

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

In re

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC**

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio  
Services

Applicant for Modification of Various  
Authorizations in the Wireless Radio Services

Applicant with ENCANA OIL AND GAS  
(USA), INC.; et al.

For Commission Consent to the Assignment of  
Various Authorizations in the Wireless Radio  
Services

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Application File Nos. 0004030479,  
0004144435, 0004193028,  
0004193328, 0004354053,  
0004309872, 0004310060,  
0004314903, 0004315013,  
0004430505, 0004417199,  
0004419431, 0004422320,  
0004422329, 0004507921,  
0004153701, 0004526264,  
0004636537 & 0004604962

In re

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC**

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio  
Services

and

**CHOCTAW HOLDINGS, LLC**

Applicant for Assignment of Various  
Authorizations in the Wireless Radio Services

EB Docket No. 13-85  
FRN: 0013587779

Application File No. 0005552500

To: The Commission

**Petition To Stay Or Hold In Abeyance  
The Issuance Of A Hearing Designation Order**

## INTRODUCTION

Susan L. Uecker (“Receiver”) was appointed by the Superior Court of California, Alameda County, in November 2015, to control the assets of several entities that were previously controlled by Warren Havens (“Havens”).<sup>1</sup> The Receiver submits this Petition to inform the Federal Communications Commission (“FCC” or “Commission”) of her position regarding EB Docket No. 11-71. The Receiver submits this brief in the context of her role as a neutral agent of the California Superior Court with the responsibility to preserve Receivership assets for the benefit of the parties before the Court and creditors of the Entities.

The goals of the Court and the FCC can be best served if two things happen in this matter. First, final resolution of Docket No. 11-71 is needed.<sup>2</sup> The Receiver controls spectrum where there is uncertainty regarding the site license holdings of Maritime Communications/Land Mobile, LLC (“MCLM”), and that uncertainty is a significant obstacle to transactions that would facilitate use of AMTS spectrum by railroads.

Second, the Receiver urges the Commission to stay or hold in abeyance the issuance of a hearing designation order (“HDO”) that would commence a proceeding to determine whether Havens and the Entities are qualified to hold Commission licenses. Proceeding with the HDO

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<sup>1</sup> The Receiver was appointed to control the following entities: Environmental LLC, Verde Systems LLC, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus Holdings GB LLC, and V2G LLC (collectively, the “Entities”). She was also appointed to control Skybridge Spectrum Foundation (“Skybridge”), but on March 11, 2016, Skybridge, through its president, Warren Havens, filed a Voluntary Petition for Bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, Case No. 16-10626. Due to the automatic stay in bankruptcy, the Receiver is not in control of Skybridge as of March 11, 2016 and cannot take a position on Skybridge’s behalf. The Receiver will report any change in Skybridge’s status as appropriate.

<sup>2</sup> The Receiver recognizes that Docket No. 11-71 is stayed pending the outcome of Docket No. 13-85. But it is the Receiver’s understanding that Docket No. 13-85 is now fully-briefed and ripe for the Commission’s decision.

would have a profoundly negative effect on the Receiver's court-directed task of preserving the assets of the Entities and would likewise halt her efforts to get AMTS spectrum held by the Entities into the hands of railroads that have a congressionally-imposed deadline to implement PTC.

The Receiver understands that the FCC places a high priority on the deployment of AMTS spectrum in support of Positive Train Control ("PTC"), an important railroad safety technology designed to reduce accidents from human error. The Receiver believes that she can work to be part of a solution that achieves important goals of both the FCC and the California Superior Court, but only if the Commission stays or holds in abeyance the issuance of an HDO regarding the qualifications of Havens and the Entities to hold spectrum licences.

## **BACKGROUND**

### **1. This Proceeding And Judge Sippel's Order**

This proceeding began in 2011 to address questions that had been raised about the fitness of MCLM to hold FCC licenses. These issues were apparently raised in large part by Havens and the Entities. The Entities stood to benefit from determinations that adversely affected MCLM, as certain site licenses held by MCLM encumber geographic licenses held by the Entities.

On April 22, 2015, FCC Chief Administrative Law Judge Richard L. Sippel entered an order in this proceeding certifying to the Commission the question of whether it should initiate a separate hearing to determine whether Havens and the Entities are qualified to be FCC licensees based on Havens' conduct before the Commission (the "Order"). The Commission is currently considering whether to issue a hearing designation order ("HDO") based on Judge Sippel's Order.

