

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

In the Matter of)
)
MARITEL, INC.) WT Docket 04-257
) RM - 10743
and)
)
MARITIME COMMUNICATIONS/
LAND MOBILE, LLC) Report and Order, 22 FCC Rcd 8971
)
)
Petitions for Rule Making to Amend the)
Commission's Rules to Provide Additional)
Flexibility for AMTS and VHF Public Coast)
Station Licensees)

To: The Commission

**OPPOSITION TO APPLICATION FOR REVIEW
OR IN THE ALTERNATIVE SECTION 1.41 REQUEST**

Paging Systems, Inc. ("PSI"), by its attorneys and pursuant to §1.115(d) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, submits its Opposition to the Application for Review or in the Alternative Section 1.41 Request ("Application"), filed in the above-referenced matter by Warren Havens ("Havens"), Environmental LLC, Verde Systems LLC, Intelligent Transportation and Monitoring Wireless LLC (ITL), Telesaurus Holdings GB LLC, VG2 LLC, and Skybridge Spectrum Foundation (collectively, the "Petitioners").¹

¹ The Application was filed in response to an *Order on Reconsideration*, FCC 11-23, released on March 3, 2011, denying the Petitioners' Petition for Partial Reconsideration in Part Based on New Facts, And in the Alternative, Request Under Section 1.41 (filed Feb. 12, 2010) (Petition).

In support of its Opposition, PSI demonstrates the following:²

I. BACKGROUND

1. The referenced proceeding adopted rule changes to permit VHF Public Coast (“VPC”) stations and Automated Maritime Telecommunications System (“AMTS”) stations additional operational flexibility to provide service to units on land. PSI, as an AMTS licensee, participated in the underlying *Notice of Proposed Rule Making* proceeding, which proposed private land mobile radio service (“PMRS”) on land in addition to the existing public correspondence service as common carriers, for VPC and AMTS operations. PSI filed Comments in favor of the proposal on October 8, 2004. PSI is licensed to both geographic and site-based incumbent AMTS facilities. On July 19, 2007, PSI also filed an Opposition to Petition for Reconsideration in the above-referenced matter by Havens who had requested that the flexibility be allowed only with respect to the geographic license.

II. PROCEDURAL MATTERS

A. The Application is Procedurally Defective.

2. Initially, the Petitioners, after filing a reconsideration of a reconsideration which was denied by a two page *Order on Reconsideration* by the Commission, is now appealing to the Commission once again, arguing the same facts, i.e., the viability of the site-based licensees. This should not be allowed since 47 C.F.R. §1.115 provides that a person may file an application for review if that person is “aggrieved by any action taken pursuant to delegated authority....” The Commission is not delegated authority and it has denied the Petitioners’ reconsideration of a reconsideration. This Application should be summarily dismissed.

² The Petitioners’ Application was timely filed on April 4, 2011; however an untimely “Errata copy” of his Application was filed on April 5, 2011.

3. Second, the Application has failed to meet the requirements of Section 1.115(b)(1) of the Rules which provides that an application for review shall concisely and plainly state the questions presented for review. In addition, Section 1.115(b)(2) provides that the application for review shall specify with particularity from among the factors identified in that rule section which warrant Commission consideration of the questions presented.

4. Here, there are no specifically identified questions presented for review in the Application regarding the specific rules which were amended in this referenced proceeding. Rather, the Petitioners presents the same shopworn allegations about site-based AMTS licensees and requests -- for the first time -- that the Commission impose onerous conditions on them. This request does not relate at all to the subject of this rulemaking proceeding and further, it was not even discussed below.³

5. Although the Petitioners list the Section 1.115(b) factors that would warrant Commission consideration, a mere recitation of the rules, without concisely presenting the actual questions, is not enough. The burden is on the Petitioners to frame the questions for which they seek review. Without the questions and discussion of the specific factor(s) on which the Commission erred, it is impossible to determine what the Application for Review is requesting and therefore it does not meet the requirements of Section 1.115(b)(1)-(4).

