

REDACTED PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

**APPLICATION TO ASSIGN LICENSES FROM
MARITIME COMMUNICATIONS/LAND
MOBILE, LLC, DEBTOR-IN-POSSESSION, TO
CHOCTAW HOLDINGS, LLC**

)
)
) WT Docket No. 13-85
) File No. 0005552500
)
)
)

For Commission Consent to the Assignment of Various
AMTS Authorizations

To: The Commission

PETITION FOR RECONSIDERATION

**CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC**

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October 14, 2014

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Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively “Choctaw”), pursuant to Section 1.106 of the Federal Communications Commission’s (“Commission”) Rules,¹ hereby request reconsideration of the *MO&O*² denying Choctaw’s request³ for *Second Thursday*⁴ relief. Reconsideration should be granted based on new

¹ 47 C.F.R. § 1.106. Alternatively, Choctaw urges the Commission to reconsider the decision on its own motion. Such reconsideration would be consistent with *LaRose v. FCC*, 494 F.2d 1145, 1149 (D.C. Cir. 1974), in which the court directed the Commission to address a *Second Thursday* petition for reconsideration despite a finality defense.

² *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Memorandum Opinion and Order, FCC 14-133 (rel. Sept. 11, 2014) (“*MO&O*”). Choctaw only seeks reconsideration of the *MO&O* to the extent it denies *Second Thursday* relief. In particular, it does not seek reconsideration of the *MO&O* to the extent it granted relief in support of positive train control. *See id.* at ¶¶ 26-33.

³ *See* Choctaw Holdings, LLC, Assignment Application, FCC File No. 0005552500 (filed Jan. 23, 2013, amended Jan. 25, 2013) (“Application”), Description of Transaction, Public Interest Statement and *Second Thursday* Showing (“PI Statement”), attached as an exhibit to the Application at 2-3.

⁴ *See Second Thursday Corp.*, Memorandum Opinion and Order, 22 FCC 2d 515, 516 (“*Second Thursday MO&O*”), *recon. granted in part*, Memorandum Opinion and Order, 25 FCC 2d 112 (1970).

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facts not previously available to Choctaw and because the *MO&O* is based on a material error that deviates from long-standing Commission precedent.⁵

SUMMARY

Reconsideration is appropriate for three reasons. First, the *MO&O* denied *Second Thursday* relief based on the assumption that a grant would relieve Donald DePriest, an alleged wrongdoer, of his obligation to repay various guarantees amounting to approximately \$8 million.⁶ New facts demonstrate that Mr. DePriest is judgment-proof, however, and, as the *MO&O* recognizes, the elimination of personal guarantees from judgment-proof individuals is not considered a significant benefit that would bar *Second Thursday* relief.⁷ Second, newly available facts demonstrate that Mr. DePriest's guarantees will be unenforceable. Finally, reconsideration is appropriate because the Commission for the first time applied a new *Second Thursday* test that fails to accommodate bankruptcy law and the interests of innocent creditors consistent with *LaRose v. FCC* and long-standing Commission precedent.

BACKGROUND

Maritime Communications/Land Mobile, LLC, Debtor-in-Possession ("MCLM")⁸ holds a number of Automated Maritime Telecommunications Systems ("AMTS") site-based and geographic licenses ("Licenses").⁹ On April 19, 2011, the Commission designated for hearing issues relating to the relationship of Donald and Sandra DePriest to MCLM and whether, based

⁵ 47 C.F.R. § 1.106.

⁶ See *MO&O* at ¶ 23.

⁷ See *id.* at ¶ 22 n.60.

⁸ MCLM hereinafter refers to Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, as well as the pre-bankruptcy Maritime Communications/Land Mobile, LLC.

⁹ *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designator Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520, 6547 (2011) ("*HDO*").

