

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

In the Matter of	)	
	)	WT Docket No. 10-83
Applications of	)	
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC	)	File Nos. 0004153701 0002303355 0004144435
and	)	
	)	
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	)	
	)	

To: Marlene K. Dortch, Secretary  
Attention: Chief, Wireless Telecommunications Bureau

OPPOSITION TO MOTION TO DISMISS  
MOTION FOR CONDITIONAL GRANT,  
OR, IN THE ALTERNATIVE,  
OPPOSITION TO MOTION FOR CONDITIONAL GRANT

Maritime Communications/Land Mobile, LLC (MCLM), by its attorney, hereby files its Opposition (MCLM’s Opposition) to the Motion to Dismiss Motion for Conditional Grant (MCLM’s Motion), or in the Alternative, Opposition to Motion for Conditional Grant (Havens’ D-Motion) filed in the above captioned matter by Warren Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation (collectively, “Havens”). In support of its Opposition, MCLM shows the following.

Havens attempted to impose his own, layman's view concerning how much spectrum Southern California Regional Rail Authority (SCRRA) needs for PTC deployment throughout the entire area of the Los Angeles Basin and San Diego. Havens' views in this regard are immaterial: SCRRA has made its decision based on its own understanding of its needs for protection of life and property.

The Commission's delay is costing American jobs. As the attached Press Release shows, SCRRA in November 2010 entered a \$120 million contract with Parsons, Inc. for the design and construction of its PTC system in Southern California. Hundreds and thousands of people will be employed directly and indirectly as a result of this major project. Yet, none of this can occur without the spectrum first being made available by the Commission. Surely, the Commission cares about safety of life and property. Surely, with Americans suffering through the third year of the Recession, and with unemployment near 10% nationwide, the Commission cares about the creation of jobs. The Commission should act *now*.

The Commission has recognized that "Congress tasked the railroad industry with deploying PTC as part of a comprehensive, long-term strategy for improving railroad safety," PTC-220, 24 FCC Rcd 8537, 8542 (WTB 2009). The Commission has further recognized that PTC "has the capability to dramatically improve rail safety preventing train-to-train collisions, enforcing speed limits, and protecting roadway workers working near trains, among other things," *id.*, and that "substantial public benefits. . . will accrue from a nationwide interoperable rail safety network," *id.* at 8542.

Havens' D-Motion was 15 pages long. Rule 1.48(c)&(d), 47 C.F.R. §1.48(c)&(d), require that a pleading in excess of ten pages shall be accompanied by a table of contents and a summary. Havens' D-Motion contained neither and should be dismissed without consideration.

At his page 2, Havens raised seven procedural arguments to MCLM's Motion. MCLM will dispose of each.

Havens argued that MCLM's Motion amended its above-referenced application for modification of its license for station WQGF318 and its application to partition the license to Southern California Regional Rail Authority (SCRRA). By no means was MCLM's Motion an amendment to its above-captioned applications. MCLM's Motion did not request any change, whatsoever, to its applications.

Second, Havens stated that motions for an interim grant are not specifically authorized by the Commission's Rules. Havens cited no Commission Rule which prohibits conditional grant of an application. Moreover on page 4 of his D-Motion, Havens quoted Rule Section 1.945(e), 47 C.F.R. §1.945(e) which expressly permits conditional grants. His position was disingenuous on its face.

Third, Havens asserted that a motion cannot be used to evade substantive requirements of rules. MCLM shows herein that the Commission does not need to evade any substantive rule requirement to grant its Motion.

Although Havens claimed that MCLM's Motion seeks waivers, he was simply incorrect. MCLM's Motion requests waiver of no rule.

Again incorrectly, Havens took the position that MCLM's Motion is in direct conflict with Sections 1.945(d)(e) of the Commission's Rules. While there are numerous ways that the Commission can grant MCLM's Motion in accord with Rule Section 1.945(d)&(e), MCLM will suggest only a few possible paths. Rule Section 1.945(e) does not require that the Commission dispose of a petition to deny when making a conditional grant, so Havens objection has no merit. The Commission could grant the applications and dismiss Havens' petition to deny. Havens would then have a full opportunity to file a petition for reconsideration of the dismissal. The Commission could grant the applications and dispose of the substantive issues which relate to only *these* applications, reserving for consideration the issues which Havens has also raised in other pending proceedings. Mobex Network Services, LLC, 25 FCC Rcd 3390 at 3393 (2010).

Havens also asserted that grant of MCLM's Motion would be in direct conflict with 47 U.S.C. §309(d). Again, the Commission could simply dismiss Havens' motions which were in opposition to MCLM's Motion and a Motion filed by SCRRRA and dismiss his petition to deny.

The Commission could grant the applications and dispose of the substantive issues which related only to these applications, reserving for consideration the issues which Havens has also raised in other pending proceedings, a course which would not jeopardize the consideration of those common issues.

MCLM's Motion is certainly not, as Havens would have it, a late-filed reply (MCLM believes that Havens' meant to say "opposition", rather than "reply") to his petition to deny. MCLM's Motion was not filed for the purpose of debating Havens' petition to deny, but rather, stands on its own.

