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

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC, DEBTOR-IN-POSSESSION	)	
	)	
Applications to Renew the Licenses for AMTS Stations WQGF315, WQGF316, WQGF317, WQGF318	)	FCC File Nos. 0007603776-79
	)	
Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline	)	
	)	
Application to Assign Licenses to Choctaw Holdings, LLC	)	FCC File No. 0005552500

ORDER

Adopted: May 11, 2017 **Released: May 11, 2017**

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

I. INTRODUCTION

1. We have before us applications filed by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession (MCLM)[1] for renewal of four geographic Automated Maritime Telecommunications System (AMTS) licenses (Renewal Applications).[2] Each Renewal Application is accompanied by an identical exhibit purporting to demonstrate that MCLM is providing "substantial service" within the licensed service area, as required by section 80.49(a) of the Commission's rules.[3] In the alternative, if we do not accept these demonstrations, MCLM requests additional time to meet the substantial service obligation. Warren Havens (Havens) and Polaris PNT PBC (Polaris) (collectively, Petitioners) jointly filed a petition to dismiss or deny the Renewal Applications (Petition to Deny).[4] We dismiss the Petition to Deny because neither Havens nor Polaris has the required standing to challenge the Renewal Applications. As discussed below, we conclude that although MCLM has failed to establish that it is providing substantial service in the licensed service areas, it has demonstrated that additional time to satisfy the substantial service requirement is warranted. We grant an additional two years from the release date of this *Order*, and conditionally grant the Renewal Applications.

II. BACKGROUND

2. In 2005, with the benefit of a 25% bidding credit based on its asserted status as a small

[1] We use the term "MCLM" to refer to the company both pre-bankruptcy and as a debtor-in-possession after it filed for Chapter 11 protection under the United States Bankruptcy Code.

[2] FCC File Nos. 0007603776, 0007603777, 0007603778, and 0007603779 (all filed Dec. 28, 2016).

[3] 47 CFR § 80.49(a).

[4] *See* Petition to Dismiss, Petition to Deny or in the Alternative § 1.41 Request (filed Feb. 3, 2017) (Petition to Deny). MCLM filed an Opposition on February 16, 2017. The Petitioners filed a Reply on March 1, 2017.

business under the designated entity criteria applicable to Auction 61, MCLM was the high bidder for four geographic AMTS[5] licenses and was granted the licenses in 2006.[6] Each AMTS geographic area licensee must notify the Commission within ten years of the initial license grant, *i.e.*, by the end of its initial license term, that it is providing substantial service within its region or service area.[7] "Substantial service" is defined as "service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal."[8]

3. In April 2011, the Commission designated MCLM for hearing on its basic character qualifications to be a Commission licensee.[9] The *Hearing Designation Order* (*HDO*) was based on a Commission determination that MCLM may have engaged in misrepresentation, lack of candor and other misconduct in connection with Auction 61 and its acquisition of the four AMTS licenses, and that MCLM may have obtained a bidding credit to which it was not entitled.[10] The *HDO* encompassed a number of then-pending applications filed by MCLM to assign portions of the four licenses to third parties, through partitioning and/or disaggregation. The processing of those assignment applications was precluded under the Commission's *Jefferson Radio* policy, which generally prohibits the assignment of a license while basic qualifications issues raised against the licensee remain unresolved, and thus serves as a deterrent to licensee misconduct.[11]

4. In August 2011, MCLM filed for bankruptcy,[12] and informed the parties to the hearing and the presiding Administrative Law Judge that it intended to invoke the *Second Thursday* doctrine to terminate the hearing.[13] The *Second Thursday* doctrine is an exception to the *Jefferson Radio* policy, providing that even if a licensee's basic qualifications are unresolved, the Commission may grant an application to assign the license(s) 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 derive only a minor benefit that is outweighed by equitable considerations in favor of innocent creditors.[14] On January 11, 2013, the Bankruptcy Court confirmed MCLM's proposed Plan of Reorganization (Plan), which called for MCLM to assign all of its licenses to Choctaw Holdings, LLC (Choctaw), which would then prosecute the pending assignment applications and seek assignees for the remainder of MCLM's spectrum assets, with the proceeds to benefit MCLM's creditors.[15] On January 23, 2013, in furtherance of

