

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
MOBILE, LLC	)	0004144435
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
For transmission to the Commission

**REPLY TO “OPPOSITION TO CONSOLIDATED MOTION
TO DISMISS PETITIONS FOR RECONSIDERATION”**

1. Southern California Regional Rail Authority (“SCRRA”) hereby replies to the Opposition filed jointly by “Skytel-1” and “Skytel-2” (collectively, “the Havens Parties”)¹ in

¹ As defined in earlier pleadings referred to in the Opposition, which was signed by Warren Havens: “Skytel-1” consists of Mr. Havens and two entities (Intelligent Transportation and Monitoring Wireless and Skybridge Spectrum Foundation) controlled by Mr. Havens; “Skytel-2” consists of four other entities (Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC and V2G LLC), all of which are also controlled by Mr. Havens.

response to SCRRA's Consolidated Motion to Dismiss Petitions for Reconsiderations. None of the several arguments presented by the Havens Parties has any merit.

2. As an initial observation, SCRRA notes that the Opposition fails to address the crystal-clear law applicable to late-filed petitions for reconsideration. Section 405 of the Communications Act imposes on such petitions a strict 30-day deadline that cannot be ignored. The D.C. Circuit has repeatedly admonished the Commission *not* to waive any deadlines – and particularly the petition for reconsideration deadline – absent extraordinary circumstances not present here.² The Commission itself has acknowledged these severe constraints.³ In their Opposition, the Havens Parties do not dispute any of this. The strength of SCRRA's argument is undiminished.

3. The Havens Parties' first claim is that the "Skytel Recons" were timely filed. *See* Opposition at 1-3. As SCRRA demonstrated in its Motion, however, the Havens Parties have already conceded that neither of the Havens Parties' two petitions for reconsideration was properly filed by the October 14, 2014 deadline. *See* SCRRA Motion at Note 4, quoting the Havens Parties' "Explanation of Timely Filing, and Explanation of ECFS Problems on 10/14/14, and Conditional Request to Accept" filed by the Havens Parties on October 22, 2014 at, *e.g.*, 3 ("... the [Havens Parties'] filings were not submitted ... until October 15, 2014"). The Havens Parties' Opposition changes nothing. Instead, it simply reiterates the Havens Parties' belief that,

² *E.g.*, *NetworkIP v. FCC*, 548 F.3d 116 (D.C. Cir. 2008); *Reuters Ltd. v. FCC*, 781 F.2d 946 (D.C. Cir. 1986); *Keller Communications, Inc. v. FCC*, 130 F.3d 1073 (D.C. Cir. 1997).

³ *See, e.g.*, *TV Communications Network, Inc.*, 26 FCC Rcd 14891 (2011); *Holy Family Oratory of St. Philip Neri*, FCC 14-169; *The Atlanta Channel, Inc.*, 27 FCC Rcd 14541 (2012); *TV Communications Network, Inc.*, 26 FCC Rcd 14891 (2011). Most recently, the Commission rejected a late-filed pleading from an amateur radio licensee whose license the Commission then revoked without allowing the applicant to advance "public interest" arguments in his own defense. *David Titus*, Decision, FCC 14-177 (released November 6, 2014).

by submitting one of their petitions through ULS and another through some other unspecified “electronic means”, they met the filing deadline.

4. That claim ignores the fact that the Commission’s rules specify that electronic filings “where permitted, must be transmitted as specified by the Commission or relevant Bureau or Office.” 47 C.F.R. §0.401(a)(iii). In this case, electronic filings were permitted, but ECFS was the only mechanism specified for such filings. *See* Public Notice, DA 13-569 (released March 28, 2013). Thus, the Havens Parties’ alternatives do not constitute “filing”.⁴ The Havens Parties do not even acknowledge, much less address, this fatal hole in their argument.

5. The Havens Parties’ second claim is that SCRRRA’s Motion is somehow inappropriate and, if viewed as an opposition to the Havens Parties’ petitions for reconsideration, late. *See* Opposition at 3-4. But SCRRRA’s motion is just what it purports to be: a motion to dismiss an untimely pleading. It expressly does not address any of the merits, such as they may be, of the Havens Parties’ reconsideration petitions and, therefore, could not legitimately be deemed an opposition to those petitions.

