

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

**CONSOLIDATED REPLY TO OPPOSITIONS TO  
CHOCTAW'S PETITION FOR RECONSIDERATION**

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CHOCTAW HOLDINGS, LLC**

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November 5, 2014

## SUMMARY

Choctaw seeks reconsideration of an *MO&O* denying Choctaw's request for relief pursuant to the *Second Thursday* doctrine. Choctaw's Petition demonstrated that 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. 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. 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.

Two parties oppose the requested reconsideration. Neither party, however, disputes that Mr. DePriest is judgment-proof. Nor does either party dispute that the *MO&O* was the first decision in the 40 years since *LaRose* to deny *Second Thursday* relief based solely on secondary liability benefits. Accordingly, Choctaw's Petition for Reconsideration should be granted.

Rather than refute the basis for reconsideration, the oppositions generally demonstrate a misunderstanding of the bankruptcy process, the Choctaw bankruptcy plan, and/or the *Second Thursday* criteria, and raise issues that are beyond the scope of the *MO&O* for which reconsideration is sought. These issues are addressed fully below.

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**CONSOLIDATED REPLY TO OPPOSITIONS**

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter “Choctaw”) hereby reply to Oppositions filed by the Enforcement Bureau and Warren Havens and various entities he controls (hereinafter “Havens”) against Choctaw’s Petition for Reconsideration.<sup>1</sup> As discussed below, the Oppositions fail to rebut the showing made in the Choctaw Petition. Choctaw thus urges the Commission to grant its Petition expeditiously.

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

The Commission decision denying *Second Thursday* relief presumed that Donald DePriest, an alleged wrongdoer in the pending hearing, would benefit from a grant of *Second*

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<sup>1</sup> See 47 C.F.R. § 1.106; Enforcement Bureau’s Opposition to MCLM and Choctaw Petitions for Reconsideration, WT Docket No. 13-85 (Oct. 24, 2014) (“Bureau Opposition”); Opposition to Petitions for Reconsideration, WT Docket No. 13-85 (Oct. 24, 2014) (filed collectively by Warren Havens and various entities he controls) (hereinafter “Havens Opposition”); Petition for Reconsideration filed by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, WT Docket No. 13-85 (Oct. 14, 2014) (“Choctaw Petition”). This Reply is being timely filed in response to the aforementioned oppositions that were served by mail. 47 C.F.R. § 1.4(h). Pursuant to Section 1.106(h), Choctaw is entitled to reply to each opposition. Rather than file separate 10 page replies to each Opposition, Choctaw is filing a consolidated reply that slightly exceeds 10 pages. To the extent such a pleading is deemed to exceed the 10 page limit, Choctaw respectfully requests a waiver.

*Thursday* relief because such relief would release him from certain loan guarantees made to various creditors.<sup>2</sup> The *MO&O* recognized, however, that no preclusive benefit is created if “the percentage of the liability when compared to the purchase price was extremely small<sup>3</sup> or ‘the wrongdoer’s debts would still exceed his assets’<sup>4</sup> such that the wrongdoer is ‘judgment-proof.’”<sup>5</sup>

Choctaw demonstrated in its Petition that it did not have an opportunity to address these issues previously because the *MO&O* “represents the first time the Commission has treated the solvency of a guarantor as a dispositive factor under *Second Thursday*.”<sup>6</sup> No party challenged this statement.

In response to the new standard, Choctaw provided detailed information demonstrating that Mr. DePriest is now judgment-proof because his liabilities grossly exceed his total assets. Again, no party challenged this showing.<sup>7</sup>

It is well settled that the release of a personal guarantee does not preclude *Second Thursday* relief where the guarantor is judgment-proof.<sup>8</sup> For example, the Commission granted

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<sup>2</sup> *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Memorandum Opinion and Order, FCC 14-133, ¶ 23 (rel. Sept. 11, 2014) (“*MO&O*”).

<sup>3</sup> *MO&O* at ¶¶ 22-23 & n.62.

<sup>4</sup> *Id.* at n.60.

<sup>5</sup> *Id.* at n.63 (quoting *LaRose v. FCC*, 494 F.2d 1145, 1149 (D.C. Cir. 1974)).

<sup>6</sup> Choctaw Petition at 5, n.18. Havens claims that information regarding Mr. DePriest’s financial condition could have been provided earlier and therefore should not form a basis for reconsideration. Havens Opposition at 16. Havens does not dispute, however, that the *MO&O* applied a new standard for the first time.

<sup>7</sup> The Havens Opposition does not challenge the fact that Mr. DePriest’s liabilities exceed his total assets but instead claims, without citation to any supporting legal authority, that the Commission cannot consider information submitted on this issue that has been classified as confidential. Havens Opposition at 15-16. The Commission’s rules expressly permit parties to seek confidential treatment of information provided to it and Choctaw exercised its rights under these rules. See 47 C.F.R. §§ 0.457, 0.459.

<sup>8</sup> See *MO&O* at nn.60 & 63 (quoting *LaRose*, 494 F.2d at 1149).

*Second Thursday* relief in *Pyle Communications*<sup>9</sup> even though the wrongdoer would be relieved of secondary liability because “the wrongdoer’s debts would still exceed his assets.”<sup>10</sup> 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.<sup>11</sup>

Given that no party has contested the showing that Mr. DePriest is judgment-proof, reconsideration should be granted on this ground.

## **II. *SECOND THURSDAY* RELIEF IS APPROPRIATE BECAUSE THE GUARANTEES WILL BE EXTINGUISHED IN BANKRUPTCY**

In addition to demonstrating that Mr. DePriest is judgment-proof, Choctaw argued that *Second Thursday* relief is appropriate because Mr. DePriest’s guarantees will be extinguished as part of an involuntary bankruptcy proceeding initiated by his creditors.<sup>12</sup> The Bureau argues that the involuntary bankruptcy proceeding does not warrant reconsideration because the status of the guarantees will be unknown until the bankruptcy process concludes.<sup>13</sup> Given the uncontested fact that Mr. DePriest’s liabilities grossly exceed his assets, it is a virtual certainty that his liabilities – including the guarantees – will be discharged as part of the bankruptcy process. The involuntary bankruptcy proceeding should be resolved quickly and Choctaw will update the Commission once it concludes. Thus, this issue remains a valid basis for reconsideration.

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<sup>9</sup> *Pyle Communications of Beaumont, Inc.*, 4 FCC Rcd 8625, 8626 (1989) (“*Pyle MO&O*”).

<sup>10</sup> *Id.*; see *MO&O* at n.60.

<sup>11</sup> *LaRose*, 494 F.2d at 1149; *MO&O* at n.63.

<sup>12</sup> Choctaw Petition at 9.

<sup>13</sup> Bureau Opposition at 2-4.

### III. THE ENFORCEMENT BUREAU'S DISCUSSION OF BENEFITS TO INNOCENT CREDITORS REFLECTS KEY MISUNDERSTANDINGS

The bulk of the Bureau's Opposition expresses concern that Choctaw has failed to demonstrate benefits to innocent creditors sufficient to justify *Second Thursday* relief.<sup>14</sup> This issue was not addressed in the *MO&O*<sup>15</sup> or in the Choctaw Petition. The arguments thus should be stricken.

The Bureau's Opposition reflects misunderstandings of the bankruptcy process, the Choctaw bankruptcy plan, and/or the *Second Thursday* criteria. Although the statements do not relate to matters discussed in the *MO&O*, Choctaw addresses these misunderstandings below to provide clarity in response to the Enforcement Bureau's concerns.

- **Misunderstanding 1 – “[D]espite 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).”<sup>16</sup>**

The *MO&O* did not consider benefits to creditors. Thus, Choctaw did not address the issue on reconsideration because it was not ripe to do so. Nevertheless, in an effort to accommodate the Bureau's desire for additional information, Choctaw provides the following overview of creditor benefits.

The First Amended Plan of Reorganization (“Reorganization Plan”), as confirmed by the United States Bankruptcy Court for the Northern District of Mississippi on January 11, 2013 and attached as Exhibit 1, was vigorously negotiated by a Committee of Creditors chaired by an attorney specializing in FCC law. The Plan *was voted on and approved by an overwhelming*

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<sup>14</sup> Bureau Opposition at 4-8.

<sup>15</sup> The *MO&O*'s *Second Thursday* analysis was limited to benefits to an alleged wrongdoer and did not address the remaining *Second Thursday* factors. See *MO&O* at n.56.

<sup>16</sup> Bureau Opposition at 5.

*majority of all creditors.* As the Bankruptcy Court Judge noted in his oral comments on approving 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 respect requirements of the law.”<sup>17</sup> The Reorganization Plan provides payment preferences and security for all of the innocent creditors, including the non-Choctaw creditors. In particular, the Plan (as modified by the Confirmation Order) provides for:

- A vehicle for full repayment of unsecured creditors.
- A preferential payment of the first \$600,000 in proceeds from any license sales to the unsecured creditors. This payment must be made before any distribution to Choctaw.
- The Implementation of an Independent Liquidating Agent, which was selected by counsel for the Creditors Committee. This Liquidating Agent will collect and distribute funds according to the Reorganization Plan, and ensure that Choctaw performs its obligations.
- The grant of a stock pledge in favor of the Liquidating Agent, which in effect makes the non-Choctaw creditors secured in the licenses.
- If the Liquidating Agent determines that Choctaw is not moving quickly enough to repay these other creditors, it may foreclose on the stock pledge and take control of Choctaw Holdings. This guarantees that the non-Choctaw creditors will be repaid quickly.<sup>18</sup>

There are several other items worth noting with respect to the Creditors and the Choctaw Plan. First, several individual creditors filed comments in support of the *Second Thursday* request in order to effectuate the Reorganization Plan proposed by Choctaw and approved by the

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<sup>17</sup> 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).

<sup>18</sup> Thus, although the Plan references Choctaw as having “sole and absolute discretion” to market and sell the MCLM licenses, the stock pledge ensures that Choctaw will work diligently to ensure creditors are repaid. *See* Bureau Opposition at 6, n.28.

Bankruptcy Court.<sup>19</sup> Second, despite the denial of relief in the *MO&O* after a delay of almost two years, not a single creditor (other than Warren Havens) has opposed the requested relief.

The creditors, through the Creditors Committee, negotiated at length for their own best interests.<sup>20</sup> By their votes and subsequent actions, they express continued belief in the fairness, equity, and integrity of the Plan. If the Enforcement Bureau is concerned about the Creditors as it claims,<sup>21</sup> it would support the relief they desire – relief that was approved by the Bankruptcy Court. As the Liquidating Agent has stated, “legitimate and impaired creditors are counting on this FCC proceeding to maximize the recovery on their claims.”<sup>22</sup>

- **Misunderstanding 2 – “[I]t 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, [but] MCLM’s other creditors would be repaid only if Choctaw subsequently sells the licenses to third parties.”<sup>23</sup>**

As noted above, the Reorganization Plan provides a stock pledge which in effect makes the non-Choctaw creditors secured in the licenses. If Choctaw does not act quickly enough to repay other creditors, they may take control of Choctaw by foreclosing on the stock pledge.

Thus, Choctaw must ensure that all creditors are repaid promptly.

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<sup>19</sup> See Reply Comments of Douglas C. Sellers, WT Docket No. 13-85 (May 29, 2013); Comments of James L. Teel, WT Docket No. 13-85 (May 29, 2013); Comments of Michael P. Dunn, WT Docket No. 13-85 (May 30, 2013).

<sup>20</sup> See Bankruptcy Hearing Transcript, *Maritime Communications/Land Mobile, LLC, Debtor*, U.S. Bankruptcy Court Northern District of Mississippi, Case No. 11-13463-dwh, at 199 (Nov. 15, 2012). The Liquidating Agent established pursuant to the bankruptcy proceeding stressed this point in a previous filing with the Commission. See Warren Averett, LLC, Objection to Petitions to Deny, WT Docket No. 13-85 at 2-3 (May 29, 2013) (“Liquidating Agent Comments”).

<sup>21</sup> Bureau Opposition at 5 (noting that *Second Thursday* is designed to benefit innocent creditors).

<sup>22</sup> Liquidating Agent Comments at 4.

<sup>23</sup> *Id.* at 6.

Moreover, as previously noted, the non-Choctaw, unsecured creditors receive a prepayment of \$600,000 of the first proceeds from the sale of licenses. Therefore, the most “immediate benefit” is not to Choctaw at all.

- **Misunderstanding 3 – “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.”<sup>24</sup>**

This issue was not addressed in the *MO&O* or in Choctaw’s Petition. Thus, it is beyond the permissible scope of an Opposition. Moreover, nothing in the *Second Thursday* test requires the submission of marketing materials. The Bankruptcy Court determined that the Choctaw plan was the best option for repaying innocent creditors; the Commission’s public interest mandate does not involve a *de facto* review of this determination. Such action would not be an accommodation of bankruptcy law.

Moreover, to avoid any potential premature transfer of control issues, Choctaw has been reluctant to engage in extensive marketing for licenses that it does not yet own. Choctaw, however, has gone to great expense to evaluate and keep up to date on the market in the event it becomes the licensee, but it has been very careful not to represent itself as the licensee. For example, Choctaw has kept in active touch with potential purchasers for licenses, which primarily include the rail transportation and public utility industries. Choctaw has identified approximately 30 potential buyers for the licenses.

The Congressional mandate for Positive Train Control (“PTC”) deadline is year-end 2015. For this reason, and due to the compatibility of the spectrum for PTC (as well as other safety and utility uses), there has been significant interest in the spectrum. There is perhaps no firmer indication of the potential marketability of the spectrum than the filings made to the Commission following the *Second Thursday* filing from various utility and railroad organizations

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<sup>24</sup> *Id.* at 7.

and businesses urging the Commission to either grant or otherwise allow for the sale of these licenses, both for economic and public interest purposes. All of this very clearly serves the public interest, and Choctaw is committed to working with railroads, utilities, and other potential buyers to that end.

- **Misunderstanding 4 – “Choctaw has [not] provided any additional information in the[] petition[] for reconsideration. . . . 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.”<sup>25</sup>**

The *MO&O* never addressed valuation, potential sales, or Choctaw's business plan.

Thus, it would have been inappropriate for Choctaw to address these issues in its Petition. It is just as inappropriate for the Bureau to raise these issues in their Opposition.

Nothing in the *Second Thursday* test requires the submission of this information. The Bureau appears to be seeking information so that it can evaluate the benefits to innocent creditors under the Choctaw Plan. The Bankruptcy Court, and the creditors by virtue of their overwhelming support for the Plan, already made this determination. As noted in *LaRose*, the Commission must “accommodate[] the policies of federal bankruptcy law with those of the Communications Act.”<sup>26</sup> Nothing in the Act or Commission precedent requires, or contemplates, a review of bankruptcy plans and benefits to creditors under such plans approved by a bankruptcy court.

Nevertheless, Choctaw provides the following clarifications in response to the Bureau's concerns. First, as noted in footnote 65 of the *MO&O*, MCLM's liabilities exceed \$31 million and that amount does not include the Commission's claim for \$6.3 million, the debtor-in-possession financing (currently totaling \$4.2 million) which continues to increase the debt while

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<sup>25</sup> *Id.*

<sup>26</sup> *LaRose*, 494 F.2d at 1146.

this matter remains pending, or the \$100,000,000 claim filed by Havens. Second, Choctaw notes the valuation during the bankruptcy process which set the value of the licenses at approximately \$45.2 million.<sup>27</sup> Third, other than the parties with pending transactions involving MCLM, Choctaw has no specific buyers lined up. As indicated above, however, Choctaw has kept abreast of the market and has identified approximately 30 potential purchasers.

- **Misunderstanding 5 – “[T]here is no precedent – and neither MCLM nor Choctaw cites to any – that requires the Commission grant *Second Thursday* relief” in this case.**<sup>28</sup>

Choctaw cited to the *LaRose* case where the United States Court of Appeals for the D.C. Circuit directed the Commission to “accommodate[] the policies of federal bankruptcy law with those of the Communications Act.”<sup>29</sup> Choctaw further noted that, “[i]n 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.”<sup>30</sup> It further cited *Hertz Broadcasting* where the Commission granted *Second Thursday* relief where the alleged wrongdoer would receive no direct benefit, but would receive an indirect benefit because he would be relieved from secondary liability associated with guarantees that exceeded the anticipated sale proceeds and amounted to nearly 90 percent of the total liabilities.<sup>31</sup> The Bureau’s Opposition never addresses *Hertz*, which constitutes precedent in support of a grant of *Second Thursday* relief here.

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<sup>27</sup> See Bureau Opposition at 6, n.24 (citing Schedule B to Third Amended Disclosure Statement in the bankruptcy proceeding).

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *LaRose*, 494 F.2d at 1146-47 n.2.

<sup>30</sup> Choctaw Petition at 11.

<sup>31</sup> *Hertz Broadcasting of Birmingham, Inc.*, 57 F.C.C.2d 183, 184 (1976).

#### IV. THE HAVENS OPPOSITION IS WITHOUT MERIT

The Havens Opposition rests on fallacies and misapprehensions regarding law and fact. The careless disregard the Havens Opposition displays in connection with the facts of this case is perhaps best demonstrated by its assertion that the value of the licenses in question are “well in excess of \$100 million” and the cavalier charge that MCLM and Choctaw have misrepresented the value of the licenses.<sup>32</sup> The Havens Opposition presents no empirical evidence to support this \$100 million figure, nor can it. There has been no independent appraisal of the value of the licenses and the Bankruptcy Court did not accept or endorse Mr. Havens’s own wildly optimistic valuations. The flawed theories put forward by Havens do not undermine the need for reconsideration in this case.

*A. Administrative Finality.* Citing to the D.C. Circuit’s venerable *LaRose* decision, Havens asserts that principles of administrative finality are a sufficient basis for the Commission to refuse to entertain the Choctaw Reconsideration Petition.<sup>33</sup> This argument is meritless because the *MO&O* at issue here is not final.

Moreover, Havens’s reliance on *LaRose* is inapposite; that decision does not support denying reconsideration. Although Havens quotes extensively from that decision, he fails to distinguish or refute the actual holding of that case.<sup>34</sup> There the court ruled that *finality was not a bar* to Commission reconsideration to accommodate bankruptcy law:

In most cases, the interests of administrative finality will suffice to support a Commission’s discretionary decision to refuse to

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<sup>32</sup> Havens Opposition at 5.

<sup>33</sup> *Id.* at 7-8, 13, 15.

<sup>34</sup> *Id.* at 8. Havens also uses his Opposition to address factors not considered in the MO&O. For example, he claims that *LaRose* does not support reconsideration because there is no “non-tainted receiver or trustee involved.” This claim does not relate to the sole *Second Thursday* issue addressed by the MO&O – whether Mr. DePriest would benefit if relief is granted. Indeed, this assertion is nothing more than an insult to the integrity of Liquidating Agent.

reconsider an earlier decision. *On the facts of this case they will not; and it was an abuse of discretion to refuse to reconsider renewal of the WLUX license and appellant LaRose's tendered proposal for its sale and assignment to appellant Swaggart.*<sup>35</sup>

The import of *LaRose* is clear – the Commission may not lawfully use administrative finality to “frustrate[] the public interests recognized in *Second Thursday*” and “deprive creditors of any significant recovery of the moneys they have advanced.”<sup>36</sup> As discussed in the Choctaw Petition, these principles clearly support reconsideration of the *MO&O*.

***B. The Phillips Debt.***

Havens incorrectly claims that Donald DePriest's debt to Oliver Phillips (“Phillips Claim”) was largely assumed by MCLM pursuant to a settlement agreement signed by Donald DePriest, Oliver Phillips, and Sandra DePriest for MCLM (the “Settlement Agreement”).<sup>37</sup> A review of the Phillips Claim reveals that Mr. DePriest owed a sum in excess of six million dollars to Mr. Phillips under the Settlement Agreement. It provides that equity distributions to the members of MCLM (if made) would be paid to Mr. Phillips to reduce that obligation. The Settlement Agreement also provides for the offer of certain warrants for equity interests in MCLM. The Settlement Agreement may create an interest in the equity of MCLM for Mr. Phillips, but nothing in it constitutes an assumption by MCLM of Mr. DePriest's obligation to Phillips nor does it create any liability for MCLM. Because of the MCLM bankruptcy, there will be no equity distributions to the DePriest's, which makes the Phillips Claim worthless.

