

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

**APPLICATION TO ASSIGN LICENSES FROM
MARITIME COMMUNICATIONS/LAND
MOBILE, LLC, DEBTOR-IN-POSSESSION, TO
CHOCTAW HOLDINGS, LLC**)

) WT Docket No. 13-85
) File No. 0005552500
)
)
)

For Commission Consent to the Assignment of Various)
AMTS Authorizations)

To: Marlene H. Dortch, Secretary
Chief, Wireless Telecommunications Bureau

**REPLY COMMENTS AND OPPOSITION TO PETITIONS
TO DENY**

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SUMMARY

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively “Choctaw”) hereby oppose the two petitions to deny filed against the captioned application (“Application”) and reply to opposing comments. As discussed in more detail below, none of the aforementioned filings provide a basis for denying the Application pursuant to the Commission’s *Second Thursday* doctrine. Choctaw thus urges expeditious grant of the Application.

At its core, the instant Application raises a simple question: whether the Commission will apply its policies and precedent to allow parties to effectuate the bankruptcy plan approved by the United States Bankruptcy Court, Northern District of Mississippi (the “Bankruptcy Court”). It is beyond dispute that there are numerous creditors with substantial claims on the assets of Maritime Communications/Land Mobile, LLC, Debtor-in-Possession (“MCLM”). The recovery of these creditors depends upon maximizing the value of MCLM’s assets, including MCLM’s various licenses.

To that end, there were lengthy, detailed, arms-length negotiations involving MCLM, the Official Committee of Unsecured Creditors (“Creditors’ Committee”), the United States Trustee for Region 5, and other interested parties to craft a plan that would maximize recovery by the MCLM creditors. The Creditors’ Committee, among other things, closely considered plans proposed by Council Tree Investors, Inc. (“CTI”) and Choctaw to obtain MCLM’s licenses and repay MCLM’s creditors.

Ultimately, *all classes of MCLM’s creditors voted to approve the Choctaw Plan* (“Plan”) over the CTI Plan. Among other things, the Choctaw Plan:

- Lessened the rights of secured creditors to ensure that repayment of unsecured creditors would occur more quickly;
- Implemented an independent Liquidating Agent to oversee repayment to unsecured creditors and to ensure that Choctaw performs all obligations required under the terms of the Plan;
- Granted a stock pledge in favor of the Liquidating Agent, which effectively converts the unsecured creditors of MCLM into secured creditors of Choctaw; and
- Provided specific provisions whereby Sandra and Donald DePriest (collectively the “DePriests”) – the only two individuals identified as potential wrongdoers in a Commission Hearing Designation Order – would receive no proceeds or direct benefit from the sale of licenses or otherwise, would have no role in Choctaw, and would have no role with the operation or sale of the AMTS licenses going forward.

After the affirmative vote of the majority of all classes in favor of the Choctaw Plan, CTI withdrew its proposal. The Bankruptcy Court confirmed the Plan after several days of hearings in which the Commission, the Creditors’ Committee, and other entities participated. The Bankruptcy Court approved the Plan as being in the interest of the creditors, contingent upon Commission approval of the assignment of MCLM’s licenses to Choctaw. Choctaw now stands

before the Commission seeking to effectuate the Plan. If the instant transaction is not approved, the Bankruptcy Court's decision, as well as the clearly expressed desires of the vast majority of creditors, would be frustrated and innocent creditors would be harmed as a direct result.

Under *Second Thursday*, the Commission will terminate a pending hearing and permit the licensee to assign its licenses to a qualified third-party, if the following three factors are satisfied: (i) the licensee designated for hearing is in bankruptcy; (ii) the individual(s) charged with misconduct would have no part in the proposed future operations of the licensee; and (iii) the individual(s) charged with misconduct would derive no benefit from the transfer, or only a minor benefit which is outweighed by equitable consideration in favor of innocent creditors. Each of these criteria is satisfied here.

Several parties have filed comments in support of the Application, including critical infrastructure providers, several individual creditors, and the Liquidating Agent. Nevertheless, a few parties oppose the Application. These parties offer no credible evidence to suggest that implementation of the Plan would not serve the public interest by allowing MCLM's creditors the best chance for recovery. These parties instead rely on spurious and unsubstantiated allegations that the Plan was somehow improperly tainted with "insider" negotiations, that the DePriests will somehow exercise control of the MCLM licenses even after assignment to Choctaw, or that they will somehow enjoy inappropriate benefits arising from implementation of the Plan. These allegations are made despite multiple provisions of the Plan which prevent any involvement by the DePriests and require the appointment of an independent Liquidating Agent to ensure compliance with the terms of the Plan. In addition, there are sworn declarations by the principal of MCLM – Sandra DePriest – and her spouse stating that they will receive no benefit and will have no future role with regard to the licenses. A supplemental sworn declaration from Choctaw management also states that the DePriests will receive no benefit and will have no future role with regard to the licenses.

The allegations made in opposition to the Application are highly speculative, unsustainable, and do not give rise to substantial or material questions of fact regarding whether assignment of the licenses would be in the public interest. The simple facts are that Choctaw is comprised of some, but by no means all, of MCLM's creditors. The members of Choctaw are upstanding members of the business community whose qualifications to hold Commission licenses have not been challenged. Choctaw, in arms-length negotiations with the Creditors' Committee put together the Plan that MCLM's creditors and the Bankruptcy Court all recognized provided the best chance for allowing the creditors to recover.

As demonstrated in the Application and herein, the DePriests will not be involved in Choctaw's operations, nor will they enjoy any significant benefit from such operations, the disposition of the licenses, or the implementation of the Plan approved by the Bankruptcy Court. Thus, grant of the Application is justified pursuant to the Commission's well-established *Second Thursday* doctrine, which is expressly designed to ensure that the Commission accommodates bankruptcy law which, in turn, is designed to protect innocent creditors.

Allegations of wrong-doing by the DePriests, whose qualifications to hold Commission licenses are subject to a hearing, do not compel a contrary conclusion. Indeed, these allegations are immaterial to the Application process because these individuals will not be involved with the licenses after the transaction and will not substantially benefit from approval of the transaction.

Nor is there any merit to the argument that the Commission should not authorize assignment of certain of MCLM's incumbent, site-based licenses on the grounds that these licenses automatically cancelled under the Commission's rules. Both MCLM and Choctaw have sought a waiver of any construction and operational requirements that might otherwise impair the ability of MCLM to transfer licenses to Choctaw and the Commission's waiver standards are clearly met here.

In sum, the Commission should grant the Application and authorize assignment of the MCLM licenses to Choctaw, so that Choctaw may expeditiously implement the Plan confirmed by the Bankruptcy Court.

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**REPLY COMMENTS AND OPPOSITION TO PETITIONS
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Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively “Choctaw”) hereby (i) oppose the two petitions to deny filed against the captioned application¹ by Warren Havens² and Council Tree Investors, Inc. (“CTI”), and (ii) reply to comments filed by Enterprise Wireless Alliance (“EWA”), Peter Harmer (“Harmer”), and the Enforcement Bureau (“EB”).³ As discussed below, none of the aforementioned filings provide a

¹ Application to assign MCLM’s AMTS licenses and leases to Choctaw filed January 23, 2013 (FCC ULS File No. 0005552500) (the “Application”).

² Mr. Havens filed in his individual capacity and on behalf of the following entities he controls: Skybridge Spectrum Foundation, Environmental LLC, and Intelligent Transportation & Monitoring Wireless LLC.

³ EB’s filing should be stricken as unauthorized. First, EB has no delegated authority to submit comments in licensing proceedings before the Wireless Telecommunications Bureau. *See* 47 C.F.R. §§ 0.311-0.317; *Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing*, 26 FCC Rcd 6520 (2012) (“HDO”). Second, the filing attempts to critique the bankruptcy plan confirmed by the United States Bankruptcy Court, Northern District of Mississippi (“Bankruptcy Court”). The Commission was a creditor to the bankruptcy proceeding and was represented by the Department of Justice. If the Commission had concerns about the plan, it had ample opportunity and chose not to appeal the order confirming it. The Commission, and certainly not EB, does not have the authority to review and revisit bankruptcy court decisions. *See LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) (“LaRose”).

basis for denying the Application pursuant to the Federal Communications Commission's ("Commission") long standing *Second Thursday* doctrine. Choctaw thus urges expeditious grant of the Application so that the process of repaying creditors can move forward.

BACKGROUND

Maritime Communications/Land Mobile, LLC, Debtor-in-Possession ("MCLM")⁴ holds a number of Automated Maritime Telecommunications Systems ("AMTS") site-based and geographic licenses ("Licenses").⁵ On April 19, 2011, the Commission designated for hearing a series of issues relating to the relationship of certain persons (Donald and Sandra DePriest) to MCLM and whether, based on these relationships and MCLM's conduct with regard to its Auction No. 61 applications, "[MCLM] is qualified to be and to remain a Commission licensee, *and as a consequence thereof*, whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied."⁶

On August 1, 2011, while the hearing was pending, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of Mississippi (the "Bankruptcy Court"). Only two parties submitted plans to the Bankruptcy Court. It is noteworthy that neither plan offered a fixed, cash payment for the Licenses. Choctaw, whose ownership includes four of the more than one hundred twenty

⁴ MCLM hereinafter refers to Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, as well as the pre-bankruptcy Maritime Communications/Land Mobile, LLC.

⁵ Comment Sought on Application to Assign Licenses Under Second Thursday Doctrine, Request for Waiver and Extension of Construction Deadlines, and Request to Terminate Hearing, *Public Notice*, 28 FCC Rcd 3358 (2013) ("*Public Notice*").

⁶ *HDO*, 26 FCC Rcd at 6521 (emphasis added) (citation omitted); *see also id.* at 6548. The specific MCLM authorizations and applications designated for hearing are listed in the *HDO*. *Id.* at 6553-54. While a number of site-based AMTS station licenses were also designated for hearing, *id.* at 6525 n.20 and 6546, Choctaw understands that some of these incumbent site-based AMTS licenses have been canceled or are in the process of being cancelled or deleted and, thus, are no longer relevant for purposes of the *HDO* and were not included in the instant Application.

MCLM creditors,⁷ and CTI submitted competing plans. Both plans were submitted for consideration by the entire creditor group. After extensive arms-length negotiations and a balloting process conducted pursuant to bankruptcy law, an overwhelming majority of creditors *from all classes* of MCLM's creditors approved the Choctaw plan which, among other things:

- Lessened the rights of secured creditors to ensure that repayment of unsecured creditors would occur more quickly;
- Implemented an Independent Liquidating Agent to oversee repayment to unsecured creditors and to ensure that Choctaw performs all obligations required under the terms of the Plan;
- Granted a stock pledge in favor of the Liquidating Agent, which effectively converts the unsecured creditors of MCLM into secured creditors of Choctaw;⁸ and
- Provided specific provisions whereby the DePriests would receive no proceeds or direct benefit from the sale of licenses or otherwise, would have no role in Choctaw, and would have no role with the operation of sale of the Licenses going forward.

As the Bankruptcy Court Judge noted in confirming the Choctaw plan: "I look at the votes – and that's another compelling thing – that have been presented by the tally of the ballots. *Every class voted to accept confirmation* by the respected requirements of the law."⁹

After the creditors overwhelmingly selected the Choctaw plan, a bankruptcy hearing was conducted with Petitioners Havens and CTI, as well as the Commission, all participating.¹⁰ On

⁷ The members of Choctaw are upstanding members of the business community whose character to hold licenses has never been challenged.

