

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
APPLICATION TO ASSIGN LICENSES FROM)	WT Docket No. 13-85
MARITIME COMMUNICATIONS/LAND)	File No. 0005552500
MOBILE, LLC, DEBTOR-IN-POSSESSION, TO)	
CHOCTAW HOLDINGS, LLC)	
)	
For Commission Consent to the Assignment of Various)	
AMTS Authorizations)	

To: Marlene H. Dortch, Secretary

**OPPOSITION TO REQUEST TO EXTEND TIME, REQUEST
TO COMPEL, AND REQUEST FOR SUPPLEMENTAL
PUBLIC NOTICE**

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively “Choctaw”) hereby oppose the “Request to Extend Time and Request to Compel MCLM to File a Required Section 1.65 Update (or to Dismiss the Application) and Request to Provide a Supplemental Public Notice” (“Motion”) filed by Warren Havens (“Havens”) on behalf of himself and various entities. The Motion is merely another obstacle Mr. Havens has tried to create in an effort to disrupt and delay resolution of the licenses subject to the instant applications. Mr. Havens participated in the Bankruptcy Court proceeding discussed below and has been aware for some time that the parties would be seeking *Second Thursday* relief. Moreover, the Bureau has provided a relatively generous six (6) weeks for interested parties to comment on the pending applications and the relief sought therein. As discussed below, the Havens filing is fatally flawed as a matter of process and substance and should be summarily dismissed or denied.

BACKGROUND

By way of background, Maritime Communications/Land Mobile, LLC, Debtor-in-Possession (“MCLM”)¹ holds licenses for a number of site-based Automated Maritime Telecommunications Systems (“AMTS”) licenses. MCLM also holds certain geographic AMTS licenses obtained from the Commission in Auction No. 61.² Havens has engaged in a pattern of litigation and delay tactics regarding these licenses for many years in several venues.

California Litigation

Havens filed an action in June 2007 against various competitors (including MCLM) in California state court (the “California Action”). This suit, which included state antitrust claims against MCLM, was dismissed in its entirety. Havens’ appeals of the dismissal, including a petition for certiorari to the United States Supreme Court, were all denied.

New Jersey Litigation

In 2008, Havens filed another lawsuit – this time in New Jersey – against various competitors (including MCLM) alleging a myriad of claims. MCLM promptly filed a motion to dismiss all causes of action. This motion was stayed pending resolution of the California Action. On December 22, 2011, the court dismissed all causes of action against MCLM, except for a single claim. The court set April 22, 2013 as the deadline for filing summary judgment motions on the remaining issue. Havens requested a stay of the proceeding on April 12, 2013, ten days before the motions were due. MCLM opposed the stay, noting that it was merely an attempt to delay resolution of the proceeding and, on April 19, 2013, the stay request was denied. MCLM timely filed its summary judgment motion on April 22, 2013.

¹ MCLM hereinafter refers to Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, as well as the pre-bankruptcy Maritime Communications/Land Mobile, LLC.

² *Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520, 6547 (2012) (“HDO”).

Bankruptcy Proceedings

On August 1, 2011, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of Mississippi (the “Bankruptcy Court”). Havens opposed MCLM’s efforts to re-organize through the Bankruptcy Process. On November 15, 2012, after a hearing, the Bankruptcy Court confirmed the Chapter 11 reorganization which called for the assignment of MCLM’s licenses to Choctaw (“Confirmation Order”). On January 25, 2013, Havens appealed the Confirmation Order and on March 18, 2013, sought a stay of the Confirmation Order pending appeal. On May 2, 2013 – one day before filing the instant request to extend the pleading cycle here – the Bankruptcy Court denied the stay request.

FCC Proceedings

The Commission designated for hearing a series of issues relating to “whether MCLM is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied.”³ On November 20, 2012, during a pre-hearing conference before Judge Sippel (and attended telephonically by Havens), Choctaw’s counsel informed the Presiding Judge that the Bankruptcy Court had approved the confirmation plan and that MCLM and Choctaw would be filing an application seeking *Second Thursday* relief to assign MCLM’s licenses to Choctaw.⁴

On January 23, 2013, MCLM and Choctaw filed the instant application seeking approval to assign MCLM’s licenses to Choctaw and provided Havens with courtesy copies of the application. The Commission placed the application on public notice on March 28, two months

³ *Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520, 6548 (2012) (“HDO”).

⁴ *Maritime Communications/Land Mobile, LLC*, et al., EB Docket No. 11-71, Tr. at 7-937 (Nov. 20, 2012).

later, and set a more than generous deadline of May 9, 2013 for filing petitions to deny.⁵ Now, six days before that deadline – more than five months after being informed that Choctaw and MCLM would be seeking *Second Thursday* relief, more than three months after actually receiving the application, and more than one month after the Public Notice – Havens filed the instant request seeking additional time to prepare and file a petition to deny. In light of these facts, there is no credible argument to suggest that continued enforcement of the existing procedural deadlines for this application will in any way prejudice Havens or frustrate the Commission’s ability to act on the pending applications. Thus, and for the reasons set forth below, the extension request should be denied.⁶

DISCUSSION

I. THE EXTENSION REQUEST FAILS TO SATISFY THE SUBSTANTIVE REQUIREMENTS SET FORTH IN SECTION 1.46

Section 1.46 states that “[i]t is the policy of the Commission that extensions of time shall not be routinely granted.”⁷ Havens fails to demonstrate anything extraordinary that would justify the Commission deviating from its routine processes in this case. To the contrary, the request for an extension of time is nothing more than one more in a long string of filings in a variety of fora by Havens seeking to delay action in a proceeding involving MCLM’s licenses.

