

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

In the Matter of	)	
	)	
Maritime Communications/Land Mobile LLC	)	
And Southern California Regional Rail	)	
Authority	)	WT Docket No. 10-83
	)	
Applications to Modify License and Assign	)	
Spectrum for Positive Train Control Use, and	)	FCC File Nos. 0004153701 and
Request Part 80 Waivers	)	0004144435

**REPLY TO OPPOSITION TO MOTION FOR CONDITIONAL GRANT**

Southern California Regional Rail Authority ("SCRRA"), by its attorneys, hereby files this Reply to the "Initial Opposition to Motion for Conditional Grant" filed by Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, and Warren Havens (collectively, "Havens") in the above-captioned docket on November 9, 2010 (the "Opposition").<sup>1</sup>

**I. The Opposition is Fatally Flawed.**

The Opposition consists primarily of material that is incomprehensible or irrelevant, along with unsupported one-line assertions. SCRRA will not address the incomprehensible material in the Opposition. The one-line assertions (pps. 7 and 13-15) are wholly unsupported by any explanation or evidence, and as such, do not rise to the level of specific allegations of fact sufficient to show that grant of the Motion for Conditional Grant ("Motion") would not be in the public interest. The

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<sup>1</sup> SCRRA is concerned that Havens' styling of his pleading as an "Initial" Opposition suggests that additional opposition pleadings to the SCRRA Motion are to be expected from Havens. Such pleadings would be unauthorized unless leave to file is granted by the Bureau, and Havens' should not be allowed to indefinitely delay Bureau action with an endless string of unauthorized pleadings.

Commission does not generally rely on such unsupported allegations in its decision-making process, and should not do so here.<sup>2</sup> The extensive quotation from the WOKO case (pps. 9-13)<sup>3</sup> is irrelevant: while that case stands for the proposition that licensee misrepresentation to the FCC can be the basis for denial of a renewal application, the grant sought in the Motion would be explicitly subject to any action subsequently taken by the Enforcement Bureau in its investigation of Maritime Communications/Land Mobile LLC (“MCLM”).

SCRRA will briefly address what it believes is Havens’ unsupported assertion that SCRRA lacks the “standing” to seek the “impermissible major amendment” requested in the Motion. Opposition at pages 7 and 8. SCRRA is clearly a party to the two applications at issue. It is the proposed assignee in the assignment application, and the modification application was explicitly filed for the benefit of SCRRA: the Description/Public Interest Statement attached to the assignment application requested that the modification be granted prior to or simultaneously with the modification application, so that the modification of the license could be executed simultaneously with the closing on the assignment. However, the Motion was not in itself, nor did it request, an amendment (major or minor) to the applications at issue in this proceeding. An amendment requests a substantive change to the authorization at issue. See, e.g., the extensive list of such substantive changes in Section 1.929 of the Commission’s rules. The Motion requested no such substantive change, but merely a change in the nature of the processing of the subject applications. Nothing in the Commission’s rules states that SCRRA could not make a

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<sup>2</sup> See, e.g., *Veracon, Inc.; Finder’s Preference Request Regarding Station WNVA790, Chicago, Illinois*, Order, 14 FCC Rcd 16217, ¶14 (WTB, 1999) (“unsupported allegation” insufficient to rebut a finder’s preference showing); *Casa de Oracion Getsemani et al., Application for a Construction Permit*, Memorandum Opinion & Order, 23 FCC Rcd 4118, ¶24 (MB, 2008) (“generic and unsupported allegation” inadequate to warrant further inquiry into application).

<sup>3</sup> *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946).

filing like the Motion.<sup>4</sup> In any case, however, SCRRA understands that, in an abundance of caution, MCLM has now filed its own Motion for Conditional Grant. So, that in itself renders this issue moot.

SCRRA will also briefly address what it believes is Havens' unsupported assertion that the Motion should have been filed in the Commission's ULS electronic filing system. It is clear from the Commission's *Public Notice* in this proceeding (DA 10-556, released March 29, 2010), that any pleadings to be filed regarding the applications are to be filed in Docket 10-83, not in ULS. The Motion is such a pleading. Nevertheless, in an abundance of caution, the Motion has now been filed in ULS. In any case, it is clear that Havens suffered no harm from the filing of the Motion in Docket 10-83.<sup>5</sup>

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<sup>4</sup> While the Opposition did not specifically say so, it may have been referring to the Bureau's decision *In the Matter of Thomas K. Kurian, AMTS Consortium LLC*, 24 FCC Rcd 4849 (2009). In that case, the Wireless Telecommunications Bureau held that only the assignor may request the withdrawal of an assignment application. However, the present matter is distinguishable from the *Kurian* case in two important ways: 1) the *Kurian* case involved the withdrawal of an assignment application, which is an unconditional, permanent action, as opposed to the interim, conditional grant requested here; and 2) the request in the Motion was made with the explicit and written concurrence of the other party to the application (MCLM), which was not so in the *Kurian* case. Accordingly, the *Kurian* case is not applicable in the present matter.

<sup>5</sup> In unsupported one-line assertions on pages 7 and 14 of the Opposition, Havens makes obscure reference to "lack of service" and "misrepresentations as to service." These assertions are demonstrably false: the Motion included a certificate of service which showed that it was mailed to the address listed by Havens in his then most recent pleading in this proceeding, and Attachment 2 to the Opposition shows the postmark and address label on the envelope which was used to serve the Motion on Havens, which confirms that Havens in fact received service. The address listed by Havens in the Opposition is a different address and explicitly states "(new office)." It is Havens, not SCRRA, who is responsible for the fact that Havens changed his mailing address without explicitly alerting other parties in this proceeding.

## II. Conclusion

As shown in the Applications in this proceeding, it is clearly in the public interest for SCRRA to obtain the spectrum at issue,<sup>6</sup> and use it to provide Positive Train Control (“PTC”). It is also clear that the public safety benefits of providing PTC to the people of Southern California should not be indefinitely delayed. Accordingly, SCRRA requests prompt action on the Applications, and if necessary, an initial grant of the Applications which is explicitly subject to the subsequent result of the pending Enforcement Bureau inquiry regarding MCLM.

Respectfully submitted,

SOUTHERN CALIFORNIA  
REGIONAL RAIL AUTHORITY

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<sup>6</sup> SCRRA also objects to the vague and unsupported suggestions in pages 2, 3 and 5 of the Opposition that PTC-220, LLC is an “affiliate” of SCRRA, that the two parties have any “partnership” for obtaining spectrum, or that SCRRA seeks spectrum not for itself, but for “its relations with PTC 220 and others.” Such suggestions are blatantly false.

CERTIFICATE OF SERVICE

I, Joan P. George, an assistant in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the attached *Reply to Opposition to Motion for Conditional Grant* was sent this 22<sup>nd</sup> day of November, 2010, via email where indicated, and via United States First Class Mail, postage prepaid, to the following:

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