III. DISCUSSION

A. Incorporated and Referenced Proceedings.

6. By referencing and seeking incorporation of the filings in other proceedings, the Petitioners are violating current precedent in which the Commission found that allegations

³ See note 7 in the *Order on Reconsideration*.

relating to other pending proceedings are not relevant or material to another proceeding.⁴ That case is applicable here.

7. Further, in email exchanges dated March 9 - 11, 2011, Roger Noel, Chief of the Wireless Telecommunications Bureau's Mobility Division, Havens specifically asked Mr. Noel, citing the same cases he cites in his Application, if he could reference and incorporate other proceedings into his pleadings. Mr. Noel responded: "As I read your request, the relief you seek is inconsistent with the Commission's Rules and thus grant would require a waiver of the rules. However, you have indicated that you do not seek a rule waiver. Therefore the division is unable to grant your request." See Exhibit 1.

8. Thus, right in the face of the Commission denial, the Petitioners are attempting to incorporate in the Application "all of their pleadings submitted for consideration resulting in the Orders...[and]...all their pleadings filed on the licenses of MCLM and PSI...." The Petitioners are asking for a second bite of the apple, a chance to reargue claims in other proceedings. The Commission does not award such treatment to petitioners.⁵

B. The Petitioners Repeat the Same Arguments They Made Below.

9. In the *Order on Reconsideration*, ¶4, the Commission stated

The subject of this proceeding is the issue of general applicability of whether to amend the service rules to afford licensees additional operational flexibility. Character and fitness of individual licensees and the construction and operational status of their stations, is wholly irrelevant to this issue...

⁴ As the FCC has found, such extraneous allegations must be considered to be outside the scope of this proceeding. See *Mobex Network Services, LLC, Order*, 20 FCC Rcd 17957 (2005) ("*Mobex Order*"). See also, *Order on Reconsideration*, DA 08-1084, 23 FCC 7458 at ¶ 10 (2008); *Order*, 21 FCC Rcd 3032 at ¶¶ 8-10 (2006), aff'd, 22 FCC Rcd 4602 at ¶ 11 (2007), review pending.

⁵ *Memorandum Opinion and Order*, 15 FCC Rcd 11166, ¶64 (2000).

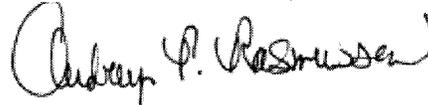
10. Despite that, the Petitioners reiterate the same false allegations that the Commission told them were irrelevant. It is time for the Commission to say that enough is enough and dismiss this pleading.⁶

IV. CONCLUSION

Therefore, for all of the reasons presented in this its Opposition to Application for Review or In the Alternative, Section 1.41 Request, the Application must be summarily dismissed or denied.

Respectfully submitted,

PAGING SYSTEMS, INC.



By: _____

Audrey P. Rasmussen
David L. Hill
ITS ATTORNEYS

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Dated: April 19, 2011

⁶ *Memorandum Opinion and Order*, 25 FCC Rcd 450, 454-55 ¶¶ 7-8 (2010).

EXHIBIT 1

Audrey Rasmussen

From: Warren Havens [warren.havens@sbcglobal.net]
Sent: Friday, March 11, 2011 12:23 PM
To: ruth.milkman@fcc.gov; Roger Noel
Cc: Dennis C. Brown; Audrey Rasmussen; jstobaugh@telesaurus.com; Tamir D Damari
Subject: Re: Section 1.41 request, regarding recurring factual exhibits

Ms. Milkman,

I am including you here as Bureau Chief.

If Mr. Noel for the Division concludes, or you for the Bureau conclude, as Mr. Noel writes below at 8:01 am today, then due to the importance of this issue, I intend to appeal that to the DC Circuit Court as this time under 47 USC § 402. This is allowed under 47 USC § 405 without further administrative appeal, however, I seek here reconsideration.

