

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

ACCEPTED/FILED

OCT 24 2014

Federal Communications Commission
Office of the Secretary

In re)
)
MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)
)
Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio)
Services)
)
and)
)
CHOCTAW HOLDINGS, LLC)
)
Applicant for Assignment of Various)
Authorizations in the Wireless Radio Services)

WT Docket No. 13-85
FRN: 0013587779
Application File No. 0005552500

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To: Marlene H. Dortch, Secretary
Attention: The Commission

**ENFORCEMENT BUREAU'S OPPOSITION TO
MCLM AND CHOCTAW PETITIONS FOR RECONSIDERATION**

1. On January 23, 2013, Maritime Communications/Land Mobile, LLC (MCLM) and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, Choctaw) submitted to the Chief, Mobility Division, Wireless Telecommunications Bureau (Wireless Bureau), an application for Commission consent to the assignment of certain geographic and site-based Automated Maritime Telecommunications System licenses from MCLM to Choctaw.¹ Accompanying this application was MCLM's and Choctaw's request for extraordinary relief pursuant to the Commission's *Second Thursday* doctrine (*Second Thursday* Submission).² On

¹ See Application, on FCC Form 603, File No. 0005552500, submitted to the Wireless Bureau on January 23, 2013.

² See Application and accompanying Description of Transaction, Public Interest Statement and *Second Thursday* Showing submitted to the Wireless Bureau on January 23, 2013 (*Second Thursday* Submission).

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September 11, 2014, the Commission denied MCLM's and Choctaw's request for *Second Thursday* relief.³ In particular, the Commission found that MCLM and Choctaw failed to demonstrate that Donald DePriest, one of the individuals suspected of misconduct, “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.”⁴ On October 14, 2014, MCLM and Choctaw filed petitions for reconsideration of the Commission's Memorandum Opinion & Order.⁵ Pursuant to Section 1.106(g) of the Commission's rules,⁶ the Chief, Enforcement Bureau (Bureau), by his attorneys, herein submits the Bureau's opposition to MCLM's and Choctaw's petitions for reconsideration.

ARGUMENT

I. An Involuntary Petition for Bankruptcy Against Donald DePriest Does Not Warrant The Commission's Reconsideration Of Its Memorandum Opinion & Order

2. MCLM and Choctaw assert that the Commission should reconsider its Memorandum Opinion & Order and MCLM's and Choctaw's request for *Second Thursday* relief because Donald DePriest is “judgment-proof” as a result of the recent filing of an Involuntary Petition with the U.S. Bankruptcy Court for the Northern District of Mississippi (Bankruptcy Court) against Donald DePriest.⁷ In particular, Choctaw argues that because the Bankruptcy Court will “discharge all of [Mr. DePriest's] personal liabilities, including the guarantees

³ *Maritime Communications/Land Mobile, LLC*, Memorandum Opinion and Order, FCC 14-133 (rel. Sept. 11, 2014) (Memorandum Opinion & Order).

⁴ *Id.* at 8, ¶ 20 (citations omitted).

⁵ See Petition for Reconsideration, filed by Maritime Communications/Land Mobile, LLC in WT Docket No. 13-85 on Oct. 14, 2014 (Maritime Petition); Petition for Reconsideration, filed by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, Choctaw) in WT Docket No. 13-85 on Oct. 14, 2014 (Choctaw Petition).

⁶ See 47 C.F.R. § 1.106(g).

⁷ See, e.g., Maritime Petition at 6, Choctaw Petition at 8.

associated with the MCLM bankruptcy,”⁸ and those MCLM creditors will not be able to collect on the guarantees, Mr. DePriest will not receive either a direct or indirect benefit should the Commission grant *Second Thursday* relief. In other words, MCLM and Choctaw argue that Mr. DePriest can receive no benefit from being relieved of the obligation to pay these guarantees when he will not be obligated, under the bankruptcy laws, to pay them in any case.

