

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

In re

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC**

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

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

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

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

In re

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC**

EB Docket No. 13-85  
FRN 0013587779

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

Application File No. 000552500

To: The Commission

**Comments of Puget Sound Energy  
on  
Petition To Stay Or Hold In Abeyance  
The Issuance Of A Hearing Designation Order**

Pursuant to Section 1.45 of the Rules of the Federal Communications Commission (“FCC” or “Commission”), Puget Sound Energy (“PSE”) respectfully submits these comments on the above-captioned Petition of Susan L. Uecker (the “Receiver”), filed on March 18, 2016 (the “Petition”). The Receiver was appointed by the Superior Court of California, Alameda County, to control the assets of a number of entities formerly controlled by Warren Havens (the “Havens Entities”).<sup>1</sup> The Receiver makes two specific requests in the Petition: (1) that EB Docket No. 11-71 be resolved as promptly as possible, and (2) that the FCC “stay or hold in abeyance the issuance of a hearing designation order (“HDO”) that would commence a proceeding to determine whether Havens and the [Havens] Entities are qualified to hold Commission licenses.”<sup>2</sup> The Receiver explains that she seeks this relief to facilitate the assignment of AMTS spectrum from the Havens Entities to railroads for use in Positive Train Control (“PTC”) systems.

As explained herein, PSE agrees with the Receiver that EB Docket No. 11-71 should be brought to a conclusion as soon as possible. However, instead of holding in abeyance any enforcement action that may be appropriate against the Havens Entities, PSE recommends that the FCC exempt from the *Jefferson Radio* policy any spectrum transactions that are entered by the Havens Entities on or before a date certain.<sup>3</sup> This more limited relief would fulfill the Receiver’s objectives of allowing spectrum to be assigned to utilities (such as PSE), railroads, and others with immediate need for spectrum to fulfill public safety purposes, while not being so broad as to effectively shield from enforcement action the conduct which, among other things, has caused repeated and unnecessary delays in EB Docket No. 11-71.

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<sup>1</sup> The Receiver reported that she is currently not in control of Skybridge Spectrum Foundation (“Skybridge”) due to that entity’s filing, on March 11, 2016, of a Voluntary Petition in Bankruptcy under Chapter 11 of the Bankruptcy Code. PSE understands that the Receiver’s continued authority over Skybridge and its assets is the subject of further motions practice in that forum.

<sup>2</sup> Petition at 1.

<sup>3</sup> *Jefferson Radio Corp. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

PSE is a public utility serving approximately 1 million electric customers and nearly 750,000 natural gas customers in a 6,000 square mile service territory in the Puget Sound area of western Washington state. In order to ensure the efficient, safe, and reliable delivery of electric and gas utility services to the public, PSE relies on private communications facilities, including private mobile radio service (“PMRS”) facilities, for the operation and control of its electric and natural gas distribution infrastructure. PSE also relies on wireless communications facilities for communication with PSE’s field crews in the performance of routine operational maintenance and repair activities as well as emergency response and restoration activities. PSE’s private radio system is critical to the safe and efficient restoration of utility service following storms or other disasters when normal means of communications (*e.g.*, landline or cellular telephone service) are congested, are damaged, or are inoperable due to lack of commercial power. By minimizing its reliance on commercial communications networks, PSE is better able to respond to emergencies and restore electric and natural gas service needed by the public – including public communications networks.

In an effort to improve operating efficiencies and to comply with the FCC’s orders requiring the narrowbanding of VHF and UHF channels licensed in the Part 90 PMRS,<sup>4</sup> including channels currently used to support PSE’s PMRS operations, PSE decided to implement a new consolidated land mobile radio system for both its electric and natural gas operations. PSE’s new radio system, completed in September 2013, consists of 54 base station transmitter sites and serves approximately 660 portable (hand-held) units and approximately 1,020 mobile (vehicular-mounted) units, and it allows dispatch from 75 console positions at 21 different dispatch centers throughout PSE’s service territory.

Because the FCC has not specifically allocated or reserved any spectrum for trunked use by electric and gas utilities, PSE was required to seek out a sufficient quantity of spectrum in the VHF band through coordination of Part 90 VHF frequencies for trunking authorization, and through license assignments in the

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<sup>4</sup> See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, RM-9332, 25 FCC Rcd 8861 (2010); *see also* 47 C.F.R. §§ 90.203(j), 90.209(b).

secondary market. PSE's analysis indicated that AMTS spectrum could be acquired in the secondary market that could be used in its PMRS system. In May 2010, PSE entered a purchase agreement with Environmental LLC and Skybridge Spectrum Foundation for the partitioning and assignment to PSE of those licensees' geographic licenses for the "A-Block" of AMTS spectrum in PSE's utility service territory. The specific areas encompassed by PSE's geographic AMTS authorizations are defined in the FCC's licensing records for Call Signs WQMZ553 and WQMZ554.

PSE entered a separate agreement in May 2010 with Maritime Communications/Land Mobile ("MCLM") for lease and purchase of MCLM's site-based authorization KAE889 (Locations 4, 20, 30, 34, and 48) for the same A-Block of AMTS spectrum because MCLM's site-based authorizations had signal contours that covered a significant portion of the western portion of PSE's utility service territory and within which PSE needed radio coverage. Unless PSE had agreement to lease and/or purchase the authorizations from MCLM, PSE would be precluded from operating in those areas under its geographic AMTS licenses because of the co-channel interference protections to which MCLM is entitled under Section 80.385(b) of the FCC's Rules.

