IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

CHAPTER 11

IN RE: MARITIME COMMUNICATIONS/ LAND MOBILE, LLC
Debtor

CASE NO: 11-13463-DWH

RESPONSE TO THE UNITED STATES' OBJECTION TO DEBTOR'S FIRST AMENDED PLAN OF REORGANIZATION BY SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (DK #828)

Southern California Regional Rail Authority ("SCRRA") files this Response to the United States' Objection to Debtor's First Amended Plan of Reorganization (Docket #828) (the "FCC Objection") . As set forth below, this Response is directed toward those aspects of the FCC Objection focused on issues related to Federal Communications Commission ("FCC") approval of the license transfers contemplated by the Debtor's proposed First Amended Plan of Reorganization (Docket #669) (the "Plan"). SCRRA respectfully urges that the Court fully consider the important public safety and economic concerns that would be implicated should the Court *not* confirm the Plan on the basis of the FCC Objection:

1. SCRRA is a party-in-interest in this proceeding. SCRRA's Metrolink train operations ("Metrolink") provide the people of Southern California with commuter rail services. On an average weekday, Metrolink serves over 40,000 riders and operates 149 daily trains.

2. The Debtor and SCRRA are parties to a Partitioned License Purchase Agreement (the "Purchase Agreement") and a related Escrow Agreement, which were originally made and entered in February 2010. The Debtor has been authorized to assume those agreements by orders of this Court. Docket #260 and #768. Under the Plan, those agreements would be assigned to

Choctaw or Council Tree and, subject to FCC approval, the underlying sale transaction would close. Plan, Article II.C at pp. 15-19 and Article II.D at pp. 22-23.

3. The radio spectrum license to be transferred to SCRRA under the Purchase Agreement is a critical component of SCRRA's Positive Train Control safety improvement project.[1] Federal legislation enacted shortly after the tragic incident on September 12, 2008 involving a collision between an SCRRA Metrolink train and a Union Pacific freight train, which resulted in the deaths of 25 and injuries to more than 135 people, mandates the national implementation of Positive Train Control safety systems no later than the end of 2015.[2]

4. On March 11, 2010, the Debtor filed its application with the FCC seeking approval of the transfer of a specified radio spectrum license to SCRRA pursuant to the Purchase Agreement. That application remains in limbo as a result of unresolved FCC enforcement proceedings and this bankruptcy case.

5. ***The public safety and economic concerns underlying Positive Train Control are not abstract and they grow with the passage of time. From March 2010, when the Debtor first sought approval of the license transfer to SCRRA, through August 2012, there were 1,713 train accidents in the United States. Cumulatively, those accidents left 27 people dead, injured another 253 people and caused $221.6 million of damages.***[3]

---

[1] The project has an overall budget of approximately $202 million and the Purchase Agreement provides for a gross purchase price of $7,178,000.

[2] Rail Safety Improvement Act of 2008, Pub.L. 110-432, 122 Stat. 4848, 49 U.S.C. § 20101.

[3] Source – Federal Railroad Administration Office of Safety Analysis – Section 3.09 Accident Summary Tables.

6. While Positive Train Control will not stop all accidents, it will prevent some -- but only when and if Positive Train Control is successfully implemented across our country, including on the rail lines operated by SCRRA.

7. The FCC objects to the Plan on several grounds. This Response is primarily directed towards those aspects of the FCC Objection that are premised on the possibility that the FCC might not allow the Debtor to transfer its licenses pursuant to the *Second Thursday* doctrine.

Discharge Objection

8. In paragraphs 8 and 9 of the FCC Objection, the FCC objects to the discharge provided by the Plan based on practical problems and/or "perverse results" that may stem from the FCC not approving transfers of the Debtor's licenses under the *Second Thursday* doctrine. It is unclear how such approval or denial relates to the discharge issue. Nevertheless, SCRRA believes that the FCC's points deserve a response to the extent the Court believes they are relevant.

9. There are <u>No Direct Benefits Precluding *Second Thursday* Approval</u>. Both the Choctaw and Council Tree versions of the Plan eliminate the potential for the individuals charged with misconduct receiving any direct benefit from the sale of the Debtor's assets. See Plan, Article II.B.1.7 (Choctaw alternative – Class 10 equity membership interests receive nothing), Article II.B.2.9 (Council Tree alternative – Class 10 equity membership interests receive nothing); Article II.C.4 at p.17 (neither Debtor nor the DePriests will receive any sale proceeds and the DePriests claims against the Debtor will be relinquished). No basis is provided for the FCC's allusion to the plan liquidating agent having any discretion to circumvent those Plan provisions.

10. <u>Indirect Benefits Do Not Preclude *Second Thursday* Approval</u>. The FCC also alludes to indirect benefits, such as elimination of guaranty exposure that the Debtor's equity holders may receive – as a possible basis for basis of denial of *Second Thursday* approval.

Indirect benefits received by possible wrongdoers are not grounds for denying *Second Thursday* relief. Indeed, blocking payments to innocent creditors to prevent secondary benefits would turn the *Second Thursday* doctrine upside down. Reduction of guarantor exposure is a secondary benefit arising from a debtor's payment of creditors.[4] Reduction of guaranty exposure resulting from MC/LM's payment of creditors is the type of "minor benefit outweighed by equitable considerations in favor of innocent creditors" expressly noted in Second Thursday (and quoted at FCC Objection, p. 6, paragraph 8). FCC decisions support this view. *E.g.*, *In re Mobilemedia Corp.*, 14 FCC Rcd 8017 at paragraph 21; 1999 FCC LEXIS 468; 14 Comm. Reg. (P & F) 1339 (1999) ("The Second Thursday doctrine does not limit approval of a transfer only to those situations in which suspected wrongdoers receive no direct benefit from the sale. . . Rather, the Commission balances the possible injury to regulatory authority that might flow from a wrongdoer's realization of benefit with the public interest in innocent creditors' recovery. . . In making this balance, the Commission has examined a wide variety of factors. These include the amount of money likely to go directly to suspected wrongdoers; the percentage of the total sales price likely to go directly to suspected wrongdoers; whether suspected wrongdoers are likely to receive a direct monetary benefit or only an indirect benefit such as a reduction of liability; and whether suspected wrongdoers are in bankruptcy so that any money paid to them will be available to pay their creditors.") (citations omitted).

