

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

In the Matter of )
)
CHOCTAW HOLDINGS, LLC ) FCC File Nos. 0004030479, 0004193328,
) 0004315013, 0004430505, 0004507921,
Petitions by Warren Havens and Related Entities to ) 0004604962, 0005224980, 0006967374
Deny Assignment Applications )

ORDER

Adopted: February 13, 2018

Released: February 14, 2018

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order addresses petitions filed by Warren Havens (Havens) and related entities to deny the above-captioned applications to assign Automated Maritime Telecommunications System (AMTS) licenses from Choctaw Holdings, LLC (Choctaw) to several gas, oil, and electric companies (CII Companies).1 For the reasons set forth below, we deny petitions filed in 20102 and 20153 to deny File Nos. 0004193328 and 0006967374 respectively, and dismiss for lack of standing a petition filed in 20174 to deny File Nos. 0004030479, 0004193328, 0004430505, 0004507921, 0004604962, 0005224980, and 0006967374.

II. BACKGROUND

2. Maritime Communications/Land Mobile, LLC (MCLM)5 was the high bidder for four geographic AMTS licenses in Auction 61.6 MCLM was awarded the licenses in 2006, but was cautioned

1 The term "CII Companies" incorporates the acronym for "Critical Infrastructure Industry," and is used here to collectively refer to the proposed assignees of Choctaw's spectrum.

2 Petition of Warren Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation to Deny, or in the Alternative Section 1.41 Request (filed May 12, 2010).

3 Petition of Warren Havens, Environmental LLC, Environmental-2 LLC, Verde Systems LLC, Intelligent Transportation & Monitoring LLC, Telesaurus Holdings GB LLC, V2G LLC, and Skybridge Spectrum Foundation to Dismiss, Petition to Deny or in the Alternative Section 1.41 Request (filed Oct. 8, 2015).

4 Petition of Warren Havens and Polaris PNT PBC to Deny or in the Alternative Petition for Relief under Sections 1.41, 1.2 and Other Rules (filed Aug. 16, 2017) (2017 Petition). The 2017 Petition states, see id. at 2, that it supersedes and replaces an earlier Motion for Corrections and Explanations and Petition for Reconsideration in the Alternative and Conditional Petition to Deny (filed Aug. 9, 2017) (Correction Motion) filed by the same parties against all of the above-captioned applications. We therefore find that the Correction Motion is moot.

5 References herein to MCLM also include Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, after the company filed for Chapter 11 protection under the United States Bankruptcy Code, as discussed below.

6 The AMTS service was initially intended primarily for maritime communications as an alternative to traditional VHF Public Coast station service, but the Commission later amended the rules to permit public correspondence service and private mobile radio service to fixed and mobile units on land. See 47 CFR § 80.123; MariTEL, Inc. and Mobex Network Services, LLC, Report and Order, 22 FCC Red 8971 (2007), subsequent history omitted.

that its representations in connection with Auction 61 remained subject to further inquiry and possible enforcement action.<sup>7</sup> MCLM also held several incumbent site-based AMTS licenses.

3. Between 2009 and early 2011, MCLM filed six of the above-captioned applications to assign site-based AMTS licenses<sup>8</sup> and portions of the geographic licenses<sup>9</sup> to CII Companies. Havens, individually and on behalf of companies he controlled that held AMTS geographic licenses, petitioned to deny the applications on the grounds that MCLM's licenses were subject to revocation because it engaged in misrepresentation, lack of candor, and other misconduct in connection with Auction 61. Due to ongoing challenges, fact-gathering, and investigation during this period, the processing of the assignment applications was precluded under the Commission's *Jefferson Radio* policy, which generally prohibits the assignment of a license while issues regarding the assignor's basic qualifications remain unresolved.<sup>10</sup>

4. In April 2011, the Commission designated MCLM for hearing on its basic qualifications based on the alleged misconduct discussed in the Havens pleadings.<sup>11</sup> In August 2011, MCLM filed for bankruptcy,<sup>12</sup> and informed the parties to the hearing that it would seek to terminate the hearing pursuant to the Commission's *Second Thursday* doctrine, which permits grant of an assignment application notwithstanding unresolved issues regarding the licensee's basic qualifications 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 application or only derive a minor benefit which benefit is outweighed by equitable considerations in favor of innocent creditors.<sup>13</sup>

5. In 2012, MCLM filed another above-captioned application to assign AMTS geographic spectrum to a CII Company.<sup>14</sup> Havens, individually and on behalf of companies he controlled that held AMTS geographic licenses, filed a petition to deny the application.

