Before the
FEDERAL COMMUNTCATIONS COMM1SSION
Washington, D.C. 20554

In the Matters of: (i) Application To Assign Licenses, and (ii) Comment Sought On Application To Assign Licenses Under the So-called "Second Thursday Doctrine," Request For Waiver And Extension Of Construction Deadlines, And Request To Terminate Hearing Application To Assign Licenses From Maritime Communications/ Land Mobile, LLC, Debtor-In-Possession ("MCLM") To Choctaw Holdings, LLC (together, the "Application")		File No. 0005552500 (the "Application") DA 13-569 (the "PN") WT Docket No. 13-85 (the "Docket")

To the Secretary
Attention, Wireless Bureau Chief

Reply to Oppositions to Petition to Deny,
and Reply to Comments (initial and reply comments)
Supplement by W. Havens and Skybridge Spectrum Foundation

This supplements the Reply filed today by the SkyTel entities. This consists primarily of factual exhibits, and certain referenced and incorporated items.

The filers intend to seek leave to supplement the text of this filing, for good cause to be presented at that time.

Contents

In the supplement noted above, the filers will complete this contents list, and conform it to the text of the filing.

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Introduction, summary, and application to all relief sought

The Contents descriptive listings above provide a summary.

This filing's sections principally discuss "Footnote 7" (or "FN7") in the HDO, FCC 11-64,[1] and relief sought in relation to FN7; however, the filing's sections also apply to other extraordinary relief sought by MCLM, Choctaw (together, "M-C"), and others in support of M-C or their positions seeking said relief in this Docket and in relation to the Application. That is, e.g. the following point apply also to relief sought on the basis of the so-called "Second Thursday"

[1] Unless otherwise indicated, by "FN7" we mean the text of, and the apparent extraordinary rule-relief purpose and rationale of, footnote 7 in this HDO.

("ST") doctrine, except with regard to elements of assertions of qualification for ST relief that is specific to that doctrine, as discussed in Skytel-HS's PD.

This filing responds or replies to comments submitted in support of, or that advocate extraordinary relief under, FN7, or with arguments that assert elements of FN7. Skytel-HS submits that those comments are clearly in error for the fundamental reasons set forth below.

Regarding certain exhibits on SCRRA

Exhibit 1.1. This contain a document that is an internal SCRRA document (a memo from the PTC Technical Team to Darrell Max and Dan Guerrero of SCRRA regarding RF Spectrum for PTC dated September 26, 2009) (obtained via a California Public Records Act Request) that shows, among other things, that SCRRA misrepresented to the FCC in terms of their AMTS spectrum needs, resulting in an artificially obtained footnote 7. It also shows that SCRRA was fully aware of the challenges to the MCLM spectrum, including possible license revocation by the FCC, prior to entering the contract with MCLM.

From page 1 of the memo:

> Alternate sources of RF spectrum exist but investigation to date has not located any that are comparable to the preferred solution.

From page 2 of the memo:

> If the entire 1 MHz block is purchased, it will likely exceed the needs of PTC. While there are still many unresolved issues that could significantly affect the amount of spectrum required, the current estimate is that Metrolink will need 400 kHz of interference-free spectrum between 217-222 MHz to support 16 bi-directional TDMA 25 kH channels for PTC. The additional spectrum can be used for other Metrolink purposes such as emergency communications. Or it can be leased or resold (provided it is absolutely certain it wil not be needed for PTC) or it can be used in negotiations with the Class I freight railroads. Any excess spectrum should not be resold, however, until absolutely certain it will not be needed for PTC, including potential future expansions of the PTC system. The current owner leases the spectrum to a local 2-way radio service provider on a monthly basis. This sort of arrangement can likely be maintained to keep the spectrum in use and provide supplemental income to Metrolink until the spectrum is actually needed for PTC use.

…..

> Waren Havens has filed the attached petition <MC_LM PetitionReconsider.pdf> against MC/LM (MC/LM's response <MC_LM Response.pdf> is also attached). The effect of this could range from preventing MC/LM from selling the spectrum to delaying the sale to no effect at all. Even if Havens does prevail, it is quite possible that the FCC would only fine MC/LM, not revoke their license to the spectrum. FCC hopes to get it resolved by the end of this year, but said it very well might not happen by then. In any event, wording should be added to the contract making it clear that Metrolink's deposit is to be refunded in full if MC/LM's license is revoked.