The extension request appears to be premised on the notion that Havens’ actions – filing an appeal of the Confirmation Order after the subject assignment application – somehow imposed an obligation on the applicants – MCLM and Choctaw – to update their application to

⁵ Comment Sought on Application to Assign Licenses Under Second Thursday Doctrine, Request for Waiver and Extension of Construction Deadlines, and Request to Terminate Hearing, Public Notice, DA 13-569 (Mar. 28, 2013).

⁶ To the extent Havens seeks dismissal of the application as part of his multiple requests for relief, such a request should be treated as a petition to deny which Choctaw will address during the pleading cycle established by the Public Notice.

⁷ 47 C.F.R. § 1.46(a).

reflect his pending appeal. Section 1.65 imposes no such requirement and Havens fails to cite any precedent for his proposition.

Section 1.65 requires applicants to keep an application updated “in all significant respects” and to include new information that “may be of decisional significance.”⁸ Havens’ appeal of the confirmation order does not satisfy this standard. The action of the Bankruptcy Court – in particular a judge distinct from the one issuing the Confirmation Order – denying Havens’ request for a stay pending his appeal buttresses the argument that the appeal should not be considered significant for Section 1.65 purposes before the Commission.

Moreover, if an amendment were filed to reflect the Havens appeal, it would only supply a parenthetical in a footnote noting that the Confirmation Order has been appealed. A parenthetical in a footnote should not be considered decisionally significant.

An extension on these grounds also is not warranted because Havens may address the impact of his appeal of the Confirmation Order on the existing May 9 deadline. He does not need additional time to address this issue. Further, other parties would not be prejudiced because they can address the issue during the reply comment cycle. In contrast, an extension would harm the innocent creditors to the bankruptcy proceeding by delaying action on the applications necessary to effectuate the Confirmation Order.

II. THE EXTENSION REQUEST FAILS TO SATISFY THE PROCEDURAL REQUIREMENTS SET FORTH IN SECTION 1.46

Section 1.46 specifies that motions for extension of time shall be filed 7 days in advance of the due date and:

If a motion for extension of time in which to make filings in proceedings other than notice and comment rulemaking proceedings is filed less than 7 days prior to the filing day, the party filing the motion shall (in addition to serving the motion on

⁸ *Id.* § 1.65(a).

other parties) orally notify the other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.⁹

Havens filed his extension request less than 7 days in advance of the May 9 deadline for petitions to deny. The application requesting Second Thursday relief was placed on public notice on March 28, 2013, but Havens waited 36 days to seek an extension of time. He has provided no justification for waiting to the eleventh hour to seek an extension. Havens also failed to orally notify the applicants (and presumably the Bureau) of the extension request. The extension request should be dismissed on these grounds alone.

CONCLUSION

For the foregoing reasons, the request for an extension of time should summarily be dismissed or denied.

Respectfully submitted,

CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC

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May 7, 2013

⁹ 47 C.F.R. § 1.46(c).

CERTIFICATE OF SERVICE

I, Lisa Barton, do hereby certify that on this 7th day of May 2013, the foregoing Motion for Intervention was served by email and first class mail, postage prepaid, on the following persons:

<p>The Honorable Richard L. Sippel Chief Administrative Law Judge Federal Communications Commission 445 12th Street, SW, Room 1-C768 Washington, DC 20554</p>	<p>Jeffrey Tobias Mobility Division Wireless Telecommunications Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554</p>
<p>Pamela A. Kane Brian Carter Investigations and Hearing Division Enforcement Bureau Federal Communications Commission 445 12th Street, S.W., Room 4-C330 Washington, DC 20554</p>	<p>Sandra DePriest Maritime Communications/Land Mobile LLC 218 North Lee Street Suite 318 Alexandria, Virginia 22314</p>
<p>Jeffrey L. Sheldon Levine, Blaszak, Block & Boothby, LLP 2001 L Street N.W., Suite 900 Washington, D.C. 20036 Counsel for Puget Sound Energy, Inc.</p>	<p>Robert J. Keller Law Offices of Robert J. Keller, P.C. P.O. Box 33428 Washington, D.C. 20033 Counsel for Maritime Communications/Land Mobile LLC</p>
<p>Charles A. Zdebski Gerit F. Hull Eckert Seamans Cherin & Mellott, LLC 1717 Pennsylvania Avenue, N.W. Washington, D.C. 20006 Counsel for Duquesne Light Co.</p>	<p>Paul J. Feldman Harry F. Cole Fletcher, Heald & Hildreth, P.L.C. 1300 N. 17th Street – 11th Floor Arlington, VA 22209 Counsel for Southern California Regional Rail Authority</p>

<p>Matthew J. Plache Albert J. Catalano Catalano & Plache, PLLC 3221 M Street, N.W. Washington, D.C. 20007 Counsel for Dixie Electric Membership Corp. Counsel for Pinnacle Wireless Corp.</p>	<p>Jack Richards Wesley Wright Keller & Heckman LLP 1001 G Street, N.W. Suite 500 West Washington, D.C. 20001 Counsel for Atlas Pipeline – Mid Continent LLC; DCP Midstream, LP; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson County Rural Membership Electric Cooperative</p>
<p>Warren Havens 2509 Stuart Street Berkeley, CA 94705</p>	<p>Dennis C. Brown 8124 Cooke Court Suite 201 Manassas, VA 20109 Counsel for Maritime Communications/Land Mobile LLC</p>

/s/ Lisa Barton
Lisa Barton