

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

<p>In re</p> <p>Maritime Communications/ Land Mobile LLC, DIP (“MCLM”) and Choctaw Holdings LLC (“Choctaw”)</p> <p>Assignment of License Authorization Applications: now in the name of “assignor” Choctaw, filed initially by assignor MCLM</p> <p>Relevant dockets</p> <p>Call Signs WQGF316, WHG750, WQGF315</p>	<p>Public Notice No. 12484. 08/02/2017</p> <p>File Nos. in the Public Notice: 0004030479, 0004193328, 0004430505, 0004507921, 0004604962, 0005224980, 0006967374</p> <p>Dockets: 11-71, 13-85</p>
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REPLY TO OPPOSITIONS TO
PETITION TO DENY
OR IN THE ALTERNATIVE
PETITION FOR RELIEF UNDER SECTIONS 1.41, 1.2 AND OTHER RULES¹

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

Warren Havens and
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September 12, 2017

¹ The defined terms used herein have the same meaning as used in the petition to deny.

Petitioners, the undersigned, hereby reply to the Joint Opposition of Enbridge Energy Company, Dixie Electric Membership, Inc. and Rappahannock Electric Cooperative (the “Energy Companies”) (the “Joint Opp”), and the Choctaw Opposition (the “Choctaw Opp”) to their Petition of the Applications (together, the “Two Oppositions”).

1. The Two Oppositions attempt to refute facts contained in the Petition and assert contra facts, but are not supported by a declaration or affidavit under oath required by Section 1.939(f), and are thus defective and should be rejected.

2. Regarding the Choctaw Opposition’s arguments at pages 1-2 and footnote 1, the proceedings that were referenced and incorporated and the filings therein are all part of one proceeding and are clearly interrelated and interdependent (even FCC 16-172 makes it clear that the Commission anticipated interrelated decisions between it and the Bureau). Petitioners’ standing showing in the Petition and referenced and incorporated pleadings, including the “MDR” (defined below, and contained at Exhibit 1 of the Petition), was made in this interrelated proceeding. There is no searching needed by the parties or the Commission. In fact, the Petition provided a copy of Petitioners’ Motion for declaratory ruling on the issue of standing at its Exhibit 1, and that entire pleading was on the topic of standing. Thus, Choctaw’s argument artificial and frivolous.

3. The Havens demonstration of standing has many independent parts or components, each sufficient. The Joint Opp alleges that a part of Havens standing showing is incorrect, but even if that were true (which it is not), it fails to address the other independent reasons for standing. The Joint Opp, like the Choctaw Opp, fails to refute the Petition’s facts, arguments and case precedents (primary and secondary) showing that Petitioners have standing, as to any of the components.

4. Also, contrary to the Two Oppositions' assertions, further clear support of Petitioners' reasons for standing is the Commission's *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 17-105, in Docket 10-112, 82 FR 41580, 82 FR 41530, at its paragraph 46 and footnote 108, which states (footnote in-line, underlining added for emphasis):

If a license is not renewed, the associated spectrum will be returned to the Commission as discussed below, allowing parties that may have been inclined to file a competing application to participate in the auction of spectrum recovered from geographic licensees or apply for spectrum recovered from a Cellular or site-based licensee. Our experience and the record confirm the Commission's finding ten years ago in the 700 MHz First Report and Order that "[t]he existing petition to deny process, coupled with the ability of a petitioner to participate in any subsequent auction to relicense spectrum that is returned to the Commission for lack of renewal, creates sufficient incentives to challenge inferior service or poor qualifications of licensees at renewal."^{108/}

108/ 700 MHz First Report and Order , 22 FCC Rcd at 8093, para. 76.

Petitioners have pending challenges to the Licenses' renewal applications. In addition, Petitioners believe that the same Commission rationale must apply at assignment (one reason that assignments are put on Public Notice is for purposes of allowing petitions to deny under Section 309(d)). Havens has argued and shown that he properly petitioned and continues to petition MCLM's qualifications and applications (including renewals) and those of Choctaw, and that if successful, the geographic licenses should be awarded to the lawful high bidders (in the case of site-based, if terminated, then by rule the frequencies would be revert to the relevant geographic license). Thus, per the Commission's *Second Report and Order* cited above, and the 700 MHz *First Report and Order*, Petitioners have standing.

5. Petitioners presented a major discussion and substance showing why the Applications are defective. Choctaw briefly and generally asserts that showing is not correct, but without providing any specifics, rules or case law to support that general denial. That is an ineffective

refutation. In sum, the Two Oppositions have not refuted the specific showings made in the Petition that the Applications are defective, including but not limited to: the assignor entities cannot just be switched on the Applications, but Choctaw and the buyers had to file new assignment applications, and the Applications cannot have the same signature dates from when Maritime submitted the Applications originally or the same representations and certifications from years ago, etc. (see the Petition). Neither of the Two Oppositions explains how the Applications were or could be lawfully modified under the FCC rules and precedents. The resort to smokescreens and *ad hominem* attacks on Havens only further show this lack of refutation of the substance.

6. Petitioners note that they did not find in searches of Docket Nos. 13-85 and 11-71, or in other searches of UILS records, any opposition to the Petition filed by MCLM. Therefore, the Petition is unopposed by MCLM. Petitioners assert that nothing in FCC records shows that Choctaw has have authority to act for MCLM. Petitioners also assert for reasons submitted in their pending challenge filings, that Choctaw does not validly hold any of the subject Licenses first issued to MCLM. Petitioners thus assert that Choctaw cannot respond to the Petition at least independent of MCLM.

7. In their various filings opposing MCLM, Petitioners assert and show that they have legal standing to challenge MCLM and Choctaw as they have continued to do in this year 2017. This includes their pending challenges to the assignment of the MCLM licenses to Choctaw, and the apparent assignment of the MCLM sale-assignment applications from MCLM to Choctaw (without grant of any waiver and without any public notice of that or explanation of how that was done under rules), and the MCLM extensions and renewals and the FCC Second Thursday Order, FCC 16-172. Until those matters are final before FCC by final order, or before DC Circuit by final

order (if Petitioners ultimately seek review by that court), Petitioners assert that MCLM remains a party in these FCC licensing matters, and thus it is subject to the Petition and my other filings. Regarding the Two Opposition's assertions that Petitioners lack legal standing, Petitioners' refer in response their facts and arguments in their "Motion for Declaratory Ruling Regarding Standing," filed on August 16, 2017 (the "MDR"), which was Exhibit 1 to the Petition. Petitioners disagree that they do not have standing and assert that they do have standing for reasons they have given in the Petition and further given in the MDR.² Petitioners have previously cited authority that establishes that a party is entitled to demonstrate standing at any time in a proceeding.

8. The Two Oppositions assert that Petitioners have not shown irreparable injury. In that regard, in Petitioners' presentations regarding standing in the Petition and their referenced and incorporated Requests and MDR, Petitioners explained why they are subject to ongoing injury, by deprivation of lawful license rights, by the FCC's December 2016 Second Thursday Order, FCC 16-172, and the Division's decisions in 2017 in DA 17-26 and DA 17-450, and what Petitioners assert are improper assertions by MCLM-Choctaw that Havens lacks standing. Deprivation of lawful license rights, where those have critical value in time in market competition, is "irreparable" as that term means in stay criteria. Petitioners also included in their standing assertions that a

² (i) One independent prong of Petitioners' legal standing showing to date is that MCLM-Choctaw, and Mobex whose licensing violations MCLM assumed, *continue with* their FCC-violation wrongful actions against their concrete interests. In this regard, the United States Supreme Court, in *Already LLC v. Nike*, 568 U.S. 85 (2013) recognized that a defendant cannot moot a case simply by ending its unlawful conduct once sued, and the Supreme Court's cases have explained that a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur. This has not been attempted, or found by the FCC. (ii) In this regard, in challenging Havens for over a decade, MCLM asserted (with support by Choctaw and the third party buyer entities who were parties in many of those proceedings and did not object), all that Havens executes for legal entities is all "Havens" but now alleges that Havens is separate. *Judicial estoppel* should apply.

reason that MCLM-Choctaw allege Petitioners do not have standing, which pertains to the California court receivership, was in large part improperly caused by MCLM unlawful actions in Docket No. 11-71.² MCLM continues to support that cause of the receivership, FCC 15M-14, which by itself is a component of Petitioners' rights to counterclaim. Petitioners' past and ongoing challenges to MCLM-Choctaw are integrated claims and counterclaims, in the subject long-term competition the FCC set up for AMTS and other competitive radio services. Petitioners submit that it is clear in FCC records that the MCLM-Choctaw challenges Petitioners have submitted that are pending are based upon demonstration of standing and substantive merit and should be decided prior to actions by Choctaw with the spectrum in the subject FCC licenses, and that unless a stay is granted, there will be increasing licensing actions by Choctaw and probably others, and oppositions by Petitioners, on an inefficient basis, causing more delay and work for FCC staff because Petitioners' pending challenges of and claims to the subject licenses would not have been resolved by final FCC action and to a large extent even by initial action on the merits. Thus far, as Petitioners have previously described, the FCC has not substantially processed and decided on their pending challenges on the substance regarding the Division's decisions thus far made in 2017, and regarding FCC 16-172. The Division has taken the position that Havens does not have standing without review of relevant facts and law (at least that was not shown, and what was shown indicates this lacking): ignoring Havens' showings of ongoing standing on various component bases (see above), which Havens has subsequently augmented (where he showed in case law that a party has a right to submit, or supplement, a showing of standing at any time in a proceeding).

² MCLM delayed and frustrated that hearing by asserting for years valid, nationwide site-based licenses that it eventually admitted were automatically terminated by MCLM failures (and that per MCLM's admissions, the creditors of MCLM knew fully about but did not tell the FCC), and where the MCLM course of conduct led to the "Sippel Order", FCC 15M-14, that in turn was used by a person to seek and obtain the California court receivership.

For that reason, the Division did not properly process and respond to the substance of Petitioners' challenge filings thus far. In addition, Petitioners have challenges pending regarding the MCLM-Choctaw Case not yet initially decided (the above cited Commission Order, FCC 17-105, shows why those provide standing). There is irreparable harm without a stay (which has been requested of the FCC in a separate filing) because Petitioners will be required to spend substantial time and funds, and divert from other matters that they must attend to, and FCC staff will also, to deal with the further licensing actions by Choctaw and others that Petitioners will oppose, and where Petitioners showed that the MCLM-Choctaw Chapter 11 Plan and Plan Order require final FCC approvals.

9. Contrary to the Two Oppositions that the FCC should dismiss the Petition because it is in the public interest to grant the licenses to the buyers/assignees, Petitioners showed that relief issued to MCLM and Choctaw thus far is not "in the public interest" but is based on false information, hidden information, smokescreens, improper legal arguments, and violation of core mandates in the Communications Act to protect and promote the public interest. Petitioners showed in the pending challenges that the FCC may not avoid *mandates* in the Communications Act and related FCC rules for discretionary bankruptcy accommodation, which is the case at hand.

10. With regard to the Two Oppositions' *ad hominem* attacks on Havens, those are false, improper and irrelevant, and suggest the weakness of the oppositions, and show the need for a decision on the Petition's merits. They may be sanctionable as well. The 11-71 proceeding before ALJ Sippel would not have taken place if not for massive cheating by MCLM, supported and invested in by the principles in Choctaw, from day one, continued to this day, including under 18 USC §1519 (as the both the FCC and the related bankruptcy proceedings). The Sippel Order, FCC 15M-14, was bred and arose because of the MCLM false and fraudulent positions in that long

hearing and the delays it caused, as noted above. Havens and companies he controlled at the time were the only parties prosecuting the Commission's case against MCLM (the Enforcement Bureau jumped ship) and they won, yet instead of reprimanding MCLM, ALJ Sippel, goaded on by MCLM (and Choctaw in the rear as the real party in interest) improperly attacked Commissions' successful prosecutorial team lead by Havens. In the 11-71 proceeding, after years, MCLM admitted to years-long lack of candor, and from the record misrepresentation and fraud, for approximately 80% of its site-based licenses, which if it had timely disclosed under FCC requirements (§§ 1.17, 1.65; 47 USC §312; etc.) would have saved everyone's time and resources "in the public interest."

11. Contrary to Choctaw's assertions of "innocent creditors" and public interest, per MCLM's own statements to the FCC, MCLM's creditors, MCLM's bankruptcy legal counsel, and others were informed of and fully knew about MCLM's site-based stations being terminated and invalid, but none of them informed the FCC for years of that fact and instead allowed the 11-71 hearing to proceed on those stations for several years, while MCLM sought Second Thursday relief for those bogus stations. See, e.g., MCLM's Response to Interrogatories, Aug. 4, 2014, in Docket 11-71, under penalty of perjury by Sandra DePriest (emphasis added):

Shortly before May 31, 2012, after consultation with, inter alia, bankruptcy counsel, the secured creditors, and the unsecured creditor's committee, MCLM decided to permanently abandon these facilities.

Simply, Choctaw and its principals and MCLM's creditors are not "innocent" -- first, given MCLM's admission above which the creditors knew for years but never told or caused MCLM to tell the FCC, resulting in the extenuated hearing and the Sippel Order, FCC 15M-14. At the time of that admission, MCLM was in privy with Choctaw, was under *de facto* control of Choctaw (see the Chapter 11 Plan and Plan Order) and was funded by Choctaw and its

principals. Nor did Choctaw and MCLM get approval from the Bankruptcy Court for the abandonment of these licenses assets-- either voluntarily as it first attempted by offered cancellations, or later when it admitted to auto termination-- which Petitioners understand is requirement of bankruptcy law, as indicated by ALJ Sippel, accepting Havens' argument on that point, in his Order FCC 14M-18, at ¶¶67-72.

12. In addition, the Sippel Order is on appeal, and it is way too late for Choctaw and the Energy Companies to raise that (the period to file pleadings in that proceeding has passed). By raising the Sippel Order in support, the Two Oppositions are effectively arguing that Havens had standing and interest, but that somehow it was taken away by the interlocutory Sippel Order (and subsequent state court receivership based upon the Sippel Order), but without articulating why that is under law. This supports Petitioners' point that the Sippel Order, and MCLM's support of it, and Choctaw's and the Energy Companies' belated, untimely use of it, provides Havens additional standing.

13. By the Joint Opposition's own argument at its page 3 that Petitioners do not have standing because they do not hold FCC licenses (Petitioners disagree and have shown multiple basis for standing), the Joint Opposition should be dismissed because the assignees do not hold any AMTS licenses.

Thus, for reasons in the Petition and this Reply, the Petition should be granted.

Respectfully submitted,

September 12, 2017,

/s/

Warren Havens
Warren Havens, an individual
Warren Havens, President, Polaris PNT PBC (a Delaware Public Benefit Corporation)
Contact information is on the Caption page.

Declaration

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

/s/

Warren Havens

September 12, 2017

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on September 12, 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 (Note: most of the addresses used for Assignees below are the assignee contact information off of the Applications on FCC ULS):

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

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

/s/

Warren Havens

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