The above shows that Metrolink misrepresented to the FCC resulting in FN7. Thus, FN7 relief should not be available. If it is not available to SCRRA, is may not be extended to other entities not named in FN7. Other evidence of this misrepresentation, and otherwise as to the lack of basis for SCRRA (and CII) FN7- type relief, is presented in the exhibits. A summary of what the exhibits present is given at the end of this filing's text.

In addition,

The FCC has stated to railroads and in Docket 11-79 (setup to take comments on whether or not FCC should allocate 200 MHz spectrum to railroads) that railroads should seek spectrum in secondary markets. That applies to SCRRA too. Even assuming that SCRRA's only spectrum option was in 200 MHz, which it is not, SCRRA could have approached 200 MHz licensees in southern California, including Verde Systems LLC and Skybridge Spectrum Foundation, Paging Systems, Inc., IVDS licensees, 220-222 MHz licensees (licenses could be consolidated to form wider channels), etc. There are also other spectrum options available in other bands at auction and in secondary markets. Clearly, SCRRA's only option is not MCLM's AMTS spectrum.

From Wikipedia (emphasis added).

> "Many of the railroads have requested that the *FCC* reallocate parts of the 220 MHz spectrum to them. They argue that they must have 220 MHz spectrum to be interoperable with each other. However, the *FCC* has stated that there is no reallocation forthcoming, that the railroads are not justified in requesting spectrum

reallocation because they have not quantified how much spectrum they need, and that the railroads should seek spectrum in the secondary 220 MHz markets or in other bands" [citing] "2012 PTC World Congress, Arsenault, Richard *(March 1, 2012)*. Chief Council, *FCC* Mobility Division."

From: http://en.wikipedia.org/wiki/Positive_train_control#cite_note-FCC_Public_Comments-15

Procedural objections as to 47 USC §309(d).

See Appendix 2 hereto.

Other procedural objections, Including, this is the fourth proceeding on the SCRRA Application and matters that stem from it. Reference and incorporation.

See Appendix 3 hereto.

To be further presented by June 20 in a revised or replacement filing – see above.

FN7 is an impermissible, unreasoned, arbitrary and capricious departure from FCC rules, the related sections of the Communications Act, and their public interest requirement, under Section 706 of Title 5 of the USC and controlling court precedent

This topic is covered in the Skytel entities Reply filed today.

Comments, including those of the FCC Enforcement Bureau, are in error factually, and did not have new evidence that further shows fatal error, as to site-based licenses, and the geographic licenses obtained by the invalid site-based licenses

The comments indicated in this section 5 caption error as follows. They are based upon the false assumption that MCLM has lawfully and fully disclosed in the hearing under the HDO FCC 11-64, docket 11-71, the documents and facts relevant to (i) its site based licenses (including their construction and operations, or lack thereof) and (ii) the site-based licenses' facts of '(i)' that were the purposes and means MCLM used to obtain the geographic licenses in Auction 61 (the principal means was not the cash spent, or the invalid bidding credits obtained by fraud, but the false assertion of the site-based licenses which meant any other bidder could not

raise or commit funds in the auction to buy the spectrum underlying those false licenses—the core areas of the geographic licenses).

Skytel-HS references and incorporate herein in full, its Opposition to the MCLM motion for summary decision on "issue (g)" in docket 11-71. This Opposition sets forth summarizes of and hundreds of pages of evidence relating to MCLM (owners, officers, attorneys, and parties in interest including Choctaw, under 47 USC §§217 and 411) fraud before the FCC in withholding the majority of the documents and evidence as to these site-based licenses history before MCLM obtained them, and afterwards.

This withholding and fraud makes the comments in support of MCLM and FN7 relief, and "Second Thursday" and other relief, lack foundation, and also pursued for unlawful purposes and void under public policy.