6. Even though their reconsideration petitions were late, the Havens Parties chose not to file a separate “motion for leave to accept late-filed pleadings”. Had they done so, SCRRRA might have opted to oppose that in lieu of separately moving to dismiss the reconsideration

⁴ *See Reuters Ltd. v. FCC, supra* note 2. In *Reuters*, a party filed competing applications on the last possible date for submission, but filed them with the wrong Commission office. So, as may arguably have been the case with the Havens Parties’ petitions, the materials had been lodged with a Commission office before the deadline – **but** it was the wrong office. By the time that error was caught and the applications were properly filed with the correct office, the deadline for filing had passed. While the Commission, in the interest of “fairness”, initially agreed to consider the applications as having been timely-filed, the Court on review held that, in so doing, the Commission had erred. In other words, merely lodging a filing with some office, any office, within the Commission is **not** an adequate substitute for compliance with the filing procedures mandated for that particular filing.

petitions. After all, the focus of SCRRA's motion is the lateness of the Havens Parties' petitions. But in the absence of such a motion by the Havens Parties, a separate motion to dismiss provided an appropriate mechanism for bringing the unacceptability of the Havens Parties' petitions to the Commission's attention.⁵

7. The Havens Parties also take issue with SCRRA's reservation of the right to respond to their "substantive" arguments in the unlikely event that those arguments might eventually be considered notwithstanding their lateness. Havens Parties' Opposition at 4-5. As a practical matter, no useful purpose could be served by responding to arguments that are not properly before the Commission, and SCRRA has no interest in doing so. The law – as set out in detail in SCRRA's Motion – is abundantly clear that the lateness of the Havens Parties' reconsideration petitions bars their acceptance. Accordingly, it makes no sense to respond to them now. Again, in the unlikely event that the Commission chooses to ignore well-established statutory, judicial and administrative precedent and consider the Havens Parties' petitions, the Commission can at that time determine how best to address oppositions thereto.

8. Presumably recognizing that their reconsideration petitions will likely be dismissed summarily without substantive consideration, the Havens Parties devote a considerable portion of their Opposition to quasi-substantive claims having no connection at all with SCRRA's Motion. Because those claims are not at all responsive to any aspect of SCRRA's Motion, they can and should be completely disregarded.⁶ The Havens Parties had ample

⁵ The Havens Parties did file an "Explanation of Timely Filing, and Explanation of ECFS Problems on 10/14/14, and Conditional Request to Accept". But since that was not styled as a "motion", it cannot properly be treated as one. And even if it were to be deemed a "motion", SCRRA's own motion was filed well within the time for oppositions thereto.

⁶ SCRRA is constrained to point out that the "substantive" claims advanced by the Haven Parties in their Opposition are not even supported by the copious materials appended to the Opposition.

opportunity to set out their arguments in a timely manner and they failed to take advantage of that opportunity. Attempting to insert them into the proceeding by cutting and pasting them into an otherwise unrelated pleading should not be countenanced.

9. The admonition of the Court in *NetworkIP* bears repeating yet again:

[P]rocrastination plus the universal tendency for things to go wrong (Murphy's Law) – at the worst possible moment (Finagle's Corollary) – is not a "special circumstance," as any junior high teacher can attest.

NetworkIP v. FCC, 548 F.3d 116, 127 (D.C. Cir. 2008). The Havens Parties were aware of the deadline for petitions for reconsideration weeks in advance of that deadline. They had ample opportunity to prepare and submit their petitions well in advance of the deadline. For whatever reason they chose not to avail themselves of that opportunity. Their petitions were filed late, and no special circumstances exist to warrant waiver of the statutory deadline here. The Havens Parties' petitions must be summarily dismissed.

Respectfully submitted,



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November 19, 2014

CERTIFICATE OF SERVICE

I, Paul J. Feldman, hereby certify that, on this 19th day of November, 2014, I have caused copies of the foregoing Reply to Opposition to Consolidated Motion to Dismiss Petitions for Reconsideration to be sent, by U.S. mail, first class postage prepaid, or (as indicated below) by hand-delivery or email, addressed to the following:

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