⁸ See Warren Averett, LLC Comments, WT Docket No. 13-85, at 2-5 (filed May 29, 2013). Warren Averett, LLC was designated as the Liquidating Agent by the Bankruptcy Court.

⁹ Transcript of Hearing at 187, *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, (Bankr. N.D. Miss. Nov. 15, 2012) ("Hearing Transcript") (emphasis added). Excerpts from the bankruptcy hearing transcript are attached as Exhibit A.

¹⁰ Havens and the Commission both were parties to the hearing. CTI submitted a competing proposal to the Bankruptcy Court and participated in pre-trial activities. CTI claimed that Choctaw would not be able to obtain *Second Thursday* relief expeditiously. There were well over one hundred different creditors eligible to vote. After every class of creditors voted in favor of the Choctaw proposal, rather than the CTI proposal, CTI withdrew its proposal on the eve of the hearing and exited the bankruptcy proceeding. It appears that, by filing a petition to deny,

November 15, 2012, after several days of hearings, the Bankruptcy Court confirmed the Chapter 11 reorganization plan submitted by Choctaw (hereinafter “Plan”) which called for the assignment of MCLM’s licenses to Choctaw upon Commission approval.

On January 23, 2013, MCLM and Choctaw filed the Application seeking approval to assign MCLM’s licenses to Choctaw, and the Commission released a *Public Notice* requesting comment on the relief sought in the Application.

I. GRANT OF THE APPLICATION WILL SERVE THE PUBLIC INTEREST

Under Section 310(d) of the Communications Act of 1934, it is the Commission’s responsibility to review potential assignments of Commission authorizations and to approve such transactions if they do not violate a statute or rule, and if, after weighing “the potential public interest harms of the [transaction] against the potential public interest benefits,” it concludes that, “on balance,” the transfer “serves the public interest, convenience and necessity.”¹¹ This standard involves balancing potential public interest benefits from the transfer against potential harms.¹²

Here, the Application demonstrates that the assignment of the Licenses to Choctaw will generate substantial public interest benefits and opponents to the transaction do not provide any compelling arguments that a grant will cause serious, countervailing public interest harms. Put

CTI is attempting to delay expeditious processing of the Application in an attempt to re-open the bankruptcy process in the hopes that its previously rejected proposal will get a new life.

¹¹ Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee, *Memorandum Opinion and Order*, 15 FCC Rcd 9816, 9820 (2000); Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 8741, 8745-46 (2009).

¹² See General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee For Authority to Transfer Control, *Memorandum Opinion and Order*, 19 FCC Rcd 473, 483 (2004); Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, *Memorandum Opinion and Order*, 17 FCC Rcd 23246, 23255 (2002).

simply, the Licenses will be assigned from MCLM, a bankrupt entity that has no money to spend to further extend its business operations and lacks the fiscal capability to continue in business, to Choctaw, an entity that stands ready, willing, and able to advance the use of the Licenses in the public interest.¹³ As detailed in the Application¹⁴ and the comments of supporting parties,¹⁵ the public interest benefits include: accommodating “the national policy underlying other federal laws, such as the bankruptcy laws pertinent here;”¹⁶ promoting good spectrum policy through the continued and new use of the underlying spectrum;¹⁷ conserving the Commission’s administrative resources;¹⁸ furthering positive train control;¹⁹ and furthering the provision of safe and efficient energy services to the American public by Critical Infrastructure Industry companies.

¹³ See Application at Description of Transaction pp. 12-13.

¹⁴ See *id.* at 12-16.

¹⁵ See Comments of Southern California Regional Rail Authority, WT Docket No. 13-85, at 4-8 (May 9, 2013) (“SCRRA Comments”); Comments of Spectrum Bridge, Inc., WT Docket No. 13-85, at 1 (May 8, 2013); Joint Comments of Atlas Pipeline Mid-Continent LLC, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., and Jackson County Rural Electric Membership Corporation, WT Docket No. 13-85, at 7-14 (May 9, 2013) (hereinafter “CII Companies’ Comments”); Comments of Shenandoah Valley Electric Cooperative Comments, WT Docket No. 13-85, at 1-4 (May 9, 2013) (“Shenandoah Valley Comments”).

¹⁶ San Diego Television, Inc., *Memorandum Opinion and Order*, 11 FCC Rcd 14689, 14693 (1996) (citing *LaRose*, 494 F.2d at 1146 n.2).

¹⁷ See, e.g., *Second Thursday (WWGM), Nashville, Tenn. For Renewal of License, Memorandum Opinion and Order*, 25 F.C.C.2d 112, 115 (1970) (“*Second Thurs. Recon. Order*”) (including among the “substantial equities” weighing in favor of relief the “public interest in the resumption of service” on the spectrum in question).

¹⁸ See Applications for Assignment of Licenses WSTX(AM) and WSTX-FM, Christiansted, U.S. Virgin Islands, *Memorandum Opinion and Order*, 25 FCC Rcd 7591, 7599 (2010).

¹⁹ See Comments of Association of American Railroads, WT Docket No. 13-85, at 1-3 (May 9, 2013).

The Petitioners and commenters opposing the Application do not offer any compelling arguments that contradict any of these significant public interest benefits.²⁰ Indeed, Choctaw has been hard pressed to find even a cite to Section 310(d) in the petitions and comments opposing the Application, much less a compelling challenge to the obvious public interest benefits of this transaction. In sum, grant of the Assignment Application will serve the public interest as required under Section 310(d) of the Communications Act.²¹

II. ALL OF THE *SECOND THURSDAY* REQUIREMENTS ARE SATISFIED AND MCLM'S AMTS LICENSES SHOULD BE ASSIGNED TO CHOCTAW

Absent serious public interest challenges to the Applications, the Petitions and comments opposing the Application turn primarily on the technical argument that the Commission should deny the application pursuant to the *Jefferson Radio* decision, which established a policy that the Commission generally will not grant assignment applications when the licenses are subject to a hearing involving the qualifications of the license holder.²² The Commission, however, has long recognized that rigid application of *Jefferson Radio* will not necessarily serve the public interest, particularly in cases involving bankruptcy where the need to protect innocent creditors of the licensee is more important than engaging in a lengthy hearing as to the alleged bad actor's character. To this end, the Commission recognized an exception to *Jefferson Radio* – the *Second*

²⁰ For example, some parties suggest that allowing MCLM to assign its incumbent, site-based licenses to Choctaw would be contrary to the public interest. *See* Comments of the Enforcement Bureau, WT Docket 13-85, at 26-27 (filed May 9, 2013) (“EB Comments”); Comments of the Enterprise Wireless Alliance, WT Docket No. 13-85 at 2-4 (filed May 9, 2013) (“Enterprise Wireless Comments”). As discussed below, this argument is wholly without merit.

²¹ 47 U.S.C § 310(d).

²² *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

Thursday doctrine – which makes appropriate accommodation for bankruptcy law and the protection of innocent creditors.²³

Under *Second Thursday*, the Commission typically will terminate any pending hearing and permit the licensee to assign its licenses to a qualified third-party, if the following three factors are satisfied: (i) the licensee designated for hearing is in bankruptcy; (ii) the individual(s) charged with misconduct would have no part in the proposed future operations of the licensee; and (iii) the individual(s) charged with misconduct would derive no benefit from the transfer, or only a minor benefit which is outweighed by equitable consideration in favor of innocent creditors.²⁴ Each of these criteria is satisfied here.²⁵ Moreover, grant of the Application will further the objectives of the Bankruptcy Court.

A. MCLM Has Obtained Bankruptcy Protection

The following facts are undisputed: on August 1, 2011, while the hearing was pending, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code; the

²³ *Second Thurs. Corp. (WWGM), Nashville, Tenn. For Renewal of License*, 22 F.C.C.2d 515 (1970) (“*Second Thurs.*”), *recon. granted in part*, 25 F.C.C.2d 112 (1970); *LaRose*, 494 F.2d at 1146 n.2.

²⁴ *Second Thurs.*, 22 F.C.C.2d at 516; *see Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15.

²⁵ Some parties spend considerable time challenging the character of Mr. DePriest based on past conduct. *See* Peter Harmer Comments, WT Docket No. 13-85, at 2-19 (filed May 9, 2013); Petition of Council Tree Investors, Inc. to Deny, WT Docket No. 13-85, at 3-9 (filed May 9, 2013) (“CTI Petition”); Petition of SkyTel-1 Entities to Dismiss or Deny, and Comments, WT Docket No. 13-85, at 10 (filed May 9, 2013) (“Havens Petition”). Such issues are irrelevant to the *Second Thursday* analysis because, in order to obtain relief pursuant to this doctrine, Mr. DePriest can have no future role with regard to the Licenses and can receive no significant benefit from the proposed transaction. As discussed below, each of these factors is satisfied here. Moreover, *Second Thursday* looks at benefits that will result from grant of the Application, not benefits that a wrongdoer may have received prior to such grant. *See Second Thurs.*, 22 F.C.C.2d at 515; *see Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15.

Bankruptcy Court approved the Plan on November 15, 2012;²⁶ and the Application seeks to effectuate the Plan. Thus, the Application satisfies the first of the *Second Thursday* criteria.

B. The DePriests Will Have No Role With Choctaw

The Application satisfies the second prong of the *Second Thursday* doctrine because the DePriests – the alleged wrongdoers identified in the *HDO* – will have no role in Choctaw and will play no future role with respect to any of the Licenses subject to the hearing, or any licenses currently held by MCLM. The pending Application contains a declaration from Patrick Trammell, Managing Member of Choctaw, stating under penalty of perjury that the DePriests will have no future role with the Licenses.

Moreover, during the bankruptcy hearing, the Bankruptcy Judge reviewed numerous exhibits, including the Choctaw proposal, and lengthy testimony. Although not binding on the Commission, the Bankruptcy Judge determined that it was “pretty undisputed as far as the proof that I’ve heard today” that the DePriests would have no future role with Choctaw.²⁷

Nevertheless and despite the fact that the Commission was represented in the bankruptcy hearing, EB now claims that additional evidence is necessary to establish that the DePriests will have no ongoing role with the Licenses.²⁸ Attached hereto as Exhibit B is a Supplemental Declaration from Patrick Trammell stating, among other things:

- Neither the DePriests nor any entity with which the DePriests are affiliated will have any involvement with the Licenses through any future transactions; and
- Choctaw will not allow Critical RF to use the spectrum associated with the Licenses.²⁹

²⁶ See Order Confirming Plan of Reorganization, *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, (Bankr. N.D. Miss. Jan. 11, 2013) (“Confirmation Order”).

²⁷ Hearing Transcript at 183 (“Hearing Transcript”).

²⁸ EB Comments at 12-13.

²⁹ See Exhibit B; see also EB Comments at 13.

Based on the Application and the foregoing, the DePriests will play no future role with respect to any of the Licenses currently held by MCLM.

