

**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:
)	0007060862, 0007061847,
Petition for Declaratory Rulings, including under)	0007067613
holdings of the Third Circuit precedential decision)	
in <i>Havens v Mobex et al.</i>)	
)	
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)	
)	

ORDER

Adopted: June 24, 2022

Released: June 24, 2022

By the Acting Chief, Wireless Telecommunication Bureau:

I. INTRODUCTION

1. On April 14, 2022, Warren Havens and Polaris PNT 1 PBC LLC (together, Havens) filed a motion to stay the implementation of all aspects of the Wireless Telecommunications Bureau's (Bureau)

Memorandum Opinion and Order released on April 11, 2022 (Motion).¹ The April Order relates to wireless radio licenses held by entities formerly controlled by Havens and now in a receivership established by California state court litigation. This litigation, between Havens and his former business partner Dr. Arnold Leong (Leong), concerns the past and future ownership and control of these licenses.² The April Order, consistent with an arbitration award approved by the California court, resolved issues related to Commission action regarding these licenses, including the conditions under which the Commission might approve sale of the licenses by the receiver.³ In the Motion, Havens relies on his separate pleading filed April 11, 2022—referred to as his “Initial Challenge”—in which he objects to various aspects of the April Order.⁴ In the present Order, for the reasons explained below, we deny Havens’s Motion because Havens fails to satisfy the well-established criteria described in the *Petroleum Jobbers* case that the Commission uses to decide whether to grant a stay.⁵

II. BACKGROUND

2. In the April Order, the Bureau ruled on petitions filed by both Havens and Leong. The Bureau first addressed Havens’s requests that the Commission issue a declaratory ruling faulting Leong’s conduct with respect to the Licenses, initiate a hearing on the qualifications of Leong to hold FCC licenses, and issue a stay of any licensing action involving the licenses captioned in the April Order.⁶ We found nothing in the Havens Petition that justified the requested declaratory ruling, a stay, or the initiation of a hearing on the character qualifications of Leong, and therefore, we denied the Havens Petition in its entirety. The Bureau found that Havens’s request for a declaratory ruling was misplaced and his allegations against Leong raised no substantial question of fact that would justify a character qualification

¹ Motion for a Stay Based on the Existing Filing in Docket 11-71, “Initial Challenge To And Requests Regarding DA 22-766 Based On Failures To Comply With Relevant Rules And Due Process Of Law” (4-11-2022) And For Additional Reasons, EB Docket No. 11-71, (filed Apr. 14, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10414371515061> (Motion). The Motion requests a stay of *Skybridge Spectrum Foundation et al.*, Memorandum Opinion and Order, DA 22-376 (Apr. 11, 2022) (April Order). In the Motion, Havens refers incorrectly to the April Order as “DA 22-766” when the correct DA number is DA 22-376. Havens also suggests inappropriately that the Motion should be reviewed by the Commission’s Office of General Counsel (OGC), which lacks authority to act on the motion, even if, as Havens alleges, the Bureau lacked delegated authority to render the underlying April Order. See Motion at 2 n.2. On April 21, 2022, Dr. Arnold Leong (Leong), Havens’s former business partner who is also affected by the April Order, filed an opposition to the Motion. (Opposition of Arnold Leong to Motion for Stay, EB Docket No. 11-71, (Apr. 21, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10520821612558>).

² The legal dispute between Havens and Leong is described in detail in the April Order. See April Order at 2-4, paras. 3-6.

³ See *id.* at 17, para. 34.

⁴ Initial Challenge to and Requests Regarding DA 22-766 Based on Failures to Comply with Relevant Rules and Due Process of Law, EB Docket No. 11-71, (filed Apr. 11, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/104121149212725> (Initial Challenge). We will treat the Initial Challenge as a petition for reconsideration and address it in a separate order at a later date. We will also address separately Havens’s additional petition for reconsideration filed May 11, 2022, concerning the same subject matter, 5-11-2022 Further Challenge to DA 22-766 Including Under § 1.106 - A Petition For Reconsideration, EB Docket No. 11-71, (filed May 11, 2022).

⁵ See *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*Petroleum Jobbers*).

