

1 of the materials that I said I have reviewed and the
2 testimony in this case indicates that there is a very
3 substantial likelihood that valuation of the spectrum at
4 issue, once Second Thursday relief is granted -- if you
5 assume that, there should be no further question of what Mr.
6 Reardon has said has been the complete market destroying
7 cloud imposed by Mr. Haydens' litigation.

8 So under those assumptions, if you do actually get
9 what this plan contemplates, you would have a situation
10 where the valuation -- and I heard Mr. Reardon use terms
11 like 40 million to 45 million, and I have heard, by my own
12 count, somewhere in the neighborhood of 15 to 20 million, in
13 debts wholly apart from what Mr. Haydens' might be able to
14 recover in that antitrust case. And I heard earlier this
15 morning Mr. Geno offering up for purposes of voting a
16 valuation of Mr. Haydens' claim at \$100,000. So for all
17 practical purposes, that doesn't really change the ratio of
18 the valuation to the recovery for creditors.

19 BY MR. RUHL:

20 Q Let me ask you, Mr. Chen. I think I heard you say that
21 you've heard testimony about the valuation being 15 or so
22 million. That's the -- that's just the secured claims,
23 correct?

24 A Sure. But the -- you know, the unsecured claims, all
25 right. You know, if you start adding unsecured claims like

1 Mr. Reardon's unpaid salary and his colleagues who are the
2 hardworking staff, I understand that. But even if you add
3 that up and you -- you undertake to pay them, this
4 (indiscernible) about the Second Thursday cases and the
5 application of those cases to a valuation, as I said, I --
6 I've undertaken to review those cases and they're
7 consistency with the broader public interest, convenience
8 necessity test of Title III, of Section 310 of the
9 Communications Act in general.

10 And the problem is this. If the cases applying
11 the Second Thursday doctrine routinely compare ability to
12 concerned value of the ending seeking Second Thursday relief
13 or at least the going concern value of its licenses and
14 operation. On the one hand, it takes that and it compares
15 the amount to be recovered because a relevant element of the
16 Second Thursday test is recovery for innocent creditors.

17 So if you take seriously -- and the commission
18 most certainly does, it expresses its seriousness by what
19 it's actually written and done. And (indiscernible) is that
20 there's always at the very least what amounts to a look at
21 the balance sheet or a look at the book value of the
22 underlying assets and compare that on a balance sheet, very
23 formal basis with the -- with the total claims.

24 And if we do that in this case, my understanding
25 is we're talking about (indiscernible) figures 40 million on

1 one side and 20 million on the other side. So I'm
2 proceeding on that assumption and even if this -- if I'm
3 wrong by some -- by some figure, we are talking about a case
4 where there is a not insubstantial overage on the side of
5 potential value from licenses relative to the creditors'
6 claims.

7 Q All right. You said -- Mr. Chen you said 20 million.
8 Did you mean 30 million?

9 THE COURT: Where do you come up with either one
10 of those numbers?

11 THE WITNESS: I was -- I was taking --

12 MR. RUHL: Well, the schedules are in the record,
13 Your Honor.

14 THE WITNESS: The schedules --

15 MR. RUHL: I think he's just saying whatever the
16 scheduled debt is.

17 THE WITNESS: That is --

18 THE COURT: Well, let me just say this. The
19 testimony that's come out has shown in the voting that
20 \$23,430,421.49 of unsecured creditors voted in this case.
21 Add that to your 15 to \$17 million of secured claim, and
22 you've got 40 million bucks.

23 MR. GENO: (Indiscernible) the administrative
24 expense monies --

25 THE COURT: Exactly.

1 MR. GENO: -- on one secured creditor that did not
2 vote, Your Honor.

3 THE WITNESS: Yeah. But by the same token, even
4 if the -- even if there is a complete balance between the
5 two sides, there is something very different about this case
6 because there has been no application of the Second Thursday
7 doctrine to any of these situations.

8 There has been no allegation that this licensee is
9 insolvent. (Indiscernible) petition for bankruptcy, but
10 there never has been a -- a non-insolvent petition for
11 Second Thursday relief. And so the -- the assertion made by
12 Mr. Keller and the assertion also made by Mr. Fedder that,
13 well, the (indiscernible) is irrelevant, well, it's because
14 in every previous instance you were dealing with cases where
15 the liabilities were so staggering that there was no point
16 in adding it up.

17 In this particular case, it's at least a close
18 call, and if it's a close call, taking seriously the factor
19 of innocence in assessing the creditors means that you need
20 to look at what the creditors' expectations were underneath
21 and what they expect to come out when this was through. So
22 I think it -- it makes sense to take a look at Choctow and
23 Choctow's particular composition in how they wound up
24 getting involved in this company.

25 So if you look at this company, and my opinion is

1 that these creditors -- the application of the Second
2 Thursday tests requirement of innocence creditors --
3 innocent creditors leads to the conclusion that they're not
4 innocent. They're not innocent in the sense that they had
5 knowledge of the underlying trouble faced by Maritime, the
6 debtor. At the very -- at the very least, Mr.

7 (indiscernible) said let's identify the four principals --
8 principals not principles -- of the four stakeholders, the
9 four equity holders in Choctaw.

10 Q Before we do that, Mr. Chen, you -- you said something
11 about -- well, a couple of minutes ago, before you go on,
12 you said -- you mentioned that even if it's a close call
13 between the debt and the value of the licenses. That's just
14 an assumption on your part, is it not?

15 A Yes, it is. It's strictly an assumption. And I'm --
16 and I understand that, you know, the Court has said earlier
17 that no one had asked for valuation to be made by the Court.
18 But all I am saying, again, is a prediction -- because
19 that's what Holmes (ph) told us. He said, well, it's
20 nothing but a prediction of what (indiscernible) and
21 agencies will do (indiscernible).

22 So if you predict what the FCC is likely to do in
23 this particular case on the basis of what it has done
24 before, that's just classic application of judicial
25 precedent or in this case quasi-issue of precedent. There

1 really has never been this kind of situation before. What
2 you can extrapolate, though, is the fact that the FCC has
3 always taken a look at the would be balance sheet of the
4 reorganized entity.

5 And the balance sheet of the reorganized entity is
6 really, really suspect when you consider what goes into the
7 definition of innocence and it cannot be consistent with the
8 public interest, convenience and necessity to allow
9 creditors who came to the nooses, in effect, who chose to
10 get involved financially with a firm whose primary asset was
11 so impaired, then take advantage of a regulatory relief
12 policy in effect to convert themselves from secured
13 creditors whose recovery is supposed to be capped, right.
14 When your expectation as a secured creditor under the
15 absolute priority rule, you're supposed to be capped at
16 getting your money back and getting your interest, and if
17 the -- if (indiscernibles) contract so permits, getting
18 attorney's fees. You're not supposed to get this colossal
19 return. That's what an equity holder does.

20 But the problem is that under the communications
21 act, you don't just get to make yourself an equity holder of
22 a company holding FCC licenses, not without FCC permission.

23 Q You mentioned earlier -- you mentioned earlier --

24 MR. LUPINACCI: Your Honor, I just want to object
25 and strike any testimony where he tends to testify as an

1 expert in bankruptcy law. There have been no attempts to
2 qualify him to any degree of expertise about bankruptcy law.

3 THE COURT: Objection sustained.

4 BYMR. RUHL:

5 Q Mr. Chen, you mentioned, I think, problems with
6 Maritime. Are you referring to the Skytel challenges?

7 A I am referring to the Skytel challenges and there were
8 other instances where -- where (indiscernible) have come up
9 from Skytel. But the hearing designation order does speak
10 of any number of -- any number of -- the reason that this is
11 a candidate for Second Thursday to begin with is because the
12 hearing designation order identifies a litany of -- of
13 questions raised by the commission of the fitness and
14 character, the basic qualifications of Maritime to be a
15 licensee of FCC licensed spectrum.

16 So all I'm saying is that where you look at what
17 Choctow and its principals hope to get after this comes out
18 is something unprecedented. The closest -- it's
19 unprecedented in Second Thursday cases. The closest is the
20 2002 case of Mobile Media, which is the only case I can find
21 where creditors wound up actually becoming owners of the
22 reconstituted licensee entity, the transferee, and it's
23 completely distinguishable on a couple of grounds.

24 Okay. So, again, just looking at what is likely
25 to happen, there's no question (indiscernible) and if you

1 apply the precedent faithfully as an application of, again,
2 just classic common law and regulatory technique, the
3 rationale expressed in that case just doesn't apply to this
4 case. The rationale in Mobile Media, which happened to be
5 the first case in which a publicly traded company applied
6 for Second Thursday relief. And I'm trying to be very
7 honest here. The commission overruled its own
8 administrative law judge and said, we're going to grant
9 relief.

10 But what's useful for our purposes is to see the
11 grounds on which it granted relief. It said, look, there --
12 it's such a staggering amount of loss compared to what at
13 that moment with the -- with the -- especially with the
14 ability to transfer licenses would have been zero meltdown
15 value for the company. And so the commission said, we're
16 not going to apply a per se rule. We're going to allow the
17 relief.

18 But what they (indiscernible) on and how they
19 allowed the relief was to let the creditors -- the unsecured
20 bondholders in particular who had half a billion dollars
21 coming to them, participate in the reconstituted company as
22 equity holders. They actually held collectively a majority
23 equity stake.

24 Now one could argue that that is this case. But
25 what I'm saying is it's not because this is a case where the

1 ordinary Second Thursday case would look for a way for a
2 completely unrelated third party to take over and do its
3 best to pay secured creditors. Secured creditors were not
4 the ones who became the owner of the successor company to
5 Mobile Media. Mobile Media wound up picking up unsecured
6 creditors because that was the only way to find them some
7 funding after the secured creditors had been paid in first
8 priority as they should be.

9 Q You mentioned earlier, Mr. Chen, that -- that one of
10 the reasons in your opinion -- correct me if I'm wrong, but
11 I think you said one of the reasons in your opinions that
12 Second Thursday is unlikely to be granted was the windfall
13 issue.

14 A Yes.

15 Q And you said even assuming it was a close call on the
16 debt versus the value, you still had a problem with it,
17 right?

18 A Well, yes.

19 Q But let me ask this question. Were you here in the
20 courtroom yesterday when Mr. Trammell testified from
21 Southeastern Commercial Finance? He's also a member of
22 Choctaw.