However, in addition, the evidence presented in the just noted Skytel-HS Opposition in docket 11-71, also shows that the Watercom and Regionet licenses eventually obtained by MCLM were not, as MCLM told the FCC (in docket 11-71, and before that to the Wireless Bureau) constructed and in operation at the time MCLM obtained them. The evidence presented in the NJ USDC case, Skybridge v Mobex and MCLM, shows this (deposition of Mr. Predmore, documents he produced, and documents produced from site owners and controllers responding to subpoenas).

FN7 is facially defective, and ultra vires, since under APA it is a substantive rule, but created without public notice and comment, and publication in fed register.

To be presented in a supplement.

FN7 is against the public interest.

This is reflected herein and in the SkyTel Reply filed today.

To be further presented in a supplement.

FN7 cannot be expanded; too late for reconsiderations.

It is specific to one railroad. This docket cannot be used for late filed requests for reconsideration, nor can any such request be to the Wireless Bureau since FN7 is in a Commission Order, FCC 11-64.

FN7 relief sought thereunder is subject to rule waiver standands, and those were not satisfied

To be presented in a supplement.

FN7, and relief sought, was based on misrepresentations, and participation in violation of antitrust law, and relief based thereupon cannot be granted.

See exhibits description at end of this filing, and the exhibits.

FN7 was based on misrepresentations, and participation in violation of antiturst law, and relief based thereupon cannot be granted. This is shown in the special docket the FCC created for the SCRRA application to obtain MCLM spectrum: see the Skytel-HS pleadings in that docket.

The railroad said to FCC it needed 1 MHz, in its application to get MCLM spectrum, long ago. FCC created a special docket just for this. Skytel-HS showed in that docket that this railroad did not need even a minor fraction of this 1 MHz, and the railroad eventually admitted that, in a footnote [where parties caught in misrepresentations tend to put their admissions] and that it was seeking this spectrum for its partner, a for-profit freight railroad, and it also knew that MCLM was not operating its site-based licenses which, its internal due diligence showed, was now MCLM bought the geographic spectrum in Auction 61. That is participation in violation of Sherman Act 1 as reflected in Skybridge v Mobex, USDJ NJ. Under 47 USC § 411, SCRRA and others who support and seek to profit from MCLM violation of SA1 (now, perpetuated by Choctaw also), can be joined in the claims, and under 48 USC § 217 have liability.

FN7 relief cannot subvert private party rights under 48 USC §309(d)

Skytel-HS has petitions to deny of not only the subject MCLM-Choctaw assignment Application, but all of the MCLM assigments to the entities seeking FN7 or FN7-like relief: the railroad and various power companies. This Docket cannot be used to reopen those closed pleading cycles, or to subject the Skytel-HS petitions to new attacks. 47 USC 309(d) and 405 petitions are based on Article III standing, private property rights, and the FCC cannot take those away, or impinge or devalue those by a new proceeding, and comments and reply comments of entities that are not parties to those formal proceedings.

Taking of such rights, apart from a proper eminent domain process, is a Consitutional tort, subject to a Bivens Action lawsuit, and other injunctive and damage relief, including against the agency and employees executing the unlawful taking. It could not be more clear, including since Skytel-HS keeps repeating it, that Skytel-HS has pending, these 309 and 405 challenges, not only those just noted closest to the matters in the Docket, but as to the invalidity of all of the MCLM spectrum: these began before Mobex sold the site based licenses to MCLM, and continued against MCLM's unlawful

The FN7 assertions by this railroad, and other self-designated "critical" entities, undermines their public duties, and any actual public interest basis.

They use misrepresentations, and do not even start with showing their inventory of free spectrum and how they are using it, how they can improve that use, whey they have not long ago done "smart" transportation and energy (veses waiting for federal and state regulators, and the public, to get on their case to do these.

To be presented in the supplement noted above.

Parties advocating FN7 relief must face the same, but they oppose it

The FN7 relief, stripped down, is a sort of eminent domain assertion. Railroad and power utilties exist, in large part, by eminent domain-- federal and state, to run their infrastructure (tracks, power lines, etc.). But they oppose others trying to piggy back on the infrastructure they built on public lands and rights of way, under any basis including eminent domain.

