

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

In the Matter of:)
Auction 72)
PN 12-12-06) DA 06-2437
Bidding Procedures)

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau

Comments
(Erratum Copy: changes shown)

The undersigned parties (“Skybridge & Affiliates”) submit Comments in the above matter.

Background

Sybridge Spectrum Foundation (“Skybridge”) is a newly created (2006) nonprofit corporation formed to obtain and use wireless spectrum and spectrum rights for nationwide Intelligent Transportation Systems, nationwide Environmental Monitoring,¹ and other high public interest purposes. These purposes are described at www.telesaurus.com, the website of Skybridge and its affiliates: the undersigned parties. Among the spectrum that Skybridge seeks is 220-222 MHz, some from its affiliates via charitable contributions, and some from the FCC in Auction 72.

Warren Havens, one of the Affiliates (and founder and President of Skybridge), submitted in year 2004 a waiver petition to the FCC to extend the 5-year construction milestone of most geographic 220 MHz licenses (the” Extension Petition”). The petition was widely

¹ The Extension Request made clear Mr. Havens’ principal purpose of making the request, which took extensive time to research, draft, and prosecute in the proceeding, which was to preserve for the Estate of NRG (see below) its 120 geographic 220 MHz licenses, so that someone (himself or any higher bidder) could by these from the Trustee of the Estate, and by such, the innocent creditors would receive some measure of relief. This matter is further discussed in the next footnote.

supported and granted in year 2005. Also, Mr. Havens is the majority interest holder and President of Telesaurus VPC LLC, another Skybridge affiliate (including in the undersigned parties), that holds over 100 geographic 220 MHz licenses.

Based on the FCC grant of the Extension Request, Mr. Havens purchased the 120 geographic licenses of the Chapter 7 Estate of Net Radio Group Communications, by approval by Order of the involved US Bankruptcy Court.² Although a proper, complete application to the FCC for approval of the assignment based on this purchase, by Order of a US Court judge, was submitted in early 2005 to the FCC, with a formal request to expedite, and period inquires thereafter made to the FCC seeking a decision), the FCC not only has not yet acted on the application, but the person in charge has informed Mr. Havens' office that there is no information that can be provided as to when action may be taken, and that the Bureau has other

² (A) The consideration paid by Mr. Havens exceeded one million dollars in combined cash and debt, not including his direct legal and other costs pursuing this matter for years. (Mr. Havens was the principal contributor, via loans to Net Radio Group Communications LLC ("NRG") when it purchased licenses in the first 220 MHz auction in 1998. This LLC entered bankruptcy. Mr. Havens was the high bidder in the sale by the Bankruptcy Trustee of NRG's 220 MHz licenses: by bidding the amount of his creditor interest in NRG (based on his loans to NRG), *and sufficient additional cash to allow other creditors to be paid a large portion of their debt: the largest other creditor being the FCC. Mr. Havens acted responsibly, when causing NRG to be placed into Chapter 7 bankruptcy (via his filing of a Petition for Involuntary Bankruptcy) by notifying the FCC General Counsel office and inviting them to present their creditor claim.* Mr. Havens had no legal obligation to do so.

(B) This investment is being rendered useless by the inability or unwillingness of FCC staff to process a simply assignment application under Order of a US Court. The FCC does not have legal authority to refuse to act in accordance with, or so unreasonably delay acting in accord with, an Order of a US Court judge.

(C) As indicated above, the purchase of these licenses in Bankruptcy was principally by credit bid. The cash offers were very low in this sale: Mr. Havens offered essentially the same cash as other bidder(s) but also offered all his credit interest, which has the effect of allowing all other creditors, including the FCC to split up the cash that was obtained by a previous sale of some of the NRG licenses by the Trustee, and the cash Mr. Havens paid. The fair market value this sale reflects is less 1/6th the amount paid to the FCC in the 1998 220 MHz auction, and does not count other direct costs to obtain the licenses.

priorities such as recent auctions.³ This delay is causing loss in much of the value in the licenses, and is contrary to the purpose of the Bureau's grant of the Extension Petition. Affiliates also hold other FCC licenses as outlined in the above-noted website.