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on these relationships and MCLM's conduct with regard to its Auction No. 61 applications, "[MCLM] is qualified to be and to remain a Commission licensee, *and as a consequence thereof*, whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied."¹⁰

On August 1, 2011, while the hearing was pending, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of Mississippi (the "Bankruptcy Court"). Two parties – Choctaw and Council Tree Investors, Inc. – submitted plans to the Bankruptcy Court. The entire creditor group reviewed both plans and the Choctaw plan was selected based on positive votes from an overwhelming majority of the creditors *from each and every class*. As the Bankruptcy Court Judge noted in confirming the Choctaw plan: "I look at the votes – and that's another compelling thing – that have been presented by the tally of the ballots. *Every class voted to accept confirmation* by the respected requirements of the law."¹¹

After the creditors selected the Choctaw plan, the Bankruptcy Court conducted a hearing with MCLM, Choctaw, Warren Havens, and the Commission all participating. On November 15, 2012, after the hearing, the Bankruptcy Court confirmed the Chapter 11 reorganization plan submitted by Choctaw which called for the assignment of MCLM's licenses to Choctaw upon Commission approval.

Because MCLM's qualifications to hold the licenses subject to the bankruptcy proceeding were subject to a separate Commission hearing, the Commission's *Jefferson Radio*

¹⁰ *Id.* at 6521 (emphasis added) (citation omitted); *see also id.* at 6547. The specific MCLM authorizations and applications designated for hearing are appended to the *HDO*. *Id.* at 6553-55.

¹¹ Bankruptcy Hearing Transcript, *Maritime Communications/Land Mobile, LLC, Debtor*, U.S. Bankruptcy Court Northern District of Mississippi, Case No. 11-13463-dwh, at 187 (Nov. 15, 2012) (emphasis added).

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policy generally precluded the licenses from being transferred or assigned.¹² The *Second Thursday* doctrine, however, provides an exception that permits the transfer or assignment of licenses “if the licensee is in bankruptcy, the assignment will benefit innocent creditors of the licensee, and the individuals charged with misconduct ‘will have no part in the proposed operations and will either derive no benefit from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors.’”¹³

On January 23, 2013, MCLM and Choctaw filed an Application seeking approval to assign MCLM’s licenses to Choctaw pursuant to the *Second Thursday* doctrine. The Application addressed each of the *Second Thursday* criteria and noted that neither of the DePriests would receive any significant benefit as a result of the transaction. In particular, the Application stated that “Mr. and Mrs. DePriest will not receive any portion of the purchase price associated with the operation or sale of the licenses.”¹⁴ The Application also noted that, to the extent *Second Thursday* relief would result in full recovery by innocent creditors and thus indirectly eliminate the release of any Donald DePriest guarantees, such action has been deemed “an incidental benefit that does not preclude *Second Thursday* relief.”¹⁵ It further cited the United States Court of Appeals for the District of Columbia Circuit *LaRose*¹⁶ decision which directed the Commission to “‘accommodate[]the policies of federal bankruptcy law with those of the Communications Act.’”¹⁷

¹² See *Jefferson Radio Corp. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

¹³ *MO&O* at ¶ 15 (citing *Second Thursday MO&O*, 22 F.C.C.2d at 516).

¹⁴ PI Statement at 8.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at n.23.

¹⁷ *LaRose*, 494 F.2d at 1146.

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Second Thursday relief is critical because, without such relief, the Bankruptcy Court order cannot be effectuated quickly and innocent creditors will be harmed. These creditors cannot be repaid until the licenses are transferred to Choctaw pursuant to the Bankruptcy Court order. Importantly, the innocent creditors are not Wall Street investment bankers, but rather they include a range of individuals from local businessmen to elderly citizens from the Southeastern United States. In many cases, the inability to get paid consistent with the Bankruptcy Court order jeopardizes their ability to make ends meet. These financial problems for the innocent creditors are further exacerbated by the fact that the process has taken far longer than anyone could have expected. Public interest considerations weigh heavily in favor of repaying innocent creditors versus denying *Second Thursday* relief based on a perceived indirect benefit that is worthless.

