

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND	)	WT Docket No. 13-85
MOBILE, LLC, DEBTOR-IN-POSSESSION	)	FCC File No. 0005552500
Application to Assign Licenses to Choctaw)	
Holdings, LLC)	
)	
MARITIME COMMUNICATIONS/LAND	)	FCC File Nos. 0004153701 and 0004144435
MOBILE, LLC)	
Applications to Modify and to Partially Assign)	
License for Station WQGF318 to Southern)	
California Regional Rail Authority)	
)	
Application for New Automated Maritime	)	FCC File No. 0002303355
Telecommunications System Stations)	
)	
Order to Show Cause, Hearing Designation	)	EB Docket No. 11-71
Order, and Notice of Opportunity for Hearing	)	File No. EB-09-IH-1751
	)	FCC File Nos. 0004030479, 0004144435,
	)	0004193028, 0004193328, 0004354053,
	)	0004309872, 0004310060, 0004314903,
	)	0004315013, 0004430505, 0004417199,
	)	0004419431, 0004422320, 0004422329,
	)	0004507921, 0004153701, 0004526264,
	)	0004636537, and 0004604962

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

**MARITIME’S CONSOLIDATED REPLY TO
OPPOSITIONS TO PETITION FOR RECONSIDERATION**

Maritime Communications/Land Mobile, LLC (“Maritime:”), by its attorney, hereby submits its consolidated reply to the Opposition to MCLM and Choctaw Petitions for Reconsideration (“*EB Opposition*”) filed by the Enforcement Bureau (“Bureau”) and the Opposition to Petitions for Reconsideration (“*Havens Opposition*”) jointly filed by Warren Havens, Intelligent Transportation and Monitoring Wireless LLC, Skybridge Spectrum Foundation, Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and V2G LLC (collectively, “Havens”).

The personal bankruptcy proceeding involving Donald DePriest was the result of an “involuntary” petition filed by third parties, not something Maritime did.¹ Maritime only learned of the Chapter 7 matter literally days before filing its reconsideration petition. This was not, moreover, the primary basis for Maritime’s petition. But the gravamen of Maritime’s reconsideration request is that Mr. DePriest is judgment proof. This was abundantly demonstrated by the information and documentation provided in the reconsideration petition, and the personal bankruptcy filing was merely one additional piece of confirming information. It is highly probative that the actions of Mr. DePriest’s enemies and creditors support and confirm Maritime’s factual assertions regarding his financial condition.²

Neither the Bureau nor Havens offers any cogent explanation why a purely theoretical benefit that does not really exist as a practical matter should be the basis for denying relief to all creditors, including those who have no such personal guarantees, much less how that can possibly be squared with the public interest and the *Second Thursday* policy as clarified by the *LaRose* court.³ Further, neither Havens nor the Bureau offers anything whatsoever to refute the showing that Mr. DePriest is judgment proof.

Contrary to the Bureau’s objection, the information regarding Mr. DePriest’s financial condition was indeed new information or at least information that was properly presented in the

¹ Havens erroneously claims that Mr. DePriest’s obligation to Oliver Phillips was assumed by Maritime, pointing to Contract and Settlement Agreement between Oliver Phillips and Donald DePriest. *Havens Opposition* at Exhibit 1. A simple reading of that agreement shows that Havens has his facts wrong. The agreement does not provide for any payment by Maritime to Phillips. It merely provides any distribution Mrs. DePriest may receive from Maritime will go toward any remaining balance due to Phillips. It is therefore a contingent obligation of Mrs. DePriest personally, not an obligation of Maritime. If anyone is guilty of attempting to improperly shift the obligation to Maritime it is Oliver Phillips, not Mr. DePriest. Oliver Phillips filed the bankruptcy claim in the Maritime proceeding, but his proof of claim shows no obligation of Maritime to him.

² The Bureau would totally disregard the personal bankruptcy because of the possibility that the guarantees may not be discharged. That is pure speculation and hardly a basis for the wholesale denial of relief to innocent creditors. More importantly, it is not relevant. Maritime’s petition for reconsideration does not rest on the assumption that the guarantees will be discharged, but rather on the demonstrated fact that Mr. DePriest is unable to satisfy the guarantees even if they are not discharged.

³ *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974).

reconsideration petition. As explained in the petition, a review of forty years of precedent under the *Second Thursday* policy failed to locate a single case in which the Commission denied *Second Thursday* relief solely on the basis of extinguishment of a secondary financial liability. In every other reported case there was also a direct benefit and/or some other contributing factor. The Bureau counters that “this is not the law,” *EB Opposition* at ¶ 6. One would expect such an adamant assertion to be supported by at least one or two authorities, but one’s expectations would be frustrated. The Bureau cites nothing to support this blanket denial. The best the Bureau can muster is that rather insipid assertion that “there is no precedent ... that requires the Commission to grant *Second Thursday* relief under such circumstances.” *Id.* Against the backdrop of the forty years of precedent reviewed by *Maritime* and *Choctaw*, that is a highly debatable statement. In any event, to say the Commission is not *required* to grant *Second Thursday* relief begs the question whether the denial of such relief is in the public interest and therefore in conformance with the Commission’s statutory mandate.