C. The DePriests Will Not Realize Any Significant Benefit From The Transaction

The Application satisfies the third – and final – prong of the *Second Thursday* doctrine because the DePriests will not realize any significant benefit from the assignment of the Licenses to Choctaw or Choctaw’s management of the Licenses following the assignment. The Plan specifically identifies the parties – *i.e.*, the creditors – that will benefit from the proposed assignment. Mr. and Mrs. DePriest are not listed as creditors and will not receive any portion of the purchase price associated with the operation or sale of the Licenses.³⁰ Further, the Plan requires an independent Liquidating Agent who, in turn, is responsible for ensuring that any funds are distributed to creditors in the manner approved by the Court. Thus, the Plan itself makes clear that the DePriests will not realize any significant benefit from approval of the instant transaction.³¹

³⁰ Moreover, no entity in which the DePriests hold an ownership or management interest is listed as a creditor. Despite EB’s erroneous assertion that the DePriests may receive \$6.8 million pursuant to the Plan (EB Comments at n.53), neither the DePriests nor any entity owned or controlled by the DePriests will receive any distributions under the Plan. *See Confirmation Order* at 11 (“Don DePriest, Sandra DePriest and any entities under their ownership and/or control shall not participate in, nor shall they receive any recovery or distributions made by the Administrative Agent/Liquidating Agent under or in connection with the Plan.”). The Plan provides that the Liquidating Agent may object to claims, including the claims of the DePriests and any entities that the DePriests own. *See Confirmation Order*, at 8 (“notwithstanding anything to the contrary in the Plan, the Debtor and the Liquidating Agent retain the sole right to object to Claims through and including 90 days following first FCC approval of the transfer of any FCC Licenses to Choctaw and Holdings.”). Thus, under the Plan, the only creditors that will receive a distribution are creditors that have valid claims; which specifically excludes the DePriests. Finally, as noted in the DePriests’ declarations attached to MCLM’s response which is being filed concurrently, they have waived claims totaling approximately Seven Million Dollars.

³¹ CTI seeks to expand this factor to include benefits a wrongdoer previously received and that are not contingent upon approval of an application seeking *Second Thursday* relief. *See* CTI Petition at 2-9. Such factors are not relevant to the *Second Thursday* doctrine which evaluates

To reinforce this point, the Supplemental Declaration of Patrick Trammell states that “the DePriests will not receive any proceeds from any future sales and assignments of the Licenses by Choctaw to third parties.”³² Further, Choctaw has been informed that declarations from Sandra and Donald DePriest will accompany MCLM’s response and state that they have affirmatively waived any benefit from the proceeds of future sales transactions associated with the subject Licenses.³³

1. THE GUARANTEES OF DONALD DEPRIEST DO NOT CONFER ANY SIGNIFICANT BENEFIT

Some parties claim that an impermissible benefit may accrue to the DePriests as a result of an alleged release of personal loan guarantees provided by Mr. DePriest to some of MCLM’s many creditors.³⁴ There has been no such release. The Plan clearly states: “claims by any person or entity against any other person or entity guaranteeing or otherwise liable for the obligations of the Debtor shall not be impaired as a result of the confirmation of the Plan or its effectiveness.”³⁵ Thus, if the Plan does not raise sufficient revenue to pay MCLM’s creditors holding these guarantees in full, those creditors retain the ability to enforce the guarantees.

benefits that will accrue only if the proposed transaction is approved. *See Second Thurs.*, 22 F.C.C.2d at 515; *see Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15. Moreover, CTI’s “facts” are wrong. It claims that Mr. DePriest received a benefit when Southeastern Commercial Finance (“SCF”) forgave his \$438,102 debt in return for his stake in SCF. CTI Petition at 7-8. Mr. DePriest’s stake in SCF was worth more than the debt, so he received no benefit. *See Exhibit C, Declaration of Anthony Vincent LaRocca, SCF Auditor.* To the extent certain CTI arguments relate to benefits that it claims should have been part of the bankruptcy “clawback” process, these concerns should have been raised with the Bankruptcy Court, not the Commission. CTI Petition at 8.

³² Exhibit B. This language addresses concerns raised by EB. *See EB Comments* at 14-15.

³³ This language addresses concerns raised by EB. *See EB Comments* at 15.

³⁴ *See id.* at 15-16; Havens Petition at 6-9; CTI Petition at 3, 5-6.

³⁵ Confirmation Order at 19, Exh. A. Only two of Choctaw’s investors have guarantees from the DePriests: Watson & Downs, LLC and Hayne Hollis. Both of these creditors combined have a total guaranteed debt of \$5,569,846. Pursuant to the Plan, all of the Choctaw investors assigned their claims against MCLM to Choctaw, and Choctaw in-turn credit bid those claims in

Moreover, even if there was a release involved, the Commission has previously determined that the elimination of potential secondary liability is an incidental benefit that does not preclude *Second Thursday* relief.³⁶ EB cites to *Capital City Communications, Inc.* and *Mid-State Broadcasting Co.* for the proposition that *Second Thursday* relief can be denied where (i) the guarantees of alleged wrongdoers would be relieved and (ii) the relieved guarantees would constitute 20% or more of the purchase price.³⁷ These cases do not support denial of *Second Thursday* in this instance.

In each of the aforementioned cases, the alleged wrongdoer's guarantee was forgiven in situations where the purchase price was less than the debts owed.³⁸ Here, as discussed above, Mr. DePriest's guarantees have not been forgiven. If there is a shortfall, the creditors unaffiliated with Choctaw are free to pursue Mr. DePriest's guarantees. Although Choctaw has assumed the risk as to the value of the Licenses, various parties have stated that the value of the

consideration of receiving the Licenses. *See id.* at 10. The effect of Choctaw's credit bid of the claims of the Choctaw investors is not a forgiveness of the DePriests' guarantees or a release of the DePriests' guarantees. Rather, Choctaw's credit bid constituted a payment-in-full of the Choctaw investors' claims against MCLM, just as if MCLM's assets had been sold for cash. *See Fire Eagle, LLC v. Bischoff (In re: Spillman Dev. Group. Ltd., 710 F.3d 299 (5th Cir. 2013).* Upon the satisfaction of the Choctaw investors' claims against MCLM, the guarantees are not enforceable; the balance of the underlying debt has been fully collected and cannot be collected a second time. *Id.*

³⁶ *See, e.g.,* KOZN FM Stereo 99 LTD., *Memorandum Opinion and Order*, 6 FCC Rcd 257, 257 (1991); *Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15; Pyle Communications of Beaumont, Inc., *Memorandum Opinion and Order*, 4 FCC Rcd 8625, 8626 (1989) ("*Pyle Order*").

³⁷ EB Comments at 15-16 (citing *Mid-State Broadcasting Co.*, 61 F.C.C.2d 196, 197 (1976) and *Capital City Communications, Inc.*, 33 F.C.C.2d 703, 712 (1972)).

³⁸ *Capital City Communications, Inc. For Renewal of License of Radio Station WLUX, Baton Rouge, La., Memorandum Opinion and Order*, 33 F.C.C.2d at 703, 712 (1972) ("*Capital City Order*"); *Mid-State Broadcasting Company (WHLW), Lakewood, New Jersey for Renewal of License, Memorandum Opinion and Order*, 61 F.C.C.2d at 196, 197 (payment of \$290,000 for assets where bankruptcy debt exceeded \$520,000).

Licenses should exceed the amount of MCLM's debt.³⁹ Thus, the present situation is completely distinguishable from the cases relied upon by EB.

Moreover, the *Capital City* decision cited by EB should be given no precedential value.

This case led to the seminal *LaRose* decision in which the United States Court of Appeals for the D.C. Circuit warned:

Administrative agencies have been required to consider other federal policies, not unique to their particular area of administrative expertise, when fulfilling their mandate to assure that their regulatees operate in the public interest. . . . [A]gencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.

The court then stated that the Commission must “accommodate[] the policies of federal bankruptcy law with those of the Communications Act.”⁴⁰

Against this backdrop, although the court did not specifically rule on the “first proposed sale” at issue in the case relied on by EB,⁴¹ it stated:

Application of *Second Thursday* requires an ad hoc balancing of the possible injury to regulatory authority that might flow from wrongdoers' realization of benefit against the public interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party. *The first proposed sale and assignment was very beneficial to Capital's creditors and appeared to benefit the principal wrongdoers of Capital only indirectly. . . .*⁴²

³⁹ EB comments are inconsistent. Logically, one cannot have it both ways and argue that the transaction should be denied because: (i) it would produce a windfall (an argument that is, in any event not relevant under *Second Thursday*); or (ii) it would produce a shortfall implicating the guarantees of Mr. DePriest. See EB Comments at 10-11 (implying that creditors may not get paid in full); *id.* at 16-19 (Choctaw will receive a “windfall”). If the value of the licenses exceeds the MCLM debt, then grant of the Application would provide no benefit to Mr. DePriest because the debts would be paid in full and the guarantee would never be triggered.

⁴⁰ *LaRose*, 494 F.2d at 1146 n.2.

⁴¹ See *Capital City Order*, 33 F.C.C.2d 703.

⁴² *LaRose v. FCC*, 494 F.2d at 1149 (emphasis added).

Post-*LaRose*, and consistent with the above-quoted language, the Commission has concluded that the “minor benefit” associated with the elimination of secondary liability is generally “outweighed by the equitable considerations favoring innocent creditors.”⁴³

2. INNOCENT CREDITORS WOULD BENEFIT SIGNIFICANTLY FROM GRANT OF THE APPLICATION

EB alleges that there is insufficient information in the Application to determine whether the proposed transaction will benefit innocent creditors.⁴⁴ This allegation demonstrates a misunderstanding of the differing roles played by the Bankruptcy Court and the Commission with regard to creditors.

The question of whether the Plan will benefit creditors is one for the Bankruptcy Court to resolve, which it did by confirming the Plan after a confirmation hearing.⁴⁵ As the Commission has noted, it “seeks, where possible within the framework of the requirements of the Communications Act, to accommodate the policies of the Bankruptcy Code and *the findings of bankruptcy courts.*”⁴⁶ It is “well-established precedent that the Commission should avoid creating conflicts over matters within a federal or state court’s jurisdiction.”⁴⁷

Under *Second Thursday*, bankruptcy courts evaluate the best interests of creditors and the Commission evaluates the future role and benefits that will flow to purported wrongdoers as a

⁴³ *Pyle Order*, 4 FCC Rcd at 8626.

⁴⁴ EB Comments at 7-12.

⁴⁵ *Cf. id.* at 8-12.

⁴⁶ New DBSD Satellite Services G.P., *Order*, 25 FCC Rcd 13664 (IB 2010) (citing *LaRose*, 494 F.2d 1145).

⁴⁷ George L. *Miller*, Memorandum Opinion and Order, 24 FCC Rcd 3471, 3472 (2009) (citing *Kralowec Children’s Family Trust*, 12 FCC Rcd 19690 (MMB 1997) (Commission will not revisit issues previously considered and resolved by a bankruptcy court); *LaRose*, 494 F.2d at 1147 (Commission is obligated to protect innocent creditors as long as the transaction in question does not unduly interfere with objectives of the Communications Act)).

result of a proposed transaction, in this case Sandra and Donald DePriest.⁴⁸ By any objective standard, the Plan contemplates a full repayment of creditors, independent oversight to ensure such, and a priority payment (\$600,000) to unsecured creditors to the detriment of secured creditors. Consistent with *LaRose*, the Commission should not evaluate Bankruptcy Court determinations regarding the sufficiency of reorganization plans or creditor issues pursuant to *Second Thursday*.⁴⁹ To do so would be antithetical to the underlying purpose of the doctrine – to accommodate bankruptcy law.⁵⁰

To the extent Havens’ claims that the creditors are not “innocent,” the claim should be summarily rejected.⁵¹ The question of “innocent creditors” is an issue for the Bankruptcy Court unless the creditors were identified as potential wrongdoers by the Commission. As the Commission has noted:

[I]n the *Second Thursday* situation, the public interest benefits stem from the facts that (1) the transfer furthers the ends of the bankruptcy law by protecting innocent creditors, and (2) the transfer takes the station from the hands of a trustee in bankruptcy, who may be ill-equipped to operate the station. *The Commission’s deterrence policy is preserved because the licensee’s creditors, not the accused wrongdoers, derive the benefit from the transaction.*⁵²

None of the creditors entitled to benefits under the Plan, including those involved in Choctaw, were accused of wrongdoing in the *HDO*.