Nearly two years after the Application was filed, the Commission applied a new test for evaluating requests for *Second Thursday* relief. For the first time, and contrary to all prior precedent, the Commission held that relief from indirect, secondary liabilities (i.e., loan guarantees) *standing alone* could justify denying relief under *Second Thursday*.¹⁸ According to the Commission:

[T]here is a substantial possibility that granting the application would permit the DePriests to obtain a benefit that is neither minor nor incidental by releasing Mr. DePriest from his obligations under his personal guarantees of loans to MCLM. Mr. DePriest could escape a potential liability most conservatively estimated to be \$8 million because the creditors could be fully repaid from the proceeds from the assignment of the licenses, and would therefore

¹⁸ Given that this case represents the first time the Commission has treated the solvency of a guarantor as a dispositive factor under *Second Thursday*, Choctaw did not fully address this issue in its request. See *MO&O* at ¶ 20. As discussed in Section II, this represents the first case since *LaRose* where *Second Thursday* relief has been denied solely because of a perceived indirect, secondary liability benefit.

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have no basis to look to Mr. DePriest for recovery under his personal guarantees.¹⁹

This judgment was premised on the misperception that the release of Mr. DePriest's loan guarantees to MCLM, standing alone, is a sufficient legal basis to deny *Second Thursday* relief unless either the percentage of the liability when compared to the purchase price was extremely small²⁰ or "the wrongdoer's debts would still exceed his assets"²¹ such that the wrongdoer is "judgment-proof."²² The Commission apparently concluded that Mr. DePriest was not judgment-proof and MCLM creditors could collect up to \$8 million based on his personal guarantees.

On September 19, 2014, four creditors filed an Involuntary Petition with the United States Bankruptcy Court, Northern District of Mississippi to subject Donald DePriest to a Chapter 7 bankruptcy proceeding. Three of the four creditors are not involved in the MCLM bankruptcy proceeding and none of the creditors are affiliated with Choctaw. Once the Bankruptcy Court determines that Donald DePriest is a debtor in bankruptcy, the likely outcome of the bankruptcy case will be that Mr. DePriest will be discharged of all of his debts.²³ A discharge pursuant to Section 727(a) of the bankruptcy code "discharges the debtor from all debts that arose before the date of the order for relief."²⁴ Accordingly, the bankruptcy will discharge all of his personal liabilities, including the guarantees associated with the MCLM

¹⁹ *Id.*

²⁰ *MO&O* at ¶¶ 22-23 & n.62.

²¹ *Id.* at n.60.

²² *Id.* at n.63 (quoting *LaRose*, 494 F.2d at 1149).

²³ See 11 U.S.C. § 727(a).

²⁴ 11 U.S.C. § 727(b).

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bankruptcy. Thus, the only way for the innocent MCLM creditors to be made whole is for the Choctaw plan to proceed as confirmed by the Bankruptcy Court.

For the reasons set forth below, Choctaw hereby seeks reconsideration of the *MO&O* to the extent it denies relief pursuant to *Second Thursday*.

DISCUSSION

I. SECOND THURSDAY RELIEF IS APPROPRIATE BECAUSE IT WILL NOT BENEFIT DONALD DEPRIEST

New facts demonstrate that Mr. DePriest is judgment-proof and creditors cannot collect on his guarantees to MCLM.²⁵ The Commission decision denying *Second Thursday* is therefore flawed and should be reconsidered.

A. SECOND THURSDAY RELIEF IS APPROPRIATE BECAUSE DONALD DEPRIEST IS JUDGMENT-PROOF

Choctaw recently learned of new facts demonstrating that Mr. Donald DePriest is judgment-proof. First, Choctaw has obtained a document – [REDACTED] [REDACTED] – demonstrating that, as of August 31, 2014, Donald DePriest had less than [REDACTED] [REDACTED].²⁶ The document further demonstrates that Mr. DePriest's liabilities exceed his total assets [REDACTED]. Choctaw also has learned that [REDACTED] [REDACTED].²⁷

²⁵ See 47 C.F.R. § 1.106.

²⁶ See Exhibit A.

