

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	EB Docket No. 11-71
)	File No. 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
Application 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)	
)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC)	WT Docket No. 13-85
)	Application File No. 0005552500
)	
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)	

To: The Commission

**REPLY COMMENTS OF ARNOLD LEONG
TO COMMENTS ON
PETITION TO STAY OR HOLD IN ABEYANCE
THE ISSUANCE OF A HEARING DESIGNATION ORDER**

Arnold Leong, by counsel, hereby replies to the Comments filed on March 31, 2016 by Maritime Communications/Land Mobile, LLC – Debtor-in-Possession (“Maritime”)¹ and Puget Sound Energy (“PSE”)² in the above-captioned proceedings.

Maritime, apparently in an attempt to give Mr. Havens “a taste of his own medicine,” alleges that Mr. Havens and Dr. Leong devised a “fraudulent scheme” to improperly shield Dr. Leong from disclosure as an “affiliate” in order to receive increased auction bidding credits.³ However, that conspiracy theory is wrong both as a matter of fact and law. There was never any attempt to withhold information from the Commission, nor was there a reason to do so because under established precedent, and pursuant to contemporaneous advice from counsel, Dr. Leong’s personal net worth is excluded from the entities’ gross revenue calculations and therefore irrelevant to eligibility for bidding credits.⁴ Maritime’s arguments include a Havens-like

¹ See Maritime’s Comments on the Receiver’s Petition to Stay or Hold in Abeyance, EB Docket No. 11-71 and WT Docket No. 13-85 (filed March 31, 2016) (“Maritime Comments”).

² See Comments of Puget Sound Energy on the Receiver’s Petition to Stay or Hold in Abeyance the Issuance of a Hearing Designation Order, EB Docket No. 11-71 and WT Docket No. 13-85 (filed March 31, 2016) (“PSE Comments”).

³ Maritime asserts a “conspiracy” between Mr. Havens and Dr. Leong that sounds much like the allegations Mr. Havens has asserted against Maritime. See Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520, 6523 ¶ 13 (2011) (Mr. Havens alleged that “Maritime deliberately and fraudulently failed to disclose many ‘affiliates’ (as defined in FCC auction rules) which, if disclosed, would have resulted in a loss of the 35% bidding credits and resulted in a different auction outcome”).

⁴ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, 15 FCC Rcd 16934, 16970 (2000) (“the personal income of an individual is part of personal net worth and thus not attributable”); see also *Applications of Radiofone Nationwide PCS, LLC and Harbor Wireless*, 16 FCC Rcd 792, 793-794 (WTB 2001) (“SBT argues that each Applicant should have disclosed the personal income of its controlling interest holders for purposes of determining whether the Applicant qualifies for a bidding credit as a very small business. ... We disagree. As the Commission has explained when addressing this issue previously, *the personal income of an individual is a part of personal net worth and therefore is*

distortion of the Commission’s rules regarding “designated entity” bidding credits and raise no substantial questions of fact requiring further Commission inquiry.

In addition, PSE’s request for the Commission to limit the scope of the Receiver’s court-mandated obligations also should be rejected.

Background

On March 18, 2016, Susan L. Uecker (“Receiver”), the court-appointed receiver for various entities controlled by Mr. Havens,⁵ filed a Petition to Stay or Hold in Abeyance the Issuance of a Hearing Designation Order (“Petition”) asking for “final resolution” of Docket No. 11-71 and urging the Commission to stay or hold in abeyance the issuance of a hearing designation order (“HDO”) concerning the qualifications of Mr. Havens and the Entities to hold Commission licenses.⁶ The Receiver explained that the Commission’s adoption of an HDO “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.”⁷ Dr. Leong supported grant of the Petition to “encourage[] the receiver to proceed with

not attributable for inclusion in the gross revenues of the entity seeking a bidding credit. Accordingly, Applicants need not disclose the personal income of any of their individual members with controlling interests, and we therefore deny SBT’s Petitions”) (emphasis added).

⁵ These entities include Environmental LLC; Environmental-2 LLC; Verde Systems LLC; Intelligent Transportation and Monitoring LLC; Skybridge Spectrum Foundation (“SSF”); Telesaurus Holdings GB LLC; V2G LLC; as well as a related entity that holds no licenses named Atlis Wireless LLC (the “Entities”).

⁶ Petition to Stay or Hold in Abeyance the Issuance of a Hearing Designation Order, EB Docket No. 11-71 and WT Docket No. 13-85 (filed March 18, 2016) (“Petition”) at 1.

