

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

In the Matter of)	
MARITIME COMMUNICATIONS/LAND	)	WT Docket No. 13-85
MOBILE, LLC, DEBTOR-IN-POSSESSION	)	FCC File No. 0005552500
Application to Assign Licenses to Choctaw)	
Holdings, LLC)	
)	
MARITIME COMMUNICATIONS/LAND	)	FCC File Nos. 0004153701 and 0004144435
MOBILE, LLC)	
Applications to Modify and to Partially Assign)	
License for Station WQGF318 to Southern)	
California Regional Rail Authority)	
)	
Application for New Automated Maritime	)	FCC File No. 0002303355
Telecommunications System Stations)	
)	
Order to Show Cause, Hearing Designation	)	EB Docket No. 11-71 File No. EB-09-IH-
	)	FCC File Nos. 0004030479, 0004144435,
	)	0004193028, 0004193328, 0004354053,
	)	0004309872, 0004310060, 0004314903,
	)	0004315013, 0004430505, 0004417199,
	)	0004419431, 0004422320, 0004422329,
	)	0004507921, 0004153701, 0004526264,
	)	0004636537, and 0004604962

To: The Secretary, Attn: The Commission (docket 13-85), and ALJ Sippel (docket 11-71)

OPPOSITION TO PETITIONS FOR RECONSIDERATION- Errata Copy^[*]

The undersigned parties (“Skytel” and “we”) hereby file this opposition to the petitions for reconsideration of MCLM and Choctaw (sometimes herein together called “MCLM-Choctaw”), and of certain Applicants captioned in the HDO-OCS FCC 11-64 (the “HDO-OSC” or the “HDO”) including Dixie, Enbridge, and Shenandoah of the *MO&O*, FCC 14-133, released on September 11, 2014 (“the Order”). Herein, “MCLM” and “Maritime” each mean Maritime Communications/Land Mobile LLC, “13-85” and “11-71” mean the dockets listed above (and the background “petitions” of Skytel cited in the HDO challenging MCLM and the Applications), and “CII Companies” has the same meaning given in the Order.

[*] Deletions in *strikeout*. Additions in *dark red*. *Italics* added to some case cites.

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Summary

The above Contents sections provide a full summary due to the descriptions provided.¹

Part I - Common to Opposition to All MCLM and MCLM-Applicants' Reconsideration Petitions

1. Reference and Incorporation, and Joinder

The Undersigned hereby reference and incorporate herein ~~in opposition~~ the sections of the “Skytel-1” and “Skytel-2” petitions for reconsideration of the Order,² filed by Warren Havens, individually and as President of the respective filing entities, on 10/14/14 with the FCC (Errata versions filed on 10/15/14), that show why SCRRRA cannot get special relief from the hearing, since those same reasons apply to the CII Companies (see e.g. the Skytel-2 petition’s facts and arguments at its Sections II-VII and the Skytel-1 petition’s facts and argument at its Sections 2-6 and 8-9). It is most efficient for the Undersigned to reference and incorporate those two petitions for reconsideration since they are already in the subject dockets, 11-71 and 13-85. We also join in the material elements of the Opposition filed today by the Enforcement Bureau except to the extent, if any, that is in conflict with the instant filing.

2. MCLM is a Sham Entity As the Petitions Opposed Hereby Further Demonstrate, Engaged in Crime, and Its Request Should Be Dismissed and the Persons Responsible Prosecuted by the FCC and DOJ, and Attorney-Client Privilege Disregarded, and the Applicants² Are Complicit. And Apparent Fraudulent Transfers Underlying the Bankruptcy and Choctaw Chapter 11 Plan and Second Thursday Request.

Skytel has previously shown in 11-71, and 13-85 that MCLM clearly is organized and operated as a sham entity. This is further shown herein including in the section on the Oliver

¹ By **reference to** CII entities and Applicants herein, we do not direct allegations at Puget Sound Energy. We refer to a longer discussion of this in our recent filing in 11-71 setting forth our exhibits and witnesses for the issue (g) hearing.

