

ORIGINAL

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

FILED/ACCEPTED

MAY 18 2009

Federal Communications Commission
Office of the Secretary

In the Matters of:

Second Order on Further Reconsideration

DA 09-798

Amendment of the Commission's Rules
Concerning Maritime Communications

PR Docket No. 92-257

Petition for Rule Making filed by Regionet
Wireless License, LLC

RM-9664

To: The Federal Communications Commission

**OPPOSITION TO
APPLICATION FOR REVIEW OR
PETITION FOR RECONSIDERATION ON NEW FACTS**

Paging Systems, Inc. ("PSI"), by its attorneys and pursuant to Section 1.115 of the Federal Communications Commission's ("FCC's" or "Commission's") Rules and Regulations, hereby submits this its Opposition to the Application for Review or Petition for Reconsideration on New Facts ("Application").¹ The Application was filed with the Commission by Warren C. Havens, individually ("Havens") and various unnamed entities which Havens referenced as "defined Petitioners"² on May 8, 2009 (together, the "Petitioners").

¹ The Application opposes the *Second Order on Further Reconsideration*, DA 09-798, released on April 8, 2009 by the Chief, Mobility Division ("Division"), Wireless Telecommunications Bureau ("Bureau") (the "Order").

² Havens references back to the Petitioners in his dismissed Petition for Reconsideration, the subject of DA 09-798 but made no specific listing of them through-out the Application, although at least two of them have had name changes.

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As argued below, PSI requests that the Commission summarily dismiss or deny the Application.

I. STATEMENT OF INTEREST

1. PSI is a Commercial Mobile Radio Service provider offering service under Part 80 of the Commission's Rules. For that reason, PSI has participated in PR Docket No. 92-257, Amendment of Commission's Rules Concerning Maritime Communications, in various proceedings therein since September of 1995.³ Because the Application deals with Automated Maritime Telecommunications System ("AMTS") licensing and references PSI, as well as because Havens is requesting a hearing regarding AMTS licensed spectrum, PSI has an interest in this proceeding. Accordingly, PSI submits this Opposition to the Application for Review or Petition for Reconsideration on New Facts ("Opposition.")⁴

II. BACKGROUND

2. As it set out, the *Order* dismissed as repetitious the Petitioners' "petition for reconsideration [] of the *Third Memorandum Opinion and Order* in this proceeding, [] which denied Havens' petition for reconsideration of the dismissal of certain" AMTS applications.⁵

3. Not content to finally accept the negative response to yet another bite of the apple, the Petitioners now file an application for review and request a "full evidentiary hearing" on the "2008 Recon's new facts" that the Petitioners had presented many years too late⁶ and which the Commission did address squarely. It is clear that no matter how many times the Commission explains its rationale, based on fact and law, the Petitioners will continue to make the same

³ It submitted filings on September 20, 1995; September 15, 1997; February 6, 2001; August 23, 2002; and October 1, 2002.

⁴ This Opposition is filed pursuant to Section 1.115(d) which requires that any reply must be filed "...within 10 days after the opposition is filed and shall be limited to matters raised in the opposition."

⁵ *Order* at ¶1.

⁶ Application at 2.

arguments and the same false claims against the FCC staff and other FCC licensees.⁷ The Commission must end this diatribe and dismiss or deny this Application.

III. PROCEDURAL ISSUES

A. The Application For Review Fails to Meet The Requirements of Section 1.115(b) of the Rules

4. The lack of full disclosure of the Petitioners aside, Section 1.115(b)(1) of the Commission's Rules provides that an application for review shall concisely and plainly state the questions presented for review and Section 1.115(b)(2) provides that the application for review shall specify with particularity from among the factors identified in the rule section which warrant Commission consideration of the questions presented. There are no specifically identified questions presented for review in the Application. The headings in the Application, even if liberally interpreted, can hardly be called concisely and plainly stated questions presented for review. The burden is on the Petitioners to frame the questions for which they seek review. It is not the Commission's job to glean from ambiguous rhetoric what the questions might be. Without the questions, it is impossible to determine whether the Application for Review meets the requirements of Section 1.115(b)(2). On that basis alone, the Application must be dismissed.

IV. DISCUSSION

5. PSI intends to only address the Petitioners' argument with respect to PSI and to the *Order*, DA 09-643.⁸ It does not presume to present arguments with respect to the referenced

⁷ Application at 3.

⁸ *Order*, DA 09-643, 24 FCC Rcd 3283 (2009) by the Mobility Division ("Division"), Wireless Telecommunications Bureau ("Bureau")(the "*PSI Order*").

Letter, DA 07-793. Aside from the fact that the Petitioners are appealing the “PSI Order”, which they do not disclose in the Application, there are no “new facts” in this order.⁹

6. Further, even the Petitioners acknowledge that characterizing these recently released orders as “new facts” is far-fetched.¹⁰ The statement regarding cooperation by adjacent AMTS licensees in the *PSI Order*, referenced a **2002 Public Coast Fifth Report and Order**.¹¹ However, PSI submits, with all due respect to the Commission, that this must be a two way street.¹² Licensee cooperation is a long-standing policy requiring mutual exchange of relevant information to promote interference free operations in the public interest.

7. With respect to the request for hearing: in order for the Commission to designate a hearing, it must find that a substantial and material question of fact is presented or that it is unable to make a finding of whether the public interest, convenience and necessity will be served.¹³ Here, the Division considered all of the evidence and **was** able to make the required finding. The Commission has made a determination, without a hearing, and the Petitioners simply have not demonstrated that the Division erred.

8. Thus, the Petitioners reiterate their same repetitious arguments and admit that their claim of new facts or insights from the referenced Orders is specious at best. The Commission must dismiss this Application as repetitious or deny it.

⁹ The *PSI Order* at note 22 put to rest the Petitioners’ claim of an *ex parte* contact between PSI and FCC staff; yet against all facts and evidence, the Petitioners obstinately maintains otherwise.

¹⁰ Application at 5. Nevertheless, that reality did not dissuade the Petitioners from making the argument before the United States District Court, Civil Action No. 08-CV-03094 (KSH) dated May 13, 2009.

¹¹ *PSI Order* at note 12.

¹² See “Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd. 9518 at ¶ 3 (2004) (“*Auction No. 57 Procedures Public Notice*”). See also, Section 90.173(b). The geographic area licensee should not be permitted to harass the incumbent licensee, as was the situation detailed in the *PSI Order* at ¶¶ 7 and 9.

¹³ 47 USC §309(d)&(e).

V. CONCLUSION

9. For the foregoing reasons, PSI respectfully requests that the Commission dismiss or deny the Application.

Respectfully submitted,

PAGING SYSTEMS, INC.



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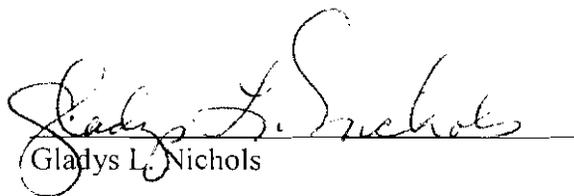
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CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 18th day of May 2009, the foregoing **OPPOSITION TO APPLICATION FOR REVIEW OR PETITION FOR RECONSIDERATION ON NEW FACTS** was served by first class mail, postage prepaid, on the following persons:

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