⁷ *Id.* at 2.

any transactions that can achieve” the objective to “deploy public safety, enterprise and commercial services on the licensed spectrum.”⁸

On March 31, 2016, Maritime and PSE filed Comments concerning the Petition. Maritime alleged that Mr. Havens and Dr. Leong “concocted a fraudulent scheme designed to secure bidding credits to which they were not entitled.”⁹ Maritime also criticized Dr. Leong for not taking a more active role before the Commission. PSE opposed the Receiver’s request to defer the adoption of an HDO, instead proposing more limited relief under *Jefferson Radio* for a limited period of time.¹⁰

Discussion

I. MARITIME’S CLAIM OF A “CONSPIRACY” RELIES ON MISSTATEMENTS OF FACTS AND RELEVANT COMMISSION RULES.

Maritime alleges that Mr. Havens and Dr. Leong conspired to claim unentitled bidding credits. The “substantial evidence” cited by Maritime consists of allegations made in various

⁸ See Opposition to “Petition for Reconsideration, to Deny, and for Other Relief,” File Nos. 0007061847 and 0007067613 (filed March 24, 2016) (“Leong Opposition”).

⁹ Maritime Comments at 8. Section I of the Maritime Comments recites many examples of Mr. Havens’ personal misconduct in the ongoing Maritime proceeding. *See id.* at 3-5. These issues have been addressed in various pleadings regarding the *Memorandum Opinion and Order*, FCC 15M-14 (rel. Apr. 22, 2015) (“*Sippel Order*”). Dr. Leong takes no position on the merits of Mr. Havens’ petition for reconsideration and appeal of the *Sippel Order*, but reiterates his view that “it would not serve the public interest if the implementation of service under these licenses is delayed while Mr. Havens files reconsideration after reconsideration, appeal after appeal, regarding his personal character issues.” Leong Opposition at 4.

¹⁰ See PSE Comments at 2, citing *Jefferson Radio Corp. v FCC*, 340 F.2d 781 (D.C. Cir. 1964).

court pleadings – not facts – that it misinterprets or that came from Mr. Havens who, as Maritime is well aware, has proven himself to lack any credibility whatsoever.¹¹

To understand why the bidding credit issue is even relevant to the dispute between Dr. Leong and Mr. Havens, it is important to understand the nature of the parties' ownership dispute. Dr. Leong and Mr. Havens originally agreed to be 50/50 partners, each with equal rights to ownership and control. However, Mr. Havens, knowing it to be untrue at the time (or at least likely untrue), convinced Dr. Leong that in a 50/50 arrangement, Dr. Leong's personal net worth would be attributable to the Entities' gross revenues and therefore reduce the available bidding credit. In order to address Mr. Havens' supposed concern, and in order to fully comply with Commission regulations, Dr. Leong and Mr. Havens agreed that Dr. Leong would initially be a 49.9% interest holder, with Mr. Havens being a 50.1% interest holder and the designated manager of the Entities formed to hold licenses. Acting on the advice of counsel, the 49.9/50.1 agreement was to remain in place until there was no longer a risk of losing the bidding credit, which would be no more than three years, although Dr. Leong and Mr. Havens understood that if they could not legally convert to 50/50, they would be required to stay 49.9/50.1. Very shortly thereafter, Mr. Havens and Dr. Leong were also advised by counsel that a recent FCC decision had further clarified that Dr. Leong's personal net worth did not factor into gross revenues,¹² and in fact there was never a legitimate reason for Dr. Leong to be a minority interest holder despite

¹¹ The record is littered with statements by Mr. Havens that suggest the parties may have engaged in an improper agreement to obtain bidding credits. This entire theory was concocted, not by Maritime, but by Mr. Havens himself, who believes if he can allege his agreement with Dr. Leong is somehow "illegal" it cannot be enforced and Mr. Havens can remain in control of the Entities. Like many other theories presented by Mr. Havens to the Commission, it is entirely false and disingenuous.

¹² *Radiofone*, 16 FCC Rcd at 793-794.

Mr. Havens' contentions to the contrary, and thus the parties were free to convert to the 50/50 arrangement. Mr. Havens, of course, repudiated the parties' agreement and insisted on maintaining voting and equity control of the Entities.¹³ Mr. Havens immediately began to dilute Dr. Leong's interest, refused to provide financial information, failed to meet tax deadlines for years, and apparently engaged in serious misconduct in Commission and other proceedings without disclosing these actions to Dr. Leong.¹⁴ Dr. Leong filed suit against Mr. Havens in 2002, but as both the Commission and Maritime are aware, Mr. Havens is masterful at delaying proceedings and Dr. Leong's lawsuit remains unresolved to this day.

