

This is filed in the FCC Auction-87 docket, **09-205**, on Sunday June 13, 2010 (which will appear in the docket as received on June 14, 2010).

This copy of the below email was placed into Word and then PDF format for greater legibility. No change was made to the text or highlighting.

- Warren Havens (identified below).

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**From:** Warren Havens <warren.havens@sbcglobal.net>  
**To:** Marlene.Dortch@fcc.gov; auction87@fcc.gov  
**Cc:** Margaret.Wiener@fcc.gov; Scott Mackoul <scott.mackoul@fcc.gov>; jsilke@silkecom.com; lester@twowayusa.com; jstobaugh@telesaurus.com; warrenhavens@mac.com  
**Sent:** Sun, June 13, 2010 7:01:12 PM  
**Subject:** Auct. 87: Request for Correction, 9th Circuit motion for stay, and related

To: FCC Secretary

Attn: Margaret Wiener  
Chief, Auctions and Spectrum Access Division  
(at the "auction87" email listed for you in DA 10-863)

Cc: Scott Mackoul (at email of record)  
Auction Rules, Policies, Regulations, of the Auctions and Spectrum Access Division

James Silke, President, Silke Communications (using title and email on the its Form 175)

Lester Boihem, "Officer," Two Way Communications (using title and email on its Form 175)

Re: DA 10-863, footnote 2, and par. 43 which the footnote is based upon.  
Motion for Correction, submitted May 28, 2010, and related matters

Dear Auction 87 staff:

(i). Since the FCC did not respond to my request for reconsideration and correction submitted May 28, noted below, and thereafter my Qualified-Bidder companies\* filed the below-noted court action, *that request is moot.*

1. However, for reasons noted below, I make clear here that whether or not the court grants the stay requested by the motion, my companies plan to contest this auction on the basis stated in the request and the motion.

Thus, if the stay is not granted by the court and the auction commences as now scheduled, this Tuesday June 15, 2010, *it would be proper* (and I hereby request for my companies listed below)\* *to give public notice to all bidders, including in the secure*

*bidding system* (that each bidder must log into to bid) of the fact that the request and motion were filed, and that my companies intend to pursue the arguments therein at least after the auction is over, in one or more forms, before the FCC and/ or court, including to seek to vacate the auction results.

(Also, placement by my companies in the Auction 87 docket of such a notice will not be as effective as the one just suggested, since a notice by FCC staff will have more effect since it is from the authority in charge, and since it must be read by bidders, whereas they may not check that docket and if they do they may not open and read a notice by my companies.)

Said notice would be in the public interest since bidders can then take that into account before and while bidding, and not after the auction allege that the FCC had that information but did not provide it, and then assert prejudice on that basis. Also, I give this notice so that, after the auction, in said challenges my companies plan to bring, the FCC cannot assert prejudice on behalf of the high bidders and other bidders on the basis of lack of knowledge.

2. Of course, the FCC could have expected this challenge in the request and motion based on the Auction 61 proceeding involving the long-form of MCLM, where to defend MCLM and its owners the FCC first constructed the argument it uses in opposing the motion based on the *dicta* in the *Biltmore* court decision: that Section 1.2105(b) does not mean what it literally states and what the Commission explained it means when deciding upon its current form, but means something quite different. Since, from year 2005, my companies have been opposing that (and the predictable ramifications now shown in the Enforcement Bureau's investigation related to that long form) the FCC could have expected this current challenge in this auction.

In practical terms, I respectfully submit that the FCC should have previously noticed said Auction 61 proceeding in the Auction 87 Public Notices, *and it should at least provide that notice now, by the means and pre-auction time indicated above*, since the results of that proceeding could affect the validity of the subject FCC Auction-87 decisions in paragraph 43 and footnote 2 of DA 10-863, and the outcome of this Auction 87.

3. Further, the following should be clarified to the auction bidders prior to the auction. In the *Biltmore* court decision *dicta* relied upon by the FCC (as noted above), the court indicated that it saw no problem in allowing not only a decrease in designed entity size (bidding/ payment credit level) (which par. 43 of DA 10-863, noted above, allows), but also an increase, as compared to what a bidder certified on its short form application. It is confusing for the FCC to use--to justify said paragraph 43 and footnote 2--only one half of this *dicta* statement at this time: that leaves unclear as to whether the FCC means to employ the other part also at this time or some future point in time. *Accordingly, I respectfully request that this also be subject of a notice by the same means and pre-auction time indicated above.*

4. Also, the FCC General Counsel has, in its opposition to the motion, provided an example given by the Commission in formulating Section 1.2105(b)(2) that amendments changing and decreasing bidding-credit eligibility size are prohibited, disqualifying major amendments. However, that is what said par. 43 allows. Thus, DA 10-863 should be amended to explain this correction (if said prohibition is the current, changed position of the FCC and that also is not changed). (That is, in fact, part of the correction I requested

on May 28 request: but I don't believe that correction is effectively made in a court pleading: it should be made to the qualified bidders in a proper notice amending DA 10-863.) *I thus also respectfully request this correction.*

If you put out any of the above-requested notices, it is my understanding that under applicable law, you must provide ample time between the notice and actions that may be taken to comply with and use the information within said notice(s). *Thus, please provide such ample time.*

None of the above amends, other than to add further support of, the positions I have expressed for my qualified-bidder companies\* in the above-noted request and motion.

Thank you again for your work in Commission auction and licensing matters.

Sincerely,

*Warren Havens*

President

\* Auction 87 Qualified Bidders --

Skybridge Spectrum Foundation

V2G LLC

Intelligent Transportation & Monitoring Wireless LLC

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**From:** Warren Havens <warren.havens@sbcglobal.net>

**To:** auction87@fcc.gov

**Cc:** Margaret.Wiener@fcc.gov; Scott Mackoul <scott.mackoul@fcc.gov>; jstobaugh@telesaurus.com; warrenhavens@mac.com

**Sent:** Tue, June 8, 2010 4:10:37 PM

**Subject:** Auction 87: 9th Circuit Court - motion for stay and other relief

Dear FCC Auction 87 staff:

As reflected in the email below (of which Mr. Schlick confirmed receipt), attached is a court filing submitted today seeking a stay of and other relief related to Auction 87.

In my email to you dated May 28, 2010, I explained that my companies that are Qualified Bidders in Auction 87\* would prepare and submit this court filing if my request for correction submitted in that email was not granted by the end of June 3, 2010, which did not occur.

I will also file a copy of this email and the attachment in Docket 09-205 so that other Qualified Bidders have access.

Sincerely,

*Warren Havens*

President

\* Skybridge Spectrum Foundation  
V2G LLC  
Intelligent Transportation & Monitoring Wireless LLC

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**From:** "Damari, Tamir D" <TDamari@Nossaman.com>  
**To:** Austin.Schlick@fcc.gov; daniel.armstrong@fcc.gov  
**Cc:** "Richard, Patrick J." <prichard@nossaman.com>; Warren Havens  
<warren.havens@sbcglobal.net>  
**Sent:** Tue, June 8, 2010 2:43:30 PM  
**Subject:** Public Auction 87

Messrs Schlick and Armstrong:

Further to my e-mail of earlier today regarding our Motion to Stay Public Auction 87, the FCC switchboard has advised me that there is no designated drop-off point for packages to be hand-delivered to your office after the close of business. Thus, I attach an electronic copy of the Motion. You'll be receiving a FedEx copy tomorrow.

**Tamir D. Damari**  
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