²⁷ See Letter from [REDACTED]

[REDACTED] (Attached as Exhibit B); Letter from [REDACTED]

[REDACTED] (Attached as Exhibit

C).

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Second, consistent with the financial information set forth above, Choctaw has learned that various creditors filed an involuntary Chapter 7 bankruptcy petition against Mr. DePriest on September 19, 2014.²⁸ The bankruptcy petition identifies more than \$13 million in claims against Mr. DePriest. [REDACTED]

[REDACTED] This involuntary bankruptcy case further demonstrates that (i) Mr. DePriest's liabilities grossly exceed his assets and (ii) he is now judgment-proof.

It is well settled that the release of a personal guarantee does not preclude *Second Thursday* relief where the guarantor is judgment-proof.²⁹ For example, the Commission granted *Second Thursday* relief in *Pyle Communications of Beaumont*³⁰ even though the wrongdoer would be relieved of secondary liability because "the wrongdoer's debts would still exceed his assets."³¹ Similarly, in *LaRose*, the elimination of secondary liability "was not of a magnitude warranting defeat of a *Second Thursday* proposal" because the wrongdoers were judgment-proof.³² The same conclusion is warranted here – the existence of Donald DePriest's guarantees should not defeat a request for *Second Thursday* relief because he is now judgment-proof – the wrongdoer's debts will exceed his assets.

²⁸ See Exhibit D, *Donald R. DePriest*, Involuntary Petition, U.S. Bankruptcy Court, Northern District of Mississippi, Case No. 14-13522-JDW (Sept. 19, 2014); see also Summons to Debtor in Involuntary Case, U.S. Bankruptcy Court, Northern District of Mississippi, Case No. 14-13522-JDW (Sept. 23, 2014) (attached as Exhibit E).

²⁹ See *MO&O* at nn.60 & 63 (quoting *LaRose*, 494 F.2d at 1149).

³⁰ *Pyle Communications of Beaumont, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8625, 8626 (1989) ("*Pyle MO&O*").

³¹ *Id.*; see *MO&O* at n.60.

³² *LaRose*, 494 F.2d at 1149; *MO&O* at n.63.

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B. SECOND THURSDAY RELIEF IS APPROPRIATE BECAUSE DONALD DEPRIEST'S GUARANTEES WILL BE EXTINGUISHED AS PART OF A CHAPTER 7 INVOLUNTARY BANKRUPTCY PROCEEDING

As a result of the recently filed involuntary bankruptcy petition, the personal guarantees of Mr. DePriest will be extinguished. The innocent MCLM creditors that hold guarantees from Mr. DePriest have claims against him in his bankruptcy case.³³ These guarantees, however, will be discharged as part of the Chapter 7 involuntary bankruptcy proceeding in accordance with Section 727 of the bankruptcy code.³⁴ Thus, separate and apart from the fact that Mr. DePriest is judgment-proof, any perceived benefits associated with the guarantees will be extinguished by virtue of this bankruptcy proceeding, not by a grant of *Second Thursday* relief. In short, Mr. DePriest will receive neither a direct nor an indirect benefit should the Commission reverse itself and grant *Second Thursday* relief, permitting the licenses to be assigned to Choctaw.

Based on the foregoing, Choctaw respectfully requests reconsideration of the denial of *Second Thursday* relief based on new facts demonstrating that creditors would not be able to collect on personal guarantees made by the alleged wrongdoer in this hearing, Mr. DePriest.

II. SECOND THURSDAY RELIEF SHOULD BE GRANTED TO ACCOMMODATE BANKRUPTCY LAW

The Commission decision denying *Second Thursday* is also flawed as a matter of law, separate and apart from the new facts discussed above. Indeed, the denial of *Second Thursday* relief here is inconsistent with court and Commission precedent and should be reversed.

³³ See 11 U.S.C. § 101(5) (defining a claim as “a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”).

³⁴ See 11 U.S.C. § 727(a).