² Skytel-1 consists of Warren Havens, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation and Skytel-2 consists of Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and V2G LLC.

Phillips debt, shifted from Don Depriest to MCLM then kept there but also shifted back to Don Depriest to his bankruptcy 2 days after the Order was released. The CII entities, Applicants described above, as well as Choctaw, entered transactions with MCLM knowing (and not at all innocent of) the facts and arguments as to its wrongdoing since those were in the SkyTel petitions cited in the HDO-OCS that were the seminal cause of HDO-OCS and were adopted in the HDO-OCS. The transactions were entered to extract benefit from the wrongdoing and these actors are complicit therein.

The MCLM actions are serial violation of 18 USC §1001 et seq. crimes and also appear to be attempts at fraudulent transfers, to defraud the IRS: the assignments were entered at artificially depressed prices (grossly low as Skytel demonstrated with an accredited appraiser in the bankruptcy, as to the assignment to Choctaw) with the apparent intent of avoiding IRS and State taxes on over \$100 million in taxable income. Attorneys for MCLM that have carried this out and defend this are violating the legal profession bar on practice of law to support crime, and that breaks the attorney client privilege. The FCC should demand the relevant records from those attorneys.

See also footnote 3 below.

This has become a mockery of due process and extreme waste of Commission and Skytel resources and should be stopped, and prosecuted by the FCC and referred to the DOJ and IRS for their review. The failure of the FCC to dismiss the defective, deceitful MCLM short- and long- form applications in Auction 61 as required under its rules including section 1.2105 (as the full Commission explained the meaning of this rule- just how it reads, when adopting the rule [see the Skytel entities petitions for reconsideration of the Order citing this Commission explanation]) provided the fertile ground for this mockery and waste, and it is likely to continue until the FCC acts as we request herein and have requested since our challenges to those auction applications commenced about a decade ago.

We demonstrated in the MCLM bankruptcy under a Confidentiality Order with a well qualified professional appraiser and appraisal, which the court accepted, that the value of the MCLM licenses to be sold to Choctaw under the Chapter 11 Plan, if the FCC approves are well in excess of \$100 million. This will result in a tax gain to Choctaw of over \$100 million (the fair market value less what was paid – mainly the debt forgiveness) and to MCLM and its owners of something in the range of over \$10 million (the debt forgiveness which is gross income, less cost basis in the licenses). This requires, to pay the taxes, the sale of licenses not for innocent creditors, but to pay the tax on the windfall gains—if any Second Thursday or other special relief is granted to allow the Choctaw Chapter 11 Plan to be implemented. This is outside of the purposes and allowances of Second Thursday policy. This is a form of fraudulent transfer including since MCLM and Choctaw deliberately misstate to the FCC the value of the licenses, and the windfall, to get around the actual tax that will be due and to cheat the US Treasury.

Part II - Opposition to CII Entities' Reconsideration Petitions

3. CII Companies' Petitions are Procedurally Frivolous, Must Be Summarily Dismissed and Should be Sanctioned: As the Commission Explained, the HDO-OSC FCC 11-64 and Order Are Interlocutory Decisions in the Hearing, Not Subject to Reconsideration (Except Decision on the SCRRA Application on Removal from the Hearing)

Paragraph 35 of FCC 14-133 reads [footnotes omitted]:

As a procedural matter, we dismiss the petitions for reconsideration of Footnote 7 on the grounds that they are petitions for reconsideration of a hearing designation order, which is an interlocutory ruling. We disagree with the CII Companies' argument that their petition comes within the exception in Section 1.106(a)(1) of the Rules, allowing “[a] petition for reconsideration of an order designating a case for hearing [to] be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding.” Nothing in Footnote 7 limited the ability of the CII Companies to participate in the hearing. Requests to expand the scope of Footnote 7 are analogous to challenges to the designation of a question for hearing, which are interlocutory petitions that will not be entertained. It is nonetheless incumbent upon us, in response to their arguments in this docket, to explain why we are treating the CII Companies differently from SCRRA with respect to Footnote 7.