Thus, please let me know if you uphold Mr. Noel's view stated at 8:01 today.

Also, please let me know if you find that, in response to this procedural question, there are any parties: What Mr. Noel answered below is not referenced to any proceeding of any third party, but is stated as a ruling on how FCC rules apply and do not apply to anyone. In addition, this was not put on Public Notice, and is not a rule making decision. If you find there are parties, please identify them so that we can include them in the appeal to the DC Circuit Court, if that is needed.

Mr. Noel,

After sending the below at 8:08, I saw your email at 8:01 am, which I paste below.

You responded to my first request on March 10, below.
You responded today at 8:01 am on reconsideration.

47 CFR §1.923 is a FCC rule regarding license applications, and 47 CFR §1.925 regards rule waivers. They do not deal with petitions challenging a FCC license application.

My question deals with petitions under 47 USC §309(d) and 405, and these allow the FCC to officially notice any relevant materials. (309 (d) includes "... If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact...").

The FCC decisions I cite, and the DC court case I cite, below also specifically allow reference and incorporation of relevant material in challenge petitions. What I pose is part of common pleading practice, as these decisions I cite demonstrate (even the ones Ms. Rasmussen cite, which I analyze below in my additions sent at 8:01 am. I found no FCC or court decisions contrary to what I cite, out of scores I reviewed.

I also referenced below your decision to allow my companies to reference and incorporate in petitions to deny long forms in Auction 87, preexisting records. That situation is the same as what I pose now. Are you stating now that your decision is retracted?

Your 8:01 reading below does not explain why these statutes and FCC decision and court decision authorities (including from yourself), which allow reference and incorporation in challenge petitions, are not correct and should be reversed. These authorities do not involve waiver of any rule.

The holding that unless a statute or regulation specifically allows an element of pleading practice commonly accepted, bars the practice for select parties or in select situations, is not supported in case law.

Ms. Milkman, Mr. Noel,

Under 5 USC §§ 554(e), 557(c)(3) [*] and related FCC rules, please provide a decision on the issue I pose that includes "...material issues of fact, law, or discretion presented on the record."

Please also explain whether the decision is informal staff advice, or is deemed to be binding declaratory ruling on all parties who submit any petitions to the FCC challenging a license application under 47 USC §§ 309(d), 405, or other statute and related rules.

Please cite any FCC or court decision authority that supports the decision.

If you rule contrary to my position, that should be placed on Public Notice prominently so that all parties that submit license applications, or challenges to them, understand this new Commission rule and statute interpretation.

[*] 5 USC §§ 557(c)(3) includes:

"...The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of (A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and (B) the appropriate rule, order, sanction, relief, or denial thereof...."

Respectfully,

Warren Havens

From: Roger Noel <Roger.Noel@fcc.gov>
To: Warren Havens <warren.havens@sbcglobal.net>
Cc: Dennis C. Brown <d.c.brown@att.net>; audrey rasmussen <arasmussen@hallestill.com>; jstobaugh@telesaurus.com; Tamir D Damari <tdamari@nossaman.com>
Sent: Fri, March 11, 2011 8:01:01 AM
Subject: RE: Section 1.41 request, regarding recurring factual exhibits

Mr. Havens: Thanks for your follow-up email.

The Division believes the relief you seek is inconsistent with Sections 1.41 and 1.939 of the Commission's rules. Specifically, nothing in Sections 1.41 or 1.939 permits incorporation by reference in informal requests or petitions to deny. In contrast, Sections 1.923 and 1.925 expressly do permit incorporation by reference in applications and waiver requests. Consequently, we read Sections 1.41 and 1.939 as not permitting incorporation by reference.

For this reason, the Division is unable to grant your request.

From: Warren Havens <warren.havens@sbcglobal.net>
To: Roger Noel <Roger.Noel@fcc.gov>
Cc: Dennis C. Brown <d.c.brown@att.net>; audrey rasmussen <arasmussen@hallestill.com>; jstobaugh@telesaurus.com; Tamir D Damari <tdamari@nossaman.com>
Sent: Fri, March 11, 2011 8:08:52 AM
Subject: Re: Section 1.41 request, regarding recurring factual exhibits

I made additions in email immediately below.

