Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION Application to Assign Licenses to Choctaw Holdings, LLC	)	WT Docket No. 13-85 FCC File No. 0005552500
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC Applications to Modify and to Partially Assign License for Station WQGF318 to Southern California Regional Rail Authority	)	FCC File Nos. 0004153701 and 0004144435
	)	
Application for New Automated Maritime Telecommunications System Stations	)	FCC File No. 0002303355
	)	
Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing	)	EB Docket No. 11-71 File No. EB-09-IH-1751 FCC File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2014 **Released: September 11, 2014**

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. This *Memorandum Opinion and Order* addresses requests to permit the assignment of certain Automated Maritime Telecommunications System (AMTS) spectrum licenses that are the subject of a pending hearing regarding the basic character qualifications of the licensee, Maritime Communications/Land Mobile, LLC (MCLM). With one narrow exception, we deny the requests.

2. We find that the public interest supports removing from the ambit of the hearing an application to assign a spectrum license from MCLM to the Southern California Regional Rail Authority (SCRRA) to be used for positive train control (PTC), a statutorily-mandated technology directly promoting rail safety, which the Commission previously identified for possible removal.[1] We decline, however, to terminate the hearing or to remove from its ambit other pending applications proposing the assignment of spectrum licenses from MCLM, including proposed assignments to certain critical infrastructure industry entities.

[1] As discussed *infra*, we are also removing from the hearing an associated application for the modification of the license for AMTS station WQGF318.

II. BACKGROUND

3. MCLM acquired four AMTS geographic licenses in FCC Auction 61 with a small business bidding credit. Subsequent investigation revealed, however, that MCLM may have obtained a bidding credit to which it was not entitled, and engaged in other misconduct. Consequently, the Commission initiated a hearing proceeding to determine whether MCLM's licenses should be revoked. MCLM filed for bankruptcy protection following the initiation of the hearing, and now seeks to assign its AMTS licenses to Choctaw Holdings, LLC (Choctaw) in furtherance of a Bankruptcy Court-approved Plan of Reorganization. MCLM and Choctaw (the Applicants) request that we terminate the hearing regarding MCLM's basic qualifications, and approve the proposed assignment of the AMTS licenses to Choctaw, pursuant to the *Second Thursday* exception to our *Jefferson Radio* policy. For reasons discussed below, we decline to do so, and we will instead withhold action on the MCLM-Choctaw assignment application (Choctaw Application) pending resolution of the designated issues in the hearing. As noted, however, we remove from the hearing the application to assign a spectrum license from MCLM to SCRRA for PTC (SCRRA Assignment Application).

A. MCLM's Auction 61 Application

4. AMTS spectrum, which consists of two spectrum blocks in the 217/219 MHz bands,[2] initially was assigned on a site-by-site basis.[3] MCLM holds more than 50 site-based AMTS licenses. Site-based AMTS authorizations terminate automatically if the station is not constructed and placed in operation within two years from the date of the license grant,[4] or upon permanent discontinuance of service.[5]

5. The Commission subsequently adopted geographic licensing for AMTS stations, with one geographic license per spectrum block in each of the ten areas into which the Commission divided the country.[6] Under the rules for the licensing of AMTS through competitive bidding, a "small business," defined as an entity with average annual gross revenues of no more than $15 million for the three years preceding the auction, was eligible to receive a bidding credit of 25 percent; and a "very small business," defined as an entity with average annual gross revenues of no more than $3 million for the three preceding years, was eligible for a 35 percent bidding credit.[7]

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[2] *See* 47 C.F.R. § 80.385(a)(2). The two AMTS spectrum blocks are Block A (217.5-218/219.5-220 MHz) and Block B (217-217.5/219-219.5 MHz).

[3] AMTS spectrum was first set aside for use by tug, towboat and barge operators to meet their need for reliable ship-to-shore communications while transiting rivers and other waterways. *See* Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Report and Order*, GEN Docket No. 80-1, 84 FCC 2d 875, 875-76 ¶¶ 1-4 (1981), *subsequent history omitted*. As demand for the spectrum evolved, the Commission amended its rules to allow AMTS licensees flexibility to provide units on land with public correspondence service, *see* Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16965 ¶ 24 (1997), and private correspondence service, *i.e*., private land mobile radio (PLMR) service, *see* MariTEL, Inc., and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971, 8971-72 ¶ 1 (2007) (*Public Coast Flexibility Order*), *subsequent history omitted*; *see also* 47 C.F.R. § 80.123.

[4] 47 C.F.R. § 80.49(a)(3). The construction period originally was eight months, but was lengthened in 2000. *See* Amendment of the Commission's Rules Regarding Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22595 ¶ 17 (2000).

[5] 47 C.F.R. § 1.955(a)(3).

[6] *See* Amendment of the Commission's Rules Regarding Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002).

[7] *Id*. at 6719 ¶ 80. These bidding credits were consistent with those specified in the generally applicable Part 1 competitive bidding rules. *See* 47 C.F.R. § 1.2210(f)(2).

6. MCLM was the high bidder for four AMTS geographic licenses in Auction 61 in 2005.[8] In both its short-form application filed in advance of the auction and its post-auction long-form application, MCLM represented that Sandra DePriest (Ms. DePriest) was MCLM's 100 percent owner and its "sole officer, director and key management personnel."[9] MCLM claimed eligibility to receive a bidding credit of 35 percent because the gross revenues of Ms. DePriest and her affiliates were below the $3 million threshold. MCLM did not list Ms. DePriest's husband, Donald DePriest (Mr. DePriest), as a disclosable interest holder, and did not include the gross revenues of Mr. DePriest or companies under his control in calculating its bidding credit eligibility.

7. Warren C. Havens and affiliated entities (collectively, SkyTel)[10] filed a petition to deny MCLM's long-form application.[11] SkyTel argued that MCLM was unqualified to be a Commission licensee because, *inter alia*, MCLM had failed to disclose its real party in interest and other information relevant to its bidding credit eligibility, and engaged in other misconduct. In 2006, the Public Safety and Critical Infrastructure Division (PSCID) of the Wireless Telecommunications Bureau (Bureau) denied the SkyTel petition because it found SkyTel's allegations of wrongdoing to be unsubstantiated.[12] However, PSCID agreed with SkyTel's argument that MCLM's failure to list Mr. DePriest as a disclosable interest holder contravened the Commission's "spousal affiliation rule"[13] and stated that it would separately address Mr. DePriest's revenues and their relevance to MC/LM's eligibility for a bidding credit.[14]

8. Thereafter, MCLM amended its long-form application to provide revenue data for Mr. DePriest and his affiliates. It represented that his one revenue-producing affiliate had average gross revenues for the prior three years of $9,838,403.[15] MCLM also argued that the spousal affiliation rule should not require the attribution to MCLM of Mr. DePriest's gross revenues because he had no ownership interest in, and was neither an officer nor a director, of MCLM, and he and Ms. DePriest "live separate economic lives."[16]

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[8] *See* Auction of Automated Maritime Telecommunications System Licenses Closes: Winning Bidders Announced for Auction No. 61, *Public Notice*, 20 FCC Rcd 13747, 13755 (WTB 2005) (*Auction 61 Winning Bidders PN*).

[9] *See* FCC File No. 0002191807 (filed June 9, 2005), Explanation of Ownership Exhibit; FCC File No. 0002303355 (filed Sept. 7, 2005) (MCLM Long-Form Application), Disclosable Interest Holders Exhibit to MCLM Long-Form Application at 2.

[10] In their filings in this proceeding, Mr. Havens and the affiliated entities generally refer to themselves as the SkyTel Entities, or some variant thereof. In earlier orders and pleadings involving MCLM, these entities have been referred to variously as "Havens," "Havens Petitioners," or simply "Petitioners," or by the name of a particular affiliated entity. For ease of reference, we will refer herein to Mr. Havens and the affiliated entities as SkyTel, even though some entities that participated earlier no longer exist, and others participating recently did not exist at earlier stages of these proceedings.

[11] *See* Petition to Deny, Amended and Erratum (filed Nov. 14, 2005 by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB, LLC).

[12] *See* Maritime Communications/Land Mobile, LLC, *Order*, 21 FCC Rcd 8794, 8796-99 ¶¶ 5-9 (WTB PSCID 2006) (*PSCID Order*).

[13] *See* 47 C.F.R. § 1.2110(c)(5)(iii)(A) (providing that, for purposes of determining eligibility for auction bidding credits, "[b]oth spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation agreement recognized by a court of competent jurisdiction …").

[14] *See PSCID Order*, 21 FCC Rcd at 8798 n.39.

[15] *See* Attachment to MCLM Long-Form Application, as amended (filed Aug. 21, 2006), at 1.

[16] *Id*. In the alternative, MCLM requested a waiver of the spousal affiliation rule. *Id.*

9. The Bureau's Mobility Division (MD)[17] concluded that the spousal affiliation rule did require the attribution of Mr. DePriest's revenues to MCLM, and accordingly directed that MCLM be awarded only a reduced bidding credit of 25 percent.[18] After MCLM made a payment to reflect the reduction of its bidding credit, the Bureau granted MCLM's long-form application.[19]

10. In 2007, the MD denied SkyTel's petitions for reconsideration of the PSCID[20] and MD[21] actions denying its petition to deny, concluding that SkyTel had not identified any error in those decisions.[22] The MD did, however, note inconsistencies in MCLM's filings regarding Mr. DePriest's attributable revenues that – while they did not appear to affect MCLM's entitlement to a 25 percent bidding credit or constitute grounds to deny MCLM's Auction 61 application – raised concerns regarding MCLM's "failure to provide accurate information on the first attempt."[23] It cautioned MCLM that the denial of SkyTel's petitions for reconsideration was without prejudice to further inquiry and enforcement action.[24] SkyTel filed an application for review.[25]

11. Between 2008 and 2011, MCLM filed several applications proposing to partition and disaggregate portions of its geographic licenses to various entities, including SCRRA[26] and a number of electric, gas, and oil companies (collectively, Assignment Applications).[27] SkyTel filed petitions to deny each of the Assignment Applications, arguing primarily that MCLM should not be permitted to assign licenses that may be subject to revocation if MCLM is ultimately found to be unqualified.

