

1 MR. KELLER: Some of them, yes.  
2 Yes, the purchase agreements. In other words,  
3 even if the Commission were to say we consent  
4 to these license assignments, we would still  
5 have to get Bankruptcy Court approval to go  
6 forward with the sale of those.

7 JUDGE SIPPEL: Now I understand.

8 MR. KELLER: It is usually done  
9 the other way around. You usually get the  
10 Bankruptcy Court approval first.

11 JUDGE SIPPEL: Right, because the  
12 Commission might not do anything with it until  
13 you get the Bankruptcy approval.

14 MR. KELLER: Right. So that is  
15 what the hearings are about, as to whether or  
16 not to allow -- and one hearing was held a few  
17 weeks ago that approved the set of  
18 applications. I don't know them off the top  
19 of my head, but they are listed in my status  
20 report where the court approved those  
21 contracts, and on February 2nd another hearing  
22 is scheduled where they will take up an

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1 additional batch of contracts, apparently now  
2 including also IPL and WPL.

3 JUDGE SIPPEL: So if everything  
4 goes your way on February 2nd, then you will  
5 have -- then all the contracts will be taken  
6 care of.

7 MR. KELLER: There are possibly a  
8 couple of other minor contracts. For example,  
9 DCP was mentioned.

10 JUDGE SIPPEL: Yes.

11 MR. KELLER: These are contracts,  
12 though, which the company will decide whether  
13 to pursue, but some of them are for like very  
14 small amounts and were prepaid anyway. So  
15 there is no net result. So that we may or may  
16 not pursue those, but they will not affect the  
17 overall plan.

18 JUDGE SIPPEL: I don't really  
19 understand that.

20 MR. KELLER: Well, for example,  
21 they are either red or blue. The DCP  
22 contract, for example, it may not be worth the

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1 company's while to pursue that, because it is  
2 for a small amount, which was already prepaid.  
3 So why waste litigation costs trying to get  
4 something approved that is not going to result  
5 in any net proceeds for the estate.

6 JUDGE SIPPEL: Well, what does  
7 that do to DCP?

8 MR. KELLER: Well, they went out  
9 anyway. They have withdrawn.

10 MR. RICHARDS: They already DCP's  
11 money. So they are not going to pursue it.

12 MR. KELLER: In the case of IPL  
13 and WPL, it makes a bigger financial  
14 difference, and we have to do the contours of  
15 whether or not -- the litigation costs.

16 JUDGE SIPPEL: All right. Now the  
17 bankruptcy judge -- he is aware of this, and  
18 he is okay with that?

19 MR. KELLER: Yes.

20 MR. HAVENS: May I add that --

21 JUDGE SIPPEL: Who is this? Mr.  
22 Havens?

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1 MR. HAVENS: Yes, sir. I just  
2 wanted to add quickly that SkyTel has appealed  
3 the court's approval at the previous hearing  
4 of certain of the APA.

5 JUDGE SIPPEL: Okay. Thank you.  
6 Let me ask the Bureau. If on February 2nd  
7 everything -- essentially everything gets  
8 wrapped up by the Bankruptcy Court, what would  
9 be the position of the Bureau with respect to  
10 moving the Second Thursday issue upstairs, if  
11 you want to call it that, to the Bureau for  
12 them to look at?

13 MS. KANE: We haven't seen  
14 anything from them or a representation of when  
15 they might file the Second Thursday. I  
16 thought that was part of what they were going  
17 to be responding to today.

18 JUDGE SIPPEL: I am just asking.  
19 I understand that. I am not asking -- What I  
20 am asking is -- That is basically all they  
21 have to do, isn't it?

22 MS. KANE: I think there was --

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1 There is an outstanding issue, Your Honor, of  
2 what their plan is going to entail and whether  
3 or not they are going to seek to sell all of  
4 their assets and what the value of those  
5 assets are, and whether the value of those  
6 assets exceeds how much they owe to their  
7 creditors.

8 I think we are still waiting for  
9 some of that information that Mr. Keller says  
10 is something that will be ongoing and part of  
11 the reorganization plan, too, at the end of  
12 this month to the Bankruptcy Court.

13 So I think that issue is still  
14 outstanding as to whether or not they are  
15 seeking to put everything at the Second  
16 Thursday that may exceed how much they owe  
17 their creditors. That was the issue that we  
18 talked about the last time.

19 So in terms of whether this is  
20 something that is right for Second Thursday,  
21 I think there is still some information we  
22 need from Mr. Keller.

