

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

<b><i>In Re Application to Assign Licenses under Second Thursday Doctrine, Request for Waiver and Extension of Construction Deadlines, and Request to Terminate Hearing</i></b>	)	<b>FCC File No. 0005552500</b>
	)	
	)	<b>WT Docket No. 13-85</b>
<b>Application to Assign Licenses from Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, to Choctaw Holdings, LLC</b>	)	
	)	
	)	

**TO: Chief, Wireless Telecommunications Bureau**

**REPLY COMMENTS OF  
CRITICAL INFRASTRUCTURE COMPANIES**

**Atlas Pipeline Mid-Continent LLC  
Dixie Electric Membership Corporation, Inc.  
Enbridge Energy Company, Inc.  
EnCana Oil & Gas (USA) Inc.  
Jackson County Rural Electric Membership Corporation**

By their attorneys and pursuant to the Public Notice released by the Federal Communications Commission (“Commission”) on March 28, 2013,<sup>1</sup> Atlas Pipeline Mid-Continent LLC (“Atlas”), Dixie Electric Membership Corporation, Inc. (“DEMCO”), Enbridge Energy Company, Inc. (“Enbridge”), EnCana Oil & Gas (USA) Inc. (“Encana”), and Jackson County Rural Electric Membership Corporation (“Jackson County REMC”) (collectively, the “*CII Companies*”), hereby submit these Reply Comments regarding the Comments and other pleadings filed in response to the captioned “Second Thursday” applications. Consistent with the

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<sup>1</sup> *Comment Sought on Application to Assign Licenses Under Second Thursday Doctrine, Request for Waiver and Extension of Construction Deadlines, and Request to Terminate Hearing*, Public Notice, DA 13-569, March 28, 2013 (*Second Thursday Public Notice*).

majority of comments submitted in this proceeding, the *CII Companies* urge the Commission to grant their assignment applications. Favorable action on the applications is long overdue.

## **I. SUMMARY OF COMMENTS**

In their Comments, the *CII Companies* urged the grant of their longstanding assignment applications in one of two ways: either through *Second Thursday* or by favorable action on the *CII Companies'* pending *Petition for Reconsideration*<sup>2</sup> of the *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing* (“*HDO*”) in this proceeding.<sup>3</sup> An overwhelming majority of the comments supported the assignment of spectrum from Maritime to the *CII Companies*.

The Commission’s Enforcement Bureau raised concerns about granting the Choctaw Assignment Application pursuant to *Second Thursday* but endorsed the grant of the *CII Companies'* applications pursuant to their pending *Petition for Reconsideration*.<sup>4</sup>

Similarly, Council Tree Investors, Inc. (“Council Tree”) filed a Petition to Deny the Choctaw Assignment Application, but – like the Enforcement Bureau – supported the assignment of licenses to the *CII Companies* pursuant to the pending *Petition for Reconsideration* as long as the funds due to Maritime were escrowed pending resolution of the Hearing.<sup>5</sup>

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<sup>2</sup> See, *CII Companies' Petition for Reconsideration*, filed May 19, 2011 (EB Docket No. 11-71).

<sup>3</sup> *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, FCC 11-64 (*rel.* Apr. 19, 2011)(“*HDO*”).

<sup>4</sup> Comments of the Enforcement Bureau, p. 21.

<sup>5</sup> Council Tree Investors, Inc. Petition to Deny, pp. 2, 3. This arrangement would be acceptable to the *CII Petitioners* and was recommended in their *Petition for Reconsideration*. See, *Petition for Reconsideration* p. 24.

The American Association of Railroads (“AAR”) and the Enterprise Wireless Alliance (“EWA”) also generally supported the assignment of spectrum to the *CII Companies* in the public interest.<sup>6</sup>

Two Commenters – Shenandoah Valley Electric Cooperative (“Shenandoah Valley”) and the Southern California Regional Rail Authority (“SCRRA”) – urged the Commission to grant the Choctaw Assignment Application pursuant to *Second Thursday*.<sup>7</sup>

Only two parties – Warren Havens and Peter Harmer – opposed grant of the *Second Thursday* applications.<sup>8</sup> While both urged the Commission to revoke Maritime’s licenses, neither challenged the *CII Companies*’ need for spectrum.