There was no conspiracy. Dr. Leong is another victim of Mr. Havens and has long sought to enforce his rights to control, which would prevent Mr. Havens from taking further unilateral improper, contemptuous, and disruptive actions in the industry and with the Commission. To the extent the parties' counsel may have been wrong about their advice regarding the bidding credit, there was no harm to any other bidder, no violation of FCC rules and no bad faith on the part of Dr. Leong. Even assuming *arguendo* that the auction applications cited by Maritime somehow "concealed and misrepresented the true ownership and control of the Havens Entities,"¹⁵ such "misrepresentation" was fashioned by Mr. Havens, who asserted unilateral control over the Entities and prosecuted the applications. And assuming (again, *arguendo*) that Dr. Leong, despite the unresolved dispute about Dr. Leong's interest in and legal

¹³ See Declaration of Plaintiff Arnold Leong in Support of Motion to Appoint Receiver, Case No. 2002-070640 (May 17, 2015), at 6 ("Mr. Havens then falsely and flatly denied the existence of the 50-50 arrangement – not just its legal effect, but that there had even been such discussions – and refused to restructure the two LLCs as he had agreed.").

¹⁴ See *id.* ("[c]ontrary to our oral agreement and despite my repeated demands, Mr. Havens has not allowed me to share in decision-making with respect to the licenses. . . .")

¹⁵ Maritime Comments at 5.

control of the applicants, should have been included as an “affiliate” in the applications’ Exhibit C (“Status as a Very Small Business”) as suggested by Maritime,¹⁶ rather than as a 49% interest holder in Exhibit A (“Applicant Identity and Ownership Information”), the omission was immaterial because, as discussed above, Dr. Leong’s personal income was not attributable for inclusion in the calculation of gross revenues of the applicants. The Entities gained no bidding credit benefit by supposedly “failing” to characterize Dr. Leong as an “affiliate.” The only “scheme” in this context was attributable to Mr. Havens’ legerdemain in convincing Dr. Leong to accept less than 50 percent ownership as a ruse to keep him from exercising control over the Entities.

In response to Maritime’s question “why would one unlawfully cheated out of a controlling interest in valuable FCC licenses choose to keep the Commission in the dark for more than a decade?”, the answer is simple. First, the issue is a civil state court dispute over control of the Entities and, to Dr. Leong’s knowledge, not something the FCC could or would resolve.¹⁷ Second, Dr. Leong was bound by confidentiality provisions insisted upon by Mr. Havens and was under constant threat of lawsuit by Mr. Havens – a known vexatious litigant – if Dr. Leong were to publicly disclose any information about the parties’ dispute. It was not until Dr. Leong filed for receivership, something expressly permitted in the LLC agreements, that the

¹⁶ *Id.* at 6.

¹⁷ The Commission has consistently stated its “long-standing policy is to accommodate the actions of state courts, thereby avoiding the conflicts between state and federal authority....” and “[t]he Commission thus defers to judicial determinations in many areas, including bankruptcy, private disputes, and the interpretation and enforcement of contracts for the sale of broadcast licenses.” *Otoniel Cruz Rivera*, 27 FCC Rcd 6001, 6002-03 (MB 2012). *See also Arecibo Radio Corp.* 101 FCC 2d 545 (¶ 9) n. 12 (1985) (FCC’s policy “is to accommodate state and local court decrees adjudicating disputes over contract and property rights, unless a public interest determination under the Communications Act . . . compels a different result.”).

bulk of the facts were subject to public disclosure.¹⁸ Dr. Leong has long been fighting to end Mr. Havens' tyranny for the benefit of all involved, but was not informed of the true extent of Mr. Havens' apparent misconduct until Judge Sippel's infamous order, after which Dr. Leong has spent millions of dollars to have the Receiver appointed and hopefully permanently extinguish Mr. Havens' involvement with the Entities' licenses. Dr. Leong should not even be associated with Mr. Havens' conduct, much less punished for it.¹⁹

Finally, Dr. Leong's silence over the past 14 years was not somehow connected to his concealment of a conspiracy, as suggested by Maritime. Dr. Leong could not exercise control over the Entities while Mr. Havens was in charge, and believed he had to wrestle control from Mr. Havens in the pending arbitration and related litigation before involving the Commission.²⁰

¹⁸ Mr. Havens deliberately toyed with the arbitration process to avoid a final decision – by, for example, hiding and firing over ten different law firms at critical junctures and refusing to provide critical financial documents – that might end his control over the Entities.