1 MR. KELLER: I just wanted to say,  
2 when I heard you restate it, I think I might  
3 have misled you. It is not that, when we have  
4 this hearing on the 2nd that everything will  
5 be all wrapped up. This hearing on the 2nd  
6 will take care of the rest of the remaining --  
7 with a few minor exceptions, of the contracts  
8 for sale.

9 There is still the reorganization  
10 plan to be gone through with the court as to  
11 how -- That just simply says the bankrupt  
12 estate can sell these assets. That doesn't  
13 get them out of bankruptcy yet or decide how  
14 the company is going to be reorganized under  
15 the plan.

16 She is right. The reorganization  
17 plan will have that, and I am prepared to  
18 address some of those issues today.

19 JUDGE SIPPEL: Well, before we get  
20 into that, I don't know how deep we want to  
21 get into that, but I am going to ask you to  
22 give me an overview on that. But my question

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1 then is this: Is the Bureau's position that  
2 the final approval of the plan by the  
3 Bankruptcy Court is necessary before the issue  
4 is ripe to -- and also, of course, the  
5 appropriate motions filed with respect to  
6 Second Thursday, but basically, the  
7 reorganization has to be approved by the  
8 Bankruptcy Court before there is even a Second  
9 Thursday issue for the WP to consider. Is  
10 that basically your position?

11 MS. KANE: I believe that is the  
12 appropriate process, Your Honor, but it also  
13 would lend some ability for the Bureau to  
14 determine whether or not Second Thursday is  
15 even applicable. So we would suggest that we  
16 would need to see the reorganization plan.  
17 Whether or not it has yet been approved by the  
18 court, it may not be as much of an issue, but  
19 obviously, if it were approved, that would be  
20 more helpful to us.

21 JUDGE SIPPEL: Why would you even  
22 be interested in it until the court approves

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1 or disapproves it?

2 MS. KANE: I think we would like  
3 to be able to know what it is Maritime is  
4 intending to do in terms of some sort of  
5 reorganization or a dissolution of its assets,  
6 how it is intending to dissolve its estate.

7 JUDGE SIPPEL: That will be  
8 basically making available for the Bureau  
9 responding with the Bankruptcy Court.  
10 Correct?

11 MS. KANE: Correct, Your Honor,  
12 and that was supposed to be filed next  
13 Tuesday, and we are -- either next Tuesday or  
14 next Monday. But we are concerned about  
15 whether that timing is going to stick.

16 MR. KELLER: Let me first say, I  
17 want to take a rare opportunity here, because  
18 I don't often have this opportunity, but I  
19 want to agree with Ms. Kane that the filing --

20 JUDGE SIPPEL: Pop the champagne.

21 MR. KELLER: The filing, but not  
22 necessarily approval by the court of the

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1 reorganization plan, is critical to putting  
2 together and presenting the Second Thursday  
3 plan. In fact, that is the one thing that is  
4 -- You know, I am not willing to present a  
5 detailed Second Thursday plan until we have  
6 the reorganization plan that includes how we  
7 are going to resolve this issue on file.

8 We are committing to get that  
9 Second Thursday petition filed as soon as  
10 possible after the reorganization plan is  
11 filed, not heard by the court but filed with  
12 the Bankruptcy Court, and I would say probably  
13 within 10 days to two weeks at the most  
14 following the filing of that reorganization  
15 plan with the Bankruptcy Court, we will be  
16 presenting the Second Thursday petition. That  
17 is number one.

18 Two other things I want to address  
19 is the timing of the reorganization plan and,  
20 secondly, the overview of what we believe  
21 right now the proposal is going to be, and  
22 what I am sure will be, as far as I am going

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1 to get.

2 I am not going to go into some  
3 details. So there are some minor details that  
4 may change, but the overview will be the same.  
5 So let me first address that.

6 What is being proposed is: There  
7 is an entity being formed -- it may have  
8 already been formed -- by the secured  
9 creditors. The secured creditors in this case  
10 have formed an entity. That entity is going  
11 to do -- and I am not a bankruptcy lawyer --  
12 what is called a credit bid.

13 They are going to acquire all of  
14 the licensed assets of Maritime, so all of the  
15 licensed assets of Maritime, subject to any  
16 pending contractual obligations. So that  
17 means if, for example, the Metrolink -- Say,  
18 if they would still be obligated to go through  
19 with that transaction, etcetera -- they will  
20 be doing this in exchange for their claims on  
21 the estate. In other words, rather than  
22 paying cash, they will be basically

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1 liquidating their claims and taking the  
2 licensed assets into this entity.

