



PUBLIC NOTICE

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DA 13-569
March 28, 2013

COMMENT SOUGHT ON APPLICATION TO ASSIGN LICENSES UNDER *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, TO CHOCTAW HOLDINGS, LLC (FCC File No. 0005552500)

WT Docket No. 13-85

Petitions to Deny and Comments Due: May 9, 2013
Oppositions to Petitions and Reply Comments Due: May 30, 2013
Replies to Oppositions Due: June 20, 2013

On January 23, 2013, Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, (MC/LM) and Choctaw Holdings, LLC (Choctaw, and together with MC/LM, the Applicants), filed an application (Application), FCC File No. 0005552500, to assign four geographic and 59 site-based Automated Maritime Telecommunications Service (AMTS) licenses from MC/LM to Choctaw under the Commission's *Second Thursday* doctrine¹ or pursuant to alternative relief. Applicants also request that the Commission waive and extend the construction deadlines for certain of MC/LM's site-based AMTS licenses, and terminate its formal hearing regarding the qualifications of MC/LM to hold the AMTS licenses. This *Public Notice* invites comment on the Application, and establishes the deadlines for filing petitions to deny the Application and responsive pleadings. As discussed below, however, we are treating this licensing proceeding as restricted for purposes of *ex parte* presentations.

In April 2011, the Commission adopted an *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (OSC/HDO)* designating MC/LM's basic qualifications to be a Commission licensee for hearing.² Specifically, the *OSC/HDO* designated issues as to whether MC/LM engaged in misrepresentation, lack of candor, and/or other misconduct in connection with its applications to acquire the AMTS geographic licenses in FCC Auction No. 61, and whether MC/LM thereby obtained a bidding credit to which it was not entitled.³ The *OSC/HDO* also designated issues regarding the construction and operational status of site-based stations licensed to MC/LM.⁴ MC/LM seeks to assign the licenses at issue in the hearing to Choctaw. The hearing remains pending.

¹ See *Second Thursday Corp., Memorandum Opinion and Order*, 22 FCC 2d 515, recon. granted, *Memorandum Opinion and Order*, 25 FCC 2d 112 (1970).

² See *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) (*OSC/HDO*).

³ *Id.* at 6536 ¶ 40.

⁴ *Id.* at 6546 ¶ 61.

Under the Commission's *Jefferson Radio* policy, an assignment or transfer of control application may not be granted where, as here, the licensee's qualifications to hold the licenses are in issue.⁵ The *Jefferson Radio* 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.⁶ This deterrent effect would be undermined if a licensee could "sell out from under a potential disqualification."⁷

In *Second Thursday*, the Commission adopted a narrow exception to the *Jefferson Radio* policy, to permit a bankrupt licensee, whose basic qualifications are at issue, to assign its licenses for the benefit of innocent creditors. The Commission may exercise its discretion to apply the *Second Thursday* doctrine where 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."⁸ Further, the Commission must find that approval of the transaction would serve the public interest, convenience and necessity.

The Applicants argue that the Commission should consent to the assignment of all of MC/LM's licenses to Choctaw under *Second Thursday*, and terminate its hearing on MC/LM's basic qualifications.⁹ As an alternative basis for relief, the Applicants cite footnote seven of the *OSC/HDO*, which states that the public interest in facilitating implementation of positive train control (PTC)¹⁰ might warrant removing from the ambit of the hearing a pending application¹¹ to assign spectrum from MC/LM to the Southern California Regional Rail Authority (SCRRA), which intends to use the spectrum for PTC.¹²

In addition, and as noted above, issues regarding the construction and operational status of MC/LM's 59 site-based AMTS stations remain unresolved. The Applicants request waivers of the applicable construction and discontinuance-of-service rules for these stations, arguing that the public

⁵ See *Jefferson Radio Corp. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

⁶ See *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981).

⁷ See *Cellular System One of Tulsa, Inc., Memorandum Opinion and Order*, 102 F.C.C. 2d 86, 90 ¶ 7 (1985).

⁸ *Second Thursday Corp., Memorandum Opinion and Order*, 22 FCC 2d 515, 516 ¶ 5.

⁹ See Description of Transaction, Public Interest Statement and *Second Thursday* Showing (Exhibit), attached to the application, at 7-9.