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In *LaRose*, the United States Court of Appeals for the D.C. Circuit stated that the Commission must “accommodate[] the policies of federal bankruptcy law with those of the Communications Act.”³⁵ The court warned:

Administrative agencies have been required to consider other federal policies, not unique to their particular area of administrative expertise, when fulfilling their mandate to assure that their regulatees operate in the public interest. . . . [A]gencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.³⁶

The Commission itself has long recognized that it “is obliged to reconcile its policies under the Communications Act with the policies of other federal laws and statutes, including the federal bankruptcy laws in particular.”³⁷ Thus, when evaluating whether *Second Thursday* relief is appropriate, the Commission conducts “an *ad hoc* balancing of the possible injury to regulatory authority that might flow from wrongdoers’ realizing benefits against the public

³⁵ *LaRose*, 494 F.2d at 1146-47 n.2.

³⁶ *Id.*

³⁷ *Dale J. Parsons*, Memorandum Opinion and Order, 10 FCC Rcd 2718, 2720 (1995); *see Urban Radio I, L.L.C., Debtor-in-Possession and YMF Media, New York Licensee LLC for Consent to Assign Licenses*, Memorandum Opinion and Order, 29 FCC Rcd 6389, 6391 (2014) (noting that under *LaRose*, the “Commission is obligated to protect innocent creditors so long as the transaction in question does not unduly interfere with objectives of the Act”). *See Family Broadcasting, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 7591 (2010) (“*Family MO&O*”); *WorldCom, Inc. and its Subsidiaries (debtors-in-possession)*, Memorandum Opinion and Order, 18 FCC Rcd 26484 (2003) (“*WorldCom MO&O*”); *Hertz Broadcasting of Birmingham, Inc.*, Memorandum Opinion and Order, 57 F.C.C.2d 183, 184 (1976) (“*Hertz MO&O*”); *KOZN FM Stereo LTD., Debtor-in-Possession*, Memorandum Opinion and Order, 6 FCC Rcd 257, 257 (1991) (“*KOZN FM 1991 MO&O*”); *KOZN FM Stereo 99 LTD.*, Memorandum Opinion and Order, 5 FCC Rcd 2849, 2850 (1990) (“*KOZN FM 1990 MO&O*”); *MobileMedia Corporation, et al.*, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8023 (1999) (“*MobileMedia MO&O*”); *NewSouth Broadcasting, Inc.*, Order, 8 FCC Rcd 1272, 1273 (1993) (“*NewSouth Order*”); *Seraphim Corp.*, Memorandum Opinion and Order, 4 FCC Rcd 8819, 8821 (1989) (“*Seraphim MO&O*”); *Pyle MO&O*, 4 FCC Rcd at 8626; *Davis Broadcasting Company, Inc.*, Memorandum Opinion and Order, 67 F.C.C.2d 872, 875 (1977) (“*Davis MO&O*”).

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interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party."³⁸

Where there is only a "potential indirect benefit" related to guarantor liability, the Commission's *ad hoc* balancing traditionally favors grant of *Second Thursday* relief.³⁹ In the forty years between *LaRose* and this *MO&O*, there has never been a Commission-level decision where this balancing resulted in a denial of *Second Thursday* relief based *solely* on the potential elimination of indirect, secondary liability.

In denying Choctaw's request for *Second Thursday* relief, the Commission concluded for the first time that the potential release of secondary liability – in the form of guarantees held by Donald DePriest – is a significant benefit that standing alone precludes *Second Thursday* relief.⁴⁰ The Commission implies that, where guarantees are held by an alleged wrongdoer subject to a character hearing, *Second Thursday* relief is appropriate only if the guarantees fall below an undefined percentage of the purchase price or if the guarantee holder is "judgment-proof."⁴¹ This approach is inconsistent with long-standing Commission precedent.

In *Hertz Broadcasting*, the Commission determined that the alleged wrongdoer would receive no direct benefit, but would receive an indirect benefit because he would be relieved from secondary liability associated with large guarantees.⁴² The alleged wrongdoer held guarantees that exceeded the anticipated sale proceeds and amounted to nearly 90 percent of the

³⁸ See *Family MO&O*, 25 FCC Rcd at 7596; *WorldCom MO&O*, 18 FCC Rcd at 26459.