The Commission rightly found the CII Companies had no procedural right to file for reconsideration of Footnote 7 and the HDO, because the HDO is an interlocutory decision. Thus, CII Companies have no procedural right to file a further petition for reconsideration of the Order, **and** therefore, the CII Companies' petitions should be summarily dismissed. The CII Companies have their rights in 11-71 ~~64~~ and can participate. If they don't like the final decision in 11-71, then they can appeal that. Further, in 11-71 the CII Companies have been basically silent and have not been active parties in the litigation, apart from certain CII Companies responding to discovery when submitted to them. The CII Companies should not be permitted to take up further Commission time.

In addition, Shenandoah is not a party to 11-71 and thus it should be found not to have standing to file its petition and its motion to intervene at this late date should be rejected. Shenandoah decided to pursue a spectrum purchase with MCLM even though it was clearly aware of the HDO and 11-71 hearing at the time. Shenandoah could have requested to be party or intervene in 11-71 years ago, and be subject to appropriate discovery, but it did not and it should not be allowed to now at this late date.

Further, the CII companies lack Article III standing for the same reasons (among others) that MCLM and Choctaw lack this required standing as explained below.

4. Illegal Operation of MCLM Spectrum By CII Companies without a Lease, and for Unlawful PMRS Without Authority Granted under ¶20.9(b)

Any of the CII Companies that in their petitions are stating that they are using the MCLM spectrum under a lease (or have otherwise informed the FCC that they are operating on the MCLM spectrum), but where no lease has been filed or accepted in FCC ULS records covering the period of such operation, should be investigated for illegal operation and appropriately sanctioned, including sanctions of their FCC counsel who clearly knew that any operations under a lease have to be reported to the FCC by filing a lease application on the ULS system. Any use

of the MCLM spectrum prior to the FCC granting an assignment or a lease application being filed with the FCC via ULS, is unauthorized and illegal and the FCC should immediately require those entities to immediately cease all operations and to turn over all records of such operations, so that the extent of the illegal operation can be determined and appropriate action taken by the FCC. In addition, the use of the MCLM spectrum by the CII entities **lacks §20.9(b) authority**.

5. CII Companies Failed Showings Including that They Can Only Use AMTS or that they Are Especially Critical

The CII Companies still fail to show that they can only use AMTS spectrum to meet their wireless communications needs and that their only spectrum option is MCLM's spectrum. There are numerous utilities and gas and oil companies that have purchased spectrum around the country in various bands for deployment of systems, including some that have purchased spectrum from the other AMTS geographic licensees. There is no good reason why these CII Companies cannot pursue market rate transactions for other spectrum at VHF, 200, 400, 800, 900 MHz, etc. in their respective operating areas. ~~The Undersigned~~ **Skytel** believes the principal reason they still pursue the MCLM spectrum is because it was sold well below market value. The FCC should not reconsider its decision to assist commercial entities in getting cheap spectrum because the licensee (MCLM in this case) is in a distressed position.

Positive Train Control could use spectrum more suitable to short range communications, such as 400 MHz, 900 MHz, or 1 GHz or higher, and there is no reason that CII Companies must and can only use AMTS spectrum. In fact, they and other companies in their class **extensively** use a variety of spectrum for the same needs for which the CII entities suggest that must have AMTS. Therefore, the CII Companies should not be able to leverage any exceptional relief **extended** ~~granted~~ to SCRRRA for getting similar relief

Part 3 - MCLM- Choctaw Reconsideration Petitions

6. Second Thursday Decisions Are Discretionary and the Commission Should Deny a Second Try for Administrative Finality, Under Established Case Law