The sole basis for denial of relief in this case is the Commission’s assumption that Mr. DePriest will benefit by being effectively released from secondary liability. Given that this is such a stark departure from long-standing precedent, and particularly in light of the Commission’s own recognition that secondary liability concerns are mitigated if the obligated person is judgment proof, *MO&O* at n.63, citing and quoting *LaRose v. FCC*, 494 F.2d at 1149, the showing as to Mr. DePriest’s financial condition is certainly critical, should be considered on reconsideration, and cannot be brushed aside with general and speculative statements that fail to meet the facts, the law, or the public interest policy at issue.⁴

⁴ Rather than addressing *Maritime*’s showing, the Bureau detours to argue other grounds for denial of *Second Thursday* relief, e.g., what the Bureau considers insufficient detail about transactions to be undertaken pursuant to the plan of reorganization. This is beyond the scope of the reconsideration petitions of either *Maritime* or *Choctaw*, and is therefore improper argument in an opposition.

The vast majority of the *Havens Opposition* is both beyond the scope of the petitions it ostensibly opposes, as well as entirely irrelevant to *Second Thursday* analysis. Most of the Havens pleading does not even attempt to limit itself to responding to the specific arguments and showings made in the Maritime reconsideration petition. Rather, Haven has launched into an extended further presentation of his own reconsideration request on several other grounds. For example, he insists on rearguing the basic qualification issues which are, by definition, not adjudicated in a *Second Thursday* context. Maritime has already commented on the irrational and illegitimate circular reasoning underling Havens' arguments in this regard, and it need not repeat them here.⁵

The *Havens Opposition* is also improper insofar as it seeks to challenge the legality and propriety of the *Second Thursday* policy itself. Havens has already asserted this fallacious argument in his own petitions for reconsideration, and it is procedurally improper here as being beyond the scope of either the Maritime or the Choctaw reconsideration petition.

Havens' arguments regarding administrative finality are far wide of the mark. This question arises when there is a request to reopen and reconsider an action after it has become administratively final, i.e., after the thirty day period for reconsideration and other periods for agency or judicial review have passed. Here, both Maritime and Choctaw filed timely petitions for reconsideration pursuant to Section 405 of the Communications Act, so the matter is not a final action.⁶

Havens' assertion that Maritime lacks standing is utterly absurd. A party to an assignment application proceeding, indeed, the licensee and assignor, as well as a party requesting *Second*

⁵ See Maritime's *Opposition to Petition for Reconsideration* at pp. 4-5, filed on October 29, 2014, in response to Havens' request for reconsideration in the captioned matter.

⁶ Once again showing his fondness for circular illogic, Havens is arguing in essence that because there is precedent disallowing reopening a matter after the statutory reconsideration period has expired, the Commission must also disallow petitions for reconsideration filed within the statutorily prescribed period.

Thursday relief, clearly has standing to seek reconsideration of a denial of those requests. Section 405(a) confers standing on “any party [to the challenged action] or any other person aggrieved or whose interests are adversely affected.” 47 U.S.C. § 405(a). Thus, Maritime has statutory standing as a “party” to the assignment application proceeding, independently of the fact that is also a “person aggrieved” by the denial of its request for *Second Thursday* relief and consent to the proposed license assignment.⁷

Similarly, Havens’ contention that discretionary actions by the Commission are not reviewable is without merit. First, Maritime does not concede that the degree of discretion in this matter is as broad as Havens claims. Moreover, while the degree of discretion may inform the applicable standard of review, a discretionary action is not insulated from review, either by Commission itself or by the courts. Even discretionary actions may be set aside if they are arbitrary, capricious, unsupported by the record, or if there is an abuse of discretion. As shown in the reconsideration petition, the Commission action in this matter was contrary to some forty years of consistent precedent. The Commission may not, without substantial justification and detailed explanation, ignore its own rules and precedents, even as to discretionary actions.⁸

⁷ *Wilderness Society v. Norton*, 434 F.3d 584 (D.C. Cir.2006), relied upon by Havens is inapposite. In that case a conservation organization sought a court order to compel the National Parks Service to identify and forward to the President recommendations for the demarcation and management of specific wilderness areas. The Court found no standing because it was not shown that the failure of the National Parks Service to undertake such action imposed any legal obligations on the Society, and because there was no showing that the requested action would redress the concerns advanced by the Society. This case markedly different. The denial of both *Second Thursday* relief and consent to the assignment obviously has significant legal impact on the parties. They cannot carry out the plan of reorganization absent such approvals. Without the approval, Maritime is faced with having to undertake a costly defense in the revocation proceeding, incurring additional debt and dashing all hope of satisfying innocent creditors’ claims. Insofar as both Choctaw and its principals are among the unpaid creditors, Choctaw also suffers sufficient injury to confer standing.

⁸ Havens’ reliance on *Suncom Mobile & Data v. FCC*, 87 F.3d 1386 (D.C. Cir.1996), is misplaced. In *Suncom*, the Commission refused to issue a declaratory ruling on a future proposed plan involving combinations of licenses the appellant potentially planned to acquire, possibly at least five years into the future, only if they were then constructed. The Commission decided it was premature to opine more than five years in advance on a theoretical proposed system. The court agreed there was no injury because Suncom could seek agency approval when it was ready to actually implement a plan rather than describe a theoretical future proposal. This hardly governs a case where the parties seek consent to assign existing licenses and request *Second Thursday* relief to permit the payment to current, existing creditors.

To the very limited extent Havens even attempts to limit his opposition to the matters raised in the petition, it fails on the same grounds as discussed above with respect to the Bureau's opposition.

Respectfully submitted,



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Certificate of Service

The redacted public version of this pleading is being electronically filed in WT Docket No. 13-85 via ECFS. In accordance with the Commission's March 28, 2013, Public Notice (DA 13-569) at p. 3: "Notwithstanding the restricted nature of this proceeding, ... pleadings ... filed via the Commission's Electronic Comment Filing System (ECFS) ... will not have to be served on the parties."