Mr. Phillips was entitled under bankruptcy law, however, to file a claim against MCLM. Under the Bankruptcy Code and the plan confirmed in this case, however, only “allowed” claims

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<sup>35</sup> *LaRose*, 494 F.2d at 1150 (emphasis added).

<sup>36</sup> *Id.*

<sup>37</sup> Havens Opposition, Exhibit 1.

shall be paid.<sup>38</sup> Because the plan in this case specifically provides that holders of equity interests shall not receive any distribution, the Liquidating Agent and Debtor likely will object to the claim as inconsistent with the plan approved by the court.<sup>39</sup> Once an objection is lodged, the Phillips Claim should be disallowed.

In any event, the Phillips Claim has no relevance to the *MO&O* and Choctaw's Petition. Accordingly, Havens arguments regarding this issue should be stricken.

**C. Standing.** Havens also fabricates an elaborate argument to the effect that Choctaw lacks standing to seek reconsideration.<sup>40</sup> This argument is specious. Choctaw has an indisputable statutory right to petition for reconsideration of the *MO&O* under section 405(a) of the Communications Act of 1934, as amended.<sup>41</sup> Section 405(a) expressly provides that a petition for reconsideration may be filed either by (1) a party to the proceeding, or (2) "any other person aggrieved or whose interests are adversely affected by" the underlying decision.<sup>42</sup> As one of the applicants, it is beyond dispute that Choctaw is a party to this proceeding and that it is aggrieved by the Commission's denial of its applications and the waiver request.<sup>43</sup>

**D. Major Amendment.** Havens next asserts that the information regarding the DePriest bankruptcy was improperly filed in connection with the Choctaw Petition and should have been

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<sup>38</sup> "Allowed" is a term of art in bankruptcy and refers to the process set forth in Sections 501 and 502 of the Bankruptcy Code whereby parties file proofs of claims which are deemed allowed and thus payable until such time as another party objects. Havens also filed a \$100,000,000 claim in the MCLM bankruptcy proceeding.

<sup>39</sup> The Confirmation Order specifically provided that the Debtor and Liquidating Agent retain the right to object to claims "through and including 90 days following the first FCC approval of the transfer of any FCC Licenses to Choctaw and Holdings." See Confirmation Order at 8.

<sup>40</sup> Havens Opposition at 10-15.

<sup>41</sup> 47 U.S.C. § 405(a).

<sup>42</sup> See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Timothy E. Welch, 21 FCC Rcd 692, 693 (MB 2006).

<sup>43</sup> Havens's citations to Article III of the Constitution of the United States of America is irrelevant with respect to standing to seek Commission reconsideration of the *MO&O*.

included as part of a major amendment to the underlying applications.<sup>44</sup> Havens provides no citation in support of this extraordinary assertion, nor can he. Mr. DePriest is not a party to the applications and changes to his financial status do not require a modification to the applications. While the DePriest bankruptcy information negates the basis for Commission's denial of *Second Thursday* relief, it is not a filing designated as major under the Commission's rules.<sup>45</sup>

### CONCLUSION

For the foregoing reasons, the oppositions to Choctaw's Petition do not justify denial of reconsideration. Given the new facts and the long-recognized importance of accommodating bankruptcy law and protecting innocent creditors, Choctaw continues to seek a prompt grant of *Second Thursday* relief on reconsideration.

Respectfully submitted,  
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November 5, 2014

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<sup>44</sup> Havens Opposition at 16. Havens further claims that the DePriests must disclose their gross revenues. *Id.* at 16-17. This is not a proper issue for this proceeding. Havens himself admits that this question is at issue in the hearing in WT Docket No. 11-71. *Id.*

<sup>45</sup> See 47 C.F.R. § 1.929(a) (setting out categories of applications that are major actions).

**CERTIFICATE OF SERVICE**

I, AJ Reust, do hereby certify that on this 5<sup>th</sup> day of November 2014, the foregoing Consolidated Reply to Oppositions to Choctaw's Petition for Reconsideration was filed via ECFS and was served by email and first class mail, postage prepaid, on the following persons:

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**EXHIBIT 1**

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**MARITIME COMMUNICATIONS/LAND MOBILE, LLC**

**Debtor**

**CHAPTER 11**

**CASE NO. 11-13463-DWH**

**ORDER CONFIRMING PLAN OF REORGANIZATION**

THIS CAUSE came on to be heard at a hearing on confirmation on November 14 and 15, 2012, of the *First Amended Plan of Reorganization* (the "Plan"), attached hereto as Exhibit A' [DK #669], the responses and/or objections thereto of Atlas Pipeline Mid-Continent LLC ("Atlas"); Denton County Electric Cooperative, Inc. d/b/a CoServ Electric ("CoServ"); Matagorda County ("Matagorda"); Collateral Plus Fund I, R. Hayne Hollis III, Patrick B. Trammell and Watson & Downs, LLC ("Collateral Plus"); Council Tree Investors, Inc. ("Council Tree"); Warren Havens, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Intelligent Transportation & Monitoring LLC, and Telesaurus Holdings GB LLC ("Skytel"); the United States on behalf of the Federal Communications Commission ("FCC"); the United States Trustee (the "UST"); and Crown Castle South, LLC ("Crown Castle"); and the Response to the United States Objection to Debtors' First Amended Plan of Reorganization by Southern California Regional Rail Authority ("SCRRA"); the Court having heard and considered the Plan, evidence and arguments of counsel in support of, and in opposition to the Plan, and being otherwise advised in the premises, is of the opinion that the Plan should be confirmed as set forth herein and in the Court's bench opinion delivered on the record at the conclusion of the hearing

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<sup>1</sup> Except as provided herein, all terms used shall have the meaning assigned in the Plan.

(the "Bench Opinion"), and subject to the terms and conditions of this order. The Court does hereby find, order, and adjudicate as follows, to-wit:

1. Notice and a hearing were adequate and appropriate under the circumstances.
2. The Court has jurisdiction of the subject matter herein and the parties hereto. This is a core proceeding.
3. The Court incorporates herein by reference its Bench Opinion as if set forth in full herein.
4. The classification of Claims in the Plan is based upon a substantial similarity of all Claims in each such class, is reasonable and was made in good faith, and was not made for the purpose of affecting the vote in such class or for any improper purpose.
5. The solicitation for acceptances of the Plan was conducted in good faith and in a thorough manner, pursuant to this Court's prior order, was made of all creditors, gave all such creditors a fair and adequate opportunity to accept the Plan and was in compliance with Section 1129 of the Bankruptcy Code. As previously determined by this Court, the Disclosure Statement which was submitted by the proponent of the Plan to all creditors contained adequate information as required by Section 1125 of the Bankruptcy Code.
6. The credible evidence embraced all the facts relevant to the Plan and addressed all the prerequisites to confirmation imposed by Section 1129 (b) of the Bankruptcy Code.
7. The Plan has been rejected by no Classes and affirmatively accepted by Classes 1, 2, 3, 5, 7, and 9. At least one of the classes accepted the Plan without including the acceptance of any insider.
8. The Plan, as modified herein, complies with the applicable provisions of 11 U.S.C. §1129 in that:

- (a) The Plan, as modified herein, complies with the applicable provisions of Title 11 of the United States Code;
- (b) The proponent has complied with all applicable provisions of Title 11 of the United States Code;
- (c) The Plan has been proposed in good faith and not by any means forbidden by law;
- (d) All payments to be made by the Debtor or any other party provided for in Section 1129(a)(4) of the Bankruptcy Code for services, or for costs and expenses and/or in connection with this case either have been approved, or are subject to the approval, by this Court as reasonable;
- (e) The proponent has disclosed the identity of any insiders who would be employed or retained by the Debtor and their compensation;
- (f) Each holder of an impaired claim would receive under the Plan on account of such claim, property of a value that is not less than the amount each holder would receive if the Debtor were liquidated under Chapter 7 of Title 11 of the United States Code;
- (g) All allowed expenses of administration, unless deferred or waived, will be paid in cash upon the Effective Date of the Plan, under the Plan when due, or as allowed and directed by the subsequent order(s) of the Court and/or this order of confirmation ("Confirmation Order");
- (h) The Plan does not discriminate unfairly among creditors or classes, and the designation of Classes under the Plan is reasonable, based upon the fact that each claim in any Class of the Plan is substantially similar;

- (i) All classes of Claims have either voted for the Plan, are not impaired under the Plan or the Plan is fair and equitable as to that Class.

9. The Plan is feasible and is based on the valid business judgment of the Debtor, and confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor, other than that specified in the Plan itself.

10. Prior to the commencement of the Confirmation Hearing, Council Tree Investors withdrew its offer to purchase the assets of the Debtor ("Council Tree Withdrawal") (DK #842).

11. The objections of Atlas and CoServ are resolved by the terms dictated into the record and contained in subsequent terms of this Confirmation Order.

12. The objection of Matagorda is overruled in that Matagorda failed to prosecute said objection at confirmation.

13. The objection of Collateral Plus is resolved by the Council Tree Withdrawal.

14. The objection of Skytel is overruled, subject to the terms and conditions of this Confirmation Order.

15. The objection of the United States of America on behalf of the FCC and response thereto filed by SCRRA are resolved by the subsequent terms of this Confirmation Order.

16. The objection of the UST is resolved by the subsequent terms of this Confirmation Order.

17. The objection of Crown Castle is resolved by subsequent terms in this Confirmation Order.

It is, therefore,

ORDERED, ADJUDGED AND DECREED, that the Plan is hereby confirmed, as set forth herein and in the Bench Opinion, and subject to the terms and conditions of this Confirmation Order. It is, further,

ORDERED, ADJUDGED AND DECREED, that Choctaw is a good faith purchaser as contemplated by 11 U.S.C. § 363(m). It is, further,

ORDERED, ADJUDGED AND DECREED, that the Debtor shall pay any and all fees currently due and outstanding to the UST within fourteen days of the entry of this Order and thereafter the Debtor shall timely pay to the UST any and all post-confirmation quarterly fees as required by 28 U.S.C. § 1930(a)(6) until such time as this case is converted, dismissed or closed by the Court. Additionally, the Debtor shall timely submit to the UST post-confirmation Monthly Operating Reports in the format prescribed by the UST until such time as this case is converted, dismissed or closed by the Court. It is, further,

ORDERED, ADJUDGED AND DECREED, any modifications of the Plan must comply with 11 U.S.C. § 1127. It is, further,

ORDERED, ADJUDGED AND DECREED that to the extent that any provision of the Plan is inconsistent with any provision of this Order, this Order shall control. It is, further,

ORDERED, ADJUDGED AND DECREED, that in light of the Council Tree Withdrawal and for the reasons stated in the Bench Opinion and herein, the Debtor is authorized to proceed to implement the Plan as to the Choctaw Offer. It is, further,

ORDERED ADJUDGED AND DECREED that the Allowed Administrative Claim of Atlas will be paid within three (3) business days after the entry of this Confirmation Order, Choctaw and/or the Debtor shall pay unto Atlas Pipeline Mid-Continent, c/o Adam Grandon, 110 West 7<sup>th</sup> Street, Suite 2300, Tulsa, Oklahoma, 74119, the sum of TWENTY-NINE THOUSAND, FOUR HUNDRED THREE DOLLARS AND SEVENTY-TWO CENTS (\$29,403.72), in good and sufficient funds, representing Atlas' allowed administrative expense claim. The further terms and conditions of the Debtor's agreement with Atlas resolving its

objection to confirmation are found in a previously entered order more expressly resolving same.

It is, further,

ORDERED ADJUDGED AND DECREED that CoServ reserves all Administrative Expenses Claims, and other Claims that it may have against the Debtor or the Debtor's estate and the Debtor reserves all defense thereto. A hearing shall be scheduled for a later date to determine the Allowance of any Claims held by CoServ. Thereafter, any Allowed Administrative Claim shall be paid in full on the Effective Date of the Plan or within ten days of the entry of an order allowing same whichever is later, and any Allowed Unsecured claim shall be paid in accordance with the terms of the Plan. It is, further,

ORDERED, ADJUDGED AND DECREED that confirmation of the Plan is without prejudice to Crown Castle's right to assert an Administrative Claim and prosecute its Motion for Allowance and Payment of an Administrative Expense Claim Pursuant to Section 503(B)(1)(a) and 365(D)(3) of the Bankruptcy Code [DK #867] (the "Crown Castle Admin. Claim Motion"), but the Allowance of its Claim will be determined at a hearing on the Crown Castle Admin. Claim Motion, currently scheduled for January 29, 2012 but in any event no later than February 5, 2013. In addition, confirmation of the Plan is without prejudice to Crown Castle's right, through the 30th day after the Effective Date, to assert a Claim for cure of defaults asserted by Crown Castle as to any unexpired leases and/or executory contracts to be assumed by the Debtor and assigned pursuant to the Plan, but the amount of such cure of default will be determined in conjunction with the hearing on the Crown Castle Admin. Claim Motion. It is, further,

ORDERED, ADJUDGED AND DECREED, that the first sentence of numbered paragraph 3 on page 16 of the Plan is amended to read as follows:

However, no provision of the Plan relieves the Debtor, the Choctaw entities (Choctaw Telecommunications, Choctaw Holding, the Choctaw Investors) or the Liquidating Agent from their obligations to comply with the Communications Act of 1934, as amended and the rules regulations and orders promulgated thereunder by the FCC, including but not limited to any order issued by the FCC or settlement reached in the administrative proceeding initiated against the Debtor by the FCC in the April 19, 2011 Order to Show Cause, Hearing Designation Order and Notice and Opportunity for Hearing, and any FCC order issued in response to a Petition for Extraordinary Relief pursuant to the FCC's *Second Thursday* doctrine filed by Debtor and Choctaw.

It is, further,

ORDERED, ADJUDGED AND DECREED, that Section III(B)(ii) on page 24 of the Plan is modified as follows:

(ii) All authorizations, consents, certifications, approvals, rulings, no action letters, opinions or other documents or actions required by any law, regulation or order to be received or to occur in order to implement the Plan on the Effective Date, including an order by the FCC approving the transfer of the FCC Spectrum licenses to Choctaw, shall have been obtained or shall have occurred unless failure to do so will not have a material adverse effect on Council Tree, Choctaw, or any other purchaser pursuant to this Plan.

It is, further,

ORDERED, ADJUDGED AND DECREED, that the Debtor shall not receive a discharge, and all references in the Plan to a discharge of the Debtor, to a discharge of claims against the Debtor, or of an injunction in connection with the Debtor are stricken except that all parties shall be enjoined from seizing or encumbering any property being administered or held by the Liquidating Agent unless otherwise ordered by this Court. No injunction contained in the Plan, nor in this Order, shall impair the FCC's authority, including but not limited to its authority to commence and prosecute administrative proceedings, to enforce the Communications Act of 1934, as amended, or the rules, regulations, and orders promulgated thereunder by the FCC. It is, further,

ORDERED, ADJUDGED AND DECREED, that all provisions of the Plan which purport to release, exculpate, or discharge any non-Debtor individuals or entities, and/or to enjoin claims against any non-Debtor individuals or entities, are stricken, except to the extent the Plan provides for the release of the Committee and the release of the Committee's members, attorneys and advisors with respect to their roles in connection with the Committee. It is, further,

ORDERED, ADJUDGED AND DECREED, that Choctaw and Holdings shall each use their best efforts to obtain the FCC Licenses from Maritime and to obtain approval from the FCC for the same. Choctaw and Holdings shall further use their best efforts to sell, subject to the approval of the FCC, sufficient FCC Licenses in order to satisfy the Allowed Claims in full. It is, further,

ORDERED, ADJUDGED AND DECREED that subject to and pursuant to an appropriate confidentiality agreement to be executed by and between the Liquidating Agent and Choctaw and Holdings, Choctaw shall issue quarterly reports to the Liquidating Agent regarding its progress in implementing the Plan. It is, further,

ORDERED, ADJUDGED AND DECREED that, notwithstanding anything to the contrary in the Plan, no portion of the Claim held by the FCC will be disallowed or not paid on the ground that it includes a penalty. It is, further,

ORDERED, ADJUDGED AND DECREED that, notwithstanding anything to the contrary in the Plan, the Debtor and the Liquidating Agent retain the sole right to object to Claims through and including 90 days following first FCC approval of the transfer of any FCC Licenses to Choctaw and Holdings. However, any objections to Class 1, 2, 3, 4, 5 and 7 Claims must be made no later than 60 days following Confirmation. Notwithstanding the preceding, Skytel may object to any Class 1, 2, 3, 4, 5 and 7 Claims up to 60 days following Confirmation. It is, further,

ORDERED, ADJUDGED AND DECREED that consistent with the Plan and statements made on the record at the hearing on confirmation of the Plan, Choctaw Telecommunications, LLC and Critical RF, Inc. shall execute security documents in support of Choctaw's obligations under the Plan in a form acceptable to the Committee and/or Liquidating Agent which shall be substantially similar to those annexed hereto as Exhibit B. It is, further,

ORDERED, ADJUDGED AND DECREED that notwithstanding anything to the contrary in the Plan, no security interest recognized by the Plan will encumber any of the FCC Licenses, pursuant to applicable federal law, including the Communications Act of 1934, as amended, and the rules, regulations and policies promulgated thereunder, but, assuming the Debtor retains the right to hold the FCC Licenses, the security interests may include all proceeds of the FCC Licenses while held by the Debtor, and the right to receive all monies, consideration and proceeds derived from or in connection with the Debtor's sale, assignment, transfer or other disposition of any FCC Licenses that are held by the Debtor at the time of such sale, assignment, transfer, or other disposition." It is, further,

ORDERED, ADJUDGED AND DECREED, that the provisions of the Plan and this Order shall bind the Debtor, and each and every creditor, whether or not the claim is impaired under the Plan or whether or not the holder of the claim has accepted the Plan. It is, further,

ORDERED, ADJUDGED AND DECREED, that distributions to creditors under the Plan shall be made in accordance with the Plan, subject to any post-confirmation modifications pursuant to 11 U.S.C. § 1127 that may be necessary to comply with FCC orders approving transfer of the FCC Licenses. It is, further,

ORDERED, ADJUDGED AND DECREED, that all individuals and entities seeking, pursuant to Section 503(b) and/or 546(c)(2) of the Bankruptcy Code, payment of accounts, debts, fees or reimbursement of expenses from the Debtor shall make application to the Court for award

of payment of such claims within thirty (30) days of the date of this Order, or shall be forever barred. It is, further,

ORDERED, AND ADJUDGED AND DECREED that applications for compensation of professional persons that are to be filed within sixty (60) days after the entry of this Confirmation Order shall be filed with the Clerk of the Court, with a copy being provided to the office of the United States Trustee, together with the Notice in connection with the Application for Compensation. In addition, a copy of the Notice shall be provided to all secured creditors scheduled in this case, all governmental entities having claims in this Chapter 11 case, the office of the United States Attorney for the Northern District of Mississippi and any person or entity having entered an appearance herein. In the event objections are filed, the dollar amounts involved in the objection shall be specified so that an order may be entered granting that portion of the application that is not objected to or in controversy, and the Court will hear and consider the objectionable portion of the application in due course. The Application for Compensation otherwise remains subject to the applicable provisions of the Bankruptcy Rules. It is, further,

ORDERED, ADJUDGED AND DECREED, that subsequent to the entry of this Confirmation Order, the Court shall retain jurisdiction as described and contemplated within the Plan. In addition, the Court shall retain jurisdiction for the administration and adjudication of objections to claims and the allowance of claims -- including jurisdiction over the allowance of penalty or punitive claims to include jurisdiction over whether to allow any portion of SkyTel's proof of claim in this bankruptcy case which may ultimately involve treble damages, punitive damages, or damages in the form of a penalty against the Debtor, an issue which the Court specifically reserves to a later date consistent with its Bench Opinion and in light of its lift stay order [DK #373] and the related ongoing New Jersey District Court litigation -- during the course of the Chapter 11 proceeding, including any and all claims against the Debtor that arose

prior to and during the course of this Chapter 11 proceeding herein in accordance with the terms and provisions of the Plan and this Confirmation Order. It is, further,