This is supported by the DC Circuit court decision in *La Rose v FCC*, 494 F.2d 1145 (1974), a Second Thursday and related relief requests case (emphasis added):

The Commission's reason for this latter action was stated to be the public interest in the finality of administrative decisions. Quoting from this court's decision in *Fischer v. Federal Communications Commission*, 135 U.S.App.D.C. 134, 417 F.2d 551, 555 (1969), in which we held that administrative agencies need not 'play games with applicants' who change plans only after failing to succeed in advancing more favorable proposals, the Commission observed that 'the Receiver would have us commence the entire process anew for the purpose of considering a different proposal At some point the administrative proceeding must be brought to a conclusion and we believe that point had been reached here.' 38 F.C.C.2d 1101 (1972).

* * * *

In most cases, the interests of administrative finality will suffice to support a Commission's discretionary decision to refuse to reconsider an earlier decision.

While in *La Rose*, the court afforded the petitioner certain relief, the principals stated above that apply “in most cases,” do apply in this MCLM-Choctaw case, where there is not even an non-tainted receiver or trustee involved in “play[ing] games...change[d] plans” and the like.

7. DePriest's Debt to Phillips was Largely Assumed by MCLM, Now Also Appears in Depriest's Bankruptcy, and Renders 'Second Thursday-Take 2' Impermissible

As the Undersigned already showed in their filings in 13-85 and in 11-71, Donald DePriest's debt to Phillips was largely assumed by MCLM pursuant to a settlement agreement signed by Donald DePriest, Oliver Phillips and Sandra DePriest for MCLM, and Phillips is a creditor in MCLM's Chapter 11 bankruptcy (See Exhibit 1 hereto that contains a copy of Oliver Phillip's Proof of Claim, which attaches various agreements between the DePriests, MCLM and other parties, including a copy of the just noted settlement agreement, and DePriest agreements to transfer to Phillips his interest in other companies, including another FCC licensee, Maritel, Inc.). Donald DePriest's personal debt that was assumed by MCLM, if eventually paid by MCLM, directly benefits Donald DePriest, and also Sandra DePriest because she is the alleged majority owner and controller of MCLM, both of who are among the wrongdoers in MCLM.

Furthermore, if Donald DePriest's personal debt can be moved over to MCLM, which is

allegedly solely owned by Sandra DePriest and not Donald DePriest (Sandra DePriest, Donald DePriest and MCLM have stated to the FCC and courts that MCLM is solely owned and controlled by Sandra DePriest, except for a smaller later amount they claim Fred Goad holds, but that Goad denies), then it shows that Donald DePriest and Sandra DePriest really have common property and that any debts owed by Donald DePriest are also shared by Sandra DePriest, and therefore MCLM.

In addition, the involuntary bankruptcy petition (contained at Exhibit 2 hereto) shows that Oliver Phillips is claiming his entire judgment amount of approximately \$9 million against DePriest, even though in the MCLM Chapter 11 Bankruptcy Oliver Phillips filed a proof of claim attaching a settlement agreement, as described above, in which that debt was reduced to around \$6 million and primarily assumed by MCLM (Exhibit 1 hereto). The Undersigned Skytel does not know how Phillips can have debt claims against MCLM, that are also against Donald DePriest, unless they are one and the same. At minimum, this is further evidence indicating that Donald DePriest and Sandra DePriest have common property, where the debts of Donald DePriest are the debts of MCLM (owned by Sandra) and vice versa.