B. Designation for Hearing

12. Further inquiry by the Wireless Telecommunications and Enforcement Bureaus yielded information indicating that Mr. DePriest may have been actively involved in the management of MCLM and that MCLM had failed to disclose dozens of entities that Mr. DePriest controlled or in which he served as an officer or director, with revenues that may have rendered MCLM ineligible for any bidding credit. On April 19, 2011, the Commission released an *Order to Show Cause, Hearing Designation*

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[17] Pursuant to a Commission reorganization effective September 25, 2006, certain duties formerly assigned to the PSCID were assumed by the MD. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

[18] *See* Maritime Communications/Land Mobile, LLC, *Order*, 21 FCC Rcd 13735, 13740 ¶ 9 (WTB MD 2006).

[19] *See* Wireless Telecommunications Bureau Grants Ten Automated Maritime Telecommunications System Licenses, *Public Notice*, 21 FCC Rcd 15061 (WTB 2006). Application of a 35 percent bidding credit had reduced MCLM's winning bids from $7,820,000 to $5,083,000, providing MCLM with a discount in the amount of $2,737,000. *See Auction 61 Winning Bidders PN*, Attachment A.

[20] *See* Petition for Reconsideration (filed Sept. 6, 2006, by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC).

[21] *See* Petition for Reconsideration (filed Dec. 27, 2006, by AMTS Consortium LLC); Petition for Reconsideration (filed Dec. 27, 2006, by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus-VPC, LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation).

[22] *See* Maritime Communications/Land Mobile, LLC, *Order on Reconsideration*, 22 FCC Rcd 4780 (WTB MD 2007).

[23] *Id*. at 4783 n.35.

[24] *Id*.

[25] *See* Application for Review (filed Apr. 9, 2007, by AMTS Consortium LLC, Telesaurus VPC LLC, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation, and Warren Havens) (SkyTel 2007 AFR).

[26] *See* FCC File No. 0004144435 (filed Mar. 11, 2010) (SCRRA Assignment Application).

[27] There is also a pending assignment application involving only a license for a site-based station. The Assignment Applications are listed in Appendix B of this *Memorandum Opinion and Order*.

Order, and Notice of Opportunity for Hearing (*HDO*) commencing a proceeding before an Administrative Law Judge (ALJ) to determine whether MCLM has the requisite character qualifications to be a Commission licensee.[28] The *HDO* directed MCLM to show cause why its AMTS licenses should not be revoked, and designated issues for inquiry regarding, *inter alia*, whether MCLM failed to disclose that Mr. DePriest was a real party in interest,[29] whether MCLM failed to disclose all of the attributable interests and revenues relevant to its claim to a bidding credit,[30] and whether MCLM engaged in misrepresentation or lacked candor in its Auction 61 application and subsequent filings pertaining to it.[31]

13. The *HDO* also designated the issue of whether MCLM's pending assignment applications should be granted.[32] With respect to the SCRRA Assignment Application, which proposes to partition and disaggregate spectrum to SCRRA for PTC use, the Commission noted that the Rail Safety Improvement Act of 2008 (RSIA) established a December 31, 2015, deadline for certain freight and commuter railroads to install and operate PTC systems.[33] In footnote 7 of the *HDO* (Footnote 7), the Commission said, "Given the potential safety of life considerations involved in the positive train control area…, we will, upon an appropriate showing by the Parties, consider whether, and if so, under what terms and conditions, the public interest would be served by allowing the [SCRRA Assignment Application] to be removed from the ambit of this Hearing Designation Order."[34] In response, SCRRA and MCLM filed showings seeking removal of the SCRRA Applications from the hearing.[35] The proposed assignees in the other Assignment Applications, *i.e.*, the electric utilities and oil and gas companies (CII Companies), supported Footnote 7 relief for SCRRA, but also sought reconsideration of the *HDO* because Footnote 7 did not provide them the same opportunity to seek the removal of their applications (CII Applications) from the hearing.[36]

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[28] Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (*HDO*).

[29] *Id.* at 6534-37 ¶¶ 35-42.

[30] *Id.* at 6537-41 ¶¶ 43-50.

[31] *Id.* at 6541-45 ¶¶ 51-58.

[32] *Id.* at 6546 ¶ 62.

[33] *Id.* at 6523 n.7, *citing* Pub. L. No. 110-432 § 104, 122 Stat. 4848, 4857 (2008).

[34] *Id.* Although not mentioned in Footnote 7, the *HDO* also designated an application filed by MCLM to modify the portion of the license for Station WQGF318 that it proposes to assign to SCRRA. *See* FCC File No. 0004153701 (filed Mar. 8, 2010, amended Aug. 30, 2011) (Modification Application). Although AMTS is presumptively classified as a commercial mobile radio service, AMTS licenses may be used for PLMR communications if the applicant certifies that the proposed use will indeed be private rather than commercial. *See* 47 C.F.R. § 20.9(b). The Modification Application requests that the spectrum proposed for assignment to SCRRA be reclassified to authorize PLMR use, which is a prerequisite to use of the assigned spectrum for PTC. We intend, therefore, to treat both applications together, and refer to them collectively as the SCRRA Applications. *See* Enforcement Bureau's Consolidated Comments on Showings Filed Pursuant to Footnote 7, at 3-4 n.4 (filed May 18, 2011) ("If the Commission determines that the assignment application should be removed from the ambit of the HDO, [EB] submits that the related modification application also should be removed"). In 2010, the Bureau had solicited comment on the SCRRA Applications, including the accompanying requests for waivers of certain Part 80 Rules to facilitate use of the spectrum for PTC. *See* Maritime Communications/Land Mobile LLC and Southern California Regional Rail Authority File Applications to Modify License and Assign Spectrum for Positive Train Control Use, and Request Part 80 Waivers, *Public Notice*, WT Docket No. 10-83, 25 FCC Rcd 3171 (WTB MD 2010). We are not addressing SCRRA's Part 80 waiver requests here.

[35] *See* SCRRA Showing Pursuant to Footnote 7 (filed May 9, 2011) (SCRRA Showing); MCLM Showing Pursuant to Footnote 7 and Statement in Support (filed May 12, 2011) (MCLM Showing).

[36] *See* CII Petitioners Petition for Reconsideration at 1-2, 5 (filed May 19, 2011) (CII PFR). The CII Companies who joined in the CII PFR are Atlas Pipeline Mid-Continent, LLC, DCP Midstream, LP, Denton County Electric

14. In addition, the *HDO* designated an issue – denominated Issue (g) in the *HDO* ordering clauses – of whether the authorizations for any of MCLM's site-based AMTS stations automatically terminated due to non-construction or permanent discontinuance of operation.[37] In a number of pleadings filed over the years, SkyTel alleged, and MCLM denied, that site-based licenses held by MCLM terminated automatically due to a failure to timely construct the authorized station or permanent discontinuance of operation at the station. The Commission concluded in the *HDO* that "there is a disputed issue of material fact with respect to whether the licenses for any of [MCLM's] site-based AMTS stations have cancelled automatically for lack of construction or permanent discontinuance of operation."[38]

C. Subsequent Developments

15. The Assignment Applications are subject to the Commission's *Jefferson Radio* policy, which provides that a license may not be assigned or transferred when the licensee's qualifications to hold it are in issue.[39] The policy provides a deterrent to licensee misconduct by preventing a licensee from avoiding the loss that would result from revocation or non-renewal of a license.[40] The Commission has recognized an exception to the *Jefferson Radio* policy in its *Second Thursday* doctrine, which permits the Commission, in the exercise of its discretion, to grant a license assignment application, notwithstanding that the licensee's basic qualifications are in issue, if the licensee is in bankruptcy, the assignment will benefit innocent creditors of the licensee, and the individuals charged with misconduct "will have no part in the proposed operations and will either derive no benefit from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors."[41] As the United States Court of Appeals for the D.C. Circuit explained in *LaRose v. FCC*, application of the *Second Thursday* doctrine requires "an *ad hoc* balancing of the possible injury to regulatory authority that might flow from wrongdoers' realizing benefits against the public interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party."[42]

16. On August 1, 2011, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of Mississippi (Bankruptcy Court),[43] and notified the presiding ALJ and parties to the Commission hearing of its intent to invoke

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Cooperative, Inc. d/b/a CoServ Electric, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Interstate Power and Light Company, Jackson County Rural Electric Membership Cooperative, and Wisconsin Power and Light Company. In addition, one of the CII Companies, Duquesne Light Company, separately filed for reconsideration of the *HDO*. *See* Duquesne Light Company Petition for Reconsideration, Request for Removal from Hearing Designation Order, and Request for Grant of Application at 1, 6 (filed May 19, 2011) (Duquesne PFR).

