

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

In the Matter of)
Skybridge Spectrum Foundation) EB Docket No. 11-71
Telesaurus Holdings GB LLC)
Verde Systems LLC) Among 'lead' Call Signs:
Environmental LLC) WQHU548, WPOJ876,
Environmental-2 LLC) WQCP815, WQCP810,
Intelligent Transportation & Monitoring Wireless) WQNZ336, WQER215,
LLC) WQMU210, WQMU215
V2G LLC)
) Among 'lead' applications:
Petition for Declaratory Rulings, including under) 0007060862, 0007061847,
holdings of the Third Circuit precedential decision) 0007067613
in Havens v Mobex et al.)
)
Petition for a hearing on qualifications of Arnold)
Leong (and co-actors, assignees and others) to)
hold any control or material interests in the)
subject, or any other, FCC licenses, license)
applications, and proceeds of license transactions,)
and on related sanctions and forfeitures)
)
Petition to issue a stay, in addition to the)
bankruptcy automatic stay under the pending)
SkyTel JV chapter 11 case (USBK) previously)
noticed)
)
Petition for Declaratory Ruling Clarifying Any)
Uncertainty Regarding the Sale of Licenses Held)
by the Foregoing Entities for the Benefit of Dr.)
Arnold Leong Consistent with State Court)
Proceedings Confirming the Arbitration Award in)
His Favor)
)

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2022

Released: April 11, 2022

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Memorandum Opinion and Order (Order) addresses a pleading dated January 28, 2021, together with supplemental and amendatory materials supporting the pleading, filed by Warren Havens and Polaris PNT 1 PBC LLC (together, Havens) requesting that the Federal Communications Commission (Commission or FCC) issue a declaratory ruling, initiate a hearing on the qualifications of his former business partner, Dr. Arnold Leong (Leong), to hold FCC licenses, and issue a stay of any

licensing action involving the above-captioned licensees (collectively, Havens Petition).¹ As explained below, we find nothing in the Havens Petition that merits the issuance of a declaratory ruling, a stay, or the initiation of a hearing on the character qualifications of Leong, and therefore, we deny the Havens Petition in its entirety. Specifically, we find not only that Havens's request for a declaratory ruling is misplaced in terms of his reliance on section 201 of the Communications Act of 1934, as amended (the Act), but also that his allegations against Leong are unsubstantiated and raise no substantial question of fact that would justify designating a character qualifications hearing against Leong. Furthermore, Havens's motion for stay is both procedurally and substantively defective and represents yet another of Havens's disruptive collateral attacks on the proper functioning of a state court in attempting to reach a resolution of these matters.

2. In this Order, we also address a petition for declaratory ruling filed by Leong, through his court-appointed guardian *ad litem*, Cheryl Choy, requesting that the Commission remove uncertainty regarding the ability of the court-appointed receiver to effectuate the sale of the Licenses (Leong Petition).² For the reasons discussed below, we grant the Leong Petition in part, subject to conditions. Specifically, we find that Leong is an innocent creditor who meets the criteria enumerated in the Commission's *Second Thursday* policy.³ However, to give the Wireless Telecommunications Bureau (Bureau) assurance that Havens will play no role in the operation of nor derive any monetary benefit from the sale of the Licenses—pending the resolution of the Commission's assessment of his character qualifications—we will condition approval of each transaction on the receiver and the buyer making certain representations in filings. In making this determination, we recognize that the sale of the Licenses will serve the public interest by helping to make valuable spectrum operational.⁴

II. BACKGROUND

3. *Leong-Havens legal dispute.* Since 2006, Havens has filed in his individual capacity, and on behalf of the Skytel entities, thousands of pleadings at the Commission, that had the effect of preventing or encumbering license grants, transactions, and renewals, as well as evading build-out requirements for the licenses held by the Skytel entities. Beginning in 2002, Havens was also involved in litigation with Leong involving their respective ownership interests in Verde and Telesaurus—and subsequently the other Skytel entities managed by Havens—and the conduct of the partnership between Havens and Leong.⁵

¹ The Havens Petition was filed in the above-captioned enforcement docket and in the Commission's Universal Licensing System (ULS) for the captioned licensees, and under the following lease: L000015500. The exhibits, amendments, and other supplementary materials were submitted in the enforcement docket, ULS, or both. Leong submitted his oppositions to Havens's petition for a stay and declaratory ruling in the enforcement docket. We will refer to the following eight entities, which are included in the receivership as described herein, as the "Skytel entities": Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC (Telesaurus), Verde Systems LLC (formerly known as Telesaurus, VPC, LLC) (Verde), Environmental LLC, Environmental-2 LLC, Intelligent Transportation & Monitoring Wireless LLC, V2G LLC, and Atlantis, LLC (Atlis). Atlantis does not hold any FCC licenses. We will also refer to Havens and the Skytel entities that hold FCC licenses as the "Licensees" and the FCC licenses that they hold as the "Licenses."

² Petition for Declaratory Ruling by Arnold Leong, EB Docket No. 11-71 (filed Mar. 11, 2021) (Leong Petition).

³ See *Second Thursday Corp.*, 22 FCC 2d 515, 516, *recon. granted*, 25 FCC 2d 112 (1970) (*Second Thursday*).

⁴ For instance, spectrum in the Automated Maritime Telecommunications Service (AMTS) band may be suited to facilitating the safety, efficiency, and reliability of electrical grid systems. See, e.g., Amended Application to assign licenses from Verde Systems LLC to Hoosier Energy Rural Electric Cooperative, Inc., ULS File No. 0009580531 (filed July 21, 2021).

⁵ The litigation began in October 2002 when Leong filed suit against Havens. See *Leong v. Havens*, Case No. 2002-070640, Alameda County Superior Court (Court). After the Court granted a motion by Havens to compel

(continued....)

4. During the pendency of the legal dispute between Havens and Leong, Havens and six affiliated entities⁶ were sanctioned by Chief Administrative Law Judge Richard Sippel (Judge) in an order detailing their repeated contemptuous and disruptive conduct while participating in a hearing regarding the basic qualifications of Maritime Communications/Land Mobile, LLC (MCLM) (*Sippel Order*).⁷ In the *Sippel Order*, the Judge concluded that such egregious behavior merited excluding Havens and his companies from further participation in the hearing.⁸ The Judge also certified questions to the Commission as to whether a separate proceeding should be initiated to determine the qualifications of Havens and the six affiliates to be Commission licensees.⁹ Havens and his companies filed separate appeals of the *Sippel Order*. In a subsequent order, the Commission found that Havens's pattern of misconduct in various administrative and judicial proceedings, coupled with his contemptuous and disruptive behavior during the MCLM hearing, justified the Judge's imposition of sanctions against Havens and his companies and a referral to the Enforcement Bureau to investigate whether character issues should be designated against them.¹⁰

5. In 2015, shortly after the release of the *Sippel Order*, Leong filed a motion with the Alameda County Superior Court (Court) to appoint a receiver for the Skytel entities and for entry of a temporary restraining order.¹¹ In November 2015, the Court appointed Ms. Susan L. Uecker (Uecker or Receiver) as receiver to manage Verde, Telesaurus, and the other Skytel entities previously managed by Havens during the pendency of the Havens-Leong dispute, which had by then been referred to arbitration.¹² In February 2016, the Commission accepted applications filed by the Receiver for the involuntary transfer of control of the licenses held by the Skytel entities to her.¹³

(Continued from previous page) _____

arbitration, Leong filed a Demand with the American Arbitration Association on or about November 4, 2005, and the arbitration proceeded from there.

