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

In the Matter of	)	
	)	
Access 220, LLC	)	WT Docket No. 02-224
	)	
Request for Waivers with Associated	)	
Proposed Conditions to Establish	)	RM-9664
Band Manager Status in 220-222 MHz	)	

Reply to Opposition to
Petition for Reconsideration and Clarification

Warren C. Havens ("Havens") and Telesaurus Holdings GB, LLC ("Telesaurus"), together DBA LMS Wireless ("LMSW"), submitted a Petition for Reconsideration and Clarification (the "LMSW Petition") regarding the grant of the above-captioned waiver request of Access 220, LLC ("Access") (the "Access Request") in a Memorandum Opinion and Order released October 16, 2002, DA 02-2717 (the "Order"). Access filed an Opposition. LMSW hereby filed a Reply.

The Petition was served (placed into an official US Postal Service mail depository box) on the day it was filed on ECSF (the end of a Friday, after business hours), which is all that is required under the §1.47. The Certificate of Service was filed on ECFS the following Monday, which is permissible under §1.47(g). Further, Access does not claim any prejudice in its Opposition with respect to its question as to timely service. Indeed, it filed its Opposition ahead of the deadline, and thus, can allege no prejudice.

Contrary to Access, the Petition satisfied the requirements for a petition for reconsideration under §1.106. Wiley Rein ("Wiley"), certainly experienced in these matters, misquoted §1.106(d)(2). It does not read, as per Wiley, "that the petition for reconsideration

shall … cite the findings . . .," rather, it reads "the petition shall also, where appropriate, cite the findings . . . ." The omission is deliberate and misleading. Wiley lifted out the "also" which refers to §1.106(d)(1), and the "where appropriate" which clearly means §1.106 (c)(2) is not always mandatory. In any case, the Petition meet the clear requirements of §1.106 and Access presented nothing to the contrary except bald assertions and tampered citations. [1]

The grant in the Order is extraordinary: it waives rules and adopts new ones and does not explain and demonstrate clearly under what rule, §1.925, or rule §1.3, this is done, and why the recipient is qualified. LMSW does not oppose Access obtaining this relief, but does object to manner of the relief in its current form for reasons given in the Petition. The Order is inappropriate and dangerous if not reconsidered and clarified as requested in the Petition.

The Opposition simply did not respond to the core issue in the Petition which is that neither the Access Request nor the Order identified why Access was entitled to the grant, apart from what all 220 MHz licensees can claim: (i) that it holds licenses in the 220 MHz service, a service that we all (Access, the Bureau, LMSW, and other 220 MHz licensees) agree warrants relief, and (ii) that band manager licensing authority is a measure of relief (for which there is no special test or certification to qualify). Among other matters, the Petition questions whether such conditions warrant a waiver under §1.925 since the criteria in that section were not satisfied. The Opposition cited language from the Order as to why the grant was made that had nothing to do with any qualification of Access to receive the grant. Indeed, the Petition cited the same language to demonstrate the need for grant of the Petition. Under the cited language, all 220 MHz licensees would qualify. That would involve a rule change, not a waiver.

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[1] In addition, a party can ask for Commission action, including clarification, under §§ 1.2 and 1.41. Further, the Commission may, on its own motion, clarify matters which come to its attention that it believes warrant clarification.

As requested in the Petition, the Order should be reconsidered and appropriate action taken and clarification made per suggestions in the Petition. Unless Access seeks undue advantage in the 220 MHz service, it has no basis for objection.

Respectfully submitted,

Warren Havens

Warren Havens and
Telesaurus Holdings GB LLC
DBA, LMS Wireless
2509 Stuart Street, Berkeley CA 94705
Phone 510 841 2220, Fax 510 841 2226

Submitted via the FCC ECSF
December 11, 2002

CERTIFICATE OF SERVICE

I, Warren Havens, hereby certify that I have, on this 11th day of December 2002, placed a copy of the foregoing Reply into the USPS mail system for delivery to the following:

Eric W. DeSilva
Zedford D. Dancey
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, DC 20006

Mark E. Crosby, President
Access Spectrum, LLC
2 Bethesda Metro Center
Bethesda, MD 20814

*Warren Havens**

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Warren Havens

[*This filing submitted via ECFS]