[37] *See HDO*, 26 FCC Rcd at 6546 ¶ 61.

[38] *Id.*

[39] *See Jefferson Radio Corp. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

[40] *See Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981).

[41] *See* Second Thursday Corp., *Memorandum Opinion and Order*, 22 FCC 2d 515, 516 ¶ 5 (*Second Thursday MO&O*), *recon. granted in part*, *Memorandum Opinion and Order*, 25 FCC 2d 112 (1970) (*Second Thursday Recon Order*).

[42] *See LaRose v. FCC*, 494 F.2d 1145, 1149 (D.C. Cir. 1974) (*LaRose*).

[43] *In re* Maritime Communications/Land Mobile, LLC, No. 11-13463-DWH (Bankr. N.D. Miss.). The Commission subsequently approved MCLM's application for the involuntary assignment of its licenses to MCLM as a debtor-in-possession, reflecting the bankruptcy filing. *See* FCC File No. 0004851459 (filed Aug. 26, 2011). With respect to events that occurred after the bankruptcy filing, the term "MCLM" herein refers to the company as debtor-in-possession.

Second Thursday to terminate the hearing.[44] The Bankruptcy Court confirmed MCLM's proposed plan of reorganization (Plan) on January 11, 2013.[45] As the first step in implementing the Plan, MCLM and Choctaw on January 23, 2013 filed the Choctaw Application, which proposes that Choctaw, a newly-formed limited liability company comprised of four of MCLM's creditors, would obtain all of MCLM's licenses, and would then replace MCLM as the assignor in the pending Assignment Applications and seek to find buyers for the remainder of MCLM's licensed spectrum assets.[46]

17. The Applicants request that the Choctaw Application be granted under the *Second Thursday* doctrine.[47] They argue that all of the prerequisites for *Second Thursday* relief are present: they note that MCLM is in bankruptcy, and claim that the DePriests would have no role with Choctaw and would receive no cognizable benefit from the proposed transaction.[48] The Applicants also argue that good cause exists for the Commission to waive its rules as necessary to permit the assignment of any site-based licenses that may have cancelled automatically due to a failure to construct or a permanent discontinuance of service.[49] They further assert that if the Commission does not grant the Choctaw Application pursuant to *Second Thursday*, it should grant the SCRRA and the CII Applications pursuant to Footnote 7.[50]

18. On March 21, 2013, the presiding ALJ, as a matter of administrative efficiency, stayed the hearing with respect to the basic qualifications issues designated against MCLM, noting that a decision on the Choctaw Application and the associated requests for relief might moot those issues.[51] Since the question of whether any of MCLM's site-based licenses have terminated automatically because of a failure to construct or a permanent discontinuance of operation is independent of the basic qualifications issues, however, and would not be rendered moot by the grant of *Second Thursday* relief unless accompanied by a grant of the requested rule waiver, the ALJ directed that the hearing proceed with respect to Issue (g).[52]

19. On March 28, 2013, the Bureau issued a *Public Notice* establishing a pleading cycle for the filing of petitions to deny the Choctaw Application as well as responsive pleadings, comments, and reply comments.[53] The *Public Notice* asked for comment on whether the Applicants' request for *Second*

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[44] *See* Maritime's Motion to Defer All Procedural Dates (filed Aug. 1, 2011 in EB Docket No. 11-71).

[45] *See Order Confirming Plan of Reorganization*, Case No. 11-13463-DWH (Bankr. N.D. Miss. Jan. 11, 2013).

[46] *See* FCC File No. 0005552500 (filed Jan. 23, 2013, amended Jan. 25, 2013) (Choctaw Application); Description of Transaction, Public Interest Statement and *Second Thursday* Showing (PI Statement), attached as an exhibit to the Choctaw Application, at 2-3.

[47] *See* PI Statement at 2, 7-9.

[48] *Id*. at 7-9.

[49] *Id*. at 10-12.

[50] *Id*. at 15-16.

[51] *See Order*, FCC 13M-6, at 1-2 (Mar. 21, 2013).

[52] *Id*. at 2.

[53] *See* 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*, WT Docket No. 13-85, 28 FCC Rcd 3358 (WTB 2013) (*Public Notice*). The parties filing pleadings and comments in response to the *Public Notice*, and the shorthand names used for them and their pleadings herein, are listed in Appendix A. *See* Appendix A, *infra*. MCLM filed a motion to strike from the record a letter submitted by Fred Goad on June 20, 2013 (Goad Opposition), arguing, *inter alia*, that the Goad Opposition raises new matters for the first time in a filing made at the final deadline in the pleading cycle, and that Goad lacks standing. MCLM also sought leave to file a surreply to address the allegations in the Goad Opposition. We do not rely on the allegations in the Goad Opposition in reaching any decision herein, and, in keeping with our intention, reflected in the *Public Notice*, to broaden the record in this proceeding by soliciting comments as well as formal pleadings, we accept into the record both the Goad Opposition and the MCLM Motion to Strike and Surreply, and we deny the motion to strike. *See*

Thursday relief should be granted, whether the assignment of any of MCLM's licenses should be approved pursuant to Footnote 7, whether the Commission should waive the construction and discontinuance-of-service rules for MCLM's site-based licenses, and whether the hearing should be terminated in whole or in part.[54]

III. DISCUSSION

A. *Second Thursday* Request

20. We deny the requests to terminate the hearing and grant the Choctaw Application pursuant to the *Second Thursday* doctrine because we find that the Choctaw Application does not meet a threshold criterion for *Second Thursday* relief. Specifically, we find that the Applicants have failed to demonstrate that individuals suspected of misconduct "will either derive no benefit from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors."[55] As we discuss below, we find that there is a substantial possibility that granting the application would permit the DePriests to obtain a benefit that is neither minor nor incidental by releasing Mr. DePriest from his obligations under his personal guarantees of loans to MCLM.[56] Mr. DePriest could escape a potential liability most conservatively estimated to be $8 million because the creditors could be fully repaid from the proceeds from the assignment of the licenses, and would therefore have no basis to look to Mr. DePriest for recovery under his personal guarantees.

21. In the Choctaw Application, the Applicants acknowledge that a "possible, albeit indirect, benefit that may accrue to the DePriests is the satisfaction of a personal loan guarantee provided by Mr. DePriest to the extent that MCLM, as primary obligor, is able to pay the holders of those claims in full pursuant to the Plan."[57] They assert that this does not foreclose *Second Thursday* relief, however, because "the elimination of potential secondary liability, such as Mr. DePriest's personal loan guarantee, is an incidental benefit" that, under Commission precedent, "is 'outweighed by the equitable considerations

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Public Coast Flexibility Order, 25 FCC Rcd at 533 n.3. We also deny Choctaw's motion to strike EB's comments from the record. *See* Choctaw Opposition at 1 n.3. EB may file comments regarding a *Second Thursday* request to assign a license that has been designated for hearing. *See*, *e.g.*, Eddie Floyd, *Memorandum Opinion and Order*, 26 FCC Rcd 5993 (MB AD 2011).

[54] *See Public Notice*, 28 FCC Rcd at 3360.

[55] *See Second Thursday MO&O*, 22 FCC 2d at 516 ¶ 5. The burden is on the applicants to demonstrate that an application is eligible for relief under *Second Thursday*. *See, e.g.,* Shareholders of Stop 26 Riverbend, Inc., *Memorandum Opinion and Order*, 27 FCC Rcd 6516, 6524 ¶ 16 (2012); Family Broadcasting, *Memorandum Opinion and Order,* 25 FCC Rcd 7591, 7598 ¶ 23 (2010) (*Family Broadcasting*).

[56] Having concluded that the *Second Thursday* request should be denied because of the potential financial benefit to the DePriests, we find it unnecessary to address other arguments, including, but not limited to, that the Plan represents an "inside deal" of some sort between the DePriests and the Choctaw principals; that an alleged wrongdoer will have an impermissible continuing role with respect to the licenses; that *Second Thursday* relief should not be available to a licensee that files for bankruptcy protection primarily to terminate a hearing and circumvent the *Jefferson Radio* policy; or that the absence of a bankruptcy receiver or trustee renders *Second Thursday* relief inappropriate. Nor need we reach the question of whether our analysis under the *Second Thursday* doctrine, first articulated more than 40 years ago, should be updated in light of the statutory authority since granted the Commission to assign spectrum licenses through competitive bidding. Because we find, with one exception, that the public interest in precluding the elimination or reduction of an alleged wrongdoer's potential liability outweighs equitable considerations favoring MCLM's creditors, we do not pause to consider whether the public interest benefit of granting the MCLM-Choctaw assignment application should be weighed against the various public interest objectives that would be promoted by using competitive bidding to assign licenses for the spectrum covered by any MCLM licenses that may be revoked. *See* 47 U.S.C. § 309(j)(3).

[57] PI Statement at 9.

favoring innocent creditors.'"[58] In addition, they later argue that the DePriests will not receive a benefit from the release of Mr. DePriest from liability under his personal loan guarantees because there has been no such release.[59] We do not find these arguments to be persuasive.