⁶ The six affiliates are part of the group comprising the Skytel entities, including: Environmental LLC, Verde, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation, Telesaurus, and V2G LLC.

⁷ Memorandum Opinion and Order, FCC 15M-14 (Apr. 22, 2015) (*Sippel Order*).

⁸ *Sippel Order*, FCC 15M-14, at 12-13, para. 22.

⁹ *Id.* at 13, para. 23.

¹⁰ See *Maritime Communications/Land Mobile, LLC*, Memorandum Opinion and Order, 33 FCC Rcd 11822, 11837, para. 56 (2018) (*2018 MCLM Order*), *pet. for recon. pending*. That investigation remains pending. If the Enforcement Bureau determines that there are character qualification questions, it may recommend that Havens's authorizations be designated for hearing.

¹¹ See Declaration of Plaintiff Arnold Leong in Support of Motion to Appoint Receiver, Case No. 2002-070640, at 7-10 (filed with the Superior Court of the State of California, County of Alameda) (Leong Declaration).

¹² See *Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Order Appointing Receiver After Hearing and Preliminary Injunction (Cal. Super. Ct. Nov. 16, 2015) (*Receivership Order*). The case was removed to federal court, *Arnold Leong v. Warren Havens*, Case No. 18-cv-03603-EDL (N.D. Cal. June 15, 2018), but the federal court remanded it back to the California Superior Court, *Arnold Leong v. Warren Havens*, Order Granting Motion to Remand, Case No. 20-cv-05236-JST, 2020 WL 6129623 (N.D. Cal. Oct. 9, 2020), *appeal dismissed*, No.20-17036, 2021 WL 1511634 (9th Cir. Jan 26, 2021).

¹³ See, e.g., File No. 0007061847 (filed Dec. 17, 2015). In March 2016, Havens sought reconsideration of the acceptance of the applications transferring control of the licenses to the Receiver. In February 2017, the Receiver, as the representative of the Skytel entities before the Commission, requested withdrawal of the reconsideration petition. The withdrawal request was granted in October 2017. See Letter from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Susan L. Uecker (Oct. 3, 2017) (viewable under FCC File No. 0007061847).

6. On August 28, 2019, the arbitrator issued a Memorandum of Decision (Decision), and on June 12, 2020, a Supplemental Memorandum of Decision and Final Award (collectively, the Arbitration Award). On June 4, 2021, the Court entered a final judgment in the dispute, confirming the Arbitration Award, and issued an order retaining Uecker as the post-judgment receiver (Judgment).¹⁴ In the Arbitration Award, the arbitrator {[

]}¹⁶

Pursuant to the Judgment, the Receiver must {[

]} The Judgment was sealed by the Court, and on August 4, 2021, the Receiver, by counsel, submitted the Judgment to the FCC with a request for confidential treatment. Thus, consistent with the Arbitration Award, the Commission anticipates that the Receiver will submit applications for the sale of Licenses.

7. *Jefferson Radio Policy.* When referring Havens and his companies to the Enforcement Bureau to investigate their potential character issues, the Commission recognized that any application to assign spectrum licensed to Havens's companies could be subject to the *Jefferson Radio* policy.²⁰ Pursuant to the Commission's *Jefferson Radio* policy, the assignment of Commission licenses is generally prohibited while basic qualification issues raised against the licensee remain unresolved.²¹ The policy recognizes that following a hearing, if a licensee is found to be unqualified to hold Commission licenses, there would be no licenses to assign. This policy thus serves as a deterrent to licensee misconduct by preventing a party from avoiding the consequences of its wrongdoing by selling its license prior to adjudication. However, in *Second Thursday*, the Commission established an exception to this policy.²² In that case, the licensee was forced into bankruptcy while in hearing, and the bankruptcy trustee sought to

¹⁴ See *Leong v. Havens*, Minute Order Granting Petition to Confirm Arbitration Award, Case No. 2002-070640, Alameda County Superior Court (Judgment). The Judgment approved the August 28, 2019 Decision; the June 12, 2020 Supplement to the Decision; and the June 12, 2020 Final Award issued by James R. Madison, the American Arbitration Association arbitrator who presided over the arbitration proceeding. The Decision, the Supplement to the Decision, and the Final Award are attached as exhibits to the Judgment.

¹⁵ See Arbitration Award at 19-22.

¹⁶ Material set off by double brackets {[]} is confidential information, as described in the Judgment, and is redacted from the public version of this order. See Judgment at 2, 4. The unredacted version of the order will be available upon request to persons qualified to view it under the Judgment.

¹⁷ See Arbitration Award at 2-3.

¹⁸ See *id.* at 3.

¹⁹ {[]} See *id.*

²⁰ See 2018 *MCLM Order*, 33 FCC Rcd at 11850, para. 91 (discussing *Jefferson Radio v. FCC*, 340 F.2d 781 (D.C. Cir. 1964) (*Jefferson Radio*)).

²¹ See *Jefferson Radio*.

²² See *Second Thursday*.

assign a license to a third party. The Commission permitted the assignment benefiting the innocent creditors of the licensee where the persons charged with the misconduct (1) would have no part in the proposed operations, and (2) would either derive no benefit from favorable action on the application or derive only a minor benefit that is outweighed by equitable consideration in favor of innocent creditors.²³ The Commission has applied the *Second Thursday* policy in cases involving receiverships initiated under state law, provided that the two-prong test has been met for the application of the policy.²⁴

8. *Havens's and Leong's Petitions.* Following the release of the Arbitration Award, Havens filed his petition at the Commission, requesting a declaratory ruling that Leong's actions are "unreasonable" or "unjust" under section 201 of the Act,²⁵ and the commencement of a hearing to determine Leong's character qualifications to hold FCC licenses. In the same pleading, Havens also seeks a stay of any assignment or transfer of control involving licenses held by the companies in the receivership.²⁶ To further support his requests for a character hearing against Leong and a stay, Havens filed a supplement to his petition containing various allegations against Leong rooted in alleged violations of Nevada state law.²⁷ Shortly after Havens filed his petition, Leong filed a petition for declaratory ruling requesting that the Commission remove any uncertainty regarding the ability of the Receiver to effectuate the sale of Commission licenses held by the Skytel entities.²⁸ Leong contends that a declaratory ruling stating that he, and not Havens, should be allowed to obtain any compensation from the sale of the licenses would be consistent with the Commission's *Second Thursday* policy.²⁹ Leong also requests that the Commission declare that any action it may commence against Havens resulting from the enforcement investigation contemplated in the *2018 MCLM Order* will be against Havens alone.³⁰

III. DISCUSSION

A. Havens's Petition for Declaratory Ruling and Request for Hearing

9. On January 28, 2021, Havens filed a petition that, in a phrase the Commission has used previously, "is not the model of clarity."³¹ Havens appears to be seeking (1) a declaratory ruling that

²³ *Id.*

²⁴ See, e.g., *Applications of KOLA, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 14297, 14306 (1996); *Application of Davis Broadcasting Co., Inc.*, Memorandum Opinion and Order, 67 FCC 2d 872, 873-74 (1977); *Applications of Hertz Broadcasting of Birmingham, Inc.*, 57 FCC 2d 183, 183-84 (1976).