2. The California Court Appoints The Receiver

Following the Order, Dr. Arnold Leong (“Leong”) sought appointment of a receiver for the Entities in a proceeding in the Superior Court of California, County of Alameda. Leong, an investor in some of the Entities, is the plaintiff and cross-defendant in an arbitration proceeding with Havens and the Entities that has been pending since 2002. Leong justified the relief he sought in large part on the basis that Havens’ conduct before the FCC jeopardized the licenses held by the Entities. He claims beneficial interest in those licenses through his interest in the Entities.

On November 16, 2015, Judge Frank Roesch of the Superior Court issued an order appointing Susan L. Uecker to serve as receiver in the case of *Leong v. Havens, et al.* (“Receivership Order”).<sup>3</sup> The Receivership Order required Ms. Uecker to take control of the assets of the Entities and Skybridge, which together hold more than 5,000 FCC licenses.

Leong’s amended complaint and Havens’ counterclaim are the subject of ongoing arbitration proceedings that are outside of the Receiver’s purview. Once the arbitration is completed, the Court will determine what happens to the Entities and their assets. In the meantime, the Receiver is tasked with preserving those assets for the benefit of the Entities’ creditors and the parties to the underlying arbitration.

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<sup>3</sup> Case No. 2002-070640.

3. The Receiver's Activity

On December 17, 2015, the Receiver filed applications for FCC consent to the involuntary transfer of control of the Entities' FCC licenses and related spectrum leases to her in her capacity as Receiver.<sup>4</sup> The FCC granted those applications on February 6, 2016.

The Receiver has also taken control of various pending litigation matters involving the Entities, and she has received claims from various creditors of the Entities.

Upon her motion, the Court instructed the Receiver by order dated February 26, 2016, that she had the power to market and sell various MAS, LMS and paging licenses, subject to the Court's and the Commission's approval.<sup>5</sup> She anticipates filing in the near future a request for instructions requesting that the Court also grant her the power to market and sell AMTS licenses held by the Entities, specifically to facilitate transactions that will support PTC implementation.

In short, the Receiver is attempting to operate the Entities in a manner consistent with the Court's orders and the FCC's orders, guidance, and policies.

4. The Receiver Spectrum Assets Implicate Important Public Interests

The spectrum controlled by the Receiver has important uses that implicate the public interest. The Receiver understands that the deployment of PTC is a high priority for the Commission, and with good reason. As featured in a recent *New York Times Magazine* article,<sup>6</sup>

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<sup>4</sup> The file numbers for those applications are as follows: Environmental LLC (File No. 0007061898, as amended); Environmental-2 LLC (File No. 0007087125); Intelligent Transportation & Monitoring Wireless LLC (File No. 0007060862); Telesaurus Holdings GB LLC (File No. 0007060898); V2G LLC (File No. 0007061828); and Verde Systems LLC (File No. 0007061808, as amended).

<sup>5</sup> Certain of these licenses are owned by Skybridge Spectrum Foundation and are not currently under the Receiver's control due to Skybridge's March 11, 2016 bankruptcy filing.

<sup>6</sup> See M. Shaer, *The Wreck of Amtrak 188, What Caused the Worst American Rail Disaster in Decades?*, N.Y. Times Magazine, Jan. 26, 2016.

the slow deployment of PTC in the United States may have played a significant role in the worst American rail disaster in decades when Amtrak 188 derailed outside Philadelphia on May 12, 2015, killing eight people and injuring more than 200 others.<sup>7</sup> Indeed, according to the National Transportation Safety Board, since 1970 there have been more than 170 rail accidents across the nation with nearly 300 fatalities, more than 6,500 injuries, and costing millions of dollars, that could have been prevented or mitigated by PTC.<sup>8</sup>

The Receiver is now in control of 17 AMTS licenses<sup>9</sup> suitable for supporting PTC technology across wide geographic areas in the United States. She is currently pursuing transactions that will facilitate deployment of that spectrum for PTC. As soon as possible, she will seek Court approval of those transactions so that transfer applications may be filed and considered by the Commission. If the Court grants her request for instructions to do so, she will make facilitating PTC-related transactions her highest priority. Such sales will facilitate the railroads' compliance with the federal *Rail Safety Improvement Act of 2008*,<sup>10</sup> which, as amended, mandates that railroads implement PTC before December 31, 2018.<sup>11</sup>

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<sup>7</sup> Nat'l Transp. Safety Bd., Preliminary Report on Amtrak 188 (Accident ID No. DCA15MR010) (2016).