[5] AMTS is allocated spectrum in the 217/219 MHz band that, although initially intended primarily for maritime communications, may now be used for service on land, including private land mobile radio service, under certain conditions. *See* 47 CFR §§ 80.123, 80.385(a)(2); *MariTEL, Inc. and Mobex Network Services, LLC*, Report and Order, 22 FCC Rcd 8971 (2007), *subsequent history omitted*.

[6] Although MCLM was awarded the licenses with the 25% bidding credit, it was cautioned that its representations in connection with Auction 61 remained subject to further inquiry and possible enforcement action. *See Maritime Communications/Land Mobile, LLC*, Order on Reconsideration, 22 FCC Rcd 4780 (WTB MD 2007).

[7] *See* 47 CFR § 80.49(a)(3).

[8] *Id*.

[9] *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).

[10] *Id*.

[11] *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).

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

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

[14] *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).

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

the Plan and pursuant to *Second Thursday*, MCLM filed an application to assign its licenses to Choctaw (Choctaw Application).[16]

5. On September 10, 2014, the Commission adopted a *Memorandum Opinion and Order* (*Choctaw MO&O*) declining to terminate the MCLM hearing proceeding and process the Choctaw Application.[17] The Commission reasoned that a grant of the Choctaw Application could permit a suspected wrongdoer, Donald DePriest, to obtain a significant benefit by eliminating or reducing his secondary liability as a guarantor of loans made to MCLM, a benefit that precludes *Second Thursday* relief.[18] MCLM and Choctaw filed petitions for reconsideration of the *Choctaw MO&O*, arguing, *inter alia*, that an event that occurred after the adoption of the *Choctaw MO&O*—the involuntary bankruptcy of Donald DePriest and the subsequent discharge of his secondary liability to MCLM's creditors—negated the Commission's stated rationale in the *Choctaw MO&O* for denying *Second Thursday* relief, and that there was no other reason to deny such relief.

6. In an *Order on Reconsideration and Memorandum Opinion and Order* released on December 15, 2016 (*Choctaw Reconsideration Order*),[19] the Commission agreed that the discharge in bankruptcy of Donald DePriest's liabilities constituted a changed circumstance that warranted reconsideration.[20] It granted the request for *Second Thursday* relief, terminated the hearing on MCLM's basic qualifications, and clarified that "the *Jefferson Radio* policy is no longer an obstacle to the processing" of the Choctaw Application or any other application to assign spectrum held by MCLM.[21] The Commission noted that its resolution, among other benefits, "protects innocent creditors of MCLM" and "removes a cloud on valuable spectrum so it can be quickly put to use in the public interest."[22] To the latter point, the record indicated some of MCLM's spectrum holdings would be assigned to third parties in the immediate future in order to repay the creditors, and that Choctaw represented that it intended to operate under the remaining licenses.[23] The Commission removed the *Jefferson Radio* legal impediment to processing the assignment of MCLM's licenses to Choctaw, but left to the Wireless Telecommunications Bureau (WTB) the processing of the assignment applications in accordance with the Commission's regulations and policies.[24] The Commission anticipated that WTB would grant the Choctaw Application first, and then process applications assigning some of the spectrum from Choctaw to others, but noted that WTB retained discretion to address such timing and logistical issues under its delegated authority.[25]

7. Because the licenses at issue were granted in 2006, the end of the initial license term was

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[16] FCC File No. 0005552500 (filed Jan. 23, 2013, amended Jan. 25, 2013).

[17] *See Maritime Communications/Land Mobile, LLC, Debtor-in-Possession*, Memorandum Opinion and Order, WT Docket No. 13-85, 29 FCC Rcd 10871 (2014) (*Choctaw MO&O*).