23 A Yes.

24 Q Did you hear him say that he at least was hopeful that
25 the value of the licenses exceeded the innocent debt?

1 A Well, yes.

2 Q Okay. If that happens, I just want to make sure if you
3 have anything to add to your -- your testimony about Second
4 Thursday being problematic if that occurs?

5 A Yes, I would add to that. I think the commission is --
6 has always said that it's not looking to -- has always said
7 that it is looking for continued service. It's looking to a
8 short (indiscernible) compensated. It's looking to recover
9 appropriate value for innocent creditors.

10 What the commission does not countenance is -- is
11 windfalls and what amounts to unjust enrichment, unjust
12 enrichment, and that is a component of a public interest,
13 convenience and necessity quite plausibly could happen here
14 when what you have is a situation such as ours where you
15 look at the -- the fact that the would be principals of
16 Choctow are also principals of the debtor-in-possession
17 lender creates a problem that I expect the commission to
18 look at.

19 So I heard Mr. Reardon and I believe this morning
20 Ms. DePriest to say that, you know, they're only able to get
21 50,000 in ongoing finance from Southeastern Finance to cover
22 what they have described as a \$90,000 per month
23 (indiscernible) rate. All right. I -- that's -- let's take
24 that on one side of the transaction.

25 Meanwhile, the four principals of Choctow -- that

1 would be Mr. Hollis, that would be the -- excuse me -- I'm
2 trying to remember their name --

3 THE COURT: That was Watson & Downs.

4 THE WITNESS: -- the Watson & Downs group and
5 Collateral Plus and Mr. Trammel, they're actually going to
6 be borrowing money from the same lender to achieve what
7 (indiscernible) leveraged buyout of this company. So the
8 company that is under lending so that the licensee gets
9 distressed is the same company that is lending to the people
10 who will now be coming before the commission to ask for
11 permission to become the owners of this company whose air
12 supply they've cut off.

13 And -- and let me also point something out, too,
14 about -- about how they wound up acquiring these -- these --
15 becoming secured creditors in the first place.

16 Now you can make the (indiscernible) that Mr.
17 Trammel, I do know this, is not a secured creditor who has
18 \$130,000 in unsecured claims and I -- I am willing to say
19 that, you know, he's taking -- it's with equity. He's
20 becoming a -- an officer of this new entity.

21 But with respect to Mr. Hollis and the Watson &
22 Downs group, they extended credit on a secured basis at a
23 time, in December of 2005, when all of the Haydens' actions
24 and other potential doubts as to the validity of the
25 Maritime licenses had already become evident through the --

1 the universal licensing system that -- well, you can see Mr.
2 Haydens' challenge is there.

3 With Collateral Plus, it's even more astonishing.
4 They elected to assume responsibility for the Pinnacle
5 claims after the filing of the petition. So it came with
6 knowledge of all of these clouds are in the -- are on the
7 underlying property, and now hope with money that they're
8 borrowing --

9 UNIDENTIFIED SPEAKER: Your Honor, I'm going to
10 object to the witness testifying about the knowledge that
11 anyone other than Collateral Plus had about the FCC
12 proceeding. He's assuming facts in evidence --

13 THE COURT: Sustained. We're getting way a field.

14 MR. RUHL: All right.

15 BY MR. RUHL:

16 Q Well, Mr. Chen -- Your Honor, if I may, can you -- can
17 you tie up how -- what you were testifying to, at least as
18 to Collateral Plus --

19 A Yes.

20 Q -- affects the public interest, convenience and
21 necessity doctrine and it might affect the debtors' ability
22 to get Second Thursday relief?

23 A So focusing strictly on Collateral Plus because
24 Collateral Plus, which my understanding is a 45 percent
25 owner and that's by any measure. It's not a majority, but

1 it's a very substantial portion of the ownership of Choctow.
2 This particular would be owner of the transferee acquired a
3 secured claim in the debt of the -- of Maritime. They did
4 so with knowledge not only of the petition, but also of what
5 appears to have been the precipitating factor which was the
6 cure designation order and even if they didn't know, this is
7 stuff that I think it's reasonable for a lender in due
8 diligence to have found out. They didn't know --

9 MR. LUPINACCI: I object to this testimony about
10 the --

11 THE WITNESS: All right. I'll withdraw -- I'll
12 withdraw that --

13 THE COURT: Sustained.

14 THE WITNESS: I will withdraw that --

15 THE COURT: Sustained. We've already covered
16 this. I understand that the Collateral Plus purchased
17 Pinnacle. We've talked about that. This all goes to
18 whether or not they're going to be looked at adversely by
19 FCC. I understand that. Let's wrap up this direct
20 examination.

21 MR. RUHL: Okay.

22 BY MR. RUHL:

23 Q Mr. Chen, if you can move on to your -- to your second
24 opinion which is why you think -- well, you tell me what
25 your second opinion was, why -- and -- and give me the

1 grounds for that.

2 A Yes. I'll just repeat. My second opinion is even if
3 the plan is confirmed, even if the commission does grant --
4 grant Second Thursday relief, there will be further
5 difficulty in actually bringing the plan about. It is --
6 it's highly speculative whether the plan would ever succeed
7 in achieving its accomplish -- in achieving its objectives.

8 THE COURT: How does this relate to Second
9 Thursday? The objection that you were about to raise is
10 sustained.

11 MR. GENO: Thank you, Your Honor.

12 MR. RUHL: Can I get the objection for the record,
13 Your Honor?

14 THE COURT: It -- he stood up. Go ahead. Make
15 the objection.

16 MR. GENO: It's way outside this witness's field
17 of expertise to speculate about whether all these APAs are
18 going to close or not, or for any other grounds why we can't
19 consummate the plan.

20 THE COURT: He's not been offered as an expert in
21 that. The objection is sustained.

22 MR. RUHL: Can I make a comment for the record,
23 Your Honor?

24 THE COURT: You can make your comment. The
25 objection is still sustained.

1 MR. RUHL: Yes, sir.

2 He was -- we're not -- we're not offering him to
3 speculate as to outside of Second Thursday. He's been
4 offered and accepted as an expert witness on FCC regulatory
5 matters in the public interest, convenience and necessity
6 doctrine, and this debtors' ability to -- to achieve Second
7 Thursday and get the licenses. And his testimony was going
8 to relate to why even if Second Thursday is obtained, under
9 the federal regulatory policies that he is an expert in that
10 would not lead to the debtor getting the licenses cleared of
11 that -- of the Skytel challenges. So that was going to be
12 our offer and --

13 THE COURT: So you're saying now even though
14 Second Thursday is obtained, that he is going to now testify
15 that it would still be difficult to get the licenses
16 transferred --

17 MR. RUHL: Absolutely, Your Honor. That's what
18 we've been saying all along. But one of the points that Mr.
19 Haydens' was testifying to --

20 THE COURT: All right. I will let you pursue
21 that, then. But let's -- let's go there because that does
22 get under the umbrella --

23 MR. RUHL: Yes, sir.

24 THE COURT: -- of the FCC regulations.

25 MR. RUHL: Yes, sir. That's where we were going.

1 THE COURT: Well, it sure didn't look like it was
2 going anywhere near that.

3 MR. RUHL: Well, let's --

4 THE COURT: We were talking about special plans.
5 Let's go there.

6 MR. RUHL: Let's get there, Mr. Chen.

7 THE WITNESS: Okay. It remains highly -- the plan
8 remains highly speculative for this reason. If you look at
9 the asset purchase agreements in a -- and it's -- it's worth
10 noting that that's all that this -- this bankrupt estate
11 consists of is, for all practical purposes, a stack of APAs
12 --

13 MR. GENO: Your Honor, I object to that
14 observation. That's assuming facts not in evidence. That's
15 only a part of our spectrum. That's not --

16 THE COURT: I understand that --

17 MR. GENO: -- merely what this case is --

18 THE COURT: -- to be the case, too; that there are
19 other -- other spectrum not -- not the whole spectrum not
20 included in the APAs that have been --

21 MR. RUHL: Yes, sir.

22 THE COURT: -- (indiscernible) by this Court.

23 MR. RUHL: Absolutely. But as to facts not in
24 evidence, the expert can testify as to facts not in -- or
25 rely on hearsay and other things.

1 THE COURT: Yeah. If he's talking about something
2 that's completely erroneous, Counselor, is what he's talking
3 about is all the assets of the estate are in the APAs.
4 That's just not right. The objection is sustained as to
5 that.

6 THE WITNESS: Okay. As far as I can tell, the
7 only way that this plan proposes to work is to sell
8 spectrum. I don't think there's any dispute about that.
9 Well, the -- something that's really uncomfortable about that
10 is that a pure spectrum warehousing -- a pure spectrum
11 warehousing operation hoarding, traffic, it's going to be
12 characterized -- there's a very strong possibility this
13 would be characterized independently as hoarding,
14 warehousing, trafficking, which are terms with negative
15 consequences in the communications act and orders of the
16 commission.

17 So what this does is concert with the asset
18 purchase agreements, which with only two exceptions of which
19 I have been informed, Pugent Sound and Dixie Electric, all
20 contain a condition that FCC approval of the license
21 transfer be final in the sense of lying beyond further
22 review.

23 Further review is likely to bring up this --
24 issues such as what I just mentioned, the warehousing or
25 trafficking nature of the plan. It is likely to bring up

1 the apparent purpose of seeking Second Thursday relief in
2 the first place, which was evidenced, among other things, by
3 Mr. Reardon's voice mail to -- to CoServ, which was played
4 for the benefit of everyone here in this courtroom and was
5 heard by me and everybody else in this courtroom.

6 So on appeal, a broader set of issues can be
7 brought on -- and it is not unheard of for the -- for the
8 commission to be reversed on a Second Thursday application,
9 albeit -- and I'll be honest about it. It was in favor of
10 applying the doctrine. So --

11 BY MR. RUHL:

12 Q Let me -- let me ask you something.

13 A -- but it was for judicial review.

14 Q Okay. Let me ask you something, Mr. Chen, about what
15 you said. Even were the debtor to obtain Second Thursday,
16 in your opinion is -- does the warehousing issue that comes
17 up under the communications act provide a potential barrier
18 for Choctow to receive a transfer of the licenses?