³⁹ See *Family MO&O*, 25 FCC at 7599; *WorldCom MO&O*, 18 FCC Rcd at 26500.

⁴⁰ *MO&O* at ¶ 20.

⁴¹ *Id.* at ¶¶ 20-24.

⁴² *Hertz MO&O*, 57 FCC 2d at 184. The Commission recognized that a direct benefit was possible, but unlikely. *Id.* at 184 n.3.

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total liabilities. *Second Thursday* relief nevertheless was granted.⁴³ There was no allegation or finding that the guarantor in *Hertz* was judgment-proof.

Similarly, in *Family Broadcasting*, there were no allegations that the wrongdoer was judgment-proof or that the alleged wrongdoer would receive a direct benefit. Various parties claimed that *Second Thursday* relief was inappropriate, however, because the wrongdoer would be relieved of potential secondary liability for taxes associated with the station. The Commission rejected this argument:

[E]ven if the [alleged wrongdoers] would receive indirect tax benefits from grant of the Application, we would find that those benefits are “outweighed by equitable considerations in favor of innocent creditors.” Equitable considerations strongly favor granting this Application. First, granting the Application will protect [the bankrupt licensee’s] innocent creditors (most notably, the Internal Revenue Service and the Virgin Islands Bureau of Internal Revenue), whose debts will be fully satisfied if the assignment is approved but who will receive virtually no recovery if it is denied. The licenses are “by far the most valuable asset of” [the licensee], and denying the Application would “effectively deprive [] creditors of any significant recovery of the moneys they have advanced.”⁴⁴

This same analysis applies to the *Second Thursday* request filed by Choctaw.

In every other post-*LaRose* *Second Thursday* case where the only potential benefit from a grant of relief was secondary liability, the Commission has granted relief. In *KOZN*, the Commission found that the “incidental benefit” associated with the elimination of “potential secondary liability” was not sufficient to warrant denial of *Second Thursday* because grant of

⁴³ *Id.* at 184. Mr. DePriest’s guarantees, even if enforceable, do not approach the 90 percent ratio that was acceptable in the *Hertz MO&O*.

⁴⁴ *Family MO&O*, 25 FCC Rcd at 7599 (citations omitted).

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relief may result in creditors being paid in full.⁴⁵ The same result was reached in *MobileMedia*,⁴⁶ *NewSouth Broadcasting*,⁴⁷ *Seraphim*,⁴⁸ *Pyle Communications of Beaumont*,⁴⁹ and *Davis Broadcasting*.⁵⁰

In contrast to this long-standing precedent, the Commission cites to a single post-*LaRose* case where *Second Thursday* relief was denied. In that case, however, the alleged wrongdoer would have received *both* direct *and* indirect benefits if relief had been granted.⁵¹ That is not the case here. To the contrary, as demonstrated above and in the Application, Donald DePriest will receive *no direct benefit* if *Second Thursday* relief is granted.⁵²

Given the absence of any post-*LaRose* precedent denying *Second Thursday* relief based solely on the potential elimination of secondary liability and the long line of precedent where such relief is granted where only indirect benefits (such as relief from secondary liability) would result, Choctaw urges the Commission to reconsider the *MO&O*, grant *Second Thursday* relief, and authorize MCLM to assign the licenses to Choctaw as requested in the assignment

⁴⁵ *KOZN FM 1991 MO&O*, 6 FCC Rcd at 257; *see also KOZN FM 1990 MO&O*, 5 FCC Rcd at 2850 (“Green will receive no more than an incidental benefit from the sale in the elimination of his potential secondary liability.”).

⁴⁶ *MobileMedia MO&O*, 14 FCC Rcd at 8023 (citing *Shell Broadcasting, Inc.*, 38 F.C.C.2d 929, 933 (1973) (approval of *Second Thursday* relief despite direct and indirect benefits to the suspected wrongdoer)).