6. MCLM filed an application to assign its licenses to Choctaw (Choctaw Application) in 2013,<sup>15</sup> after the Bankruptcy Court confirmed a reorganization plan that called for MCLM to assign its licenses to Choctaw, which would prosecute the pending assignment applications and seek assignees for the remainder of MCLM's spectrum, and use the proceeds to repay MCLM's creditors.

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<sup>7</sup> See *Maritime Communications/Land Mobile, LLC*, Order on Reconsideration, 22 FCC Rcd 4780, 4781, n.35 (WTB MD 2007), *review denied*, Memorandum Opinion and Order, 31 FCC Rcd 13729 (2016), *recon. pending*.

<sup>8</sup> FCC File Nos. 0004193328 (filed Apr. 21, 2010) (assigning spectrum to Duquesne Light Company), 0004315013 (filed July 7, 2010) (assigning spectrum to Puget Sound Energy, Inc.).

<sup>9</sup> FCC File Nos. 0004030479 (filed Nov. 13, 2009) (assigning spectrum to EnCana Oil & Gas (USA), Inc. (EnCana)), 0004430505 (filed Nov. 19, 2010) (assigning spectrum to Enbridge Energy Company, Inc.), 0004507921 (filed Dec. 8, 2010) (assigning spectrum to Dixie Electric Membership Corporation, Inc.), 0004604962 (filed Apr. 17, 2011) (assigning spectrum to EnCana).

<sup>10</sup> See, e.g., *Jefferson Radio Corp. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964); *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981).

<sup>11</sup> See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520 (2011).

<sup>12</sup> *In re Maritime Communications/Land Mobile, LLC*, No. 11-13463-DWH (Bankr. N.D. Miss.).

<sup>13</sup> See, e.g., *Second Thursday Corp.*, Memorandum Opinion and Order, 22 FCC 2d 515, 516, para. 5, *recon. granted in part*, Memorandum Opinion and Order, 25 FCC 2d 112 (1970).

<sup>14</sup> FCC File No. 0005224980 (filed July 5, 2012) (assigning spectrum to Shenandoah Valley Electric Cooperative).

<sup>15</sup> FCC File No. 0005552500 (filed Jan. 23, 2013, amended Jan. 25, 2013).

7. In 2014, the Commission declined to terminate the hearing or grant *Second Thursday* relief.<sup>16</sup> MCLM and Choctaw sought reconsideration.

8. In October 2015, MCLM filed the last of the above-captioned applications to assign AMTS geographic spectrum to a CII Company.<sup>17</sup> Havens, individually and on behalf of companies he controlled that held AMTS geographic licenses, filed a petition to deny the application.

9. Later that year, Susan L. Uecker was appointed as Receiver to take control of the Havens-controlled entities.<sup>18</sup> In early 2016, the Commission accepted an application filed by the Receiver for the involuntary transfer of control of their licenses to her.<sup>19</sup>

10. In late 2016, the Commission reconsidered its 2014 decision, granted *Second Thursday* relief, and terminated the hearing into MCLM's character qualifications, permitting the assignment of its licenses to Choctaw.<sup>20</sup> With respect to the applications to assign spectrum to CII Companies, the Commission stated,