22. First, we agree with the Enforcement Bureau that the cases relied upon by Choctaw for the proposition that relief from a secondary liability does not militate against *Second Thursday* relief do not support that proposition.[60] To the contrary, it has always been incumbent upon the parties invoking *Second Thursday* to "show that those principals suspected of wrongdoing will derive no substantial benefit from the sale, either direct *or indirect*."[61] The Commission has repeatedly recognized that the possible elimination or reduction of an alleged wrongdoer's secondary liability may outweigh the interest in protecting innocent creditors and thus preclude *Second Thursday* relief.[62] For example, in *Capital City Communications, Inc.* (*Capital City*), the Commission denied *Second Thursday* relief because licensee stockholders charged with wrongdoing would be relieved of liability as guarantors on obligations in excess of $51,000, which represented more than 20 percent of the proposed purchase price, which the Commission held "manifestly is far more than a 'minor' benefit."[63]

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[58] *See id.*, *citing* KOZN FM Stereo 99 LTD., *Memorandum Opinion and Order*, 6 FCC Rcd 257, 257 (1991) (*KOZN*), *Second Thursday Recon Order*, 25 F.C.C. 2d at 115, and Pyle Communications of Beaumont, Inc., *Memorandum Opinion and Order*, 4 FCC Rcd 8625, 8626 (1989) (*Pyle*); *see also* Choctaw Opposition at 11; MCLM Opposition at 5.

[59] *See* Choctaw Opposition at 10-13; MCLM Opposition at 5.

[60] *See* Enforcement Bureau (EB) Reply at 9 & n.34. Nothing in those decisions suggests that they held anything more than that, in the circumstances of those particular cases, the indirect benefits to alleged wrongdoers were not so significant as to compel denial of *Second Thursday* relief. In *Pyle*, the Commission held that consenting to the proposed assignment was consistent with *Second Thursday* notwithstanding that the alleged wrongdoer would be relieved of liability for certain debts because, unlike the instant case, the wrongdoer's debts would still exceed his assets. *See Pyle*, 4 FCC Rcd at 8626 ¶ 7. In the *Second Thursday Recon Order*, the Commission expressly held that relief from a secondary liability must be considered in a *Second Thursday* analysis; the proposed assignment was approved not because the alleged wrongdoer's relief from a secondary liability was of no consequence, but because it was outweighed by the equities in favor of innocent creditors. *See Second Thursday Recon Order*, 25 FCC 2d at 114-15 ¶¶ 6-7. In *KOZN*, too, the Commission held only that, under the particular terms of the sales agreement presented by the applicants, the alleged wrongdoer would "receive only an incidental benefit from the sale through the elimination of his potential secondary liability." *See KOZN*, 6 FCC Rcd at 257 ¶ 8.

[61] *See* Cosmopolitan Enterprises, Inc., *Memorandum Opinion and Order*, 73 FCC 2d 700, 705 ¶ 11 (1979) (emphasis added).

[62] *See, e.g.,* Mid-State Broadcasting, *Memorandum Opinion and Order*, 61 FCC 2d 196, 198 ¶¶ 6-7 (1976) (*Mid-State*) (denying *Second Thursday* relief where suspected wrongdoers would receive direct benefits amounting to 10.6% and indirect benefits – based on partial removal of secondary liability to creditors and relief from potential personal liability under state tax law – amounting to 60 percent of the purchase price); *see also* Shell Broadcasting, Inc., *Memorandum Opinion and Order*, 38 FCC 2d 929, 932-33 ¶¶ 10-11 (1973) (holding that relieving an alleged wrongdoer of secondary liability is an indirect benefit that must be considered in the *Second Thursday* analysis, but that an indirect benefit amounting to approximately 8 percent of the total claims filed against the bankruptcy licensee was only a minor benefit); Cosmopolitan Enterprises, Inc., *Decision*, 63 FCC 2d 35, 42 ¶ 13 (Rev. Bd. 1977) (holding that approval of application under *Second Thursday* would apparently provide an indirect benefit to alleged wrongdoers by relieving them of a secondary liability of $11,633 on federal tax liens, but this benefit was within the amount allowed wrongdoing parties under *Second Thursday* precedent), *application for review dismissed as moot*, *Memorandum Opinion and Order*, 73 FCC 2d 700, 705 ¶ 11 (1979).

[63] *See* Capital City Communications, Inc., *Memorandum Opinion and Order*, 33 FCC 2d 703, 711 ¶ 24 (*Capital City*), *recon. denied*, *Memorandum Opinion and Order*, 34 FCC 2d 685 (1972). Choctaw contends that the finding by the Court of Appeals in *LaRose* that the proposed assignment in that case appeared to benefit the principal wrongdoers only indirectly stands for the general proposition that the elimination of a secondary liability should always be deemed a minor benefit outweighed by equitable considerations favoring innocent creditors, and thus that *Capital City* has lost its precedential value. *See* Choctaw Opposition at 12-13. We see no basis for such a

23. Moreover, it is precisely because the creditors retain the ability to sue Mr. DePriest under his personal guarantees that he may receive a substantial benefit from a grant of *Second Thursday* relief. Estimates of the amount of Mr. DePriest's liability on his loan guarantees range from at least $8 million to more than $11 million.[64] The record also indicates that the proceeds from the assignment of MCLM's spectrum licenses to third parties would be more than enough to repay MCLM's creditors in full.[65] Thus, a grant of *Second Thursday* relief here could very well discharge Mr. DePriest's personal liability, resulting in significant potential savings. Under Commission precedent, this amount is too large to be deemed minor or incidental.[66]

24. By virtue of our denial of *Second Thursday* relief to the Applicants, the Choctaw Application shall remain pending, and the hearing regarding MCLM's basic qualifications shall continue. We direct the Bureau to continue to defer action on the Choctaw Application pending resolution of the matters before the ALJ. We also expect the presiding ALJ to rescind his partial stay of the proceeding, and to proceed with the adjudication of the issues pertaining to MCLM's basic qualifications.

B. Footnote 7 Relief

25. Having determined that the Choctaw Application is not eligible for *Second Thursday* relief, and that, consequently, the hearing regarding MCLM's basic qualifications should continue, we now consider whether any applications should be removed from the ambit of the hearing pursuant to Footnote 7. For reasons discussed below, we conclude that the SCRRA Applications should be removed from the hearing in order to facilitate SCRRA's implementation of PTC, but that the CII Applications should not be removed.

1. SCRRA Applications

26. SCRRA argues that the removal and grant of the SCRRA Applications is "plainly warranted in view of the federal PTC mandate, the overriding public safety considerations at stake here and the well-established Federal transportation safety policies that will be advanced" by such action.[67] It also notes that grant of the SCRRA Applications would not terminate the MCLM hearing and, since only a relatively small portion of MCLM's spectrum holdings would be removed from the hearing, the

(Continued from previous page)
conclusion; the court held merely that the elimination of the secondary liability in that particular case was not of a magnitude warranting defeat of a *Second Thursday* proposal. *See LaRose*, 494 F. 2d at 1149 ("The first proposed sale and assignment was very beneficial to Capital's creditors and appeared to benefit the principal wrongdoers of Capital only indirectly. Moreover, appellant LaRose felt that this indirect benefit – in this case, the elimination of some of the wrongdoers' secondary liability on certain financial obligations – was mitigated by the fact that those persons were judgment-proof."). The court did not question any of the eligibility criteria for *Second Thursday* relief, and, as noted *supra*, subsequent Commission decisions continued to consider alleged wrongdoers' potential secondary liability in determining whether a given proposal satisfied the *Second Thursday* criteria. We agree with EB that *Capital City* continues to be meaningful precedent. *See* EB Reply Comments at 11 n.45.

[64] Ms. DePriest testified in the bankruptcy proceeding that Mr. DePriest personally guaranteed approximately $8 million. *See* Transcribed 341(a) [referring to the meeting of creditors under 11 U.S.C. § 341(a)], Case No. 11-13463-DWH, Bankr. Ct. N.D. Miss. (Sept. 23, 2011) at 112 (providing a "ballpark estimate" of "about 8 million"). Other commenters assert that Mr. DePriest personally guaranteed more than $11 million of MCLM's debt. *See*, *e.g.*, Council Tree Petition at 5-6 (asserting that Mr. DePriest's personal guarantees exceeded $11 million), Reply at 2 ($11.2 million); SkyTel Petition at 7 ($11.2 million), Reply at 21 ($11.5 million).

[65] The Amended Summary of Schedules filed by MCLM with the Bankruptcy Court discloses assets worth $46,542,751.63, virtually all of which is attributable to MCLM's FCC licenses, and liabilities of $31,240,965.12. *See* Debtor's Amended Summary of Schedules, Case No. 11-13463-DWH, Bankr. Ct. N.D. Miss. (filed Nov. 15, 2011), attached to EB Comments as Exhibit 3, at 1, 5. Nothing in the record of this proceeding creates any question that the value of MCLM's assets substantially exceeds the amount of its liabilities.

[66] *See, e.g., Capital City*, 33 FCC 2d at 711 ¶ 24; *Pyle*, 4 FCC Rcd at 8626 ¶ 7; *Mid-State*, 61 FCC 2d at 98 ¶¶ 6-7.

[67] *See* SCRRA Showing at 9; *see also* MCLM Showing at 1-4.

Commission would retain the ability to impose a meaningful penalty on MCLM that would avoid undermining the deterrent provided by the *Jefferson Radio* policy.[68] Other parties and commenters, except SkyTel,[69] generally support granting Footnote 7 relief to SCRRA.[70] As discussed below, we remove the SCRRA Applications from the hearing, and direct the Bureau to process the applications, consistent with this *Memorandum Opinion and Order* and the Commission's Rules.