⁴⁷ *NewSouth Order*, 8 FCC Rcd at 1273.

⁴⁸ *Seraphim MO&O*, 4 FCC Rcd at 8821.

⁴⁹ *Pyle MO&O*, 4 FCC Rcd at 8626.

⁵⁰ *Davis MO&O*, 67 F.C.C.2d at 875.

⁵¹ *Mid-State Broadcasting*, 61 F.C.C.2d 196, 198 (1976).

⁵² Even if Mr. DePriest were solvent, the only potential benefit would have been an indirect, secondary liability benefit and, as discussed above, the Commission has never found that an indirect benefit, standing alone, warrants denying *Second Thursday* relief.

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Application. This course of action would be consistent with Commission precedent and its obligation to accommodate bankruptcy law so as to ensure the protection of innocent creditors.

CONCLUSION

For the foregoing reasons, the Commission should reconsider the portion of its *MO&O* denying *Second Thursday* relief to Choctaw. Given the new facts and the long-recognized importance of accommodating bankruptcy law and protecting innocent creditors, Choctaw urges a prompt grant of *Second Thursday* relief on reconsideration.

Respectfully submitted,

CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC

By: _____ /s/ _____

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October 14, 2014

EXHIBIT A - REDACTED

EXHIBIT B – REDACTED

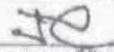
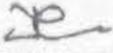
EXHIBIT C - REDACTED

EXHIBIT D

B 5 (Official Form 5) (12/07) - Page 2

Name of Debtor Donald R. DePriest

Case No. _____

TRANSFER OF CLAIM		
<input type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).		
REQUEST FOR RELIEF		
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.		
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.		
<p>x  <u>Attorney</u></p> <p>Signature of Petitioner or Representative (State title) <u>Oliver L. Phillips</u></p> <p>Name of Petitioner _____</p> <p>Date Signed <u>09/19/2014</u></p> <p>Name & Mailing Address of Individual Signing in Representative Capacity <u>81 Windsor Blvd. Columbus, MS 39702</u></p>	<p>x  _____</p> <p>Signature of Attorney _____ Date <u>09/19/2014</u></p> <p>Name of Attorney Firm (If any) <u>John W. Crowell, Crowell Gillis & Cooper, PLLC</u></p> <p>Address <u>Post Office Box 1827, Columbus, MS 39703-1827</u></p> <p>Telephone No. _____</p>	
<p>x <u>/s/ Charles N. Parnell, III, Attorney</u></p> <p>Signature of Petitioner or Representative (State title) <u>ADECA</u></p> <p>Name of Petitioner _____</p> <p>Date Signed <u>09/19/2014</u></p> <p>Name & Mailing Address of Individual Signing in Representative Capacity <u>c/o Parnell & Crum, PA Box 2189 Montgomery, AL 36102</u></p>	<p>x <u>/s/ Charles N. Parnell, III</u> _____</p> <p>Signature of Attorney _____ Date <u>09/19/2014</u></p> <p>Name of Attorney Firm (If any) <u>Parnell & Crum, PA</u></p> <p>Address <u>Box 2189, Montgomery, AL 36102-2189</u></p> <p>Telephone No. _____</p>	
<p>x <u>/s/ William Rutledge, III, Attorney</u></p> <p>Signature of Petitioner or Representative (State title) <u>Bank of New Albany</u></p> <p>Name of Petitioner _____</p> <p>Date Signed <u>09/19/2014</u></p> <p>Name & Mailing Address of Individual Signing in Representative Capacity <u>c/o William Rutledge, III PO Box 29, New Albany, MS 38652</u></p>	<p>x <u>/s/ William Rutledge, III</u> _____</p> <p>Signature of Attorney _____ Date <u>09/19/2014</u></p> <p>Name of Attorney Firm (If any) <u>William Rutledge, III, Rutledge Davis and Harris, PLLC</u></p> <p>Address <u>Box 29, New Albany, MS 38652-0029</u></p> <p>Telephone No. _____</p>	
PETITIONING CREDITORS		
Name and Address of Petitioner	Nature of Claim	Amount of Claim
<u>Oliver Phillips, 81 Windsor Blvd., Columbus, MS 39702</u>	<u>Judgment</u>	<u>9,133,230.00</u>
<u>ADECA, c/o Parnell, Box 2189, Montgomery, AL 36102</u>	<u>Judgment</u>	<u>2,947,899.74</u>
<u>Bank of New Albany, Box 29, New Albany, MS 38652-0029</u>	<u>Judgment</u>	<u>797,405.95</u>
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims <u>13,260,803.69</u>