The problems with the 220 MHz service and spectrum, described in the Extension Request, remain to this day. Skybridge affiliates, ~~and not along with~~ Skybridge, are diligently progressing with required and sound technical, service, and other solutions. These are indicated in the above-noted website. However, it is requiring a great deal of endeavor and expenditure. Among the "other solutions" is the need to buy in each EA area sufficient EA and EAG channels for the channels to form at minimum 12.5 kHz-wide channels, and preferably wider ones, so that new digital technology that requires such bandwidth per channel can be used. As just noted above, even after spending well in excess of a million dollars to buy a certain group a geographic 220 MHz licenses see footnote: the bankruptcy-sale cash component was a small fraction of this—to complete a required step described in the granted Extension Request—the FCC is frustrating the process, as noted.

Nevertheless, Skybridge & Affiliates have interest in participation in Auction 72, since there is scarcity of additional spectrum in or near 220-222 MHz, and for Skybridge & Affiliates require additional spectrum for their planned nationwide Intelligent Transportation System wireless, and Environmental protection wireless.

³ Email from Scot Stone of the FCC to Jimmy Stobaugh of Mr. Havens office, in mid December 2006. Mr. Stone wrote of a Bureau policy in this regard, concerning clearing out old matters before newer ones, except for auction matters. The undersigned intend to seek a copy of any such policy and review it for legal validity. It of course is not acceptable for basic licensing matters to take a year or so. It is also at best very bad business practice for the FCC, or any merchant, to continue to sell products when it cannot support what it has already sold.

Proposed Changes: Minimum Bids

1. For reasons indicated above, and in the Extension Request, 220 MHz is, thus far, a failed service, the failure principally due to each license having non-adjacent 5--kHz wide channels (with exception of a few blocks that have adjacent channels: but these are insufficient in total spectrum for any viable wide-area service). Far more has to be spent, after acquiring consolidated spectrum in auctions or the secondary market, on technology development, testing, and in obtaining acceptance by relevant market segments, than the cost of the spectrum.

2. See footnote 1, item '(C).' This is a further indication of the low market value of 220 MHz spectrum, as it is configured in FCC geographic licenses.

3. The undersigned, who regularly follow developments in 220 MHz, do not know of market indications of higher values, or developments near term that would cause higher values.

4. For reasons indicated above, the undersigned believe that the opening-bid prices proposed are too high, and propose that they be reduced by 50%. Of course, if the market values the licenses, or some of them, higher, then the prices will be whatever the market pays. But by such reduction, which is appropriate given the facts noted herein, there is a higher chance that these remaining 220 MHz geographic licenses will be all or most all sold. By such sale, these remaining licenses will help fill in the current "holes" in spectrum in each EA and EAG area: as indicated above and in the Extension Petition: one of the steps needed to attain viable 220 MHz spectrum and service in any given areas, is it to consolidate sufficient adjacent channels (which requires combination of the channels in many EA and EAG licenses in the given area) to have many 12.5 KHz channels. The spectrum being sold in Auction 27 will help fulfill this step, ~~but~~ by at least having ~~the~~-this spectrum licensed thus and in the market s (after--auction spectrum sales, trades, or leases may be needed of course, for a particular licensee to attain such sufficient adjacent consolidated spectrum for a particular viable market opportunity).

Proposed Change: Auction Dates

5. The undersigned propose that dates for this auction be extended by twelve months, but at least six months: There is no current substantial market for or use of the majority of 220 MHz. There also, as noted herein, backlog on processing major 220 MHz assignments that are clearly in the public interest (including by Order of a US Court). It is premature to hold this auction as currently scheduled.

Respectfully,

[Submitted Electronically. Signature on File]

Skybridge Spectrum Foundation,
Warren C. Havens, President

Warren Havens, Individually, and as President of:
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