[18] *Id.* at 10878, para. 20.

[19] *See Maritime Communications/Land Mobile, LLC, Debtor-in-Possession,* Order on Reconsideration and Memorandum Opinion and Order, WT Docket No. 13-85, 31 FCC Rcd 13729 (2016) (*Choctaw Reconsideration Order), recon. pending.*

[20] *Id*. at 13734, para. 9.

[21] *Id*. at 13738, para. 18. The Commission did not, however, grant the Choctaw Application or any other application in the *Choctaw Reconsideration Order*; it instead directed the Wireless Telecommunications Bureau (WTB) to process the subject applications in accordance with the Commission's regulations and policies, noting that WTB has "discretion to address … timing and logistical issues under its existing delegated authority." *Id*. at 13737, note 59.

[22] *Id.* at 13740, para. 22.

[23] *Id.* at 13736-37, para. 15.

[24] *Id.* at 13737, note 59.

[25] *Id*.

in 2016. Accordingly, on December 28, 2016, MCLM filed the Renewal Applications. Each has an identical "Public Interest Statement," which includes a substantial service showing (Substantial Service Showing), and, as a contingency in the event that the Commission finds the Substantial Service Showing to be lacking, a "Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline" (Extension/Waiver Request).[26] In the Substantial Service Showing, MCLM claims that it "has satisfied the requirement in three ways: (1) operating and providing traditional maritime and land mobile services via constructed incumbent facilities throughout the geographic area; (2) working diligently to identify and attempt to deploy new uses for this spectrum as consumer demand for traditional maritime and land mobile radio services declined sharply; and (3) entering into spectrum leases with third parties, including railroads, utilities, energy companies, and other critical infrastructure entities."[27] In its Extension/Waiver Request, MCLM argues that, if the Commission does not accept the Substantial Service Showing, an extension or waiver of the substantial service deadline is warranted because MCLM was impeded in this effort by the hearing proceeding, its bankruptcy, and the delay in resolving its request for *Second Thursday* relief.[28]

III. DISCUSSION

8. *Petition to Deny*. In the Petition to Deny, Havens and Polaris argue primarily that MCLM has failed to demonstrate that it is providing substantial service,[29] and that the Renewal Applications should be denied because of MCLM's alleged disqualifying misconduct.[30] The Petitioners also appear to argue that the Renewal Applications are defective because Choctaw was not made a party to the Renewal Applications, and oppose granting MCLM an extension simply to allow the assignment to Choctaw to go forward. We dismiss the Petition because Havens and Polaris lack standing. 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.[31] To demonstrate standing, the 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.[32] For purposes of standing, an injury must be both "concrete and particularized" and "actual or imminent, not conjectural or

[26] The Extension/Waiver Request was initially filed on October 31, 2016, as a pleading in the Commission's Universal Licensing System under each of the pertinent call signs, and was incorporated in the Renewal Applications.

[27] *See* Substantial Service Showing at 2.

[28] *See* Extension/Waiver Request at 2-3. MCLM adds that granting it relief from the substantial service deadline would serve the public interest by allowing the spectrum to be more quickly put to use, compensating innocent creditors of the company, and promoting public safety by supporting the radio operations of critical infrastructure industry entities. *Id*. at 9-10.

[29] *See* Petition to Deny at 7-28.

[30] *See*, *e.g.*, *id*. at 28-41. The Commission's statement in the *Choctaw Reconsideration Order* that the *Jefferson Radio* policy is no longer an impediment to the processing of the applications designated in the *HDO* means that the basic qualifications issues raised in the *HDO* cannot serve as the basis for denying any of MCLM's applications. *See Warren C. Havens et al*., Order, 32 FCC Rcd 218, 219, para. 4 (WTB MD 2017), *recon. pending*. Accordingly, even if we were to reach the merits of the Petition to Deny, rather than dismissing it for lack of standing, we would not credit the Petitioners' argument that the Renewal Applications should be denied because of the allegedly disqualifying misconduct of MCLM.