3. It is purely speculative, however, whether the Bankruptcy Court will in fact discharge Mr. DePriest’s obligations to pay the guarantees at issue. Mr. DePriest did not voluntarily file for bankruptcy.⁹ Rather, several of his creditors filed an involuntary petition which Donald DePriest still has the opportunity to oppose.¹⁰ Indeed, the Bankruptcy Court has not yet entered an order of relief subjecting Mr. DePriest to its control.¹¹

4. Even if the Bankruptcy Court were to later determine that Mr. DePriest is subject to its authority, the discharge of Mr. DePriest’s personal liabilities, such as the liabilities associated with the guarantees, is not automatic. Rather, the Maritime creditors to whom Mr. DePriest provided these guarantees can oppose the discharge of those liabilities.¹² Moreover, should the Bankruptcy Court determine that these guarantees are debts that were obtained by “false pretenses, a false representation, or actual fraud ...” Mr. DePriest’s liabilities associated with these guarantees will not be dischargeable as a matter of bankruptcy law.¹³ Thus, despite MCLM’s and Choctaw’s assertions to the contrary, it is not a forgone conclusion that the Bankruptcy Court will discharge Mr. DePriest’s personal guarantees and that his obligations related to those guarantees will be extinguished. As a result, there are no new facts that would

⁸ Choctaw Petition at 6-7.

⁹ See, e.g., Choctaw Petition at 8 and Exhibit D thereto.

¹⁰ See, e.g., Exhibit E to Choctaw Petition.

¹¹ See Docket Report for Case 14-13522, filed herewith as Exhibit 1.

¹² See, e.g., 11 U.S.C. § 727(c).

¹³ See, e.g., 11 U.S.C. § 523 (a)(2)(A).

warrant the Commission's reconsideration of its determination that Mr. DePriest will receive an indirect benefit valued at between \$8 million and \$11 million dollars should the Commission grant MCLM and Choctaw *Second Thursday* relief.

II. MCLM And Choctaw Offer No Additional Basis For The Commission To Reconsider Its Memorandum Opinion & Order

5. For the Commission to grant relief under the *Second Thursday* doctrine, it must be assured that the alleged wrongdoers – Mr. and Mrs. DePriest – “will either derive no benefits from favorable action on the application[] or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors.”¹⁴ Here, the Commission found that Donald DePriest stood to benefit from the proposed assignment of MCLM's licenses to Choctaw by being discharged from personal liability valued at between \$8 and \$11 million dollars.¹⁵ Balancing the interests of the innocent creditors against this benefit, the Commission denied MCLM and Choctaw *Second Thursday* relief.¹⁶

6. In their petitions for reconsideration, MCLM and Choctaw argue that when, as here, the Commission has identified the avoidance of secondary liability as the only benefit to an alleged wrongdoer from the proposed transaction, Commission precedent dictates finding in favor of the innocent creditors and granting *Second Thursday* relief.¹⁷ Yet, this is not the law. Indeed, there is no precedent – and neither MCLM nor Choctaw cites to any – that requires the Commission grant *Second Thursday* relief under such circumstances.

7. Rather, as the Commission acknowledged in its Memorandum Opinion & Order, it “has repeatedly recognized that the possible elimination or reduction of an alleged

¹⁴ *Second Thursday, Corp.*, 22 FCC 2d 515, 516, ¶ 5 (1970).

¹⁵ See, e.g., Memorandum Opinion & Order at 10, ¶ 23.

¹⁶ See, e.g., *id.*

¹⁷ See, e.g., Maritime Petition at 3-4; Choctaw Petition at 11.

wrongdoer's secondary liability may outweigh the interest in protecting innocent creditors and thus preclude *Second Thursday* relief.¹⁸ In light of this precedent and the record before the Commission on MCLM's and Choctaw's request for *Second Thursday* relief, the Commission was well within its discretion to deny the requested relief. Neither MCLM nor Choctaw have presented any basis to suggest otherwise.

8. Moreover, despite the fact that both MCLM and Choctaw urge the Commission on reconsideration to favor the interests of the innocent creditors, neither MCLM nor Choctaw offers any additional evidence to demonstrate how granting their request for *Second Thursday* relief would benefit Maritime's creditors other than the four who formed Choctaw (the Choctaw Creditors).¹⁹

9. As the Bureau noted in its Comments, Commission policy generally prohibits the transfer of a license in the face of unresolved questions about the licensee's basic character qualifications to hold a license.²⁰ The Commission carved out a narrow exception to this general prohibition when a licensee is bankrupt, and when certain other requirements are satisfied, in order to protect the interests of innocent creditors.²¹ Therefore, before granting *Second Thursday* relief, the Commission must be assured that the proposed transaction benefits innocent creditors. In all other cases in which the Commission has granted *Second Thursday* relief, this was a relatively simple analysis because the bankruptcy trustee or receiver requested approval of a

¹⁸ Memorandum Opinion & Order at 9, ¶ 22; see also *Second Thursday*, 25 FCC 2d 112, 114, ¶ 6 (1970) (when alleged wrongdoer would be relieved from paying 80% of accounts he guaranteed, it is "a benefit which must be considered in determining whether the public interest will be served by a grant of the applications pending before us"); *MobileMedia Corp.*, 14 FCC Rcd 8017, 8023, ¶ 21 (1999) (recognizing that the Commission examines a variety of factors in determining whether to grant *Second Thursday* relief including whether suspected wrongdoers are likely to receive an indirect benefit such as reduction of liability).