1 continuation sheets attached

B 5 (Official Form 5) (12/07) - Page 2

Name of Debtor Donald R. DePriest

Case No. _____

TRANSFER OF CLAIM		
<input type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).		
REQUEST FOR RELIEF		
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.		
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.		
<input checked="" type="checkbox"/> <u>/s/ Chad J. Hammons, Attorney</u> Signature of Petitioner or Representative (State title) <u>Republic Bank & Trust</u> Name of Petitioner Date Signed <u>09/18/2014</u> Name & Mailing Address of Individual Signing in Representative Capacity <u>601 S. Hurstbourne Ln</u> <u>Louisville, KY 40222</u>	<input checked="" type="checkbox"/> <u>/s/ Chad J. Hammons</u> Signature of Attorney <u>Chad J. Hammons, Jones Walker, LLP</u> Name of Attorney Firm (If any) <u>Jones Walker, LLP, PO Box 427, Jackson, MS 39205</u> Address <u>(601) 949-4900</u> Telephone No.	Date <u>09/19/2014</u>
<input checked="" type="checkbox"/> _____ Signature of Petitioner or Representative (State title) Name of Petitioner Date Signed Name & Mailing Address of Individual Signing in Representative Capacity	<input checked="" type="checkbox"/> _____ Signature of Attorney Name of Attorney Firm (If any) Address Telephone No.	Date
<input checked="" type="checkbox"/> _____ Signature of Petitioner or Representative (State title) Name of Petitioner Date Signed Name & Mailing Address of Individual Signing in Representative Capacity	<input checked="" type="checkbox"/> _____ Signature of Attorney Name of Attorney Firm (If any) Address Telephone No.	Date
PETITIONING CREDITORS		
Name and Address of Petitioner	Nature of Claim	Amount of Claim
<u>Republic Bank & Trust, 601 S Hurstbourne Ln, Louisville, K</u>	<u>Judgment</u>	<u>382,268.00</u>
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims <u>13,260,803.69</u>

0 continuation sheets attached

EXHIBIT E

United States Bankruptcy Court

NORTHERN District Of MISSISSIPPI

In re Donald R. DePriest Debtor* Case No. 14-13522-JDW Chapter 7

SUMMONS TO DEBTOR IN INVOLUNTARY CASE

To the above named debtor:

A petition under title 11, United States Code was filed against you in this bankruptcy court on 9/19/14 (date), requesting an order for relief under chapter 7 of the Bankruptcy Code (title 11 of the United States Code).

YOU ARE SUMMONED and required to file with the clerk of the bankruptcy court a motion or answer to the petition within 21 days after the service of this summons. A copy of the petition is attached.

Address of the clerk: U. S. Bankruptcy Court Thad Cochran U. S. Bankruptcy Courthouse 703 Hwy 145 North Aberdeen, MS 39730

At the same time, you must also serve a copy of your motion or answer on petitioner's attorney.

Name and Address of Petitioner's Attorney: John W. Crowell P.O. Box 1827 Columbus, MS 39703

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 1011(c).

If you fail to respond to this summons, the order for relief will be entered.

Date: 9/23/14 By: AOH (Deputy Clerk) s/ David J. Puddister (Clerk of the Bankruptcy Court)



* Set forth all names, including trade names, used by the debtor within the last 8 years. (Fed. R. Bankr. P. 1005).