From: Warren Havens <warren.havens@sbcglobal.net>
To: Roger Noel <Roger.Noel@fcc.gov>
Cc: Dennis C. Brown <d.c.brown@att.net>; audrey rasmussen <arasmussen@hallestill.com>; jstobaugh@telesaurus.com; Tamir D Damari <tdamari@nossaman.com>
Sent: Thu, March 10, 2011 11:54:50 PM
Subject: Re: Section 1.41 request, regarding recurring factual exhibits

Mr. Noel,

I copy and paste below the email today from Ms. Rasmussen to keep it in tact with this exchange. Also, I note here that between my Request first stated below, and your response to that below, there was intervening objections by Mr. Brown and Ms. Rasmussen and my reply to the.

Can you please inform me of the rule or rules you indicate below that do not allow, in a pleading challenging a FCC license application (and any related opposition, replies, etc.), reference and incorporation to existing factual materials in FCC public records? I ask this, of course, under the minimum requirements for a decision under 5 USC §§ 554(e), 557(c)(3) and related FCC rules.

Do you mean that case law can be referenced, but a rule or rules require that all factual allegations in such a pleading must be supported in separate attached documents, even where said documents already exist in FCC ULS public records and can be referenced and easily found (as easy as finding cited FCC decisions in FCC and other public sources)?

If the answer is yes, then applying that to the history of FCC pleadings over decades would, I believe it can be demonstrated, result in a large percentage that are defective (including of parties outside my companies to the proceedings my Request address).

While I find no support for that in the Communication Act including 47 USC 309(d) and 405, or FCC rules including 47 CFR 1.939 and 1.1106, or in a review I just did in Lexis with appropriate searches run -- (and Mr. Brown and Ms. Rasussen are addressing straw-men matters they choose to devise that are not relevant to my Request) -- the obvious question I have at this time is the above.

Rather, 47 USC §309(d) and supporting case law *specifically allow* submission by the petitioner/ challenger (which carries forward into reconsideration appeals under 47 USC 405) of relevant facts, supported by an affidavit, and allow the FCC to "officially notice" other facts, including if referenced in the text of a petitioner pleading. The facts the Commission may notice include any that are relevant and available, especially those in FCC records, and of those the most readily accessible are those filed in USL under the license(s) subject of the challenge petition.

E.g.,

(1) See *In re: Entercom Portland License, LLC, DA 08-495*, Rel. March 4, 2008 (emphasis added):

"In the Objections, Stolz incorporates by reference the Petition to Deny against the Sacramento Applications. n5/ Stolz argues [**5] that the Applications should not be granted because Entercom has shown a "wanton disregard for the FCC's rules" as evidenced by:....

"n5/ Although the Sacramento Applications are not before us here, we will consider the allegations contained in the Petition to the extent they are relevant to Stolz' claims in this proceeding."

In the just cited case, the issue is not the incorporation by reference itself, but whether it is relevant. In addition, this was reference to allegations in a pleading (with factual allegations and arguments) whereas, in my Request, the subject is only incorporation by reference to pre-existing factual documentation (if that is not relevant in a particular case, then of course it should be rejected in said case).

(2) The Commission itself does the same. See, e.g., *In the Matter of Communications TeleSystems International Application...MO&O, DA 96-2183*, 11 FCC Rcd 17471; 1996 FCC LEXIS 7206, Rel. Dec. 31, 1996 (emphasis added):

"We placed CTS's application on public notice on July 28, 1995. n7 AT&T filed a petition to deny. n8 CTS filed an opposition to AT&T's petition to deny n9 and AT&T replied. n10 Because the issues raised by CTS's application are substantially similar to those raised by TNZL's facilities-based application, we incorporate by reference the record in that proceeding. AT&T, MCI and Sprint filed petitions to deny TNZL's application...."