We anticipate that WTB [the Wireless Telecommunications Bureau] . . . will grant the Choctaw Application prior to processing any of the applications assigning spectrum to the CII Companies, then, after Choctaw files and WTB processes the notification of consummation of the assignment to Choctaw, that the applications assigning spectrum to the CII Companies will be amended to substitute Choctaw for MCLM as the assignor. That procedure would be consistent with our decision here and our expectation regarding the processing of all of the subject applications, but we note that WTB retains discretion to address such timing and logistical issues under its existing delegated authority.<sup>21</sup>

11. In January 2017, WTB's Mobility Division (Division) denied the Havens petitions to deny the above-captioned applications filed between 2009 and 2012 to assign AMTS geographic spectrum to CII Companies, and one of the above-captioned applications filed in 2010 to assign a site-based AMTS license.<sup>22</sup> The Division concluded that the Commission's grant of *Second Thursday* relief and termination of the hearing into MCLM's character qualifications precluded dismissal or denial of the applications on the basis of the misconduct alleged in the petitions, and that the petitions' other arguments lacked merit.<sup>23</sup> The Division failed, however, to address the Havens petitions to deny an above-captioned application filed in 2010<sup>24</sup> and the above-captioned application filed in 2015.<sup>25</sup>

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<sup>16</sup> See *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Memorandum Opinion and Order, 29 FCC Rcd 10871, 10887, para. 40 (2014), *recon. granted*, Order on Reconsideration and Memorandum Opinion and Order, 31 FCC Rcd 13729 (2016), *recon. pending*.

<sup>17</sup> FCC File No. 0006967374 (filed Oct. 8, 2015) (assigning spectrum to Rappahannock Electric Cooperative).

<sup>18</sup> See *Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Order Appointing Receiver After Hearing and Preliminary Injunction (Cal. Super. Ct. Nov. 16, 2015) (*Receivership Order*).

<sup>19</sup> See ULS File Nos. 0007060862, 0007060898, 0007061808, 0007061828, 0007061847, 0007061898 (all filed Dec. 17, 2015).

<sup>20</sup> See *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Order on Reconsideration and Memorandum Opinion and Order, 31 FCC Rcd 13729 (2016), *recon. pending*.

<sup>21</sup> *Id.* at 13737, n.59.

<sup>22</sup> See *Warren C. Havens et al.*, Order, 32 FCC Rcd 218 (WTB MD 2017) (*2017 Order*), *recon. pending*.

<sup>23</sup> See *id.* at 219-21, paras. 4-7.

<sup>24</sup> FCC File No. 0004193328 (filed Apr. 21, 2010).

<sup>25</sup> FCC File No. 0006967374 (filed Oct. 8, 2015).

12. WTB approved the Choctaw Application, and accepted Choctaw's consummation notification in July 2017.<sup>26</sup> In August 2017, WTB provided public notice that the above-captioned applications had been updated to substitute Choctaw for MCLM as the assignor.<sup>27</sup> Havens, individually and on behalf of Polaris PNT PBC (Polaris) (which Havens formed in 2016 after the entities he previously controlled were placed in receivership), filed a petition to deny seven of the above-captioned applications (all but File No. 0004315013).<sup>28</sup>

### III. DISCUSSION

13. *Pre-2017 Petitions.* As an initial matter, we deny the still-pending petitions to deny that were filed in 2010 and 2015. As we concluded with respect to the other pre-2017 petitions, the Commission's grant of *Second Thursday* relief and termination of the hearing into MCLM's character qualifications precludes dismissal or denial of the applications on the basis of the misconduct alleged in the petitions, and the petitions' other arguments lack merit.

14. *2017 Petition.* In the 2017 Petition, Havens and Polaris argue that the assignment applications are defective for multiple reasons, including an assertion that Choctaw was improperly substituted for MCLM as the assignor,<sup>29</sup> and that the Commission's grant of *Second Thursday* relief was erroneous because wrongdoers will benefit.<sup>30</sup> They assert standing based on harm caused by insufficient explanation in the Public Notice regarding the substitution of Choctaw for MCLM,<sup>31</sup> and Havens's interest in the entities now controlled by the Receiver.<sup>32</sup>

15. The Commission has explained that to establish standing, a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury.<sup>33</sup> To demonstrate standing, petitioners must show a causal link between the claimed injury and the challenged action, and that the claimed injury would be prevented or redressed by the relief requested.<sup>34</sup> For purposes of standing, an injury must be both "concrete and particularized" and "actual or imminent, not

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<sup>26</sup> FCC File No. 0007841134 (filed July 3, 2017).