Under FN7 logic, Skytel-HS can assert rights to use railroad track rights of way, and power company power poles and facilities, if we convice the FCC we are sufficient "critical," and we are pursuing far more critical purposes, with better tech, far more spectrum efficient tech and systems, etc., and we fairly and squarely obtained our FCC licenses. Under FN7 logic, we can ask the FCC to kick power companies and railroad off of their spectrum so we can use it, and to stop them from use of 900 ISM/ Part 15 band spectrum that underlies our Part 90 M-LMS spectrum for Intelligent Transportation Systems. We have not done that, but instead actively for over a decade seek to assist public and private transport and energy systems, with spectrum, tech, networks, programs, etc including on a nonprofit basis. But we will fight those in these sectors that act agains the public interest and against core laws in the wireless field, and that includes purusit of FN7 relief by some in these fields.

The fact is that all these entities seeing FN7 relief showed, in the proceedings already completed on their assignment applications to get the MCLM spectrum, is that they like AMTS spectrum since it allows easier cheaper coverage, and for the railroad, since is freight-rail partner are using 220 MHz and want to sell it their proprietary radios for PTC (that, for over 5 years, are not even available for any actual systems).

Further, these entities did not even go into the AMTS market for spectrum, the simply bought MCLM spectrum since it was bing sold in a fire sale. It is because the spectrum was defective and challenged by Skytel-HS and the FCC, for termination and revocation, that it was cheap. That is the "critical" need of these buyers. The fails to meet any public interest standard.

Actions for or that benefit or flow from, illegal purposes and assets, are unlawful and cannot be granted. It is against public policy.

Defects in FN7 showings

1. SCRRA did not file anything under the assignment app, 0004144435, re FN7 showing. -- not until the "third supplement" in 1-25-13. Filing on ULS is required since it involves an amendment to the App. See below. The preceding FN7 showings, regarding which the third supplement is ineffective by itself, were never filed on ULS under the App. SCRRA reflects its awareness of this issue by filing the third supplement on ULS under the App, but avoiding at that time filing the preceding principal FN7 showings (to not flag this defect).

2. SCRRA initial and other FN7 showings were by SCRRA only and not by "the parties" as FN7 states.

3. SCRRA FN7 showings are amendments to the App, but did not comply with the requirements of the applicable rule (see below).

4. SCRRA only FN7 filing that is even under the App is the one filed close to two years after the HDO and it is defective (see above)-- this tardiness and lack of following rule procedures, undercuts any assertions of critical do-or-die need for 1,000 kHz of AMTS and only AMTS A block, of all radio spectrum, for PTC.

5. The FN7 permitted showing by "the parties" had to be before the "presiding officer" but was not presented to him. See rule below.

Some of these alleged defects were presented in Skytel-HS's preceding Opps to past FN7 showings by SCRRA, and MCLM. Oddly, I don't think they ever filed a joint showing by "the parties."

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FN7 is about the application, it begins:
"n7 We note that on March 11, 2010, Maritime and Southern California Regional Rail Authority ("Metrolink," and together with Maritime, the "Parties") sought Commission consent to assign certain spectrum. See Application for Assignment of Authorization, File No. 0004144435. Metrolink has represented...."

The FN showing must be an amendment, since it is for purpose of getting the App granted, to amend what was previously filed as part of the App. In this regard --
See FCC rules that follow: emphasis and numbers in brackets [ ] added, then discussed below --

§ 1.927 Amendment of applications.

(a) Pending applications may be amended as a matter of right **[1]** if they have not been designated for hearing or listed in a public notice as accepted for filing for competitive bidding, except as provided in paragraphs (b) through (e) of this section.
* * * *
(e) Amendments to applications **[1]** designated for hearing may be **[2]** allowed by the presiding officer or, when a proceeding **[3]** is stayed or **[4]** otherwise pending before the full Commission, may be allowed by the Commission for good cause shown. In such instances, a written petition demonstrating good cause must be submitted and served upon the parties of record.

(f) Amendments to applications are also subject to the service-specific rules in applicable parts of this chapter.

(g) Where **[5]** an amendment to an application specifies a substantial change in beneficial ownership or control (de jure or de facto) of an applicant, the applicant must provide an exhibit with the amendment application containing an affirmative, factual showing as set forth in § 1.948(i)(2).