Thus, the facts above show that Donald DePriest's personal bankruptcy and the MCLM bankruptcy are related bankruptcies and are both of Donald and Sandra Depriest, and that MCLM is not the sole property of Sandra Depriest as she and MCLM represented to the FCC (through the alleged-valid many corporate shells- literally shells, with no assets and functions: Communications Inc., and SRJW a transparently bogus limited liability partnership).³

³ A limited liability partnership does not exist in law without at least one limited partner and one different general partner. Use of legally invalid corporate structures, and lack of assets and legitimate business functions, are core elements of sham entities and operations in which the corporate veil should be pierced. Other elements are present in abundance also, including no defined officers, and shifting characterization of officers (Reardon alleged to be CEO and signed contracts with that title, but Sandra Depriest renounced that, yet allowed him to continue) and she and Don Depriest resort to using officer titles with lower case-titled letters to suggest they are only that role for a day or event, and to limited degrees, etc. MCLM lacks the minimum

8. Depriest's Financial Condition Is Part of the License Revocation and Licensee Disqualification Hearing for Which the Order Lifted the Stay, and Cannot be the Basis of Reconsideration

An element of the HDO-OSC is that Depriests must disclose financial information of their affiliates and of MCLM. They cannot use the alleged valid bankruptcy of Don Depriest to thwart this requirement of the HDO-OSC, and to substitute for FCC fact finding the assertions of creditors of Depriest or even actions of a bankruptcy court. This new bankruptcy is one more attempted evasion of FCC law enforcement.

9. MCLM and Choctaw Lack Article III Standing to Seek Reconsideration and the Commission Should Decline to Further Exercise Discretion, Including Since It Wastes Commission Resources and Damages Private Party Rights that Do Have Standing

For an entity to have the right to seek reconsideration, whether to the Commission or a reviewing Court, it must have and meet the burden of proving up Article III standing ("Standing"). See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). There are several reasons that MCLM-Choctaw do not have Standing.

First, an entity whose asserted interests are based on FCC discretion cannot meet that burden. *SunCom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386, 1388 (D.C.Cir. 1996).

In the HDO-OSC FCC 11-64, the Commission explained: "15. The Assignment Applications are subject to the Commission's Jefferson Radio policy... an exception... its Second Thursday doctrine, which permits the Commission, in the exercise of its discretion..."

MCLM and Chocktaw do not have Standing since it is fully within Commission discretion whether to apply any relief under the Second Thursday doctrine (even if that doctrine is not unlawful to begin with). Simply because the Commission decided to process and rule on the MCLM-Choctaw Second Thursday relief request, does not create standing. See *Paging*

formality, records, valid assets, and actions under law before government entities, to qualify as a legal entity to be respected as a legal entity separate from from the actors using it: the Depriests, Reardon, and Choctaw, with the Applicants along for the ride to benefit from the sham.

Systems Inc., *below*.

Second, a petitioner to a federal agency has standing only if a positive determination by the agency "would redress the particularized injuries" of the petitioner). *The Wilderness Society v. Norton*, 434 F.3d 584, 594, 369 U.S. App. D.C. 165 (D.C. Cir. 2006) (cited in the AMTS licensing case FCC-DA05-1099 on appeal in the *Per Curiam* Order in *In re: Paging Systems, Inc.*, Petitioner, Case No. 10-1051, US Court of Appeals, DC Circuit, filed December 16, 2010, 2010 U.S. App. LEXIS 25771). (MCLM supported Paging Systems Inc. in the underlying FCC proceedings.) MCLM-Choctaw have no "particularized injuries" since what they seek is relief from losses they may suffer if they do not succeed in defending what they assert as rightful licenses and licensee qualification, and bidding discount, in the first place. That is, they do not concede the case of the Commission in the HDO-OSC FCC 11-64 and thus maintain that they have nothing that should rightfully be lost. They seek, however, by a request under Second Thursday to avoid that defense. That fails to meet this redressibility prong of the threshold requirement of Article III standing.

MCLM has been afforded all its rights, and we believe far more,⁴ to hold licenses, lease and profit from them, extract from buyers up from payments of various kinds,⁵ *etc.* The Commission denied the Second Thursday request under its discretion and lifted the stay on the

⁴ See the Skytel-2 Group Petition for Reconsideration of the Order FCC 14-133 arguments regarding the MCLM geographic AMTS licenses being void *ab initio*. If this is correct, then all of the extensive rights afforded MCLM in a decade of holding licenses and going through legal proceeding before and after the HDO-OSC FCC 11-64 was issued, were improper boons to MCLM.