²⁵ 47 U.S.C. § 201.

²⁶ See Havens Petition. Leong filed an opposition to the Havens Petition and a request for sanctions against Havens on March 11, 2021. See Opposition of Arnold Leong and Request For Sanctions Against Warren Havens, EB Docket No. 11-71 (filed Mar. 11, 2021) (Leong Opposition). While it is well-established that the Commission has the authority and discretion to impose certain sanctions against a person or entity that files frivolous pleadings or pleadings with the intent to delay a proceeding, we see no need to proactively impose sanctions against Havens at this juncture. See 47 CFR § 1.52; *Commission Taking Tough Measures Against Frivolous Pleadings*, Public Notice, 11 FCC Rcd 3030 (1996).

²⁷ See Supplement of December 13, 2021, Regarding Warren Havens v. Arnold Leong and Cheryl Choy, his Guardian and Assignee, in the Nevada State Court, Clark County (Las Vegas): Default, and Admissions, by Defendant Choy, For Choy and Leong, of the Complaint's Averred Facts and Claims including Fraud in the Factum (Inception) and on the FCC and Courts (Havens Supplement).

²⁸ See Leong Petition.

²⁹ See *id.* at 1-2.

³⁰ See *id.*

³¹ See Warren C. Havens, *Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas and at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Memorandum Opinion and Order, 29 FCC Rcd 6326, 6327, para. 4 (2014).

Leong's actions are "unreasonable" or "unjust" under section 201 of the Act, (2) the commencement of a hearing to determine Leong's character qualifications to hold FCC licenses, and (3) a stay of any assignment or transfer of control involving licenses held by the companies in the receivership.³² In this section, we address Havens's requests for a declaratory ruling and a hearing to determine Leong's character qualifications.³³

10. *Havens's Petition for Declaratory Ruling.* As an initial matter, we dismiss Havens's request for a declaratory ruling pursuant to section 201 of the Act because section 201 governs the actions of common carriers, not the actions of an individual such as Leong.³⁴ Whether Leong's actions are unreasonable or unjust is irrelevant to the applicability of a statutory section that governs common carriers. Furthermore, section 201(b) also states in relevant part that "[a]ll charges, practices, classifications, and regulations for and in connection with *such communication service*, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful."³⁵ Not only is Leong not a carrier subject to section 201 of the Act, but also Havens provides no evidence that there is any "communication service" related to any of his allegations against Leong.

11. Further, we disagree with Havens that, pursuant to *Havens v. Mobex*, Havens must first seek a declaratory ruling from the Commission on his allegations against Leong pursuant to section 201(b) before seeking relief in federal district court under section 207.³⁶ Section 207 states that "[a]ny person claiming to be damaged by any common carrier ... may bring suit" against the carrier "in any district court of the United States" for "recovery of the damages for which such common carrier may be liable under the provisions of this chapter."³⁷ As discussed above, however, Leong is not a common carrier and therefore can neither be sued under section 207 nor found liable for a violation of section 201. We therefore need not address the circumstances under which a Commission determination may be a prerequisite to a section 207 complaint.

12. Even if we were to consider the merits of Havens's request for a declaratory ruling regarding Leong's behavior, we would not find that Leong engaged in unjust or unreasonable practices that caused harm to Havens. Havens does not allege any unjust or unreasonable practices by Leong independent of the grounds on which he seeks a hearing regarding Leong's character qualifications.³⁸ As discussed below, these allegations are meritless.

13. *Havens's Request for Hearing.* Turning to Havens's request for a hearing on Leong's character qualifications, Havens claims that Leong improperly assumed control over the Licensees and used his improper control to refer them to the Court for arbitration and put them in receivership.³⁹ We reject this claim. We find that the establishment of the receivership and the arbitration did not represent an improper assumption of control over the Licensees by Leong. Rather, they represent

³² See Havens Petition.

³³ See *id.* at 7-8.

³⁴ See 47 U.S.C. §201; *Glob. Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 45, 53 (2007) (*Metrophones*); *Sw. Bell Tel. Co. v. F.C.C.*, 19 F.3d 1475 (D.C. Cir. 1994).

³⁵ 47 U.S.C. § 201(b) (emphasis added).

³⁶ See Havens Petition at 5-7, citing *Havens v. Mobex Network Services, LLC*, 820 F.3d 80, 89-91 (3d Cir. 2016) (*Havens v. Mobex*).

³⁷ 47 U.S.C. § 207; *Metrophones*, 550 U.S. at 52.

³⁸ See Havens Petition at 8 (stating that the Commission should commence a hearing "[f]or the same reasons that the FCC should grant the declaratory ruling described above").

³⁹ See *id.*

appropriate state action to resolve a private dispute properly within the jurisdiction of the state courts. To be sure, nothing in the Court’s or arbitrator’s actions interferes with the Commission’s exclusive authority over licensing. It is not the Commission’s role to interfere in state court proceedings involving private contract disputes, including receivership appointments.⁴⁰ The Commission’s only role in such a private dispute is to act on transfer of control applications submitted to it, which the Commission already did in this case with respect to the transfer of the Licensees to the Receiver.⁴¹ Furthermore, the original Verde and Telesaurus agreements signed by Havens and Leong provided for arbitration and reserved the rights of the parties to seek interim relief from a court. Accordingly, as the arbitrator concluded, pursuant to the agreements “and Section 1281.8 of the Code of Civil Procedure,” {[

]} Additionally, the arbitrator found that {[

]}]

14. Havens’s principal argument in support of a character hearing is that Leong misrepresented to the arbitrator that Leong had 50% (or more) ownership of the Licensees.⁴⁴ According to Havens, equal ownership would have been required in order for Leong to maintain his actions in state court. Havens further asserts that the arbitrator rejected Leong’s claim regarding ownership and that Leong “lost” on his “lead claim.”⁴⁵ Contrary to Havens’s assertions, however, we find no reason to believe that Leong’s right to seek state court relief depended on his having a 50% interest. Nor do we find that Leong misrepresented his interest to the arbitrator. The arbitrator {[