## **II. The Commission Should Grant The Choctaw Application And The *CII Companies*’ Assignment Applications under *Second Thursday*.**

Continued delay in processing the pending assignment applications from Maritime to various critical infrastructure companies is undermining public safety and frustrating the public interest. Some of these applications have been pending for nearly four years.<sup>9</sup> SCRRA captured the critical role of Maritime’s spectrum for all of the *CII Companies* by noting that, “[e]very day that the Commission delays in acting, it prolongs the dangers to which Americans nationwide are subjected.”<sup>10</sup>

In their Comments, the *CII Companies* explained how this spectrum is much needed to support the safe and efficient transmission and distribution of electric utility and oil and gas

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<sup>6</sup> Comments of American Association of Railroads, p. 3; Comments of Enterprise Wireless Alliance, p. 3.

<sup>7</sup> Comments of Shenandoah Valley Electric Cooperative p. 3; Comments of Southern California Regional Rail Authority p. 6.

<sup>8</sup> See, Petition to Dismiss or Deny, and Comments of SkyTel-1 Entities; See also, Comments of Peter Harmer.

<sup>9</sup> See, e.g., FCC File No. 0005030479 filed by by Maritime and Encana on November 13, 2009.

<sup>10</sup> Comments of the Southern California Regional Rail Authority p. 2.

services in compliance with federal and other requirements in the energy industries.<sup>11</sup> The spectrum is needed to serve public safety and national security interests. In addition to standard day-to-day operational requirements, there must be adequate spectrum in times of hurricanes and other natural disasters for utilities to serve the public in restoring outages. Spectrum also is needed to remotely monitor and protect these facilities.

Similarly, SCRRRA needs the spectrum to deploy a Positive Train Control (PTC) system required by Congress, pursuant to the Rail Safety Improvement Act of 2008, to foster train safety.<sup>12</sup> Between March 2010 (when the SCRRRA assignment applications were filed) and October 2012, SCRRRA reports 249 train collisions, resulting in nine fatalities, 82 injuries and more than \$44 million of damage.<sup>13</sup>

Shenandoah Valley urged the Commission to grant the Choctaw Assignment Application because “*loss of [its AMTS] spectrum would cripple, if not eliminate, all communication between office and field for purpose of outage restoration, operation and maintenance of distribution system, and provision of basic consumer service field operations.*”<sup>14</sup>

Choctaw has represented to the Commission that the alleged bad actors have no role in Choctaw and will play no future role with respect to any of the licenses nor will they derive any benefit from the sale of the licenses.<sup>15</sup> With that in mind, the Choctaw Assignment Application and, in turn, the pending Assignment Applications by the *CII Companies* and others should be

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<sup>11</sup> See, Comments of CII Companies pp. 8-10.

<sup>12</sup> Pub. L. No. 110-432, 122 Stat. 4848 (2008).

<sup>13</sup> Comments of SCRRRA p. 2.

<sup>14</sup> Comments of Shenandoah Valley Electric Cooperative p. 2.

<sup>15</sup> Choctaw Description of Transaction, Public Interest Statement and *Second Thursday Showing* p. 8 (FCC File No. 0005552500).

granted pursuant to the Commission's *Second Thursday* precedent with whatever conditions the Commission finds appropriate to protect the public interest.

**III. Alternatively, the Commission Should Grant the *CII Companies*' Applications Through Favorable Action on their Longstanding *Petition for Reconsideration***

The *CII Companies' Petition for Reconsideration* urged the Commission to remove the *CII Companies'* applications from the ambit of the Hearing and to grant them *post haste*. When the *Petition for Reconsideration* was filed two years ago, it was opposed by the Enforcement Bureau.<sup>16</sup> The Bureau's view, however, seems to have evolved as the hearing has progressed. The Bureau now appears to recognize that the *CII Companies* are innocent third parties that in good faith attempted to acquire portions of Maritime's geographic licenses to meet critical communications needs vital to protecting safety of life and property. There is no purpose to be served by continuing to hold their applications in abeyance pending further investigation of a third party.