[31] *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*).

[32] *See Wireless Co.*, 10 FCC Rcd at 13235, para. 7; *TouchTel*, 29 FCC Rcd at 16250-51, para. 7.

hypothetical."[33]

9. At the outset, we reject the Petitioners' argument that, with Havens having demonstrated standing in other Commission proceedings, "[i]t need not be demonstrated again here."[34] That position is plainly incorrect; standing is determined case-by-case on the facts before the Commission. That Havens may have been found to have standing in other proceedings does not eliminate the need for the Petitioners to establish standing in this proceeding.[35] Moreover, the Petitioners' offer to provide "[o]ther support for Petitioners' Standing and Interest … if needed" is unavailing.[36] Petitioners, like any party before the agency, are not entitled to file an inadequate pleading and then attempt to remedy its deficiencies later.[37] We accordingly must determine whether Havens or Polaris has satisfied the standing requirement in the factual context of this proceeding.

10. We have carefully reviewed the record, and we find that neither Havens nor Polaris has demonstrated standing. The Petitioners do not argue that grant of the Renewal Applications would cause competitive harm of any sort, and neither Havens nor Polaris is a Commission licensee. The only injury articulated by the Petitioners in asserting standing is that MCLM has accused Havens of wrongdoing in matters before the Commission.[38] Even if such accusations were to be considered a cognizable injury, Havens fails to show how denial of the Renewal Applications would redress such an injury. Standing, moreover, cannot be based on Petitioners' speculation that they might seek the spectrum now covered by

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[33] *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).

[34] *See* Petition to Deny at 47. Indeed, the Commission has not routinely afforded Havens standing as Petitioners suggest. *See, e.g.*, *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*, Order, 31 FCC Rcd 9826, 9830, para. 11 (WTB MD 2016).

[35] *See, e.g.*, 47 U.S.C. § 309(d)(1) (mandating that every petition to deny an application "shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest …"); *Cellco Partnership d/b/a Verizon Wireless, Coral Wireless, LLC, and Coral Wireless Licenses, LLC*, Order, 29 FCC Rcd 13397, 13400, para. 8 (WTB MD 2014) (denying standing because petition "fails to assert specific allegations of fact sufficient to show that [the petitioner] is a party-in-interest *with respect to this particular transaction*") (emphasis added).

[36] *See* Petition to Deny at 51.

[37] The Commission does not "allow a party to 'sit back and hope that a decision will be in its favor and, when it isn't, parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.'" *Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154, para. 7 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)); *see also Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002) ("[A] petitioner whose standing is not self-evident should establish its standing by the submission of its arguments and any affidavits or other evidence appurtenant thereto at the first appropriate point in the review proceeding …"). With respect to a petitioner opposing a license application before the Commission, that first appropriate point is in the petition to deny itself, as specified in Section 309(d)(1) of the Act, n.36, *supra*.

[38] *See* Petition to Deny at 50.

the MCLM licenses "in future FCC auctions or other licensing actions."[39]

11. Petitioners claim that Polaris has standing based on "an assignment by Havens of some of Havens [sic] claims in the matters of this Petition . . . ."[40] It follows from our finding that Havens lacks standing that Polaris too lacks standing. We therefore dismiss the Petition.[41]

12. *Substantial Service Showing.* We are unable to credit MCLM with compliance with the substantial service standard, because its Substantial Service Showing does not provide sufficient information to allow us to meaningfully assess the extent to which the licensed spectrum is or has been utilized for operational communications. MCLM first notes that it provided maritime and land mobile services through site-based AMTS stations that it acquired in December 2005, that were later subsumed under its geographic licenses.[42] In addition, MCLM lists the entities to which it has leased spectrum for critical infrastructure communications.[43] In neither case, however, does MCLM describe the operations sufficiently for us to conclude that the operations constitute substantial service.