]} That said,

however, the arbitrator also found that {[

]} To our knowledge, nothing in the record indicates that Leong ever represented

⁴⁰ See, e.g., *Arecibo Radio Corporation*, 101 FCC 2d 545, 550, para. 11 n.12 (1985), *aff’d sub nom. Llerandi v. FCC*, 863 F.2d 79 (D.C. Cir. 1988) (the FCC’s long-standing “policy is to accommodate state and local court decrees adjudicating disputes over contract and property rights ...”); *Listeners’ Guild, Inc. v. F.C.C.*, 813 F.2d 465, 469 (D.C. Cir. 1987) (this court’s decision was “entirely consistent with the Commission’s longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts.”); see also, e.g., *KOLA, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 14297, 14303, para. 11 (1996) (recognizing “the Commission’s policy of deferral to the state courts in determining the legitimacy of a receivership appointment”); *Pappammal Kurian*, 29 FCC Rcd 10425 (WTB MD & BD 2014) (“we will not substitute our judgment for that of the state court regarding the legitimacy of a receivership appointment”).

⁴¹ See *supra* note 13.

⁴² See Decision at 8.

⁴³ *Id.* at 10.

⁴⁴ See Havens Petition at 3-4, 8.

⁴⁵ See *id.* at 4.

⁴⁶ See Decision at 25.

⁴⁷ See *id.* at 17. {[

]} See *id.* at 15-16.

anything different than that there was an oral agreement to increase his ownership from 49.9% to 50% at a future date. Given these findings, it is clear that the arbitrator's decisions, affirmed by the Court, were not premised on Leong currently having a 50% interest, and there is no basis for us to find that Leong was guilty of misrepresentation to the arbitrator.

15. Havens also contends that Leong had asserted both *de jure* and *de facto* control of the Licensees and misled the Commission with regard to his exercise of control in pursuing his state court remedies.⁴⁸ However, there is no evidence in the record that Leong either exercised or claimed *de jure* or *de facto* control over the Licenses, and indeed {[

]} To the extent that Havens is also contending that Leong earlier misrepresented to the Commission, for purposes of acquiring the Licenses in the auction, that his ownership interest was less than 50%, that is also contrary to the facts. {[]}, Leong's interest in the Licenses was less than 50% as reflected in Commission filings.⁵⁰ Because increasing Leong's interest to 50% from the current 49.9% would require Commission approval, there is no basis to find that Leong committed auction fraud by indicating in the auction that his interest was 49.9% to qualify for the 35% small business auction credit. In the absence of evidence that the parties intended to change their respective ownership interests without Commission approval, there is no misrepresentation by Leong to the Commission here.

16. To further support his request for a hearing on Leong's character, Havens claims that "decades ago," "[l]ong before meeting and dealing with Havens," Leong and his then-wife committed auction fraud when applying for cellular radio licenses.⁵¹ We reject this claim as unsupported and stale. Even if Havens had proffered probative evidence to substantiate his claim, the fact is that the alleged violations would have had to occur at least 23 years ago given that Havens and Leong became business partners on or about November 1998.⁵² In this regard, the Commission's 1986 *Character Policy Statement* generally bars consideration of events in character inquiries that are more than ten years old.⁵³ In fact, in the case cited to support this time period in the *Character Policy Statement*, the Commission noted that looking back to consider alleged wrongdoing more than ten years prior "must be the rare exception..."⁵⁴ The Commission imposed such a limitation because of the "inherent inequity and practical difficulty" involved in requiring applicants to respond to allegations of wrongdoing so many

⁴⁸ See Havens Petition at 8.

⁴⁹ See Decision at 17, 25.

⁵⁰ See *id.* at 15, 17.

⁵¹ See Havens Petition, Exh. 3, at 71-72, paras. 108-109; see also Petitioners First Subpoena Request of 2-10-2021 To Sign and Issue the Attached Form Subpoena, FCC Form 766, at 3 n.2 (filed in the enforcement docket on Feb. 10, 2021). Havens raises this allegation again in a state court complaint included in the Havens Supplement. See *Havens v. Leong*, Complaint, No. A-21842940-C (Nev. Eighth Jud. Dist. Ct. Oct. 20, 2021) at 29 (Nevada Complaint).

⁵² See Decision at 14.

⁵³ See *Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1229, para. 105 (1986) (quoting *Kaye-Smith Enterprises*, 71 FCC 2d 1402, 1406-07, para. 10 (1979), *recon. denied*, 46 Rad. Reg. 2d (P & F) 1583 (1980) (*Kaye-Smith Enterprises*)) (*Character Policy Statement*). See also *In re of Chinese Voice of Golden City Dkqls-Lp, Las Vegas, Nevada Application for A Low Power Fm Broad. Station License Application for Modification to Transmission Parameters of Licensed Facility, No. BLL-20171120AABBMLL-*, 2020 WL 7013393, at *6, n. 77 (OHMSV Nov. 25, 2020) (specifying the time period relevant to character inquiries is ten years); *In re of Contemp. Media, Inc. Contemp. Broad, Inc., Lake Broad., Inc. Lake Broad, Inc.*, 13 FCC Rcd 14437 (1998) (referencing the ten year statute of limitations).

⁵⁴ *Kaye-Smith Enterprises*, 71 FCC 2d at 1407, para. 10.

years old.⁵⁵ Consequently, we will not consider the auction fraud that Leong and his then-wife allegedly committed when applying for cellular radio licenses in the 1990s, allegations that were not raised in the ten years following the alleged fraud and to our knowledge are not otherwise pending before the Commission. We find that application of the ten-year limitation is appropriate given that the alleged events occurred 20-30 years ago. Not only is the claim stale, but also, Havens provides no evidence to support his contentions.⁵⁶ For example, Havens suggests that Leong and his then-wife fraudulently represented to the FCC that they were not married when applying for the cellular licenses, and that they apparently used proceeds from the sale of the fraudulently obtained licenses in a manner that “may be laundering...”⁵⁷ However, Havens fails to provide any evidence that Leong intentionally concealed his marital status to the Commission, much less evidence of “laundering.”⁵⁸

17. Havens continues his attack on Leong’s character and on the validity of his pursuit of relief in state court by alleging that the application of Nevada state law to various actions of Leong and his ex-wife many years ago supports findings of fraud by Leong and calls into question the validity of Leong’s ownership interests in the Licensees.⁵⁹ The Havens Supplement, dated December 13, 2021, includes a complaint that Havens filed in Nevada state court in October 2021.⁶⁰ In the Havens Supplement, Havens argues that Leong committed fraud by signing the original loan agreement, the Verde agreement, and the Telesaurus agreement as an individual person rather than as a married person (which he was at the time), resulting in void agreements, under Nevada’s state law regarding marital community property.⁶¹ At the time these agreements were signed, given that Leong was married in a community property state, Havens contends that Leong entered the agreements with an intent to defraud, which would support the need for a character hearing against Leong.⁶² Included in the Havens Supplement is a default of Leong entered by the Nevada court in November 2021 for failing to respond to the Nevada Complaint.⁶³ Havens asserts that the default entered against Leong constitutes an “admission” to the facts and claims that Havens included in his complaint and implies that the default is a ruling that settles all the issues of Nevada law in Havens’s favor.⁶⁴

18. Even if the facts were as represented in the Havens Supplement, we would be disinclined to decide questions of Nevada state law more appropriately addressed by the Nevada state courts. Subsequent to Havens’s filing, however, the Nevada court took actions that dispose of Havens’s allegations.⁶⁵ On February 25, 2022, the Nevada court dismissed Havens’s complaint with prejudice,

⁵⁵ *Character Policy Statement* at 1229, para. 105.