11. "Windfall" Concerns Do Not Preclude *Second Thursday* Approval. The FCC Objection, at paragraph 9, also states ambiguously that the FCC "will also need to consider whether the value of the Licenses exceeds the debts to be repaid and creates a potential windfall

[4] Any time a debtor pays creditors there are secondary benefits to people other than the creditors who get the money. E.g., the recipient creditor can use a distribution to pay its creditors, equity holders and others.

gain that usually does not result from *Second Thursday* transfers." If the FCC is referring to the Debtor or its equity holders, as noted above, neither will receive sale proceeds and the DePriests are relinquishing their creditor claims. Thus, there is no chance for a windfall to the suspected wrongdoers. If the FCC is referring to Council Tree or Choctaw, whether either would ***make or lose*** money on the licenses has nothing to do with benefit to suspected wrongdoers. Imposing a "no windfall to the transferee" requirement for *Second Thursday* approval would be both novel and, more importantly, contrary to the doctrine's purpose of protecting innocent creditors.

Feasibility Objection

12. In paragraphs 13 to 15 of the FCC Objection, the FCC objects to the Plan based on feasibility concerns. To the extent the objection relates to FCC approval of license transfers, the points noted previously show that FCC concerns about *Second Thursday* approval appear to be overstated. The other concerns raised in these paragraphs relate to how much license sales will generate (and, therefore, how much creditors may realize) not whether the Plan is feasible:

- Paragraph 13 – concern about how sale of licenses not already under contract will proceed or what their sale may produce.

- Paragraph 14 – concern about Choctaw or Council Tree discretion in seeking to sell licenses. As prudent investors, it seems obvious that Choctaw and Council Tree would both seek to sell the licenses in an arm's length process that generates maximum value after a reasonable marketing period.

- Paragraph 15 – concern about the Debtor's marketing of the licenses if the FCC denies *Second Thursday* approval of transfers to Council Tree or Choctaw. The Plan provides for the Debtor to market the licenses in that scenario and the Debtor, no doubt, would also seek to maximize value from an arm's length buyer after a reasonable marketing period. That market

making would also necessarily factor in whatever FCC ruling lead to denial of a transfer to Council Tree or Choctaw.

The FCC's Public Interest Analysis Supports Plan Confirmation

13. Finally – and importantly – the FCC's own public interest analysis under Section 309 of the Communications Act views successful resolution of a bankruptcy proceeding as a positive factor:

> First, facilitating the successful resolution of a bankruptcy proceeding is a factor in our public interest analysis. It is the Commission's policy to support the bankruptcy laws, and where possible to accommodate them in a manner that is consistent with the Act. The Commission has stated that facilitating a telecommunications service provider's successful emergence from bankruptcy "advances the public interest by providing economic and social benefits, especially the compensation of innocent creditors." The Bankruptcy Court has granted interim approval of the ICC asset groupings, which includes assigning both the Vitelco and Innovative Cable assets in Group One for sale to CFC. The Court stated that the sale of the assets to CFC is "in the best interests of the Debtor's estate and its creditors" and found that the Trustee marketed the Group One assets through a "fair, full and complete marketing process." While this is an interim approval, pending regulatory approval of the transaction, it represents the Bankruptcy Court's judgment that the Trustee "has demonstrated both (i) good, sufficient, and sound business purpose and justification for the sale of the Assets; and (ii) compelling circumstances for interim approval of the sale transaction contemplated in the [Sale] Agreement pursuant to Bankruptcy Code §§ 363(b) and (f)." We recognize the Court's jurisdiction to find that the sale of the assets in a combined grouping is in the best interests of the creditors, and we do not question that finding here.

In re The Bankr. Estate of Innovative Commun. Corp. et al., 24 FCC Rcd 14360 at paragraph 19; 2009 FCC LEXIS 6191; 14 Comm. Reg. (P & F) 1467 (2009) (citations omitted).

14. SCRRA believes that good, sufficient and sound business purposes have been shown in support of the Plan and that the Plan is in the best interests of the Debtor's creditors.

Respectfully submitted this 12th day of November, 2012.

SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY

/s/ Jim F. Spencer, Jr.
Jim F. Spencer, Jr.

OF COUNSEL:

Jim F. Spencer, Jr. (MSB # 7736)
Watkins & Eager PLLC
Post Office Box 650
Jackson, MS 39205-0650
(601) 965-1900 (p)
(601) 965-1901 (f)
jspencer@watkinseager.com

CERTIFICATE OF SERVICE

I, Jim F. Spencer, Jr., hereby certify that I have filed the foregoing document using the CM/ECF System which sent notice of the filing to all persons requesting notice in addition to:

Craig M. Geno - cmgeno@hjglawfirm.com
Sammye S. Tharp - sammye.s.tharp@usdoj.gov

This 12th day of November, 2012.

/s/ Jim F. Spencer, Jr.
Jim F. Spencer, Jr.