⁵ See the MCLM-Buyer spectrum asset purchase agreements ("APAs") public copies of which are in the records of the MCLM bankruptcy court case. The FCC is a party to that case. These APAs show that MCLM profited substantially already, by holding these licenses that should never have been granted in the first place and should be held to be void *ab initio*. MCLM personnel and attorneys benefited from this wrongful enrichment, and they are the ones that seek to continue it. MCLM management did not get a trustee to take over the company as debtor in possession, who may have stopped this, and acted properly and candidly before the FCC under applicable law.

hearing under the HDO-OSC FCC 11-64. MCLM now has full rights to defend in the hearing what it maintains to date: its rightful title to the licenses, its qualifications, rights to keep the bidding credit, etc. If it concedes those, it should not have asked for Second Thursday relief but had duties of candor **and** to turn in the defective licenses and accept sanctions. If it continues to maintain those, it has no Standing, and no other proper basis, to seek further Second Thursday relief.

Third, while the Policy has been the subject of court action and decision, that does not mean that Article III standing was raised therein by the Commission or Court and properly found (that does not appear to be the case by a search on Lexis), and even if it was found in some cases, it cannot be found in the MCLM-Choctaw case for that reasons above and that follow.

Unlike in other Second Thursday cases, MCLM-Choctaw have not proven up or even attempted to show the threshold elements to make a case under the Policy: who are the wrongdoers and who are innocent creditors. That is not for them to merely suggest or for a bankruptcy court to determine: only the FCC can make these threshold determinations under its Policy. Instead, in this case, MCLM “wants it all ways possible,” none of which involve threshold Standing but which show lack thereof and great waste of Commission resources:

- (i) first, it got a stay of the very hearing in which it could have tried to prove up, for FCC findings, the wrongdoers and any innocents,
- (ii) then it sought relief under the Policy on the basis of self-serving suggested wrongdoers and innocents on *tentative or informal basis* (vs. ‘(iv)’ below),
- (iii) through the above, it kept control in the bankruptcy and in seeking relief under the Policy in the persons suggested as the wrongdoers (that clearly lack credibility before the Commission shown in the HDO-OSC FCC 11-64) that were funded from the start of MCLM to this day by the alleged innocents (now called Choctaw) with security in the licenses that from the start were subject to SkyTel entities’ petitions (**under the licenses on ULS**) showing the wrongdoing, and

- (iv) in all the above, it maintains its *formal* innocence of any wrongdoing which is why the Order lifted the stay—to proceed with the hearing in which that will be tested and decided.

MCLM cannot assert any sort of rights to Policy relief when, by these series of actions and positions, it does not define and show threshold facts by which the Policy can even be applied, and since it formally maintains that its licenses, qualifications, and bidding credits are valid, it has no injury it can assert for Article III standing or to seek reconsideration from the Commission of the Order under the Policy.

As the DC Circuit Court found, “In most cases, the interests of administrative finality will suffice to support a Commission's discretionary decision to refuse to reconsider an earlier decision....” ⁶ in the Second Thursday *decision La Rose (see § 6 above)*.

This discretionary Policy, under broad powers the Commission asserts, cannot be used to damage established rights of parties that do have Article III standing ~~to protect them~~.⁶ In this case, the Skytel entities that were the lawful high bidders in Auction 61 to the licenses awarded to MCLM clearly have concrete rights and injury and the other Article III Standing elements at issue. Their petitions to deny, for reconsideration, and for a ~~in~~ application for review, preceded by years the MCLM bankruptcy and demonstrate their Standing. Those petitions were also procedurally sound. The Commission has no discretion to not rule under those petitions still pending, but to instead to rule on and grant relief under the Policy under discretion for MCLM-Choctaw, and ~~grant~~ **assign** the licenses to parties that did not place lawful high bids or any bids in the auction ~~since they~~ but fund ed the company that cheated in the auction. There is no Commission or court decision under the Policy that allows this. What does apply in this case is these FCC and Supreme Court decisions:

Throughout exceptors' arguments there is the recurring theme that failure to renew

⁶ We question whether the Policy itself is valid exercise of Commission power, given the ruling of the Supreme Court in *WOKO*, cited ~~above~~ **below**.

the license herein will "punish" certain creditors, stockholders, and employees, who were innocent of any wrongdoing, yet will fail to punish those individuals who have already disposed of their interests and who will not be affected regardless of the disposition of these proceedings. They contend that since the object of the proceeding (i.e., punishment) cannot be achieved, or, if achieved, will affect the wrong persons the entire matter should be terminated. This contention was considered and rejected in WOKO, n3 where the Supreme Court stated: n3 WOKO v. FCC, 329 U.S. 223 at 228, 91 L. Ed. 204, 67 Sup. Ct. 213 (1946).

It also is contended that this order inflicts a penalty, that the motive is punishment and that since the Commission is given no powers to penalize persons, its order must fall. We think it unnecessary to indulge in the exposition of what a penalty is. It is enough to decide this case to know what a penalty is not. A denial of an application for a license because of the insufficiency or deliberate falsity of the information lawfully required to be furnished is not a penal measure. It may hurt and it may cause loss, but it is not made illegal, arbitrary, or capricious by that fact.

While the consequences to innocent persons may be unfortunate, it is a fate common to many who associate themselves in business enterprises with persons who are lacking in the affirmative qualifications necessary to be a broadcast licensee. Conversely, persons found unfit to be licensees should not be allowed to continue to hold their licenses by associating themselves with persons whose conduct *may be* above reproach.

In Re Wallerstein, Receiver, 1 F.C.C.2d 91; 1965 FCC LEXIS 390 (1965), citing *WOKO v FCC*, 329 U.S. 223 at 228 (1946) (emphasis added).

Since MCLM-Choctaw have no Article III Standing, they cannot appeal to the DC Circuit Court any ruling they do not like on the initial or any new request under the Policy including in the subject MCLM-Choctaw Recon. The U.S. Constitution Article III, § 1, limits the federal courts to deciding "cases" and "controversies." The U.S. Supreme Court has long recognized that this limitation means that the federal courts cannot exercise jurisdiction over cases where an essential party lacks Standing. That holds even where the FCC or other agency exercised discretion to make a ruling within the agency such as in this case. See the *Suncom* and *Paging Systems Inc.* cited above: in both of those cases, the FCC exercised discretion and denied, with reasons given, requests for extraordinary relief by the petitioners, but when they appealed to the court, the court dismissed for lack of Standing since it lacked jurisdiction.

For the above and other reasons, as shown in this filing and in the Skytel-1 group Petition for Reconsideration and the SkyTel-2 group Petition for Reconsideration, the Commission should dismiss the MCLM and Choctaw petitions for reconsideration of FCC 14-133 for lack of Standing and other good causes, and allow MCLM to pursue in 11-71 the path it chose – to maintain its claims to the licenses, its qualifications, the bidding credit, etc.

10. The Second Thursday "Doctrine" is Vague Law Insufficient to Create Any Rights or Expectation of Relief, It Is Not Separate from the Mandate Under 47 USC §310(d), and It Must Consider Parties with Direct Interest in the Subject Spectrum Licenses

This is discussed by the DC Circuit court in *La Rose v FCC*, 494 F.2d 1145 (1974) (emphasis added): *Skytel has the direct interests as underlined below.*

...[T]he unclear state of the FCC Second Thursday doctrine itself. As a receiver, appellant LaRose was an officer of the court.... [T]he Second Thursday doctrine hardly held up a beacon of clarity that definitively foretold the Commission's disposition.... Application of Second Thursday requires an ad hoc balancing
* * * *

In most cases, the interests of administrative finality will suffice to support a Commission's discretionary decision to refuse to reconsider an earlier decision....
* * * *

...[W]e remand the case to the Commission with directions to consider whether the proposed sale and assignment of such license to appellant Swaggart would promote the 'public interest, convenience, and necessity,' 47 U.S.C. 310(b).