(h) Where an amendment to an application constitutes a major change, as defined in § 1.929, **[6a]** the amendment shall be treated as a new application for determination of filing date, public notice, and petition to deny purposes.

§ 1.929 Classification of filings as major or minor.

Applications and amendments to applications for stations in the wireless radio services are classified as major or minor (see § 1.947). Categories of major and minor filings are listed in § 309 of the Communications Act of 1934.

(a) For all stations in all Wireless Radio Services, whether licensed geographically or on a site-specific basis, the following actions are classified as major:
* * * *
(2) Any **[6b]** substantial change in ownership or control, including requests for partitioning and disaggregation;
* * * *

Comments and arguments on items indicated by bracketed numbers above --
- [1] This App is designated for hearing: under HDO 11-64, docket 11-71.
- [2] The FN7 showing was not directed to the presiding officer of the hearing, Judge Sippel.
- [3] This 11-71 hearing was not stayed, the judge did not grant any request for stay (there were various ones, including based on FN7).

- [4] The App is not "otherwise pending before the full Commission." The Commission issued the HDO but that set up the hearing before the "presiding officer" who under this rule would entertain amendments of an App in a hearing. Where in FN7 the Commission said "we", it could not mean to waive sua sponte this rule, but meant that SCRRA could, under this rule, apply to the presiding officer. Indeed, it is an evidentiary hearing, and any FN7 showing is based on evidence, and must be tested in the hearing, since the App is in the hearing. That is, to get out of the hearing (the purpose of FN7), SCRRA and MCLM (the "parties") had to submit a "showing" (show evidence) to the presiding officer. But they did not. They did not even file the showing, a request for amendment, under the App on ULS, not until the SCRRA Third Amdment in 2013, and that was only by SCRRA not "the parties" that included MCLM but, by that time, included Choctaw also.
Thus, the SCRRA showing is defective.
- [5] MCLM did not do this, for this App, when the Ch 11 was approved and Choctaw obtained co-control, or at least a "substantial ... beneficial ownership or control (de jure or de facto)".
(Also, MCLM did not do this for its granted long form, that is still pending as stated in the HDO: granted Apps still being challenged are still pending and subject to being updated, as under rule 1.65. The HDO stated that, but even after this admonishment, MCLM STILL have not done this, to admit to the real ownership and control, and affiliates, etc.)
[6a, 6b] The FN7 showing amendment seeks a "substantial change in ownership or control" since it specifically pleads that MCLM will not get the money for the spectrum purchase, but it will go to the FCC: that is a pleading that MCLM no longer has valid, clean ownership title to the subject spectrum license.

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(1) Much of what I allege as defects as to SCRRA FN7 showing (the CII Recons are amendments to their Apps, and ... etc.- see above).

(2) I don't think the CII Petition for Recon is permissible.
It appears timely, but see the following from my attached 6-2-11 Opp:

- They called it a petition for recon. I believe it was timely- it was within 30 days of release of the HDO (I assume that is the time limit). However --

- Their option (see my authority below) was to participate in the hearing and prove up any case they want to make, or to forfeit any such case.

- But instead, they asked to sit on the sidelines and aggressively and successfully asked the Judge to NOT have to participate (not be subject to Skytel-HS or EB discovery, at least, but they would tag along passively- basically, monitor).

- It is not permitted for them, in a formal hearing, to duck out and on the side-- without being subject to hearing discovery, including doc production, interrogs, and depositions, to assert a case directly to the Commission or before Wireless Bureau.
- They simply failed to put on their case, and forfeited it.

Citing from Skytel-HS 6-2-11 Opp--

Section 1.106 "Petitions for reconsideration," provides in pertinent part:

> (a)(1) Petitions requesting reconsideration of a final Commission action will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained…

The Petitions must be dismissed since the Petitions does not related to an adverse ruling with respect to the Petitioning Parties participation in the hearing proceeding, indeed, they were
designated as participant Parties in the Order to Show Cause and elected to participate as Parties
by filing Notices of Appearance.