In his argument at pages 4 and 5 of his Motion, Havens misunderstands the meaning of "final." Final grant of the applications on a conditional basis would mean only that they were granted subject to a condition(s). The conditional grant would be subject to appeal as a conditional grant but until the condition(s) was satisfied, the Commission could take further action, which further action would then be subject to appeal.

History shows that Havens' suggestion that SCRRA could apply for an experimental authorization is disingenuous. Havens would surely petition to deny SCRRA's experimental application and tie it up in litigation for years. The above captioned applications are for regular operating authority and not for experimental purposes. SCRRA desires to move forward with PTC now under regular authority.

At his page 6 of his Motion, Havens alleged that the reason that there are petitions against the MCLM spectrum is that “SCRRA [sic] has joined MCLM and brought PTC-220 along, in practice of deception and cover ups before the FCC.” Havens has been petitioning against MCLM spectrum for more than five years and for many years before that when the spectrum was held by Mobex Network Services, LLC. Not only is Havens’ allegation absurd on its face, Havens presented not one bit of evidence of deception or cover-up by SCRRA.

While Havens may be unhappy that he has not been able to obtain all of the documents which he might desire from SCRRA or the Federal Railroad Administration, that is of no consequence to the Commission’s disposition of his D-Motion. The Commission can consider only the evidence which Havens presents in support of his D-Motion. The public should not have to wait for Positive Train Control (PTC) until Havens works his requests for information through the agencies and the courts with no certainty of ever obtaining additional information.

Havens questioned whether SCRRA *needs* the AMTS spectrum. If “need” were the generic standard, Havens would be hard-pressed to justify his need for what he says are his near nationwide holdings of AMTS spectrum. It is clearly in the public interest that SCRRA acquires enough spectrum to meet both projected needs and those that cannot yet be fully foreseen, as soon as possible. The Rail Safety Improvement Act (RSI) requires commuter rail and Class I railroad carriers to have submitted PTC implementation plans with the Secretary of Transportation in April of 2010 (see, RSI, Section 20157(a)(1)) that describe how the carrier will provide the interoperability with trains of other carriers. SCRRA needs this spectrum as

soon as possible to design and adjust in practice for such interoperability. In addition to the public safety benefits inherent in the expeditious deployment of PTC, the carriers face civil penalties for failing to comply with the interoperable implementation plan.

### Conclusion

The Commission must act now to improve the safety of SCRRRA passengers as well as the safety of the trackside public. This action will have the tangential benefit of creating much-needed jobs at a time when the economy is still lagging, and will help fulfill the goals of the current Administration to create infrastructure improvements and jobs. MCLM respectfully requests that the Commission disregard and dismiss or deny Havens' D-Motion and that the Commission make an immediate initial conditional grant of the applications.

Respectfully submitted,  
MARITIME COMMUNICATIONS/  
LAND MOBILE, LLC

/s/ Dennis C. Brown

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Dated: December 20, 2010

## Metrolink, Parsons First Out Of The Gate With PTC

*From Railway Age October 29*

**SOUTHERN CALIFORNIA---**The Southern California Regional Rail Authority has awarded a \$120 million contract to Parsons to design, procure, and install Positive Train Control (PTC) technology on the 512-mile Metrolink regional rail system. Parsons' responsibilities will include design, installation, documentation, testing, integration, and commissioning. In addition, Parsons will lead the overall radio frequency infrastructure development, manage the development of the network management system, and provide a replacement of the dispatching system, Railway Age reports.

"This significant contract represents the first of its kind to be awarded in the U.S. rail industry," said Parsons Group President Tom Barron. "It is the first application of PTC in compliance with the U.S. Rail Safety Improvement Act of 2008, which mandates that passenger and freight railroads install PTC by Dec. 31, 2015. We are excited to be the first firm awarded such an industry-changing contract and to have the opportunity to work with Metrolink to improve passenger safety on our nation's railroads through the implementation of technology."

Metrolink's PTC system will be fully interoperable with Union Pacific's VTMS (Vital Train Management System) and BNSF Railway's ETMS (Electronic Train Management System) PTC technologies. The implementation program will consist of the following:

- A PTC back-office system.
- Replacement of the existing CAD (computer aided dispatch) system.
- PTC onboard computers, display screens, GPS tracking, and radios on 57 cab cars and 52 locomotives.
- Stop enforcement system at 476 wayside signals.
- A six-county specialized communication network to link the wayside signals, trains, and the centralized dispatch office.

Metrolink's system will be designed to comply with all of the Federal Railroad Administration PTC requirements: enforcing speed restrictions; preventing train-to-train collisions, over-speed derailments, and casualties or injuries to roadway workers (maintenance-of-way workers, bridge workers, signal maintainers) operating within their limits of authority as a result of unauthorized incursion by a train, and preventing train movements through a misaligned switch.

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CERTIFICATE OF SERVICE

I hereby certify that on this twentieth day of December, 2010, I served a copy of the foregoing Opposition to the Motion to Dismiss Motion for Conditional Grant, or in the Alternative, Opposition to Motion for Conditional Grant on the following persons by placing a copy in the United States Mail, first-class postage prepaid:

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