ORDERED, ADJUDGED AND DECREED that, as discussed in more detail in the Plan, Don DePriest, Sandra DePriest and any entities under their ownership and/or control shall not participate in, nor shall they receive any recovery or distributions made by the Administrative Agent/Liquidating Agent under or in connection with the Plan. It is, further,

ORDERED, ADJUDGED AND DECREED that, neither this Order, nor any other order entered in connection with any of the responses or objections to the Plan, shall have any effect on or otherwise vary or modify: (a) any of the prior orders of the Court with respect to the assumption by the Debtor of any executory contracts or unexpired leases; or (b) any of the prior orders of the Court with respect to the sale of FCC Spectrum Licenses by the Debtor to third parties. It is, further,

ORDERED, ADJUDGED AND DECREED, that notwithstanding anything to the contrary that may be contained in the Plan, this Order, or otherwise, this Order shall not constitute a waiver of SkyTel's rights or arguments in connection with its pending appeals initiated on October 31, 2012. It is further,

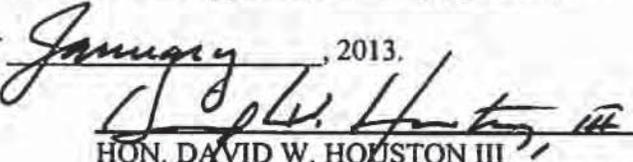
ORDERED, ADJUDGED AND DECREED, that notwithstanding anything to the contrary that may be contained in the Plan, this Order, or otherwise, nothing in the Plan, this Order, or otherwise shall be deemed to be a finding or adjudication that the Debtor owns or otherwise has the right to hold the FCC Spectrum Licenses or any FCC licenses, or a finding or adjudication as to the value of the FCC Spectrum Licenses or any FCC licenses, the Court having expressly recognized that: (a) the Court is not attempting through its orders or otherwise to superimpose this Court's rulings or judgments on the FCC; (b) the Court's rulings and orders herein are contingent on what the FCC ultimately decides regarding the subject FCC licenses and

the Debtor's rights to hold and/or transfer same; (c) the Court has not been asked to value, has not valued, and has not ruled upon the value of the subject FCC licenses; and (d) SkyTel preserves and maintains its right to continue to assert its claims, defenses, rights, and positions in and in connection with the FCC licenses before both the FCC and the New Jersey District Court, including those claims, defenses, rights, and positions which are the subject of and/or are related to the FCC proceedings and New Jersey District Court Litigation discussed in SkyTel's Objection to Confirmation of the Plan [DK #806]. It is further,

ORDERED, ADJUDGED AND DECREED, that counsel for the Debtor-in-Possession is directed to serve a copy of this Confirmation Order upon all creditors and parties in interest within ten (10) days after entry hereof, and to provide an accompanying certificate of service, regarding service of this Confirmation Order, to the Clerk of the Court.

The foregoing constitutes findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. This is a final judgment in accordance with the applicable Bankruptcy Rules.

SO ORDERED this the 11<sup>th</sup> day of January, 2013.

  
HON. DAVID W. HOUSTON III  
UNITED STATES BANKRUPTCY JUDGE  
NORTHERN DISTRICT OF MISSISSIPPI

APPROVED AS TO FORM:

/s/ Craig M. Geno  
Craig M. Geno, Esq.  
Attorney for the Debtor

/s/D. Andrew Phillips  
D. Andrew Phillips, Esq.  
Attorney for Atlas Pipeline Mid-Continent LLC

/s/ Bradley T. Golmon  
Bradley T. Golmon, Esq.  
Attorney for Denton County Electric  
Cooperative, Inc. d/b/a CoServ Electric

/s/ R. Spencer Clift  
R. Spencer Clift, Esq.  
Attorney for Collateral Plus Fund I,  
R. Hayne Hollis III, Patrick B. Trammell  
and Watson & Downs, LLC

/s/ Douglas C. Noble  
Douglas C. Noble, Esq.  
Attorney for Council Tree Investors, Inc.

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William H. Leech, Esq.  
Danny E. Ruhl, Esq.  
Attorneys for Skytel

/s/ Richard Drew  
Richard Drew, Esq.  
Attorney for the United States of America  
On behalf of the FCC

/s/ Sammye S. Tharp  
Sammye S. Tharp, Esq.  
Attorney for United States Trustee

/s/ Jim F. Spencer, Jr.  
Jim F. Spencer, Jr., Esq.  
Attorney for Southern California Regional  
Rail Authority

/s/ Stephen W. Rosenblatt  
Stephen W. Rosenblatt, Esq.  
Attorney for Crown Castle South, LLC

**PRESENTED BY:**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI**

<b>In re:</b>	)	
	)	
<b>MARITIME</b>	)	<b>Case No. 11-13463-DWH</b>
<b>COMMUNICATIONS/LAND</b>	)	
<b>MOBILE, LLC,</b>	)	<b>Chapter 11</b>
	)	
<b>Debtor.</b>	)	

**FIRST AMENDED PLAN OF REORGANIZATION**

Dated September 25, 2012

**SUBMITTED BY:**

**Craig M. Geno, Esq., MB #4793  
Jarret P. Nichols, Esq. MB #99426  
Law Offices of Craig M. Geno, PLLC  
Post Office Box 3380  
Ridgeland, MS 39158-3380  
Phone: 601-427-0048  
Fax: 601-427-0050**

**COUNSEL FOR THE DEBTOR**



Maritime Communications/Land Mobile, LLC (the "Debtor") proposes the following First Amended Plan of Reorganization (this "Plan") pursuant to the Bankruptcy Code.

## I. DEFINITIONS

Unless the context otherwise requires, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in this Plan that is not defined herein, but that is defined in the Bankruptcy Code, shall have the meaning assigned to such term in the Bankruptcy Code.

**Administrative Agent** means that person or entity appointed by the Committee to receive and distribute payments for and on behalf of the general unsecured creditors and to enforce the unsecured creditors' rights herein.

**Administrative Claim** shall mean a Claim for a cost or expense of administration of the Chapter 11 Case allowed under Section 503(b) of the Bankruptcy Code and referred to in Section 507(a)(1) of the Bankruptcy Code, including: (a) the actual, necessary costs and expenses incurred after the commencement of the Chapter 11 Case of preserving the Estate and operating the businesses of the Debtor; (b) wages, salaries or commissions for services; (c) reimbursement of expenses awarded under Sections 330(a) or 331 of the Bankruptcy Code; and (d) all fees and charges assessed against the Estate of the Debtor under title 28 of the United States Code.

**Administrative Expense Claimant** means all counsel for the Debtor, and all counsel for the Committee.

**Administrative Expense Claim Limit** means the sum of one million fifty thousand dollars (\$1,050,000.00), said sum representing the Administrative Expense Claimants' fees and Claims incurred during the pendency of the Case, which shall have an allocation of (a) a maximum allowed amount of \$300,000 for the Committee's Professional Persons, and (b) a maximum allowed amount of \$750,000 for the Debtor's Professional Persons.

**Administrative Expense Pre-Payment** means the sum of \$45,000, said sum representing Administrative Expense Claimant's costs and expenses incurred during the pendency of the Case, which shall have an allocation of (a) a maximum allowed amount of \$15,000 for the Committee's Professional Persons, and (b) a maximum allowed amount of \$30,000 for the Debtor's Professional Persons.

**Allowed Amount** means the amount in lawful currency of the United States of any Allowed Claim.

**Allowed Claim** means, with reference to any Claim: (i) a Claim against the Debtor, proof of which, if required, was Filed on or before the Bar Date, which is not a Contested Claim or Contested Interest, (ii) if no proof of Claim was so Filed, a Claim against the Debtor that has been or hereafter is listed by the Debtor in its Schedules as liquidated in amount and not disputed or contingent, or (iii) a Claim allowed hereunder or by Final

Order. An Allowed Claim does not include any Claim or portion thereof that is a Disallowed Claim or that has been subsequently withdrawn, disallowed, released or waived by the holder thereof, by this Plan, or pursuant to a Final Order. Unless otherwise specifically provided in this Plan, an Allowed Claim shall not include any amount for punitive damages or penalties.

**Allowed Interest** means, with reference to any Interest: (i) an Interest in the Debtor, proof of which, if required, was Filed on or before the Bar Date, which is not a Contested Interest, (ii) if no proof of Interest was so Filed, an Interest in the Debtor that has been or hereafter is listed by the Debtor in its Schedules as liquidated in amount and not disputed or contingent, or (iii) an Interest allowed hereunder or by Final Order. An Allowed Interest does not include any Interest or portion thereof that is a Disallowed Interest or that has been subsequently withdrawn, disallowed, released or waived by the holder thereof, by this Plan, or pursuant to a Final Order. Unless otherwise specifically provided in this Plan, an Allowed Interest shall not include any amount for punitive damages or penalties.

**Avoidance Action** means any claim or Cause of Action belonging to the Debtor and arising under the Bankruptcy Code including, but not limited to §§ 544, 547, 548, 549 and 550.

**Ballot** shall mean the form mailed to holders of Claims for the purpose of voting to accept or reject this Plan.

**Bankruptcy Code or Code** means Title 11 of the United States Code, as amended.

**Bankruptcy Court or Court** means the United States Bankruptcy Court for the Northern District of Mississippi.

**Bar Date** means the date fixed by the Bankruptcy Court by which a proof of claim must be filed against the Debtor.

**Books and Records** means all of Debtor's books and records concerning the operation of its business from its inception until the date of Confirmation.

**Cause of Action** means all claims or causes of action that belong to the Debtor and/or that could have been brought by the Debtor under state or federal law, including the Bankruptcy Code, but not including any actions released under this Plan.

**Chapter 11 Case** means the above entitled and numbered case Filed by the Debtor pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

**Choctaw** means the entity Choctaw Telecommunications, LLC.

**Choctaw Investors** means Trammell and the Secured Creditors.

**Choctaw Investors Tax Accrual** means that amount that is the greater of (a) 20% of the realized and recognized taxable gain on the sale of any FCC Spectrum License, or (b) the

sum of (i) the maximum federal capital gains tax rate, plus (ii) the maximum state capital gains tax rate for the State of Alabama.

**Claim** means: (i) right of payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**Claimant** means a holder of a Claim.

**Class** means all of the holders of Claims against or Interests with respect to the Debtor that have been designated as a class in this Plan.

**Committee** means the Official Committee of Unsecured Creditors.

**Confirmation** means the entry by the Bankruptcy Court of the Confirmation Order.

**Confirmation Date** means the date of entry by the Court of an Order confirming this Plan.

**Confirmation Hearing** means the hearing or hearings to be held before the Bankruptcy Court in which the Debtor shall seek Confirmation of this Plan.

**Confirmation Order** means the Order confirming this Plan, together with any supplements, amendments or modifications thereto.

**Consummation** means that substantially all payments required to be made under this Plan on the Effective Date have been made and Notice of the Effective Date has been Filed and served.

**Contested** when used with respect to a Claim or Interest, means a Claim against or Interest in the Debtor that is: (i) listed in the Debtor's Schedules as disputed, contingent or unliquidated and as to which a proof of Claim has been timely Filed; (ii) listed in the Debtor's Schedules as undisputed, liquidated and not contingent and as to which a proof of Claim or Interest has been Filed with the Bankruptcy Court, to the extent the proof of Claim or Interest amount exceeds the amount provided for in the Debtor's Schedules; or (iii) the subject of an objection which has been or may be timely Filed and which claim has not been disallowed by Final Order. To the extent an objection relates to the allowance of only a part of a Claim or Interest, such a Claim or Interest shall be a Contested Claim or Contested Interest only to the extent of the objection.

**Contingent Claim** means a Claim that has not accrued and that is dependent upon a future event that may or may not occur.

**Creditor** means holder of a Claim as of the Petition Date.

**Critical RF** means the subsidiary of the Debtor, Critical RF, Inc.

**Debtor or Debtor-in-Possession** means Maritime Communications/Land Mobile.

**Deficiency Claim** means the unsecured portion of the Allowed Claim of a Secured Creditor; provided, however, that if the holder of a Secured Claim or the class of which such Claim is a member makes the election provided in § 1111(b)(2) of the Code, there shall be no Deficiency Claim in respect of such Claim.

**DIP Account** means the Debtor-in-Possession bank account utilized by the Debtor during this Chapter 11 Case.

**DIP Loan** means that certain debtor-in-possession loan from SECF to the Debtor, as such amount may be outstanding from time to time.

**DIP Loan Documents** means the loan documents evidencing the DIP Loan.

**Disallowed Claim** means a Claim, or any portion thereof, (i) that has been disallowed by Final Order, (ii) proof of which has been untimely Filed and as to which no Order of allowance has been entered by the Bankruptcy Court, or (iii) listed as disputed, contingent or unliquidated and as to which no proof of claim or proof of interest has been timely Filed.

**Disclosure Statement** means the Disclosure Statement for this Plan, together with any supplements, amendments or modifications thereto.

**Distribution** means any payment under this Plan.

**Distribution Date** means the date specified in this Plan on which payment to any Claimant shall be made. If not specified in this Plan with regard to a Class of Claims, then the Distribution Date shall be the first day of the month following the Effective Date.

**Effective Date** means the date an order confirming this Plan becomes final and non-appealable or when the Plan is substantially consummated, whichever ever shall occur first. If no party obtains a stay of the order confirming the plan pending appeal, the Debtor and Choctaw may proceed toward substantial consummation of the terms of this Plan.

**Entity** includes any individual, partnership, corporation, estate, trust, governmental unit, person and the United States Trustee.

**Estate** means the bankruptcy estate of the Debtor created by § 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

**Estate Assets** means each and all of the assets and property included in the Estate.

**Estimated Claim** means any Contested Claim that is estimated in accordance with § 502(c) of the Code. For purposes of voting and distribution, the estimated amount of

each Contested Claim shall be deemed to be the Allowed Amount of such Claim. For the full satisfaction of its Contested Claim and its related Allowed Claim, a Claimant shall have, as its sole and exclusive remedy, the rights to payment provided under this Plan and shall have no other rights or remedies and may not, following Consummation, assert any other right against the Debtor.

**Executory Contract** means any contract, including, without limitation, any unexpired lease, to which the Debtor is a party and that is capable of being assumed or rejected pursuant to § 365 of the Bankruptcy Code.

**FCC** means the Federal Communications Commission.

**FCC Spectrum Licenses** means any and all licenses from the FCC to the Debtor that the Debtor holds, whether approved for assignment to another party or not. FCC Spectrum Licenses do not include any assets of Critical RF. All assets of Critical RF shall remain the possession of Critical RF, and the Debtor shall maintain its equity interest in Critical RF.

**Fee Claim** means a Claim for fees and expense reimbursements under § 330 or 503(b) of the Bankruptcy Code.

**Filed** means filed with the Bankruptcy Court.

**Final Order** means: (i) an Order as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing, shall then be pending or, (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such Order shall have been affirmed by the highest court to which such Order may be appealed, or certiorari has been denied, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that the Confirmation Order may be treated as a Final Order, at the option of the Debtor, if no stay pending an appeal has been obtained.

**General Unsecured Claims** means all Claims except for Administrative Claims, Priority Tax Claims, Secured Tax Claims, Classes 1 Claims, and Claims relating to an Interest.

**Holding** means the entity Choctaw Holding, LLC.

**Impaired** means the treatment of an Allowed Claim under this Plan unless, with respect to such Claim, either (i) this Plan leaves unaltered the legal, equitable, and contractual rights to which such Claim entitles the holder of such Claim, or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such Claim to demand or receive accelerated payment of such Claim after occurrence of a default, there is (A) a cure of any default that occurred before, on or after the commencement of this Chapter 11 Case other than default of the kind specified in § 365(b)(2) of the Bankruptcy Code; (B) a reinstatement of the maturity of such Claim as such maturity existed before such default; (C) compensation paid the holder of such Claim for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such

applicable law; and (D) no alteration of the legal, equitable or contractual rights to which such Claim entitles the holder.

**Interest** means an interest held by a creditor or by a holder of equity in the Debtor.

**Lender** See Secured Lender.

**Lien** means all valid and enforceable liens, security interests, claims and encumbrances against any property of the Estate that are permitted by, or not avoided pursuant to, the Bankruptcy Code.

**Litigation** means (i) all Causes of Action; (ii) all Avoidance Actions; and (iii) any and all policies of insurance or indemnity agreements related to any litigation, and all rights and remedies of the Estate under all policies of insurance or indemnity agreements related to such litigation.

**Monthly Accruals** means payments totaling \$90,000 per month from the Effective Date to Choctaw for financing post-confirmation operations of Choctaw.

**Order** means an order or judgment of the Bankruptcy Court.

**Person** shall have the meaning ascribed to such term under § 101(41) of the Bankruptcy Code.

**Petition Date** means August 1, 2011.

**Plan** means this First Amended Plan of Reorganization dated September 25, 2012, as it may be amended or modified from time to time as permitted herein or in accordance with § 1127 of the Bankruptcy Code.

**Post Confirmation** means any time after the Confirmation Date.

**Pre Tax Profit** means the pre tax profit generated by the Debtor's operations determined by the consistent application of the principles for determining pre tax profit in the pro forma income statement that is an exhibit to the Disclosure Statement.

**Priority Claim** means all Claims entitled to priority under Section 507(a)(2) - (a)(7) and (a)(9) of the Bankruptcy Code.

**Professional Persons** means a Person retained or to be compensated pursuant to §§ 327, 328, 330, 331, 1102, and/or 1103 of the Bankruptcy Code.

**Proof of Claim** means a written statement setting forth a Claimant's Claim in proper form that has been filed with the Court in this Chapter 11 Case.

**Reardon** means John Reardon

**Reserved Claims** means any and all claims and causes of action that the Debtor may, could, or does have against Choctaw, Holding, and the Choctaw Investors, including but

not limited to causes of action against any such entities pursuant to Chapter 5, Title 11, United States Code.

**Schedules** means those schedules and statements of financial affairs Filed by the Debtor under Federal Rule of Bankruptcy Procedure 1007, as same may be amended from time to time.

**Secured Claim** means an Allowed Claim that is secured by a Lien on or security interest in property in which the Estate has an interest, or that is subject to setoff under § 553 of the Bankruptcy Code, to the extent of the value of a Claimant's interest in the Estate's interest in such property determined in accordance with §506(a), or to the extent of the amount subject to setoff, as the case may be.

**Secured Creditors** means holders of the Class 1, 2, and 3 Claims.

**Secured Lender (also Lender)** means any Claimant that holds a Secured Claim or Lien, as defined above, against the Estate Assets.

**SECF** means Southeastern Commercial Finance, LLC.

**Tax Claims** mean any and all Claims of any Entity for the payment of any Taxes (a) accorded a priority pursuant to the Bankruptcy Code (but excluding all Claims for post-Petition Date interest and pre-Petition Date and post-Petition Date penalties, all of which interest and penalties, pre-Confirmation, and post-Confirmation, shall be (i) deemed disallowed and (ii) fully discharged on the Confirmation Date), or (b) secured by valid Liens on assets of the Debtor existing on the Confirmation Date (but excluding all Claims for post-Petition Date interest and pre-Petition Date and post-Petition Date penalties, all of which interest and penalties shall be (i) deemed disallowed and (ii) discharged on Confirmation).

**Taxes** means and includes all federal state, county and local income, ad valorem, excise, stamp, and other taxes of any type or nature whatsoever.

**Trammell** means Patrick Trammell.

**Unsecured Creditor Pre-Payment** means the payment of \$600,000 from the cumulative sales of FCC Spectrum Licenses to be paid to the Administrative Agent on behalf of Class 7 unsecured creditors.