In this regard, Commission has explained: "... orders to show cause are, by their very nature, interlocutory. They are nothing other than a lawful attempt by the Bureau to facilitate the
Commission's ability to issue a decision on the merits...." In the Matter of MCI, MO&O, FCC 89-344, 5 FCC Rcd 216; 1990 FCC LEXIS 124; 67 Rel. January 9, 1990.

The Commission has further explained this rule, as applied to the Petition, in In the

Matter of TIME SALES, INC. MO&O, FCC 74-1371, 49 F.C.C.2d 1403; 1974 FCC LEXIS 2026,
Rel. December 18, 1974 (emphasis added):

> 1. The Commission has before it for consideration (1) a petition for reconsideration of an Order to Show Cause (FCC 74-869, released August 9, 1974; filed by Time Sales, Inc., ... The Commission also has before it a motion for stay filed by Skytel-HS on October 1, 1974, requesting that further proceedings be stayed pending disposition of the petition for reconsideration....
> * * * *

6. Since this case is presently in an interlocutory posture, the petition for reconsideration must be dismissed. Petitions for reconsideration are governed by Section 1.106 of our Rules. Section 1.106(a)(1) limits petitions for reconsideration of Commission actions to final actions, and further provides that a petition for reconsideration of an order designating a case for hearing will be entertained only if, and insofar as, the petition relates to an adverse ruling with respect to a petitioner's participation in the proceeding. Section 1.106(a)(1) expressly states that petitions for reconsideration of other interlocutory actions will not be entertained. Petitioner's request for reconsideration of our Order to Show Cause does not involve a final Commission action, nor does it involve an adverse ruling with respect to their participation in the proceeding.

* * * *

9. Accordingly,... the Petition for Reconsideration ... IS DISMISSED; and that the Motion for Stay... IS DISMISSED as moot.

For the same reasons the Commission gave in the above decision, it should dismiss the instant
Petitions.

Given that the rule is clear on this matter, the Petitioning Parties appear to have filed the
Petitions for abusive purposes such as for delay, which should be sanctioned including under rule
section 1.52.

-wh

Respectfully,

/s/ Electronically submitted. Signature on file.

Warren Havens, and
Skybridge Spectrum Foundation

2649 Benvenue Ave
Berkeley CA 94704
510 848 7797

Dated: May 30, 2013

Declaration

I declare under penalty of perjury that the facts in the above pleading are true and correct.

/s/ Electronically submitted. Signature on file.

Warren Havens
President of the Skytel-HS parties submitting this filing, listed on the signature page above.

June 20, 2013

Appendixes and Exhibits

Certain appendixes are attached below.
Exhibits hereto are separately filed on ECFS.

List of Exhibits

The exhibits are presented provide evidence in support of the text of this reply, above, including of the following issues or points. In most of the exhibits, were provide comments in margin text boxes, and some highlights and arrows, to refer to some of the text on the following issues or points. But additional text in these exhibits (in addition to text we specifically comment on) is also relevant, as the text of the particular exhibit shows. We provide the entire documents, to demonstrate that we are not deleting any text that may provide any contrary point.

1 - "Critical" infrastructure companies do not critically need only AMTS, or any particular spectrum. They do need to adopt modern digital radio technology, systems and architecture. SCRRA and CII entities did not when submitting the assignment application with MCLM assert footnote 7 type critical needs that they are now asserting, which undercuts the current footnote 7 based requests.

2 – CII companies are no more "critical" or unable to compete for spectrum in FCC auctions, and the broad secondary market, than other important market industries and sectors that use wide area wireless, and even small companies like SkyTel entities that have no problem participating in auction and purchasing spectrum in AMTS, 220 MHz, and lower and higher bands.

3 – None of the petitioners making footnote-7-based requests are "innocent" (the CII companies, and SCRRA). Rather, they seek the MCLM spectrum not due to spectrum needs, but as an economic opportunity to buy grossly undervalued spectrum due to the MCLM cheating to get and keep the spectrum, leading to the FCC revocation and termination proceedings, and thus to the MCLM "fire sale," "going-out-of-business" liquidation. CII companies and SCRRA have "unclean hands" and therefore lack the foundation to plead for extraordinary relief.