...[I]n Second Thursday,...[t]he broad question, therefore, would seem to be whether the public interest would best be served by permitting the **receiver** to...dispose of the asset. Like most FCC license determinations, this question would require evaluation of a number of factors, e.g., ... the existence of other parties who seek construction permits for the same or overlapping frequencies and the relative merits of their applications....

11. MCLM and Choctaw New Facts and Information Spuriously Filed Confidentially

Insofar as the MCLM and Choctaw petitions rely upon facts that are redacted and provided only confidentially to the Commission, the Undersigned assert that their petitions are defective and those facts should be disregarded. Docket 13-85 is a public docket and MCLM and Choctaw are relying upon facts for reconsideration that they assert the public cannot see. Thus, they have

effectively eliminated the public's ability to fully address and oppose their petitions. The Undersigned reserve the right to amend and supplement this opposition if they eventually obtain the confidentially filed facts via a FOIA request.

12. MCLM and Choctaw Attempt to Amend the Assignment Application with New Facts is Too Late and Impermissible

By their asserted new facts, MCLM and Choctaw are trying to get a second bite of the apple, but their attempt is untimely and not permitted in a petition for reconsideration. What MCLM and Choctaw are attempting to do is a major amendment of their assignment application, but without filing such an amendment, because they want to avoid the application having to go back out on Public Notice and be subject to challenges and another proceeding. MCLM cannot get its assignment application to Choctaw granted without the FCC granting *Second Thursday* relief and they are now changing the basis for that relief, but without doing a major amendment of their assignment application. The Undersigned assert that the MCLM and Choctaw "new" facts cannot be used in a petition for reconsideration, but would have to be included as part of a major amendment to their pending assignment application.

13. Information Previously Known to MCLM But Not Presented Timely Should Be Barred

Any information that MCLM files in support of its petition that it could have previously presented timely in 13-85, but it did not, should be barred and ignored. See e.g. the MCLM petition at its page 6 and footnote 6. One of the recurring themes with MCLM before the FCC is its failure to accurately disclose relevant information in a timely fashion.

14. Disclosure of Gross Revenues Still Required

The Order lifted the stay on disqualification and revocation issues in the HDO. One of the prime reasons for the HDO and hearing in 11-71 is because the DePriests did not accurately disclose their affiliates and the revenues of their affiliates they controlled, and possibly other affiliates. The DePriests' and their affiliates will have to provide accurately all of their gross

revenues information in the 11-71 hearing, unless MCLM gives up in the hearing. The involuntary bankruptcy filed against DePriest cannot stay the 11-71 hearing and MCLM's requirement to disclose what revenues the DePriests and their affiliates had during the relevant periods.

///

Respectfully submitted, Tuesday October 24, 2014

/s/

Warren Havens, Individually and as President of
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Environmental LLC
Environmental-2 LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC
Skybridge Spectrum Foundation *

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* For purposes of this proceeding, Skybridge Spectrum Foundation agrees to accept service at the above address.

Declaration

I declare under penalty of perjury that the facts in the foregoing filing are true and correct to the best of my knowledge.

/s/ Electronically submitted. Signature on file.

Warren Havens

October 24, 2014

Certificate of Service ^[*]

The undersigned certifies that he has on this 24th day of October 2014, caused to be served, by first-class United States mail, a copy of the foregoing filing to: ⁷

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^[*] This Errata Copy is served as described in this Certificate but on 10-25-14.

⁷ The mailed copy 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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