(3) The DC Circuit Court and other Circuit Courts accept the same. See, e.g., *Artis v Bernake*, 630 F.3d 1031; 2011 U.S. App. LEXIS 519; 111 Fair Empl. Prac. Cas. (BNA) 300; 94 Empl. Prac. Dec. (CCH) P44,078, Decided January 11, 2011 (emphasis added):

"Despite this evidence in the notes of the Board's own counselors, the district court found the secretaries "failed to provide any meaningful information about specific instances of discrimination." 474 F. Supp. 2d at 19. To the contrary, the secretaries argued consistently that they "counseled fully and completely to the extent allowed by the Board." Dist. Ct. Docket No. 42, at 7. Their response to the Board's motion to dismiss incorporated by reference the previously filed counselors' reports. Id. at ii. In a motion for reconsideration, the secretaries directed the district court's attention to individual counseling reports, including those of Carter, Dorey, Love-Blackwell, and Williams, and quoted them at length. Dist. Ct. Docket No. 72, at 2-3, 17-28. As the Board admitted in response to that motion, "[t]hese reports . . . have previously been filed with [the district court] by both plaintiffs and defendant on

numerous occasions and their contents have been exhaustively discussed in the parties' pleadings." Dist. Ct. Docket No. [*18] 73, at 2. The Board therefore conceded that the evidence of successful counseling that is now before us was properly before the district court.

This case shows, in the decision text and in the summary provide by Lexis, that these previously filed pleadings were not in the identical case, with fully identical parties.

In contrast, Ms. Rasmussen's argument is false, as is easy to confirm. She writes:

As it stated, among other objections, the Commission has long standing precedent that forbids incorporation by reference. The Commission has found that allegations in a pending proceeding are not relevant or material to another proceeding. See *Mobex Network Services, LLC*, Order, 20 FCC Rcd 17957 (2005). See also, Order on Reconsideration, DA 08-1084, 23 FCC 7458 at ¶ 10 (2008); Order, 21 FCC Rcd 3032 at ¶¶ 8-10 (2006), *aff'd*, 22 FCC Rcd 4602 at ¶ 11 (2007). Therefore, to have one set of facts posted for each call sign is prohibited by this FCC precedent.

There is no such "long standing precedent," rather, case review show a long-standing practice to accept what I propose.

Further, the Commission has not found what she next asserts, that would be impossible, and contrary to statutes.

Allegations in one proceeding against a party's or its practice, or other matters, may obviously be relevant in another proceeding, not only since many facts may be common, but since a licensee's violations or compliance in one matter, is indeed considered by the FCC in another case. (As a few examples, revocation or sanction proceedings under 47 USC 312, and in a 47 USC 308 proceeding, the *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 F.C.C. 2d 1179 (1985).)

In addition,

(1) As to the Rasmussen-PSI first cited case, 20 FCC Rcd 17957, DA 05-2947: It does not prohibit reference and incorporation as a practice, it merely found that information referenced in a past pleading was not relevant in the subject one. However, what she failed to note is that some of that information is now being investigated by the FCC Enforcement Bureau, due to my companies' persistence in doing what she suggests is barred: showing in repeated cases and pleadings facts of licensee abuse and lack of character and fitness: new events build on past ones, but past ones are relevant to new case, etc. Also, this decision is not final: it is on appeal.

(2) As to the Rasmussen-PSI second cited case: DA 08-1084, that also did not bar reference and incorporation as a practice, but again the decision found that cited facts in a previous case not relevant or "appropriate" to the subject one. That decision is also on appeal and not final.

(3) As to the Rasmussen-PSI third cited case, 21 FCC Rcd 3032, 2 FCC Rcd 4602: It supports my position, not Rasmussen-PSI's: It states: "those earlier allegations have relevance here only if they can support a finding that PSI lacks the requisite basic character qualifications to hold any Commission license." (Italics in original). "if they can support..." means if they are relevant. (They were relevant to both the conclusion of this cited sentence, and other issues of decisional importance: for this and other reasons, this decision is also still not final and on appeal.)

