

[False representations. Compare to later forced disclosures of D. Depriest as co-controller spouse, and his and S Depriests affiliates, attributable gross revenues, etc. That continued in the long form, and pleadings opposing our petition to deny and petitions for reconsideration. And into the FCC investigations.]

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

In the Matter of)
)
Maritime Communications/Land Mobile, LLC)
)
Form 175 for Auction No. 61) File Number 0002191807
)

Marlene H. Dortch, Secretary
Federal Communications Commission

Attention: Chief, Auctions & Spectrum Access Division
Chief, Wireless Telecommunications Bureau

Response to Section 1.41 Request

Maritime Communications/Land Mobile, LLC (MCLM), by its attorney and pursuant to Section 1.41 of the Commission's Rules, hereby respectfully files its Response to the Section 1.41 Request (Request) filed in the above captioned matter by AMTS Consortium, LLC (AMTSC) and Intelligent Transportation & Monitoring Wireless, LLC (ITL) (collectively, Havens) in the above captioned matter. In support of its position, MCLM shows the following.

Havens' Request is procedurally flawed. The Commission accepted MCLM's Form 175 filing and permitted MCLM to participate in Auction 61. Havens waited until commencement of the auction in a transparent attempt to intimidate, distract and harass MCLM in the bidding process. The fact that the Commission does not provide for the filing of protests to Form 175 applications is clearly intended to prevent such intimidation, distraction, and harassment during the course of an ongoing auction. Havens proper course would have been to object to MCLM's long form application in a timely manner, which he will have ample opportunity to do at an

appropriate time. Bidders should be free from such underhanded techniques during the bidding process itself. This is the reason the Commission has placed the short form and long form filing windows before and after the auction, so that bidders like MCLM can focus on competitive bidding rather than on responding to scurrilous allegations such as Havens'. Having been forced to consider and respond to Havens' complaints now, the Commission should in the future pay no attention to any attempt by Havens to raise the same or similar issues in any petition to deny MCLM's long form application.

Havens' state court complaint against Mobex Network Services, LLC (Mobex) is another example of bidder intimidation by Havens. Havens knows that MCLM plans to purchase the Mobex incumbent licenses upon approval by the Commission. Mobex is not a participant in Auction 61 and the mere filing of a state court complaint by Havens against Mobex is not evidence relevant to MCLM's participation in Auction 61. It is, however, evidence of Havens' efforts to intimidate, harass and distract MCLM during the bidding process.

Havens' Section 1.41 Request provided no evidence, whatsoever, of the violation of any Commission rule by MCLM. In fact, the ownership of S/RJW Partnership, Ltd. (S/RJW) and of Communications Investments, Inc. (ComI) was accurately reported to the Commission in MCLM's Form 175 application. The Commission is hereby advised that S/RJW and ComI have updated their records with the States of Delaware and Mississippi to reflect their information correctly reported to the Commission in MCLM's Form 175.

Havens failed to demonstrate that MCLM did not disclose all attributable interests. His repeated, gross speculations did not provide any reasonable basis for the Commission to inquire of MCLM.

Havens did not show that National Rural Telecommunications Cooperative (NRTC) had any affiliation with MCLM which would require the attribution of NRTC revenues to MCLM. In fact, NRTC has no such affiliation.¹ In its filing of its Form 175, MCLM disclosed the existence of a potential lease agreement with NRTC; this disclosure was made out of an abundance of caution. As shown by the attached declaration of Jack Harvey, Senior Vice President, Business Operations for NRTC, no final agreement has been reached, and negotiations are continuing. As stated in MCLM's Form 175 application, the potential agreement between MCLM and NRTC looks toward entry into one or more spectrum lease agreements with NRTC or its individual members of some of the spectrum which MCLM won at auction. Stated more simply, the agreement contemplates NRTC or its members becoming customers of MCLM, not affiliates. MCLM will retain full control of any authorization which it won at auction.

MCLM has filed an application for consent to assignment of certain licenses from Mobex. MCLM does not own or control Mobex. Again, Havens has his facts all wrong.