⁶ See April Order. The April Order addresses Havens’s pleading dated January 28, 2021, together with supplemental and amendatory materials supporting the pleading, submitted 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 (collectively, Havens Petition). The exhibits, amendments, and other supplementary materials were submitted in the enforcement docket, ULS, or both. In this Order, as in the April Order, we refer to the entities included in the receivership as the “Skytel entities.” We 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.”

hearing against Leong.⁷ Regarding Havens's request for a stay, the Bureau found that Havens's motion was both procedurally and substantively defective, representing a disruptive collateral attack on the proper functioning of the state court.⁸ Procedurally, the request for a stay was subject to dismissal because Havens combined the stay request with another pleading, specifically, a petition for declaratory ruling and request for a hearing.⁹ Section 1.44(e) of the Commission's rules requires that a stay request be submitted as a separate pleading.¹⁰ Substantively, we rejected Havens's request for a stay because Havens failed to satisfy the four factors necessary to justify a stay set forth in *Petroleum Jobbers*.¹¹

3. Next, the Bureau addressed 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.¹² As related in the April Order, in November 2015, a California court appointed Ms. Susan L. Uecker as receiver to manage the Skytel entities during the pendency of the Havens-Leong dispute, which had been referred to arbitration, and in 2016, the Commission granted the involuntary transfer of control of the Skytel licenses to her.¹³ Subsequently, the arbitrator issued an award, and in June 2021, the California court entered a final judgment in the dispute, confirming the award, and issued an order retaining Uecker as the post-judgment receiver (Receiver).¹⁴ As the minority equity interest shareholder in the Skytel entities and a judgment creditor pursuant to the arbitration award, Leong sought a declaratory ruling that he, and not Havens, should be allowed to obtain any compensation from the sale of the licenses and that sale would be consistent with the Commission's *Second Thursday* policy.¹⁵

4. We granted the Leong Petition in part, subject to conditions.¹⁶ Specifically, we found that Leong is an innocent creditor who meets the criteria enumerated in the Commission's *Second Thursday* policy.¹⁷ This removed any uncertainty regarding Leong's ability to receive compensation from the sale

⁷ April Order at 1, 9-10, paras. 1, 18, 20.

⁸ *Id.* at 1, 10, paras. 1, 21.

⁹ *Id.*

¹⁰ 47 CFR § 1.44(e) ("Any 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").

¹¹ April Order at 11-12, paras. 22-23.

¹² Petition for Declaratory Ruling by Arnold Leong, EB Docket No. 11-71, (filed Mar. 11, 2021) <https://www.fcc.gov/ecfs/search/search-filings/filing/103111858802078> (Leong Petition).

¹³ See April Order at 3-4, paras. 5-6.

¹⁴ *Id.* at 4, para. 6.

¹⁵ *Id.* at 14, para. 26. See *Second Thursday Corp.*, 22 FCC 2d 515, *recon. granted*, 25 FCC 2d 112 (1970) (*Second Thursday*). In *Second Thursday*, the Commission established an exception to the *Jefferson Radio* policy, which generally prohibits licenses from being assigned while basic qualifications issues raised against the licensee remain unresolved. *Id.* at 516. *Jefferson Radio* is implicated here because an investigation regarding the character qualifications of Havens and his companies, based on issues raised in an unrelated proceeding, remains pending at the Commission. See April Order at 3-5, paras. 4-7; *Maritime Communications/Land Mobile, LLC*, Memorandum Opinion and Order, 33 FCC Rcd 11822 (2018), *pet. for recon. pending*. The *Second Thursday* exception applies when the assignment will benefit innocent creditors of the licensee and the persons charged with the misconduct (1) will have no part in the proposed operations, and (2) will 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.

¹⁶ See April Order at 2, para. 2.

¹⁷ See *id.* at 14, para. 28.

of the Licenses.¹⁸ In addition, to ensure 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 conditioned approval of each transaction on the Receiver and the buyer making certain representations in filings.¹⁹ In making this determination, we recognized that the sale of the Licenses will serve the public interest by helping to make valuable spectrum operational.²⁰ As we noted in the April Order, consistent with the arbitration award, we anticipate that the Receiver will submit applications for the sale of the Licenses.²¹

III. HAVENS’S REQUEST FOR A STAY

5. Havens’s Initial Challenge questions numerous aspects of the April Order. His Motion essentially seeks a stay of any licensing action by the Commission regarding the Licenses pending our resolution of the Initial Challenge.²² In this Order, we deny Havens’s Motion for the reasons explained below.

6. Havens contends that the Commission does not have an explicit standard by which it assesses a request to stay a Commission action, since none is set forth in the Commission’s rules.²³ It is well established, however, that the Commission uses the four-prong test described in *Petroleum Jobbers* to decide whether to grant a stay: (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.²⁴ The Bureau, acting pursuant to delegated authority, has used the *Petroleum Jobbers* test when determining whether to grant a stay request in prior cases.²⁵

7. While arguing that the Commission has no stay analysis standard, Havens nonetheless attempts to make a *Petroleum Jobbers* showing.²⁶ Havens makes no attempt to show a likelihood of success on the merits, the first prong of the stay analysis, but instead attempts to meet the more lenient standard of *Holiday Tours*, which is that the party requesting a stay need only raise a substantial issue concerning the merits (as opposed to a likelihood of success), provided that the moving party makes a strong showing under the remaining three prongs of the analysis.²⁷ In other words, the *Holiday Tours*

¹⁸ See *id.* at 14, para. 27.