⁵⁶ The Commission requires the submission of evidence in order to assess fraud allegations. *See, e.g., Applications of Pinelands Inc.*, 7 FCC Rcd 6058, 6065, para. 24 (1992) (evidence of intent is an element basic to the issue of misrepresentation); 47 U.S.C. § 309(e) (the burden of proceeding with the introduction of evidence and the burden of proof is on the party requesting the hearing).

⁵⁷ Nevada Complaint at 29, para. 40 n.18.

⁵⁸ *Id.*

⁵⁹ *See* Havens Supplement.

⁶⁰ *See* Nevada Complaint.

⁶¹ *See* Havens Supplement.

⁶² *Id.*

⁶³ *See Havens v. Leong*, Default, No. A-21842940-C (Nev. Eight Jud. Dist. Ct. Nov. 24, 2021).

⁶⁴ *See, e.g.,* Havens Supplement at 2.

⁶⁵ *See Havens v. Leong*, Minute Order, No. A-21-842940-C (Nev. Eight Jud. Dist. Ct. Feb. 10, 2022) (Minute Order); *Havens v. Leong*, Order to Dismiss with Prejudice, No. A-21-842940-C (Nev. Eight Jud. Dist. Ct. Feb. 25, 2022) (Nevada Court Order). Havens has filed an appeal, which is pending.

after setting aside the default, finding that the court did not have personal jurisdiction over Leong's court-appointed guardian *ad litem*, Cheryl Choy, and that Havens's Nevada state law claims were time-barred.⁶⁶ Further, the court found that Havens has been "admonished by multiple courts, been deemed a vexatious litigant, and has been fined and jailed for contempt by prior courts."⁶⁷ In view of the court's actions, we will give no further attention to Havens's Nevada law claims either as they relate to the validity of Leong's interests or any possible questions they might raise about Leong's character. We find that there is no substantial question of fact regarding intentional misrepresentation by Leong sufficient to justify the designation of a hearing on this issue.

19. Finally, we also reject Havens's miscellaneous unsubstantiated claims of *ex parte* violations. Throughout Exhibit 3 to the petition, a lengthy draft complaint that Havens stated he planned to file in federal court,⁶⁸ Havens includes multiple references to alleged violations of "ex parte" laws committed by Leong, his "receiver," and Commission staff.⁶⁹ Again, Havens does not substantiate his claims with any evidence, and we therefore reject the claims as without merit.

20. For the reasons set forth above, we deny Havens's request that we designate a character hearing regarding Leong's qualifications to hold FCC licenses because we find that his allegations raise no substantial question of material fact. In addition to lacking evidentiary support, we also find Havens's request for a declaratory ruling to be legally misplaced, and we accordingly dismiss that request.

B. Havens's Request for a Stay

21. Havens also requests that the Commission issue a stay of any licensing action regarding the Licenses, such as an assignment or transfer of control or "any other license-dispositive action."⁷⁰ Havens's request for a stay is both procedurally and substantively defective. Procedurally, it is defective because Havens combines a stay request with another pleading (a petition for declaratory ruling and request for a hearing). Section 1.44(e) of the Commission's rules states: "[a]ny request to stay the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. Any such request which is not filed as a separate pleading will not be considered by the Commission."⁷¹ Havens is essentially seeking a stay of potential future Commission action on assignment or transfer of control applications that might be filed, and thus seeks to "stay the effectiveness" of a Commission order or decision acting on such applications. Accordingly, because the request was not filed as a separate pleading, it is subject to dismissal.

22. Notwithstanding the procedural defect and the fact that we are now rejecting Havens's substantive claims on which his request for a stay is predicated, Havens's petition for a stay is substantively deficient. Havens makes only a perfunctory attempt to assert the four factors necessary to justify a stay. In determining whether to stay the effectiveness of one of its orders, the Commission applies a four-factor test developed in *Petroleum Jobbers*: (1) has the petitioner made a strong showing that it is likely to prevail on the merits; (2) has the petitioner shown it will suffer irreparable harm if a stay is not granted; (3) would a stay substantially harm other interested parties; and (4) does the public interest support granting a stay.⁷² Rather than attempt to meet the stay criteria, Havens simply states that the

⁶⁶ See Nevada Court Order at 11-14.

⁶⁷ *Id.* at 14.

⁶⁸ See Havens Petition at 7.

⁶⁹ See, e.g., Exh. 3 to the Havens Petition at n.7, n.36, n.58.

⁷⁰ Havens Petition at 9.

⁷¹ 47 CFR §1.44(e).

⁷² See *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*Petroleum Jobbers*); *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843-44 (D.C. Cir. 1977).

“[g]rounds to issue the requested stay are the same as the grounds above to issue[] declaratory relief and to commence a hearing.”⁷³ This would clearly not be a strong showing of likely success on the merits even if we had not already rejected his merits arguments, as we do above. Rather than describe what harm would result absent a stay, Havens simply states that clear harm “may result,” which is not sufficient to demonstrate irreparable harm.⁷⁴ Any harm to Havens caused by the sale of the Licenses would not be irreversible since Havens could be compensated in state court for the value of any interests in the licenses to which he may be entitled (assuming that the Commission finds Havens is qualified to hold the relevant licenses). With regard to the third prong, Havens states that Leong cannot allege prejudice since he has chosen not to appear before the FCC.⁷⁵ Contrary to this statement, Leong was within his rights to pursue action at the state court level, and he would certainly be harmed if we issue a stay because a failure to rule on the sale of the Licenses would deprive Leong of the value of his interest and his share of the licenses.⁷⁶ Finally, Havens has clearly failed to demonstrate that the public interest would be served by issuing a stay.⁷⁷ To the contrary, the public interest would be served by granting assignments of the Licenses as soon as possible, especially since the Receiver is proceeding under the authority of a California court order. Using the licenses to support Positive Train Control systems weighs heavily in the public interest.⁷⁸

23. Havens attempts to further support his request for a stay in the recently-filed Havens Supplement wherein he presents arguments that are based on Nevada community property law.⁷⁹ To the extent that Havens is asking us to stay any licensing action pending decisions by the Nevada court, we note that the court has dismissed the Nevada Complaint in part because Havens’s claims are time-barred.⁸⁰ Notwithstanding the Nevada court’s dismissal, we will apply the *Petroleum Jobbers* stay criteria. Once again, Havens is attempting to interfere with the receivership and the implementation of the Arbitration Award with the goal of disrupting the sale of the Licenses. These arguments do not justify

⁷³ Havens Petition at 9.

