

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Application to Assign Licenses from) WT Docket No. 13-85
Maritime Communications/Land Mobile, LLC,)
Debtor-in Possession, to Choctaw)
Holdings, LLC (FCC File No. 0005552500))

To: Chief, Wireless Telecommunications Bureau

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its comments in response to the FCC’s request for comments¹ on an application filed by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, (“MC/LM”) and Choctaw Holdings, LLC (“Choctaw”) to assign licenses held by MC/LM to Choctaw under the Commission’s *Second Thursday* doctrine.² The Public Notice explains that the filing seeks to assign four geographic and 59 site-based Automated Maritime Telecommunications Service (“AMTS”) licenses from MC/LM to Choctaw, a request directly related to the ongoing hearing in which the Commission is considering MC/LM’s qualifications to be a licensee of the FCC.³

EWA is a national trade association representing business enterprises, wireless sales and service providers, hardware and software system vendors, and technology manufacturers.

¹ Comment Sought on Application to Assign Licenses under *Second Thursday* Doctrine, Request for Waiver and Extension of Construction Deadlines, and Request to Terminate Hearing, *Public Notice*, WT Docket No. 13-85, DA 13-569 (rel. Mar. 28, 2013) (“Public Notice”).

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

³ See *Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing* (“HDO”), EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (“MC/LM Hearing”).

Members of the Alliance hold FCC authorizations in numerous spectrum bands and in various radio services.

All of the services in which EWA members hold FCC licenses have rules that define the applicable construction obligations⁴ and most also have specific provisions governing the limits of permissible discontinuance-of-service.⁵ These rules are the foundation on which the private land mobile radio (“PLMR”) industry has been able to build systems that serve essential public safety, business enterprise and commercial communications requirements. In a world of limited spectrum availability – and in the case of PLMR, exceedingly limited allocations – it is imperative that spectrum be recovered from licensees that fail to meet a construction requirement or that subsequently take the spectrum out of operation permanently so that those frequencies can be made available for other entities. Of course, the Commission has established procedures for extending construction deadlines in appropriate circumstances and has authority to grant waiver relief from both the construction and service discontinuance rules if doing so will serve the public interest. But the FCC should err on the side of parsimony in granting such relief, lest it permit spectrum to remain unused when the demand for it continues to grow, thereby establishing a precedent that could have seriously negative consequences for the PLMR community.

The Alliance takes no position on whether the proposed MC/LM-Choctaw transaction warrants *Second Thursday* treatment. The Commission is fully qualified to assess the information provided to it and determine whether the high bar of achieving *Second Thursday* status has been satisfied. If it determines that the individuals charged with misconduct in the

⁴ See, e.g., 47 C.F.R. §§ 22.503, 22.511, 90.155, 90.551, 90.631, 90.629, 90.665, and 90.685.

⁵ See, e.g., 47 C.F.R. §§ 22.317, 90.157, and 90.631. Even licensees operating on spectrum whose service rules do not have specific discontinuance time periods remain subject to the general FCC Rule Section 1.955(a)(3) that provides for the automatic cancelation of any wireless license if service has been discontinued permanently. 47 C.F.R. § 1.955(a)(3).

MC/LM hearing will derive no or only minor benefit from the assignment of valid licenses and that the company's innocent creditors will benefit from the sale, then a favorable decision may be appropriate. However, an award of *Second Thursday* status cannot, by itself, resurrect licenses that have terminated by operation of law for violation of the FCC's construction or discontinuance-of-operation rules. EWA agrees with MC/LM and Choctaw that the public interest favors putting this spectrum to good use. The question is whether that should be achieved by allowing it to be assigned to and then sold by Choctaw or, as has been the case with many thousands of licenses over decades of FCC oversight, by returning the spectrum to the FCC for assignment to other parties through the applicable licensing process.

The Alliance has no objection to the Commission making individualized decisions about this spectrum in cases where the particular use to which it would be put by a specific applicant can be weighed against the public interest in maintaining adherence to construction and service discontinuance requirements. For example, MC/LM-Choctaw have argued specifically that an assignment of MC/LM geographic spectrum to the Southern California Regional Rail Authority ("SCRRA") is justified, as SCRRA intends to use the spectrum to deploy a federally mandated Positive Train Control system.⁶ SCRRA had entered into an agreement to purchase this spectrum from MC/LM prior to initiation of the MC/LM Hearing and the HDO also suggested that the public interest might warrant allowing that transaction to proceed.⁷

However, licenses alleged not to be in compliance with bedrock FCC requirements should not be resuscitated, irrespective of their validity, as a bonus for achieving *Second Thursday* status. That very narrow exception to the Commission's licensee qualification

⁶ Public Notice at 2.

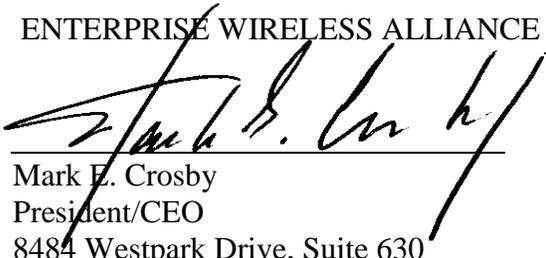
⁷ HDO at n. 7. EWA understands that other entities, including utility providers, also entered into agreements to purchase geographically licensed spectrum from MC/LM prior to issuance of the HDO. These transactions may warrant individual consideration as well.

requirements has no bearing on compliance with other FCC rules and should be applicable only to licenses determined to be valid and otherwise assignable. To conclude otherwise would suggest that bankruptcy itself is a basis for waiving those requirements and would seriously undermine long-standing FCC principles about the obligation to construct spectrum on a timely basis and ensure that it continues to be used to serve the public interest.

However the Commission decides the *Second Thursday* issue, EWA urges the Commission to consider carefully any waiver of the construction and discontinuance-of-service rules, particularly with regard to site-based licenses. While a waiver might promote administrative efficiency vis-à-vis the MC/LM Hearing, the Alliance questions whether it would serve the broader public interest in consistent enforcement of these critical FCC requirements.

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May 9, 2013