3 So at that point, Maritime as an  
4 entity will no longer hold any licensed  
5 assets. The only monies that may go to  
6 Maritime, and I am not even sure that they  
7 would go directly to Maritime or be pursued in  
8 some other arrangement, would be such funds as  
9 are necessary to pay the unsecured creditors  
10 and administrative claims, things like that.

11 So there would be no cash proceeds left  
12 in Maritime after this is done. I would also  
13 add that, in terms of claims on the estate  
14 that would be satisfied in this, these do not  
15 include -- would not include the claims of  
16 Sandra DePriest, Donald DePriest or Scotland  
17 House. In fact, when I prepared my status  
18 report, I was working from the schedules that  
19 have been filed with the court. There is now  
20 an actual claims register, and I would note  
21 that those claims aren't even on the register.

22 So that is essentially what the

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1 plan is. The plan is to assign all the  
2 license assets out of Maritime into this  
3 entity owned by the secured creditors, and  
4 then the only proceeds that would affect  
5 Maritime at all would be to pay its unsecured  
6 creditors and administrative claims.

7 JUDGE SIPPEL: Does the Commission  
8 have to approve that?

9 MR. KELLER: Yes. Yes, but for  
10 that part we will need Bankruptcy Court  
11 approval. You know, we will need Bankruptcy  
12 Court approval for that transaction, and then  
13 we would come to the Commission; but what I  
14 anticipate that that would look like is, first  
15 of all, there would certainly be an  
16 application for the Commission to assign the  
17 licenses from the DIP, the debtor in  
18 possession, to this entity.

19 There may or may not be some two-  
20 step stages involved then to get the other  
21 pending contracts taken care of, or whether  
22 they could be handled laterally, I don't know.

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1 But those are minor. But, yes, the Commission  
2 would ultimately have to approve this, but  
3 that would be part of the Second Thursday  
4 plan, would be presenting the overall picture  
5 saying, here is the plan, here is how we are  
6 moving forward; we want you, pursuant to  
7 Second Thursday, to approve this, including  
8 consenting to the applications that are  
9 necessary to implement this.

10 JUDGE SIPPEL: How does that sound  
11 to you, Ms. Kane?

12 MS. KANE: It raises a few  
13 questions for us, Your Honor. First and  
14 foremost, if there has been an evaluation of  
15 the license inspector and beyond those covered  
16 by the assumed contracts -- in other words,  
17 what is the value of assets that is being  
18 transferred to this secured creditor group.  
19 That is number one.

20 Number two, who are the secured  
21 creditor group, and what is the value of the  
22 claim for the secured creditors? Mr. Keller

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1 has identified the secured claims as only \$18  
2 million. I think, as we have talked before,  
3 the value of this license in this spectrum has  
4 been valued by them to the Bankruptcy Court at  
5 \$45 million.

6 If these creditors are assuming a  
7 value of spectrum that is far beyond what they  
8 are owed, that may cause an issue under Second  
9 Thursday, Your Honor.

10 MR. HAVENS: This is Warren  
11 Havens. May I just state that in the upcoming  
12 -- I'm sorry.

13 JUDGE SIPPEL: Mr. Keller, I am  
14 thrown off track here a little bit now. The  
15 way you were saying it, I kind of thought it  
16 was a wash, but it really is -- there is going  
17 to be a difference -- Obviously, from what Ms.  
18 Kane has said, there is going to be a sort of  
19 a leftover slush fund or however you want to  
20 characterize it.

21 MR. KELLER: No, there won't be  
22 any leftover slush fund, because, as I said,

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1 the only cash that will come out of this would  
2 be, pursuant to this deal, they are canceling  
3 their debts. They are also putting up the  
4 cash necessary to pay the unsecured creditors  
5 and administrative claims.

6 There is no extra cash going to be  
7 left in Maritime as a result of this. What  
8 Ms. Kane is referring to --

9 JUDGE SIPPEL: Well, in terms of  
10 Maritime, but there is money -- There is a  
11 value to all those licenses --

12 MR. KELLER: Right.

13 JUDGE SIPPEL: -- that are going  
14 to be assigned to this Secured Creditors, Inc.  
15 or whatever it is called, and that value is  
16 going to exceed -- correct me if I am not  
17 saying this right. It is going to exceed the  
18 amount of indebtedness of -- Yes, it is going  
19 to exceed the amount of indebtedness of  
20 Maritime. So that is going to be -- and then  
21 what happens? If that's the case, what  
22 happens to that value?

