitioners' argument to be that a licensee cannot get a waiver at all, but that is not what Petitioners' argued. Rather, Petitioners are arguing that when a rule says you cannot get an extension waiver under certain circumstances, then that means a waiver presented under the extension rule's prohibited circumstances, then it cannot be granted. MCLM simply did not meet the standard for grant under §1.946(e).¹⁶

Extension – waiver. DA 12-847 (Commnet and successors) refutes the oppositions and supports the Recon. e.g. (emphasis added): In this case in which, also involving a bankruptcy, an extension waiver request was denied as it should be in the instant case. The whole decision is instructive, but include,

After a thorough examination of the record, we find that an extension of time to meet the construction milestone in Section 24.203 is not warranted.⁵⁵ As an initial matter, Petitioners' arguments rest almost entirely on the supposed cloud of uncertainty surrounding the ownership of the License between February 2009 and December 2009.⁵⁶ They assert that this uncertainty was caused by factors beyond their control, specifically the threatened avoidance action associated with Crossroads Wireless' bankruptcy proceeding.⁵⁷ However, we find that, during the period in question, the ownership of the License was entirely certain and that the decision not to meet the build out requirements was a voluntary business decision completely within Commnet's control.

.....

16. Here, Commnet made several voluntary business decisions that contributed to its failure to meet the construction deadline, including: (1) entering into the original agreement with Crossroads Wireless to use Crossroads Sub (and the License) as security for Crossroads Wireless' debt; (2) acceptance of the subsequent transfer of Crossroads Sub (and the License) from Crossroads Wireless; and (3) its decision not to construct a compliant PCS system prior to June 30, 2009 when, by its own admission, it could have completed the build out in a timely fashion.⁵⁸ We have consistently rejected the argument that voluntary business decisions by a licensee, particularly those motivated by economic factors, create situations beyond the licensee's control that would justify an extension under Section 1.946(e).⁵⁹

¹⁶ It is MCLM's problem that its reasons do not qualify for a waiver, and that it could not show any other reasons to support grant of a waiver of §1.946(e) and Section 309(j). MCLM failed to show why its circumstances were "beyond its control" or "unique or unusual", because its reasons for extension were entirely based on its own bad actions and bad business decisions, which were entirely within its control and cannot form the basis for waiver relief in the public interest.

Respectfully submitted,

July 14, 2017,

/s/
Warren Havens
Warren Havens, an Individual
And for Polaris PNT PBC, as President

Contact information is on the Caption page.

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing, including any attachments and exhibits, was prepared pursuant to my direction and control and that the factual statements and representations contained herein known to me are true and correct.

/s/

Warren Havens

July 14, 2017

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on July 14, 2017:^[*]

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

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033-0428
(Counsel to MCLM/MCLM DIP)

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

(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed,^[**] provide notice and service to any party that has or may seek to participate in dockets 13-85 and 11-71 that extend to this filing, and the defined “Order” and “3 Orders.”

/s/

Warren Havens

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

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