13. MCLM lists its site-based stations that had operated in each of the geographic service areas by call sign and location, but does not provide any explanation of the nature or extent of such services (including geographic or population coverage), other than to identify the technology that some of the stations used.[44] For each of the leases, MCLM identifies the lessee and generally describes for what it used or uses the spectrum.[45] Again, however, the full extent of the operations is unclear. MCLM's Substantial Service Showing is devoid of any meaningful metrics that would permit us to, for example, gauge how much of its total spectrum under the four geographic licenses is being used, or the aggregate proportion of each license area in which the spectrum is being used. Without such information, we cannot assess whether the service is substantial. We conclude, therefore, that MCLM's showing regarding its and its lessees' uses of the spectrum is inadequate to demonstrate substantial service.

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[39] *Id.* at 51. *See, e.g.*, *Clapper v. Amnesty International USA*, 133 S. Ct. 1138, 1147 (2013) ("[A]llegations of possible future injury are not sufficient" to establish standing; a "threatened injury" must be "certainly impending") (internal quotation marks omitted); *Chamber of Commerce of U.S. v. EPA*, 642 F.3d 192, 200 (D.C. Cir. 2011) (when alleging future injury, "petitioners must show that there is a substantial … probability of injury") (internal quotation marks omitted).

[40] *See* Petition to Deny at 47.

[41] We reject the Petitioners' alternative request that we treat the Petition as an informal request for Commission action under Section 1.41 of the rules, 47 CFR § 1.41. Section 1.41's underlying purpose is to provide "an avenue of recourse to parties who might otherwise have none," and the Commission regularly declines to consider "informal" requests for Commission action under Section1.41 when there are formal procedures available to the requesting parties. *See, e.g., Warren C. Havens*, Memorandum Opinion and Order, 28 FCC Rcd 16261, 16267-68, para. 18 (2013).

[42] Substantial Service Showing at 3.

[43] *See id.* at 6-8. The Commission's rules provide that a "licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable build-out or performance requirement." *See* 47 CFR § 1.9030(d)(5)(i).

[44] Substantial Service Showing at 3-4. For example, the "Brief Description of Service Provided" for the WQGF315 licensed service area says in its entirety: "Originally constructed as conventional land mobile stations, facilities in the Baltimore/Washington DC area were converted to PassPort Systems (a proprietary Trident Micro Systems format) operated under a management agreement with Motorola. There were plans to also convert other facilities to PassPort Systems." *Id*. at 3.

[45] It notes, for example, that a lessee using the spectrum for Positive Train Control has 536 operating route miles of track, serving an average of 44,000 riders per week on 149 trains. Another lessee, a member-owned utility, provides electric service to over 161,000 connections in portions of 22 counties, and operates and maintains more than 16,000 miles of power lines over "an area that ranges from the Blue Ridge Mountains to the tidal waters of Chesapeake Bay." *Id*. at 7.

14. We also are unable to credit MCLM with substantial service based on what it says were "extensive efforts, expending considerable time, money, and other resources, in an effort to find new avenues for keeping the spectrum in public use" in light of the waning demand for traditional AMTS services.[46] MCLM states that it conducted extensive investigations into the possible use of its AMTS licenses to support container tracking at ports and other transportation terminals, engaging a consultant for that purpose; hired another consultant to pursue the possible use of AMTS facilities to support the terrestrial facilities of satellite radio operations; explored the possibility of using its spectrum to connect digital billboards; partnered with another company to combine its spectrum holdings with the other company's technology to develop an enhanced maritime Automatic Identification System; and sought to use its spectrum for Radio over Internet Protocol technology.[47] These efforts occurred mostly in 2006 and 2007, early in the license term; MCLM says that, by March 2008, it had determined that the best course would be to pursue spectrum lease and/or asset purchase agreements with companies that wished to use AMTS spectrum for internal communications systems.[48] In any event, efforts such as those described by MCLM cannot stand as the basis for a finding of substantial service. The standard is substantial service rather than substantial due diligence, and a finding of substantial service must be based on actual service.[49]

15. *Request for Extension and/or Waiver.* We find merit, however, in MCLM's request that we grant it additional time to demonstrate substantial service.[50] Section 1.925(b)(3) of the rules provides that we "may grant a request for waiver if it shown that … (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."[51] We find that, in light of the totality of the particular facts of this case, a waiver of the substantial service deadline is warranted under the second prong of the waiver standard. As explained below, the prolonged hearing, the attendant application of the *Jefferson Radio* policy, and the Commission's recent public interest determination that

[46] *Id*. at 5.