¹⁹ Maritime's assertion that Mr. Havens' acquiescence in Dr. Leong's "assumption of negative control" supports its theory of a Havens-Leong conspiracy to defraud the FCC is absurdist fiction. Maritime Comments at 7. Indeed, the fact that Dr. Leong has been consistently insisting through the long course of the parties' private dispute that Mr. Havens stop exercising unilateral control over the Entities demonstrates just the opposite of a conspiracy – the complete lack of *any* agreement between Mr. Havens and Dr. Leong about anything associated with the operation of these Entities. That Dr. Leong was forced (per Mr. Havens' threats) to abide by supposed requests from third parties (per Mr. Havens) involved in minor sales transactions (necessary for the continued existence of the Entities, again per Mr. Havens) to confirm that Dr. Leong would not employ his pending arbitration claims to interfere with the mechanics of these sales, does not mean that Dr. Leong had any role in operating the Entities with Mr. Havens, or that Mr. Havens agreed that he did. Indeed, the superior court judge who granted the receivership (the Honorable Judge Frank Roesch) emphasized in granting the motion that Dr. Leong had "never seen a dime" from the operations of the Entities, as opposed to Mr. Havens' lucrative haul. There simply has never been any "conspiracy" between these two individuals who have spent more than a decade in fierce litigation over the control of the entities.

²⁰ In SSF's recent "Supplement Statement," Mr. Havens cites *American Bird v. FCC*, 545 F.3d 1190 (9th Cir. 2008), for the proposition that any minority interest holder in an FCC licensee has standing before the FCC regarding any issue in any proceeding. See Havens' Supplement Statement at 4. n.3. However, *American Bird* merely recites the truism that "suit[s] challenging

Dr. Leong only approached the Commission individually to support the Receiver – the new controlling party – in her efforts to make the licenses available to third parties, and to oppose Mr. Havens’ efforts to upset that court-approved result. Dr. Leong understands the importance of implementing the licenses held by the Entities, including with regard to Positive Train Control, and is pursuing all available avenues to make sure that can happen as quickly as possible.

II. THE COMMISSION SHOULD NOT LIMIT THE RECEIVER’S COURT-MANDATED OBLIGATIONS.

Understandably frustrated with Mr. Havens, PSE asks the Commission to limit the scope of the Receiver’s requested 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.”²¹ Dr. Leong agrees with PSE that the Receiver should be able to continue to market and sell the licenses to railroads, electric utilities or any third party, but disagrees that the timeline for completing such sales should be artificially restricted because it would unnecessarily create a “fire sale.” Dr. Leong, an innocent party with a significant interest in the licenses, is already taking all conceivable steps at great personal expense to get the licenses to market as quickly as possible. In fact, the Receivership Order²² obtained by Dr. Leong granted the

a final order made by the FCC must be brought in the appropriate federal court of appeals,” except for matters involving station licenses, which “*may* be challenged in the United States Court of Appeals for the District of Columbia Circuit.” *Id.* at 1193 (internal quotations omitted and emphasis in original). Moreover, in the one case where Dr. Leong filed a pleading with the Commission – his support for the Receiver’s Petition – Mr. Havens claims that Dr. Leong lacks standing and that SSF’s petition for reconsideration of the involuntary transfer of the licenses to the Receiver “is unopposed.” *Id.* at 4. It is difficult to imagine a more hypocritical set of statements.

²¹ PSE Comments at 5.

²² See *Order Appointing Receiver After Hearing and Preliminary Injunction*, Case No. 2002-070640, Aug. 11, 2015 (“Receivership Order”).

Receiver authority to sell some of the Entities' licenses, and a subsequent order approved the Receiver's engagement of a broker to sell a subset of the licenses.²³ The Receiver's Petition makes clear that one of her priorities will be to sell licenses to benefit Positive Train Control, which the Commission has already acknowledged was appropriate with respect to Maritime's sale of a license to Southern California Regional Rail Authority.²⁴ The Receiver should be allowed adequate time to obtain fair market value.

Conclusion

The Commission should approve the Receiver's Petition and reject Maritime's baseless arguments suggesting that there are factual and legal grounds to find a conspiracy to obtain more bidding credits to which the Entities were not entitled.

Respectfully submitted,

ARNOLD LEONG

April 12, 2016

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²³ See Order Approving the Employment by Receiver of Select Spectrum as Broker, Case No. 2002-070640 (Feb. 18, 2016).

²⁴ See *Maritime Communications/Land Mobile, LLC*, WT Docket No. 13-85 and EB Docket No. 11-71, FCC 124-133 (rel. Sept. 11, 2014).

CERTIFICATE OF SERVICE

I, Sharon A. Krantzman, hereby certify that on this 12th day of April, 2016, I caused a copy of the foregoing “Reply Comments of Arnold Leong to Comments On Petition to Stay or Hold in Abeyance the Issuance of a Hearing Designation Order” to be served on the parties listed below via First Class U.S. Mail, postage prepaid, except as otherwise indicated below.

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