<sup>27</sup> See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action*, Public Notice, Report 12484 (WTB Aug. 2, 2017), 2017 WL 3306078.

<sup>28</sup> 2017 Petition, note 4, *supra*; see also Motion of Warren Havens and Polaris PNT PBC for Declaratory Ruling Regarding Standing (filed Aug. 16, 2017) (Standing Motion) (filed as an exhibit to the 2017 Petition). Choctaw and three CII Companies file oppositions. Opposition of Choctaw Communications LLC to Petition to Deny or in the Alternative Petition for Relief under Sections 1.41, 1.2 and Other Rules (filed Aug. 30, 2017); Joint Opposition of Enbridge Energy Company, Inc., Dixie Electric Membership Corporation, Inc., and Rappahannock Electric Cooperative (filed Aug. 28, 2017). Havens and Polaris filed a consolidated reply. Reply to Oppositions to Petition to Deny or in the Alternative Petition for Relief under Sections 1.41, 1.2 and Other Rules (filed Sept. 12, 2017).

<sup>29</sup> See, e.g., 2017 Petition at 7-13.

<sup>30</sup> *Id.* at 14-15.

<sup>31</sup> *Id.* at 11.

<sup>32</sup> See Standing Motion at 3-6.

<sup>33</sup> See *AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465, para. 16 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235, para. 7 (WTB 1995) (*Wireless Co.*) (citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972)); see also *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002); *TouchTel Corporation*, Order on Reconsideration, 29 FCC Rcd 16249, 16250-51, para. 7 (WTB BD 2014) (*TouchTel*).

<sup>34</sup> See *Wireless Co.*, 10 FCC Rcd at 13235, para. 7; *TouchTel*, 29 FCC Rcd at 16250-51, para. 7.

conjectural or hypothetical.”<sup>35</sup> The Division has held that neither Havens individually nor any related entity that does not hold any AMTS licenses has standing to challenge the renewal of MCLM’s AMTS licenses<sup>36</sup> or the assignment of that spectrum.<sup>37</sup>

16. Having carefully reviewed the record, we now conclude that Havens and Polaris lack standing to challenge the assignment applications at issue. Neither Havens<sup>38</sup> nor Polaris holds a Commission license. They do not argue that grant of the assignment applications would cause competitive harm of any sort, direct or otherwise. The only injury articulated by the petitioners that arises from grant of the assignment applications is that the Public Notice provided an insufficient explanation for the substitution of Choctaw as the assignor in place of MCLM, and thus deprived interested parties of notice and the opportunity to object.<sup>39</sup> The substitution of Choctaw as assignor, however, was elucidated by the Commission in the order granting *Second Thursday* relief, so there was no need for the Public Notice implementing that decision to repeat the explanation. Moreover, any such injury is not direct, let alone actual; Havens and Polaris do not explain how it would be redressed by dismissing the assignment applications and requiring Choctaw to file applications proposing to assign the same spectrum to the same parties.<sup>40</sup> The remainder of harms alleged in the petition amount to untimely challenges to actions in other proceedings that, as such, do not form the basis for a cognizable injury directly caused from grant of the assignment applications. We therefore dismiss the 2017 Petition for lack of standing.<sup>41</sup>

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<sup>35</sup> See *Conference Group, LLC v. FCC*, 720 F.3d 957, 962 (D.C. Cir. 2013) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (*Lujan*)). The *Lujan* Court stated that the constitutional minimum of standing requires that the plaintiff must have suffered an “injury in fact,” an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of; the injury has to be fairly traceable to the challenged action of the defendant. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. See *Lujan*, 504 U.S. at 560-61. While license proceedings before the Commission are not Article III proceedings, wireless applications generally have been reviewed using the foregoing Article III standard, and we find no reason to depart from this practice here. See *Airadigm Communications, Inc.*, Order on Reconsideration, 21 FCC Rcd 3893, 3897, para. 14 & n.30 (WTB 2006), *review dismissed*, 26 FCC Rcd 6739 (WTB 2011).