But also, those decisions as PSI asserts them to hold (which as shown above, is not what they actually hold), make no sense: "relevance" is not dependent on the location of the facts at issue, but whether they are relevant. "Relevance," in the common law of evidence, is the tendency of a given item of evidence to prove or disprove one of the legal elements of the case, or to have probative value to make one of the elements of the case likelier or not. The United States Court of Appeals for the District of Columbia Circuit explains the concept of "matter properly provable" as follows: (emphasis added):

The initial step in determining relevancy is therefore to identify the "matter properly provable." As Professor James explained in a highly-regarded article, "[t]o discover the relevancy of an offered item of evidence one must first discover to what proposition it is supposed to be relevant."

United States v. Foster 986 F.2d 541 (D.C. Cir. 1993) citing James, *Relevancy, Probability and the Law*, 29 Cal. L. Rev. 689, 696 n. 15 (1941)

Under the positions of MCLM and PSI, there is no public interest case for my proposal, with or without any waiver. Extending that logic, my companies and others may and should file with the FCC pleadings with extensive factual exhibits (as I noted, over 1,000 pages at this time, re MCLM related pleadings) in only paper form with the FCC (that is permitted under 47 CFR 1.939 and 1.1106, among other rules). This could result in tens of thousand of pages. While I fail to see any public-interest efficiencies or other benefits to their position and said extension, if adverse parties take a position, and the FCC backs it, I can of course adopt that without their later objection.

As to formality-- (Mr. Brown below writes: "... ,...")-- the FCC has often decided matters as I pose in email communications, and in filings other than under formal-pleading rules. Mr. Brown cites no rules, again. It is illustrative to point out a recent request by MCLM spectrum assignees (in support of MCLM) in this regard: the letter from Keller & Heckan to Ruth Milkman dated January 21, 2011 (the service list does not include you, but did include Mr. Stone, and others at the FCC): This letter sought relief in many restricted proceedings not in a "regular form in accord with the Commission's Rules" if Mr. Brown meant 47 CRF §§ 1.49, 1.50, etc. since it was in letter form, single spaced, without full caption, did not cite clearly facts and law, did not seek leave to file past the pleading cycles, etc. I am not making here an argument as to that letter, but my point is that it is not clear what Mr. Brown means, but again, rules are rules, and if applied to one side, have to be applied to the other side or sides.

Respectfully,
Warren Havens

----- Forwarded Message -----

From: Audrey Rasmussen <ARasmussen@HallEstill.com>
To: Warren Havens <warren.havens@sbcglobal.net>; Roger Noel <Roger.Noel@fcc.gov>
Cc: d brown <d.c.brown@att.net>; "jstobaugh@telesaurus.com" <jstobaugh@telesaurus.com>; Tamir D Damari <tdamari@nossaman.com>
Sent: Thu, March 10, 2011 1:26:55 PM
Subject: RE: Section 1.41 request, regarding recurring factual exhibits

Dear Mr. Noel,

Paging Systems, Inc. reiterates its objections submitted on March 9, 2011 to you. As it stated, among other objections, the Commission has long standing precedent that forbids incorporation by reference. The Commission has found that allegations in a pending proceeding are not relevant or material to another proceeding. See Mobex Network Services, LLC, Order, 20 FCC Rcd 17957 (2005). See also, Order on Reconsideration, DA 08-1084, 23 FCC 7458 at ¶ 10 (2008); Order, 21 FCC Rcd 3032 at ¶¶ 8-10 (2006), aff'd, 22 FCC Rcd 4602 at ¶ 11 (2007). Therefore, to have one set of facts posted for each call sign is prohibited by this FCC precedent.