## **II. CLASSIFICATION OF CLAIMS AND INTERESTS**

### **A. Creation of Classes**

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or

Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. Pursuant to Bankruptcy Code § 1122, the Claims against and Interests in the Debtor are classified as follows:

Class 1 - Secured Claims of Collateral Plus in the amount of \$9,476,618.76. Interest shall not accrue on this claim. This Class is deemed to be Impaired.

Class 2 - Secured Claims of Hollis in the amount of \$2,784,293.06. Interest shall not accrue on this claim. This Class is deemed to be Impaired.

Class 3 - Secured Claims of Watson in the amount of \$2,784,293.06. Interest shall not accrue on this claim. This Class is deemed to be Impaired.

Class 4 - Secured Claims of Dupree in the amount of \$2,784,293.06. Interest shall not accrue on this claim. This Class is deemed to be Impaired.

Class 5 - Secured Claims of NRTC. This class is deemed to be Impaired.

Class 6 - Priority Tax Claims. This class is deemed to be Impaired.

Class 7 - DIP Financing Claim of SECF. Interest shall accrue on this claim in accordance with the DIP Loan Documents. This Class is deemed to be Impaired.

Class 8 - Administrative Expense claims including professionals. This Class is deemed to be Impaired.

Class 9 - General Unsecured Claims. This Class is deemed to be Impaired.

Class 10 - Membership Interests in the Debtor. This Class is deemed to be Impaired.

#### **B. Treatment of Classified Claims**

Pursuant to Section 1123 of the Bankruptcy Code, the Claims and Interests as classified herein shall be satisfied in the manner set forth in this Article. The treatment of, and the consideration to be received by Entities holding Allowed Claims against the Debtor's Estate pursuant to the Plan, shall be in full settlement, satisfaction, release and discharge of their respective Allowed Claims against the Debtor's Estate, but shall not affect the liability of any other Person or Entity with respect to such Claim or Interest.

##### **1. Treatment of Classes of Claims Under The Choctaw Offer**

The Choctaw offer set forth in Exhibit "C-1" to the Disclosure Statement (which is incorporated herein by reference) is detailed with respect to how the classes of claims will be treated under the Choctaw offer, and those provisions are simply incorporated here by reference. The Choctaw proposal is as follows:

Pursuant to Section 1123 of the Bankruptcy Code, the Claims and Interests as classified herein shall be satisfied in the manner set forth in this Article. The treatment of, and the

consideration to be received by Entities holding Allowed Claims against the Debtor's Estate pursuant to the Choctaw Proposal, shall be in full settlement, satisfaction, release and discharge of their respective Allowed Claims against the Debtor's Estate, but shall not affect the liability of any other Person or Entity with respect to such Claim or Interest.

1. Classes 1 through 4 - Secured Claims

The Secured Creditors and Trammell have formed a separate entity known as "Choctaw" (defined supra) and have each assigned their respective Claims to Choctaw. Choctaw is the sole member of, and owns all equity in, Holding. In exchange for, and in consideration and full satisfaction of Choctaw's Claims against the Debtor and Choctaw's release of the Debtor from all liability to Choctaw on account of the Claims, the Debtor will transfer, assign, and sell to Holding all of the Debtor's right, title, and interest in the FCC Spectrum Licenses. Such transfer is and will be subject to final approval by the FCC. As additional consideration, the Debtor shall assign to Choctaw any and all Reserved Claims.

After final FCC approval of Holding as the owner and holder of the FCC Spectrum Licenses, Choctaw will market and sell the FCC Spectrum Licenses in its sole and absolute discretion; subject only to FCC's regulatory approval of all sales. Choctaw shall distribute all revenue, products and proceeds of the FCC Spectrum Licenses to Choctaw for final and ultimate distribution to the Choctaw Investors until such time as the Choctaw Investors have received the full amounts of their Claims. Included within the revenue, products and proceeds of the FCC Spectrum Licenses that will be distributed to all creditors are those proceeds from the sale of Spectrum Licenses that have already been approved by the Court in prior hearings consistent with the Debtor's various motions to assume executory asset purchase agreements with various purchasers for Spectrum Licenses, as well as any other sales of Spectrum Licenses that may be approved by the Court until such time as the FCC approves Holding as the owner of the FCC Spectrum Licenses, together with any revenue, products and proceeds received by Holding for the sale of Spectrum Licenses subsequent thereto. Choctaw Investors' rights to distribution are subordinate to the rights of other parties strictly as follows:

- a. Upon confirmation of the Plan, Choctaw shall pay to the Administrative Expense Claimants the allowed amount of their expenses, up to their share of the Administrative Expense Pre-Payment, and a payment of \$250,000.00 to be used by the Administrative Expense Claimants to pay a pro rata portion of the administrative fees, as allowed by the Court.
- b. Upon the sale of FCC Spectrum Licenses in a cumulative amount of at least \$600,000, Choctaw shall pay the Unsecured Creditors Pre-Payment to the Liquidating Agent.
- c. After the sale of FCC Spectrum Licenses in a cumulative amount of at least \$600,000, Choctaw shall pay the Administrative Expense Claimants as further described in Article I.B.5 hereto.

In addition to the Secured Creditor's Claims, the Choctaw Investors shall be entitled to receive Monthly Accruals until the later of such payment is made in full, of the last Secured

**Creditors' Claims.** Other than as set forth herein, no creditor junior or subordinate to the Secured Creditors shall receive any distribution from the sale of FCC Spectrum Licenses until such times as the Secured Creditors have recovered the amounts of their Claims in full, together with all Monthly Accruals.

In addition to the Secured Creditor's Claims and the Monthly Accruals, and to the extent that there are distributions to any junior class of claimants not made pursuant to Article I, C, 1, the Choctaw Investors shall be entitled to receive the Choctaw Investor Tax Accruals. The net Choctaw Investor Tax Accruals shall be determined on an annual basis at the end of Choctaw's taxable year. Choctaw shall make distributions to the Choctaw Investors for the net Choctaw Investor Tax Accruals for any given taxable year upon the first sale of FCC Spectrum Licenses after the close of such taxable year.

Choctaw shall provide upon request from the Liquidating Agent, a monthly report that shall include a summary of all operating expenses incurred by Choctaw in operating its business for the month prior to the Liquidating Agent's request. Choctaw shall provide the report within thirty days of such request. The Liquidating Agent shall have twenty-one days to respond to such report, and otherwise object to the reasonableness of the expenses. Choctaw shall have fifteen days to reply to the Liquidating Agent's response to explain why the expenses were incurred and why such amounts were reasonably necessary. If the Liquidating Agent is not satisfied with the explanation in Choctaw's reply, the Liquidating Agent shall have ten days to file an objection to the reasonableness of the expenses with the Bankruptcy Court. The Liquidating Agent shall not be required to reopen the case to file any such objection. If the Liquidating Agent does not respond to the report or does not file an objection after Choctaw's reply as set forth herein, such objection shall be waived and forever barred.

Chris Dupree, the owner and holder of the Class 4 Claims, shall receive distributions from Choctaw on account of his Class 4 Claim on a *pari passu* basis with the Secured Creditors. Distributions to Chris Dupree are limited to, and shall not exceed, his Class 4 Claim

2. Class 5 - Secured Claims of NRTC

NRTC shall be treated as a fully secured creditor. It shall be afforded the exact same treatment as secured creditor Chris Dupree, so that NRTC shall receive distributions from Choctaw on account of its fully secured Class 5 claim on a *pari passu* basis with the Secured Creditors. Distributions to NRTC are limited to, and shall not exceed, its Class 5 claim.

The fully secured claim of NRTC is impaired.

3. Class 6 - Priority Tax Claims

The Debtor is liable to various taxing authorities for ad valorem property taxes. Choctaw shall pay all such claims annually over three years with the first such payment due a year after the Effective Date. Such claims shall accrue interest at the rate of 3.0% *per annum*.

4. Class 7 - DIP Financing Claim

After the Choctaw Investors have received the full amounts of their Claims and the Monthly Accruals, and assuming there is sufficient revenue from the sale of the FCC Spectrum Licenses, Choctaw shall pay to SECF the full amount due and owing on the DIP Loans. To the extent that all senior Classes are satisfied, with the exception of the Choctaw Investor Tax Accrual, Choctaw shall make distributions to Class 6 Claimants within a reasonable time after the sale of any additional FCC Spectrum Licenses.

5. Class 8 - Administrative Expense Claims

Upon the sale(s) of FCC Spectrum Licenses (including those sales already approved by the Bankruptcy Court subject to FCC approval) as set forth below, Choctaw shall pay all claims to Administrative Expenses Claimants as follows:

- a. Upon confirmation of the Plan, Choctaw shall pay to the Administrative Expense Claimants the allowed amount of their expenses, up to their share of the Administrative Expense Pre-Payment. Choctaw shall also pay \$250,000.00 toward Allowed Administrative Expense Claims immediately upon Confirmation.
- b. Upon the sale of FCC Spectrum Licenses and collection of proceeds in a cumulative gross amount of \$2,600,000, Choctaw shall make a distribution to Administrative Expense Claimants in the amount of 10% of the total Administrative Expense Claimants' claims, to be distributed pro rata between the Administrative Expense Claimants.
- c. Upon the sale of FCC Spectrum Licenses and collection of proceeds in a cumulative gross amount of \$3,600,000, Choctaw shall make a distribution to Administrative Expense Claimants in the amount of 15% of the total Administrative Expense Claimants' claims, to be distributed pro rata between the Administrative Expense Claimants.
- d. Upon the sale of FCC Spectrum Licenses and collection of proceeds in a cumulative gross amount of \$4,600,000, Choctaw shall make a distribution to Administrative Expense Claimants in the amount of 20% of the total Administrative Expense Claimants' claims, to be distributed pro rata between the Administrative Expense Claimants.
- e. Upon the sale of FCC Spectrum Licenses and collection of proceeds in a cumulative gross amount of \$5,600,000, Choctaw shall make a distribution to Administrative Expense Claimants in the amount of 20% of the total Administrative Expense Claimants' claims, to be distributed pro rata between the Administrative Expense Claimants.
- f. Upon the sale of FCC Spectrum Licenses and collection of proceeds in a cumulative gross amount of \$6,600,000, Choctaw shall make a distribution to Administrative Expense Claimants in the amount of 20% of the total

Administrative Expense Claimants' claims, to be distributed pro rata between the Administrative Expense Claimants.

- g. Upon the sale of FCC Spectrum Licenses and collection of proceeds in a cumulative gross amount of \$7,600,000, Choctaw shall make a distribution to the Administrative Expense Claimants of the balance of their respective total Administrative Expense Claimants' claims.

In no event shall the total Administrative Expense Claimants' Claims be more than the Administrative Expense Claim Limit, nor shall Administrative Expense Claimants receive distributions in excess of the Administrative Expense Claim Limit, up through the date of confirmation of the Plan. In no event shall any class of Administrative Expense Claimant receive or be entitled to distributions in an amount greater than such class' share of the total Administrative Expense Claim Limit, up through the date of confirmation of the Plan. All Administrative Expense Claimants shall file their final fee applications within 30 days of the Effective Date.

#### 6. Class 9 General Unsecured Claims

After Choctaw Investors, SECF, and Administrative Expense Claimants have received the full amounts of their Claims and the Monthly Accruals, and assuming there is sufficient revenue from the sale of any FCC Spectrum Licenses, Choctaw shall pay to the Liquidating Agent the full amount of Class 9 General Unsecured Claims (or as much of the surplus is available from such sales). Choctaw shall make such distributions to the Liquidating Agent as funds are available from time to time from the sales of FCC Spectrum Licenses. To the extent that all senior Classes are satisfied, with the exception of the Choctaw Investor Tax Accrual, Choctaw shall make distributions to the Liquidating Agent within 10 days of the closing of the sale of the FCC Spectrum License.

In further consideration of the obligations owed to this Class herein, upon confirmation, as security for Choctaw's obligations herein, Critical RF shall immediately assign, grant and convey to the Liquidating Agent an accommodation pledge granting a security interest in and lien on all of Critical RF's assets. Should Choctaw fail to make a payment in accordance herewith, and upon notice of said failure and demand for payment by the Liquidating Agent in writing, Choctaw shall have 20 days from the date of such demand to cure such failure and make the distribution required herein. Absent such cure, the Liquidating Agent shall be entitled to immediately pursue any and all rights available to it with respect to Critical RF including without limitation, foreclosing on applicable security interests and other remedies at law, without further leave of the Bankruptcy Court.

Upon confirmation, the Debtor shall pay the sum of \$10,000 to the Liquidating Agent to cover the Liquidating Agent's initial costs and expenses in performing its duties hereunder.

To the extent that the Interest holders have any unsecured claims, such parties shall waive such claims and shall not receive any distributions on account of such claims.

**7. Class 10 Membership Interests**

Holders of Class 10 shall not receive any distribution from Choctaw, Holding, the Liquidating Agent, or otherwise.

Obviously, creditors and parties in interest are urged to carefully review those provisions to determine the treatment of the particular claims within the classifications discussed in the Choctaw offer.

**2. Treatment of Classes of Claims Under The Council Tree Offer**

The Council Tree offer set forth in Exhibit "D" to the Disclosure Statement (which is incorporated herein by reference) is detailed with respect to how the classes of claims will be treated under the Council Tree offer, and those provisions are simply incorporated here by reference. The Following is a summary discussion of Council Tree's proposal for distributions of available cash to Maritime creditor classes, a discussion which is designed to complement the materials in Council Tree's PowerPoint document filed with the Court, dated August 27, 2012 and entitled "Council Tree's Purchase of Maritime's Assets" ("Council Tree's Proposal"). Additional details and perspective are incorporated in Council Tree's Proposal and will be further documented in definitive documentation with Debtor.

1. Class 8 Claims. First, at plan confirmation Council Tree will pay \$250,000 to the Class 8 Administrative Expense Claims (equals \$250,000 cumulative total paid out of \$1 million total claim limit).
2. Class 8 Claims. Next, at Effective Date Council Tree will distribute \$600,000 to the Class 8 Administrative Expense Claims (equals \$850,000 cumulative total distributed out of \$1 million total claim limit).
3. Council Tree Claim. Next, Council Tree will distribute to Council Tree's investors amounts owing under the \$250,000 loan advanced in (1) above (proceeds of which were used to pay a portion of the Class 8 Claim).
4. Class 9 Claims. Next, Council Tree will distribute \$1 million to the Class 9 General Unsecured Claims (equals \$1 million cumulative total distributed out of \$8.89 million total claim).
5. Class 7 Claim. Next, Council Tree will distribute an estimated \$1 million to the Class 7 DIP Financing Claim (equals 100% of the estimated amount owing under the claim). Under Council Tree's Proposal we estimate the \$1 million claim amount based on approximately \$600,000 accrued through June 30, 2012, plus \$200,000 of additional amounts accrued through confirmation date (\$50,000 per month times four months), plus \$200,000 of additional accrued thereafter through effective date (\$50,000 per month times four months).

6. Class 1 through 4 Claims, Class 5 Claims, Class 8 Claims and Tax Accruals. Next, Council Tree will distribute cash on a pro rata basis to these classes based on amounts that remain owing to each class:
  - a. Class 1 through 4 Claims. Council Tree will distribute \$17.825 million to the Class 1 through 4 Secured Claims (equals \$17.825 million cumulative total distributed out of \$17.825 million total claim).
  - b. Class 5 Claims. Council Tree will distribute \$1.15 million to the Class 5 Secured Claims of NRTC (equals \$1.15 million cumulative total distributed out of \$1.15 total claim).
  - c. Class 8 Claims. Council Tree will distribute \$150,000 to the Class 8 Administrative Expense Claims (equals \$1 million cumulative total distributed out of \$1 million total claim limit).
  - d. Tax Accruals. Council Tree will distribute amounts to Council Tree Investors sufficient to pay estimated tax payments.
7. Class 6 Claims. Next, Council Tree will distribute \$0.08 million to the Class 6 Priority Tax Claims (equals \$0.08 cumulative total distributed out of \$0.08 million total claim).
8. Class 9 Claims. Next, Council Tree will distribute a maximum of \$7.89 million to the Class 9 General Unsecured Claims (equals maximum \$8.89 million cumulative total distributed to Allowed General Unsecured Claims). This amount shall be adjusted downward if the total amount of Allowed General Unsecured Claims is determined to be lower.
9. Class 10 Claims. Council Tree will make no distributions to the Class 10 Membership Interests.
10. Other Claims. Council Tree will make no distributions for any other claims.

Obviously, creditors and parties in interest are urged to carefully review those provisions to determine the treatment of the particular claims within the classifications discussed in the Council Tree offer.

**C. Means for Implementation of the Plan**

**1. Post Confirmation FCC Procedures and Processes Under the Choctaw Offer**

The Choctaw offer set forth in Exhibit "C-1" to the Disclosure Statement (which is incorporated herein by reference) is detailed with respect to post confirmation FCC Processes

and Procedures under the Choctaw offer, and those provisions are simply incorporated here by reference.

Obviously, creditors and parties in interest are urged to carefully review those provisions to determine the post confirmation FCC Processes and Procedures discussed in the Choctaw offer.

**2. Post Confirmation FCC Procedures and Processes Under the Council Tree Offer:**

The Council Tree offer set forth in Exhibit "D" to the Disclosure Statement (which is incorporated herein by reference) is detailed with respect to post confirmation FCC Processes and Procedures under the Council Tree offer, and those provisions are simply incorporated here by reference.

Obviously, creditors and parties in interest are urged to carefully review those provisions to determine the post confirmation FCC Processes and Procedures discussed in the Council Tree offer.

**3. General**

However, no provision herein relieves the Debtor or the Choctaw entities (Choctaw Telecommunications, LLC; Choctaw Holding, LLC, the Choctaw Investors) or Council Tree from their obligations to comply with the Communications Act of 1934, as amended, and the rules, regulations and orders promulgated thereunder by the FCC. No contemplated transfer of control by the Debtor or by a Choctaw or Council Tree of any federal license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory approval for such transfer of control pursuant to applicable FCC regulations. The FCC's rights and powers to take any action pursuant to its regulatory authority over the transfer of control by the Debtor or by Choctaw or by Council Tree, including, but not limited to, imposing any regulatory conditions on such transfer, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority. Holding or Council Tree will not engage in any operations activity, but shall merely hold the FCC Spectrum Licenses. Holding or Council Tree shall not engage in any operations or incur any debt. Choctaw and Council Tree shall continue the business operations and make the payments provided for under their respective offers (Exhibits "C" and "D" to the Disclosure Statement, which are incorporated herein by reference).

**4. FCC Application and "Second Thursday" Issues**

The Federal Communication Commission (FCC) has commenced a proceeding before an Administrative Law Judge to determine, among other questions, whether the debtor is qualified to remain a licensee, and consequently, whether its licenses should be revoked and certain pending applications for consent to debtor's proposed assignment of some of its licenses should be denied; whether debtor should be ordered to repay the full amount of the bidding credit claims in Auction No. 61, with interest; whether a forfeiture not to exceed the statutory maximum should be issued against debtor for violations of the FCC's rules; whether any licenses the debtor holds have cancelled automatically for lack of construction or permanent discontinuance of operation, and whether debtor and its principals should be prohibited from participating in future

FCC auctions. *In the Matter of Maritime Communications/Land Mobile, LLC*, EB Docket No. 11-71, File No. EB-090IH-1751, ¶ 1-2 (April 19, 2011).

FCC policy prohibits the transfer of a license in the face of unresolved questions about the licensee's basic qualifications to hold a license. *Jefferson Radio Company v. F.C.C.*, 340 F.2d 781 (D.C. Cir. 1964). However, in the bankruptcy context, the Commission has recognized an exception to this general prohibition if certain requirements set forth in *In Re Application of Second Thursday Corp.*, 22 F.C.C. 2d 515 (1970) are satisfied. Under the Second Thursday doctrine, the Commission may allow an assignment or transfer by a licensee with unresolved basic qualifications issues outstanding, if it determines, in its judgment, that the transaction is otherwise in the public interest and if it finds that, notwithstanding unresolved questions about the licensee's character qualifications, "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." 22 F.C.C. 2d at 516. The Second Thursday doctrine is intended to protect innocent creditors and to accommodate the policies of federal bankruptcy law with those of the Communications Act. *See LaRose v. FCC*, 494 F.2d 1145, 1149 (1974).