19 A Yes. In the first place and furthermore to -- to
20 answer it this way. If it doesn't happen at the first
21 stage, it's going to happen later on --

22 Q Okay.

23 A -- because the whole point is that you can always go
24 back and question that.

25 Q Okay. Well, you were in the -- you said earlier you

1 were in the courtroom when Mr. Keller and Fedder testified?

2 A Yes.

3 Q And you heard their opinions. Do you have any -- do
4 you take umbrage with any of the opinions that you heard
5 other than what you've already said?

6 A Well, I -- I do think it's -- it's interesting that in
7 particular Mr. Fedder, in his recitation of the Second
8 Thursday test, never did mention the innocence of the
9 creditors as a factor. He just said, you know, if the plan
10 assures the absence of the wrongdoers, make sure that they
11 have low -- low participation in the -- in the reconstituted
12 entity, the reorganized -- the entity that emerges after
13 reorganization and transfer, and then said, oh, and, you
14 know, we just need the -- a fairly routine identification
15 that the would be transferor of licenses is in bankruptcy,
16 then it's complete.

17 And I did think it -- I do want to emphasize that
18 you can't omit the consideration of the flow of benefits,
19 innocence of the creditors, and the possibility of windfall.

20 Q Okay. Did you hear Mr. Keller testify that in his
21 opinion the existence of the -- of the guarantees given by
22 Mr. DePriest and the fact that they may ultimately go away,
23 I guess, if all the debt is paid? Did you hear that
24 testimony?

25 A I did hear that testimony.

1 Q And -- and that his opinion that that benefit or even
2 if it's just a -- you know, benefit, indirect benefit,
3 however he called it, that that wouldn't factor into a
4 determination on Second Thursday?

5 A Well, I did hear him say that.

6 Q And what -- what's your opinion on -- on the existence
7 of those guarantees and how they -- what would happen to
8 them under the plan and --

9 A I --

10 Q -- (indiscernible) the debtors' ability gets --

11 A Yeah. I would respectfully disagree with him about the
12 probable consequence of that. First of all, the number is a
13 large number. You know, I've heard something along the
14 lines of \$10 million as an estimate of the value of the
15 personal guarantees that Mr. DePriest would elude. And just
16 as a matter of this Second Thursday cases, the Second
17 Thursday cases have not said, oh, a -- in fact, the original
18 Second Thursday case said that benefit to a wrongdoer in the
19 neighborhood of 25 percent -- I'm rounding up from 23
20 percent -- but we'll say 23 percent to 25 percent was
21 unacceptable in the original Second Thursday case.

22 Well, if you take \$10 million of benefit to Mr.
23 DePriest whose omission from the original Auction 61
24 paperwork appears to have been the triggering event for
25 everything that brings us here today, I -- in a number that

1 has been offered up that we've heard, the \$40 million
2 ballpark figure, 40 to 45 million that Mr. Reardon talked
3 about yesterday. Mr. Geno said, you know, we get to 40
4 million right there. Okay. If you take 40 million, I mean,
5 you're right back exactly where Second Thursday began, ten
6 -- you know, I'm good enough with math to do this. Ten
7 million is 25 percent of 40 million.

8 So the benefit from those personal guarantees is
9 by no means irrelevant. It is not a fair reading of the
10 Second Thursday cases, including Second Thursday -- the
11 original Second Thursday case itself to say that a wrongdoer
12 getting relief from personal guarantees up to 25 percent of
13 the value of the transaction is something that the
14 commission will ignore in favor of its assessment of the
15 public interest, convenience and necessity.

16 So if you -- and -- and it also goes to the --
17 this is for the creditors as well because this very morning
18 we heard no evidence that anyone with the exception of a
19 gentleman whose name I -- I no longer recall ever -- and
20 certainly not any of the members of the Choctow group ever
21 sought to get \$10 million from Mr. DePriest. I can't -- I'm
22 not going to speculate why. I've been (indiscernible) over
23 and over for speculating so I won't.

24 But the fact remains that there is no evidence
25 that has been -- that I have heard, and I am now speaking as

1 someone who can predict or whose here to offer an opinion on
2 how the commission interpreting its public interest
3 responsibilities is likely to treat that kind of evidence.
4 It goes both to benefit to the wrongdoer, which is a major
5 prong, and it goes to just how innocent the creditors were
6 when you have a potential source of recovery for the
7 creditor class as a whole and no one wants in.

8 Q Okay. Thank you, Mr. Chen.

9 THE COURT: Are you done with direct?

10 MR. RUHL: No further questions on direct, Your
11 Honor.

12 THE COURT: All right. We're going to take a
13 recess now and then we'll start cross-examination at, let's
14 say 10 after two. That will give you a little -- a little
15 time to take a break. 2:10.

16 Court's in recess.

17 (Recess taken at 12:53 p.m.)

18 (Proceedings resumed at 2:14 p.m.)

19 THE COURT: You remain sworn. All right.

20 Mr. Geno, cross-examination.

21 MR. GENO: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. GENO:

24 Q Professor Chen, I'm Craig Geno. I represent Maritime.

25 In how many cases have you served as trial counsel

1 before the FCC in connection with a Second Thursday request?

2 A Zero.

3 Q You've never litigated before the FCC?

4 A I have not.

5 Q You've not stood where I am and asked a question?

6 A I have not.

7 MR. GENO: I don't have anything further, Your
8 Honor.

9 THE COURT: All right. Let me get my little list
10 here so I'll know who -- who's next in line.

11 Mr. Lupinacci or Mr. Kirk?

12 MR. KIRK: Nothing, Your Honor.

13 THE COURT: No questions?

14 MR. KIRK: No questions.

15 THE COURT: All right.

16 Mr. Solomon?

17 UNIDENTIFIED SPEAKER: He's outside.

18 THE COURT: He's outside. All right.

19 Mr. Spencer?

20 MR. SPENCER: No questions, Your Honor.

21 THE COURT: Mr. McCullough?

22 MR. MCCULLOUGH: No questions.

23 THE COURT: All right. Let me just get a -- an
24 answer from Mr. Solomon and we will --

25 Mr. Solomon, do you have any cross-examination of

1 Professor Chen?

2 MR. SOLOMON: No, Your Honor.

3 THE COURT: Okay.

4 Is there any redirect examination?

5 REDIRECT EXAMINATION

6 BY MR. RUHL:

7 Q Mr. Chen, you've been in the academic world for a
8 substantial -- for a -- for a long time, correct?

9 A Nearly 20 years.

10 Q You don't actively practice law in front of courts, do
11 you?

12 A No. I recently just got my license reactivated because
13 I thought it would be a good idea. That's all.

14 Q Okay. So you wouldn't be expected to get up and make
15 arguments or ask questions from a podium in a suit in front
16 of the FCC, would you?

17 A No.

18 Q Thanks.

19 MR. RUHL: That's all I have.

20 THE COURT: You may stand down.

21 THE WITNESS: Thank you.

22 THE COURT: Uh-huh.

23 Further proof on behalf of the Skytel entities?

24 MR. RUHL: No, Your Honor.

25 THE COURT: All right. Will there be rebuttal

1 testimony from the proponents?

2 MR. GENO: Yes, Your Honor. We would call Bob
3 Keller.

4 THE COURT: Mr. Keller, come up and let the clerk
5 administer the oath.

6 (Witness sworn)

7 THE COURT: Have a seat.

8 MR. GENO: May I proceed, Your Honor?

9 THE COURT: You may.

10 MR. GENO: Thank you.

11 DIRECT EXAMINATION

12 BY MR. GENO:

13 Q Mr. Keller, state your full name, please, sir?

14 A Robert J. Keller.

15 Q And you're the same Robert J. Keller that testified in
16 this case yesterday?

17 A Yes, sir.

18 Q Mr. Keller, were you present in the courtroom earlier
19 today when Professor Chen testified?

20 A Yes.

21 Q You heard his testimony?

22 A All but about maybe one minute when I went to the men's
23 room for a moment.

24 Q Did you hear anything in his testimony that impacts the
25 opinions that you gave us yesterday during your expert

1 testimony?

2 A Certainly nothing that would change my opinion at all.

3 MR. GENO: That's all.

4 THE COURT: All right.

5 Cross-examination, let's just go around.

6 Mr. Lupinacci, any questions?

7 MR. LUPINACCI: Nothing, Your Honor.

8 THE COURT: All right. Mr. Solomon, Mr. Spencer,
9 Mr. McCullough, Mr. Drew, cross-examination?

10 MR. DREW: No, sir.

11 THE COURT: All right. You may stand down. Thank
12 you.

13 THE WITNESS: Thank you.

14 MR. GENO: No more rebuttal, Your Honor. We would
15 finally rest.

16 THE COURT: All right.

17 I don't know whether you've had an opportunity
18 during the noon hour or the recess to collect your thoughts,
19 but I would like to hear comments from each of you as to
20 what your respective positions are following the
21 presentation of proof. Do you have something --

22 MR. RUHL: Well, just, Your Honor, that I -- I
23 didn't have quite sufficient time to put my thoughts. And I
24 know we just came back. I would ask for a very brief
25 (indiscernible).

1 THE COURT: How much time would you like? How
2 much is brief?

3 MR. RUHL: Ten or 15 minutes.

4 THE COURT: All right. We'll recess for about 15
5 minutes. That will give everybody an opportunity to sort of
6 organize themselves. I -- I just don't want you to launch
7 off into, you know, reinventing the wheel and educating me
8 on every spoke.

9 So, you know, try to be concise, okay?

10 We'll take a 15-minute recess.

11 (Recess taken at 2:18 p.m.)

12 (Proceedings resume at 2:42 p.m.)

13 THE COURT: You may lead the parade.

14 MR. GENO: Your Honor, I believe Ms. Hayden has an
15 announcement about some resolutions of certain limited
16 issues. I'll let her go first if that's all right with you.

17 THE COURT: All right. That's fine.

18 MS. HAYDEN: Thank you, Your Honor. We've been
19 talking to the FCC representatives and some of the other
20 folks and I think we have a recommendation or an agreement
21 really to make to resolve the FCC's objections. So if I
22 could walk through that, that would, I believe, resolve
23 almost all of it.

24 THE COURT: All right. Very well.

25 MS. HAYDEN: The first thing is that Choctaw (ph)

1 has agreed to use his best efforts to obtain second Thursday
2 and to sell the licenses, market the licenses and we would
3 put that in the confirmation order with language that we
4 both agree to.