⁴⁸ *LaRose*, 494 F.2d at 1146 n.2; Shareholders of Stop 26 Riverbend, Inc., *Memorandum Opinion and Order*, 27 FCC Rcd 6516, 6524 (2012). The court already has resolved the creditor issues.

⁴⁹ *LaRose*, 494 F.2d at 1146 n.2.

⁵⁰ The Bankruptcy Court has the authority and the expertise necessary to make these determinations. EB’s comments demonstrate why creditor issues are best left to the bankruptcy courts – arguing first that the Plan confirmed by the Bankruptcy Court will result in a windfall to Choctaw after all creditors are paid, and then arguing that the Plan may not result in payments sufficient to repay all creditors. EB Comments at 5, 8-12. EB cannot have it both ways.

⁵¹ *See* Havens Petition at 12-16.

⁵² RKO General, Inc. (KHJ-TV), Los Angeles, California, *Memorandum Opinion and Order*, 3 FCC Rcd 5057, 5061 (1988).

Moreover, there was extensive testimony before the Bankruptcy Court on the issue of innocent creditors and potential benefits to Mr. DePriest. After reviewing the evidence, the Judge stated:

[A]re we to choose to punish legitimate creditors just so someone might get an indirect benefit? No. I agree with the witness who testified yesterday that said that's a small issue. And if these creditors are paid, then they ought to get paid and they certainly shouldn't be punished.⁵³

Accordingly, there is no basis for finding Choctaw or its members to be anything other than innocent, legitimate creditors.

D. There Are No Additional *Second Thursday* Factors

EB attempts to graft new requirements onto the Commission's *Second Thursday* precedent and then argue that the Application does not satisfy these new criteria. EB's arguments, however, are fatally flawed. The fact is that the three criteria above are the *only* factors used in a *Second Thursday* analysis and there is no legitimate basis for establishing new requirements.

1. THERE IS NO TRUSTEE REQUIREMENT

EB suggests that *Second Thursday* requires the use of a trustee.⁵⁴ Such a requirement has never been identified as a factor in *Second Thursday* cases. Moreover, the absence of a trustee here is purely a matter of form over substance and does not have the material significance EB implies.

⁵³ Hearing Transcript at 186.

⁵⁴ EB Comments at 7-8. Although there is no "trustee," there is a Liquidating Agent that is responsible for receiving all funds from transactions and paying creditors according to the Plan confirmed by the court. The Liquidating Agent also has a right to review future transactions and to object to claims.

Bankruptcy law recognizes the debtor-in-possession to be the equivalent of a trustee.⁵⁵ Pursuant to Section 1107 of the Bankruptcy Code, a debtor-in-possession has all of the rights and fiduciary obligations of a trustee.⁵⁶ Indeed, the terms “trustee” and “debtor in possession,” as used in the Bankruptcy Code, are essentially interchangeable.⁵⁷ Hence, by virtue of being a debtor-in-possession, MCLM operated not only as a business entity, but essentially as a trustee as well.⁵⁸ Because MCLM has the exact same obligations as a bankruptcy trustee, there is no functional difference between a bankruptcy trustee making an application to assign licenses, and MCLM making the Application to assign the Licenses. In short, the lack of a trustee in this case is a distinction without a difference and does not justify denying the Application.⁵⁹

⁵⁵ 11 U.S.C. § 1108 (providing that specifically “[u]nless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor’s business”).

⁵⁶ The term “debtor in possession” refers to a debtor in a chapter 11 case for which no trustee has been appointed. *See* 11 U.S.C. § 1101(1). When no trustee is appointed, the Bankruptcy Code gives a debtor in possession the powers and duties of a trustee. *Id.*; § 1107(a); FED. R. BANKR. P. 9001(10). *See also In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 474 (3d Cir. 1998).

⁵⁷ *See L.R.S.C. Co. v. Rickel Home Centers, Inc. (In re Rickel Home Centers, Inc.)*, 209 F.3d 291, 297 & n. 7 (3d Cir. 2000).

⁵⁸ *See Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 355 (1985) (citing *Wolf v. Weinstein*, 372 U.S. 633, 649-652 (1963)). CTI also implies that a trustee was necessary to avoid insider dealings and impermissible “horse trading.” *See* CTI Petition at 3, 5. CTI’s claim is baseless. There is nothing unusual about Ms. DePriest remaining in control of MCLM during the Bankruptcy Case. As discussed above, the Bankruptcy Code permits Ms. DePriest to remain in control of MCLM as debtor-in-possession and to act as the trustee throughout the Bankruptcy Case.

⁵⁹ EB also suggests that *Second Thursday* does not apply unless a third party offers to purchase the Licenses. EB is mistaken. *Second Thursday* relief has previously been granted where minority owners seek approval to acquire licenses from majority owners accused of wrongdoing. *See Seraphim Corporation, Memorandum Opinion and Order*, 4 FCC Rcd 8819, 8821 (1989). Moreover, Choctaw’s credit bid is equivalent to a cash bid.

2. SECOND THURSDAY DOES NOT INVOLVE AN ANALYSIS OF PROFITABILITY

EB also suggests that *Second Thursday* requires an analysis to ensure that the party obtaining the license from the bankrupt entity does not receive a “windfall.”⁶⁰ This argument is fundamentally speculative. EB cites to no Commission precedent defining what might constitute an improper “windfall.” More important, EB’s argument itself is premised on a set of assumptions EB makes regarding the value of the licenses and the erroneous assumption that transactions requesting *Second Thursday* relief must be devoid of profit potential.

Indeed, when the question of whether there would be a windfall was raised before the Bankruptcy Court, the Judge noted that it was difficult to value the Licenses and that “the existence of the Skytel [Havens] challenges at every level have certainly impacted the valuation of the spectrum.”⁶¹ The Judge also expressed skepticism about any windfall claims given that, by his calculation, the outstanding debt exceeded \$38 million:

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

. . . I looked at the amount of debt involved. You’ve got the secured debt that could range between, in my recollection, \$15-17 million. You’ve got the voting unsecured creditors that voted in this case \$23 million. You’ve got the administrative claims in this case of an undetermined amount right now. And then you’ve got as Mr. Spencer just mentioned a moment ago, the cure claims.

So that’s a lot of debt out there. If the FCC wants to look at windfall, then they’re going to have to look at all these debts too.

⁶⁰ EB Comments at 16-19. EB criticizes the Application for citing to no case where a windfall has been permitted. Such a citation would not have been material because this issue has never been adopted as a condition for granting *Second Thursday* relief.

⁶¹ Hearing Transcript at 184.

And then when – windfall doesn't really bother me a lot. I'm not sure there is a great amount of windfall here.⁶²

The actual consideration that Choctaw is providing, however, exceeds the Judge's recollection and thoroughly undermines any concerns regarding the potential for a windfall. Choctaw effectively bid more than \$42 million for MCLM's assets during the bankruptcy process. Choctaw credit bid the amount of \$14,995,204.88 for its claims. Choctaw also assumed another \$25,855,142.24⁶³ in pre-petition claims against MCLM. Finally, pursuant to the Plan, Choctaw agreed to pay the administrative expense claims incurred during the Bankruptcy Case which currently exceed \$1,183,582.04.⁶⁴ Thus, the minimum consideration to MCLM for the Licenses is \$42,033,929.16.⁶⁵ This consideration approximates the value placed on the Licenses during the bankruptcy hearing, assuming "fire sale" pricing can be avoided.

Moreover, it would be a terrible precedent for the Commission now to interpret *Second Thursday* to preclude an acquiring party from making a profit upon the resale of licenses acquired through the bankruptcy process. Such an approach would undermine the willingness of parties to step forward in the bankruptcy process. As the Bankruptcy Court judge noted:

But I think about Choctaw and their involvement in this case. There is a lot of reason for them to be involved in this case. Number one it's sort of self-preservation at one point. But they're taking a risk. And sometimes when you take a risk, you expect a little [profit] – no telling how big the pot of gold might be at the end of the rainbow, it might be little bitty, it might be good. But *you're not out there for philanthropic effect on the economy. You're there to make a living and to make money and, I mean, I understand that and I think that's what makes our country go. So*

⁶² *Id.* at 185.

⁶³ Amount is derived from MCLM's schedules and the Bankruptcy Court claims register. The amount specifically excludes any and all claims of the DePriests or any entities they own.

⁶⁴ This amount reflects *only* the legal costs to date and was derived from Bankruptcy Court orders approving legal costs for administrative expenses.

⁶⁵ This amount does not include other consideration such as the payment of MCLM's debtor-in-possession loan.

*you consider all those factors and I hope the FCC will, because I'm considering them in my decision here today.*⁶⁶

No party has cited a case where the Commission has traced the proceeds of subsequent transactions to determine whether a recipient of *Second Thursday* relief made a profit. It is difficult to imagine a *Second Thursday* applicant who would pursue a transaction with no hope of earning a profit. Additionally, EB discussed the broad concept of a “windfall,” yet offers no clear indication of what it, the Commission, or anyone else, might consider a “windfall” profit. There is simply no basis for adopting such an approach and EB is mistaken to suggest otherwise.

III. THE PLAN WAS CONFIRMED WITHOUT ANY INSIDER DEALING INVOLVING THE DEPRIESTS

CTI alleges that “[t]he design of the bankruptcy Plan of Reorganization was also a product of [Sandra DePriest’s] substantial involvement and control”⁶⁷ and that “this is nothing more than an improper ‘inside deal’ where the DePriests provided their support for the Choctaw plan in return for (a) existing transfers of value to the DePriests, as listed above, and (b) the forbearance and potential elimination of personal guarantee obligations of the DePriests.”⁶⁸ CTI’s spurious allegations are wrong.

Ms. DePriest and MCLM *were not* the primary participants for the negotiation of the Plan as CTI alleges. In fact, because the Plan is designed to protect the interests of creditors, it was primarily the product of negotiation between Choctaw and the Official Committee of Unsecured Creditors (“Creditors’ Committee”). At the confirmation hearing for the Plan, Patrick Trammell, a witness on behalf of Choctaw, testified as follows:

⁶⁶ Hearing Transcript at 185 (emphasis added).

⁶⁷ CTI Petition at 5.

⁶⁸ *Id.*

Question by Counsel: And did you get all the terms and conditions you wanted under the Choctaw proposal worked under this plan, or was there negotiations about those points?

Answer by Mr. Trammell: There was hours of negotiations. I believe your partner, Mr. Bensinger has told me that we spent – he did, and I did with Mr. Solomon and his partner, Mr. Meek over 60 hours, you know, negotiating, you know, the unsecured creditor’s part of this plan.⁶⁹

This makes sense as Creditors’ Committee of Unsecured Creditors represented essentially all of the creditors with claims against MCLM; claimholders who wanted to get paid pursuant to the Plan. The DePriests both knew that they would not be able to receive a distribution under the Plan and were therefore not involved in the Plan negotiations. Simply put, their approval of the Plan was not essential to approval by the creditors or the Bankruptcy Court, so there was no “quid pro quo” needed.