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1                   MR. KELLER: First of all, I take  
2 issue with the fact that that is the case.  
3 That is a speculation. Mr. Rupke's license is  
4 revoked. Under these circumstances and all  
5 that, there is no way they are worth \$45  
6 million, but whatever they are worth, I --

7                   MR. HAVENS: I would like to make  
8 a relevant point, please.

9                   JUDGE SIPPEL: Now you can't  
10 interrupt. We will get to you, Mr. Havens,  
11 but not right now. Let him finish. Let him  
12 finish.

13                   MR. KELLER: So I would say the  
14 question of the precise value of the assets is  
15 a question of fact, and I don't think it has  
16 been established. So we just can't throw  
17 around a number like \$45 million and assume,  
18 ha, ha, that's it.

19                   Secondly, I would argue that --  
20 and this is a matter that will be fallout in  
21 pleadings before the Commission and addressing  
22 Second Thursday, I am sure, but I would argue

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1 that the value -- the excess value, if any, is  
2 not relevant so long as who is taking that  
3 excess value is not the alleged wrongdoers.

4 The idea is -- Let's assume, for  
5 the sake of argument, that this secured  
6 creditors' committee would now have license  
7 assets that -- The amount of claims that they  
8 cancel plus the amount of cash that they put  
9 up to satisfy unsecured creditors' claims and  
10 administrative expenses: Let's assume that,  
11 when you add those together, there is still  
12 some added alleged value to the licenses.

13 Even so, that value is not going  
14 to the alleged wrongdoers. It is going to the  
15 secured creditors, number one. Number two,  
16 remember, the whole point of Second Thursday  
17 is to satisfy the claims of creditors and  
18 support the bankruptcy laws.

19 The alternative is that no  
20 creditor gets anything. You know, the  
21 alternative is we come back here. We have a  
22 license, and we risk the possibility that all

1 the licenses get revoked, and then no creditor  
2 gets anything. But as I say, the question of  
3 whether or not there is an excess value and  
4 whether or not that is legally relevant under  
5 Second Thursday is a question to be briefed  
6 and argued in the context of the Second  
7 Thursday petition, in my opinion.

8 JUDGE SIPPEL: All right. I am  
9 trying to get a feel for how much work has to  
10 be done before this case can move along, and  
11 it seems to me, there is a lot of work that  
12 has got to be done.

13 MS. KANE: Your Honor, we would  
14 argue that the question of fact as to the  
15 value of the licenses is a question for this  
16 forum, because it will determine whether or  
17 not Second Thursday is even an appropriate  
18 measure to move forward and, therefore,  
19 whether this hearing should be stayed with  
20 regard to Mr. Keller's and Maritime's motion  
21 to set.

22 If Second Thursday is not an

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1 option, this hearing should proceed on all  
2 issues.

3 MR. HAVENS: Your Honor, could I  
4 make one point?

5 JUDGE SIPPEL: I am on a rather  
6 significant issue here, Mr. Havens. I don't  
7 mean to cut you off. We will get back to you.

8 MR. HAVENS: But it is on exactly  
9 the point of value. There is experts who are  
10 testifying to that and --

11 JUDGE SIPPEL: I don't want to get  
12 into the facts of the value. I am just  
13 looking for issues right now, and there is an  
14 item outstanding from the Bureau that Mr.  
15 Keller has to address. So just stay quiet a  
16 while. Go ahead, Mr. Keller.

17 MR. KELLER: I again dispute the  
18 issue that the value of the licenses in this  
19 context, under the scenario that I have laid  
20 out, is relevant to Second Thursday. I mean,  
21 the fact that there is some excess value -- it  
22 doesn't really matter.

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1           It would matter if the licenses  
2           were being sold for cash and that cash was  
3           going to stay in Maritime and then possibly,  
4           therefore, go to the alleged wrongdoers, but  
5           that is not the scenario that has been laid  
6           out.

7           The scenario that is laid out is  
8           that no cash will go to Maritime or, if it  
9           does, it is solely cash to pay unsecured  
10          creditors and administrative claims. There  
11          will be no excess cash money or any value --  
12          Proceeds of the license assets will not remain  
13          with Maritime, period.

14          Now the fact that those license  
15          assets, are the license assets potentially  
16          worth more than the -- A little. I presume  
17          there is a business judgment here that the  
18          secured creditors have to make, and maybe that  
19          is a risk that they take in exchange for  
20          canceling their debts.

21                           JUDGE   SIPPEL:           Counsel   for  
22          Pinnacle?

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1 MR. CATALANO: For DEMCO, Your  
2 Honor.