[47] *Id*. at 5-6.

[48] *Id*. at 6.

[49] *See, e.g., Intelligent Transportation & Monitoring Wireless, LLC*, Order, 31 FCC Rcd 11528, 11537, para. 21 (WTB MD 2016) ("While licensees are free to investigate, invest in, and pursue a wide range of technologies and service options, regulatory compliance is ultimately demonstrated by material accomplishments in the use of the spectrum resource to provide service"); *Cornerstone SMR, Inc*., Order, 27 FCC Rcd 5900, 5906-07, para. 13 (WTB MD 2012) ("…planned future construction and services is not material to a demonstration that a licensee has met its substantial service obligation"; "Substantial service at renewal is a demonstration addressing whether the radio spectrum has ultimately been put to active use in the public interest, not demonstrated merely by … a licensee's stated business goal of maintaining a license for future use");. *Warren C. Havens*, Order on Reconsideration, 29 FCC Rcd 1019, 1033, para. 35 (WTB MD 2014) ("At some point theory must give way to action and 'due diligence' must yield tangible results."); *see also Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8085, para. 194 (2016) (noting that the Commission has rejected the argument that antecedent activities such as developing equipment and submitting proposals to potential customers should be credited towards a finding of substantial service) (citing *Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees*, Report and Order, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, 26 FCC Rcd 11614, 11661, para. 114 (2011)).

[50] *See* 47 CFR § 80.49(a). Having determined that MCLM has satisfied the criteria for a waiver of Section 80.49(a), we do not reach MCLM's request for an extension under Section 1.946 of the rules, 47 CFR § 1.946.

[51] 47 CFR § 1.925(b)(3).

an assignment of the MCLM licenses to Choctaw would foster beneficial spectrum uses are unusual circumstances that render a strict application of the substantial service deadline to MCLM contrary to the public interest.

16. The hearing commenced with the *HDO* in April 2011. Not until almost six years later, with the release of the *Choctaw Reconsideration Order* in December 2016, did the Commission conclude its consideration of MCLM's basic qualifications and remove the *Jefferson Radio* policy as an obstacle to the processing of MCLM's pending applications. During that period, there was uncertainty as to whether MCLM's licenses would be revoked, and the processing of any applications pertaining to the licenses had to be deferred. Moreover, although bankruptcy standing alone does not justify a waiver of a substantial service deadline,[52] we note that MCLM would have needed the approval of the bankruptcy court for any extraordinary expenditures, and that the Plan did not provide for such expenditures. In unusual circumstances, the Commission has granted extensions of time or limited waivers of build-out deadlines, citing regulatory uncertainty and other factors.[53] Here, the uncertainty is posed by the prolonged FCC hearing and the need for bankruptcy court approval of expenditures, notwithstanding potential revocation of the licenses that goes to whether MCLM would be able to use the spectrum.

17. In addition, although there may have been third parties willing and able to use the spectrum, action on applications to assign spectrum to those third parties was deferred pursuant to the *Jefferson Radio* policy. Thus, a key avenue for meeting the substantial service standard—conveying responsibility to parties willing to undertake it—was unavailable to MCLM for most of the license term. Indeed, prior to the commencement of the hearing, MCLM had filed applications to partition and disaggregate portions of the AMTS licenses to gas, oil, and electric companies (critical infrastructure industry, or CII) and the Southern California Regional Rail Authority (SCCRA). Those applications were not processed before the hearing because of the ongoing investigation. The SCCRA applications were ultimately removed from the hearing to allow them to be processed].[54] But the CII applications are still pending. This underscores that MCLM did not have a reasonable alternative available to it for continuing the build-out of the authorized facilities beyond its stated early provision of service through its site-based licenses, and taking other steps to initiate substantial service without risking the loss of its investment and possibly incurring additional liability.