The Bankruptcy Court’s findings with regard to the Plan contradict CTI’s fanciful allegations that there was a *quid pro quo* between the DePriests and Choctaw. The Bankruptcy Court found that “[t]he Plan has been proposed in good faith and not by any means forbidden by law.”⁷⁰ The Bankruptcy Court’s findings of fact belie any allegation of an impermissible deal.

Finally, CTI claims there was a back-room deal whereby creditors agreed to forbear from enforcing Mr. DePriest’s guarantees in return for the DePriests’ support for Choctaw’s plan.⁷¹ CTI’s contention is similar to the faulty logic that other courts have rejected: “If we had some

⁶⁹ Transcript of Confirmation Hearing at 199, *Maritime Communications/Land Mobile LLC*, Case No. 11-13463-DWH (Bankr. N.D. Miss. Nov. 14, 2012) (“Confirmation Hearing Transcript”). Mr. Solomon and Mr. Meek were counsel for the Creditors’ Committee.

⁷⁰ *Confirmation Order* at 3.

⁷¹ CTI Petition at 6, n.16.

ham, we could have some ham and eggs, if we had some eggs.”⁷² That is, if the Commission imagines that the secured lenders agreed to forbear, and if the Commission imagines that the DePriests agreed to support the Choctaw plan, then the only conclusion that the Commission can come to is that the DePriests receive a benefit from forbearance on the guarantees. However, there is no ham and there are no eggs; the secured lenders never made a deal to forebear on their guarantees and the DePriests never made a deal to support the Choctaw plan.

IV. THE BUREAU SHOULD ASSIGN THE SITE-BASED LICENSES TO CHOCTAW EVEN IF IT FINDS THE *SECOND THURSDAY* DOCTRINE DOES NOT APPLY TO THESE LICENSES

As discussed, there are two categories of AMTS licenses subject to this application – (1) incumbent, site-based licenses; and (2) geographic, auctioned licenses. Petitioners and commenters have argued that MCLM should not be permitted to assign the incumbent site-based licenses to Choctaw because these licenses do not fall within the parameters of *Second Thursday* and because there remain outstanding questions regarding whether some of these licenses have automatically cancelled pursuant to sections 1.955(a)(2) or (a)(3) of the Commission’s rules, 47 C.F.R. § 1.955(a)(2) and (a)(3).⁷³ The petitioners and commenters, however, are wrong – there is no fatal legal impediment barring the Bureau from granting authority for MCLM to assign the incumbent, site-based AMTS licenses to Choctaw.

⁷² *Barnette v. Evans*, 673 F.2d 1250, 1252 (11th Cir. 1982).

⁷³ See EB Comments at 21-23; Havens Petition at 24, Enterprise Wireless Comments at 2-4. The question of whether the incumbent site-based licenses automatically cancelled under 47 C.F.R. §§ 1.955(a) and 80.49 was designated for hearing before the Chief Administrative Law Judge (hereinafter “Issue G” of the *HDO*) and is pending before the judge pursuant to a motion for summary decision. See *HDO*, 26 FCC Rcd at 6546, 6547; see also Maritime Communications/Land Mobile, LLC Motion for Summary Decision on Issue G, MB Docket No. 11-71 (filed May 8, 2013); Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, MB Docket No. 11-71 (filed May 21, 2013).

MCLM and Choctaw have sought a waiver of any construction and operational requirements that might otherwise impair the ability of MCLM to transfer the Licenses to Choctaw.⁷⁴ Petitioners and commenters themselves admit that the Commission may grant the requested waiver if:

In view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁷⁵

There can be no doubt that these standards are met here.

A. Strict Application of Section 1.955 Would Be Contrary to the Public Interest

As described in the Application and above, strict enforcement of Section 1.955(a) could potentially punish innocent creditors by precluding MCLM from transferring the incumbent, site-based AMTS licenses to Choctaw. Such an outcome would be contrary to the fundamental policies underlying the Commission's *Second Thursday* doctrine and frustrate implementation of the Plan as confirmed by the Bankruptcy Court. This point alone is sufficient to warrant grant of the requested waiver of Section 1.955(a).

Indeed, in *LaRose*, the Court of Appeals ordered the Commission to reopen a final decision denying a broadcast license renewal application and directed the agency to consider the

⁷⁴ Application at Description of Transaction pp. 10-12.

⁷⁵ 47 C.F.R. § 1.925(b)(3)(ii). *See* EB Comments at 23; Havens Petition at 22. Haven's efforts to graft an "exhaustion of state remedy" requirement onto the Commission's waiver standard are wholly unsupported. Havens Petition at 22-24. Section 1.925 of the Commission's rule on its face contains no such requirement. 47 C.F.R. § 1.925. Similarly, while the two cases cited by Havens do discuss the availability of state law remedies, nothing in either case requires that the Commission may grant a waiver only upon an exhaustion of state law remedy. Havens Petition at 23-24 (citing *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Connect America Fund High-Cost Universal Service Support*, 2013 FCC LEXIS 1824 (WCB rel. Apr. 30, 2013)). Moreover, there is no state law remedy available here. The Commission has exclusive jurisdiction to manage wireless spectrum and the United States Court of Appeals of the District of Columbia Circuit has exclusive jurisdiction to review Commission licensing actions. *See* 47 U.S.C. §§ 301, 303, and 402(b).

proposed sale and assignment of that license pursuant to the *Second Thursday* doctrine.⁷⁶ In that case, the Commission had denied a petition to terminate the pending license renewal hearing and approve the transfer and sale of said license pursuant to *Second Thursday*.⁷⁷ While the receiver was negotiating a second sale, the Commission both declined to renew the license and to consider the second transaction based on principles of administrative finality. The D.C. Circuit concluded that the Commission erred, finding:

The Commission’s refusal to consider the second proposal frustrates the public interests recognized in *Second Thursday* itself. Since the license is by far the most valuable asset of Capital City, the Commission’s refusal effectively deprives creditors of any significant recovery of the moneys they have advanced.⁷⁸

Section 1.955(a) should not be invoked as a bar to consideration of the assignment of MCLM’s incumbent, site-based licenses to Choctaw for the same reasons – to do so would “frustrate[] the public interests recognized in *Second Thursday* itself.”⁷⁹

Further, *Carson City*, another analogous case, states:

It is well established that where, as here, a bankrupt permittee seeks an extension of time in order to assign a construction permit, and no wrongdoer would benefit thereby, the Commission has considered the equities of the creditor as an important factor in determining whether the extension was warranted. Moreover, the proposed assignee’s firm commitment to build satisfies a requirement which, in the past, has also been an important factor in determining whether other matters exist which warrant favorable action on requests for extension of time to construct.⁸⁰

⁷⁶ *LaRose*, 494 F.2d at 1149.

⁷⁷ *Id.* at 1146.

⁷⁸ *Id.* at 1150.

⁷⁹ *Id.*

⁸⁰ *Carson City Broadcasting Corp. (KRWL-FM) Carson City, Nev. For Construction Permit To Replace Expired Permit, Decision*, 26 F.C.C.2d 694, 695-96 (Rev. Bd. 1970) (“*Carson City Decision*”) (internal citations omitted).

Moreover, in *Manning Telecasting*, a construction permit that had expired on multiple occasions was reinstated and extended in order to accommodate bankruptcy laws.⁸¹ The logic of these cases applies with full force here.⁸² The Wireless Telecommunication Bureau's public interest determinations with regard to the instant applications require it to give deference to and to avoid frustrating the purposes of the bankruptcy laws through rigid and formalistic interpretation and enforcement of its construction and operational rules.

B. Strict Application of Section 1.955 Would Be Inequitable

Waiver is also warranted because strict application of the permanent discontinuance rule in Section 1.955(a)(3) of the Commission's rules would be fundamentally inequitable and

⁸¹ *Manning Telecasting, Inc.*, 1986 FCC LEXIS 3974 ¶12 (MMB 1986) (“Before an extension application can be granted, a permittee must demonstrate that its failure to complete construction within the time provided was due to causes beyond its control or that there are other matters sufficient to justify the extension, 47 C.F.R. Section 73.3534(a). Where, as here, the permit is held by a fiduciary that never intends to construct the station, we do not hold it to the above standard. Rather, the Court has held that our public interest determination requires some consideration of the policies embodied in the bankruptcy laws. *LaRose v. FCC*, 494 F. 2d at 1145. In fact, our failure to defer to the bankruptcy court's determination could well undermine its jurisdiction.”).

⁸² EB claims that the cases cited in the Application in support of the requested waivers are “distinguishable” because they did not involve “licenses” or *Second Thursday*. EB Comments at 24. We disagree; EB is drawing an artificial distinction between licenses and the construction authorizations involved in the cases cited in the Application. Both are Commission authorizations. With regard to EB's claim that the cited cases did not address *Second Thursday*, *Carson City* specifically cited *Second Thursday* for the proposition that “It is well established that where, as here, a bankrupt permittee seeks an extension of time in order to assign a construction permit, and no wrongdoer would benefit thereby, the Commission has considered the equities of the creditor as an important factor in determining whether the extension was warranted. *See Second Thursday Corp.*, 25 FCC 2d 112, 19 RR 2d 1199 (1970).” *Carson City Decision*, 26 F.C.C.2d at 695-96. Finally, it is well recognized that “the Commission has broad discretion to fashion remedies, including exceptions to the *Jefferson Radio* policy, where, after a hard look at the record, we find compelling reasons for doing so. Indeed, exceptions to Commission policies are generally appropriate where they further the public interest more than rigid application of the rule or policy.” *RKO General, Inc., Memorandum Opinion and Order*, 3 FCC Rcd 5057, 5061 (1988).

contrary to the dictates of constitutional due process under the circumstances of this case.⁸³

Even assuming there are unresolved questions of fact regarding whether, when, and for how long operations at many of MCLM's incumbent AMTS stations were suspended,⁸⁴ it is clear from MCLM's Motion for Summary Decision that MCLM never intended to permanently discontinue operations.⁸⁵ Thus, the question under Section 1.955(a)(3) is whether operations at any of the incumbent AMTS stations were permanently discontinued because service at the stations may have been suspended for some period of time.

There is, however, no standard for determining how long an AMTS station can remain non-operational before operations are deemed to be permanently discontinued. The Commission's rules and precedent are devoid of standards for determining whether operation of an AMTS station has been permanently discontinued. The Commission itself has repeatedly acknowledged this fact, stating in the still-pending *Discontinuance NPRM* that, because of the severe consequence of permanent discontinuance, "it is imperative that our rules provide a clear and consistent definition of permanent discontinuance of operations; *they do not.*"⁸⁶ Later in the

⁸³ Grant of the requested waiver would not imply that bankruptcy standing alone would be a basis for waiving the Commission's construction and operational requirements as Enterprise Wireless suggests. *See* Enterprise Wireless Comments at 4. This waiver request is made in the relatively rare circumstance in which the Commission's rules lack a standard for determining how long service at an AMTS station may be suspended before the license automatically cancels, pursuant to Section 1.955(a)(3). Moreover, there is a pending rulemaking to resolve this omission, so the circumstances will not be likely to be repeated in the future. *See* Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996 (2010) ("*Discontinuance NPRM*").

⁸⁴ MCLM has filed a motion for summary decision on Issue G arguing that there are no substantial and material questions of fact whether the incumbent site-based AMTS licenses automatically cancelled pursuant to Sections 1.955(a) and 80.49 of the Commission's Rules. *See* MCLM Motion for Summary Decision.

⁸⁵ *See id.* at 9-12.