3 JUDGE SIPPEL: I'm sorry.

4 MR. CATALANO: We participated in  
5 the bankruptcy proceeding on the assumption of  
6 the DEMCO contract, and in the context of the  
7 DEMCO contract, the court addressed valuation  
8 for not only DEMCO but for all the contracts  
9 that were assumed.

10 The court found fair value, good  
11 faith transactions. In the court's opinion  
12 from the bench, the court expressed skepticism  
13 regarding the prior valuation of the 45  
14 million. In the bankruptcy proceeding as it  
15 goes forward, the court will be addressing the  
16 valuation issue, and any Second Thursday  
17 showing would have the benefit of what is  
18 decided on the valuation issue in the  
19 bankruptcy proceeding, and that is an issue  
20 that is directly in front of the bankruptcy  
21 proceeding, the valuation of those assets.

22 So the Commission would have the

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1 benefit of the court's finding in that  
2 proceeding, but should not independently take  
3 off on a separate track to address valuation.

4 JUDGE SIPPEL: Are you saying or  
5 is it implied from what you are saying that it  
6 is going to be -- it is, in effect, res  
7 judicata that the Commission has no business  
8 getting into that?

9 MR. CATALANO: That issue of  
10 valuation has not been designated in this  
11 proceeding, and the issue of valuation is the  
12 very issue that the bankruptcy court  
13 determines in making its decisions on the  
14 liquidation of the estate.

15 That is within the jurisdiction of  
16 the bankruptcy court, and that is what the  
17 bankruptcy court is already in the process of  
18 doing, has done so on the contracts that it  
19 has addressed, will do so on the additional  
20 contracts on February 2nd and, finally, in  
21 addressing the bankruptcy plan of  
22 reorganization, will be addressing the final

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1 valuation.

2 At that point, that record can go  
3 to the Commission under a Second Thursday  
4 showing, and the Commission will have the  
5 benefit of the findings of the court, the  
6 bankruptcy court, which is empowered to  
7 address those very issues. That is the  
8 purpose of the bankruptcy court.

9 JUDGE SIPPEL: I understand --  
10 Well, you are giving me a good explanation,  
11 and it is very appropriate. But I am of the -  
12 - Well, I am not going to say where I am  
13 coming out on this, but I think that the  
14 Bureau and Ms. Kane is of the view that, once  
15 -- and I am not trying to put words in your  
16 mouth, please. But once all that is done --  
17 that is, the valuation is done and the  
18 bankruptcy court basically has a final ruling  
19 on what they find the value to be these issues  
20 are all -- at least, they have resolved them  
21 to the court's satisfaction, then it comes to  
22 the Commission.

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1           I think that the Bureau would have  
2           it come to me so that they could make their  
3           comment, objections or what-not on the  
4           accuracy of some of those figures. They are  
5           not satisfied, because it is the good faith --  
6           The issue with me would be does this qualify?  
7           In other words, does this qualify for Second  
8           Thursday in the generic, not necessarily in a  
9           point by point, but if there is reason to  
10          believe that the Second Thursday is being used  
11          as a device to get the case out of here, to  
12          get a case away from me -- I don't want to  
13          even suggest accusations, but if there is a  
14          significant difference between what the Bureau  
15          finds to be the true value and the value  
16          determined by the bankruptcy court because  
17          they can -- The bankruptcy court is going to  
18          consider whatever it is going to consider.

19                 Let me rephrase it this way. It's  
20                 the question of the good faith application of  
21                 the principle of the Second Thursday doctrine.  
22                 If I am satisfied that this is all done in

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1 good faith, then bang, it goes up to WB.

2 Now is my understanding correct?

3 MS. KANE: That would be our  
4 concern, Your Honor. I think you phrased it  
5 very accurately, which is that, depending on  
6 how that valuation falls out, Second Thursday  
7 is only designed to transfer licenses in an  
8 effort to satisfy the creditors.

9 If they are getting more value  
10 than what they are owed, then Second Thursday  
11 may not apply and may not provide any basis to  
12 hold up this hearing on the remaining issues.

13 So our concern, obviously, is to  
14 get that information as quickly as possible.  
15 We thought we were expecting a reorganization  
16 plan with this detail outlined next week, but  
17 now I still haven't heard from Mr. Keller when  
18 that is going to be filed.

19 JUDGE SIPPEL: Can you give us --  
20 I'm sorry, yes, sir? Could I have your name?

21 MR. CATALANO: Al Catalano,  
22 counsel for DEMCO.

**NEAL R. GROSS**

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