<sup>8</sup> *In the Matter of Metro. Transp. Auth.*, 2016 WL 633361, at ¶ 60 (Feb. 16, 2016) (internal quotation marks omitted).

<sup>9</sup> These 17 AMTS licenses are held by Environmental LLC, Environmental-2 LLC, Verde Systems LLC, and Intelligent Transportation & Monitoring Wireless LLC. Exhibit A lists the call signs for these licenses by licensee.

<sup>10</sup> Pub. L. No. 110-432, 122 Stat. 4848 (2008).

<sup>11</sup> Surface Transportation Extension Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015).

Likewise, the Receiver controls important LMS spectrum. The Commission is well aware of important uses of LMS, such as enhanced geolocation abilities that would allow, for example, first responders to pinpoint an emergency in a particular floor of a multi-story building.<sup>12</sup>

But if the FCC were to issue an HDO, the Receiver's ability to get these important assets into the hands of users who will deploy them in furtherance of the public interest would be effectively destroyed because of the *Jefferson Radio* doctrine, which holds that an FCC license may not be assigned or transferred when the licensee's qualifications to hold it are in issue.<sup>13</sup>

## ARGUMENT

### I. The Resolution Of Docket No. 11-71 Is In The Public Interest.

A determination of whether MCLM should hold any FCC licenses, the main issue in Docket No. 11-71, is stayed pending a determination of whether *Second Thursday* relief is warranted in Docket No. 13-85. The Receiver need not add further to the extensive record in these proceedings.

If MCLM is deemed unfit to hold FCC licenses in Docket No. 11-71 and its licenses are terminated, PTC transactions will be facilitated in those areas where the Entities' geographic AMTS licenses are encumbered by MCLM site licenses. Alternatively, if *Second Thursday* relief is granted in Docket No. 13-85 and Choctaw becomes the transferee of MCLM's licenses, then the Receiver and parties in the spectrum market would have a different counterparty with whom to negotiate. Currently, the Entities' AMTS spectrum is encumbered and MCLM cannot enter into sales transactions without *Second Thursday* relief. The status quo benefits no one and makes comprehensive solutions for users of AMTS spectrum difficult or impossible to achieve.

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<sup>12</sup> See *In the Matter of Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Serv. Rules*, 28 FCC Rcd. 8555, ¶¶ 2-3 (June 6, 2013).

<sup>13</sup> *Jefferson Radio Corp. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

The Receiver does not suggest that the issues before the Commission in these two proceedings are simple. Nevertheless, these issues require resolution so that the AMTS spectrum transactions can be facilitated and PTC technologies can be deployed.

## **II. Issuance Of An HDO Against Havens And The Entities Would Likewise Frustrate The Commission’s Goals Of Spectrum And PTC Deployment.**

The issuance of an HDO would bring to a halt the Receiver’s efforts to facilitate transactions for and use of the spectrum licenses held by the Entities. Importantly, the 17 AMTS licenses held by the Entities could be sidelined for the entire duration of any HDO proceeding from being part of a PTC solution. Additionally, the interests of the Receivership in having funds to pay expenses of the Receivership and claims of innocent creditors would be impaired.

The *Jefferson Radio* doctrine “prohibit[s] the sale of a station by a licensee whose qualifications are under investigation if issues concerning the licensee’s character qualifications remain unresolved or have been resolved adversely to the licensee.”<sup>14</sup> The *Jefferson Radio* doctrine acts as a deterrent to licensee misconduct by preventing a licensee from avoiding the loss that would result from the revocation or non-renewal of a license.<sup>15</sup> In short, if the Commission were to issue an HDO to determine whether Havens and the Entities are qualified to hold FCC licenses, the *Jefferson Radio* doctrine would effectively end the Receiver’s ability to assign any licenses to third party purchasers – including AMTS licenses to railroads.

The crash of Amtrak 188 on May 12, 2015, less than a month after Judge Sippel’s Order, highlights the cost of delays in the implementation of PTC. In the wake of the crash, railroad

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<sup>14</sup> *In the Matter of Applications for Assignment of Licenses WSTX(AM) and WSTX-FM, Christiansted, U.S. Virgin Islands; Family Broadcasting, Inc.; Order to Show Cause Why the Licenses for Stations WSTX (AM) and WSTX-FM, Christiansted, U.S. Virgin Islands, Should Not Be Revoked; For Renewal of Licenses for WSTX(AM) and WSTX-FM*, 25 FCC Rcd 7591, 7595-96 (2010).