¹⁹ See, e.g., First Amended Plan of Reorganization (Plan), dated September 25, 2012, as confirmed by the Bankruptcy Court, submitted as Exhibit 2 to Comments of the Enforcement Bureau on MCLM and Choctaw's *Second Thursday* Submission, filed in WT Docket No. 13-85, on May 9, 2013 (Bureau's Comments), at 8, 10.

²⁰ See Bureau's Comments at 6-7; *Jefferson Radio Company v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

²¹ See *Second Thursday Corp.*, 22 FCC 2d 515 (1970).

transaction that would assign the licenses at issue to a third party who had agreed to acquire the bankrupt entity's assets for a specified purchase price.²² The proceeds from this "sale" of the assets were then used to repay any innocent creditors.²³

10. Here, Choctaw has not offered to purchase MCLM's assets for a specified upfront cash payment that in turn would be used to pay the remaining MCLM creditors. Instead, Choctaw has agreed only to acquire MCLM's licenses, previously valued at \$45.2 million,²⁴ in full satisfaction of the *Choctaw Creditors'* claims,²⁵ which amount to approximately \$15 million,²⁶ and then, consistent with MCLM's Plan of Reorganization (Plan), to act as a broker to sell some or all of the licenses to repay the remaining creditors an unspecified amount within an unspecified period of time.²⁷ Thus, while it is evident that the proposed assignment of MCLM's licenses to Choctaw would immediately benefit the Choctaw Creditors by providing them with licenses worth well beyond the amount they are owed, MCLM's other creditors would be repaid only if Choctaw subsequently sells the licenses to third parties.²⁸

²² See, e.g., *In re Eddie Floyd*, 26 FCC Rcd 5993, 5995 ¶ 6 (MB 2011) (proceeds of the sale of the station distributed to creditors); *Family Broadcasting, Inc.*, 25 FCC Rcd at 7595 ¶ 12 (2010) ("Under the Plan, Family's creditors will receive 100 percent of the purchase price paid by Caledonia ..."); *In re Litton*, 22 FCC Rcd 641, 646 ¶ 3 (2007) (using purchase price for the stations to reduce the bankrupt entities' obligations); *KOZN FM Stereo 99 Ltd.*, 6 FCC Rcd 257, 257 ¶ 6 (1991) (sale proceeds of \$250,000 available to pay \$280,000 in total claims); *Cosmopolitan Enterprises, Inc.*, 73 FCC 2d 700, ¶ 14 (1979) (purchase price applied to pay creditors' claims); *Hertz Broadcasting of Birmingham, Inc.*, 57 FCC 2d 183, 184 ¶ 3 (1976) (purchase price distributed to creditors).

²³ See *supra* note 22.

²⁴ See Exhibit A-Pt. 1, Schedule B to Third Amended Disclosure Statement for Maritime Communications/Land Mobile, LLC, dated September 25, 2012, submitted as Exhibit 9 to the Bureau's Comments, at 6 of 32. As the Bureau noted in its Comments, it understands that Choctaw has a more recent valuation of MCLM's licenses. See Bureau's Comments at 11-12.

²⁵ See Plan (Exhibit 2 to the Bureau's Comments) at 10.

²⁶ See Choctaw's Reply Comments and Opposition to Petitions to Deny (Choctaw's Reply), filed in WT Docket No. 13-85, on May 30, 2013 (Choctaw's Reply), at 18. Based on the Bureau's review of MCLM's bankruptcy filings, however, Choctaw's secured claims amount to \$15,045,204.33. See Plan (Exhibit 2 to the Bureau's Comments) at 9. Together with Mr. Trammell's unsecured claim, Choctaw's claims amount to \$15,181,204.88. See *id.*; Amended Summary of Schedules (MCLM's Amended Schedules), dated November 15, 2011, submitted as Exhibit 3 to the Bureau's Comments, at Amended Schedule F, at 19 of 29.

²⁷ See, e.g., Plan (Exhibit 2 to the Bureau's Comments) at 10-13.