⁷⁴ *Id.* Pursuant to the *Petroleum Jobbers* standard, the stay movant’s “injury must be certain and great; it must be actual and not theoretical... the party seeking relief must show that ‘[t]he injury complained of [is] of such imminence that there is a ‘clear and present’ need for equitable relief to prevent irreparable harm.’” *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C.Cir.1985) quoting *Ashland Oil, Inc. v. FTC*, 409 F. Supp. 297, 307 (D.D.C.), *aff’d*, 548 F.2d 977 (D.C.Cir.1976); see also *In re Expanded Interconnection with Local Telephone Facilities*, Order, 8 FCC Rcd 123, 125, para. 8 (1992).

⁷⁵ Havens Petition at 9.

⁷⁶ In addition, Havens’s argument that Leong cannot allege prejudice since he has chosen to not appear before the FCC misconstrues the nature of the inquiry when a stay is requested. A party other than the movant seeking the stay is not required to demonstrate that it would incur substantial harm, nor is such a party able to waive this element of the stay inquiry. Rather, as with the other three stay criteria, the burden is on the party seeking the stay to demonstrate that grant of the stay would not substantially harm other parties. See, e.g., *Martinez Rodriguez v. Jimenez*, 537 F.2d 1, 2 (1st Cir. 1976) (explaining that “[t]he applicable standards for a party seeking a stay are ... (3) a showing that no substantial harm will come to other interested parties....”).

⁷⁷ See Havens Petition at 9.

⁷⁸ Notwithstanding the potential encumbrance on the Licenses due to the pending investigation of Havens’s character, the Commission in the *2018 MCLM Order* found that the public interest would best be served by directing the Bureau to review and process any such assignment application to implement Positive Train Control systems to help fulfill the statutory mandate in the *Rail Safety Improvement Act of 2008*. See *2018 MCLM Order* at 11849-50, paras. 89-91. Further, the Licenses can potentially be used to support smart grid electronic systems which is in the public interest. See *supra* note 4 (approval of the requested license assignment application will help facilitate the safety, efficiency, and reliability of electrical grid operations).

⁷⁹ See *supra* paras. 17-18.

⁸⁰ See Minute Order.

the imposition of a stay most plainly because Havens has not demonstrated a likelihood of success on the merits, the first prong in the four-factor test.⁸¹ To prevail on the merits, Havens would have to persuade the Nevada state court, on appeal, that as a matter of state law, Leong's interest in the Licensees is invalid and that the invalidity, in turn, would result in the California state court unwinding the Arbitration Award. While we hesitate to speculate on the outcome of state court proceedings applying state law, not only has Havens not shown that these results are likely, but also the Nevada court has dismissed his complaint. With regard to the remaining prongs, Havens fails to satisfy the *Petroleum Jobbers* criteria for the reasons we articulate above.⁸² Accordingly, in the alternative, we deny Havens's request for a stay.⁸³

C. California Court Orders and Other Pleadings

24. As an additional matter, our denial of Havens's petition for declaratory ruling and request for a stay is supported by the California Court and the Receiver. On August 30, 2021, the Receiver filed a statement with the Commission in the enforcement proceeding, with the approval of the Court, requesting that the Commission deny Havens's request for a stay on licensing transactions as violative of the Court's injunctions and, further, that it disregard any filings by Havens related to the Skytel entities or their Licenses.⁸⁴ Specifically, the Receiver highlights two separate orders of the Court that she states have been ignored by Havens. First, in the November 2015 order establishing the receivership, the Court ordered Havens to refrain from interfering with the discharge of the receiver's duties, acting to impair the preservation of the property, and/or communicating with the FCC regarding the Skytel entities or the Licenses.⁸⁵ More recently, in the order appointing Uecker as post-judgment receiver, the Court prohibited Havens from: "Interfering in any manner with the discharge of the Receiver's duties under this order or any prior order of this Court; Interfering in any way with the assignment, sale, or lease of any assets, including FCC licenses held by the estate, by or to the Receiver; Communicating or filing pleadings with the FCC regarding any of the FCC licenses held by the [Licensees], whether individually and/or in the name of entities he controls [i.e., Polaris PNT PBC] as it is the Receiver's responsibility to communicate and file pleadings with the FCC on behalf of the [Licensees]. This injunction includes but is not limited to filing any objections with the FCC to spectrum transfers proposed by the Receiver."⁸⁶ While we are not bound by the opinions of the state court and the Receiver,⁸⁷ we find them persuasive. We agree that the Havens Petition is part of a pattern of harassment and delay that is a disruptive collateral attack on the

⁸¹ See *supra* para. 22.

⁸² *Id.*

⁸³ As an additional matter, Havens's reliance on the pendency of judicial proceedings, other than the Nevada state court proceeding, to justify a stay may be moot. The bankruptcy proceeding (Case No. 21-00005-ELG (D.C. Bank.)) was dismissed on June 3, 2021, and action on the motion for dismissal has been stayed indefinitely (C.A. No. 2021-0033-PAF). In any event, Havens has not shown how the pendency of these proceedings bears on any of the four *Petroleum Jobbers* factors.

⁸⁴ See *In re Maritime Communications/Land Mobile, LLC Applicant for Modification of Various Authorizations in the Wireless Radio Services*, Statement Regarding Havens's January 28, 2021 Petition for Stay, EB Docket No. 11-71, (filed Aug. 30, 2021) (Receiver Statement).

⁸⁵ Receiver Statement at 1, citing *Receivership Order* at 5, para. 28 d and e.

⁸⁶ See *id.* at 2, citing the Order Appointing Post-Judgment Receiver, at 6-7, paras. 3, 6, 8.

⁸⁷ See, e.g., *Radio Station WOW v. Johnson*, 326 U.S. 120, 130-31 (1945) (Nebraska Supreme Court exceeded its authority, invading the province of the Commission by ordering litigants "to do all things necessary" to secure the retransfer of a broadcast station license); *In re Pacific Land Sales, Inc.*, 187 B.R. 302, 312 (9th Cir. B.A.P. 1995) (noting, largely in reliance on *Radio Station WOW v. Johnson*, that "a court may not enjoin a party from appearing before the FCC entirely"). See also *Pappammal Kurian*, Letter, 24 FCC Rcd 4842, 4845 (WTB MD 2009) (deciding to leave to Nevada courts the question of whether a state court litigant's filing of an assignment application with the Commission would violate an order of those courts).

court's ability to execute its Judgment and impedes the ability of the Receiver to fulfill her responsibilities. This reinforces our conviction that we act in the public interest by denying the Havens Petition and supporting the implementation of the Judgment.

