

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

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In the Matter of)
)
MARITEL, INC. and)
MOBEX NETWORK SERVICES, LLC) FCC 07-87
)
Petitions for Rule Making to Amend the) WT Docket No. 04-257
Commission's Rules to Provide Additional)
Flexibility for AMTS and VHF Public Coast) RM-10743
Station Licensees)

DOCKET FILE COPY ORIGINAL

To: the Commission

Reply to Opposition to Petition for Reconsideration

The undersigned "Petitioners" hereby submit this reply to the Paging Systems, Inc. ("PSI") opposition (the "Opposition") to their petition for reconsideration ("Petition") of the Commission's Report and Order (the "R&O")¹ regarding AMTS and VHF Public services.

1. Petition was Timely: PSI Misrepresents, Characteristically

Contrary to the Opposition, the Petition was timely filed as shown by Petitioners' filings on ECFS under the above-captioned docket. PSI suggests in its Opposition that the Petition was late-filed on July 9; however, ECFS shows it was not.² This misrepresentation is characteristic of PSI and its counsel, Audrey Rasmussen. There is ample evidence of this, and it will be part of the litigation noted below. In this case, while the misrepresentation cannot be effective since it is so early disproven, this at minimum wastes FCC staff time and merely supports one of Petitioners' arguments in this matter, related to the serious FCC rule violations by PSI throughout its AMTS history, and other, state and federal law violations subject of the litigation

¹ Report and Order, 22 FCC Rcd 8971 (Commission 2007).

² ECFS contains two copies of the Petition. The first, listed as type "Letter" filed on behalf of AMTS Consortium LLC with a "date received" showing 7/6/07, is a date-stamped copy (stamped 7/6/07) uploaded onto ULS by the FCC itself on 7/24/07. The second is a copy filed by "Intelligent Transportation and affiliates" with a receipt date of 7/9/07 that contains as its first page an email explaining that the following Petition was timely filed via email under FCC 01-345 on 7/6/07.

No. of Copies rec'd 071
List ABCDE

noted below, including violation of antitrust law, which is sustained in court, may lead to disqualification of PSI as an FCC licensee and revocation of its licenses under the Communications Act.³

2. No Opposition from MCLM (and Subsumed Mobex);
PSI Cannot Speak for MCLM; No Objection May Be Assumed Re MCLM

Since Maritime Communications/ Land Mobile (“MCLM”) and its Mobex predecessor in interest, affiliate, and apparent subsidiary, did not file any Opposition to the Petition, but had ample notice and opportunity to do so, the Commission may not, to benefit MCLM, assume any objection by MCLM. Further, PSI has provide no evidence that it has been duly authorized by MCLM to represent MCLM in this matter, by the PSI Opposition.

3. Incumbents Can’t Have it Both Ways, Incumbents’ own Arguments,
Unless Reversed, Support Disparate Treatment vs. Geographic Licensees

PSI, Mobex, and MCLM have argued to the Commission many times in proceedings where Petitioners and their affiliates have challenged the incumbents’ license applications and other matters, that AMTS incumbents are not and should not be subject to the same rules as geographic licenses, with regard to the defining, most essential rule based on which the entire AMTS service was founded: multi-site contiguous coverage over wide areas. The incumbents argued that it was entirely within the FCC powers and applicable law, for incumbents to have zero coverage requirements (by an alleged removal of said *sine qua non* coverage rule), and to not have said coverage rule even applied prior to the alleged removal, while geographic licenses (the Congressionally mandated preferred form of licensing for spectrum that can be used for

³ While it is clear that the FCC is not primarily designed and operated to conduct evidentiary hearings, and in fact it rarely holds them (even when called for under 47 USC §309(d)), the courts are for this purpose, and in the case of AMTS incumbent violations of laws beyond matters subject of FCC jurisdiction (but arising out of actions involving FCC licenses), of both PSI and Mobex and MCLM, the court suit noted below will determine such facts, and make findings of law, some of which may bear upon licensee qualifications under the Communications Act. This includes, for example, a finding of violation of antitrust law, which may lead to disqualification under 47 USC §

commercial purposes) are saddled with a coverage rule. Yet here, PSI suggest that disparate treatment is not allowed or appropriate. Can't have it both ways. The actual standard is noted below. Under the incumbents argument noted above, which if not accepted would result in their being no, or virtually no incumbent stations at all (since they would have been found automatically terminated for failure to construct the required coverage), it is entirely fine to treat incumbents differently, if they get a magic boon (the subject one being blatantly unlawful, and Petitioners believe, will be overturned at least by a court), but not if they get lesser advantage than the Congressionally-preferred geographic, auctioned, licensees. Rather, for all the reasons Petitioners gave in this proceeding, it is the incumbents that, per this Congressional mandate, and the other good causes given, should not be granted with additional flexibility and benefits by new or amended rules vs. what they were entitled to by the actual rules in place when they obtained and began to warehouse their incumbent spectrum.

4. Contrary to the Opposition,
the FCC Clearly May Treat Incumbents Differently, And Already Does

It is well established that where the Commission articulates a satisfactory explanation for action, including disparate treatment of incumbents vs. auctioned licenses in one radio service, such action is not arbitrary and capricious in violation of the Administrative Procedures Act, and is within prevailing court precedent. See *Atlantic Tele-Network, Inc.*, 59 F.3d at 1389; *Fresno Mobile Radio v. FCC*, 334 U.S. App. D.C. 178; *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837. Petitioners proposal provide ample justification. The Opposition does not show otherwise.