4 – SCRRA, and its partners, including PTC-220, LLC (and its members) misrepresented to the FCC to obtain footnote 7.

5 – SCRRA's asserted need for 220 MHz range spectrum has been satisfied by PTC-220, LLC, under its commitment to the FCC (in order to keep its 220 MHz spectrum) to provide 220 MHz spectrum to public transit railroads on a non-profit basis. PTC-220, LLC and its large freight railroad members, are for-profit partners of SCRRA regarding the development and operation of PTC wireless in the Metrolink service area. In addition, railroads long ago obtained nationwide spectrum for positive train control (PTC), and other train safety and operational purposes, in 900 MHz and 160 MHz—and that is not being fully or efficiently used. 900 MHz is better for transit railroads in major metropolitan areas and transit corridors. The push for 220 MHz range spectrum was artificially created by PTC-220, LLC and its members for their for-profit purposes.

6 – Transit railroad only needs, even in the largest markets with the highest traffic density, 100-150 kHz of spectrum for PTC, and even that is only due to use of antiquated, non-trunked, 1G-2G technology and architecture.

7 – Railroads and CII companies seek free or distressed-low cost spectrum. They fail to show, including in federal-agency surveys, that they are using their current spectrum efficiently, and why they allege additional spectrum is needed.

8 – Power utilities knew about AMTS spectrum auctions, including by invitation of SkyTel entities, but had no interest. CII companies hardly show up at FCC spectrum auctions. SkyTel entities hold the majority of AMTS spectrum on a geographic basis (not considering bogus site-based, co-channel stations); however, only rarely have CII companies contacted these SkyTel entities to seek AMTS spectrum—even where SkyTel has publicly, including in direct surveys, by professionals in the CII field, offered AMTS and other spectrum on a partnership basis, and certain lease basis, involving little or no cash.

9 - The CII entities and railroads generally, including the footnote-7 relief seekers, do not have or demonstrate serious, smart-wireless plans: they are not "shown" in the footnote-7 "showings." There is no "show" in this "show and tell," only tall tales.

10 - The following are in pleadings and FCC Orders on the following, that are easy to find in FCC records: those are not attached as exhibits to this filing.

The FCC is acting improperly and prejudicially against the public interest and the protected rights of SkyTel entities, in conducting dozens of proceedings, for over a decade, on matters now in this Wireless Bureau proceeding, including but not limited to the following long proceedings, still going on: (1) Mobex's license assignments to MCLM; (2) renewal proceedings of those licenses; (3) MCLM Short + Long Forms in Auction 61, petitions to deny and reconsiderations (noted by the Commission in the HDO, FCC 11-64, as still pending at the application for review stage—SkyTel entities are the petitioners); (4) MCLM-SCRRA assignment application, petition to deny proceeding; (5) MCLM-SCRRA assignment application, public comment docket no. 10-83 (not closed); (6-13) MCLM-CII assignment applications, petitions to deny proceedings; (14) MCLM HDO (FCC 11-64) hearing in docket no. 11-71 (in which the Administrative Law Judge has never granted any formal stay of any issue); (15) FCC public proceeding regarding spectrum for railroad PTC, including for SCRRA, docket no. 11-79; (16) Warren Havens' pending appeal to the Commission of the unlawful limitation to his Commission-designated, individual-party status in the HDO hearing, and Havens' challenge to the hearing based upon reversible error, due to those restrictions and other matters.

From: Jeff Tobias <Jeff.Tobias@fcc.gov>
To: 'Warren Havens' <warren.havens@sbcglobal.net>
Cc: Scot Stone <Scot.Stone@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Thursday, May 30, 2013 8:26 AM
Subject: RE: Request for a clarification re DA 13-569, WT Docket No. 13-85

Mr. Havens,

Skytel-HS need not file both reply comments and a reply to oppositions. Should Skytel-HS wish to only file a single responsive pleading, and that on June 20, the deadline for replies to oppositions, that's fine. I would only remind you that a reply (as opposed to reply comments) may only address matters raised in oppositions. See 47 C.F.R. § 1.45(c). Although that limitation may not have any practical impact in this particular proceeding, we could not say so definitively prior to reviewing the oppositions (if any) and the reply comments (if any) that are filed today.