⁸⁶ *Discontinuance NPRM*, 25 FCC Rcd at 7017 (emphasis supplied).

same order, the Commission acknowledged that “Part 80 [of the Commission’s rules], which governs stations in the Maritime Services, does not currently define permanent discontinuance of operations.”⁸⁷ The Bureau had recognized this problem in an earlier decision, stating: “Part 80, unlike some rule parts, does not set forth a specific period of non-operation after which the operation will be deemed to have permanently discontinued.”⁸⁸

Absent any clear indication of what does and does not constitute permanent discontinuance for AMTS licenses, fundamental principles of due process preclude the Commission from enforcing that rule to subject MCLM to the death penalty of losing its licenses. In *Trinity Broadcasting*, the United States Court of Appeals for the District of Columbia Circuit reversed the Commission’s decision to deny a television license renewal application on the grounds that the applicant did not have adequate notice as to how the Commission was interpreting its minority preference regulations.⁸⁹ The court explained that:

Because “due process requires that parties receive fair notice before being deprived of property,” we have repeatedly held that “in the absence of notice – for example, where the regulation is not sufficiently clear to warn a party about what is expected of it – an agency may not deprive a party of property by imposing civil or criminal liability.”⁹⁰

Thus, the court ruled that the Commission may deprive a regulated entity of a license only if:

... “by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would

⁸⁷ *Id.* at 7022.

⁸⁸ Northeast Utilities Service Company To Modify License for Station WQEJ718, *Order*, 24 FCC Rcd 3310, 3313 (WTB 2009) (“*Northeast Utilities*”).

⁸⁹ *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000) (“*Trinity Broadcasting*”).

⁹⁰ *Id.* at 628 (alterations in original) (quoting *General Elec. Co. v. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (“*GE*”).

be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform. . . .”⁹¹

The Supreme Court recently reconfirmed these principles in *Fox Television Stations*. In that case, the Court found that the Commission violated broadcast networks’ due process rights by failing to give them fair notice that a fleeting expletive or a brief shot of nudity could be actionably indecent.⁹² The Court explained that:

[The] requirement of clarity in regulation is essential to the protections provided by the *Due Process Clause of the Fifth Amendment*. . . . A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.”⁹³

The Court went on to state that:

Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.⁹⁴

Given the profound due process implications of the lack of clear standards governing permanent discontinuance for AMTS licenses, a waiver of Section 1.955(a) to avoid automatic termination of MCLM’s incumbent, site-based licenses is wholly warranted. Indeed, the Bureau previously waived Section 1.955(a)(3) in a case involving the assignment of certain Personal Communications Services (“PCS”) licenses for precisely these reasons.⁹⁵ Like the instant case,

⁹¹ *Id.* at 628 (quoting *GE*, 53 F.3d at 1329).

⁹² *FCC v. Fox Television Stations*, 132 S.Ct. 2307 (2012) (“*Fox Television Stations*”).

⁹³ *Id.* at 2317 (citations omitted).

⁹⁴ *Id.* (citations omitted).

⁹⁵ Letter from Renée Crittendon, WTB to Cheryl Tritt, Counsel for Monet Mobile Networks, Inc. (Oct. 20, 2004) (released in the Edmund J. Wood, Chapter 11 Trustee for Monet Mobile

the PCS case involved the assignment of licenses in the context of a bankruptcy, where service at the subject licenses had been suspended, and the rules lacked any definition of discontinuance of service.⁹⁶ The Bureau waived section 1.955(a)(3) to allow the bankrupt licensee’s “successor(s)-in-interest a period of time [one-year] within which it may re-initiate service under each of the licenses, and during which the stations associated with the [bankrupt entity’s] licenses will not be considered to have permanently discontinued operations.”⁹⁷ The Bureau found that:

Given that the Commission’s rules provide no specific timeframe for when PCS services are considered to have been permanently discontinued, we believe it is appropriate to grant the Trustee’s request for a waiver of Section 1.955(a)(3), to the extent applicable, for a period of one year from the date of this letter
*In the absence of a specific rule or precedent defining “permanently discontinued” for PCS, automatic termination of . . . licenses, in this instance, is neither equitable or in the public interest.*⁹⁸

Enforcement of Section 1.955(a)(3) to block assignment of MCLM’s incumbent, site-based licenses to Choctaw would be “neither equitable nor in the public interest” for the same reasons.

EB’s efforts to cobble together a standard for permanent discontinuance from disparate Commission precedent and rules from different services are not sufficient to justify denying the requested waiver.⁹⁹ Both the Commission and the Wireless Telecommunications Bureau have stated that no such clear standard exists.¹⁰⁰ To the contrary, the Commission recognizes that it

Networks, Inc., Petition for Declaratory Ruling or, Alternatively, a Partial Waiver of Section 1.955(a)(3) of the Commission’s Rules proceeding (attached as Exhibit D).

⁹⁶ *Id.* at 2.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 2 (emphasis added).

⁹⁹ EB Comments at 26-29.

¹⁰⁰ *See supra Discontinuance NPRM and Northeast Utilities.*

has adopted inconsistent and differing standards with regard to some radio services¹⁰¹ and established no standards for other services, including Part 80 services such as AMTS.¹⁰² It is simply not credible for EB now to suggest that there is a clear standard for permanent discontinuance of AMTS licenses of which MCLM, or any AMTS licensee should have been aware.

EB's assertion that "MCLM had fair notice that by not operating its AMTS site-based stations for multiple years it risked automatic termination of these licenses" similarly lacks merit.¹⁰³ The Commission itself has acknowledged that its conflicting and inconsistent standards can easily lead licensees to conclude reasonably that they "could discontinue service for a long period without fear of automatic license termination."¹⁰⁴ Moreover, EB's standard of "not operating" for "multiple years"¹⁰⁵ lacks the "precision and guidance"¹⁰⁶ due process requires. In EB's view, it should be self-evident that a suspension of service for multiple years is permanent discontinuance, but this conclusion is not compelled by logic; "multiple years" could mean five years, ten years, or twenty years, just as easily as it could mean two years, and the Commission has provided no basis for judging which would be correct. Without more, a standard of "multiple years" is woefully inadequate.

¹⁰¹ *Discontinuance NPRM*, 25 FCC Rcd at 7017-18. *See also* 47 C.F.R. § 22.317 (which governs operations in the paging and other services and provides that "any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued. . . ."); *id.* § 90.157(a) (which governs operations in most Part 90 services and provides that "any station which has not operated for one year or more is considered to have been permanently discontinued.").

¹⁰² *Discontinuance NPRM*, 25 FCC Rcd at 7017-18.

¹⁰³ EB Comments at 26.

¹⁰⁴ *Discontinuance NPRM*, 25 FCC Rcd at 7018

¹⁰⁵ EB Comments at 6.

¹⁰⁶ *Fox Television Stations*, 132 S.Ct. at 2317.

Apparently recognizing this flaw, EB goes on to argue that existing AMTS cases make clear to a reasonable AMTS licensee that: it must “maintain operations at its stations for the licenses to remain valid”; it “could not cease operations of its stations indefinitely without that license terminating for permanent discontinuance”; “the Commission would look to such factors as whether the licensee maintained equipment at the licensed location, whether electric power was being supplied to equipment at the licensed location, and the licensee’s due diligence in re-commencing operations at the licensed location or an alternative location”; and “the Commission would consider how many years the stations had not been operating and why operations had been discontinued.”¹⁰⁷ Tellingly, these cases do not establish a fixed period of time beyond which a permissible suspension of service at a given station becomes permanent discontinuance such that the station license is automatically cancelled.

EB effectively is reading these cases as providing a list of factors that the Commission might reasonably consider and balance in a case-by-case determination of whether operations have been permanently discontinued at a given station. This is not how Section 1.955(a)(3) operates, however. Section 1.955(a)(3) is binary – the license cancels automatically when operations are permanently discontinued, and permanent discontinuance is defined in the “Commission authorization or the individual service rules.”¹⁰⁸ Nowhere does the license or rule suggest that permanent discontinuance will be defined on a case-by-case basis based on a

¹⁰⁷ EB Comments at 29 (citing *Mobex Network Services*, 19 FCC Rcd 24939 (WTB 2004); *Paging Systems, Inc.*, 21 FCC Rcd 7225 (WTB 2006); *Mobex Network Services* 22 FCC Rcd 665 (WTB 2007); *Mobex Network Services*, 22 FCC Rcd 1311 (WTB 2007); *Northeast Utilities*, 24 FCC Rcd at 3310; *Mobex Network Services*, 25 FCC Rcd 3390 (2010)). None of the cases cited by EB establish a clear time frame for determining when an AMTS authorization is permanently discontinued, however. Notably, all of these cases predate the *Discontinuance NPRM* in which the Commission expressly recognized that no such standard exists and the most recent *Mobex Networks Services* remains pending on reconsideration.

¹⁰⁸ 47 C.F.R. § 1.955(a)(3) (“The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.”).

balancing of factors identified by EB. To the contrary, the rule is intended to operate “without specific Commission action.”¹⁰⁹ The lack of a clear definition of permanent discontinuance in the AMTS rules or Commission precedent is thus fatal to EB’s position.

C. Waiver of Section 1.955(a) Will Serve the Public Interest

Parties also oppose waiver of Section 1.955(a) arguing that waiver would be contrary to the public interest by allowing AMTS spectrum to lie fallow and not be used to provide service to the public.¹¹⁰ These petitioners and commenters are again wrong. As demonstrated in the Application and above, assignment of the MCLM Licenses, including the incumbent, site-based licenses to Choctaw will serve the public interest, convenience, and necessity on several levels ranging from making the innocent creditors whole to expediting the provision of crucial services to the public.¹¹¹

To begin, the Plan, as confirmed by the Court, is contingent upon Choctaw acquiring all of the Licenses and taking all steps necessary to recover the value of the Licenses for the creditors. In part, this will be accomplished by completing the pending transactions with several entities.¹¹² As dictated in the Plan, the Liquidating Agent is entitled to proceeds from Choctaw’s sale of Licenses in order to pay the unsecured creditors.

This process, however, not only will serve to make innocent creditors whole, but also will expedite putting this spectrum to use providing services that, among other things, will (i) enhance public safety through the implementation of positive train control on tracks carrying

¹⁰⁹ *Id.*

¹¹⁰ *See* EB Comments at 26-27; Enterprise Wireless Comments at 2-4.

¹¹¹ *See* Application at Description of Transaction pp. 12-15.

¹¹² There are several applications pending with the Commission to assign MCLM spectrum to various entities. *See* FCC, ULS File Nos: 0004030479, 0004144435, 0004193328, 0004310060, 0004315013, 0004430505, 0004507921, 0004526264, 0004636537, 0004604962, 0005591095, and 0005224980 (“Pending Applications”).

tens of thousands of commuters daily, (ii) facilitate the deployment of smart grid technology, (iii) increase economic efficiencies for companies involved in oil and gas extraction and transport, and (iv) provide access to spectrum for rural operations.¹¹³ Entities that have entered into agreements with MCLM for the assignment of AMTS spectrum desperately need said spectrum, and have waited years for access to this spectrum to support critical infrastructure communications functions. The critical functions contemplated by these entities include Supervisory Control and Data Acquisition related to the operation of pipelines and liquefied natural gas facilities in the oil and gas industry as well as smart grid and other critical infrastructure industry functions in the electric utility industry. For electric utilities, control and operations of transmission and distribution infrastructure are mandated by the Federal Energy Regulatory Commission to achieve nationwide stability and system reliability. Most of the operations are conducted on a private (noncommercial) basis and are essential to the safe and efficient operation of inherently dangerous, public-safety related critical infrastructure industry businesses previously recognized as such by the Commission.¹¹⁴ By granting the instant application the Commission will advance the process of clearing the path for these entities that have been waiting years to access use the AMTS spectrum, including some of the incumbent, site-based AMTS licenses.