<sup>15</sup> *Id.*

officials complained that they had been unable to secure the necessary spectrum fast enough to deploy the PTC technology.<sup>16</sup> The issue is that the spectrum needed to deploy PTC has been previously allocated in auctions to private purchasers such as the Entities.<sup>17</sup> One of the most effective ways the FCC can facilitate the deployment of PTC is to encourage railroads to acquire spectrum from existing licensees like the Entities.<sup>18</sup> To that end, since the passage of the *Rail Safety Improvement Act of 2008*, the FCC has worked “closely” with railroads “to identify available spectrum on the secondary market and to approve secondary market transactions quickly.”<sup>19</sup>

Prior to the Receiver’s appointment, the Entities, through Havens, had engaged in negotiations with at least two companies that are seeking spectrum to implement PTC. Those parties had reached agreement on the material terms for those transactions when the Receiver was appointed. The Receiver has continued to work to bring those transactions to fruition. She anticipates filing applications to assign some of the licenses not affected by the Skybridge bankruptcy as soon as transaction agreements can be completed and approved by the California Court. This is exactly the kind of action that will assist the Commission in achieving its goal of PTC deployment by 2018. Issuance of an HDO against Havens and the Entities would severely undermine the public interest by preventing transactions like this from moving forward.

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<sup>16</sup> See, e.g., M. Flegenheimer et al., *Amtrak Crash Illuminates Obstacles to Plan for Controlling Train Speeds*, N.Y. Times, May 18, 2015.

<sup>17</sup> See *Hearing on Passenger Rail Safety: Accident Prevention and On-Going Efforts to Implement Train Control Technology*, Before the U.S. Senate Comm. on Commerce, Science, and Transp., 114th Cong. 1 (2015) (statement of Charles Mathias, Assoc. Chief of the Wireless Telecomm. Bureau, FCC).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 1-2.

The Receiver is likewise working to assure preservation and deployment of other spectrum assets, such as licenses for MAS, LMS and paging spectrum, consistent with the instructions of the California Court. The initiation of an HDO proceeding would prevent the Entities' spectrum licenses of all kinds from being put to further public use. This would harm innocent creditors with claims against the Entities as well as the Entities themselves.<sup>20</sup>

The Receiver is mindful that the findings of Judge Sippel and his recommendation for the initiation of an HDO are serious matters.<sup>21</sup> But the delay in spectrum deployment that will result from the issuance of an HDO would be inappropriate, particularly with regard to AMTS spectrum after the tragic loss of life and numerous injuries resulting from the derailment of Amtrak 188. The Receiver submits that such delays would be inconsistent with "the Commission's fundamental obligation to promote safety of life and property through the use of wire and radio communications."<sup>22</sup>

## CONCLUSION

It is important for the Commission to reduce the obstacles to deploying the spectrum held by the Entities under the Receiver's control. The Receiver requests that the Commission decide

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<sup>20</sup> Dr. Arnold Leong, an investor and former business colleague of Mr. Havens who claims an interest in the Entities, has alleged in *Leong v. Havens* that Mr. Havens acted without authority and against the interests of the Entities. Thus, if these allegations are correct, the Entities and Dr. Leong could be considered victims of Mr. Havens' actions. Mr. Havens vigorously disputes Dr. Leong's allegations. He contends that he has engaged in no wrongdoing and that he was fully authorized in all actions. As an agent of the California Court, the Receiver is neutral as to the outcome of their dispute, which is the subject of an arbitration proceeding.

<sup>21</sup> The Receiver is aware that Havens has filed an appeal of Judge Sippel's Order, and takes no position on the merits of either the Order or Havens' appeal.

<sup>22</sup> *In the Matter of Metro. Transp. Auth.*, 2016 WL 633361, at ¶ 58 (Feb. 16, 2016) (internal quotation marks omitted).

in a reasonable time the matters in Docket No. 11-71 – and by extension, Docket No. 13-85 – as such decisions, no matter what their outcome, will likely facilitate spectrum deployment.

The Receiver also asks the Commission to stay or hold in abeyance the issuance of an HDO until the conclusion of the Receivership. The Receiver stands ready to work with the Commission and make its priorities her priorities as she seeks to provide solutions that will serve the interests of the Commission and the California Court.

Respectfully submitted,

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March 18, 2016

## CERTIFICATE OF SERVICE

I, Amanda Lanham, hereby certify that on this 18th day of March, a copy of the foregoing Petition to Stay or Hold in Abeyance the Issuance of a Hearing Designation Order was filed with the Commission, served on the parties listed below via First Class U.S. Mail and a courtesy copy was provided via electronic mail.

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