25. We further note that Havens attempts to incorporate in the petition all filings before the FCC referenced in the petition, as well as the filings in the referenced bankruptcy and chancery cases.⁸⁸ As we have said before, we “are not required to scour the labyrinth” of Havens’s pleadings to discern what, if any, facts and arguments may be germane here and we decline to do so.⁸⁹ Any arguments contained in the Havens Petition that we do not specifically address herein are ones we have determined lack merit.

D. Leong’s Petition for Declaratory Ruling

26. In light of the potential *Jefferson Radio* cloud over the licenses held by the Skytel entities and to effectuate the Judgment, Leong seeks a declaratory ruling establishing that any such cloud does not preclude the sale of the Licenses to compensate Leong.⁹⁰ He contends that a declaratory ruling is the appropriate vehicle to remove any uncertainty as to whether the Commission may limit or be unwilling to approve license assignments based on Havens’s past misconduct.⁹¹ As the minority equity interest shareholder in the Skytel entities and a judgment creditor pursuant to the Arbitration Award, Leong argues that a declaratory ruling stating that he, and not Havens, should be allowed to obtain any compensation from the sale of the licenses would be consistent with the Commission’s *Second Thursday* policy.⁹² Finally, Leong asks the Commission to declare that any action it may commence against Havens resulting from the enforcement investigation contemplated in the *2018 MCLM Order* will be against Havens alone.⁹³

27. Pursuant to section 1.2(a) of the Commission’s rules, the Commission may “issue a declaratory ruling terminating a controversy or removing uncertainty.”⁹⁴ Based on the information in the record, we grant in part the Leong Petition. Specifically, we find that Leong has made a sufficient showing to warrant application of the *Second Thursday* policy, provided that certain conditions are met, as discussed below. We therefore remove any uncertainty regarding Leong’s ability to receive compensation from the sale of the Licenses, in accordance with the Arbitration Award.⁹⁵ However, we

⁸⁸ See Havens Petition at 4-5.

⁸⁹ *In re 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, 9833 (2016). See, e.g., *Petition of Core Communications, Inc. for Forbearance From Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14215, para. 13 n.48 (2007) (“the Commission is not obligated to search the record” to determine whether arguments incorporated by reference may be relevant); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 n.9 (D.C. Cir. 1969) (an “agency is not bound to process in depth what are only generalized pleas, a requirement that would condemn it to divert resources of time and personnel to hollow claims”).

⁹⁰ See Leong Petition at 1-2.

⁹¹ See *id.* at 3.

⁹² See *id.* at 1-2.

⁹³ See *id.*

⁹⁴ 47 CFR § 1.2(a).

⁹⁵ We are aware that the Arbitration Award mandates the {{

}} If this situation arises and any licenses are so distributed, we also remove any uncertainty regarding Leong’s eligibility to hold such licenses to the extent there are (continued....)

decline to opine on or otherwise prejudice any matter related to an enforcement investigation, including the one contemplated in the *2018 MCLM Order*.

28. *Leong is an innocent creditor.* As an initial matter, we agree with Leong that he is a judgment creditor due to his legal right to enforce execution of the Judgment affirming the Arbitration Award.⁹⁶ We also find Leong to be an innocent creditor, notwithstanding Havens's attacks against his character qualifications, which we find meritless as addressed above.⁹⁷ Despite being business partners, the record reflects that Leong played no part in the various instances of misconduct for which Havens has been sanctioned and that formed the basis upon which the Commission referred Havens to the Enforcement Bureau for potential character issues in the *2018 MCLM Order*.⁹⁸ Specifically, we point to the *Sippel Order* finding that Havens, along with six affiliated entities, had engaged in "egregious" behavior during the MCLM hearing and that such misconduct warranted removal of Havens and his companies as parties to the MCLM proceeding.⁹⁹ The misconduct included harassing FCC staff, disregarding the Judge's repeated "clearly understandable" orders, ignoring deadlines, disregarding summary decision procedures, filing vexatious and frivolous motions and interlocutory appeals, and making false and/or misleading statements.¹⁰⁰

29. In the subsequent *2018 MCLM Order*, the Commission observed that Havens's conduct in the MCLM hearing was "just the most recent instance in which the Commission and its staff, as well as courts, have had to consider action against Havens for abusing administrative and judicial processes."¹⁰¹ The Commission went on to cite four separate matters, in addition to the MCLM hearing, in which Havens engaged in such abuse of process.¹⁰² Based on the information in the record, Havens appears to have been the sole orchestrator of the referenced misconduct because (1) he was the sole manager and controlling principal of the six affiliated entities at the time the misconduct occurred,¹⁰³ (2) neither the *Sippel Order* nor the *2018 MCLM Order* mention Leong as a participant in the misconduct meriting the exclusion of Havens and his companies from the MCLM proceeding, and (3) in the *2018 MCLM Order*, the Commission refers only Havens and his companies to the Enforcement Bureau to conduct an inquiry

(Continued from previous page) _____

any lingering issues regarding his character qualifications, provided that he is otherwise qualified to hold the licenses under the Commission's rules. *See supra* paras. 13-20.

⁹⁶ *Judgment Creditor*, Black's Law Dictionary (11th ed. 2019) ("a person having a legal right to enforce execution of a judgment for a specific sum of money").

⁹⁷ *See supra* paras. 13-20.

⁹⁸ *See 2018 MCLM Order*, 33 FCC Rcd 11845-47, paras. 76-83.

⁹⁹ *See Sippel Order*.

¹⁰⁰ *See Sippel Order*, FCC 15M-14, at 3-12.

¹⁰¹ *2018 MCLM Order*, 33 FCC Rcd at 11845, para. 78.

¹⁰² In brief, those matters are: (1) in 2000 and 2001, Havens filed repetitious pleadings in the AMTS licensing matter which led the Commission to ban Havens from making further filings without first receiving approval from the Bureau; (2) in 2010, Havens misused process in the Auction 87 proceeding by attempting to use the proceeding to circumvent the Commission's ban on further filings in the AMTS licensing matter; (3) in 2012, Havens filed "repetitious and baseless" petitions for reconsideration in response to the Bureau's denial of Havens's opposition to applications filed by MariTEL, Inc. to transfer, modify, and renew certain licenses; and (4) in 2012, a federal district court assessed costs of more than \$110,000 against the predecessor of Telesaurus, which was owned and controlled by Havens at the time, for bringing baseless litigation against an FCC licensee. *See 2018 MCLM Order*, 33 FCC Rcd at 11845-47, paras. 78-83.