As of the date of the Plan, debtor has not applied for Second Thursday treatment for any of its licenses, because the Commission will generally not act upon assignment or transfer applications by a debtor prior to approval of the proposed transaction by the bankruptcy court. Accordingly, no determination has been made whether the Second Thursday exception should be applied to the debtor.

The Plan of Reorganization contemplates that Maritime and the proposed buyers (Choctaw or Council Tree), will seek Second Thursday relief from the FCC. Procedurally that will involve the submission of an application requesting FCC consent to the assignment of Maritime's licenses to Choctaw or Council Tree. The application would include and/or be accompanied by a request for special relief from or waiver of the Jefferson Radio policy. This would include showings that:

- the principals of Choctaw are secured creditors;
- the plan, negotiated and agreed to by the secured creditors and the unsecured creditors' committee, provides a mechanism for the payment of all allowed claims against the debtor;
- none of the creditors to be compensated had knowledge of, nor was involved in, the alleged wrongdoing (i.e., the alleged non-disclosure of Mr. DePriest's holdings);
- neither Maritime nor the DePriests will receive any of the proceeds from the sale of licenses and they will forego their claims against the debtor (totaling approximately \$7 Million); and
- the DePriests will have no future involvement with and will receive no portion of any sales proceeds from the sale of AMTS licenses, nor the revenues from the operation of the AMTS licenses, being assigned to Choctaw, and the grant of the license assignment to Choctaw will be so conditioned.

- the Council Tree offer, if Council Tree is the ultimate purchaser of the FCC Spectrum Licenses, will be submitted to the FCC in connection with the application for Second Thursday relief.
- Council Tree has no connections with, or relationship to, the DePriests or Maritime except with respect to the Council Tree offer in this case.

In addition to the Second Thursday showing, Maritime and Choctaw or Council Tree will also be relying on other public interest grounds as a justification for special relief from the Jefferson Radio policy. In initiating EB Docket No. 11-71 (the pending enforcement proceeding), the Commission included various pending applications for assignment of Maritime licenses to other entities. In Footnote 7 of the Hearing Designation Order, the Commission expressly stated that, because of the potential importance of one of the licenses to rail safety, it would consider severing one of these applications, the proposed sale to Southern California Regional Rail Authority ("MetroLink"), from the hearing, upon an appropriate showing by debtor and Metrolink, and that the Commission would consider whether, and under what terms and conditions, the public interest would be served by allowing the Metrolink application to be removed from the administrative proceeding. 26 FCC Rcd at 6523 n.7. MetroLink formally requested such severance, and the matter is pending before the Commission. Most of the other buyers whose assignment applications were designated in the hearing filed similar requests for severance. These buyers are "critical infrastructure" entities, providing public services such as electrical power, natural gas, and transmission pipelines. These operations affect public safety, homeland security, and similar matters. Maritime, as debtor-in-possession, has assumed many of these purchase agreements, and the court has approved the sales subject to prior FCC approval. For reasons similar to those already enunciated by the FCC in Footnote 7 of the Hearing Designation Order, this provides yet another public interest ground for an exception to the Jefferson Radio policy.

One cannot predict the outcome in advance, and this is even more so where the proposal is likely to be opposed by Warren Havens and possibly the Enforcement Bureau. Maritime believes, however, that the proposed course has a reasonable likelihood of success. Protecting innocent creditors and accommodating bankruptcy policy is an important and well-established policy. The plan is structured so as to maximize the likelihood that innocent creditors will be compensated. Moreover, neither Maritime nor the DePriests will receive any of the proceeds, they will not be involved in the future operation of the licenses, and the Commission can and presumably will impose specific conditions on future license assignments to ensure this remains the case. Further, the FCC has previously granted Second Thursday relief for a similar arrangement where control of the licenses was assumed by a group of creditors. *MobileMedia Corp.*, 14 FCC Rcd 8017 (1999). There are also important public interest benefits that will flow from the already-assumed and court-approved sales to critical infrastructure entities. Nevertheless, if the FCC does not approve the Second Thursday plan as presented, Maritime will endeavor to modify the plan as necessary to address the agency's concerns.

The Debtor is not aware of any prohibition against filing a subsequent FCC application if Choctaw or Council Tree (or any other party for that matter), fail to obtain *Second Thursday* approval or if the FCC will simply revoke the licenses that are sought to be transferred and sold. As stated in numerous sections of the Third Amended Disclosure Statement, the Debtor certainly

intends to pursue additional applications for approval if Choctaw or Council Tree (or any other purchaser) is unsuccessful. However, while there is no prohibition on another buyer seeking Second Thursday relief, the FCC may, either before or after an application by a second buyer, instead choose to revoke the spectrum authorizations if there is a legal basis to do so.

SkyTel's general views on the matters discussed above are set forth in Exhibit "E" (attached to the Disclosure Statement and incorporated herein by reference). The Debtor disagrees with the views of SkyTel as stated in Exhibit "E".

#### 5. Transactions Authorized Under the Plan

On or after the Effective Date, Choctaw or Council Tree may enter into such transactions and may take such actions as may be necessary or appropriate to affect its business consistent with the terms of the Plan, subject to the FCC's rights and powers as described in VI(D)(2), *supra*. The Bankruptcy Court will not retain jurisdiction over Choctaw or Council Tree, and Choctaw or Council Tree will not otherwise be subject to oversight by the Bankruptcy Court. The Bankruptcy Court will retain jurisdiction over the Debtor until such time funds are fully distributed in accordance with this Plan.

#### 6. Cancellation of Notes, Instruments, Debentures, and Membership Interests

As of the Effective Date, except as otherwise provided for herein, (a) all notes, bonds, indentures, or other instruments or documents evidencing or creating any indebtedness, obligations of or interests in the Debtor or its assets that are Impaired under the Plan shall be cancelled, and (b) the obligations of the Debtor under any agreements, indentures, or certificates of designation governing Interests or Claims or any notes, bonds, indentures, or other instruments or documents evidencing or creating any Interest in or Claims against the Debtor that are Impaired under the Plan shall be discharged. However, claims by any person or entity against any other person or entity guaranteeing or otherwise liable for the obligations of the Debtor shall not be impaired as a result of the confirmation of the Plan or its effectiveness.

#### 7. Employment of Reardon

Reardon functions as an operating officer, counsel, marketer of assets, negotiator for sales of Spectrum and drafter of documents of the Debtor. Reardon has served as the primary salesman for the FCC Spectrum Licenses over the past few years. Mr. Reardon has over 15 years of experience working with the utility, railroad, and oil and gas communications industries. Mr. Reardon has negotiated all of the pending transactions with lessees and buyers. Mr. Reardon will renegotiate his terms of continued employment with Choctaw. In the event Council Tree is interested in employing Mr. Reardon, he will renegotiate the terms of any employment directly with Council Tree.

#### 8. Liquidating Agent

a. Appointment. The Liquidating Agent shall be appointed as of the Effective Date and shall serve without a bond. The Liquidating Agent's appointment shall be a prerogative delegated to, and assumed by, the Committee, but the Liquidating Agent shall be disinterested,

consistent with 11 U.S.C. §327(a). Notice of the appointment of Liquidating Agent and his/her or its compensation shall be provided by the Committee to all creditors and parties in interest. In the event of the death, resignation, incapacity, disqualification, or misconduct of the Liquidating Agent, the members of the Committee (notwithstanding the fact the Committee shall cease to formally exist pursuant to the Plan) shall appoint a successor. The Liquidating Agent shall retain and have all of the rights, powers and duties necessary to carry out its responsibilities under this Plan and those rights, powers and duties shall be exercisable solely by the Liquidating Agent. Commencing on the Confirmation Date, the Debtor shall work with the Liquidating Agent to facilitate a smooth transition of the responsibility of the wind down of the Estate to the Liquidating Agent.

b. Duration. The Liquidating Agent shall continue to exist until entry of a Final Order by the Bankruptcy Court closing the Bankruptcy Case pursuant to section 350(a) of the Bankruptcy Code.

c. Exclusive Powers and Duties. The Liquidating Agent shall serve under this Plan and shall discharge all of the rights, powers and duties set forth in this Plan. Without limiting the generality of the foregoing, the Liquidating Agent, his successors and assigns, shall have the following exclusive rights, powers and duties:

i. All of the rights, powers, and duties of a trustee in bankruptcy, including but not limited to, those under sections 704(a)(1), (2), (4), (5) and (7) and 1106(a)(6) and (7) of the Bankruptcy Code;

ii. to administer any available funds for unsecured Claims, pursuant to the terms of this Plan;

iii. to use, acquire and dispose of property free of any restrictions imposed under the Bankruptcy Code;

iv. to sell, devise or otherwise dispose of any assets without further notice or order of the Bankruptcy Court, except as otherwise provided herein;

v. to employ, retain, and replace such persons, including actuaries, attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants and advisors as necessary to discharge the duties of the Liquidating Agent under this Plan and to pay the reasonable fees and costs of such employment without the need to seek approval from the Bankruptcy Court or review by any other party in interest;

vi. to object to the allowance of Claims or seek equitable subordination of Claims, pursuant to the terms of this Plan, and to settle any such objection to Claims without further Order of the Court or notice to creditors;

vii. to establish reserves and open, maintain and administer bank accounts as necessary to discharge the duties of the Liquidating Agent under this Plan;

viii. to investigate, analyze, commence, prosecute, litigate, collect and otherwise administer any Cause of Action in the Bankruptcy Court or other court of competent jurisdiction and settle same without further order of the Court or notice to creditor. The holder of the Debtor's Books and Records (whether the Debtor, Choctaw, Council Tree or any other entity that acquires the Debtors assets pursuant to this Plan) agrees to cooperate in good faith with the Liquidating Agent to allow the Liquidating Agent to review, copy, and investigate said Books and Records in full;

ix. to voluntarily engage in arbitration or mediation with respect to any Cause of Action;

x. to represent the Estate before the Bankruptcy Court and other courts of competent jurisdiction with respect to all matters;

xi. to seek the examination of and production of documents from any entity under and subject to the provisions of Bankruptcy Rule 2004;

xii. to pay any fees due and owing under 28 U.S.C. § 1930;

xiii. to comply with applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth herein;

xiv. to comply with all applicable laws and regulations concerning the matters set forth herein;

xv. to invest any available funds in (a) direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, (b) in money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof, or (c) or any other investments that may be permissible under section 345 of the Bankruptcy Code or order of the Bankruptcy Court;

xvi. to exercise such other powers and enforce any and all rights as may be vested in the Liquidating Agent pursuant to this Plan and to ensure compliance with this Plan, the Confirmation Order and/or other Final Orders of the Bankruptcy Court. This right includes the authority to foreclose on any security interest or stock pledge that may be granted in favor of Class 7 and 8 Claimants;

xvii. to execute any documents, instruments, contracts and agreements necessary and appropriate to carry out the powers and duties of the Liquidating Agent; and

xviii. to review, upon reasonable notice and request, Choctaw, Holding, or Council Tree's books and records.

d. Fees and Expenses. The Liquidating Agent shall be reimbursed for all out of pocket fees, costs, and expenses in acting under this Plan. The identity and compensation of the Liquidating Agent shall be agreed upon by the Committee and the Liquidating Agent and

disclosed to the Bankruptcy Court on or before ten (10) days prior to the Confirmation Hearing. Compensation of the Liquidating Agent and the costs and expenses of the Liquidating Agent (including, without limitation, professional fees and expenses) shall be paid from any funds available to the Liquidating Agent, including those funds available to pay creditors holding allowed unsecured claims. Without limitation of the foregoing, the Liquidating Agent shall pay, without further order, notice or application to the Bankruptcy Court, the reasonable fees and expenses of the Liquidating Agent and the Liquidating Agent's professionals, as necessary to discharge the Liquidating Agent's duties under this Plan. The payment of fees and expenses of the Liquidating Agent shall be made in the ordinary course of business and shall not be subject to the prior approval of the Bankruptcy Court, provided, however, any such payment shall remain subject to any challenge as to reasonableness, if any, in accordance with this paragraph and such relief as the Bankruptcy Court may order.

e. **Compromising Disputed Claims, Liens, and Causes of Action.** The Liquidating Agent is authorized to: (i) compromise and settle any Causes of Action, Liens, and Disputed Claims (including Personal Injury Claims and Punitive Damage Claims); and (ii) execute necessary documents, including, but not limited to, a stipulation of settlement or release, without notice or further order of the Bankruptcy Court or notice to any party in interest.

9. Disposition of Property by the Liquidating Agent.

a. **Vesting of Assets.** Unless otherwise dealt with under this Plan or by a prior Final Order, on the Effective Date all property of the Estate (including all Causes of Action) will remain vested in the Estate and shall continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of this Plan until distributed to Holders of Allowed Claims in accordance with the provisions of this Plan and the Confirmation Order. From and after the Effective Date, all property of the Estate shall be free and clear of all liens, claims and interest of Holders of Claims and Interests, except as otherwise provided in this Plan. All such property of the Estate shall be distributed in accordance with the provisions of this Plan and the Confirmation Order.

b. **Distributions.** The Liquidating Agent shall distribute the assets it has available to pay to the unsecured creditors in an amount and manner chosen by the Liquidating Agent in the Liquidating Agent's sole discretion, with the Liquidating Agent's claims (including, without limitation, professional fees and expenses) considered as an Allowed Claim in Class 8 herein. The Liquidating Agent shall distribute assets available to creditors as follows: (a) first to pay the reasonable costs and expenses of the Liquidating Agent and his professionals (including professional fees) incurred in administering, maintaining, and preserving any funds available to Creditors (to the extent not otherwise paid pursuant to this Plan); and (b) second to the holders of allowed Claims on the terms and conditions, and in the priority, set forth in this Plan.

D. Treatment of Executory Contracts and Unexpired Leases

*UNLESS OTHERWISE PROVIDED HEREIN, CONFIRMATION OF THE PLAN CONSTITUTES (A) AN ASSUMPTION OF THE DEBTOR'S EXECUTORY CONTRACTS AND (B) A FINAL ORDER DETERMINING THAT THE AMOUNT REQUIRED TO CURE ALL DEFAULTS WITH RESPECT TO EXECUTORY CONTRACTS IS \$0.00.*

1. Assumption of Executory Contracts

All Executory Contracts, including all current or future contracts to sell FCC Spectrum Licenses, that have not been previously rejected, or are the subject of a pending motion to reject as of the Confirmation Hearing, shall be assumed by the Debtor and assigned to Choctaw as of the Effective Date pursuant to Bankruptcy Code §§ 365 and 1123. Each Executory Contract assumed pursuant to this provision, as well as all other executory contracts, as to which the Court has previously approved the Debtor's request to assume, shall vest in and be fully enforceable by Choctaw in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable federal law. All employment contracts are rejected, and neither Choctaw nor Council Tree will have any obligations with respect to any of the Debtor's employment contracts.

2. Cure of Defaults of Assumed Executory Contracts

Any monetary amounts by which each Executory Contract and unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied, pursuant to § 365(b)(1) of the Bankruptcy Code, by payment of the amount necessary to cure such default in Cash on the Effective Date or on such other terms as the parties to each such Executory Contract may otherwise agree. In the event non-debtor parties to executory contracts do not file and assert their cure costs, the cure costs will be assumed to be zero. In the event of a dispute regarding (a) the amount of any cure payments, (b) the ability of Council Tree, Choctaw, or any assignee to provide "adequate assurance of future performance" (within the meaning of § 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, the cure payments required by § 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

Known costs asserted and/or filed by non-debtor parties to executory contracts are:

Encana Oil & Gas (USA), Inc. -- \$50,290.65

Enbridge, Inc. -- \$108,738.45

Dixie Electric Membership Corporation -- \$116,021.95

Jackson County Rural Electric Membership Corporation - \$43,273.76

3. Rejection of Certain Contracts and Claims for Rejection Damages

All Executory Contracts not assumed shall be rejected. Proofs of Claim for damages allegedly arising from the rejection pursuant to the Plan or the Confirmation Order of any Executory Contract to which a Claimant is a party must be filed with the Bankruptcy Court and served on the Debtor not later than thirty (30) days after the Effective Date. All Proofs of Claim for such damages not timely Filed and properly served as set forth herein shall be forever barred and discharged and the holder of such a Claim shall not be entitled to participate in any Distribution under the Plan.

4. Objections to Proofs of Claim Based On Rejection Damages

An objection to any Proof of Claim based on the rejection of an Executory Contract pursuant to the Plan will be pursuant to the procedures set forth in this Article III of the Plan.

### **III. CONFIRMATION AND CONSUMATION OF THE PLAN**

#### **A. Conditions Precedent to Confirmation**

Confirmation of the Plan shall be subject to satisfaction of the following conditions at or prior to the time the Confirmation Order is entered:

(i) The Bankruptcy Court shall have approved pursuant to a Final Order a Disclosure Statement to accompany the Plan in form and substance reasonably acceptable to the Debtor; and

(ii) The Confirmation Order shall be entered in form and substance reasonably acceptable to the Debtor.

#### **B. Conditions to Effective Date**

The following are conditions precedent to the occurrence of the Effective Date:

(i) The Confirmation Order confirming the Plan, as the Plan may have been modified shall have been entered and become a Final Order in form and substance reasonably satisfactory to the Debtor or, in the event the Confirmation Order is appealed or a motion to reconsider is filed, the thirtieth (30<sup>th</sup>) day after the entry of a Final Order denying the motion, dismissing such appeal or affirming the Confirmation Order.

(ii) All authorizations, consents, certifications, approvals, rulings, no-action letters, opinions or other documents or actions required by any law, regulation or order to be received or to occur in order to implement the Plan on the Effective Date shall have been obtained or shall have occurred unless failure to do so will not have a material adverse effect on Council Tree, Choctaw, or any other purchaser pursuant to this Plan.

(iii) All other documents and agreements necessary to implement the Plan on the Effective Date shall have been executed and delivered and all other actions required to be taken in connection with the Effective Date shall have occurred, including an agreement acceptable to the Debtor and Choctaw or Council Tree, whichever prevails, regarding the occupancy by Choctaw or Council Tree of the premises utilized by the Debtor during this case.

#### **C. Waiver of Conditions**

Each of the conditions set forth herein may be waived in whole or in part by the Debtor, without any other notice to parties in interest or the Bankruptcy Court and without a hearing.

**D. Failure to Obtain FCC Approval**

**1. Representations and Warranties Concerning FCC Approval**

Choctaw Investors, SECF, Choctaw, Holding and Council Tree each individually and collectively represent and warrant, to the best of their knowledge, as to themselves but not as to each other (i) that Choctaw, Holding and Council Tree are each eligible to receive the FCC Spectrum Licenses from the Debtor, and (ii) that they have not, do not, and will not, made any agreement, contract, or other convention with the Debtor, Debtor's equity Holders, or any other party concerning the assignment of the FCC Spectrum License to Holding or Council Tree that would negatively affect the assignment of the FCC Spectrum License.

**2. FCC Denies Approval**

If the FCC does not approve the transfer of any FCC Spectrum License from the Debtor to Holding or Council Tree, such FCC Spectrum License shall remain the property of the Debtor.

The Debtor has held, and will continue to hold, the FCC Spectrum Licenses pending the approval of the Plan, and it will continue to hold the FCC Spectrum Licenses unless and until an assignment of transfer thereof is approved by the FCC, consistent with the provisions of Section VII(D)(3) hereof.

As previously noted, in the event the FCC Spectrum Licenses become property of the Debtor, it will use every reasonable effort to monetize those assets through sales or other dispositions of them in order to achieve the highest and best prices for the FCC Spectrum Licenses, depending upon market conditions, results of Choctaw's or Council Tree's FCC application process and related factors.