<sup>36</sup> See *Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Order, 32 FCC Rcd 3907, 3910-12, paras. 8-11 (WTB MD 2017), *recon. pending*; see also *Metropolitan Transit Authority*, Proposed Order of Modification and Order on Reconsideration, 31 FCC Rcd 1436, 1440-42, paras. 12-15 (2016) (*MTA*) (finding that Havens and related entities lacked standing to challenge renewal of 218-219 MHz Service license).

<sup>37</sup> See *Maritime Communications/Land Mobile, LLC and Southern California Regional Rail Authority*, Order, 31 FCC Rcd 9826, 9830-31, paras. 11-15 (WTB MD 2016), *recon. pending*.

<sup>38</sup> The Receiver is now the sole authorized representative before the Commission of the entities formerly controlled by Havens, and Havens individually has no standing to assert duplicative interests. The order appointing the Receiver prohibited Havens from, *inter alia*, acting on behalf of any of the receivership entities or “[c]ommunicating with the FCC regarding the FCC Licenses or the Receivership Entities.” *Receivership Order* at 5, para. 28(d).

<sup>39</sup> See 2017 Petition at 11.

<sup>40</sup> See *Lujan*, 504 U.S. at 570-71.

<sup>41</sup> Although the 2017 Petition includes an informal request for Commission action under section 1.41 of the rules, 47 CFR § 1.41, as alternative relief should we find the pleading wanting as a petition to deny, the inclusion of this alternative request does not change our analysis and we decline to grant any relief under section 1.41. Havens routinely includes such alternative requests in his pleadings and the Commission just as routinely denies them as unwarranted because section 1.41 is not intended to supplant or provide litigants with a means of circumventing the rules governing formal pleadings. See *MTA*, 31 FCC Rcd at 1442, para. 16; *2017 Order*, 32 FCC Rcd at 221, n.23 (citing *Warren C. Havens*, Memorandum Opinion and Order, 28 FCC Rcd 16261, 16268, para. 18 (2013)).

**IV. ORDERING CLAUSES**

17. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and sections 1.41 and 1.939 of the Commission's rules, 47 CFR §§ 1.41, 1.939, that the Petition to Deny, or in the Alternative Section 1.41 Request filed against application FCC File No. 0004192238 on May 12, 2010, and the Petition to Dismiss, Petition to Deny or in the Alternative Section 1.41 Request filed against application FCC File No. 0006967374 on October 8, 2015, ARE DENIED.

18. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and sections 1.41 and 1.939 of the Commission's Rules, 47 CFR §§ 1.41, 1.939, the Motion for Corrections and Explanations and Petition for Reconsideration in the Alternative and Conditional Petition to Deny filed against applications FCC File Nos. 0004030479, 0004193328, 0004315013, 0004430505, 0004507921, 0004604962, 0005224980, and 0006967374 on August 9, 2017, IS DISMISSED as moot.

19. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and sections 1.41 and 1.939 of the Commission's Rules, 47 CFR §§ 1.41, 1.939, that the Petition to Deny or In the Alternative Petition for Relief Under Sections 1.41, 1.2 and Other Rules filed against FCC File Nos. 0004030479, 0004193328, 0004430505, 0004507921, 0004604962, 0005224980, and 0006967374 on August 16, 2017, IS DISMISSED.

20. IT IS FURTHER ORDERED that applications FCC File Nos. 0004030479, 0004193328, 0004430505, 0004507921, 0004604962, 0005224980, and 0006967374 SHALL BE PROCESSED in accordance with this *Order* and the Commission's rules.

21. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau