

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

In the Matters of: SKYBRIDGE SPECTRUM FOUNDATION (“SSF”) - Applications for Waiver and Extension of Time of Various M-LMS Licenses, to Renew the Licenses TELESAURUS HOLDINGS GB LLC (“THL”) - Applications for Waiver and Extension of Time of One M-LMS license, to Renew the License WQGN602	DA 17-1124 WT Docket No. 16-385
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To: the FCC Secretary
Attention: Chief of the Wireless Bureau

Request for Reconsideration
by Warren Havens and Polaris PNT PBC

Warren Havens and Polaris PNT PBC (“Havens” and “Polaris”) (together, “Petitioners”) request the FCC reconsider and reverse its decision in Order DA 17-1125 (the “Order”) and grant the following relief (the “Request” or “Petition”). This Request is submitted for the Petitioners’ interests and upon the legal standing discussed below, in compliance with the relevant decision of the California Court of Appeal (cited below) and acceptance of that decision by the subject receivership court. This Request is not submitted for the subject Receiver, Susan Uecker and her current exercise of control over SSF and THL and their Licenses (defined below).

The relief request is:

(1) Reinstatement of the subject licenses subject of Order held in the names of SSF and THL (defined above) (the “SSF Licenses,” and the “THL License” and together the “Licenses”) and (iv) permit at least three years of time thereafter to meet “substantial service” (the “Request”) (the “Grant”). This filing is called the “Havens 2017 Filing” (to use the same term as in Exhibit 1B hereto (a Declaration of Havens in a California Superior Court), or:

(2) Alternatively, and at minimum:¹ Retract the decisions in the Order, and place a stay upon licenses on until the termination of the subject State- Court receivership over SSF and THL is terminated and the controlling interest in SSF for the SSF Licenses, and the controlling interest in THL for the THL licenses, can at that time submit to the FCC its requests regarding DA 17-1124 (the “Alternative Request”) (the “Alternative Grant”).

1. Introduction and Summary

The legal standing of Petitioners to submit this request or their interests, and to have that fully considered and count for benefit of the subject Licenses under this Petition. is shown in a section below. This includes correction of the Order’s statement that Havens was in contempt of court for his filing in 2016 to support renewal of the Licenses, filed at the time of the submission by the Receiver of SSF and THL if the subject captioned SSF and THL applications to renew the licenses (together, the “Receiver Applications” or the “Applications”) (the “Havens 2016 Filing”).

The FCC should Grant of the Request based on the just noted mistake alone -- corrected herein (see Exhibit 1A hereto, and its *Exhibit 3*, the Alternative Writ issued by the California Court of Appeal) -- the FCC should now consider fully all of the fact and arguments in the Havens 2016 Filing, and Grant the Request.

Among the other reasons are the following, in sum:

The Order also erred, as discussed below, is its finding that the FCC should not or may not consider in full the presentation of a party with legal standing as an undisputed (in FCC records and otherwise) current owner of rights in the subject licensees and licenses (here, Havens, and licensee SSF and the SSF Licenses, and Havens and THL and the THL License) to

¹ If this alternative relief is granted, Petitioners reserve right to nevertheless continue to seek Grant of the Request for reasons herein, and for based on any new facts and law that may arise, or that they could not at this time reasonably know of, or that was improperly hidden to them, or on basis of prejudice caused to them by any person in or part of the FCC, or the subject Receiver or Receivership Court, or any third party including the real party in interest that obtained and maintains the receivership, Arnold Leong.

count toward a favorable decision on license renewals, even where renewal applications are submitted by another person (here, the Receiver) that has purported lawful control: That is an error in any case, but especially here, given the circumstances shown and known to the FCC, including, as the Order itself noted, the control obtained by the subject Receiver is under a pending request for reconsideration filed by Havens (for SSF and Havens as the sole Member of SSF, shown in FCC and other public records) before the FCC and was not opposed by the Receiver (was opposed only by a third party, and without a required showings and declaration). There is no meaning to legal standing where its use in a legal matter is futile: which is the essence of this mistake in the Order.

Also, other errors in the Order are presented below, that also warrant Grant.

Petitioners submit that for the following numbered reasons, each alone, and together, that the FCC must Grant the Request, or at least the Alternative Request.

2. The Havens 2016 Filing is resubmitted here (by reference and incorporation) and must now be reviewed in full and decided upon, due to the mistakes noted herein that the FCC did not do so in the Order.

Due to the mistakes indicated above and further discussed herein below, the Havens 2016 Filing (defined above) must now be considered in full and decided upon for purposes of this Request. This filing's components cannot be in part reviewed decided upon, as was done in the Order. The Order notes that it only considered aspects of the this Havens 2016 Filing, but that rejected consideration of most of the substance, and what the FCC did consider as reflected in the Order cannot be properly considered on its own: as with most legal pleadings: the facts and arguments are interrelated and together present the case.

As shown in Exhibits A1, A2 and A2 hereto, Havens requested a judge in the receivership court that was currently on duty (the regular judge over the receivership was not available this month for court matters) to grant his request to allow him to present the Havens 2016 Filing to the FCC today, December 20, 2017, the due date for a request or petition for

reconsideration of the Order, directly on behalf of SSF and THL. The judge on duty denied the request. But later, the regular Judge may support the Havens request made to this judge on duty, if he so chooses, and may at that time authorize a request to accept a late filing. However, as shown below, Havens has authority to submit this Request including since it complies with the decisions of both the California Court of Appeal and the receivership court.

3. New precedent and policy, after the Order, requires Grant of the Request.

The FCC granted for MCLM (Maritime Communications/ Land Mobile LLC) and its successor Choctaw (the alleged valid successor of MCLM in its Chapter 11 bankruptcy case) applications for extensions of time of the (purportedly valid) MCLM licenses (purportedly validly assigned to Choctaw) to meet the applicable “construction” or “substantial service” requirements these licenses, and based upon said grants, the renewal applications for these licenses were also granted.

These grants were based upon on the MCLM-Choctaw admission that they had not meet construction/ substantial service requirements, but that they wanted more time to sell the licenses and/or develop them. See, e.g., (i) the “Second Thursday” Order, FCC 16-172, and (ii) Wireless Telecommunications Bureau Order, DA 17-450 (granting MCLM's extensions and renewals and assignments to Choctaw).

This creates a new precedent and doctrine, and it is granted to a competitor of SSF and THL and of the subject SSF and THL Licenses (shown below). Under this new precedent and doctrine, the FCC must Grant this Request, because:

(i) Like MCLM-Choctaw-- SSF and THL also, in the Applications and in the Havens 2016 filing, and in this Petition, assert that if an extension of time is granted, then SSF and THL will put the licensed spectrum into use: the Receiver’s Applications proposed that by license sales and assignments to third parties, and Havens proposes that SSF and THL themselves use the spectrum and but for the Receivership of Leong, had a compelling developments to do so,

with sufficient proof provided in the Havens 2016 Filing (and the existing FCC showings referenced therein); and

(ii) An agency's departure from precedent, with justified departure that can be shown (see '(i)' above), must be overturned as arbitrary and capricious: see, e.g., *Pontchartrain Broad. Co., Inc. v. FCC*, 15 F.3d 183, 185 (D.C.Cir. 1994). Similarly, an agency must provide an adequate explanation to justify treating similarly situated parties differently, and none can be shown here (see '(i)' above): see e.g., *Burlington N. & Santa Fe Ry. v. STB*, 403 F.3d 771, 776-77 (D.C.Cir.2005).

Regarding the just noted competitor status: The subject MCLM-Choctaw licenses are AMTS licenses, and the has properly found that the subject M-LMS Licenses can compete. See DA 03-2064 regarding WHV733 (June 2003) (emphasis added):

5. Discussion. Mobex² contends that Havens, who is not licensed to operate any AMTS system that is in direct competition with its proposed Hillsborough and Rockfish AMTS stations, lacks standing to file this petition.^{16/} Havens argues that under his Location and Monitoring Service (LMS)^{17/} geographic area licenses he is authorized to serve parts of North Carolina wherein he potentially can compete with AMTS Call Sign WHV733.^{18/} Mobex argues that LMS and AMTS provide different services and therefore, are not competitive.^{19/} We agree with Havens that he has standing to file the subject petition. We concur with Haven's assertion that in certain instances, the need to locate and monitor mobile radio units could be equally met by AMTS or LMS. In view of the fact that there is service area overlap, and because it is conceivable that AMTS can compete with LMS for customers who need to locate and monitor mobile radio units, we conclude that Havens has standing in the instant matter. Because standing in this case is based on Havens's status as a competitor in the same market that Mobex operates, Havens does not need to demonstrate that he will suffer a specific injury from grant of the modification application.^{20/}

17/ LMS provides the use of non-voice signaling methods to locate or monitor mobile radio units. LMS systems may transmit and receive voice and non-voice status and instructional information related to such units. See 47 C.F.R. § 90.7.

18/ Petition at 1; Reply at 1. We note that Mobex's proposed Hillsborough AMTS station is located in Basic Economic Area 019 where Havens is licensed to use LMS Channel Block A (Call Sign WPOJ882).

19/ Opposition at 2.

² Mobex is the predecessor holder of various AMTS licenses assigned to MCLM, which assigned them to Choctaw.

20/ See *American Mobilephone, Inc. and Ram Technologies, Inc., Order*, 10 FCC Rcd 12297, 12298 ¶ 8 (1995).

For the reason in this section 2 alone, the FCC must Grant the Request, at least as long as the above noted MCLM-Choctaw precedent and doctrine is not reversed. The FCC cannot “have it both ways.”

4. The “2014 Extension Order” (see the Order, e.g. par. 27), a basis of the Order for the denial of the Application and termination of the Licenses, was appealed by Havens.

In this regard, Havens asserts that this appeal was sound, and the FCC has a duty to consider and rule upon it in the public interest (the standard in the Communications Act including for licensing matters). For this reason, the relief should be granted as requested herein. Havens asserts the above regardless of whether his legal challenges to the receivership as void ab initio (for the many reasons he has already asserted and any further ones to be asserted) succeed, but including if they do succeed, since in that case the acts of the receiver will be void. The receivership, per Mr. Leong who obtained and sustains it, is based upon the validity of the so-called FCC “Sippel Order,” FCC 15M-15 which Havens asserts is fatally flawed, void, and is now moot.

5. Correction of the FCC Order Regarding Assertion that Havens Was in Contempt of California Court Receivership Order for the Havens 2016 Filing.

As indicated in Section 1 above, the Order is incorrect on this matter. The Order asserted in a footnote:

100/ Havens filed this pleading in ULS on call signs WQHU548 (Skybridge lead call sign) and WQGN602 (Telesaurus), as a “conditional submission for protective purposes,” requesting an extension and waiver of the construction requirements, pending the outcome of ongoing litigation concerning the receivership.... The Havens pleading, filed on September 2, 2016, formed the basis in part of an Alameda County Superior Court Order finding Havens in contempt of court for violating the Receivership Order. See *Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Order Holding Warren Havens in Contempt for Failure to Comply with Court Orders (Dec. 14, 2016).

The Receiver has a duty to submit the FCC under rule §1.65 a correction of any submission she made, or that the real party in interest in the receivership (Mr. Leong) made, to the FCC that was cause of this sustained mistake quoted above. As indicated above, the correction is shown by the California Court of Appeal Alternative Writ that struck down the FCC's noted Contempt decision of the lower, Superior Court. See in Exhibit 1A hereto, its *Exhibit 3*, page 2:

...petitioner was permitted to communicate with the FCC as long as he clearly indicated he was not speaking on behalf of any Receivership Entity."

Also see other text in this Alternative Writ. The Appeals Court did not decide on other basis Havens submitted in his write petition: see footnote 1 in the Alternative Writ decision, on p. 1. This included citing to US Supreme Court precedents on rights of any person to address the FCC under its exclusive jurisdiction, which a State Court cannot bar (see, e.g., the cite to the well-known *WOW v Johnson* US Supreme Court precedent explained in Exhibit 1A, page 3, footnote 3.

The Superior Court and the Receiver accepted this Alternative Writ decision and so informed the Court of Appeal, and this decision thus became final, and it is now beyond and time for any party to appeal this decision.

These California Courts and the Receiver have thus accepted that the Havens 2016 Filing is not in contempt of the Orders establishing and governing the Receivership. As the FCC noted, the Havens 2016 Filing

Respectfully submitted,

/s'

Warren Havens

For Petitioners

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