**3. Choctaw, Holding or Council Tree Fail to Request FCC Approval**

If Choctaw, Holding or Council Tree determine, in their sole and absolute discretion, that obtaining FCC approval of the transfer of any FCC Spectrum License from Maritime is cost prohibitive, Choctaw, Holding or Council Tree shall so inform the Liquidating Agent and such FCC Spectrum License will remain the property of the Debtor. The Secured Lenders and SECF shall retain a security interest in the proceeds of FCC Spectrum Licenses remaining the property of the Debtor to the extent that such claims have not been paid in full pursuant to Article VI, C, herein.

In addition, the Secured Lenders claim that they have liens on the proceeds of the FCC Licenses and all other incidents of ownership not excluded by the applicable law and FCC regulations.

The FCC states that security interests and liens cannot encumber any FCC Licenses, pursuant to applicable federal law, including the Communications Act of 1934, as amended, and the rules, regulations and policies promulgated thereunder. Security interests and liens can include all proceeds of FCC Licenses.

4. No Liability for Failure to Obtain FCC Approval

The party that prevails under the Plan, whether Council Tree or Choctaw, shall not have any liability to the Liquidating Agent, any Creditor, or any other party for the failure of the FCC to approve the transfer of any FCC Spectrum License for any reason, including but not limited to the prevailing party's failure or refusal to request such approval in its sole and absolute discretion. Neither Choctaw Investors nor Council Tree is obligated to make any continuing investment to fund ongoing operations of Council Tree, Choctaw or Holding. Any determination by either Council Tree or Choctaw Investors to make additional investments as they deem necessary and prudent, other than as set forth in their respective Offers, shall not create a course of dealing between the parties or a right of Council Tree, Choctaw, Holding, the Liquidating Agent or any Creditor. Other than as set forth in their respective Offers, any determination by either Council Tree or Choctaw Investors to make additional investments as they deem necessary and prudent is not a commitment to any further investments.

E. Reservation of Right to Object to Claims

The Debtor and the Liquidating Agent retain the right to object to Claims though and including 90 days following FCC approval of any FCC Spectrum License sales. However, no objections can be filed as to the Class 1 through 8 Claims after Confirmation, except by the Liquidating Agent as to Claims in Class 8.

1. No Distributions Pending Allowance or Estimation of Claims

No payments or distributions shall be made with respect to all or any portion of a Contested Claim unless and until such Claim becomes an Allowed Claim as determined by Final Order.

2. Reserve for Certain Distributions

The Liquidating Agent shall reserve funds adequate to properly treat Contested Claims pending the resolution of any objection to such Claims.

3. Unclaimed Property

Any distribution or payment to a Creditor shall be sent by first class mail to the Creditor's address indicated on the proof of claim filed by that Creditor in the Case or, if no proof of claim has been filed, to that Creditor most recent address indicated on the Debtor's Schedules or known to the Liquidating Agent. If a Creditor holds an Allowed Claim by virtue of a transfer of such Claim pursuant to Rule 3001 of the Federal Rules of Bankruptcy Procedure, then distributions to the holder of such Claim shall be sent to the address set forth in evidence of the transfer filed with the Bankruptcy Court. If any distribution remains unclaimed for a period of ninety (90) days after it is sent by the Liquidating Agent, then the Creditor to whom such distribution was sent will be deemed to have forfeited the distribution, and such person's Claim shall no longer be deemed to be Allowed, but rather, such Claim shall be deemed disallowed and expunged for all purposes, and such person shall be deemed to have no further Claim with respect and such distribution and shall not participate in any further distributions under the Plan.

#### 4. Precluded Distributions

No distribution shall be made in violation of Bankruptcy Code § 502(d) (to an entity or transferee liable for recoverable property of an avoidable transfer). The Liquidating Agent shall notify each affected Creditor of any contention that Bankruptcy Code § 502(d) prohibits any distribution to such Creditor. If such notice is given, the Claim held by such Creditor will be treated as a Contested Claim.

#### 5. Treatment of Contingent or Unliquidated Claims

Until such time as a contingent Claim becomes fixed and Allowed, such Claim shall be treated as a Contested Claim for purposes related to voting, allowances, and distributions under the Plan. The Bankruptcy Court, upon request by the Debtor, in a summary proceeding for each such contingent Claim or unliquidated Claim, by estimation shall determine the allowability of each such contingent or unliquidated Claim for purposes of voting on the Plan.

### F. Litigation

#### 1. Reservation of Claims and Causes of Action

All Litigation, except the Reserved Claims, including claims, causes of action, cross claims or counterclaims held or assertable by the Debtor, including but not limited to: (1) the Causes of Action; or (2) the Avoidance Actions; and (3) any and all claims, causes of action, counterclaims, demands, controversies, against third parties on account of costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, and executions of any nature, type, or description which the Debtor may have or may come to have, including, but not limited to, negligence, gross negligence, usury, fraud, deceit, misrepresentation, conspiracy, unconscionability, duress, economic duress, defamation, control, interference with contractual and business relationships, conflicts of interest, misuse of insider information, concealment, disclosure, secrecy, misuse of collateral, wrongful release of collateral, failure to inspect, environmental due diligence, negligent loan processing and administration, wrongful setoff, violations of statutes and regulations of governmental entities, instrumentalities and agencies (both civil and criminal), racketeering activities, securities and antitrust laws violations, tying arrangements, deceptive trade practice, breach or abuse of fiduciary duty, breach of any alleged special relationship, course of conduct or dealing, obligation of fair dealing, obligation of good faith, and obligation of good faith and fair dealing, whether or not in connection with or related to the Plan, at law or in equity, in contract in tort, or otherwise, known or unknown, suspected or unsuspected, are preserved and retained for enforcement by and for the benefit of the Unsecured Creditors. It is the intent of the Debtor that this reservation, transfer and assignment of claims to and for the benefit of the Unsecured Creditors shall be as broad as permitted by applicable law.

#### 2. Avoidance Actions

As of the Effective Date, the Liquidating Agent is appointed as the representative of the Estate pursuant to § 1123(b)(3) of the Code to pursue and shall be the only Person or Entity authorized to pursue actions to recover preferences, fraudulent conveyances, and other avoidance

and/or recovery actions under Chapter 5 of the Bankruptcy Code or applicable state law. Unless the Liquidating Agent consents in writing, or it is otherwise ordered by the Bankruptcy Court, no other Person or Entity shall have the right or obligation to pursue any such actions. Any Creditor determined by the Liquidating Agent to have received a transfer that is avoidable pursuant to any provision of Chapter 5 of the Bankruptcy Code or any other applicable law shall be required to remit to the Liquidating Agent the determined amount of the avoided transfer prior to receiving any Distribution under the Plan.

**G. Effect of Confirmation, Discharge and Injunction**

**1. Vesting of Property**

Except as otherwise provided herein, and subject to FCC approval of the transfer of the FCC Spectrum Licenses, Confirmation of the Plan shall vest all of the property of the Debtor, except the Debtor's equity interest in Critical RF and all assets owned by Critical RF, into Choctaw, Holding or Council Tree as of the Effective Date. Holding (if the Choctaw offer is approved) shall hold only the FCC Spectrum Licenses. Choctaw or Council Tree shall hold all other assets of the Debtor transferred.

**2. Property Free and Clear**

Except as otherwise provided herein, all property dealt with by the Plan shall be free and clear of all claims, Liens, and interests of any party as of the Confirmation of the Plan. The Plan will evidence the release of any and all Liens or encumbrances against all property dealt with by the Plan, unless such Lien or encumbrance is specifically retained herein.

**3. Legal Binding Effect: Discharge of Claims and Interests**

The provisions of the Plan shall (i) bind all Claimants and Interest holders, whether or not they accept the Plan, and (ii) discharge claims and liabilities that arose before the Petition Date, and from any Claims, claims, debts, and liabilities, including, without limitation, any Claims, claims, debts, and liabilities of a kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, that arose, or have been asserted against, the Debtor at any time before the entry of the Confirmation Order or that arise from any pre-Confirmation conduct of the Debtor, whether not the Claims, claims, debts and liabilities are known or knowable by the Claimant. In addition, distributions provided for under the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims against the Debtor or any of its assets or properties, including any Claim accruing after the Petition Date and prior to the Effective Date.

While the Plan calls for the sale of the FCC Spectrum licenses, and other assets to Choctaw/Holding or Council Tree, the Debtor is, in effect, "owner financing" the sale of those assets to Choctaw/Holding or Council Tree because it will not receive an immediate cash payment for those assets in the event the Court sees fit to approve the Plan. As all creditors know, and as the Plan clearly provide, substantial cash payments from Choctaw/Holding or Council Tree will not occur until after FCC approval, and then only after execution and consummation of the asset purchase agreements that exist, and that will exist, that call for the sale of FCC Spectrum Licenses to Choctaw/Holding or Council Tree (or other purchasers in the

event Choctaw/Holding or Council Tree cannot obtain FCC approval). As a result, the Debtor, through the Liquidating Agent, and otherwise, will continue in an active posture by monitoring and assisting in the FCC approval process. Additionally, the Debtor will continue to prosecute objections to claims, post-confirmation, and the Debtor or the Liquidating Agent will pursue litigation, including, but not limited to, all avoidance claims and causes of action that may exist, especially with respect to transfers listed in the Debtor's schedules and books and records involving payments made within the ninety (90) days prior to the filing of the Petition and payments or other transfers in the two (2) years prior to the filing of the Petition herein.

In the event Choctaw/Holding or Council Tree cannot obtain FCC approval, or they abandon that pursuit, then the FCC Spectrum Licenses will be returned to the Debtor, as noted in various prior sections of the Plan. In that event, the Debtor will become active and aggressive with respect to seeking a purchaser for the FCC Spectrum License (and "accompanying" assets) that are being returned to the Debtor. Since it is contemplated that FCC approval will not occur overnight, these post-confirmation functions and obligations of the Debtor (and the Liquidating Agent as well), and the contingency that the FCC Spectrum License may be returned to the Debtor cause the Debtor to be engaging in business post-confirmation. The Debtor will also be required, as noted, to monitor the ongoing FCC application process and, to the extent necessary, participate therein. The Debtor will likely remain obligated to participate in the FCC Enforcement Bureau litigation as well, post-confirmation.

The Havens Entities have multiple proceedings before the FCC that pertain to assets of the Debtor, and they have asserted, among other things, antitrust claims that are pending in the district court in New Jersey. The court has lifted the stay with respect to the New Jersey litigation and it is proceeding. The court has set a claim estimation hearing, tentatively, for October 15-16, 2012, to estimate the claims of the Havens Entities in the New Jersey district court litigation for voting purposes. In the event the Court approves the Plan, then, subject to proceedings before the FCC, and in the event the FCC grants and approves application of the *Second Thursday* doctrine to the Debtor/Holdings/Council Tree or any other corporate entity, the Debtor is of the view that claims pending in the FCC asserted by the Havens Entities will be consumed in that litigation, when combined with approval of the Plan in this Court. Further, while the district court litigation in New Jersey will proceed to establish the amount, if any, of the Havens Entities' monetary claims, those monetary awards, if any, will simply be included in the class of unsecured creditors and paid according to the priority established in the proposed Plan of reorganization.

The Debtor will retain, under the Plan, the assets of Critical RF, which will be counted on to provide further payments to creditors in the event Critical RF becomes profitable or in the event there is a sale or other disposition of its assets at some point in the future, well after the Plan has been confirmed.

The FCC does not concede that a discharge is lawful and may object to confirmation of the Plan on this basis.

SkyTel also does not concede that a discharge is lawful and may object to confirmation of the Plan on this and any other valid basis.

Further, SkyTel disagrees with the Debtor's above-stated view regarding the effect that application of Second Thursday, combined with confirmation of the Plan, would have on SkyTel's claims pending in the FCC. SkyTel's general views on these matters are set forth in an Exhibit to the Disclosure Statement which is referenced under "Means for Implementation of the Plan" and the "FCC Application and 'Second Thursday' Issues" portion thereof.

The Debtor disagrees with the view of SkyTel/Havens.

4. Effect on Third Parties

Except as otherwise expressly provided herein, nothing contained in this Plan or in the documents to be executed in connection with this Plan shall affect any Creditors' rights as to any third party.

5. Release and Discharge of Claims and Interests

Except as otherwise provided by the Plan, the consideration distributed under the Plan shall be in complete satisfaction, release and discharge of the Debtor and its assets from all Claims of any Creditor, including Claims arising prior to the Effective Date.

6. Permanent Injunction

Except as otherwise expressly provided in, or permitted under, the Plan, the Confirmation Order shall provide, among other things, that all Creditors and persons who have held, hold, or may hold Claims or Interests that existed prior to the Effective Date, are permanently enjoined on and after the Effective Date against the: (i) commencement or continuation of any judicial, administrative, or other action or proceeding against the on account of Claims against or Interests in the Debtor, or on account of claims released pursuant to the Plan; (ii) enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the Debtor, or any assets or property of same; or (iii) creation, perfection or enforcement of any encumbrance of any kind against the Debtor arising from a Claim. This provision does not enjoin the prosecution of any claims that arise on or after the Effective Date nor does it enjoin the determination of the Allowed Amount of any Claims that arose prior to the Effective Date by a court of competent jurisdiction.

Any injunction will in no way impair the FCC's regulatory authority or any administrative proceedings in exercise of that authority. After confirmation of the Plan, the FCC asserts that it may commence and prosecute actions against the Debtor consistent with its statutory authority with the exception of money judgments arising from discharged claims, if a discharge is found to be lawful and appropriate. Generally, the Debtor agrees with the noted language in this paragraph, inserted at the request of the FCC. However, Debtor asserts that it is also entitled to injunctive relief, as to all creditors, to allow it to enforce the provisions of a plan that may be confirmed by the Court, whether or not a discharge is granted, so long as the discharge simply seeks to enforce the provisions of the Plan and protect post-confirmation assets accordingly.

7. Special Provisions for Tax Claims

Tax claims dealt with under the terms of the Plan shall retain their status as tax obligations after confirmation of the Plan. If either Council Tree or Choctaw fails to timely pay a Tax Claim that results in a default on any tax debts provided for under the Plan, the taxing authority may send either Council Tree or Choctaw notice by Certified Mail describing the event of default and giving either Council Tree or Choctaw twenty (20) business days to cure the default. If either Council Tree or Choctaw fails to cure the default in the 20-day period, the entire balance still owed to the taxing authority shall become due and payable immediately and the taxing authority may collect these unpaid tax liabilities through the administrative collection provisions of applicable law.

8. Releases

Various releases are called for within the Choctaw offer (Exhibit "C" to the Disclosure Statement, which is incorporated herein by reference) and the Council Tree offer (Exhibit "D" to the Disclosure Statement, which is incorporated herein by reference). Those releases are incorporated by reference in this section of the Plan.

The releases sought herein are necessary to implement the Plan and to obtain necessary funding from Holding, Choctaw or Council Tree.

9. Exculpation

FROM AND AFTER THE EFFECTIVE DATE, (A) THE DEBTOR; (B) ALL CURRENT OFFICERS AND DIRECTORS, AND ALL OTHER AGENTS, EMPLOYEES, PROFESSIONALS AND REPRESENTATIVES OF THE DEBTOR; (C) THE LIQUIDATING AGENT; (D) ALL AGENTS, EMPLOYEES, PROFESSIONALS AND REPRESENTATIVES OF THE LIQUIDATING AGENT; (E) THE COMMITTEE, ITS MEMBERS AND ITS PROFESSIONALS (COLLECTIVELY, WITH EACH OF THEIR PREDECESSORS AND SUCCESSORS IN INTEREST AND THEIR RESPECTIVE GENERAL AND LIMITED PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PROFESSIONALS AND OTHER REPRESENTATIVES, THE "EXCULPATED PARTIES") SHALL NEITHER HAVE NOR INCUR ANY LIABILITY TO ANY PERSON OR ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN FROM AND AFTER THE PETITION DATE IN CONNECTION WITH OR RELATED TO THE FORMULATION, PREPARATION, DISSEMINATION, IMPLEMENTATION, ADMINISTRATION, CONFIRMATION OR CONSUMMATION OF THE PLAN, ANY SALES OF ANY ASSETS, THE DISCLOSURE STATEMENT OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO POST PETITION IN CONNECTION WITH THE PLAN. HOWEVER, THE FOREGOING PROVISIONS OF THIS SECTION SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY PERSON OR ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM,

OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, REMEDY OR LIABILITY RELEASED OR TO BE RELEASED AGAINST AN EXCULPATED PARTY PURSUANT TO THE PLAN.

10. Injunction.

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE CONFIRMATION ORDER SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTOR ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTOR OR ITS ESTATE, OR ANY OF ITS PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO THE DEBTOR; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN, PROVIDED HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER.

H. Effect of Confirmation, Discharge and Injunction

1. Vesting of Property

Except as otherwise provided herein, and subject to FCC approval of the transfer of the FCC Spectrum Licenses, Confirmation of the Plan shall vest all of the property of the Debtor into Holding or Council Tree as of the Effective Date.

2. Property Free and Clear

Except as otherwise provided herein, all property dealt with by the Plan shall be free and clear of all claims, Liens, and interests of any party as of the Confirmation of the Plan. The Plan will evidence the release of any and all Liens or encumbrances against all property dealt with by the Plan, unless such Lien or encumbrance is specifically retained herein.

3. Legal Binding Effect: Discharge of Claims and Interests

The provisions of the Plan shall (i) bind all Claimants and Interest holders, whether or not they accept the Plan, and (ii) discharge claims and liabilities that arose before the Petition Date, and from any Claims, claims, debts, and liabilities, including, without limitation, any Claims, claims, debts, and liabilities of a kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, that arose, or have been asserted against, the Debtor at any time before the entry of the Confirmation Order or that arise from any pre-Confirmation conduct of the Debtor,

whether not the Claims, claims, debts and liabilities are known or knowable by the Claimant. In addition, distributions provided for under the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims against the Debtor or any of its assets or properties, including any Claim accruing after the Petition Date and prior to the Effective Date.

#### 4. Effect on Third Parties

Except as otherwise expressly provided herein, nothing contained in this Plan or in the documents to be executed in connection with this Plan shall affect any Creditors' rights as to any third party.

#### 5. Release and Discharge of Claims and Interests

Except as otherwise provided by the Plan, the consideration distributed under the Plan shall be in complete satisfaction, release and discharge of the Debtor and its assets from all Claims of any Creditor, including Claims arising prior to the Effective Date.

#### 6. Permanent Injunction

Except as otherwise expressly provided in, or permitted under, the Plan, the Confirmation Order shall provide, among other things, that all Creditors and persons who have held, hold, or may hold Claims or Interests that existed prior to the Effective Date, are permanently enjoined on and after the Effective Date against the: (i) commencement or continuation of any judicial, administrative, or other action or proceeding against the on account of Claims against or Interests in the Debtor, or on account of claims released pursuant to the Plan; (ii) enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the Debtor, or any assets or property of same; or (iii) creation, perfection or enforcement of any encumbrance of any kind against the Debtor arising from a Claim. This provision does not enjoin the prosecution of any claims that arise on or after the Effective Date nor does it enjoin the determination of the Allowed Amount of any Claims that arose prior to the Effective Date by a court of competent jurisdiction.

#### 7. Special Provisions for Tax Claims

Tax claims dealt with under the terms of the Plan shall retain their status as tax obligations after confirmation of the Plan. If Holding or Council Tree fails to timely pay a Tax Claim that results in a default on any tax debts provided for under the Plan, the taxing authority may send Holding or Council Tree notice by Certified Mail describing the event of default and giving Holding or Council Tree 20 business days to cure the default. If Holding or Council Tree fails to cure the default in the 20-day period, the entire balance still owed to the taxing authority shall become due and payable immediately and the taxing authority may collect these unpaid tax liabilities through the administrative collection provisions of applicable law.

#### 8. Termination of the Committee

As of the Effective Date, the Committee shall terminate its existence and otherwise cease to operate. Prior to the Effective Date, the Committee shall appoint the Administrative Agent to assume its duties hereunder as of the Effective Date. The Committee shall approve the

Administrative Agent's appointment, retention, compensation and other terms of engagement as necessary and proper. Should the Committee fail to appoint the Administrative Agent, the chair of the Committee shall have sole and absolute authority to appoint and engage the Administrative Agent.