Jeffrey Tobias
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Procedural objections as to 47 USC §309(d).

Regarding 47 USC §309(d), FCC rule FCC rule §§ §1.939 and 1.45(c) (here, the "Law") (see text of the first two of these rules below):

A petition to deny ("PD") under the Law is not be subject to "comments" or "reply comments," only to timely oppositions by parties that submitted the subject license application (or any other party with standing).

However, where the FCC has called for comments and allow reply comments, a party that submitted a petition to deny may expect those to effect the FCC decision on the PD.

A reply under the Law is limited to what is in oppositions to the PD. Also, the "Commission will dismiss or deny the petition... disposing of all substantive issues raised in the petition" -- and not anything raised in comments or reply comments on the subject license application. But where the FCC has allows said comments and reply comments, this appears to create an ultra vires change of 1.939, and an impermissible impingement on 309(d).

There is nothing in the statute, 47 USC §309(d) that allows PD (a decision on the PD, and any appeals of that decision) to be subject to any filing other than a timely opposition (or any other pleading with FCC permission to file granted) by a party with standing. The FCC has been clear and strict on this. Otherwise, it turns upside down the essential law on Article III standing that both the FCC and courts have insisted on for obvious reasons (otherwise, anyone can challenge any agency action by parties with direct interests and alleged injury).

For the above reason, Skytel-HS objects in the case that the FCC imposes upon the Skytel-HS PD, consideration of any comments in this Docket (by whatever name, e.g, “comments,” “reply comments,” or other name). *In addition, if the FCC does cause the case*

just noted, then Skytel-HS makes this instant filing, and any other "comments" or "reply comments" it files in this docket part of its PD and Reply to Oppositions to its PD.

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47 USC §309 (emphasis added)

> (d) Petition to deny application; time; contents; reply; findings
>
> (1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a) of this section (or subsection (k) of this section in the case of renewal of any broadcast station license). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

FCC rule § 1.939 Petitions to deny (emphasis added)

> (a) Who may file. Any party in interest may file with the Commission a petition to deny any application listed in a Public Notice as accepted for filing, whether as filed originally or upon major amendment as defined in § 1.929 of this part.
> * * * *
>
> (f) Oppositions and replies. The applicant and any other interested party may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof. Time for filing of oppositions and replies is governed by § 1.45 of this part for non-auctionable services and § 1.2108 of this part for auctionable services.
> * * * *
>
> (h) Grant of petitioned application. If a petition to deny has been

filed and the Commission grants the application, the Commission will dismiss or deny the petition by issuing a concise statement of the reason(s) for dismissing or denying the petition, disposing of all substantive issues raised in the petition.

/ / /

Other procedural objections

Skytel-HS references and incorporates herein all of its filings made in relation to the Application prior to its filing of its PD of the Application. These contained various procedural objections to the Application and the FCC procedures to process and take pleadings from persons (with party interest, and otherwise) regarding the Application including the special relief sought in relation to the Application.

/ / /

Certificate of Service

The undersigned certifies that he has, on June 20, 2013, caused to be served a copy of the foregoing filing to the below-listed persons and entities (i) by compliance with the instructions in the PN as to submitting on ECFS the filing including the appended materials.*[2]

Dennis C Brown
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406
Counsel for "MCLM" (MCLM Debtor-in-Possession)

Wilkinson Barker Knauer, LLP
M. O'Connor, R. Kirk, J. Lindsay
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Counsel for "Choctaw" (defined in the filing)

And parties that filed Comments
[Their names may be filled in, in an amended Certificate of Service, which, if made, will be filed in the docket.]

/s/ [Filed Electronically. Signature on File]
_____
Warren Havens

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* The PN states (emphasis added):

> Notwithstanding the restricted nature of this proceeding, however, pleadings and comments filed via the Commission's Electronic Comment Filing System (ECFS), as discussed below, will not have to be served on the parties,
>
> We will permit parties and commenters to file pleadings and comments using ECFS.
> …
>
> Parties who choose to [only] file by paper must comply with the Commission's requirements for service of documents to parties in a restricted proceeding,17

[2] Copies mailed may be placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.