In its Comments, the Enforcement Bureau endorsed granting the *CII Companies' Petition for Reconsideration* and, in turn, their applications, since “*the Commission does not need to suspend the hearing on MCLM's basic character qualifications and grant a wholesale assignment to Choctaw of every MCLM License ... in order to grant the pending applications and advance the Commission policies concerning public safety.*”<sup>17</sup>

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<sup>16</sup> See, Enforcement Bureau's Consolidated Opposition to Petitions for Reconsideration, EB Docket No. 11-71, File No. EB-09-IH-1751, (June 2, 2011).

<sup>17</sup> Comments of the Enforcement Bureau p. 21.

Council Tree also appears to recognize the long overdue equities in the case and “*supports the transfer of certain licenses under the pre-existing bonafide contracts to [the CII Companies].*”<sup>18</sup>

For the past four years, it has been unclear whether the *CII Companies* ever would gain access to the small portion of Maritime’s spectrum they sought to acquire. This type of regulatory uncertainty is grossly inconsistent with the public interest and tantamount to punishing these critical infrastructure companies for dealing in good faith with a duly-authorized, publicly recognized Commission licensee selling and leasing spectrum under the Commission’s rules and policies governing secondary markets.

The *CII Companies* have demonstrated their clear need for this spectrum to facilitate the safe and efficient distribution of energy services pursuant to federal mandates, and to further public safety and national security interests. The record in this proceeding is devoid of any indication they did anything “wrong.” The public safety and public interest benefits of granting the *CII Companies*’ applications are undisputed.<sup>19</sup> President Obama recognized the important public safety and public interest served by critical infrastructure entities when recently reiterating “his desire to designate utility workers as first responders, with the rights and responsibilities that implies.”<sup>20</sup> There is no legitimate reason at this point to continue holding their applications hostage to an enforcement process directed at a different company.

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<sup>18</sup> Comments of Council Tree, p. 2. Council Tree and Choctaw both submitted written proposals that were options provided by Maritime to its creditors as a plan for reorganization in the Bankruptcy proceeding. The creditors voted in favor of Choctaw’s purchase of Maritime’s assets.

<sup>19</sup> Comments of CII Companies p. 8.

<sup>20</sup> See, SmartGridNews.com, *Obama Wants to Elevate Linemen to First Responder Status*, May 10, 2013, available at [http://www.smartgridnews.com/artman/publish/Business\\_Strategy/Obama-wants-to-elevate-linemen-to-first-responder-status-5753.html](http://www.smartgridnews.com/artman/publish/Business_Strategy/Obama-wants-to-elevate-linemen-to-first-responder-status-5753.html) (last visited May 29, 2013).

The *CII Companies* again urge the Commission to grant their longstanding *Petition for Reconsideration*, remove their applications from the ambit of hearing, and grant them *post haste* outside the scope of *Second Thursday* if necessary.<sup>21</sup>

#### IV. CONCLUSION

Through no fault of their own, and in reliance on the Commission's rules and policies governing secondary markets as well as Maritime's status as a duly authorized Commission licensee, the *CII Companies* for too long have been denied access to much needed spectrum to satisfy their pressing communications requirements. Further delay in processing their applications is unwarranted and detrimental to the public interest. The Commission should promptly make this spectrum available to the *CII Companies* either via *Second Thursday* or through favorable action on their longstanding *Petition for Reconsideration*.

Respectfully submitted,

  
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<sup>21</sup> As noted in the *CII Companies* Petition For Reconsideration, the Commission must treat the *CII Companies* similarly to the railroads in removing all of these critical infrastructure entities from the ambit of hearing.