PSE is a party to EB Docket No. 11-71 only because its application for FCC consent to assignment of the site-based AMTS licenses from MCLM remains pending.<sup>5</sup> PSE's application was filed on July 7, 2010, but has remained in pending status due to the filing of a "petition to deny" by the Havens Entities and the release of the HDO in EB Docket No. 11-71.

PSE agrees with the Receiver's request that the Commission bring EB Docket No. 11-71 to a conclusion as promptly as possible. The most expeditious avenue to resolving that proceeding is for the Commission to promptly address Choctaw's updated showing under *Second Thursday*. If relief is granted under *Second Thursday*, a significant impediment will be removed for a number of parties, including PSE, to conclude transactions for the assignment of radio spectrum that is needed to support public safety, health and

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<sup>5</sup> Application File No. 0004315013. The HDO in EB Docket No. 11-71 provided that a failure by PSE and similarly-situated applicants to enter a Notice of Appearance in this docket would result in dismissal of the party's application for assignment of license.

welfare.<sup>6</sup> If relief under *Second Thursday* is not granted, the issue will have to be resolved through an evidentiary hearing before the Chief Administrative Law Judge, who stayed this portion of the hearing in EB Docket No. 11-71 pending a decision on Choctaw's updated *Second Thursday* showing. In any event, PSE urges the Commission to promptly issue a decision on Choctaw's petition.

The Receiver has also requested the FCC to hold in abeyance any enforcement actions against the Havens Entities until the Receiver has an opportunity to assign spectrum rights to the railroads for use in PTC systems. However, PSE respectfully submits that the FCC should better define the scope of this relief by only exempting from the ambit of the *Jefferson Radio* policy any spectrum transactions that were entered by the Havens Entities on or before a date certain; for example, any transactions that are entered within 90 days after the release of the FCC's order on the Receiver's Petition, or that are entered on or before the date the FCC releases an HDO against the Havens Entities, whichever is later.

Moreover, such relief should not be limited to transactions between the Receiver and railroads, as implied by the Receiver's Petition, but should include any *bona fide* spectrum transactions previously entered by the Havens Entities, or by the Receiver on behalf of the Havens Entities, with any third-party. PSE recommends that this relief be defined with respect to the date when a spectrum agreement is entered, and not when applications are filed with the FCC, because the Receiver might need court approval before filing applications with the FCC, and because Skybridge, one of the entities that is contractually obligated to assign spectrum to PSE, will likely need approval of the Bankruptcy Court before it may file an assignment application with the FCC.<sup>7</sup>

On October 30, 2015, PSE filed a Complaint against three of the Havens Entities in the U.S. District Court for the Western District of Washington for breach of a Spectrum Purchase Agreement entered into among the parties on May 18, 2010.<sup>8</sup> The Complaint, as amended, alleges that the Havens Entities have

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<sup>6</sup> In PSE's view, Choctaw has demonstrated that it meets all of the elements heretofore required by the Commission for relief under *Second Thursday*, and that Choctaw is entitled to such relief for the benefit of MCLM's innocent third-party creditors and other parties, such as PSE, that are counterparties to spectrum purchase agreements that have already been approved by the Bankruptcy Court.

<sup>7</sup> See note 1, *supra*.

<sup>8</sup> *Puget Sound Energy, Inc. v. Atlas Wireless LLC, et al.*, No. 2:15-cv-01393-RSM.

unlawfully refused to assign to PSE certain additional AMTS spectrum rights in Washington State that the defendants were contractually obligated to assign to PSE as of May 18, 2015. If the FCC were to initiate enforcement action against the Havens Entities without relief substantially similar to that which has been requested by the Receiver, PSE will be further delayed in gaining access to spectrum that the Havens Entities contractually agreed to assign to PSE six years ago, and that the Havens Entities should have assigned to PSE almost a year ago. Just as the railroads have been delayed in gaining access to spectrum needed for PTC – and largely due to delaying tactics initiated by the Havens Entities – PSE has a continuing need for prompt access to the AMTS spectrum that the Havens Entities are already obligated to assign to PSE.

For the foregoing reasons, PSE urges (1) prompt FCC action on Choctaw’s updated petition for relief under *Second Thursday*, and (2) adoption of a limited exception to, or waiver of, the *Jefferson Radio* policy to permit the Havens Entities to assign AMTS spectrum in connection with any transactions that are entered within 90 days after the release of the FCC’s order on the Receiver’s Petition, or that are entered on or before the date the FCC releases an HDO against the Havens Entities, whichever is later.

Respectfully submitted,

**PUGET SOUND ENERGY, INC.**

By: /s/ Jeffrey L. Sheldon  
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Its Attorney

Dated: March 31, 2016

## CERTIFICATE OF SERVICE

I, Michaelleen Terrana, hereby certify that on this 31st day of March, 2016, I caused a copy of the foregoing "Comments of Puget Sound Energy" to be served on the parties listed below via First Class U.S. Mail, postage prepaid, except as otherwise indicated below.

<p>* The Honorable Richard L. Sippel Chief Administrative Law Judge Federal Communications Commission 445 12th St. S.W. Washington, DC 20554</p>	<p>Brian Weimer Sheppard, Mullin, Richter &amp; Hampton LLP 2099 Pennsylvania Ave., NW Suite 100 Washington, DC 20006 <b>Counsel for Susan L. Uecker, Receiver</b></p>
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\* Hand-Delivered



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Michaelen Terrana