5 We have agreed that we would put in the order
6 language that made clear that the regulatory or penal
7 authority of the FCC and its ability to impose and collect
8 forfeitures would not be effected by the entry of the
9 confirmation order.

10 They have asked for some additional reporting to
11 both them and to the creditor body. We have agreed to -- in
12 theory -- some additional reporting, but we'd have to work
13 on the language for that, but we would include that in the
14 confirmation order.

15 Yesterday Mr. Geno made an announcement regarding
16 the discharge, removing the discharge language. We pointed
17 out and the FCC has agreed that we should have a limited
18 injunction that makes sure that the property held in the
19 hand of the liquidating agent can't be seized or attacked
20 and they've agreed to that. We've also agreed that we would
21 put in the confirmation order language that says the
22 effectiveness of the liens will conform to that which was
23 described in the DIP financing order and everybody is
24 agreeable to that.

25 Also, page 16 of the plan provides that -- covers

1 the who's in controlled by the FCC orders and we neglected
2 to put in there that the liquidating agent would be governed
3 by that and we'd add the liquidating agent as one of those
4 parties.

5 I believe this effectively sets for the agreement
6 we've reached with the FCC. We have -- as I've made clear
7 -- we have to talk about some language that wasn't met. And
8 I think this is agreeable both to the unsecured creditors
9 committee and to the debtor.

10 THE COURT: All right. Mr. Geno, you want to
11 speak to that?

12 MR. GENO: Agreeable on behalf of the debtor, Your
13 Honor.

14 THE COURT: All right.

15 UNIDENTIFIED SPEAKER: It's agreeable to the
16 committee, Your Honor.

17 THE COURT: All right. Thank you. Mr. Drew (ph),
18 does that comport with your understanding of --

19 MS. HAYDEN: Yes, Your Honor. It comports with
20 the basic understanding. We still have to work out the
21 language and so we reserve all rights until we've been able
22 to agree to the language, but the broad outline
23 (indiscernible).

24 THE COURT: Very well. Thank you very much. All
25 right.

1 Let's start the parade now. Mr. Geno, you may
2 lead off.

3 MR. GENO: Thank you, Your Honor. May it please
4 the Court. Your Honor, the debtor and most of the creditors
5 in this case have made some significant strides since the
6 case was filed a little over a year ago about pushing the
7 ball down the field and getting a plan together that has
8 some reasonable chance of returning some money to the
9 creditor body. Mr. Trammel testified the negotiations
10 between the debtor, Choctaw and others and the committee
11 were lengthy and sometimes difficult, but they produced a
12 document and a path for the debtor and Choctaw to follow
13 that has a reasonable chance of success we believe.

14 We have withdrawn, as Ms. Hayden said, the request
15 for discharge. The release issue has been resolved. Some
16 of the other FCC technical issues about the injunction have
17 also been resolved and now they're out of the way.

18 I presume that we still have a feasibility
19 objection although from the proof on the stand, not really
20 much of a feasibility issue, but I'll go through that, Your
21 Honor, quickly.

22 From the testimony that we heard, Your Honor, the
23 debtor has little choice, at least for the immediate future,
24 but to pursue Second Thursday application and coverage with
25 the FCC and that's exactly what we intend to do.

1 The expert witness that the debtor called and that
2 Choctaw called are not academics, they are not practicing in
3 an academic world. They are litigators. They try these
4 cases, they've tried these cases and to say that they ought
5 to have a better feel for what the FCC is going to do with
6 Second Thursday application is just to state the obvious.

7 On the other hand, Professor Chin (ph) is an
8 academic, never tried a case, never asked a witness a
9 question, never prepared an opening or closing argument.
10 he's strictly in an academic world and his testimony
11 certainly belied that. And some of the admonitions that the
12 Court gave us yesterday about expert witnesses being biased
13 and becoming more advocates than expert witnesses is
14 certainly at play in this particular case.

15 In order to pursue Second Thursday, Your Honor,
16 the debtor needs some money and we believe that it needs a
17 purchaser of assets and that's Choctaw. Whether or not
18 Choctaw is an innocent purchaser is really for the -- or
19 innocent creditor is really for the FCC to decide, but the
20 Court has certainly heard sufficient testimony and no
21 evidence to the contrary that Choctaw is a good faith
22 purchaser and the negotiations leading up to the third
23 amended disclosure statement and plan were all conducted in
24 good faith with no side deals or understanding that were not
25 fully disclosed to the Court.

1 How innocent a creditor Choctaw is again is for
2 the FCC to determine, but we believe that it is a completely
3 innocent creditor. There's no proof before the Court that
4 it had any ill will or the members of it had any ill will or
5 hidden agendas or anything else. Again, another issue for
6 another day.

7 Mr. Trammell's testimony and Ms. Hayden's
8 announcement really put to rest whether Choctaw had a secret
9 agenda to sell the spectrum for a dollar or to take a dive
10 and take what it could and move on. They've now agreed to
11 use their best efforts and that really was a difficult
12 argument to make anyway. Why in the world would they take a
13 dive and sell the spectrum on the cheap when they've got
14 \$15- to \$20 million in claims at stake in this case when
15 they accepted the spectrum that we purported to transfer to
16 them in full exchange for all of those claims. They clearly
17 have skin and lots of skin and real skin in the game and
18 will continue to do that in the future.

19 Responding to the professor's comments and to the
20 objections of Mr. Havens, Your Honor, as to feasibility, I
21 kind of wonder what is the debtor supposed to do? Are we
22 supposed to just quit, not pursue Second Thursday, which is
23 a risk but certainly an acceptable risk based on the
24 testimony of the Choctaw expert and Mr. Keller (ph), the
25 expert that we called.

1 But we're not quitters. We're not just going to
2 throw up our hands and say, oh Mr. Havens has filed an
3 objection, we'll quit. So in his view, he's entitled to all
4 the spectrum anyway and he really will cull the market. But
5 we're certainly not going to do that. And we're not going
6 to knuckle under because we've got well over \$40 million in
7 claims to creditors we've got to worry about.

8 Not to belabor this point, Your Honor, but I would
9 like to run through just for the sake of argument, the
10 creditors who voted. And these are just the voting
11 creditors for the plan.

12 Collateral Plus who bought the Pinnacle claim
13 because as Ms. Dupree (ph) testified, it had guaranteed some
14 of the debtor debt that was called on by Pinnacle and that's
15 why it bought the Pinnacle claim because it had to or either
16 suffer a law suit, \$9 million. Hollis, \$3 million. Watson
17 and Downs, \$3 million, Mr. Dupree (ph), but he's owed \$3
18 million. The NRTC a million one fifty. Priority tax claims
19 filing only \$13,000 but as Mr. Reardon testified, there are
20 numerous tax claims and numerous lease claims associated
21 with those tax claims that the debtor has not paid from well
22 before the date of filing and certainly haven't filed
23 -- haven't paid any of those after the case. So that number
24 will increase significantly.

25 The DIP financing claim of Southeast Commercial

1 right around a million -- by December it will be right
2 around a million. Administrative expense claims
3 (indiscernible) \$129,000. There are a number of other
4 administrative expense claims that are out there including
5 the professionals group that is at least a million dollars
6 to add to the heap, assuming the Court sees fit to grant
7 those.

8 All secured creditors who voted (indiscernible)
9 voted a little over \$23 million. Rejected includes the
10 FCC's (indiscernible) number of 3.5 although their proof of
11 claim says their owed well over \$6 million. And Mr. Havens
12 at 100,000 and he says he's owed millions and millions of
13 dollars.

14 So that, Your Honor, rough count gets us to well
15 over \$43 million of creditors claims who have no real chance
16 of getting paid unless the debtor achieves Second Thursday
17 status and we're not going to turn out back on Second
18 Thursday, just because we may have some difficulty in
19 getting there or because it's not an assured path and no one
20 knows for certain on either side of the aisle here whether
21 we'll be granted Second Thursday status, but it's certainly
22 -- again based on the testimony and opinions of Choctaw's
23 expert and the debtors' expert. It's certainly a risk well
24 worth taking and pushing forward.

25 One thing is certain that's not always certain in

1 Chapter 11 cases, we have the funding to do it. Choctaw's
2 proof from the stand was unequivocal, it was not impeached
3 or attacked. Choctaw has plenty of funds available to it to
4 keep pursuing this.

5 Mr. Trammell said he wasn't going to keep doing it
6 15 years from now, but plenty of money to get from here to a
7 reasonable period down the road especially with the
8 agreement of Choctaw that's always been there, but it's
9 expressed agreed, but now it's going to use its best efforts
10 to pursue Second Thursday status and to get as much as it
11 possibly can for the spectrum that's available to it.

12 Quickly address some of the issues that were
13 raised in the -- especially the Havens objection, Your
14 Honor. He somehow claimed in his objection that we run up a
15 \$200 million tax till arising out of the Novex (ph)
16 transaction.

17 Unless I was asleep, I don't remember any proof
18 about that. So that's kind of out of the way and it was
19 sort of silly in the first place. But Mr. Reardon did
20 testify that our basis in the spectrum that we're selling to
21 the Choctaw is about 14 million. We get 15- 16 million
22 (indiscernible) in exchange for it because that's the
23 Choctaw claims and then we have operating losses just post-
24 petition of almost \$900,000 and they mount every day.

25 We've got significant pre-petition operating

1 losses that could be carried forward to offset any other
2 gain that we have. And the difference in the basis of 14
3 million and 15, 16 or whatever we get is a very small amount
4 anyway.

5 After that point in the event the Court sees fit
6 to confirm the plan and if Mr. Reardon's testimony points
7 out as his disclosure statement and plan are abundantly
8 clear, Choctaw, not Maritime, but Choctaw has reserved some
9 funds in the event we get that far in order to take care of
10 any future tax obligations that it may incur.

11 Mr. Havens says we're not acting in good faith and
12 we hear his tired oral argument that we've heard so many
13 times before, we never should have filed bankruptcy. And
14 we've heard the same testimony from the debtor we've heard
15 time and time again, we were broke. We didn't have any
16 money. Our employees were behind in pay. Our utilities
17 were behind. Our rent was behind. Our expenses for some of
18 the (indiscernible) licenses were behind. We had no real
19 prospect of income because of the hearing designation order
20 and the Havens' attacks. We had a lot of contracts to sale,
21 but we couldn't close those for the same reason, had no
22 financing.