27. We reject SkyTel's arguments that granting Footnote 7 relief to the SCRRA Applications would violate the Communications Act of 1934, as amended (Act) or the Commission's Rules because it would supersede SkyTel's pending application for review[71] of the PSCID and MD decisions upholding the initial grant of the Auction 61 AMTS licenses to MCLM, and SkyTel's petition to deny[72] the SCRRA Applications.[73] As an initial matter, we note that the Commission has denied petitions to deny an assignment application where the licensee's qualifications are in issue and the application was filed pursuant to the *Second Thursday* doctrine,[74] and we see no basis for distinguishing our action here simply because it is based on Footnote 7 rather than *Second Thursday*. Moreover, the statutory provisions cited by SkyTel – Sections 309(d) and 405 of the Act – give parties with standing a right to file petitions to deny and petitions for reconsideration, respectively,[75] but they do not give a petitioner a vested right to any particular outcome, and neither those statutory provisions nor any Commission rule precluded the Bureau from issuing the *Public Notice* and inviting additional comment on matters that were earlier addressed in petitions to deny filed by SkyTel prior to the opening of this docket. Neither applicants,[76]

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[68] *See* SCRRA Showing at 14.

[69] *See, e.g.,* Opposition to Showing Pursuant to Footnote 7 (filed May 24, 2011 by Warren Havens, Individually and as President of Skybridge Spectrum Foundation, Environmentel LLC, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and V2G LLC).

[70] *See, e.g.*, AAR Comments at 1-4; Council Tree Petition at 2; CII Companies Comments at 15-16; Caltrans Letter at 1; RCTC Letter at 1; SANBAG Letter at 1. In addition, the United States Department of Transportation says that "allowing this spectrum to be made available to SCRRA as quickly as possible is in the public interest of delivering the significant benefits of PTC required by the RSIA." *See* USDOT Letter at 1-2.

[71] *See* SkyTel 2007 AFR, n.25, *supra*.

[72] *See* Petition to Deny, and in the Alternative Section 1.41 Request (filed Apr. 28, 2010, by Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, and Warren Havens).

[73] *See* SkyTel Reply Comments at 4. We also reject SkyTel's argument that the Footnote 7 showings by SCRRA and the CII Companies are procedurally defective for various reasons. *See* SkyTel Reply Supplement at 11. Footnote 7 did not prescribe any particular requirements for such a showing.

[74] *See Family Broadcasting*, 25 FCC Rcd at 7600 ¶ 29; *see also* Public Service Enterprises, Inc., *Memorandum Opinion and Order*, 69 FCC 2d 967 (1978) (both denying petition to deny filed against a *Second Thursday* applicant after the release of an initial decision finding that the applicant lacked the basic qualifications to be a licensee).

[75] *See* 47 U.S.C. §§ 309(d), 405(a).

[76] *See* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, WT Docket No. 96-18 and PR Docket No. 93-253, 14 FCC Rcd 10030, 10038 ¶ 8 (1999) ("[c]ourts have consistently recognized that the filing of an application creates no vested right to continued application of licensing rules that were in effect when the application was filed, and an application may be dismissed if substantive standards subsequently change"), *aff'd sub nom. Benkelman Telephone Company v. FCC*, 220 F.3d 601 (2000), *citing*, *e.g.*, *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202-03 (1956); *Chadmoore Communications Inc. v. FCC*, 113 F.3d 235, 240-41 (D.C. Cir. 1997); *Hispanic Information & Telecommunications Network v. FCC*, 865 F.2d 1289, 1294-95 (D.C. Cir. 1989).

nor licensees generally,[77] have a vested property right in licensed spectrum, so a petitioner such as SkyTel can assert no greater interest.

28. SkyTel also argues that Footnote 7 is "facially defective and ultra vires" as a substantive rule created without public notice, comment, and Federal Register publication; and that granting Footnote 7 relief to the SCRRA Applications would be arbitrary, capricious, and an abuse of discretion.[78] We disagree. Neither the *Jefferson Radio* policy nor any exception thereto was adopted through notice-and-comment rulemaking or codified in the Commission's Rules,[79] and SkyTel fails to provide any legal basis for its assertion that the Commission may not act pursuant to Footnote 7 without a rulemaking proceeding.[80] It is well established that an agency has broad discretion in choosing to proceed via adjudication or rulemaking as it thinks best.[81] We do agree with SkyTel that it is incumbent upon the Commission to provide a clear rationale for establishing a new exception to the *Jefferson Radio* policy.[82]

29. PTC is a potentially transformative technology that is intended to save lives, prevent injuries, and avoid extensive property damage. PTC systems will be implemented with the aim of reducing the risk of rail accidents caused by human error, preventing train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.[83] Railroads have chosen to implement PTC using radio spectrum to create wireless networks that will enable real-time information sharing between trains, rail wayside devices, and "back office" applications, regarding train movement authorities, speed restrictions, train

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[77] *See* 47 U.S.C. §§ 301 (providing that grant of an FCC license does not convey ownership of the licensed spectrum and that "no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license"), 304 ("No station license shall be granted by the Commission until the applicant therefore shall have waived any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States…"), 309(h) (mandating that each FCC station license shall state that the "license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the terms thereof …") ; *Celtronix Telemetry, Inc. v. FCC*, 272 F. 3d. 585, 589 (D.C. Cir. 2002), *cert. denied*, 536 U.S. 923 (stating that "it is undisputed that the Commission always retained the power to alter the terms of existing licenses by rulemaking" and that the introduction of auctions as a licensing mechanism did not restrict the Commission's "authority 'to regulate or reclaim spectrum licenses,'" *citing* 47 U.S.C. § 309(j)(6)(C) (other internal citations omitted)).

[78] *See* SkyTel Reply Comments at 4-6, Reply at 5, 26-35.

[79] Notwithstanding the absence of a formal rulemaking proceeding, SkyTel and other interested parties were provided with ample opportunity to comment on Footnote 7, both in the hearing and this proceeding, and SkyTel, among others, has availed itself of those opportunities multiple times. Our decisions here are informed by an extensive record on PTC spectrum needs and other factors.

[80] SkyTel also argues that removing any of the Assignment Applications from the hearing would undermine the deterrent value of the *Jefferson Radio* policy. *See* SkyTel Reply at 27. This is true of any exception to the policy, and does not bar the development of such exceptions. We believe, moreover, that removing only the SCRRA Applications from the hearing pursuant to Footnote 7 would not significantly undermine the deterrent to licensee misconduct, because it would be confined to a narrow circumstance.

[81] *See, e.g., SEC v. Chenery Corp*., 332 U.S. 194, 202-03 (1947) ("[T]he choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency").

[82] *See* SkyTel Reply at 28; *see also Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 893 F. 2d 1349, 1359-63 (D.C. Cir. 1990) (*Coalition for the Preservation of Hispanic Broadcasting*), *on rehearing*, 931 F. 2d 73 (1991), *cert. denied*, 502 U.S. 907 (1991) (remanding a Commission decision approving the sale of a broadcast station for full market value because the decision created an *ad hoc* exception to *Jefferson Radio* without articulating a clear rationale for the departure from precedent); *but see id*. at 1360 ("obviously, the Commission is free to change the [*Jefferson Radio*] doctrine, as long as it explains why and what it is doing").

[83] *See* 49 U.S.C. § 20157(i)(3); 49 C.F.R. § 236.1005(a) (PTC system requirements).

position and speed, and the state of signal and switch devices. It is a priority of the Commission to facilitate this important safety measure, and we have endeavored to develop policies to facilitate the rail industry's acquisition and use of spectrum for PTC in the public interest.[84] FCC staff has worked, and will continue to work, with the Department of Transportation, the National Transportation Safety Board,[85] railroads, and spectrum licensees to identify and facilitate secondary market transactions to make spectrum available for PTC operations.[86]

30. PTC-220, LLC (PTC-220), a joint venture of the seven Class I freight railroads in the United States, has begun the development and deployment of interoperable PTC communications systems using spectrum in the 220-222 MHz band.[87] It is also leasing spectrum to non-member railroads to implement PTC,[88] but notes that its spectrum may not be sufficient to provide robust PTC operations in some areas of heavy traffic, such as the Los Angeles basin where SCRRA operates.[89] SCRRA notes that it has executed a temporary spectrum lease with PTC-220, but this does not provide a long-term solution to its PTC spectrum needs.[90]

31. We conclude that the removal of the SCRRA Applications from the hearing would serve the public interest by significantly promoting rail safety of life and property, and that the SCRRA Applications should be processed rather than left in abeyance for an additional indefinite period, due in part to the pending statutory deadline for PTC implementation.[91] Under the circumstances presented, allowing the SCRRA Applications to be addressed outside the hearing pursuant to Footnote 7 is a tailored response to a narrow and demonstrated need, involves only a limited amount of spectrum in a single

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[84] *See, e.g.,* Experimental Actions, *Public Notice*, Report No. 456, Transportation Technology Center, EX-PL-2014 WH2XDB (OET June 3, 2014) (granting experimental license for testing PTC systems); Metropolitan Transportation Authority Request for Waiver to Facilitate Positive Train Control System, *Order*, 29 FCC Rcd 2004 (WTB 2014) (authorizing the use of increased power in the 218-219 MHz band to implement PTC systems for the Metro-North and Long Island commuter railroads); Wireless Telecommunications Bureau Seeks Comment on Request for Waiver to Facilitate Deployment of Positive Train Control Systems, *Public Notice*, WT Docket No. 13-59, 28 FCC Rcd 2243 (WTB 2013) (seeking comment on request for waiver of certain rules to facilitate PTC system deployments in the 220-222 MHz band); Wireless Telecommunications Bureau Seeks Comment on Spectrum Needs for the Implementation of the Positive Train Control Provisions of the Rail Safety Improvement Act of 2008, *Public Notice*, WT Docket No. 11-79, 26 FCC Rcd 6704 (WTB 2011) (seeking comment on PTC spectrum issues); PTC-220, LLC, *Memorandum Opinion and Order*, WT Docket No. 08-256, 24 FCC Rcd 8537 (WTB 2009) (granting waiver of certain technical rules to enable PTC system deployments in the 220-222 MHz band).