¹ Havens' obvious disappointment at his not reaching an agreement with NRTC does not form a basis for Havens to complain about a relationship between MCLM and NRTC.

Contrary to Havens' allegations, Mobex and Clarity GenPar, LLC did not consummate a potential transfer of control transaction. In fact, as shown by the attached letter from the Commission, on June 30, 2005, the Commission properly rescinded the prior grant of its consent to the proposed transfer of control of Mobex to Clarity GenPar, LLC.

Moreover, Havens baselessly claimed that MCLM and Paging Systems, Inc. have a "joint venture" relationship. MCLM has no ownership relationship, joint venture relationship, or management relationship, whatsoever, with Paging Systems, Inc.

Despite Havens' protestations, under the Commission's spousal attribution rule, 47 C.F.R. §2.110(c)(5)(iii)(A), the revenues of one spouse are not automatically attributed to the other spouse. Neither is mere involvement in an entity by one spouse attributable to the other spouse. Havens did not demonstrate that Donald R. DePriest owned or controlled any interest which must be attributed to Sandra L. DePriest. Nor did Havens demonstrate that Donald R. DePriest serves as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.²

Havens speculated; he showed nothing concrete against MCLM. His "pleading" was unsupported by anything by guesswork. It was meant only to intimidate, distract, and harass

² The "affiliation through common management rule" provides that "affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity," 47 C.F.R. §1.2110(c)(5)(vii).

another auction participant at the outset of a simultaneous, multiple round auction. Moreover, Havens' tired assertions against Mobex are entirely irrelevant to the auction participation of MCLM.³

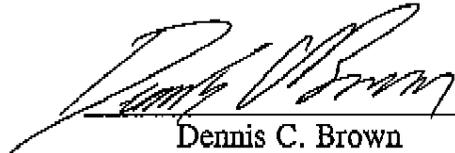
The Commission should be more proactive in reigning in Havens' type of behavior in auctions and other Commission proceedings. To prevent further such harassment filings, MCLM recommends that the Commission require Havens to first seek leave from the Commission before any future filings are permitted involving MCLM.

³ It would appear that Havens' allegations concerning a joint-venture relationship between Mobex and Paging Systems, Inc. are merely an untimely attempt to launch a collateral attack on Mobex's assignment of authorization application. Havens had his chance to say whatever he desired to say concerning Paging Systems, Inc. in his petition to deny Mobex's application. None of it is relevant here.

Conclusion

For all the foregoing reasons, MCLM respectfully requests that the Commission disregard and dismiss Havens' Section 1.41 Request. MCLM further requests that the Commission require Havens to seek leave to file any protest against MCLM in the future, including against MCLM's long form application, any assignment of authorization from Mobex to MCLM, or any other matter involving MCLM.

Respectfully submitted,
MARITIME COMMUNICATIONS/
LAND MOBILE, LLC


Dennis C. Brown

8124 Cooke Court, Suite 201
Manassas, Virginia 20109-7406
703/365-9436

Dated: August 22, 2005



Federal Communications Commission

**Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, PA 17325-7245**

APPLICATION DISMISSAL LETTER

**MOBEX COMMUNICATIONS, INC.
SUITE 630, 1725 DUKE STREET
ALEXANDRIA, VA 22314**

**Date: 06/30/2005
Reference Number: 3590148**

The application file number is: 0001932509

The Commission has rescinded its consent for this application for assignment of authorization / transfer of control and the application is dismissed for failure to timely file pursuant to Section 1.934(a) and for failure to notify the Commission of consummation or to request an extension of time to consummate pursuant to Section 1.948(d).

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Auction 61 for Automated Maritime Telecommunications System Geographic Area Licenses)	
)	File No. _____
Participation by AMTS Consortium and Intelligent Transportation & Monitoring Wireless)	
)	

To: The Commission

DECLARATION OF JACK HARVEY

I, Jack Harvey, have reviewed the Section 1.41 Request (Request) filed by Warren C. Havens in the above-captioned proceeding on August 8, 2005, which mischaracterizes the nature of the relationship between Maritime Communications/Land Mobile, LLC (MCLM) and the National Rural Telecommunications Cooperative (NRTC). I have been requested by MCLM to submit this Declaration clarifying our relationship, which I understand will be appended to MCLM's response to Mr. Havens' Request.¹

I declare under penalty of perjury that the following is true and correct.

