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Via email

Warren Havens (licensee in AMTS, VPC, LMS, and 220 MHz), to
Scott Stone, FCC

SEP 25 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Stone,

Below is a recommendation. (It does not related to any restricted proceeding.) I understand that the FCC is not obligated to consider the following or respond to it. As you will see, the below will be moot if submitted after the completion and release of the upcoming R&O in the AMTS Service.

Summary: The FCC should not complete (and release) the R&O (that will soon thereafter effect the AMTS auction) until after the construction deadline of the large AMTS incumbent licenses has passed and the FCC then, in subsequent months, determines, with appropriate proof, if such licenses were actually and timely constructed and placed into operation, and thus, which remain in effect and which are cancelled in full or in part (such determination called here the "Incumbent Fix"). Completing (and releasing) the R&O prior to a Incumbent Fix will mean that the locations and amount of incumbents encumbering the spectrum to be sold will not be determined, and this will

- 1) greatly decrease interest in the auction and participation in the R&O (Comments, Replies, etc.), and increase probability of inefficient post-auction petitions for relief,
- 2) greatly inhibit determination by the FCC of, and input by Interested parties concerning, realistic and appropriate License-area definitions, upfront payments and minimum bid prices, technology and operational technical matters, and other essential elements of auction, licensing, and operational rules for the AMTS service.

These will be greatly effected since AMTS, far more so than other services subject to auctions, involves licenses that cover most of the population of the US--most prime market areas (East, West, and Gulf coasts and Great Lakes areas) that have construction deadlines coming up soon before a planned auction.

Also, there should be inquiry into and determination of allowing Watercom to keep both A and B blocks along the Mississippi and associated inland rivers since Watercom never had any real need for these, contrary to their representations of need that were the basis of the grant of A and B blocks to them.

AMTS in the auction will present an entirely different opportunity, and AMTS should have very different proposed rules and associated discussion in the R&O, depending on the extent to which such incumbent licenses are determined to remain valid for years (the Incumbent Fix). Such Incumbent Fix determinations can't be made until after the end of the construction period for such licenses (and for the Watercom licenses, prior to such inquiry and determination), and such determinations should involve proof of construction (site leases, equipment purchase documents, affidavits of site construction manager, evidence of customers and marketing materials, sworn statements by the licensee, etc.)

Argument

Essential Elements of the R&O can't be drafted prior to Incumbent Fix: The FCC needs the Incumbent Fix to design proper geographic licenses, set opening prices, etc.:

- If all large incumbent licenses have been timely constructed and thus remain valid, and if their holders assert that they have, or now want to, serve marine traffic in a AMTS System (or if the FCC imposes a condition that AMTS along waterways must give some priority to marine traffic), then consideration should be given to defining licenses by large marine-traffic corridors, such as per the VPC auction. But if the above is not the case, then geographic licenses based on land markets should prevail.
- Upfront payments, opening bid prices, and increments, must consider available vs.

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encumbered territory and spectrum.

- More so than probably any other auction (e.g., vs. 800 MHz, 900 MHz, and even 220 MHz), in the case of AMTS, most of the largest and most valuable areas of the nation are licensed but few reported as built so close to an auction (see above). Thus, such Incumbent Fix is especially critical for logical, fair, and effective rulemaking on the AMTS auction and service.

For sufficient public comment on the R&O, and in the Auction, the Incumbent Fix is needed:

- If parties don't know what is to be sold in the Auction, it will be too hard for all but the most speculative to muster interest to deal with the R&O and soon-to-follow auction.
- This could lead to such more speculative bidders, after acquiring licenses, then petitioning for relief, having not formed and expressed their views as Comments to the R&O. This will be wasteful of FCC resources and retard public service vs. Commenting on the R&O.
- Depending on the status of incumbents (via Incumbent Fix), a party (such as myself and some aligned vendors, large end users, and 220 MHz licensees across the US) may Comment that the FCC should permit AMTS to be combined with 220-222 MHz in certain ways, e.g., with transmit on 220 or AMTS and receive on another (if one entity owns both) to achieve better separation and thus more effective and cost-efficient systems, full-duplex end-user devices; or to be combined with certain 900 MHz LMS for two-way messaging and location services. Coming up with effective comments, including technical aspects, will take considerable time and resources, and these can't be invested if the status of the incumbents, and thus the opportunity in the auction, is up in the air.
- Certain pre-Form 175 bidding agreements among parties are permissible (in past auctions, and I assume so in this one), but without the Incumbent Fix, there will be no basis on which to consider such arrangements with incumbents. Not having the Incumbent Fix before the R&O would undermine this permitted and common arrangement which normally would lead to more viable (better projected reward/risk) plans of, and better, financed parties involved in such permitted agreements.

The Auction follows soon after the R&O, heightening the need for the Incumbent Fix prior to competition (and release) of the R&O.

- The above arguments related to the need for the Incumbent Fix before completing and releasing the R&O, but many of the above arguments carry through to the actual auctions, which will follow soon after the R&O. The Incumbent Fix must be before release of the R&O for potential bidders not only to prepare to make Comments and Reply Comments as noted above, but also *to give sufficient time* to prepare business plans, to get financing for the auction and their business plan, etc., since these depend on knowing what will be for sale, what incumbent licenses will remain valid for years, what will be the license-area definitions, bid minimums, etc. (see above).

Supplementary discussion

Incumbents with upcoming construction deadlines should properly construct (and prove it) or turn back in their licenses prior to the action, i.e., do what they applied to do and were licensed to do-- build and operate and serve the public, not just sit on frequencies and effectively block others from bidding by retaining unbuilt or under-built licenses through the auctions, or so close to the auctions that it effectively achieves the same--

--including perhaps by petitions for reconsideration if licenses are cancelled in part or full: if, e.g., the license deadline is November, and the FCC doesn't determine if it was built or not for a few months thereafter (see below), and then determines it was not sufficiently built, and in the middle of this, the auction is scheduled, such licensee may file a petition for reconsideration and keep the issue clouded during the auction (diminishing success in FCC goals '1' and '2' above). Whereas, as I propose, by first deciding on these incumbent licenses, then releasing the R&O-- if the licensee then submits a petition for recon, the FCC would have time to decide upon such petition while it undergoes the Comment, Reply Comment, and final decision process, such that bidders can know before bidding the outcome (or, at minimum, have more time to review the petition for reconsideration and decide on its chances of success).

Some incumbent coastal licenses that were granted extended construction deadlines have such deadlines this Fall, e.g., the Atlantic coastal license for Regionet is sometimes this November. (I believe but am not sure that other large Regionet licenses have similar construction deadline.) When a further one-year extension was granted to this license in Fall of 1999, per Regionet communication to the FCC, the licensed stations had not been constructed, even though Regionet by that time had at least two years to construct.

Per my understanding--

- The FCC requires AMTS licensees to report to the FCC when a AMTS license is constructed, either when the entire AMTS system license is constructed, or when component stations are constructed-- I don't know the requirement, but I assume that it must at least be the former, since without this, the FCC can't determine if the required coverage was achieved.
- If the licensee does not submit the notice of construction (with any proof required), then the FCC may (per past practice, at least in similar radio services) send out a letter inquiring as to whether the AMTS system was constructed, as a courtesy, a last chance so to speak. If the licensee does not then affirm (and document as may be required), then the license will be cancelled.
- When cancelled, it will be deleted from the FCC license database, which is accessibly by the public.
- If not cancelled, due to sufficient affirmations of timely construction, then such adequate affirmations will be in the system/ station files at the FCC, and available to the public for review.

The FCC should require AMTS licensees with construction deadlines coming up in late 2000 (or early 2001)-- and all licenses with past construction deadlines that were reported as timely constructed and not cancelled-- to submit verifiable proof of timely construction (see below) and cancel licenses not constructed, including those that were not fully constructed per their granted applications to *provide continuous coverage of substantial (coastal) waterways*.

The FCC should require proof of construction, such as equipment purchase proof, station site leases, affidavits from persons who actually constructed and placed into operation, list of subscribers, marketing materials used to solicit marine-traffic customers, etc.

Also, the FCC should require Watercom (now owned by Mobex) to prove that they timely provided contiguous coverage of the defined Mississippi waterway, and that they needed both A and B blocks. (Recent trade press articles by or about Mobex state that Mobex is working to provide contiguous wide-area coverage, implying that they have not achieved this.) Such proof requirements by the FCC would not be onerous since there are only a few incumbents and a few AMTS licenses involved, whereas, the potential benefit to the public, and the fairness to be achieved (an overriding public interest in itself), are compelling.

Sincerely,
Warren Havens
(by email, from whavens@ricochet.net)