5. There is no Factual Issue as to Incumbents' Serious Past Rule Violations
Additional Facts Will Be Determined in Recently Filed Litigation,
And Such Facts, Together, Are Relevant to the Incumbent AMTS Service Rules

ACL has filed suit against PSI, MCLM and Mobex in a California Court under various causes of action (the "Court Action"). See the Complaint attached hereto. Upon the discovery of or judicial findings of facts in the Court Action that have or may have bearing upon this Petition

proceeding, ACL will provide the appropriate pleading, under Section 1.65 and other sections, and/or other filing with the Commission that may be appropriate at that time.⁴

⁴ Filing of a court action in which facts and findings relevant to such a pending application may be discovered or judicially determined, does not, in itself, appear to require a Section 1.65 report. In any case, if Commission staff find otherwise, then this report satisfies such finding also (along with the above-stated purpose of this filing).

Respectfully,

AMTS Consortium LLC, by
[Filed electronically. Signature on file.]
Warren Havens
President

Telesaurus VPC LLC, by
[Filed electronically. Signature on file.]
Warren Havens
President

Intelligent Transportation & Monitoring Wireless LLC, by
[Filed electronically. Signature on file.]
Warren Havens
President

[Filed electronically. Signature on file.]
Warren Havens
An Individual licensee

September 6, 2007

Address for each above entity:
2649 Benvenue Ave., #2-3
Berkeley, CA 94704

Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Reply to Opposition to Petition for Reconsideration was prepared pursuant to my direction and control and that all of the factual statements and representations contained therein are true and correct.

[Filed Electronically. Signature on File.]

Warren C. Havens

September 6, 2007

Certificate of Service

I, Warren Havens, certify that I have, on this 6th day of September 2007, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Reply to Opposition to Petition for Reconsideration to the following:⁵

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
(filed electronically via ECFS under WT Docket No. 04-257 and RM-10743)

Dennis Brown (legal counsel for MCLM and Mobex)
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406

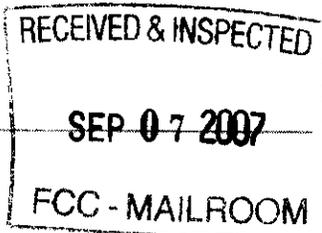
Audrey P. Rasmussen (counsel to Paging Systems, Inc.)
Hall, Estill, Hardwick, Gable,
Golden & Nelson, P.C
1120 20th Street, N.W.
Suite 700, North Building
Washington, DC 20036-3406

Telesaurus affiliates
By email

[Filed Electronically. Signature on File.]

Warren Havens

⁵ The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.



Karen Washington

From: warren havens [warren.havens@sbcglobal.net]
Sent: Friday, September 07, 2007 2:27 AM
To: WTBSecretary
Cc: arasmussen@hallestill.com; d.c.brown@att.net; warren havens; Telesaurus Stobaugh
Subject: Reply to Opp to PD: FCC 07-87, WT Docket No. 04-257, RM-10743.
Attachments: Rply2Opp_04-257.pdf; ATT1774554.htm; Complaint,Telesaurus.v.PSI,MCLM,Mobex.pdf; ATT1774555.htm; ECFS,problems,RplyOppPD,FCC07-87.pdf; ATT1774556.htm

Secretary:

Attached for filing under FCC 01-345, are two items, and the request below (thus, this email itself) is a third item for filing.? The items are explained below.

1.a.? Attached is a? **Reply** to Opposition to Petition to Deny:???In the Matter of: MARITEL, INC. and MOBEX NETWORK SERVICES, LLC,?Petitions for Rule Making to Amend the Commission?s Rules to Provide Additional Flexibility for AMTS and VHF Public Coast Station Licensees:???Regarding:?? FCC 07-87,?WT Docket No. 04-257,?RM-10743.??

1.b. Also attached hereto is the Reply's attachment, referenced in the Reply text (a pre-existing document: a court Complaint) that inadvertently was not included in the initial submissions of this Reply when filed as described in item 2 below (and which is already on file with the Commission in another AMTS-related proceeding involving Paging Systems Inc.).?

2.? Attached also is a File entitled "ECFS,problems,RplyOppPD,FCC07-87.pdf."? This explains that the above noted?**Reply** was submitted on EFCS in the two dockets referenced above prior to the end of the day, Eastern time, on 9-6-2007, but ESFC apparently would not accept the submissions.? The undersigned, who made the submissions, know of no technical problem on his side (his DSL, and Internet browsers employed in the submission attempts were working fine with no problems before and after the attempts).

3.? To the Commission:??
 Request to Accept Filing on Date Submitted (Attempted Submissions)):

In this email, Petitioners who submitted said **Reply**, herby request that -- IF-- EFCS did not in fact accept the?**Reply** filing as filed on 9-6-2007 (which cannot be determined at this time), then the filing be accepted as filed on that date, due to reasons indicated above under item 2 and in said attached file.??

In addition, this request should be granted since: (i) this is a Reply, and no party could be prejudiced since the pleading cycle is over, (ii) since acceptance will provide for a more complete record in the public interest, and (iii) since Petitioners hold the majority of AMTS spectrum in the nation and will be substantially affected by decisions on matters addressed in the?**Reply** position, (iv) addressing the matters in the **Reply** will be more efficient and timely than possibly having to address said matters later in a subsequent administrative appeal in these dockets, or other possible permitted filing, and (v) the Commission and the only party to this proceeding captioned above involving this?**Reply** will receive the subject **Reply**, by this email, no later than the same time it would appear on EFCS if the filing was

9/7/2007

made by the close of 9-6-2007.?

Respectfully,

/s/ Warren Havens

Warren Havens

President

'Telesaurus' --

www.telesaurus.com?

Telesaurus VPC LLC

AMTS Consortium LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

& Skybridge Spectrum Foundation, a nonprofit corporation

Berkeley, California

(510) 841 2220

Attachments:

9/7/2007