18. We find that these circumstances, taken together, justify granting MCLM a limited amount of additional time to meet its substantial service deadline. As in other cases where a substantial service or construction deadline was waived,[55] this relief will serve the public interest by facilitating the

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[52] *See Globalstar, L.P.*, Memorandum Opinion and Order, 19 FCC Rcd 11548, 11561, para. 29 (2004).

[53] *See MariTel, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 14074, 14079-81, paras. 9-11, 14085-88, paras. 20-25 (2007) (*MariTel Extension Order*) (granting an extension of a maritime VHF Public Coast Station licensee's substantial service deadline due to regulatory uncertainty engendered by a Notice of Proposed Rule Making that proposed rule changes that could have significantly affected the licensee's ability to use its licensed spectrum); *see also, e.g.*, *Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment*, Order, 30 FCC Rcd 11827, 11828, para. 5 (2015); *Request of Licensees in the 218-219 MHz Service for Waiver of the Five-Year Construction Deadline*, Order, 14 FCC Rcd 5190, 5194, para. 8 (WTB PSPWD 1999). *But see also Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16889, 16893, para. 11 (2003) (denying extension based on regulatory uncertainty).

[54] *See Choctaw MO&O*, 29 FCC Rcd at 10883, para. 31.

[55] *See, e.g.*, *Metropolitan Transportation Authority*, Proposed Order of Modification and Order on Reconsideration, 31 FCC Rcd 1436, 1443, para. 19 (2016); *Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules*, Memorandum Opinion and Order, 24 FCC Rcd 8537, 8542-43, paras. 12-13 (WTB 2009); *Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, Order, 32 FCC Rcd 122, 136-37, paras. 28-31 (WTB MD 2017); *see also Requests by FCR, Inc., Progeny LMS, LLC, PCS Partners, L.P., and Helen Wong-Armijo for Waiver and Limited Extension of Time*, Order, 29 FCC Rcd 10361, 10367-68, paras. 17-18 (WTB MD 2014) (*M-LMS Waiver Order*), *aff'd*, *Order on Reconsideration*, 32 FCC Rcd 556 (WTB MD 2017); *Request of Warren C. Havens for*

(continued….)

efficient and effective use of the subject spectrum, including for communications that may benefit public safety. Granting a limited amount of additional time, moreover, serves the same public interest in accommodating bankruptcy law and protecting innocent creditors that underpins the *Second Thursday* doctrine.[56] Relief from a build-out deadline has been found to be warranted where a bankrupt licensee seeks to assign the license to an assignee that is able to construct the station, and no wrongdoer would benefit from the construction extension.[57] Indeed, such relief was granted in the *Second Thursday* proceeding to permit the assignee to meet the construction requirement.[58]

19. Our action here follows on and is fully consistent with the Commission's conclusions in the *Choctaw Reconsideration Order*. The Commission there noted the multiple benefits of its decision, including the fact that granting *Second Thursday* relief would "remove a cloud on valuable spectrum so it can be quickly put to use in the public interest."[59] The Commission left the processing of the various assignment applications to WTB, noting that "WTB retains discretion to address … timing and logistical issues under its existing delegated authority."[60] Our grant of MCLM's license renewals here is a necessary step to processing the assignment applications.