[85] PTC is on NTSB's top-10 Most Wanted List. *See* http://www.ntsb.gov/safety/mwl8_2014.html.

[86] The Commission has worked closely with the railroads and other stakeholders to enable the deployment of the many towers and wayside poles required for robust PTC wireless networks. Specifically, Commission staff developed a Program Comment adopted by the Advisory Council on Historic Preservation to "facilitate timely completion of the important PTC railway safety initiative…while ensuring that the effects of wayside poles and infrastructure on historic properties are appropriately considered in compliance with the" National Historic Preservation Act (NHPA). *See* Wireless Telecommunications Bureau Announces Adoption of Program Comment to Govern Review of Positive Train Control Wayside Facilities, *Public Notice*, WT Docket No. 13-240, 29 FCC Rcd 5340 (WTB 2014). The Commission continues to devote substantial resources to facilitate build out of PTC infrastructure in a manner consistent with parties' obligations under the RSIA, NHPA and the National Environmental Policy Act. *See*, *e.g.*, http://www.fcc.gov/encyclopedia/positive-train-control-ptc.

[87] *See PTC-220 Waiver PN*, 28 FCC Rcd at 2243.

[88] *Id*. at 2243-44.

[89] *See* AAR Comments at 2, *citing* Comments of PTC-220, LLC, WT Docket No. 10-83 (Apr. 28, 2010), and Reply Comments of PTC-220, LLC, WT Docket No. 13-59, at 10 (Apr. 23, 2013).

[90] *See, e.g.,* SCRRA Comments 7, *citing* SCRRA's "Third Supplement to 'Showing Pursuant to Footnote 7' and Second Renewal of Request for Prompt Agency Action" (filed Jan. 24, 2013); AAR Comments at 3.

[91] *See* Pub. L. No. 110-432 § 104, 122 Stat. 4848, 4857 (2008).

geographic area, and is unlikely to undermine the deterrent to licensee misconduct posed by the *Jefferson Radio* policy. We note that we are confining Footnote 7 relief to applications proposing to use the spectrum license for PTC, a service statutorily mandated for protecting life and property, where the spectrum in question is uniquely suited to enable system interoperability as part of the frequency range that is being deployed nationwide for PTC. We also note that SCRRA, which operates in one of the most populous regions of the country in an area where rail safety is of particular importance and concern,[92] filed its assignment application prior to release of the *HDO*, and thus may have relied on access to the spectrum without notice of that obstacle to the transaction.

32. We are not persuaded by SkyTel's arguments to the contrary. SkyTel says that allowing the SCRRA Assignment Application to be removed from hearing and then granted would undermine the AMTS allocation and licensing process, but does not explain why it would do so any more than would any secondary markets transaction.[93] SkyTel also argues that SCRRA's asserted need for the license to be assigned by MCLM is not genuine, and that nothing in the record indicates that AMTS spectrum is better suited to PTC than other spectrum that SCRRA might acquire.[94] We disagree. The record shows that the railroad industry has coalesced around three specific frequency bands, ranging from 217.6 MHz to 222 MHz, for implementation of PTC. The nationwide use of 220-222 MHz frequencies for PTC by PTC-220, coupled with the critical need to ensure PTC interoperability, makes AMTS spectrum particularly suitable for PTC use. Both the Federal Railroad Administration and PTC-220, among other commenters, support SCRRA's claim that obtaining the spectrum license it seeks to acquire from MCLM is vital.[95] SkyTel's argument that SCRRA has no real need for such spectrum is simply contrary to the weight of the evidence.[96]

33. Given that we are removing the SCRRA Applications from the hearing pursuant to Footnote 7, we are not constrained by the specific limitation imposed by *Second Thursday* that a wrongdoer derive no more than a minor benefit which is outweighed by equities favoring innocent creditors. We are mindful, however, that the exceptions to the *Jefferson Radio* policy that have been recognized to date generally require assurance that suspected wrongdoers will not avoid a monetary

[92] The immediate impetus for enactment of the RSIA, and its mandate for implementation of PTC, was a September 2008 rail accident in Chatsworth, California resulting from the collision of a commuter train and freight train that resulted in 25 deaths and more than 100 injuries.

[93] *See* SkyTel Reply Comments at 4-5. We emphasize that our decision here is only to remove from the hearing a single transaction between two parties for the assignment of spectrum to be used for PTC, and does not constitute a finding that the public interest would be served either by a general allocation of spectrum specifically for PTC or a general relaxation of otherwise applicable licensing rules for applications proposing to use spectrum for PTC.

[94] *Id*. at 30-31.

[95] *See* Letter, dated Apr. 16, 2010, from Joseph Szabo, Administrator, Federal Railroad Administration (FRA), to Ruth Milkman, Chief, Wireless Telecommunications Bureau (filed in WT Docket No. 10-83); Letter, dated May 9, 2011, from Edwin F. Kemp, President, PTC-220, LLC, to Marlene H. Dortch, Secretary, FCC (filed in EB Docket No. 11-71). In fact, the FRA has identified the need for appropriate spectrum as the first of several technical obstacles impeding progress in the implementation of PTC, and has said that "[o]f particular concern is the availability of … spectrum planned for use between 217.6 MHz and 222 MHz" because the "industry [has] adopted 220 MHz as the interoperability communications standard." *See* "Positive Train Control Implementation Status, Issues, and Impacts," Federal Railroad Administration Report to Congress (August 2012), at 15-16.

[96] We also are not persuaded by SkyTel's alternative argument that the SCRRA Applications should not be removed from the hearing because, even if SCRRA truly needs spectrum in the 220 MHz band, it could have approached other licensees holding such spectrum in Southern California, including entities affiliated with SkyTel. *See* SkyTel Reply at 33. SkyTel has not cited any precedent suggesting that the Commission may limit the licensees from whom a particular party may seek an assignment of a license. *Cf.* 47 U.S.C. § 310(d) (prohibiting the Commission from denying a proposed assignment based on the public interest in having the license assigned to a party other than the proposed assignee). We also find the assertion that SCRRA could obtain the needed spectrum elsewhere to be speculative, notwithstanding SkyTel's suggestion that it might be willing to assign its own spectrum to SCRRA.

penalty if the underlying application is granted.[97] In assessing whether the public interest would be served by granting Footnote 7 relief to the SCRRA Applications, we have considered the possibility that a distribution of the proceeds from the transaction to MCLM's creditors might operate to reduce Mr. DePriest's personal liability on his loan guarantees. The record indicates, however, that, even if so, Mr. DePriest would still be subject to a substantial personal liability.[98] We find that, on balance, this partial reduction in his total liability is outweighed by the public interest in permitting the assignment of a spectrum license to SCRRA to implement a life-saving, positive train control system as required by Congress.

2. CII Applications

34. The CII Companies contend that, like SCRRA, they need spectrum for what they argue are public safety-related communications, such as Supervisory Control and Data Acquisition (SCADA) communications by oil and gas companies or smart grid deployment by electric utilities, to comply with federal or state requirements.[99] They add that they, like SCRRA, entered into agreements with MCLM in good faith and for fair market value to acquire needed spectrum unavailable elsewhere, and that they are not themselves accused of any wrongdoing.[100] In addition, the record reflects support among other commenters, other than SkyTel,[101] for extending Footnote 7 relief to the CII Companies.[102] As discussed below, we decline to grant Footnote 7 relief to the CII Companies because the CII Applications are readily distinguished from the SCRRA Applications, and extending Footnote 7 relief to other applications would not serve the public interest.

35. As a procedural matter, we dismiss the petitions for reconsideration of Footnote 7 on the grounds that they are petitions for reconsideration of a hearing designation order, which is an interlocutory ruling.[103] We disagree with the CII Companies' argument[104] that their petition comes within the exception in Section 1.106(a)(1) of the Rules, allowing "[a] petition for reconsideration of an order designating a case for hearing [to] be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding."[105] Nothing in Footnote 7 limited the ability of

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[97] *See, e.g.*, *Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 893 F. 2d 1349, 1360 (D.C. Cir. 1990) ("In those rare cases where the Commission, prior to final resolution of a … hearing, has approved transfers falling outside these recognized exceptions [to the *Jefferson Radio* policy], the transfer was made with a substantial monetary penalty to the transferor"); Statement of Policy on Minority Ownership of Broadcasting Facilities, *Public Notice*, 68 FCC 2d 979, 983 (1978) (former distress sale policy permitted licensees designated for hearing to assign licenses to applicants with significant minority ownership, but only at "distress sale" price); Tinker, Inc., *Memorandum Opinion and Order*, 8 FCC 2d 22, 22 ¶ 4 (1967) (terminated proceeding and permitted license assignment where allegedly culpable principal had serious medical condition, provided principal would withdraw from broadcasting and not profit from sale of the station).

[98] *See* notes 64-65, *supra.*

[99] *See* CII PFR at 5-12; Duquesne PFR at 3-4, 7-10.