23 So I'm not sure exactly how we were supposed to
24 just go forward with Second Thursday or with the hearing
25 designation order with no money to pay professionals and no

1 way to operate. And we couldn't just say, well we'll just
2 keep operating and hope that Mr. Reardon and his colleagues
3 keep working for us. His testimony is clear and the Court
4 knows that we had to keep operations ongoing to keep our
5 license viable so that we wouldn't forfeit those and that's
6 what we did.

7 We filed bankruptcy, Your Honor, and we obtained
8 DIP financing that wasn't available before the filing of the
9 petition for obvious reasons. Mr. Trammell said we didn't
10 ask for it, but I dare say if we'd asked for it, it never
11 would have been granted because we couldn't give any lender
12 the protection pre-petition that we can post-petition. It
13 was blessed by the Court, approved by the Court now it can't
14 really be attacked or subordinated or anything else because
15 of the protections the Court gave to the lender and
16 certainly those are valuable. And any lender in the
17 circumstances in which Maritime found itself would not lend
18 any money to an outside Chapter 11 outside of getting DIP
19 financing.

20 So it's sort of self defeating, Your Honor, to
21 argue that the case wasn't filed on good faith and that we
22 really didn't need Chapter 11 relief in the first place.

23 One of the legitimate purposes as I've already
24 mentioned is to get DIP financing so that we could pay our
25 operating expenses. And the owners of Southeast Commercial

1 have done that, Your Honor. Southeast Commercial is not
2 choking off the debtor by not funding the \$90,000 per month.
3 It's funding the expenses that we absolutely have to have
4 and there is funding available post-confirmation if the
5 Court sees fit to confirm the plan to help pay that
6 shortfall.

7 But for now, that extra \$40,000 is not a pressing
8 issue. Those plaintiffs have not pressed the debtor. So
9 it's not as if Southeast and Commercial said we're choking
10 the debtor contrary to Professor's Chen's allegations. If
11 those (indiscernible) aren't really at the forefront right
12 now like (indiscernible) much more important.

13 As I noted, Your Honor, in order to achieve Second
14 Thursday filing and to prosecute the Second Thursday
15 application and coverage we need money and we need someone
16 to help sponsor that and that's Choctaw. They have agreed
17 to fund those operations and it will not be cheap. And as
18 Mr. Trammell testified and as I mentioned they are here for
19 the long run. They are here to get the best deal they can
20 under Second Thursday for themselves and for the creditors
21 even though there are risks involved. There really is no
22 other choice, Your Honor, but to pursue that route and that
23 kind of a treatment under Second Thursday.

24 A couple of other issues about bad faith that
25 Mr. Havens has raised, just briefly, Your Honor. Claims

1 that the case was filed as part of a litigation tactic and
2 somehow we were going to sneak Second Thursday by everybody.
3 Well, that's just silly. You can't sneak Second Thursday by
4 anybody. And I don't think we gained any litigation
5 advantage by filing the bankruptcy. We certainly have
6 protected our assets by obtaining financing to pay for our
7 bills. We have protected -- in most part -- not in every
8 case -- but in most part the asset purchase agreements that
9 we had prepetition especially the largest one that we had,
10 which was Southern California Railway who is here supporting
11 us today and who has probably health and safety issues
12 involved as the FCC noted in footnote 7. And we positioned
13 ourselves with a soft lender and a good party to go forward
14 with pursuit of the Second Thursday application. So there's
15 no litigation advantage here. There's no attempt to sneak
16 around and somehow fool everybody by grabbing Second
17 Thursday status.

18 Some of the other issues that are on the Skytel
19 (ph) good faith argument, Your Honor, is that we're
20 attempting to launder Skytel's claims through the Bankruptcy
21 Court. We're not doing that at all.

22 Their anti-trust claims -- and I'll get to the
23 damages in a minute -- are going to be what they're going to
24 be. Their FCC claims are going to be what they are going to
25 be. And we believe that if we get Second Thursday status,

1 it will take care of the Havens' objections and attacks
2 because he'll be a party to all that and he'll have a chance
3 to litigate those issues if that's what he wants to do.

4 Again, the third party release issues that's
5 mentioned in the Havens' response and objection to the plan,
6 Your Honor, had been taken care of by agreement as had the
7 objections to -- the (indiscernible) objected to some of the
8 secured creditors.

9 And we mentioned this windfall issue again.
10 There's a difference of the experts about whether valuation
11 is really an issue before the FCC, but as we demonstrated,
12 Your Honor, there are at least \$43 million of claims that
13 are out there that we know about, including the ones that
14 voted for the plan. And that includes a number for
15 Mr. Havens of only \$100,000 and it includes a claim for the
16 FCC of 3.5 and they say that they're owed 6.

17 There are additional claims accruing all the time.
18 The funding with Choctaw is going to make post-confirmation
19 has to be dealt with and while it may not be a claim against
20 the debtor, it certainly effects the windfall funds that are
21 coming out from the sale of Spectrum and collection of
22 Spectrum.

23 Mr. Havens has also said in his objection that
24 nobody had considered his proposal, but he elected not to
25 pursue it. We didn't hear anything about it today. So

1 that's gone by the boards.

2 I do want to spend a minute or two, Your Honor,
3 about the law as we perceive it with respect to the treble
4 damages claims of Mr. Havens and the anti-trust litigation
5 and the penalty claims of the FCC.

6 The best case that I read on this issue, Your
7 Honor, is in re: W.G. Wade Shows Inc. 218 B.R. 625 it's the
8 decision in 1998 from Judge Pasqual (ph).

9 In that case, the creditor pre-petition had
10 obtained a judgment in a jury trial although the debtor did
11 defend it and part of the award was a large punitive damage
12 award. And while Judge Pasqual would not allow the debtor
13 to go behind the award and undo it, because the debtor
14 didn't defend he found that it was binding on the debtor.

15 He did say this, the allowance of the claim for
16 punitive damages against a debtor in a Chapter 11 case had
17 been litigated before. Bankruptcy Courts almost without
18 exception have held punitive damages claims are not
19 allowed."

20 The Court's reason that to allow punitive damages
21 against the debtor's estate would punish the entire body of
22 creditors and not the actual wrongdoer who deserves the
23 punishment. And he cites a case from the Eighth, Robbins
24 (ph) case from Virginia and a case called the GAC
25 Corporation from the Southern District of Florida.

1 And there are other cases, Your Honor, that have
2 also held that. There are cases that go to the contrary.
3 In a case called Allegany International (ph) the Court said
4 because the essence of bankruptcy jurisdiction is the
5 allowance or disallowance of claims, the allowance or
6 disallowance of punitive damages is more appropriate when a
7 liquidated claim is returned to the Bankruptcy Court and if
8 the debtor or another party objects individually to that
9 claim. Alternatively such matters may be germane to the
10 plan of reorganization.

11 At some later date, however, the Court may
12 determine the punitive damages are inappropriate
13 (indiscernible) or may limit punitive damages in some other
14 way such as fixing an amount of punitive damages
15 (indiscernible) and placing some punitive damages in a
16 separate class to be distributed pro rata. Any of the
17 aforementioned procedures would be consistent with the
18 equitable power described in in re (indiscernible) Robbins.

19 Mr. Reardon's testimony, Your Honor, was that the
20 sky is the limit on a treble damages claim and the unknown
21 and uncertainty of any FCC penalties that may be assessed by
22 the FCC could and would dilute the claims of the unsecured
23 creditors who may very well not be paid in full simply based
24 on a look at the certificate of tally, which again does not
25 include nearly all of the creditors and it certainly does

1 not include all of the claims asserted by Mr. Havens, nor
2 all of the FCC who of course probably will get paid nothing
3 or next to nothing on its unsecured claim, whatever it turns
4 out to be unless the debtor achieves Second Thursday status.

5 The only proof before the Court, Your Honor is
6 that of Mr. Reardon's testimony and his testimony was that
7 an unlimited amount of treble damages in the anti-trust
8 litigation or penalty by the FCC will very possibly dilute
9 the payment to the unsecured creditors and will be to the
10 determine of the unsecured creditor classes.

11 A couple other points about the Havens objection,
12 Your Honor. We know that the best interest test really
13 can't be raised by the Havens' objection or by the FCC
14 because their class voted overwhelmingly to accept the plan.
15 But the proof was that the plan is in the best interest of
16 creditors.

17 Mr. Havens also claimed that we violated the
18 Bankruptcy Code by turning in some spectrum. The only
19 testimony before the Court was that of Mr. Reardon as to
20 turning in that spectrum and his testimony was it really
21 meant nothing and it was merely an inconvenient -- an
22 administrative convenience to turn the spectrum in and deal
23 with the donut of the hole analogy as he told us about in
24 his deposition and in his testimony yesterday.

25 To bar confirmation for violation of the

1 Bankruptcy Code provision under 1129(a)(2), Your Honor,
2 requires a serious violation of the code. It wasn't a
3 violation at all. Ordinary course of business and
4 administrative convenience. There is absolutely no proof
5 before the Court that anything of value was turned in by the
6 debtor to the FCC or abandoned.

7 The last thing Mr. Havens mentioned was that we
8 can't assume or assign executory contracts at confirmation.
9 Notice of hearing were given to the appropriate parties
10 about assumption and assignment of executory contracts and
11 unexpired leases. None of them objected with the exception
12 of Mr. Phillips (ph). We satisfied his objection and he was
13 excused yesterday.

14 In summary, Your Honor, the debtor has no choice
15 but to pursue Second Thursday treatment before the FCC. We
16 hope for the best. There is a risk there, but it's an
17 assumable risk. Our expert certainly believed that we
18 qualified for treatment and we'll simply have to wait and
19 see what the FCC does with the Second Thursday request. But
20 we're not going to give up. We're not going to walk away.
21 We're not going to give the spectrum back or let Mr. Havens
22 have it because if we did that, nobody gets anything.

23 There's no assurance that the FCC will grant
24 Second Thursday status. The proof before the Court is that
25 it is more likely than not. We believe we carried our

1 burden of proof there and deserve an opportunity to have our
2 plan confirmed, which is the first step in going forward
3 with Second Thursday status.