#### **IV. MISCELLANEOUS PROVISIONS**

##### **A. Request for Relief Under § 1129(b)**

The Debtor anticipates that it will request the Bankruptcy Court to confirm the Plan in accordance with the provision of Section 1129(b) of the Bankruptcy Code.

The Bankruptcy Court may confirm a plan, even if it is not accepted by all impaired Classes, if the plan has been accepted by at least one impaired Class of Claims and the plan meets the "cram down" provisions set forth in § 1129(b) of the Code. The "cram down" provisions require that the Bankruptcy Court find that a plan "does not discriminate unfairly" and is "fair and equitable" with respect to each non-accepting impaired class.

The Bankruptcy Court may find that the Plan is "fair and equitable" with respect to a Class of nonaccepting Impaired Unsecured Claims only if (a) each Impaired Unsecured Creditor receives or retains under the Plan property of a value as of the Effective Date of such Plan equal to the amount of its Allowed Claim, or (b) the holder of any Claim that is junior to the Claims of the dissenting Class will not receive or retain any property under the Plan.

The Bankruptcy Court may find that the Plan is "fair and equitable" with respect to a Class of nonaccepting Secured Claims only if, under the Plan, (a) the holder of each Secured Claim in such Class retains such holder's lien and receives deferred cash payments totaling at least the Allowed amount of such Secured Claim and having a value, as of the Effective Date of the Plan, equal to or in excess of the value of such holder's interest in the estate's interest in the collateral or the Secured Claim, (b) the collateral for such Secured Claim is sold, the lien securing such Claims attached to the proceeds, and such liens on proceeds are afforded the treatment described under clause (a) or (c) of this paragraph, or (c) the holders of such Secured Claims realize the "indubitable equivalent" of their claims.

If all of the provisions of Section 1129 are met, the Bankruptcy Court may enter an Order confirming the Plan.

##### **B. The Plan is Confirmable Under § 1129(b) of the Bankruptcy Code**

The Plan also meets the "best interest of creditors" test and is "feasible." In addition, if any Class of Claims rejects the Plan, the Plan can nevertheless be confirmed because it meets the "cram down" standard with respect to such Class.

###### **1. The Plan Meets the "Best Interest of Creditors" Test**

The "best interest of creditors" test requires that the Bankruptcy Court find that the Plan provides to each non-accepting holder of a Claim treated under the Plan a recovery which has a

present value at least equal to the present value of the distribution that such person would receive from the Debtor if the Debtor liquidated under Chapter 7 of the Code.

2. The Plan is Feasible

The Code requires that, as a condition to Confirmation of a plan, the Bankruptcy Court find that Confirmation is not likely to be followed by liquidation or a need for further financial reorganization except as proposed herein. Once the Plan is in effect, Holding or Council Tree will be able to effectively manage the business and focus on maintaining or increasing the revenue produced by the sales of the FCC Spectrum Licenses.

3. The Plan Meets the Cram Down Standard with Respect to Any Impaired Class of Claims Rejecting the Plan

In the event any Impaired Class of Claimants rejects the Plan, the Plan can nevertheless be confirmed. The Plan satisfies the provisions for cram down under Section 1129(b) of the Code. Secured Creditors are the Debtor of affiliated with the Debtor and will vote for confirmation of the Plan. The holders of Priority Claims are not impaired. The Unsecured Creditors are either receiving on account of their Claims property of a value equal to the allowed amount of their Claims, or the holders of Claims that are junior to the Claims of such Class will not receive or retain under the Plan on account of such junior Claim any interest any property..

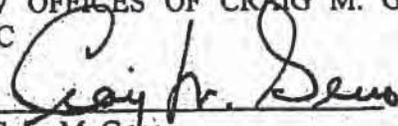
THIS, the 25<sup>th</sup> day of September, 2012.

Respectfully submitted,

MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC

By Its Attorneys,

LAW OFFICES OF CRAIG M. GENO,  
PLLC

By:   
Craig M. Geno

OF COUNSEL:

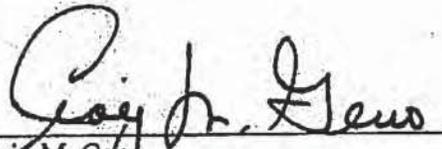
Craig M. Geno, Esq., MB #4793  
Jarret P. Nichols, Esq. MB #99426  
Law Offices of Craig M. Geno, PLLC  
Post Office Box 3380  
Ridgeland, MS 39158-3380  
Phone: 601-427-0048  
Fax: 601-427-0050

**CERTIFICATE OF SERVICE**

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via electronic filing transmission and/or U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

Sammye S. Tharp  
Office of the United States Trustee  
[Sammye.S.Tharp@usdoj.gov](mailto:Sammye.S.Tharp@usdoj.gov)

THIS, the 25<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Craig M. Geno

## ASSIGNMENT AND SECURITY AGREEMENT

**THIS ASSIGNMENT AND SECURITY AGREEMENT** (this "Agreement") made and effective as of the \_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), is by **CHOCTAW TELECOMMUNICATIONS, LLC**, a \_\_\_\_\_ limited liability company ("Pledgor"), to and in favor of \_\_\_\_\_, in his capacity as Administrative Agent under and pursuant to the Plan described herein (in such capacity, "Agent").

### RECITALS:

A. On August 1, 2011, Maritime Communications/Land Mobile, LLC ("Debtor"), filed a voluntary petition with the United States Bankruptcy Court for the Northern District of Mississippi (the "Court"), initiating Case No. 11-13463-DWH (the "Case"), under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

B. On April 30, 2012, the Debtor filed a Plan of Reorganization in the Case, which was modified by the Modifications to Plan of Reorganization filed in the Case on \_\_\_\_\_, 2012, and was further modified and confirmed by order of the Court dated \_\_\_\_\_, 2012 (the "Confirmation Order", and as confirmed by the Confirmation Order, the "Plan"). Capitalized terms used herein without definition shall have the respective meanings set forth in the Plan.

C. Pursuant to the Plan, and as provided by [citation to applicable LLC Act] (the "Act"), Choctaw Holding, LLC ("Holding"), has been formed by Pledgor pursuant to (i) those certain Articles of Organization filed with the \_\_\_\_\_ on \_\_\_\_\_, 2012 (the "Articles of Organization"), and (ii) that certain Operating Agreement adopted by Pledgor on \_\_\_\_\_, 2012 (the "Operating Agreement"). All limited liability company membership rights and equity interests in and to Holding, whether arising under the Articles of Organization, the Operating Agreement, the Act or otherwise (collectively, the "Membership Interests"), are owned by Pledgor.

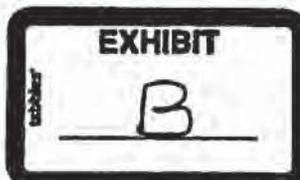
D. Pursuant to the Plan, all authorizations to use the radio frequency spectrum issued by the Federal Communications Commission (the "FCC") and held by Debtor will be transferred to Holding upon and subject to final approval by the FCC, free and clear of all liens, claims or interests other than as permitted by the Plan and/or other than as provided in the Confirmation Order.

E. This Agreement is being made and delivered in fulfillment of the obligations of Pledgor under Section 4 of the Plan with respect to Administrative Expense Claimants, and Section 5 of the Plan with respect to Unsecured Creditors.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing Recitals, Pledgor hereby represents and warrants to Agent, and covenants and agrees with Agent, as follows:

1. Grant of Security Interest. As security for the full and timely payment and performance by Pledgor of (i) all its obligations, duties and liabilities under the Plan, and (ii) all



terms, covenants and conditions of this Agreement (collectively, the "Secured Obligations"), Pledgor hereby assigns, pledges, hypothecates, transfers, sets over and delivers unto Agent, and grants to Agent a collateral assignment of, and a continuing security interest in and to, all right, title and interest of Pledgor in and to the following (the "Collateral"):

(a) The Membership Interests, including any additional interests that Pledgor may hereafter acquire, or any rights of Pledgor to acquire additional interests, including any split or division of the Membership Interests into additional units, any issuance or distribution of additional units to Pledgor in respect of its status as holder of the Membership Interests, or any rights to acquire any units in respect of its status as a member of Holding or holder of the Membership Interests, all of which shall, without further action, be deemed part of the Membership Interests.

(b) All monies and other property now due or to become due to Pledgor pursuant to or resulting from the Membership Interests, whether from , disposition of the assets of Holding or any liquidation and dissolution of Holding or otherwise.

(c) All proceeds and products of the Membership Interests including, without limitation, all contract rights, general intangibles, securities, investment property, dividends, distributions, warrants, options and other rights and proceeds arising out of, derived from or associated with the Membership Interests.

2. Power of Attorney. As further security for the Secured Obligations, Pledgor hereby constitutes and appoints Agent as its true and lawful attorney-in-fact, which appointment is coupled with an interest and is irrevocable, with full power of substitution for all purposes as a member, including, without limitation, (i) the right to receive any dividends or other distributions, whether cash or non-cash, distributed or distributable to Pledgor pursuant to the Membership Interests (and Agent may apply any such cash and other assets to the Secured Obligations in such order as Agent may elect in its discretion), (ii) the right to remove and appoint in their place any managers or officers of Holding, and (iii) the right to exercise all other rights of the Pledgor as a member of Holding, including all voting rights (the "Power of Attorney"); provided, however, that such Power of Attorney may only be exercised by Agent while an Event of Default exists, and provided further that the Agent shall not exercise any right of Pledgor that would require the consent of the FCC prior to the Agent's exercise thereof unless and until the Agent has received any required consent from the FCC to a transfer of control.

3. Representations, Warranties and Covenants. Pledgor and Holding represent and warrant to Agent and agree with Agent as follows:

(a) All of the Membership Interests are now, and will remain free of any claim, lien, security interest, purchase option, right of first refusal or other encumbrance other than that granted to Agent herein.

(b) The consideration for the Membership Interests has been fully tendered and is not subject to any existing or future requirement to make any capital contribution.

(c) All voting rights of the Pledgor as a member of Holding with respect to the Membership Interests are held by Pledgor. Such voting rights are not subject to any restrictions or voting rights agreement.

(d) All of the Membership Interests held by Pledgor or that Pledgor has a right to obtain are assigned and pledged pursuant to this Agreement.

(e) This Agreement constitutes a valid and legally binding obligation of Pledgor and Holding, enforceable in accordance with its terms, and does not violate, conflict with, or constitute any default under any agreement (including the Articles of Organization and Operating Agreement of Holding or the Articles of Organization or Operating Agreement of Pledgor) or any law, government regulation, decree, or judgment, and will not constitute a violation of any other agreement or instrument binding upon Pledgor or Holding.

(f) Holding has not issued, and shall not issue, any certificate or other document or instrument evidencing the Membership Interests or any other ownership interest in Holding in favor of Pledgor or any other person or entity. In the event any such certificates or other documents or instruments are issued in the future during the effective time of this Agreement, Holding and Pledgor shall immediately deliver such certificates or other documents into the possession of Agent, together with executed powers of attorney in blank to cause such certificates to be in transferable form without further signatures by or on behalf of Pledgor.

(g) Pledgor will not vote in favor of the issuance of any additional membership interests in Holding without the prior written consent of Agent. Additionally, Pledgor shall not transfer or otherwise encumber the Membership Interests, or any part thereof, or any interest therein.

(h) Each of Holding and Pledgor is a legally formed entity existing under the state of formation set forth herein, is solvent and has not changed its name or state of domicile.

(i) Each of Holding and Pledgor will maintain its existence, maintain qualification and good standing in each state in which it conducts business, and not merge or consolidate with or into any other entity.

(j) Without notice to the Pledgor, without the consent of the Pledgor, and without affecting or limiting the Pledgor's agreements hereunder, the Agent may:

(i) grant Holding extensions of time for payment and/or performance of the Secured Obligations;

(ii) consent to any modification of the Plan, in Agent's sole discretion;  
and

(iii) grant Holding extensions of time for performance of agreements or other indulgences.

(k) Notwithstanding anything to the contrary herein, Pledgor will not, without the prior written consent of Agent, which consent will be in Agent's sole discretion, (a) vote in

favor of or consent to any dissolution or filing in any bankruptcy or insolvency proceeding with respect to Holding, or (b) vote in favor of or consent to Holding taking any other action that would materially affect the ability of Holding to carry on its business substantially in the same manner as presently conducted or would cause an "Event of Default" to occur pursuant to this Agreement. If Pledgor votes in favor of or consents to any action that would violate any covenant of this Agreement, such action, to the extent requiring the favorable vote or consent of the Pledgor, shall be deemed invalid and ineffective and not binding upon Holding or upon Agent as assignee of the Membership Interest.

(l) During an Event of Default, the Pledgor shall make or file any application, petition, request, or appeal, and take any action in connection with such application, petition, request, or appeal, requested by the Agent to cause the FCC to grant its consent to the transfer of control of Holding to the Agent or the Agent's designee, including any receiver or trustee appointed by a court of competent jurisdiction or any purchaser of the Membership Interests designated by the Agent.

4. Events of Default. Each of the following shall constitute an "Event of Default" hereunder:

(a) The failure of Holding or Pledgor to timely pay or perform any of the Secured Obligations as and when due, which failure is not cured after the giving of any required notice and expiration of any applicable cure period pursuant to the Plan, if any, for failures related to the Plan and subject to subsection 4(c) below for failures related to this Agreement;

(b) The falsity of any representation or warranty herein; or

(c) The failure of Pledgor or Holding to perform or observe any covenant herein that is not curable, or, if curable, which failure is not cured within thirty (30) days following written notice by Agent to Pledgor and Holding.

5. Remedies. If an Event of Default shall exist, Agent may immediately exercise any one or more of its remedies hereunder, successively or concurrently, as follows:

(a) Require that Holding pay all amounts arising under the Membership Interests and from time to time due to Pledgor directly to the Agent by checks or other orders payable to the order of Agent, and Pledgor hereby authorizes and directs Holding to do so upon Agent's demand without further inquiry and without regard to any contrary instructions from any Pledgor or others. Pledgor constitutes and appoints Agent as its true and lawful attorney-in-fact, which appointment is coupled with an interest and is irrevocable, with full power of substitution, in its name or in the name of the Agent or otherwise, to ask, require and demand and to receive and give acquittance for any payment, and to endorse the name of Pledgor to any check, draft or other order for the payment of money payable to any Pledgor by virtue of its Membership Interests while an Event of Default exists. After demand by the Agent, while an Event of Default exists, Pledgor agrees that if it shall receive any payment pursuant to or by virtue of the Membership Interests, such payment will be delivered forthwith to Agent in the form received, and until so delivered, the Pledgor shall hold such payment in trust for the benefit of Agent and

shall not commingle it with any other funds or property of Pledgor. All such payments with respect to the Membership Interests shall be applied to the Secured Obligations in accordance with the Plan.

(b) Exercise the Power of Attorney granted by Pledgor to Agent herein and/or may, to the extent permitted by applicable law, require that Holding reissue to Agent in Agent's name all Membership Interests to Agent or its designee.

(c) Sell the Membership Interests at any time and from time to time, at any public or private sale or judicial proceeding, at the option of Agent, without advertisement except as otherwise expressly required by law; Agent may become the purchaser thereof at any such sale, free from any equity of redemption and from all other claims, and credit all or any part of the Secured Obligations against the purchase price; and after deducting all legal and other expenses for maintaining or selling the Membership Interests and all reasonable attorneys' fees, legal or other expenses for such collection, sale and delivery, Agent shall have the right to apply the remainder of the proceeds of such sale or sales in payment of (or may hold the same as a reserve against) the Secured Obligations in accordance with the Plan. Five (5) days prior written notice of any public or private sale shall be considered fair and commercially reasonable.

(d) Agent shall have the rights and remedies of a secured party under each applicable Uniform Commercial Code and under any and all other applicable laws in addition to the rights and remedies provided herein or in any other instrument or document executed by the Pledgor.

(e) Agent shall have the right, but not the obligation, to exercise all voting rights with respect to the Membership Interests, subject to the Agent receiving any required prior approval from the FCC.

(f) Agent may proceed to protect its rights by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of Pledgor herein contained or in aid of the exercise of any power or remedy granted to Agent under this Agreement.

(g) Holding agrees to follow Agent's written instructions with regard to the Membership Interests or any rights or payments relating thereto notwithstanding any contrary instructions from Pledgor or others.

#### 6. Miscellaneous.

(a) It is expressly recognized and agreed by Pledgor and Holding that none of the Membership Interests hereunder have been registered under the Securities Act of 1933, any state securities law or otherwise as may be required for the public sale or other disposition upon an Event of Default hereunder and that the manner and terms upon which the Membership Interests may be offered for sale or other disposition upon an Event of Default may therefore be limited by applicable state or federal statutes, rules or regulations. Accordingly, it is expressly agreed that, upon an Event of Default hereunder, the Membership Interests may be sold or otherwise disposed of by Agent, in its discretion, to purchasers of such limited or restrictive

number or character (or both) and upon such restricted terms and conditions (including, without limitation, the agreement of the purchaser or purchasers thereof that the Membership Interests are bought for the purchaser's own account and not with a view toward resale) as may, in Agent's sole judgment, be required to comply with all applicable state or federal statutes, rules or regulations, and Pledgor hereby expressly agrees that such method and manner of sale or other disposition shall constitute a commercially reasonable method and manner of sale or other disposition.

(b) The Membership Interests have been designated by Pledgor as a "security" and constitute a "security" under the applicable Uniform Commercial Code.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) Any notice required hereunder or by reason of the application of any law shall be deemed to have been duly given if delivered in person, by nationally-recognized overnight delivery service with confirmation of delivery, or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at their respective addresses set forth below, or to such other address as either party hereto shall designate to the other in a written notice, given as herein provided:

If to Pledgor to:

Choctaw Telecommunications, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Holding to:

Choctaw Holding, LLC'

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Agent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

Derek Meek, Esq.  
Burr & Forman LLP  
420 North 20th Street, Suite 3400  
Birmingham, Alabama 35203

(e) In the event that any provision hereof is hereafter deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provisions hereof, and any and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

(f) The failure at any time or times hereafter to require the strict performance by Pledgor or Holding of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, document or instrument now or hereafter executed by Pledgor or Holding and delivered to Agent shall not waive, affect or diminish any right of Agent thereafter to demand strict compliance or performance therewith and with respect to any other provisions, warranties, terms and conditions contained in such agreements, documents and instruments, and any waiver of any default or Event of Default shall not waive or affect any other default or Event of Default, whether prior or subsequent thereto and whether of the same or a different type. None of the warranties, conditions, provisions and terms contained in this Agreement or in any other agreement, document or instrument now or hereafter executed by Pledgor or Holding and delivered to Agent shall be deemed to have been waived by any act or knowledge of Agent, its agents, officers or employees but only by an instrument in writing, signed by an officer of Agent and directed to the Pledgor and Holding specifying such waiver.

(g) Each of Pledgor and Holding will, at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable or that the Agent may reasonably request in order (a) to perfect and protect the security interest created or purported to be created hereby; and (b) to enable Agent to exercise and enforce its rights and remedies hereunder in respect of the Membership Interests. Agent is hereby authorized to file in such offices as Agent deems appropriate Uniform Commercial Code financing statements naming Pledgor as a debtor and describing its Membership Interests as collateral, and Pledgor agrees to pay or reimburse Agent for all reasonable costs thereof.

(h) After an Event of Default, the Agent, or any of its agents, shall have the right to call at Holding's or Pledgor's places of business at intervals to be determined by the Agent and, without hindrance or delay, to inspect, audit and check and make abstracts from the

books, records, journals, correspondence and other data relating to the Membership Interests or to any other transaction between Holding and Pledgor, and upon Agent's reasonable request, Pledgor and Holding will make copies of the same available to Agent at such address as Agent may designate.

(i) Pledgor and Holding waive any right they may have to require marshalling of assets.