¹⁹ See *id.* at 17, para. 34.

²⁰ See *id.* at 2, para. 2.

²¹ See *id.* at 4, para. 6.

²² Motion at 5.

²³ *Id.* at 4.

²⁴ See *Petroleum Jobbers*, 259 F.2d at 925; *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843-44 (D.C. Cir. 1977) (*Holiday Tours*); see also *In re Amendment of Section 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, FCC 87-248 (OHMSV July 17, 1987).

²⁵ See, e.g., *In re Motions for Stay of the ALLTEL Corporation and Telephone and Data Systems, Inc., and the Motion for Extension of Time to Comply of the ALLTEL Corporation*, 2 FCC Rcd 1203 (1987).

²⁶ Motion at 4-7.

²⁷ *Id.*; see *Holiday Tours*, 559 F.2d at 843 (“[W]e hold that under Virginia *Petroleum Jobbers* a court, when confronted with a case in which the other three factors strongly favor interim relief may exercise its discretion to grant a stay if the movant has made a substantial case on the merits. The court is not required to find that ultimate success by the movant is a mathematical probability, and indeed, as in this case, may grant a stay even though its own approach may be contrary to movant’s view of the merits. The necessary “level” or “degree” of possibility of success will vary according to the court’s assessment of the other factors.”)

standard is a refinement or modification of *Petroleum Jobbers* that allows for the consideration of a stay request when the likelihood of success on the merits is not particularly high, but the remaining three prongs weigh significantly in favor of the movant.²⁸

8. Without deciding whether Havens's Initial Challenge meets even the more lenient *Holiday Tours* standard under the first prong, we find that Havens fails to make the showings required by prongs (2)–(4) of the stay test: (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.²⁹ Indeed, Havens does not, at any point in his Motion, relate the specific facts of the case to the factors necessary to justify a stay.

9. Specifically, with regard to the second prong, Havens does not specify the harm that he would suffer if a stay is not granted, let alone show that the harm is irreparable. Havens merely generally refers to his Initial Challenge and the “aggressive language” in the April Order.³⁰ These vague references do not begin to meet the *Wisconsin Gas* standard for establishing harm, which requires that the stay movant's injury must be both “certain and great” and “of such imminence that there is a ‘clear and present’ need for equitable relief to prevent irreparable harm.”³¹

10. With regard to the third prong, Havens again generally references the Initial Challenge but fails to allege specific facts showing that a grant of a stay would not substantially harm other parties.³² As with the other stay criteria, the burden is on the party seeking the stay to demonstrate that grant of a stay would not substantially harm other parties.³³ In any event, Leong would certainly be harmed by a stay because he would be barred from receiving the proceeds from any sale of the licenses in the receivership that might have been approved.

11. Finally, with regard to the fourth prong, Havens does not explain why a stay would promote the public interest. We find no public interest benefit to letting spectrum remain unused and in a state of limbo. To the contrary, as we noted in the April Order, the public interest would be served by expeditiously granting assignments of the licenses in the receivership, particularly since the licenses can potentially be used to support smart grid electronic systems.³⁴

IV. CONCLUSION

12. For the reasons stated herein, we deny Havens's request for a stay because Havens has failed to meet either the Commission's long-standing *Petroleum Jobbers* test or the related *Holiday Tours* test for granting a stay. Havens has not demonstrated any need to maintain the state quo ante pending a ruling on his Initial Challenge. Accordingly, we confirm that we may proceed with licensing actions involving the licenses in the receivership, subject to the conditions and as described in the April Order.³⁵

²⁸ See *Holiday Tours*, 559 F.2d at 843-44.

²⁹ *Petroleum Jobbers*, 259 F.2d at 925; *Holiday Tours*, 559 F.2d at 842-43 (quoting *Petroleum Jobbers*).

³⁰ Motion at 6.

³¹ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C.Cir.1985) (*Wisconsin Gas*), 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).

³² Motion at 5-6.

³³ 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....”).

³⁴ April Order at 11, para. 22.

³⁵ See *id.* at 17, para. 34.

V. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i); and Sections 0.131, 0.331, 1.102(b), and 1.106(n) of the Commission's rules, 47 CFR §§ 0.131, 0.331, 1.102(b), and 1.106(n), that the Motion for Stay dated April 14, 2022, filed by Warren Havens and Polaris PNT 1 PBC LLC in the above-captioned matter is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joel D. Taubenblatt
Acting Chief
Wireless Telecommunications Bureau