[100] *See* CII PFR at 3, 5, 12-13.

[101] *See* Consolidated Opposition to Petitions for Reconsideration (filed June 2, 2011, by Warren Havens, Individually and as President of Skybridge Spectrum Foundation, Environmentel LLC, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, and V2G LLC).

[102] *See, e.g.*, Choctaw Opposition at 33-35; Council Tree Petition at 2; UTC Reply Comments at 3-4. EB opposed the petitions for reconsideration of the *HDO*, *see* Enforcement Bureau's Consolidated Opposition to Petitions for Reconsideration (filed June 2, 2011), but its comments in response to the *Public Notice* appear to support Footnote 7 relief for the CII Applicants as an alternative to *Second Thursday* relief, *see* EB Comments at 19-21.

[103] *See* Trinity Broadcasting of Florida, Inc., *Memorandum Opinion and Order*, 9 FCC Rcd 2567, 2567 ¶ 2 (1994).

[104] *See* CII PFR at 1 n.1.

[105] 47 C.F.R. § 1.106(a)(1).

the CII Companies to participate in the hearing. Requests to expand the scope of Footnote 7 are analogous to challenges to the designation of a question for hearing, which are interlocutory petitions that will not be entertained.[106] It is nonetheless incumbent upon us, in response to their arguments in this docket, to explain why we are treating the CII Companies differently from SCRRA with respect to Footnote 7.

36. The CII Companies argue that they are similarly situated to SCRRA such that it would be "an unlawful abuse of discretion for the Commission to allow the railroad to extract itself from the hearing proceeding while not affording the same opportunity to electric utilities and oil and gas companies facing similar federal requirements and spectrum shortages."[107] We recognize that the CII Companies are critical infrastructure industry entities under the Commission's Rules.[108] We acknowledge as well that important public benefits stem from the operation of, for example, SCADA systems by oil and gas companies and smart grid systems by electric cooperatives and other utilities.[109] Although the CII Companies' proposals to use the spectrum licenses for SCADA, smart grid and similar applications would be beneficial to the public, unlike PTC, those other services are not dedicated to communications to prevent human injury and property damage, but are also used for day-to-day facilities management and other purposes that primarily serve the business needs of the licensee.

37. The CII Companies point to their own regulatory mandates for implementation of wireless communications systems, but none has the same federal statutory mandate, grounded principally in a specific public safety concern with an imminent statutory deadline, as PTC.[110] The AMTS frequencies, moreover, are uniquely suited for SCRRA's PTC deployment because they are within the band range (217-222 MHz) of the industry's PTC radio solution.

38. The Commission deliberately limited Footnote 7 to the possibility of removing the SCRRA Assignment Application from the ambit of the hearing because of the particular public interest in facilitating the implementation of PTC. The Commission was aware of the pending applications to assign

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[106] *See* Service Electric Cable TV, Inc., *Memorandum Opinion and Order*, 51 FCC 2d 763, 764 ¶ 3(1975), *citing* Phone-Mate, Inc. v. American Telephone and Telegraph and South Central Bell Telephone Co., *Memorandum Opinion and Order*, 48 FCC 2d 201 (1974).

[107] *See* CII Companies Comments at 17; *see also* Duquesne PFR at 10-11.

[108] *See, e.g.*, 47 C.F.R. § 90.7. We also credit their claims that they require spectrum to comply with regulatory mandates, would use the spectrum to support critical and innovative new applications in the public interest, face constraints in obtaining suitable spectrum, and acted in good faith in their dealings with MCLM. *See* CII Companies Comments at 15-16. *See also* SVEC Comments at 2, Reply at 1-2 (SVEC, which is a party to an assignment application with MCLM that was filed after the release of the *HDO* and thus is not part of the hearing, says that the loss of the spectrum it is now leasing from MCLM would cripple, if not eliminate, its communications capabilities relating to outage restoration, operation and maintenance of its distribution system, and consumer service).

[109] *See* CII Companies Comments at 8-11.

[110] The CII Petitioners note, for example, that in 2009 the Pipeline and Hazardous Materials Safety Administration amended the safety regulations governing control room management of pipelines where controllers use SCADA systems, requiring implementation of new procedures by February 1, 2012. *See* CII PFR at 6, *citing* 74 Fed. Reg. 63311 (Dec. 3, 2009). The CII Companies also cite to Environmental Protection Agency environmental monitoring standards applicable to SCADA systems. *See, e.g.*, CII PFR at 7-8 n.18, *citing* 40 C.F.R. §§ 63.1 *et seq*., 75 Fed. Reg. 51570 (Aug. 20, 2010). Although the CII Companies do not cite to any specific safety-related statutory or regulatory mandate for smart grid technology, they note that smart grid and other electric utility operations are a key component of homeland security. *See, e.g.*, CII PFR at 14-17, *citing* Comment Sought on the Implementation of Smart Grid Technology, *Public Notice*, GN Docket Nos. 09-47, 09-51,and 09-137, 24 FCC Rcd 11747 (2009), USA Patriot Act, Pub. L. 107-56 § 1016, 115 Stat. 272 (2001). In addition, UTC notes that utilities require spectrum to comply with certain reliability standards promulgated by the North American Electric Reliability Corporation. *See* UTC Reply Comments at 3 n.6.

spectrum licenses from MCLM to the CII Companies, but it did not invite those parties to seek removal of their applications from the hearing. We find, after careful consideration of the record, that on balance removing only the SCRRA Applications from the hearing based on considerations unique to PTC, including the particular frequencies sought, would best serve the public interest. We therefore decline to extend Footnote 7 to the CII Applications.[111]

C. Waiver Request

39. Having denied the requests for *Second Thursday* relief and to expand Footnote 7 relief beyond the SCRRA Applications, we conclude that we need not address the Applicants' request for a waiver of the automatic termination of any site-based licenses[112] due to a failure to construct or a permanent discontinuance of service.[113] We understand that the parties have expended significant time and resources in litigating this issue in the hearing,[114] and that Issue (g) may be relatively close to resolution.[115] At this juncture, therefore, we defer to the presiding ALJ, who has the benefit of the broader record developed in the hearing on this issue, to determine whether there has been any violation of the construction or discontinuance-of-service rules, rather than truncate that inquiry by waiving the construction and discontinuance-of-service rules in advance of a determination as to whether such a waiver is needed.

IV. CONCLUSION

40. We conclude that the Choctaw Application may not be processed at this time because the Applicants have failed to demonstrate that the hearing on MCLM's basic qualifications should be terminated under the *Second Thursday* exception to the *Jefferson Radio* policy. The Choctaw Application is not eligible for *Second Thursday* relief because granting the Choctaw Application would likely afford the DePriests a significant financial benefit by releasing Mr. DePriest from his personal guarantees of loans to MCLM. Accordingly, the hearing on MCLM's basic qualifications shall continue, and the Choctaw Application shall remain in pending status until the outcome of the hearing. We remove one of the designated assignment applications from the hearing, however, based on overriding public interest considerations. Specifically, we find that, in accord with Footnote 7 of the *HDO*, MCLM and SCRRA have made a sufficient showing to justify the removal of the SCRRA Applications in the interest of facilitating the effective and expeditious deployment of PTC. We decline to remove the CII Applications because we find that PTC is distinguishable from the purposes to which the CII Companies intend to put the spectrum, and because removing the CII Applications would greatly diminish the deterrent to licensee misconduct provided by the *Jefferson Radio* policy. Finally, in light of these decisions, we conclude that

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[111] The CII Companies cite Cablecom-General, Inc., *Letter*, 87 FCC 2d 784, 790-91 (1981) (*Cablecom*) in support of their argument that, in these circumstances, other public interest considerations outweigh the importance of maintaining a deterrent to licensee misconduct. *See* CII Companies Comments at 12-14. While *Cablecom* once was construed as holding that character considerations do not carry the same significance in a non-broadcast context as in broadcast proceedings because the non-broadcast licensee does not control content delivered to the public, *see* Arizona Mobile Telephone Company, *Decision*, 93 FCC 2d 1147, 1153 ¶ 12 (1983), we note that the Commission later held that its *Character Qualifications Policy*, although developed in a broadcast context, applies equally to non-broadcast licensees. *See, e.g.*, Leslie D. Brewer, *Order to Show Cause, Notice of Order of Suspension, Notice of Opportunity for Hearing, and Notice of Apparent Liability for a Forfeiture*, EB Docket No. 01-61, 16 FCC Rcd 5671, 5674 ¶ 12 (2001).

[112] The spectrum at issue in the SCRRA Applications is part of an AMTS geographic license.

[113] Choctaw asserts that the waiver request should be granted regardless of whether we provide relief pursuant to *Second Thursday*, but it does not explain what purpose would be served by adjudicating a request for a waiver to enable the assignment of licenses that we are not permitting to be assigned. *See* Choctaw Opposition at 21.

[114] *See, e.g.*, EB Comments at 22; SkyTel Reply at 36.

[115] *See, e.g.*, *Order*, FCC 14M-18 (June 17, 2014) (granting summary decision on the construction question but not the discontinuance question under Issue (g)).

we need not address the Applicants' request for a waiver of the construction and discontinuance-of-service requirements for MCLM's site-based stations.