²⁸ The Plan provides Choctaw with "*sole and absolute discretion*" to market and sell MCLM's licenses. *Id.* at 10 (emphasis added).

11. However, neither MCLM nor Choctaw presented sufficient details in their *Second Thursday* submissions concerning these proposed sales to third parties. Although Choctaw had stated in its filings before the Bankruptcy Court that it “has worked extensively to develop a comprehensive plan for marketing the FCC Licenses in an efficient manner which will repay all creditors in the most expeditious manner possible”²⁹ and has “developed a network of contacts and potential purchasers with ready interest in purchasing” MCLM’s licenses,³⁰ MCLM’s and Choctaw’s *Second Thursday* submissions failed to describe Choctaw’s marketing plan or any marketing efforts Choctaw has made or the results of any such efforts. They also failed to include any information about potential purchasers who are ready to purchase MCLM’s licenses and the prices they were willing to pay. They also did not identify any timeline for repayment to MCLM’s other creditors.

12. Neither MCLM nor Choctaw has provided any additional information in their petitions for reconsideration. Indeed, critical facts about Choctaw’s potential future sales of MCLM’s licenses and how they will benefit the remaining creditors still remain unknown. In particular, MCLM and Choctaw still have failed to identify (i) the total amount owed to MCLM’s remaining creditors; (ii) the current value of MCLM’s licenses; (iii) the identity of any potential buyers for MCLM’s licenses; and (iv) which of MCLM’s licenses Choctaw intends to sell and for how much.

13. As a result, the Bureau suggests there is still insufficient information in the record for the Commission even to assess whether *Second Thursday* relief is appropriate under these circumstances, let alone for the Commission to reconsider its Memorandum Opinion & Order.

²⁹ See Exhibit C-2 to Third Amended Disclosure Statement for Maritime Communications/Land Mobile, LLC (Amended Disclosure), dated September 25, 2012, submitted as Exhibit 4 to the Bureau’s Comments, at 3 of 5.

³⁰ See *id.*

CONCLUSION

14. For the foregoing reasons, MCLM and Choctaw's petitions for reconsideration should be denied.

Respectfully submitted,

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October 24, 2014

EXHIBIT 1

U.S. Bankruptcy Court
Northern District of Mississippi (Aberdeen)
Bankruptcy Petition #: 14-13522-JDW

Date filed: 09/19/2014

Assigned to: Judge Jason D. Woodard
Chapter 7
Involuntary
No asset

Debtor

Donald R. DePriest
510 7th Street North
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Filing Date	#	Docket Text
09/19/2014	<u>1</u> (3 pgs)	Chapter 7 Involuntary Petition. (Crowell, John) (Entered: 09/19/2014)
09/19/2014		Receipt of filing fee for Involuntary Petition (Chapter 7)(14-13522) [misc,invol7] (335.00). Receipt number 5194239, amount \$ 335.00. (U.S. Treasury) (Entered: 09/19/2014)
09/22/2014		Clerk's Notice of Adjustment (RE: related document(s) <u>1</u> Involuntary Petition (Chapter 7) filed by Petitioning Creditor Bank of New Albany, Petitioning Creditor Oliver L. Phillips, Jr., Debtor Donald R. DePriest, Petitioning Creditor ADECA, Petitioning Creditor Republic Bank & Trust). Due to software limitation error, this case name has been corrected to show only the Debtor. Entered on Docket by: (CAB) (Entered: 09/22/2014)
09/23/2014	<u>2</u> (2 pgs)	Involuntary Summons Issued on Donald R. DePriest. Entered on Docket by: (AOH) (Entered: 09/23/2014)
10/13/2014	<u>3</u> (5 pgs)	Certificate of Service of <i>Summons</i> Filed by John W. Crowell on behalf of Oliver L. Phillips, Jr. RE: (related document(s) <u>2</u> Involuntary Summons Issued). (Crowell, John) (Entered: 10/13/2014)
10/17/2014	<u>4</u> (2 pgs)	Notice of Appearance and Request for Notice / <i>Service</i> by Justin B. Little Filed by Justin B. Little on behalf of Bank of Vernon. (Little, Justin) (Entered: 10/17/2014)
10/20/2014	<u>5</u> (2 pgs)	Notice of Appearance and Request for Notice by Les Alvis Filed by Les Alvis on behalf of BancorpSouth Bank. (Alvis, Les) (Entered: 10/20/2014)

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CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 24th day of October, 2014, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MCLM AND CHOCTAW PETITIONS FOR RECONSIDERATION" to

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Chief Administrative Law Judge
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