The public interest benefits, however, do not end with these transactions. Choctaw has committed to the Commission that it will do everything necessary to comply with the Commission's Rules while at the same time protecting the interests of the creditors.¹¹⁵ Choctaw is prepared to make the investments necessary to resume active operations for many licenses as

¹¹³ See Application at Description of Transaction pp. 13-14.

¹¹⁴ *Id.* at 14.

¹¹⁵ *Id.* at 13.

quickly as possible.¹¹⁶ This will return the spectrum to service far more expeditiously than having the Commission reclaim the licenses and relicense the spectrum at some future date, as proposed by Enterprise Wireless.¹¹⁷ Choctaw's understanding of its obligations as a Commission licensee is perhaps best summarized in Mr. Patrick Trammell's testimony before the Bankruptcy Court: "[W]e will be a good corporate citizen, that's the way we run our other businesses, and that's what we're going to do, and we are going to get everybody paid back."¹¹⁸

In sum, whether part of *Second Thursday* or as separate relief, the Commission should waive its construction and permanent discontinuance rules to the extent necessary to allow for the assignment of MCLM's incumbent, site-based licenses to Choctaw. Strict enforcement of the automatic cancellation rules in Section 1.955(a) would be inequitable and contrary to the public interest, while grant of a waiver to permit MCLM to assign all of the Licenses, including the incumbent, site-based licenses to Choctaw, will serve the public interest by making the innocent creditors whole and expediting the provision of crucial services to the public.

V. PENDING APPLICATIONS SHOULD BE GRANTED EXPEDITIOUSLY PURSUANT TO FOOTNOTE 7 OF THE *HDO*

Second Thursday relief is not the only avenue available for the Commission to begin assigning the MCLM spectrum to entities that are eager to utilize it and put it to immediate use. In the unlikely event the Commission does not grant full relief pursuant to the *Second Thursday* doctrine the Commission can still proceed with grants pursuant to Footnote 7 of the *HDO*. The Commission has before it several applications to assign MCLM spectrum to various entities that

¹¹⁶ *Id.*

¹¹⁷ See Enterprise Wireless Comments at 3.

¹¹⁸ Transcript of Hearing at 216-217, *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, (Bankr. N.D. Miss. Nov. 14, 2012) (emphasis added). Excerpts are attached as Exhibit A.

are subject to the *HDO*.¹¹⁹ In recognizing the safety-of-life considerations underlying Southern California Regional Rail Authority's ("SCRRA") proposed acquisition of spectrum from MCLM, and the statutory mandate surrounding positive train control, the Commission in Footnote 7 of the HDO invited SCRRA and MCLM to submit showings in support of removal of their applications "from the ambit" of the hearing.¹²⁰ SCRRA and other entities that have pending applications to purchase or lease MCLM spectrum timely responded to this invitation and formally requested severance from the Hearing but have seen no action on these requests in over two years.¹²¹

Second Thursday relief and relief pursuant to Footnote 7 in the *HDO* do not have to be mutually exclusive, and both would be a positive first step in fulfilling the Plan and making whole the innocent creditors. Footnote 7 and *Second Thursday* each provide a mechanism by which the Commission can resolve the outstanding issues in these applications, remove them from the hearing and put the spectrum into the hands of those entities that have been waiting in excess of three years to complete the desired transactions. If the Commission decides to bifurcate this proceeding or otherwise assign only those licenses not subject to Issue G, the

¹¹⁹ FCC, ULS File Nos. 0004030479, 0004144435, 0004193328, 0004310060, 0004315013, 0004430505, 0004507921, 0004526264, 0004636537, and 0004604962. In addition there are pending applications to lease and assign certain spectrum to Shenandoah Valley Electric Cooperative (File Nos. 0005591095 and 0005224980) that are not subject to the hearing but that should be granted as well.

¹²⁰ *HDO*, 26 FCC Rcd at 6523 n.7

¹²¹ See Showing Pursuant to Footnote 7 of Southern California Regional Rail Authority, EB Docket No. 11-71 (filed May 9, 2011); Supplement to Showing Pursuant to Footnote 7 of Southern California Regional Rail Authority, EB Docket No. 11-71 (filed June 21, 2011) (for File Nos. 0004153701 and 000414435) and Petition for Reconsideration of by Dixie Electric Membership Corporation, Inc. Atlas Pipeline Mid-Continent LLC, Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Jackson Count Rural Electric Membership Cooperative, and Denton County Electric Cooperative, Inc. d/b/a CoServ Electric, EB Docket 11-71 (filed May 19, 2011) (for FCC, ULS File Nos. 0004030479, 0004507921, 0004526264, 0004430505, 0004604962, 0004310060 and 0004636537).

CERTIFICATE OF SERVICE

I, Bridget Anderson, do hereby certify that on this 30th day of May 2013, the foregoing Reply Comments and Opposition to Petitions to Deny was served by email and first class mail, postage prepaid, on the following persons:

<p>The Honorable Richard L. Sippel * Chief Administrative Law Judge Federal Communications Commission 445 12th Street, S.W., Room 1-C768 Washington, DC 20554</p>	<p>Sandra DePriest Maritime Communications/Land Mobile LLC 510 N. 7th St. Columbus, MS 39701</p>
<p>Pamela A. Kane * Brian Carter Investigations and Hearing Division Enforcement Bureau Federal Communications Commission 445 12th Street, S.W., Room 4-C3350 Washington, DC 20554</p>	<p>Jeffrey L. Sheldon Levine, Blaszak, Block & Boothby, LLP 2001 L Street, NW, Suite 900 Washington, DC 20036 Counsel for Puget Sound Energy, Inc.</p>
<p>Dennis C. Brown 8124 Cooke Court Suite 201 Manassas, VA 20109 Counsel for Maritime Communications/Land Mobile LLC</p>	<p>Charles A. Zdebski Gerit F. Hull Eckert Seamans Cherin & Mellott, LLC 1717 Pennsylvania Avenue, N.W. Washington, D.C. 20006 Counsel for Duquesne Light Co.</p>
<p>Jack Richards Wesley Wright Keller & Heckman LLP 1001 G Street, N.W. Suite 500 West Washington, D.C. 20001 Counsel for Atlas Pipeline – Mid Continent LLC; DCP Midstream, LP; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson</p>	<p>Matthew J. Plache Albert J. Catalano Catalano & Plache, PLLC 3221 M Street, N.W. Washington, D.C. 20007 Counsel for Dixie Electric Membership Corp. Counsel for Pinnacle Wireless Corp.</p>

<p>Paul J. Feldman Harry F. Cole Fletcher, Heald & Hildreth, P.L.C. 1300 N. 17th Street – 11th Floor Arlington, VA 22209 Counsel for Southern California Regional Rail Authority</p>	<p>Warren Havens 2509 Stuart Street Berkeley, CA 94705</p>
<p>Robert J. Keller Law Offices of Robert J. Keller, P.C. P.O. Box 33428 Washington, D.C. 20033 Counsel for Maritime Communications/Land Mobile LLC</p>	<p>Louis P. Warchot Timothy J. Strafford Association of American Railroads 425 Third Street, SW Washington, DC 20024 Counsel for Association of American Railroads</p>
<p>Peter Harmer P.O. Box 159341 Nashville, TN 37215</p>	<p>Steve C. Hillard George T. Laub Jonathan B. Glass Council Tree Investors, Inc. 9271 Jackson Street Thornton, CO 80229 Counsel for Council Tree Investors, Inc.</p>
<p>Mark E. Crosby Enterprise Wireless Alliance 8484 Westpark Drive, Suite 630 McLean, VA 22102</p>	<p>Elizabeth R. Sachs Lukas, Nace, Guterrez & Sachs, LLP 8300 Greensboro Drive, Ste. 1200 McLean, VA 22102 Counsel for Enterprise Wireless Alliance</p>

/s/ Bridget Anderson
Bridget Anderson

* Also served by hand delivery.

Exhibit A

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI
Case No. 11-13463-DWH

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In the Matter of:

MARITIME COMMUNICATIONS/LAND MOBILE, LLC,

Debtor.

- - - - - x

United States Bankruptcy Court
Thad Cochran U.S. Courthouse
703 Highway 145 North
Aberdeen, MS

November 14, 2012

10:04 AM

B E F O R E :

HON DAVID W. HOUSTON, III

CHIEF JUDGE

Transcribed by: Sheila Orms

1 protections you get as a DIP lender, correct?

2 A Yes, sir. We've done it at the past at Southeastern.

3 Q And the protections provided under a DIP loan were part
4 of the reasons you determined to make that loan, correct?

5 A Yes, sir.

6 Q Okay. Now, the DIP loan was funding in addition to
7 those that we -- the debt we just talked about in those
8 proofs of claim. Those were already financings that had
9 been done prior to the bankruptcy, correct?

10 A Yes, sir.

11 Q What is the balance of the DIP loan today?

12 A I believe we've made another payroll since the last
13 time I checked, but it should be between 950 and a million
14 twenty dollars I believe at this point in time.

15 Q Okay. So over the course of the bankruptcy case, that
16 DIP loan balance has increased, correct?

17 A Oh, yes, sir.

18 Q You've heard testimony earlier today about that the
19 need -- that that was the funding to continue to operate in
20 bankruptcy?

21 A That's correct.

22 Q Now, there's been some discussion today about the
23 debtor's plan and the Choctaw proposal. How were you
24 involved in the formulation of the Choctaw proposal?

25 A Well, you know, when the company went into bankruptcy,

1 you know, obviously you want to get your hands around this,
2 and I have had a limited amount of experience with
3 bankruptcy through my Southeastern business, but we wanted
4 to, you know, have discussions about that. So we engaged
5 your firm to help us with that. And also recognizing
6 they're, you know, some fairly significant FCC issues at
7 play here, you know, we went out and tried to find, you
8 know, the FCC counsel we could. And we talked to -- I think
9 we talked to a couple of firms and got some recommendations,
10 and chose Wilkinson Barker to represent us to try to, you
11 know, to try to figure out what the best way was to get the
12 creditors paid, and you know, move forward out of this.

13 Q So did you engage in negotiations with the debtor's
14 professionals and the committee's professionals?

15 A Yes, sir.

16 Q And did you get all the terms and conditions you wanted
17 under the Choctaw proposal worked under this plan, or was
18 there negotiations about those points?

19 A There was hours of negotiations. I believe your
20 partner, Mr. Bensinger has told me that we spent -- he did,
21 and I did with Mr. Solomon and his partner, Mr. Meek over 60
22 hours, you know, negotiating, you know, the unsecured
23 creditor's part of this plan.

24 And I really -- you know, one of the things I'm proud
25 of in this plan is I think it's really a collaborative plan,

1 and in the situation, you know, I think everybody is treated
2 fairly and equitably. Everybody -- our plan is, and of
3 course, it's an uncertain world, but our plan is, is that
4 everybody gets paid back a hundred cents on the dollar.

5 We have made -- you know, everybody has given and, you
6 know, a little bit. You know, we have made some concessions
7 to pay the unsecured creditors even before we get any money.
8 And as John Reardon more eloquently said, the administrative
9 professionals have been kind enough to give up a little bit,
10 and put some of their collections down the road.