¹⁰³ *See Sippel Order*, FCC 15M-14, at 1; *2018 MCLM Order*, 33 FCC Rcd at 11823, 11845-11847, paras. 3, 79-82 (citing Havens and/or some or all of his six affiliates as the ones responsible for the misconduct).

on their basic qualifications to be licensees; there is no mention of Leong.¹⁰⁴

30. The ongoing Leong-Havens litigation dating back to 2002 further bolsters our finding that Leong played no part in the misconduct. Since 2002, Leong had been locked in litigation with Havens regarding their business partnership, asserting, for example, that Havens excluded him from any decision-making, provided him with very limited financial information about the companies, and failed to distribute any profits to Leong pursuant to the terms of their partnership.¹⁰⁵ And as noted above, Leong responded to the *Sippel Order* by filing a motion with the Court to appoint a receiver for the Skytel entities and for entry of a temporary restraining order to protect the Licenses from potential revocation by the Commission due to Havens's misconduct.¹⁰⁶

31. Lastly, the Arbitration Award affirms in general that Havens was the source of the misconduct cited in the *Sippel Order* and the *2018 MCLM Order*. The arbitrator found that, {[

]} In light of this information, we find that Havens was solely responsible for the misconduct potentially creating the *Jefferson Radio* cloud over the Licenses and that Leong stands in the shoes of an innocent creditor.¹⁰⁹

32. *Second Thursday two-prong test.* As noted above, the Commission may permit an assignment benefiting innocent creditors of a licensee if the person charged with the misconduct (1) would have no part in the proposed operations, and (2) would either derive no benefit from favorable action on the application or derive only a minor benefit that is outweighed by equitable consideration in favor of innocent creditors.¹¹⁰ With respect to the first of these criteria, the evidence in the record suggests that Havens will play no role in the proposed operations of the spectrum associated with the Licenses. All of the Licenses have been and will continue to be under the control of the Receiver until the Arbitration Award is effectuated.¹¹¹ Havens has played no part in the operations of the spectrum associated with those licenses since the Receiver took control of them in 2015.¹¹² Additionally, Leong has

¹⁰⁴ See *2018 MCLM Order*, 33 FCC Rcd at 11848-49, para. 88. Leong also asserts that the record reflects that “Havens, and only Havens, should be the subject of any proceedings the Commission may choose to take to bar Havens from holding Commission licenses or profiting from the proceeds of the sale of the licenses.” Leong Opposition at 8-9.

¹⁰⁵ See Arbitration Award at 18-21.

¹⁰⁶ See Leong Declaration at 1 (supporting the referenced motion to appoint a receiver). As noted above, the Court granted the motion on November 16, 2015. See *supra* note 12.

¹⁰⁷ See Arbitration Award at 12, 18-21 (also concluding that {[

]}).

¹⁰⁸ See *id.* at 21.

¹⁰⁹ The Commission has invoked the *Second Thursday* policy on behalf of innocent insiders. See, e.g., *KOLA, Inc.*, 11 FCC Rcd at 14307-08 (finding that the wrongdoer's ex-wife held 50% equity ownership in the licensee under state community property law, and that she was an innocent shareholder or partner and thus entitled to her appropriate share of the sale proceeds).

¹¹⁰ See *Second Thursday*.

¹¹¹ See Judgment at 1-2.

¹¹² See *Gold v. Gold*, 114 Cal. App. 4th 791, 806 (2003) (stating that the “receiver is an agent and officer of the court and the property in her or his hands remains under the control and continuous supervision of the court.”).

stated that he has expended several millions of dollars over the course of 18 years to prevent Havens's mismanagement of the Licenses and disruptive conduct in administrative and judicial proceedings.¹¹³ Given that Havens's misconduct is a matter of public record,¹¹⁴ we find that it is unlikely that any current or prospective buyer of the Licenses would involve Havens in the operations of the associated spectrum. For avoidance of doubt, however, we will condition Commission approval of each transaction to sell the License(s) on the submission of a sworn statement by the buyer attesting that Havens will not be involved in the operations of the associated spectrum.

33. We also find that the second prong of the *Second Thursday* criteria has been satisfied, subject to the conditions described below. Pursuant to the Judgment, {[
]}, which may ultimately result in the distribution of proceeds from the sale of the Licenses to Havens.¹¹⁵ According to the Arbitration Award, {[

]} Havens may benefit from the grant of a transaction. This scenario is a possibility {[
]}]¹¹⁸

34. To ensure that Havens will not receive any benefits from the sale of the Licenses while the Commission evaluates his character qualifications, we will apply the following conditions to each Commission approval of a transaction involving those licenses: (1) the Receiver must file a sworn statement attesting that any proceeds of the sale intended for Havens will go into escrow, in accordance with all applicable state and local laws, pending the resolution of the Commission's assessment of Havens's character qualifications to be a licensee; and, post-closing of each transaction, (2) the Receiver must also file under seal an accounting of the proceeds collected from the sale of any licenses. Given the number of licenses here, this information will allow the Bureau to monitor the accrual of proceeds from license sales and to ensure the any such proceeds are not distributed to Havens while the Commission evaluates his character qualifications.¹¹⁹

35. With the foregoing conditions in place, we ensure that the two-prong test for the application of the *Second Thursday* policy has been met. Providing favorable consideration to transactions involving the Licenses under these circumstances is consistent with the equitable principles enunciated in *Second Thursday* and serves the public interest by facilitating the operational use of the spectrum that would otherwise lie fallow. We therefore conclude that the past misconduct of Havens when he held a controlling interest in the Skytel entities does not preclude Commission consent to any

¹¹³ See Leong Petition at 4.

¹¹⁴ See, e.g., *Sippel Order*; *2018 MCLM Order*, 33 FCC Rcd at 11845-48, paras. 76-86.

¹¹⁵ Leong has stated that, to date, neither he nor Havens has received any proceeds because the funds derived from the license sales after the Receiver assumed control of the Skytel entities were used to pay the Receiver and her counsel. See Leong Opposition at 33-34.

¹¹⁶ See Arbitration Award at 2-4.

¹¹⁷ See *id.* at 3.

¹¹⁸ See *id.*

¹¹⁹ It is also consistent with Commission precedent to condition the approval of a transaction on the submission of a post-closing statement confirming that the alleged wrongdoer did not benefit from the transaction. See, e.g., *KOLA, Inc.*, 11 FCC Rcd at 14306.

transaction involving the Licenses, whether pending now or in the future, {[
]}.¹²⁰

IV. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i); Section 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e); and Section 1.2 of the Commission's rules, 47 CFR § 1.2, that the petition dated January 28, 2021, filed by Warren Havens and Polaris PNT 1 PBC LLC in the above-captioned matter is DISMISSED IN PART and DENIED IN PART.

37. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.2 of the Commission's rules, 47 CFR § 1.2, the petition for declaratory ruling filed by Dr. Arnold Leong on March 11, 2021 is GRANTED IN PART AND DENIED IN PART to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

Joel D. Taubenblatt, Acting Chief
Wireless Telecommunications Bureau

¹²⁰ We also remove any uncertainty that may have impeded the Bureau's processing of routine applications related to certain Licenses (e.g., license renewals, constructions notifications, leasing arrangements), provided that those applications are otherwise compliant with the Commission's rules.