4 THE COURT: All right. Mr. Loupenache (ph)? Ms.
5 Hayden?

6 MS. HAYDEN: Your Honor, I'm going to try not to
7 repeat anything that Mr. Geno said because actually he did
8 such a good job, why would I try to improve on it. But there
9 is one point that we did want to make as creditors. Both we
10 represent folks who are both secured and unsecured
11 creditors. And we've also spent two days here watching
12 other creditors, such as the unsecured creditors committee,
13 the administrative claimants, even the FCC work for a
14 resolution that's going to end up, we hope, with this case
15 not being in the Chapter 7 and everybody getting zero.

16 I think the creditor body has worked hard to bring
17 to you a plan that you can confirm. In fact, I think you
18 see that the only real opposition that we have here is from
19 Mr. Havens and his group, which really is just an
20 alternative claimant trying to get this Court -- an
21 alternative claimant to the licenses -- trying to get this
22 Court to use the bankruptcy process to allow him to get the
23 value rather than let it go to the creditors.

24 As Mr. Geno has pointed out, hmm, it's 30, it's
25 40, it's 45 million, but it's a lot of unsecured debt and

1 the only way -- debt. And the only way we're going to get
2 paid is if we're allowed to move forward with a plan of
3 reorganization Gives us a possibility of getting paid.
4 And with that, I don't have anything else to add to Mr.
5 Geno. Thank you for your time.

6 THE COURT: I appreciate your brevity.

7 Mr. Solomon.

8 MR. SOLOMON: Yes, Your Honor. Your Honor, the
9 committee which has a fiduciary duty to represent the best
10 interest of the unsecured creditors does in fact support
11 this plan's confirmation.

12 All of the factors in 11 U.S.C. 1129(a) are met
13 including the fact that the unsecured creditors accepted the
14 plan by a wide margin including factoring in Skytel's
15 \$100,000 vote. Skytel had a chance to vote on this plan,
16 they did so and it -- the plan was still accepted by the
17 creditors.

18 To address the feasibility of the plan, the
19 evidence before the Court is that there is a likelihood is
20 that this is a feasible plan. It's important to note that
21 there only need be demonstrated that there is a likelihood.
22 There does not need to be a guarantee that this plan will be
23 feasible. There is never a guarantee from a debtor coming
24 out of a plan that its alternate plan will ultimately bear
25 fruit. Sometimes it doesn't. Just that there has to be a

1 likelihood.

2 And in this case, we believe that's been met based
3 upon the testimony of the debtor's expert, the Choctaw's
4 expert, Choctaw's representative. They all demonstrate that
5 there is at least a likelihood that Second Thursday relief
6 will be granted here. Based on similar situations that have
7 been faced by creditors who have obtained Second Thursday
8 relief accordingly. We think there is at least a likelihood
9 here that his plan will be feasible.

10 Choctaw's representative has indicated he is
11 motivated to obtain Second Thursday relief and that is bared
12 out by the testimony and all the evidence here.

13 Skytel's representative and expert testified that
14 Second Thursday relief would likely not be granted here.
15 Part of that is based on an assertion that there could be a
16 windfall to Choctaw. The plan proponents experts say that
17 doesn't matter. Even if it does, on one hand, Mr. Havens
18 has argued and filed a proof of claim for \$100 million,
19 which if you add everything up, there's \$140 million of
20 claims. On the other hand, he says that the claims are less
21 than the value of the spectrum and accordingly there could
22 be a windfall to Choctaw. The two don't juxtapose with each
23 other.

24 Accordingly, the Court should give the appropriate
25 weight to Skytel's experts and representatives and

1 comparison to the experts and representatives of the plan
2 proponents.

3 Here, this plan will ultimately if successful lead
4 to recover of creditors. In the alternative, there will be
5 no recovery for creditors. The only opposition, as again,
6 has been stated is a competitor to the debtor who wants the
7 debtor's assets for itself. The Court needs to take into
8 account those motivations, but ultimately there is not some
9 other path being offered here that is somehow better than
10 the current path. Accordingly, the Court should grant
11 confirmation.

12 THE COURT: Thank you.

13 Mr. Drew?

14 MR. DREW: Your Honor, I had hoped to be very
15 brief indeed, but there seems to have been a bit of a
16 misunderstanding. Ms. Loumenache (ph) got up and went
17 through a number of sort of multi-part agreement that we had
18 come to resolve the sort of principle part of our
19 objections.

20 One part of that agreement is that the FCC would
21 be allowed to impose and collect any regulatory forfeitures
22 in exercise of its police power. And I understood Mr. Geno
23 to have signed off on that. However, Mr. Geno has just --

24 THE COURT: I understood that too. And I
25 understood -- I heard his comments also, but I'm prepared to

1 address that and I'm prepared to accept the resolution of
2 your objection, because it is what it is. I think you
3 recognize that and that's Ms. Hayden.

4 MS. HAYDEN: Yes, sir. I just wanted to --

5 THE COURT: Tim and Jan haven't hooked up over
6 lunch I don't think.

7 MR. DREW: And I would -- I would just say --
8 thank you, Your Honor. I'll just say just for the record,
9 Your Honor, that we believe that the FCC's (indiscernible)
10 is distinguishable from any of the cases cited by Mr. Geno
11 and that it would be inconsistent on the one hand to both
12 rely upon the FCC's preliminary regulatory power at the same
13 time seek to impair the FCC's regulatory power to impose
14 forfeitures. So with the understanding it will have the
15 power to impose them, I will move to impose them, I will
16 move on.

17 As Mr. Loumenache says, the main sort of principle
18 specific points of our objection have been dealt with by
19 agreement, the disclosure, the end of any non-debtor leases,
20 except for the creditors' committee. We still have to work
21 out specific language for these issues.

22 I would say that the FCC continues to have a
23 feasibility related concern in terms of just the vast
24 uncertainties and the discretion granted to Choctaw. It is
25 my hope that we will be able to work out language that

1 addresses those. Pending that language being agreed to, the
2 FCC absolutely reserves all rights connected with objections
3 including any rights to appeal.

4 Finally, Your Honor, I want to say just a few
5 words about Second Thursday. And I know, Your Honor, has
6 heard all too much about Second Thursday over this last
7 year.

8 The FCC has never predicted what it would do with
9 a Second Thursday application that is not before it yet.
10 Nor will it ever come here and ask the Court to put itself
11 in the place of the FCC as the Court has been very careful
12 not to do. However, in objection -- in our -- FCC's
13 objection to the plan of reorganization, we did include what
14 we called a number of risk factors connected to this
15 particular potential Second Thursday application.

16 We included those in the objection as just one
17 more argument why discharge would not be a wise thing to
18 grant here. Besides its conflict with the code.
19 Nevertheless over the course of this hearing, there's been a
20 lot of comment about some of the specific points that the
21 FCC made in its objection. We just wanted for the Court's
22 information just to clarify a few things.

23 In regard to the issue about whether a windfall
24 would be a negative factor in any Second Thursday
25 application. We've heard that will never be relevant. We

1 don't believe it's correct to say in advance that it would
2 be irrelevant because it's an open question of law. No
3 party on either side has shown any precedent where the FCC
4 has squarely addressed the issue of a windfall. If this
5 Second Thursday application comes before and is finally
6 adjudicated, after that, then we will know what the effect
7 of a windfall is on a Second Thursday. We simply do not
8 know at this point. So it simply remains a risk factor.

9 The same is true of the guarantees. We've heard
10 that guarantees are always going to be minor and indirect
11 benefits. Well, there is nothing that prevents the FCC from
12 deciding the guarantees however large may be are not direct
13 benefits that would harm the possibility of Second Thursday.
14 We don't know how the FCC would handle this. They might
15 look at these guarantees and think they are relevant. We
16 just don't know in advance and it's wrong not to consider
17 them a risk factor.

18 Finally, we wanted to talk a little bit about
19 what's called issue G. What that is the issue that remains
20 before the administrative law judge under active
21 consideration. And that is probably the most significant
22 and complicated risk factor going forward with Second
23 Thursday.

24 Issue G will determine which of the debtor's
25 licenses have been revoked by operation of law because of

1 permanent discontinued use or lack of operation.

2 Until issue G is resolved or decided, Second
3 Thursday, will be basically impossible because you won't
4 know the universe of licenses that is being -- transfers
5 being sought. So on the one hand this issue G definitely
6 poses a risk of delay.

7 Second, depending on what the resolution of issue
8 G is and how many licenses are found to have been
9 discontinued, we won't know what the -- we won't know what
10 affect that might have on the recovery from --
11 (indiscernible) these licenses if a significant number of
12 them are found to be revoked.

13 Again, we're not here to advocate a particular
14 position regarding the Second Thursday, however, since we're
15 raising our objection and since there are comments made
16 through the course of the hearing, we wanted for the Court's
17 information to understand the FCC views these issues as
18 potential risk factors and that the FCC will be free to act
19 upon them if they eventually come before the agency.

20 And with that, I don't have anything more for Your
21 Honor.

22 THE COURT: Thank you very much. Mr. Spencer?

23 MR. SPENCER: Thank you, Your Honor. I will be
24 brief. There's one set of claims that we really haven't
25 talked about that has to be factored into this occasion or

1 into the equation and that are the cure claims for people in
2 my client's situation. And I know we had filed a motion
3 with the Court and it hadn't been set for hearing yet, to
4 establish the cure amounts. And I'm certain that others
5 have also been filed and those are just another set of class
6 that aren't on that tally board that add to the amount of
7 debt that's out there.

8 Ours is approximately \$380,000. I don't know what
9 the other ones are and I don't know if that would be the
10 full amount after being here today and participating in
11 this. But those are just another set of claims that have to
12 be added into the equation.

13 Now, with respect to my particular client, Your
14 Honor has heard Gray Cleary (ph) testify twice about the
15 public safety and need for this particular spectrum. And
16 I'm not going to go back over that. His testimony, I think
17 the Court found was very compelling. They have a hard and
18 fast deadline of 2015 to put this (indiscernible) control in
19 place. Our best option is this license. We are satisfied
20 based on the testimony that we've heard from the Choctaw
21 group that they are prepared to spend the money necessary to
22 fight this to a conclusion and the way to get that done is
23 to get this plan confirmed and we are here to support that
24 plan and we ask that the Court confirm it.

25 Thank you.

1 THE COURT: Thank you. Mr. McCullough, anything
2 you'd like to add?

3 MR. MCCULLOUGH: Your Honor, James McCullough for
4 NRTC. Nothing really to add. I believe counsel has spoken
5 to all the points. We too are a creditors of the debtor.
6 We too supported the plan. We believe that the testimony
7 presented to the Court shows the Choctaw offer as presented
8 provides the most feasible option on the table for
9 satisfaction of claims and therefore we renew our support in
10 favor of debtor's plan.

11 THE COURT: Thank you. Mr. Ruhl?

12 MR. RUHL: Thank you, Your Honor. May it please
13 the Court. Daniel Ruhl for the Skytel entities.

14 Your Honor, I will be as brief as I can be and I
15 will take less time than Mr. Geno. I promise you that. We
16 discussed our issues in greater detail in our objection and
17 I'm not going to go over all those. I'm going to say that
18 we don't waive any of those arguments just because I don't
19 mention them here, of course. But in our view, the plan
20 should not be confirmed for several reasons, only a few of
21 which I'll discuss. First is feasibility.

22 Of course 1129(a)(11) requires that plans be
23 feasible to be confirmed. It's to prevent confirmation of
24 visionary schemes which debtor can possibly obtain after
25 confirmation. No guarantee of success is required but the

1 debtor must establish by a preponderance of the evidence
2 that there is a reasonable assurance that the plan can be
3 effectuated. The inquiry is whether the plan proponent has
4 sufficiently established its post-confirmation viability and
5 its ability to meet future obligations that are under the
6 plan.

7 And again the debtor has the burden of proof on
8 this issue. We don't think the debtor has met it in the
9 last two days. We don't think it can -- the debtor can meet
10 it for several reasons. I'm only going to discuss two or
11 three.

12 First, to the extent that it relies on Second
13 Thursday. The plan for its success to the extent it relies
14 on Second Thursday to enable the debtor to transfer the
15 licenses to Choctaw closed APAs if that works out with the
16 final order provisions that have been discussed. Then
17 market and sell the rest of the licenses to fund the plan.
18 Several reasons were discussed, at least in our client's
19 testimony of why there are material hurdles to Second
20 Thursday being obtained and even if Second Thursday is
21 obtained, there are other claims out there.

22 There's other issues like the issue G issue that
23 the FCC counsel's brought up that will have to be dealt with
24 at some point and provide risk factors, we think material
25 and significant risk factors and hurdles.

1 By way of example, only we don't think that Second
2 Thursday can be applied to a bankruptcy licensee who we
3 think the circumstantial evidence at least has shown entered
4 bankruptcy at least in part for the purposes of seeking the
5 Second Thursday doctrine to allude the hearing designation
6 order. We think that the issue of the alleged debt begin --
7 a large part of it anyway being closely associated with the
8 debtor's principals, guarantees or the guarantees of Mr.
9 Deprees. We think that presents an issue. We think that
10 Second Thursday is going to be difficult if not impossible
11 to obtain where the proposed transferee of the license is
12 Choctaw here and its principals have so many connections
13 with the debtor and its principals and some of the
14 wrongdoers.

15 And ill will I don't think is the test, Your
16 Honor, where the debtor's counsel seemed to think that was.
17 I don't think that's the test there, but again, it's another
18 significant risk factor or material hurdle as is the issue
19 of whether there will be a windfall. Just again, another
20 risk factor for whether this plan is feasible and is
21 reasonably assured of success.

22 Even if Second Thursday would somehow be obtained,
23 there's been multiple reasons discussed why there's still
24 significant material hurdles to the debtor transferring
25 licenses to Choctaw to effectuate the remainder of the plan.

1 The issue G already discussed, the other claims of the
2 Skytel entities that are outside of the show cause hearing
3 that they think don't go away -- we think don't go away with
4 the Second Thursday application provides another material
5 hurdle or material risk factor even if Second Thursday would
6 be otherwise obtained.

7 We think -- importantly, Your Honor, and I think
8 the testimony and evidence has established that there are a
9 lot of different contingencies outside the control of the
10 debtor that make this plan and the feasibility of this plan
11 impermissibly, speculative and risky for a lot of the
12 reasons that have been discussed.

13 It's speculative and risky due to its reliance on
14 Second Thursday relief. Whether Choctaw will be able to
15 market and sell the licenses and close the APAs with the
16 final order provisions. That's the speculative and
17 hypothetical team.

18 How long the Second Thursday process will take or
19 could possibly take. It could take a long time if issue G
20 has to be resolved first. There doesn't seem -- there's no
21 time limit afforded in the plan and even if Choctaw is going
22 to agree to use best efforts, they still as far as I can see
23 will retain the discretion to not go forward if that's what
24 they decide to do.

25 And, you know, the cases we've read, courts have

1 repeatedly denied confirmation on feasibility grounds in the
2 face of such speculative and risky contingencies.

3 Mr. Reardon testified that in his mind the plan involves a
4 great degree of risk and the FCC counsel again noted some of
5 those risk factors.

6 And, you know, in our view, the debtor quitting is
7 not the only choice. There's been comments made that this
8 is the -- this plan or some plan that relies on Second
9 Thursday is the only plan that is available. The debtor
10 counsel mentioned in his closing comments that the Skytel
11 proposal wasn't (indiscernible), it was off the table.
12 Well, it's interesting that the debtor did everything they
13 could to not allow us to mention it here today. It's not --
14 I won't to say it's not off the table, I don't know if it is
15 or not. If the Court confirms the plan, it appears it's off
16 the table for at least a little while maybe, but it
17 illustrates that there is a proposal out there that could
18 potentially resolve issues without Second Thursday being
19 involved.

20 The good faith argument, Your Honor, I'll just
21 stop. It was not the case being filed --

22 THE COURT: I want to make something clear for the
23 Court --

24 MR. RUHL: Yes, sir.

25 THE COURT: The Court didn't prohibit you from

1 talking about this other proposal.

2 MR. RUHL: Yes, sir.

3 THE COURT: I said that you could.

4 MR. RUHL: Absolutely.

5 THE COURT: I'll make it clear, okay.

6 MR. RUHL: Absolutely.

7 THE COURT: It didn't come out that way when I
8 heard you say that.

9 MR. RUHL: Okay. I didn't mean to suggest
10 otherwise. I was just commenting that the debtor fought
11 against that. And it again there has been testimony that a
12 plan that relies -- that moves forward with Second Thursday
13 is the only possibility -- possible resolution to get
14 creditors paid. My point is that's not necessarily the
15 case.

16 The plan being proposed -- not being proposed in
17 good faith. I'll just discuss why in our view the plan is
18 not feasible. That is one in the totality of circumstances
19 to be considered one of the reasons why a plan can be found
20 to lack or not to have been proposed in good faith.

21 We think at least circumstantial evidence has been
22 presented that at least part of the reason why the case was
23 filed was as a litigation tactic. I don't think it's the
24 standard that -- I don't think we ever alleged that the plan
25 was trying to sneak Second Thursday through and I don't

1 think that's the standard.

2 The windfall issue I won't go in again. But we
3 think that cause or touches on the good faith of the plan as
4 far as this transferee potentially at least getting a
5 windfall. And the treble damages issue. Your Honor, in our
6 objection we cite and discuss a case I believe from the
7 Southern District of New York -- that I haven't reviewed the
8 debtor's cases, I just heard them for the first time today.
9 But we cite and discuss a case that seems to be on point
10 because it deals with the statute pursuant to which treble
11 damages can be available and the New Jersey antitrust case.
12 And that court found as we think this Court should, that
13 while noting treble -- while they noted in their opinion
14 that treble damages can possibly be considered punitive
15 damages, they said that salutatory treble damages and a
16 valid judgment aren't penalties of the sort congress
17 intended the Bankruptcy Courts not to enforce in a Chapter
18 11 proceeding. We think that case is right on point and its
19 holding should be followed. We also note that there are
20 other cases that hold treble damages should be treated as
21 ordinary compensatory damages.

22 Final point on the treble damages issue though,
23 Your Honor, is we think the plan providing for allowed
24 claims not to include punitive damages or penalties. It
25 doesn't specifically say treble damages, but we think that

1 -- I don't think -- but we think that's contrary to this
2 order's --this Court's order lifting the stay to allow the
3 New Jersey case or New Jersey court to liquidate the amount
4 of Skytel's claim there and that that provision is improper
5 and appears to have been geared towards the FCC and Skytel,
6 no other creditors.

7 And I will just say for the record that we don't
8 think the best interest of creditors test doesn't apply in
9 this case regardless of whether the class Skytel is in voted
10 to accept the plan. And there are, you know, court's hold
11 -- at least the cases we cite in our objection that all but
12 the rarest cases the liquidations analysis has to be part of
13 the disclosure statement and will be required to establish
14 compliance with 1129(a)(7).

15 There's cases that hold it's not sufficient to
16 come to a confirmation hearing and try to put on proof that
17 the liquidation analysis is a requirement that on all but
18 the rarest cases should be in the disclosure statement and
19 nothing was in the disclosure statement here as far as a
20 liquidation analysis.

21 The issue of the debtor turning back in some site
22 based licenses and the joint stipulation and in our view
23 abandoning them. There's testimony in Mr. Reardon's
24 deposition that was read into the record that said those
25 licenses at least have potential value even in his view and

1 I don't think the debtor can abandon assets in the ordinary
2 course of business.

3 I think abandonment controlled by 554(a) among
4 other provisions of the code and that decision to do that
5 without court notice and court approval is a violation of
6 the code. We think it's a serious violation of the code and
7 the circumstances in which it occurred. We think that is
8 another reason why the Court should deny confirmation.

9 Finally, Your Honor, and we discussed this in
10 greater detail in our objection than I'm going to today, but
11 -- and there's been some discussion of it, the plan -- at
12 least arguably and permissibly fails to preserve Skytel's
13 claims in and in connection with the FCC proceedings in the
14 New Jersey case.

15 I heard a lot of comments that that's not the
16 intent. I'm glad that's not the intent. I think Choctaw
17 said that. I think Mr. Geno said that. Our concern -- and
18 it wasn't what Mr. Keller said on the stand yesterday as I
19 recall. He said, we thought maybe Second Thursday would
20 launder our claims. That's not our concern.

21 Our concern is the plan contains multiple very
22 broadly written and probably boiler plate releases,
23 exculpatory causes, injunctions, that sort of thing that can
24 undoubtedly be read with the plan. And one part says or
25 suggests that those claims will be preserved. There are

1 releases and those sorts of things in the plan that can be
2 read to not preserve them. That's our concern, Your Honor.