41. We are removing the SCRRA Applications from the hearing, but we are not granting them herein. The Bureau may grant the SCRRA Applications upon a finding that such a grant would be consistent with the determinations in this *Memorandum Opinion and Order* and the relevant rules. The Bureau should not entertain efforts to relitigate matters that have been addressed here, such as the propriety of removing only the SCRRA Applications pursuant to Footnote 7. Any pleadings that may be filed against the SCRRA Applications that repeat arguments that have been resolved here should be summarily dismissed.[116]

V. ORDERING CLAUSES

42. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 309(e), and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), 312(c), that the request filed by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, and Choctaw Holdings, LLC on January 13, 2013 to terminate the hearing proceeding in EB Docket No. 11-71 and consent to application File No. 0005552500 IS DENIED, and that application File No. 0005552500 SHALL BE HELD IN ABEYANCE consistent with this *Memorandum Opinion and Order* and the Commission's Rules.

43. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the requests filed by Southern California Regional Rail Authority on May 9, 2011, and by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession on May 12, 2011, to remove application File Nos. 0004153701 and 0004144435 from the EB Docket No. 11-71 hearing proceeding pursuant to footnote 7 of the *Hearing Designation Order* in EB Docket No. 11-71 ARE GRANTED, and that application File Nos. 0004153701 and 0004144435 SHALL BE PROCESSED consistent with this *Memorandum Opinion and Order* and the Commission's Rules.

44. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed on May 19, 2011, by Atlas Pipeline Mid-Continent, LLC, DCP Midstream, LP, Denton County Electric Cooperative, Inc. d/b/a CoServ Electric, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Interstate Power and Light Company, Jackson County Rural Electric Membership Cooperative, and Wisconsin Power and Light Company IS DISMISSED.

45. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration, Request for Removal from Hearing Designation Order, and Request for Grant of Application filed on May 19, 2011 by Duquesne Light Company IS DISMISSED insofar as it is a petition for reconsideration and IS OTHERWISE DENIED.

46. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended,47 U.S.C. §§ 154(i), 309, that the requests made on May 19, 2011, by Atlas Pipeline Mid-Continent, LLC, DCP Midstream, LP, Denton County Electric Cooperative, Inc. d/b/a CoServ Electric, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Interstate Power and Light Company, Jackson County Rural Electric Membership Cooperative, Wisconsin Power and Light Company, and Duquesne Light Company to remove application File Nos. 0004030479, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921,

[116] If the SCRRA Assignment Application is granted after being removed from the hearing pursuant to Footnote 7, and a notification of consummation for that transaction is accepted by the Bureau, the Applicants will need to amend the Choctaw Application to delete that portion of the license for Station WQGF318 that has been assigned to SCRRA. Such an amendment would be a minor amendment. *See* 47 C.F.R. § 1.929(a)(6), (k).

0004526264, 0004636537, and 0004604962 from the EB Docket No. 11-71 hearing proceeding pursuant to footnote 7 of the *Hearing Designation Order* in EB Docket No. 11-71 ARE DENIED.

47. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the Motion to Strike filed on May 30, 2013 Choctaw Holdings, LLC, and the Motion to Strike filed on July 3, 2013, by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession ARE DENIED, and the Request for Leave to File a Surreply filed on July 3, 2013,by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Pleadings and Comments

Petitions to Deny and Comments

Association of American Railroads (AAR) Comments – AAR Comments
Council Tree Investors, Inc. (Council Tree) Petition to Deny – Council Tree Petition
Critical Infrastructure Companies (CII Companies) Comments – CII Companies Comments
Enforcement Bureau, FCC (EB) Comments on MCLM and Choctaw's *Second Thursday* Submission – EB Comments
Enterprise Wireless Alliance
Harmer, Peter (Harmer)
Shenandoah Valley Electric Cooperative (SVEC) Comments – SVEC Comments
SkyTel-1 Entities (SkyTel) Petition to Dismiss or Deny, and Comments – SkyTel Petition
Southern California Regional Rail Authority (SCRRA) Comments – SCRRA Comments
Spectrum Bridge, Inc.

Oppositions to Petitions to Deny and Reply Comments

California Department of Transportation, Division of Rail (Caltrans) Letter – Caltrans Letter
Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (Choctaw) Reply Comments and Opposition to Petitions to Deny – Choctaw Opposition
CII Companies Reply Comments
Dunn, Michael P.
Maritime Communications/Land Mobile, LLC, Debtor-in-Possession (MCLM) Reply Comments and Opposition to Petitions – MCLM Opposition
Riverside County Transportation Commission (RCTC) Letter – RCTC Letter
San Bernardino Associated Governments (SANBAG) Letter – SANBAG Letter
Sellers, Douglas C.
SkyTel Replies to Comments and Procedural Objections – SkyTel Reply Comments
SMART-Transportation Division
SCRRA Response
Teel, James L.
Utilities Telecom Council (UTC) Reply Comments – UTC Reply Comments
Warren Averett, LLC

Replies to Oppositions

Council Tree Reply
EB Reply to MCLM's and Choctaw's Reply Comments and Oppositions to Petitions to Deny – EB Reply
Goad, Fred (Goad) Opposition – Goad Opposition
Harmer
SVEC Reply
SkyTel Reply to Oppositions to Petition to Deny and Reply to Comments – SkyTel Reply
SkyTel Reply to Oppositions to Petition to Deny and Reply to Comments Supplement by W. Havens and Skybridge Spectrum Foundation – SkyTel Reply Supplement
United States Department of Transportation (USDOT) Letter – USDOT Letter

APPENDIX B

Applications

The following applications are designated for hearing in the EB Docket 11-71 proceeding, or are otherwise relevant to the instant proceeding.
[1] In all of the assignment applications, the proposed assignor is MCLM.

FCC File No. 0002303355 (filed Sept. 7, 2005, amended Aug. 21, 2006, granted Dec. 29, 2006) – MCLM application for new AMTS licenses.

File No. 0004030479 (filed Nov. 13, 2009, amended Dec. 8, 2009) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to EnCana Oil & Gas (USA), Inc.

File No. 0004144435 (filed Mar. 11, 2010) – Partial assignment (partition and disaggregation) of the license for station WQGF318 to Southern California Regional Rail Authority (SCRRA Assignment Application).

File No. 0004193028 (filed Mar. 31, 2010, amended Aug. 30, 2011) – Modification of the license for station WHG750, filed by MCLM to accommodate Duquesne Light Company.

File No. 0004193328 (filed Apr. 21, 2010) – Partial assignment of the license for (site-based) station WHG750 to Duquesne Light Company.

File No. 0004354053 (filed Aug. 19, 2010, withdrawn Nov. 10, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to DCP Midstream LCP.

File No. 0004309872 (filed July 6, 2010, amended Aug. 30, 2011) – Modification of the license for station WQGF317, filed by MCLM to accommodate Jackson County Rural Membership Electric Cooperative.

File No. 0004310060 (filed July 6, 2010, amended Aug. 9, 2010) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to Jackson County Rural Membership Electric Cooperative.

File No. 0004314903 (filed July 7, 2010) – Modification of the license for (site-based) station KAE889, filed by MCLM to accommodate Puget Sound Energy, Inc.

File No. 0004315013 (filed July 7, 2010) – Partial assignment of the license for (site-based) station KAE889 to Puget Sound Energy, Inc.

File No. 0004430505 (filed Nov. 19, 2010, amended Jan. 31, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to Enbridge Energy Company, Inc.

File No. 0004417199 (filed Dec. 1, 2010, withdrawn Nov. 15, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to Interstate Power and Light Company.

[1] MCLM's numerous pending license renewal applications are not listed here. Nor do we list any pending application for modification of an MCLM license if the application was not designated for hearing, or any lease applications.

File No. 0004419431 (filed Dec. 1, 2010, withdrawn Nov. 15, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to Wisconsin Power and Light Company.

File No. 0004422320 (filed Dec. 1, 2010, withdrawn Nov. 15, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF317 to Wisconsin Power and Light Company.

File No. 0004422329 (filed Dec. 1, 2010, withdrawn Nov. 15, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF317 to Wisconsin Power and Light Company.

FCC File No. 0004507921 (filed Dec. 8, 2010) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to Dixie Electric Membership Corporation, Inc.

FCC File No. 0004153701 (filed Mar. 8, 2010, amended Aug. 30, 2011) – Modification of the license for station WQGF317, filed by MCLM to accommodate Southern California Regional Rail Authority (Modification Application).

FCC File No. 0004526264 (filed Mar. 2, 2011, amended Apr. 18, 2012) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to Atlas Pipeline - Mid Continent LLC.

FCC File No. 0004636537(filed Mar. 11, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to Denton County Electric Cooperative, Inc. dba CoServ Electric.

FCC File No. 0004604962 (filed Apr. 7, 2011) – Partial assignment (partition and disaggregation) of the license for station WQGF316 to EnCana Oil and Gas (USA), Inc.

FCC File No. 0005224980 (filed July 5, 2012) – Partial assignment (partition and disaggregation) of the license for station WQGF315 to Shenandoah Valley Electric Cooperative.[2]

FCC File No. 0005552500 (filed Jan. 23, 2013, amended Jan. 25, 2013) – Full assignment of all of MCLM's licenses to Choctaw Holdings, LLC (Choctaw Application).[3]

[2] This assignment application was filed after the commencement of the hearing in EB Docket No. 11-71, and so is not among the applications designated for hearing in the *HDO*, but its disposition is affected by the Commission's decisions herein.

[3] This assignment application was filed after the commencement of the hearing in EB Docket No. 11-71, and so is not among the applications designated for hearing in the *HDO*, but its disposition is affected by the Commission's decisions herein.