20. For the reasons described above, we conclude that the public interest will be served by providing MCLM and any assignee of its spectrum (including but not limited to Choctaw) additional time in which to demonstrate substantial service. In its Extension/Waiver Request, MCLM asks that its deadline be extended to "one year after final Commission action" on the still-pending Choctaw Application.[61] We decline to use MCLM's suggested starting point, both because of the ambiguity of the term "final action"[62] and because it would leave the waiver period indefinite even after the release of this *Order*.[63] We instead grant a waiver of the substantial service deadline for two years beginning on the date of release of this *Order*. Providing MCLM and any assignee two years from the release of today's order to demonstrate substantial service will support the Commission's stated goal of fostering near-term, intensive use of the MCLM spectrum.[64] This approach provides MCLM and other interested parties with certainty regarding the date by which substantial service must be achieved and demonstrated for each

(Continued from previous page)
Waiver of the Five-Year Construction Requirement for His Multilateration Location and Monitoring Service Economic Area Licenses, Memorandum Opinion and Order, 19 FCC Rcd 23742, 23774-75, paras. 6-7 (WTB MD 2004).

[56] *Cf. Martin W. Hoffman, Trustee*, Memorandum Opinion and Order, 12 FCC Rcd 11722, 11723, para. 4 (1997) (upholding a waiver of the Commission's deadline for submitting a hearing fee that was granted to a bankruptcy trustee to accommodate bankruptcy law); *San Diego Television, Inc., Debtor-in-Possession*, Memorandum Opinion and Order, 11 FCC Rcd 14689, 14693, para. 13 (1996) (waiving broadcast multiple ownership rule to accommodate bankruptcy law).

[57] *Carson City Broadcasting Corp*., Decision, 26 FCC 2d 694, 695-96, para. 5 (Rev. Bd. 1970) (citing *Second Thursday Corp.,* Memorandum Opinion and Order, 25 FCC 2d 112 (1970); *Hubbard Broadcasting Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 519 (1967)).

[58] *See Second Thursday Corp.*, Memorandum Opinion and Order, 25 FCC 2d 112, 116, para. 7 (1970).

[59] *Choctaw Reconsideration Order*, 31 FCC Rcd at 13740, para. 22.

[60] *Id.* at 13737, note 59.

[61] *See* Extension/Waiver Request at 1-2.

[62] It is unclear whether "final action" refers to the date of grant of the Choctaw Application, to the period after which petitions for reconsideration of such a grant may no longer be filed, to a final decision by the full Commission upon review, to the exhaustion of judicial remedies, or to some other date.

[63] *See MariTel Extension Order*, 22 FCC Rcd at 14087, paras. 22-23 (declining to grant an extension until the Commission's decision in a pending rulemaking proceeding "bec[a]me[] final").

[64] *Choctaw Reconsideration Order,* 31 FCC Rcd at 13740, para. 22.

license. As we have done in similar contexts, we remind MCLM and any successor licensees that the licenses will terminate automatically if they fail to meet the extended substantial service deadline, and caution that we do not expect to grant any further waivers of the substantial service deadline absent the most compelling of reasons.[65]

IV. CONCLUSION

21. We conclude that it will serve the public interest, convenience, and necessity to grant the Renewal Applications, and WTB's licensing staff will process the Renewal Applications subject to the condition that MCLM or any future licensee of the spectrum demonstrate substantial service within two years of this *Order*'s release date. Renewal of MCLM's geographic licenses pursuant to this *Order* will remove the final procedural impediment to processing the Choctaw Application. Consequently, the Choctaw Application shall be processed after the Renewal Applications are granted as set forth above.[66]

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, 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 Dismiss, Petition to Deny or in the Alternative § 1.41 Request, filed by Warren Havens and Polaris PNT PBC on February 3, 2017, IS DISMISSED.

23. 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 1.925(b) of the Commission's Rules, 47 CFR § 1.925(b), that the Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline, filed by Maritime Communications/Land Mobile, LLC, on December 28, 2016, IS GRANTED to the extent that the substantial service deadline is waived until two years after the date of release of this *Order*.

24. IT IS FURTHER ORDERED that applications FCC File Nos. 0007603776, 0007603777, 0007603778, and 0007603779 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

25. This action is 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

[65] *See, e.g., M-LMS Waiver Order*, 29 FCC Rcd at 10368, para. 18.

[66] *See Choctaw Reconsideration Order*, 31 FCC Rcd at 13731, n.59, 13735, para. 23.