3 So it appears that no one is going to have a
4 problem with the order clarifying that those things are
5 preserved like the Court's past orders have done. If that's
6 the case, then that would resolve that concern of Skytel.
7 And in our objection we set forth some language that we
8 request be in the confirmation order in the alternative if
9 the Court chooses to confirm it. That is either identical
10 or very similar to the past language that's been in this
11 Court's orders. And we would for that -- for the reason of
12 the releases and broad exculpatory clause language that I
13 mentioned, we would request that that sort of language be in
14 this Court's order if the Court confirms the plan.

15 Thank you.

16 THE COURT: All right.

17 (Pause)

18 THE COURT: I have been making notes up here while
19 you were all giving me your summations and I worked on this
20 during the time we were out for lunch also.

21 I'm going to make the last comment at this hearing
22 about Second Thursday. I heard a lot of testimony about it.
23 Harkens of testimony of Samuel Fader (ph) formal counsel,
24 former chief counsel to the FCC who is (indiscernible)
25 qualified to testify about Second Thursday. He said there

1 were three requirements that had to be met.

2 The first was that the licensee is in bankruptcy.
3 Clearly that's the situation here.

4 Number two, the alleged -- alleged wrongdoer is
5 not participating with the transferee. That's pretty
6 undisputed as far as the proof I've heard today.

7 And number three, the alleged wrongdoer will
8 receive no benefit or only incidental benefit that would not
9 be exceeded by the benefit to the creditors who would be
10 paid by the transaction.

11 Now, there is absolutely no guarantee that Second
12 Thursday is going to be granted by the FCC. And I'm not
13 sitting up here trying to say to the FCC, you've got to
14 grant Second Thursday. That's not my function. That's the
15 function of the FCC and I said that from the time this case
16 started. I am not trying to superimpose this Court's
17 judgment on that agency.

18 The FCC may look to a lot of things such as value
19 and compare those values to the debts that are being treated
20 in this transaction. While I'm certainly not establishing a
21 value the debtor's spectrum, because as I said earlier today
22 it is a moving target that could be affected by many
23 variables. Of course one variable is the ability to be
24 treated pursuant to the Second Thursday doctrine.

25 Secondly the value could be effected by the

1 treatment of certain of these assignee entities pursuant to
2 footnote 7 in the opinion, such as Southern California
3 Regional Railway Authority. And that to me is one of the
4 most compelling factors in this entire case as to what went
5 on out there with that train wreck in California that
6 prompted congressional legislation that has now put Southern
7 California Railway Authority into the position of having to
8 do something to comply with the congressional act and it's
9 under a deadline to do so for obvious reasons of public
10 safety. To me that's one of the most compelling stories
11 that I've heard throughout the history of this case. And of
12 course the existence of the Skytel challenges at every level
13 have certainly impacted the valuation of spectrum.

14 We look to this question of windfall and you have
15 to compare it to the risk involved. I thought Mr. Reardon
16 was very candid in his testimony yesterday that when he
17 valued the spectrum from zero to perhaps \$45 million --
18 \$40- to \$45 million and then he said at a fire sale it might
19 have value of \$8- to \$10 million. Well that's clearly a
20 moving target and that's what I think that it is.

21 You look at the debt related to this value and
22 that's why when Professor Chen was testifying I looked back
23 at my own notes and I looked at the amount of debt involved.
24 You've got the secured debt that could range between -- in
25 my recollection 15- to 17 million. You've got the voting

1 unsecured creditors that voted in this case 23 million.
2 You've got the administrative claims in this case of an
3 undetermined amount right now. And then you've got as Mr.
4 Spencer just mentioned a moment ago, the cure claims.

5 So there's a lot of debt out there. If the FCC
6 wants to look at windfall then they're going to have to look
7 at all these debts too. And then when -- windfall doesn't
8 really bother me a lot. I'm not so sure there's a great
9 amount of windfall here. But I think about Choctaw and
10 their involvement in this case, there are a lot of reason
11 for them to be involved in this case.

12 Number one it's sort of self preservation at one
13 point. But they're taking a risk. And sometimes when you
14 take a risk, you expect a little may not -- no telling how
15 big the pot of gold might be at the end of the rainbow, it
16 might be little bitty, it might be good. But you're not out
17 there for philanthropic effect on the economy. You're there
18 to make a living and make money and, I mean, I understand
19 that and I think that's what makes our country go. So you
20 consider all those factors and I hope the FCC will, because
21 I'm considering them in my decision here today.

22 Look at the personal guarantee issue that's been
23 talked about a lot. Don Deprees may very well receive an
24 indirect benefit and if this transaction succeeds, this plan
25 succeeds and these creditors are paid. But who knows? I

1 haven't heard one shred of proof in the last two days as to
2 what Mr. Deprees guarantee is really worth. Is it worth \$10
3 million? I don't know. I haven't heard that.

4 But, you know, he may be off the hook, but are we
5 to choose to punish legitimate creditors just so someone
6 might not get an indirect benefit? No. I agree with the
7 witness who testified yesterday that said that's a small
8 issue. And if these creditors are paid, then they ought to
9 get paid and they certainly shouldn't be punished.

10 Issue G that was just talked about a moment ago.
11 I don't have any idea what's going to happen with that and
12 nobody else does. So we're talking about some unknowns
13 today.

14 I can't certainly say with any great degree of
15 assurance that Second Thursday is going to be granted by the
16 FCC, but the proof that has been presented to this Court in
17 this last two days that it is more likely than not, that
18 Second Thursday will be granted.

19 Footnote 7 is certainly a viable alternative,
20 particularly for Southern California Regional Railway
21 Authority and that is another reason to move this forward.

22 Feasibility. I thought the testimony of Mr.
23 Trammell yesterday was very compelling and it's somewhat
24 like a balloon that you keep inflating. You can only go so
25 far. It doesn't mean that the balloon is endless. At some

1 point it might pop. And he said he didn't want to be here
2 15 years from now and I'm sure he does not. And I'm sure
3 Choctaw doesn't want to be here 15 years from now. But the
4 testimony was undisputed that he's there, that he's not
5 going away and that he has and that Choctaw has resources to
6 make this thing go forward. So that testimony was
7 compelling. It resonated with me.

8 I look at the votes -- and that's another
9 compelling thing -- that have been presented by the tally of
10 ballots. Every class voted to accept confirmation by the
11 respected requirements of the law. That is the dollar
12 amount within the class voting and the number of creditors
13 in the class voting. When a court sees that, that's
14 certainly a motivation to confirm a plan.

15 Look at the objections that have been filed. And
16 I certainly accept the objection of -- the resolution of the
17 objection by the FCC. And I understand it and I hope that
18 you can work out the language. If you can't and you need
19 assistance I am available to help you. But I think that's a
20 job well done to get that objection resolved and contingent
21 as it may be at this moment. You resolved the other
22 objections, Alice Pipeline, the U.S. Trustee, Coserve (ph),
23 they're no longer in the courtroom with us.

24 In my opinion from what I've heard at this
25 confirmation hearing the requirements of Section 1129(a) of

1 the Bankruptcy Code have been met to my satisfaction.

2 This is not a chicken or an egg conundrum here.
3 This plan is the first step in a long pathway to making this
4 thing actually work.

5 I understand that. I understand that there are
6 some unknowns. The issue of the penalties that could come
7 out of the FCC. What's going to come out of the District
8 Court of New Jersey with the Skytel law suit there? I don't
9 know. None of us know what's going to come out of that.

10 This court reserves the right to look at that
11 depending on what happens at a later date. But that's not -
12 - it is what it is. You've created a resolution of your
13 objection that the FCC reserves these rights to do what they
14 think they need to do and that's fine. I think that's an
15 intelligent resolution of the objection and a way to go
16 forward.

17 Now, what happens in the District Court in New
18 Jersey? It is what it is. We'll just have to see. And it
19 may not be a problem at all, but I don't know that. But I
20 am of the opinion that if this plan is not confirmed and
21 confirmed today by my bench decision then everybody loses.

22 So my decision is that the plan of -- filed by the
23 debtor and proposed by -- in conjunction with Choctaw will
24 be confirmed by this Court and an order will be entered
25 accordingly.

1 Are there questions? Number one thing. The
2 objection to Skytel which is the only objection remaining is
3 overruled.

4 Any questions?

5 MR. RUHL: Quick question, Your Honor. You said
6 that you were reserving your right to look at the New Jersey
7 decision if and when that ever happens?

8 THE COURT: Yeah.

9 MR. RUHL: Does that mean -- what effect on the
10 treble damages disallowance provision (indiscernible)
11 reserve your right to (indiscernible).

12 THE COURT: Just look at it and see what happens.

13 MR. RUHL: Yes, sir. And the second thing --

14 THE COURT: It won't be me.

15 (laughter)

16 MR. RUHL: The second thing is the Court okay with
17 the same reservation of rights that we had before on the
18 Skytel proceedings like we did in the APA orders?

19 THE COURT: I just said that what happens there
20 can happen there. I'm not trying to tell the New Jersey
21 district court that they can't decide that case and do what
22 they want to do.

23 MR. RUHL: And they're FCC proceedings too, Your
24 Honor.

25 THE COURT: Exactly. I made that explicitly clear

1 I thought a moment ago.

2 MR. GENO: One question, Your Honor. We had
3 requested that the Court find that Choctaw was a good faith
4 purchaser. And I know that you didn't specifically find
5 that. We'd like --

6 THE COURT: I do now.

7 MR. GENO: Thank you. Nothing further, Your
8 Honor.

9 THE COURT: I think that Mr. Trammell's testimony
10 convinces me that they're a good faith purchaser and trying
11 to do the right thing by this.

12 All right. You all are free to go. Have a great
13 weekend.

14 (Chorus of thank you.)

15 (Proceedings concluded at 3:47 p.m.)

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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

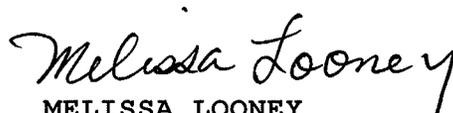


SHERRI L. BREACH

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CERT*D -397

I, Melissa Looney, certify that the foregoing transcript is a true and accurate record of the proceedings.



MELISSA LOONEY

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Veritext

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