1. I am the Senior Vice President, Business Operations, for NRTC, which represents the advanced telecommunications and information technology interests of more than 1,200 rural utilities and affiliates in 47 states.

2. NRTC's mission is to lead and support its members by delivering telecommunications solutions to strengthen member businesses, promote economic development, and improve the quality of life in rural America.

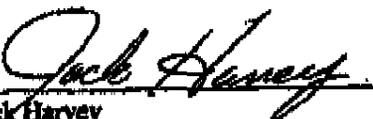
3. Among other responsibilities in my position as Senior Vice President, Business Operations, I review and report to NRTC and its members on new business opportunities, negotiate national contracts for NRTC and its members, support business solutions which expand NRTC's and our members' existing service offerings, and aggregate our members' individual buying power in an effort to promote the delivery of advanced telecommunications solutions to rural America.

¹ I do not respond in this Declaration to every unfounded allegation in the Request.

4. I am familiar with the wireless spectrum associated with the Automated Maritime Telecommunications System (AMTS) and the Commission's Auction 61 for AMTS spectrum (the "Auction").
5. Prior to the Auction's short-form application (FCC Form 175) filing window deadline of June 9, 2005, I was engaged on behalf of NRTC in discussions with MCLM regarding MCLM's existing AMTS spectrum holdings and the upcoming Auction, which ultimately resulted in the drafting of a proposed memorandum of understanding between MCLM and NRTC (Proposed MOU).
6. I understood that the Proposed MOU was nonbinding and created no legally enforceable rights or obligations for either NRTC or MCLM.
7. NRTC and MCLM never finalized their negotiations, and the Proposed MOU was never executed by either NRTC or MCLM.
8. The Proposed MOU contemplated the future negotiation of a spectrum lease arrangement, whereby NRTC would lease AMTS spectrum currently held by MCLM or obtained by MCLM in the Auction (Proposed Lease) on terms and conditions to be determined.
9. NRTC's rights under the Proposed Lease would have been limited to leasing from MCLM the use of certain AMTS spectrum licensed to MCLM, whether obtained through the Auction or otherwise.
10. Under the Proposed Lease, NRTC had no right to become the licensee of or to obtain any licensee interests in any of MCLM's AMTS licenses, whether through assignment, transfer, partitioning or disaggregation. All of the AMTS spectrum that would have been subject to the Proposed Lease would have remained solely in MCLM's possession and control as licensee.
11. NRTC and MCLM continue to negotiate the terms and conditions of NRTC's possible lease of MCLM's AMTS spectrum but have not reached any final agreement.
12. Despite the fact that the Proposed MOU was never executed by NRTC or MCLM, I understand that the discussions between NRTC and MCLM were publicly disclosed by MCLM in MCLM's FCC Form 175.
13. NRTC and MCLM are not affiliates and share no identity of interests. Neither controls the other, directly or indirectly, or has the power to do so.
14. NRTC did not participate as a bidder in the Auction.

Executed on August 18, 2005.

FURTHER AFFIANT SAYETH NOT.


Jack Harvey
Senior Vice President, Business Operations
National Rural Telecommunications Cooperative
2121 Cooperative Way, Suite 500
Herndon, VA 20171

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct. Executed on
August 22, 2005.



Sandra M. DePriest

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-second day of August, 2005 I served a copy of the foregoing Response to Section 1.41 Request on the following person by placing a copy in the United States Mail, first-class postage prepaid to:

Warren C. Havens, President
AMTS Consortium, LLC
Intelligent Transportation & Monitoring Wireless, LLC
2649 Benvenue Avenue, Suites 2 and 3
Berkeley, California 94704



Dennis C. Brown