(j) Pledgor and Holding will, on demand, reimburse Agent for all expenses incurred by Agent in connection with the administration, amendment, modification or enforcement of this Agreement and/or in the collection of any amounts owing from Pledgor or Holding to Agent under this Agreement and, until so paid, the amount of such expenses shall be added to and become part of the amount of the Secured Obligations and bear interest at the maximum rate allowable by applicable law, not to exceed eighteen percent (18.0%) per annum (the "Default Rate").

(k) If at any time or times hereafter Agent employs counsel to advise or provide other representation with respect to this Agreement or any other agreement, document or instrument heretofore, now or hereafter executed by Pledgor or Holding and delivered to Agent with respect to the Secured Obligations, or to commence, defend or intervene, file a petition, complaint, answer, motion or other pleadings or to take any other action in or with respect to any suit or proceeding relating to this Agreement or any other agreement, instrument or document heretofore, now or hereafter executed by Pledgor or Holding and delivered to Agent with respect to the Secured Obligations, or to represent Agent in any litigation with respect to the affairs of Pledgor or Holding, or to enforce any rights of Agent or obligations of Pledgor or Holding or any other person which may be obligated to Agent by virtue of this Agreement or any other agreement, document or instrument heretofore, now or hereafter delivered to Agent by or for the benefit of Pledgor or Holding with respect to the Secured Obligations, or to collect from Pledgor or Holding any amounts owing hereunder, then in any such event, all of the reasonable attorneys' fees incurred by Agent arising from such services and any expenses, costs and charges relating thereto shall constitute additional obligations of Pledgor and Holding payable on demand and, until so paid, shall be added to and become part of the Secured Obligations and bear interest at the Default Rate.

(l) This Agreement, the Plan and the other documents evidencing or securing the Secured Obligations constitute the entire agreement between the parties with respect to the subject matter of this Agreement, and this Agreement may be amended only by a writing signed on behalf of each party.

(m) Notwithstanding any other provision hereof, nothing in this Agreement shall be deemed to make the Agent liable to any person for the liabilities or obligations of Holding.

**(n) AGENT SHALL HAVE NO FIDUCIARY DUTIES TO PLEDGOR OR HOLDING WITH RESPECT TO THE MEMBERSHIP INTERESTS OR THE EXERCISE OF ITS RIGHTS OR REMEDIES HEREUNDER. PLEDGOR AND HOLDING HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS AGENT**

**FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, OR EXPENSES INCURRED BY AGENT AS A RESULT OF, OR ARISING OUT OF, OR IN ANY WAY RELATED TO, OR BY REASON OF ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING (WHETHER OR NOT AGENT IS A PARTY THERETO) RELATED TO THE ENTERING INTO AND/OR PERFORMANCE OF THIS AGREEMENT OR THE MEMBERSHIP INTERESTS ASSIGNED TO AGENT UNDER THIS AGREEMENT.**

(o) The validity, interpretation, enforcement, and effect of this agreement shall be governed by and construed according to the laws of the State of Mississippi.

(p) PLEDGOR AND HOLDING HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF AGENT, HOLDING AND/OR PLEDGOR WITH RESPECT TO THIS AGREEMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. PLEDGOR AND HOLDING AGREE THAT AGENT MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF PLEDGOR AND HOLDING IRREVOCABLY TO WAIVE THEIR RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT TO THE AGENT, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN PLEDGOR, HOLDING AND AGENT SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

\* \* \*

**IN WITNESS WHEREOF**, Agent, Holding and Pledgor have caused this Agreement to be properly executed as of the day and year first above written.

**PLEDGOR:**

**CHOCTAW TELECOMMUNICATIONS, LLC,**  
a \_\_\_\_\_ limited liability company

By \_\_\_\_\_  
Its \_\_\_\_\_

**HOLDING:**

**CHOCTAW HOLDING, LLC.,**  
a \_\_\_\_\_ limited liability company

BY: \_\_\_\_\_  
Its \_\_\_\_\_

**AGENT:**

Print Name: \_\_\_\_\_

## SECURITY AGREEMENT

**THIS SECURITY AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 2012, is executed and entered into by and between **CRITICAL RF, INC.**, a Florida corporation (the "CRI"), and \_\_\_\_\_, in his capacity as Administrative Agent under and pursuant to the Plan described herein (in such capacity, "Agent"). Capitalized terms used herein without definition shall have the respective meanings set forth in the Plan (defined below).

### RECITALS:

A. On August 1, 2011, Maritime Communications/Land Mobile, LLC ("Debtor"), filed a voluntary petition with the United States Bankruptcy Court for the Northern District of Mississippi (the "Court"), initiating Case No. 11-13463-DWH (the "Case"), under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

B. On April 30, 2012, the Debtor filed a Plan of Reorganization in the Case, which was modified by the Modifications to Plan of Reorganization filed in the Case on \_\_\_\_\_, 2012, and was further modified and confirmed by order of the Court dated \_\_\_\_\_, 2012 (the "Confirmation Order", and as confirmed by the Confirmation Order, the "Plan").

C. Pursuant to the Plan, Choctaw Holding, LLC ("Holding"), has been formed by Pledgor and pursuant to the Plan, title to all FCC Spectrum Licenses owned by Debtor will be absolutely and irrevocably transferred to Holding upon and subject to final approval by the FCC, free and clear of all liens, claims or interests other than as permitted by the Plan and/or other than as provided in the Confirmation Order.

D. CRI, an affiliate of Debtor and Holding, has agreed to give this Agreement in furtherance of the Plan. The confirmation and implementation of the Plan, a substantial and material part of which is the granting of this Agreement, will directly and indirectly benefit CRI.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing Recitals, CRI hereby represents and warrants to Agent, and covenants and agrees with Agent, as follows:

1. **DEFINITIONS.** As used herein, the following terms shall have the meanings set forth below (such meanings to be equally applicable to the singular and plural forms thereof):

**"Agent's Lien"** means the Lien granted to Agent by CRI pursuant to this Agreement.

**"CRI Parties"** means CRI, Holding, Debtor and any other Person that hereafter becomes a party to this Agreement and/or any other document executed in connection with the Obligations under the Plan, and which Person is responsible in whole or in part for any of the Obligations.

**"Collateral"** means the following assets of CRI, wherever located, and whether now owned or hereafter acquired:

- (a) All amounts that may be owing from time to time by Agent to CRI in any capacity, including, without limitation, any balance or share belonging to CRI, of any Deposit Accounts or other account with Agent;
- (b) All of CRI's assets which are or may be subject to Article 9 of the Uniform Commercial Code, together with all replacements therefor, additions and accessions thereto, and proceeds (including, but without limitation, insurance proceeds) and products thereof, including, without limitation, the following (as such terms are used in the Uniform Commercial Code):
  - (i) Accounts;
  - (ii) Chattel Paper;
  - (iii) Contract Rights;
  - (iv) Commercial Tort Claims;
  - (v) Deposit Accounts;
  - (vi) Documents;
  - (vii) Equipment;
  - (viii) General Intangibles;
  - (ix) Instruments;
  - (x) Inventory;
  - (xi) Investment Property;
  - (xii) Letter-of-Credit Rights;
  - (xiii) Payment Intangibles;
  - (xiv) Supporting Obligations;
  - (xv) Rights as seller of Goods and rights to returned or repossessed Goods;
  - (xvi) All existing and future leases and use agreements of personal property entered into by CRI as lessor with other Persons as lessees, including without limitation the right to receive and collect all rentals and other monies, including security deposits, at any time payable under such leases and agreements;
  - (xvii) Any existing and future leases and use agreements of personal property entered into by CRI as lessee with other Persons as lessors, including

without limitation the leasehold interest of CRI in such property, and all options to purchase such property or to extend any such lease or agreement;

- (xviii) All Fixtures;
  - (xix) All moneys of CRI and all Agent accounts, deposit accounts, lock boxes and other accounts in which such moneys may at any time be on deposit or held and all investments or securities in which such moneys may at any time be invested and all certificates, instruments and documents from time to time representing or evidencing any of the same;
  - (xx) All claims of CRI in any pending litigation and/or claims for any insurance proceeds;
  - (xxi) All Records pertaining to any of the Collateral;
- (c) Any and all interests in intellectual property held by CRI, including without limitation the following (the "Intellectual Property Collateral"):
- (i) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held (collectively, the "Copyrights");
  - (ii) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;
  - (iii) Any and all design rights which may be available to CRI now or hereafter existing, created, acquired or held;
  - (iv) All patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same (collectively, the "Patents");
  - (v) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of CRI connected with and symbolized by such trademarks (collectively, the "Trademarks");
  - (vi) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

- (vii) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights; and
- (viii) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.
- (d) Any and all other assets of CRI of any kind, nature, or description and which are intended to serve as collateral for the Obligations; and
- (e) All interest, dividends, Proceeds, products, rents, royalties, issues and profits of any of the property described above and all notes, certificates of deposit, checks and other instruments from time to time delivered to or otherwise possessed by Agent for or on behalf of CRI in substitution for or in addition to any of said property.

"Lien" means any mortgage, pledge, encumbrance, charge, security interest, lien, assignment or other preferential arrangement of any nature whatsoever, including any conditional sale agreement or other title retention agreement.

"Obligations" means the full and timely payment and performance by Holding, Debtor and CRI of (i) all their obligations, duties and liabilities under the Plan, and (ii) all terms, covenants and conditions of this Agreement.

"Person" means any individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture, court or governmental authority.

"Uniform Commercial Code" means the Uniform Commercial Code as presently adopted and in effect in the State of Mississippi.

2. **GRANT OF LIEN AND SECURITY INTEREST.** For good and valuable consideration, as security for the prompt satisfaction of all Obligations, CRI hereby assigns, transfers, and sets over to Agent all of CRI's right, title and interest in and to, and grants Agent a Lien on, upon and in the Collateral.

3. **RESIDENCY/LEGAL STATUS.** CRI is a duly organized and existing Florida corporation in good standing and has full power and authority to consummate the transactions contemplated by this Agreement and the Plan.

4. **REPRESENTATIONS, WARRANTIES, AND COVENANTS.** CRI represents, warrants and covenants to Agent that:

- (a) CRI is and shall remain the sole owner of the Collateral;
- (b) The Collateral is and shall at all times remain free of all tax and other Liens of any kind except for those approved by Agent;

- (c) CRI shall defend the Collateral against all claims and demands of all Persons at any time claiming any interest therein;
- (d) CRI has the right and is duly authorized to enter into and perform its obligations under this Agreement. CRI's execution and performance of these obligations do not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may now or hereafter be binding on CRI;
- (e) No action or proceeding is pending against CRI which might materially affect the Collateral;
- (f) CRI has not violated and shall not violate any applicable federal, state, county or municipal statute, regulation or ordinance (including but not limited to those governing hazardous materials) which might materially affect the Collateral;
- (g) CRI shall keep the Collateral insured for such amounts and pursuant to such policies as are acceptable to Agent in its sole discretion; and
- (h) This Agreement and the obligations described in this Agreement are executed and incurred for business and not consumer purposes.

5. **TRANSFER OF COLLATERAL.** CRI shall not assign, convey, lease, sell or transfer any of the Collateral to any Person without the prior written consent of Agent.

6. **FINANCING STATEMENTS AND OTHER DOCUMENTS.** CRI shall at any time and from time to time take all actions and execute all documents required by Agent to attach, perfect and maintain Agent's Lien on the Collateral and establish and maintain Agent's right to receive the payment of the proceeds of the Collateral including, but not limited to, executing any financing statements, fixture filings, continuation statements, notices of security interest and other documents required by the Uniform Commercial Code and other applicable law. CRI shall pay the costs of filing such documents in all offices wherever filing or recording is deemed by Agent to be necessary or desirable. Agent shall be entitled to perfect its security interest in the Collateral by filing carbon, photographic or other reproductions of the aforementioned documents with any authority required by the Uniform Commercial Code or other applicable law. CRI authorizes Agent to prepare and file any financing statements, as well as extensions, renewals and amendments of financing statements and endorse, complete or otherwise execute certificates of title for the Collateral in such form as Agent may require to perfect and maintain perfection of any security interest granted in this Agreement. CRI authorizes and requests, if necessary, that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Agreement.

7. **ATTORNEY-IN-FACT.** CRI hereby irrevocably appoints Agent as CRI's attorney-in-fact, with full authority in the place and stead of CRI and in the name of CRI, from time to time in Agent's discretion, to take any action and to execute any instrument which Agent may deem necessary or advisable to accomplish the purposes of this Agreement.

8. **INQUIRIES AND NOTIFICATION TO THIRD PARTIES.** CRI hereby authorizes Agent to contact any third party and make any inquiry pertaining to CRI's financial condition or the Collateral. In addition, Agent is authorized to provide oral or written notice of its security interest in the Collateral to any third party and, following an Event of Default, to make payment to Agent.

9. **DEFAULT.** The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

- (a) Any CRI Party shall fail to pay, perform or observe any other obligation, condition, or covenant to be observed or performed by it under this Agreement or the Plan or any document executed in connection therewith, and such failure shall continue for ten (10) days after the earlier of:
  - (i) Notice of such failure from Agent; or
  - (ii) Any CRI Party knows of any such failure; or
  - (iii) Agent is notified of such failure or should have been so notified pursuant to the provisions of this Agreement or any other document executed in connection with the Plan.
- (b) There shall occur any Event of Default as defined and provided under any other document executed in connection with the Plan.
- (c) There shall occur any default or event of default under any agreement of any CRI Party with any Person and relating to the borrowing of money.
- (d) The validity or enforceability of this Agreement or any other document executed in connection with the Plan, or any part thereof, shall be contested by any CRI Party, and/or any CRI Party shall deny that it has any or further liability or obligation hereunder or thereunder.
- (e) The conveyance, lease, mortgage, or any other alienation or encumbrance of the Collateral or any interest therein without the prior written consent of Agent.
- (f) The transfer of CRI's interest in, or rights under, this Agreement by operation of law or otherwise, including, without limitation, such transfer by CRI as debtor in possession under the Bankruptcy Code, or by a trustee for CRI under the Bankruptcy Code, to any other Person, whether or not the obligations of CRI under this Agreement are assumed by such Person.
- (g) The institution of a foreclosure or other possessory action against any Collateral.
- (h) The dissolution of any CRI party.

- (i) Any financial statement, representation, warranty or certificate made or furnished by any CRI Party to Agent in connection with this Agreement, or as inducement to Agent to enter into this Agreement, or in any separate statement or document to be delivered hereunder to Agent, shall be materially false, incorrect, or incomplete when made.
- (j) The existence of any other condition which, in Agent's determination, constitutes an impairment of any CRI Party's ability to perform its obligations under this Agreement or any other document executed in connection with the Plan.
- (k) Any CRI Party shall admit its inability to pay its debts as they mature, or shall make an assignment for the benefit of itself or any of its creditors.
- (l) Proceedings in Bankruptcy, or for reorganization of CRI, or for the readjustment of its debts, under the Bankruptcy Code, as amended, or any part thereof, or under any other laws, whether state or federal, for the relief of debtors, now or hereafter existing, shall be commenced by CRI, or shall be commenced against CRI.
- (m) A receiver or trustee shall be appointed for CRI or for any substantial part of its assets, or any proceedings shall be instituted for the dissolution or the full or partial liquidation of CRI or CRI shall discontinue business or materially change the nature of its business.
- (n) CRI shall suffer a final judgment for payment of money in excess of \$50,000.00 and shall not discharge the same within a period of fifteen (15) days unless execution has been effectively stayed.
- (o) A judgment creditor of CRI shall obtain possession of any of the Collateral by any means, including, without limitation, levy, distraint, replevin or self-help.

Provided that with respect to each of the foregoing, an Event of Default will be deemed to have occurred upon the occurrence of the applicable event without notice being required (if required) (i) with respect to 8.1(f) above, or (ii) if Agent is prevented from giving notice by Bankruptcy or other applicable law.

**10. RIGHTS OF AGENT ON DEFAULT.** Upon the occurrence of an Event of Default, Agent shall be entitled to exercise one or more of the following remedies without notice or demand (except as required by applicable law):

- (a) To declare the Obligations immediately due and payable in full;
- (b) To take possession of any Collateral in any manner permitted by applicable law;
- (c) To set-off CRI's obligations against any amounts due to CRI; and
- (d) To exercise all other rights available to Agent under any other written agreement or applicable law, including, without limitation, the Uniform Commercial Code.

Agent's rights are cumulative and may be exercised together, separately, and in any order. If notice to CRI of intended disposition of Collateral is required by law, Agent will provide reasonable notification of the time and place of any sale or intended disposition as required under the Uniform Commercial Code. In the event that Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of a prejudgment remedy in an action against CRI, CRI waives the posting of any bond which might otherwise be required.

11. **APPLICATION OF PAYMENT.** Whether or not an Event of Default has occurred, all payments made by or on behalf of CRI and all credits due to CRI from the disposition of the Collateral or otherwise may be applied against the amounts paid by Agent (including attorneys' fees and expenses) in connection with the exercise of its rights or remedies described in this Agreement and any interest thereon, and then to the payment of the remaining Obligations in whatever order Agent chooses.

12. **REIMBURSEMENT OF AMOUNTS EXPENDED BY AGENT.** CRI shall reimburse Agent for all amounts (including attorneys' fees and expenses) expended by Agent in the performance of any action required to be taken by CRI or the exercise of any right or remedy belonging to Agent under this Agreement, together with interest thereon at the lower of the highest rate described in the Plan or the highest rate allowed by law from the date of payment until the date of reimbursement. These sums shall be included in the definition of Obligations, shall be secured by the Collateral and shall be payable upon demand.

13. **ASSIGNMENT.** CRI shall not be entitled to assign any of its rights, remedies or obligations described in this Agreement without the prior written consent of Agent. Consent may be withheld by Agent in its sole discretion. Agent shall be entitled to assign some or all of its rights and remedies described in this Agreement without notice to or the prior consent of CRI in any manner.

14. **MODIFICATION AND WAIVER.** The modification or waiver of any of CRI's obligations or Agent's rights under this Agreement must be contained in a writing signed by Agent. Agent may perform any of CRI's obligations or delay or fail to exercise any of its rights without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. CRI's obligations under this Agreement shall not be affected if Agent amends, compromises, exchanges, fails to exercise, impairs or releases any of the obligations belonging to CRI or any third party or any of its rights against CRI, any third party or the Collateral.

15. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of CRI and Agent and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees, and devisees.

16. **NOTICES.** All notices and other communications from either party to the other hereunder shall be given and deemed received when given in accordance with the terms of the Plan.

17. **SEVERABILITY.** If any provision of this Agreement violates any applicable law or is unenforceable, the rest of the Agreement shall remain valid.

18. **APPLICABLE LAW.** This Agreement shall be construed and governed by the laws of the State of Mississippi. The venue of any action filed by any Party with respect to this Agreement shall be enforceable in the federal courts presiding in the Northern District of Mississippi, to the exclusion of all other courts.

19. **COLLECTION COSTS.** If Agent hires an attorney to assist in collecting any amount due or enforcing any right or remedy under this Agreement, CRI agrees to pay Agent's attorneys' fees and collection costs.

20. **WAIVER OF JURY TRIAL.** AGENT AND CRI HEREBY MUTUALLY WAIVE ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THE PLAN, OR IN ANY WAY CONNECTED WITH OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THE PLAN, OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES HEREUNDER AND THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. AGENT AND CRI AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. CRI HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF AGENT, INCLUDING AGENT'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT AGENT WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH, AND CRI ACKNOWLEDGES THAT AGENT HAS, IN PART, BEEN INDUCED TO ENTER INTO THIS AGREEMENT IN RELIANCE ON THE PROVISIONS OF THIS PARAGRAPH.

\* \* \* \* \*

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered as of the day and year first above written.

**CRI:**

**CRITICAL RF, INC.**, a Florida corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**AGENT:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**[notary acknowledgements begin on following page]**

**NOTARY ACKNOWLEDGEMENTS**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of **CRITICAL RF, INC.**, a Florida corporation is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[AFFIX SEAL]

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, executed the same voluntarily.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[AFFIX SEAL]