¹⁰ PTC is designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zones, and the movement of trains through switches left in the wrong position. PTC provides a communications-based network linking trains to equipment along the track and in centralized office locations to provide information to a locomotive about its authority to proceed along a track at a particular speed. See 49 U.S.C. § 20157(i)(3); 49 C.F.R. § 236.1005(a); U.S. Government Accountability Office, Report to Congressional Committees, Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology, at 2 (Dec. 2010).

¹¹ See FCC File No. 0004144435; see also FCC File No. 0004153701 (related application for modification of license to permit spectrum to be used for PTC).

¹² *Id.* at 14-16. In footnote seven, the Commission stated: "Given the potential safety of life considerations involved in the positive train control area and therefore attendant to the Metrolink [*i.e.*, SCRRA] application, 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 Metrolink application to be removed from the ambit of this Hearing Designation Order." See *OSC/HDO*, 26 FCC Rcd at 6523 n.7. MC/LM and SCRRA submitted a showing in response to the footnote. The Commission has approved SCRRA's five-year spectrum lease with PTC-220, a joint venture of the seven Class I freight railroads, to implement PTC in the Los Angeles basin. See File Nos. 0005375628 and 0005375658.

interest favors removing any cloud on the licenses and putting them to good use.¹³

The Administrative Law Judge issued an *Order* on March 21, 2013, that stayed the hearing with respect to the basic qualifications issues designated against MC/LM as a matter of administrative efficiency, noting that a decision on the Application and the associated requests for relief might moot those issues, but directed that the hearing proceed with respect to the build-out and discontinuance of service issues.

In light of the above, we seek comment on whether the Commission should: (1) consent to the assignment of some or all of MC/LM's AMTS licenses to Choctaw under *Second Thursday*; (2) consent to the assignment of some of MC/LM's AMTS licenses pursuant to footnote 7 of the OSC/HDO;¹⁴ (3) waive the construction and discontinuance-of-service rules for MC/LM's AMTS site-based stations; and (4) terminate its formal hearing, partially or otherwise, regarding MC/LM's basic qualifications. We also invite interested parties to suggest appropriate procedures to guide the Commission's consideration of the Application in a manner that will accommodate the processes of the separate but related hearing proceeding in a manner that promotes administrative efficiency and reduces to the extent feasible the burdens on the parties and the Commission in addressing these matters.

Interested parties may file comments as well as petitions to deny the Application on or before **May 9, 2013**. Reply comments and oppositions to petitions to deny must be filed on or before **May 30, 2013**, and replies to oppositions must be filed by **June 20, 2013**.

Ex Parte Status. Although we are inviting public comment on the Application and the associated requests for relief in view of the unique circumstances of this case, we remind all parties and commenters that this proceeding is restricted under the Commission's *ex parte* rules.¹⁵ As a consequence, *ex parte* presentations to or from Commission decision-making personnel are prohibited.¹⁶ 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. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to [http:// apps.fcc.gov/ecfs/](http://apps.fcc.gov/ecfs/). Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.

Parties who choose to file by paper must comply with the Commission's requirements for service of documents to parties in a restricted proceeding,¹⁷ as well as the following requirements for submit paper filings to the Commission:

¹³ *Id.* at 10-12.

¹⁴ Although footnote 7 of the *OSC/HDO* was directed solely at the application to assign spectrum to SCRRA for PTC, other proposed assignees of MC/LM spectrum intending to use it for critical infrastructure industry communications filed pleadings in the hearing proceeding arguing that the same public interest considerations that merit removing the SCRRA application from the ambit of the hearing likewise support removing their own applications from the hearing. The Applicants echo that request here, as an alternative to relief under *Second Thursday*. *See* Exhibit at 15-16.

¹⁵ *See* 47 C.F.R. §§ 1.1200(a), 1.1208.

¹⁶ *See* 47 C.F.R. § 1.1208.

¹⁷ *See* 47 C.F.R. § 1.47.

- Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, DC 20554.

Parties are requested to send one copy of their filing to Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (800) 378-3160, e-mail FCC@BCPIWEB.com.

The comments and pleadings filed in response to this *Public Notice* will be available for viewing via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, **WT No. 13-85**. The documents also will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-Level, Washington, D.C. 20554. They may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail FCC@BCPIWEB.com.

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Questions regarding this *Public Notice* may be directed to Jeffrey Tobias, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-1617, TTY (202) 418-7233, jeff.tobias@fcc.gov.

Action by the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

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