11 So I feel like we have put together a plan that is
12 equitable to everybody, and everybody has had significant
13 input into that. You know, I think it's probably taken us
14 six or seven months working very diligently to get this plan
15 together. So everyone certainly has had input.

16 Q And you've invested a lot of time and money into
17 getting to where we are today, correct?

18 A Yes, sir.

19 Q Okay. Now, who -- tell the Court what is Choctaw
20 Telecommunications?

21 A Well, Choctaw Telecommunications and Choctaw Holdings
22 is an entity that was formed by certain of the secured
23 creditors, the ones you've mentioned, Mr. Hollis, Watson and
24 Downs Investments, Collateral Plus, and myself to -- you
25 know, to present or to be a part of the debtor's plan of

1 understand that, and we understand that, and we're prepared
2 for that.

3 Q And we just went through numbers in excess of \$3
4 million of commitments that are at the table to fund Choctaw
5 Telecommunications.

6 A That's correct.

7 Q All right. Now, is it your opinion that Choctaw
8 Telecommunications and Choctaw Holdings has engaged in good
9 faith negotiations with the debtor and the committee on this
10 plan?

11 A I believe we've engaged in good faith negotiations with
12 everyone up to, you know, up to and including CTI who's not
13 here today. You know, and I don't want to make an editorial
14 comment here, but you know, we have worked diligently with
15 everyone for a very long time, in what admittedly is a very
16 tough situation. And, you know, our only goal in this is to
17 get everyone paid back.

18 Now, you know, selfishly, you know, my friends, you
19 know, or my shareholders, Mr. Hollis, and Watson and Downs,
20 and other friends of mine, such as Mr. DuPree and some
21 unsecured creditors, you know, I want them paid them back
22 to. But -- and I do want the FCC to know that we intend to
23 pay you every nickel we owe you, okay. You know, this case
24 has been about, with several parties, you know, who's been
25 bad, who's done what. You know, we will be a good corporate

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI
Case No. 11-13463-dwh

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In the Matter of:

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

Debtor.

----- x

United States Bankruptcy Court
Thad Cochran U.S. Courthouse
703 Hwy 145 North
Aberdeen, Mississippi

November 15, 2012
9:35 a.m.

B E F O R E :
HON. DAVID W. HOUSTON, III
U.S. BANKRUPTCY CHIEF JUDGE

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

Exhibit B

SUPPLEMENTAL DECLARATION

I, Patrick Trammell, hereby declare that I have reviewed that attached Opposition to Petition to Deny and Reply Comments and that, to the best of my personal knowledge, all factual statements and representations contained therein are true and correct to the best of my knowledge and belief. In particular:

- Sandra and Donald DePriest will receive no compensation or other direct benefit as a result of the proposed transaction and will not receive proceeds from any future sales and assignments of the Licenses by Choctaw to third parties;
- Sandra and Donald DePriest have not had, nor will they have, any role with Choctaw Telecommunications, LLC or Choctaw Holdings;
- Sandra and Donald DePriest will play no future role with respect to the Licenses;
- Neither Sandra and Donald DePriest nor any entity with which they are affiliated will have any involvement with the Licenses through any future sales and assignments of the Licenses by Choctaw to third parties;
- Critical RF, Inc. will not use any of the Licenses as long as Choctaw is the licensee of the Licenses; and
- Choctaw will not sell, lease, assign, or otherwise cause a transfer of any of the Licenses to Critical RF, Inc.

I declare under penalty of perjury that the foregoing is true and correct.



Patrick Trammell
Managing Member

Choctaw Telecommunications, LLC
Choctaw Holdings, LLC

Dated: May 28, 2013

Exhibit C

**Affidavit of
DiPiazza, LaRocca, Heeter & Co., LLC**

My name is Anthony Vincent LaRocca. I am a Certified Public Accountant licensed to practice in the State of Alabama. DiPiazza, LaRocca, Heeter & Co, LLC ("DLHC"), of which I am a partner, is the auditor of record for Southeastern Commercial Finance, LLC ("Southeastern Commercial"). On May 8, 2013 our firm issued its audit opinion on the financial statements of Southeastern Commercial as of December 31, 2012 and 2011. In our opinion, the financial statements present fairly, in all material respect, the financial position of Southeastern Commercial Finance, LLC as of December 31, 2012 and 2011, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Per the audited financial statements as of December 31, 2011, total membership equity amounted to \$5,016,386, and Mr. Donald R. DePriest's 10.52% share was \$527,723.81. This is \$89,621.05 more than the \$438,102.76 for which Southeastern Commercial redeemed his interest as of June 30, 2012.

The accounting for the transaction described above is the responsibility of management, however this transaction has been subjected to the auditing procedures applied in the audit of the December 31, 2012 financial statements.

Further the Affiant sayeth not.

By: 

Anthony Vincent LaRocca

Alabama Certified Public Accountant Certificate Number 1466

May 20, 2013

Exhibit D



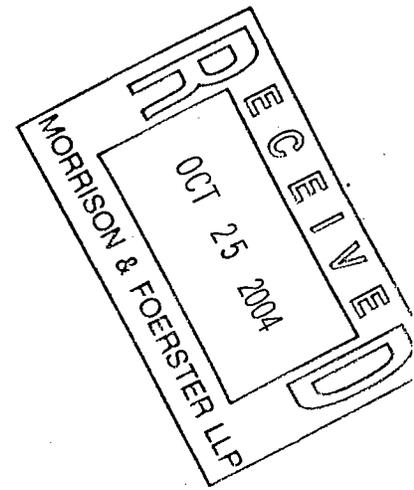
Federal Communications Commission
Washington, D.C. 20554

October 20, 2004

By facsimile and first-class mail

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W., Suite 5500
Washington, D.C. 20006-1888

Ref. Call Signs KNLG791
KNLG951
KNLG947
KNLG803
KNLH747
KNLG784



Re: Edmund J. Wood, Chapter 11 Trustee for Monet Mobile Networks, Inc., Petition for Declaratory Ruling or, Alternatively, a Partial Waiver of Section 1.955(a)(3) of the Commission's Rules

Dear Ms. Tritt and Mr. Pham:

This letter addresses the above-captioned Petition for Declaratory Ruling or, Alternatively, a Partial Waiver of Section 1.955(a)(3) of the Commission's rules ("Petition") filed on June 10, 2004. Edmund J. Wood, the Chapter 11 Trustee ("Trustee") of the bankruptcy estate of Monet Mobile Networks, Inc. ("Monet") requests that the Commission issue a declaratory ruling that the permanent discontinuance rule set forth in Section 1.955(a)(3) of the Commission's rules does not apply to Monet's above-referenced broadband personal communications service ("PCS") licenses. In particular, the Trustee requests that the Commission not apply Section 1.955(a)(3) during the period that each license remains part of the bankruptcy estate plus one year after the disposition of Monet's bankruptcy petition, or the remainder of the initial licenses' terms, whichever is longer.¹ Alternatively, the Trustee requests a partial waiver of Section 1.955(a)(3) of the Commission's rules, to the extent applicable, to allow Monet's successor(s)-in-interest a limited extension of time to re-initiate service under each license, either one year after the disposition of Monet's bankruptcy petition or the expiration of the license terms, whichever is later.

Monet, through wholly-owned subsidiaries, holds six 10 MHz PCS licenses, and, until recently, provided service to customers in each of its licensed markets. On March 4, 2004, Monet filed a Chapter 11 bankruptcy petition and issued written notices to its customers announcing its intention to temporarily suspend service, which it did on March 11, 2004. The Trustee is actively seeking offers to purchase Monet's PCS licenses and other assets, and expects to resume service under those licenses upon resolution of the bankruptcy petition and once a successor-in-interest has purchased the network assets.²

The Trustee contends that Section 1.955(a)(3) should not apply to Monet's PCS licenses because Monet's suspension of service is temporary, not permanent, and that once a successor-in-interest purchases Monet's licenses and network assets, it will quickly re-initiate service.³ The Trustee also asserts that Section 525(a) of the Bankruptcy Code prohibits the Commission from revoking Monet's

¹ Petition at 1. Monet's six PCS licenses expire on April 28, 2007.

² Petition at 2-3.

³ Petition at 3-4.

licenses solely because of Monet's status as a Chapter 11 debtor.⁴ The Trustee also contends that the Commission has granted similar "regulatory flexibility" to other wireless service licensees,⁵ and that automatic cancellation of Monet's licenses would violate the Commission's own notice and hearing requirements.⁶ Finally, the Trustee states that, should the Commission find that Section 1.955(a)(3) remains applicable to Monet's licenses, the Commission should nevertheless grant a partial waiver of Section 1.955(a)(3) to allow Monet's successor(s)-in-interest a limited extension to re-initiate service under the licenses.⁷

Section 1.955(a)(3) states that license authorizations automatically terminate, without specific Commission action, if service is "permanently discontinued."⁸ The Commission's service rules generally define "permanently discontinued" as the discontinuance of operations or services for a period of time up to a year or more.⁹ As noted by the Trustee, and in contrast with the Commission's guidance in other wireless services, the Commission has not defined "permanently discontinued" for PCS specifically. Given that the Commission's rules provide no specific timeframe for when PCS services are considered to have been permanently discontinued, we believe it appropriate to grant the Trustee's request for a waiver of Section 1.955(a)(3), to the extent applicable, for a period of one year from the date of this letter (*i.e.*, October 20, 2005) to allow sufficient time for Monet's bankruptcy petition to be discharged, and for Monet's successor-in-interest to purchase Monet's licenses and assets and re-initiate service. In the absence of a specific rule or precedent defining "permanently discontinued" for PCS, automatic termination of Monet's licenses, in this instance, is neither equitable nor in the public interest.¹⁰ Allowing the Trustee a period of time to sell the licenses and network assets advances the underlying purpose of the "permanently discontinued" rule by ensuring that the licensed spectrum will be put to its highest valued use.¹¹ In contrast, automatic cancellation of Monet's licenses, under these circumstances, would potentially delay service to the public and would not advance the Commission's policy objectives of encouraging the use of licenses.

⁴ Petition at 4, *citing* 11 U.S.C. § 525(a).

⁵ Petition at 6-8.

⁶ Petition at 8-10.

⁷ Petition at 10.

⁸ 47 C.F.R. § 1.955(a)(3); *see also* 47 C.F.R. § 1.901.

⁹ *See, e.g.*, 47 C.F.R. § 22.317 (public mobile radio services) (stating that a station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued); 47 C.F.R. § 90.157 (private land mobile radio services) (indicating that a station which has not operated for one year or more is considered to have permanently discontinued operations); 47 C.F.R. § 90.631(f) (specialized mobile radio services (SMR)) (stating that an SMR licensee is presumed to have permanently discontinued operation if the associated station has not operated for 90 continuous days).

¹⁰ *See* 47 C.F.R. § 1.925.

¹¹ Petition at 10-11.

Accordingly, we grant the Trustee until October 20, 2005, to permit Monet's successor(s)-in-interest a period of time within which it may re-initiate service under each of the licenses, and during which the stations associated with Monet's licenses will not be considered to have permanently discontinued operations.

If you have any questions concerning this matter, please contact me at (202) 418-2352.

Sincerely,

A handwritten signature in black ink, appearing to read 'Renée R. Crittendon', with a stylized flourish at the end.

Renée R. Crittendon
Associate Chief, Mobility Division
Wireless Telecommunications Bureau