Further, if the Division interprets this correspondence from Mr. Havens as a waiver request and considers it, Paging Systems, Inc. requests that it be placed on Public Notice for comments by entities, other than Paging Systems, Inc. and MCLM, who will be affected by such a request. See, for example, Letter from the Law Firm of Keller and Heckman LLP to the FCC dated January 21, 2011 in, among others, File No. 0004507921.

Paging Systems, Inc. respectfully requests that the FCC deny the Havens request. In the alternative, if the Commission entertains this waiver, Paging Systems, Inc. requests that it be put on Public Notice for comment by all interested parties.

Audrey P. Rasmussen
Attorney for Paging Systems, Inc.

From: Dennis C. Brown <d.c.brown@att.net>
To: Warren Havens <warren.havens@sbcglobal.net>
Cc: Roger Noel <Roger.Noel@fcc.gov>; audrey rasmussen <arasmussen@hallestill.com>; jstobaugh@telesaurus.com; Tamir D Damari <tdamari@nossaman.com>
Sent: Thu, March 10, 2011 1:52:53 PM
Subject: Re: Section 1.41 request, regarding recurring factual exhibits

Mr. Noel:

Audrey Rasmussen, Esq. has sent me a copy of the response of Paging Systems, Inc. (PSI) to today's restatement and re-presentation of the request of Warren Havens (Havens). On behalf of Maritime Communications/Land Mobile, LLC (MCLM), I respectfully submit the following.

MCLM agrees with and supports the position of PSI. Havens requested an action which can reasonably be expected to affect adversely a large number of persons who cannot be identified at this time. Any request of this nature which Havens makes should be placed on public notice and the public be given the opportunity to comment on it. Electronic correspondence among a limited set of persons is not an appropriate forum for consideration of Havens' proposal.

Having failed to identify the rule section or sections which he desires to be waived, Havens' request is moot. While Havens may be correct that 47 C.F.R. Section 1.47, does not describe what a pleading may and may not include, as MCLM showed earlier, there are elements of Rule 1.47 with which Havens must comply in the absence of a rule waiver. While Havens now indicates that he desires a rule waiver, he does not indicate that he has paid the fee for each of the rule sections which he desires to be waived.

For all the foregoing reasons, MCLM requests that if Havens desires a waiver of the Commission's Rules that he be directed to file a request in regular form in accord with the Commission's Rules and to serve a paper copy of his request on persons whom he knows may be affected thereby, including specifically, MCLM and PSI.

Dennis C. Brown
on behalf of
MARITIME COMMUNICATIONS/LAND MOBILE, LLC
8124 Cooke Court, Suite 201
Manassas, Virginia 20109-7406
703/365-9437

On 3/10/2011 3:54 PM, Warren Havens wrote:
Mr. Noel,

I know of no rule that needs to be waived. The Service rule, 1.47, does not describe what in a pleading can be referenced and incorporated rather than attached. Your decision in Auction 87, which I noted below, is one FCC decision I cite as precedent.

I restate and re-present the Request as follows:

- I seek--

(i) Confirmation that there is no FCC rule that prohibits the reference, and incorporation by reference, to facts in documents with factual information that exists at the time of a pleading in FCC public ULS records, in a petition to deny or other pleading of a license application.

(ii) But if there is any rule that prohibits this, or may prohibit this in some cases, then I seek that

(a) the rule be identified,

(b) how the rule prohibits this explained, and

(c) that the prohibition be waived under 47 CFR §1.925 in the circumstance I describe below, for the efficiencies and public interest reasons presented below which, in sum, show (i) that application of any such

prohibition would be contrary to the purpose of rules regarding efficient licensing matters in cases of challenges to said matters (in petition to deny, or petition for reconsideration proceedings, for example), and waiver would promote said efficiencies; (ii) there is no other alternative in the circumstance to achieve said efficiencies; and (iii) grant would be in the public interest in the circumstances. My presentation below supports the above waiver argument.

Thank you,
Warren Havens

cc. Tamir Damai, at the Nossaman law firm, DC office.
(This firm and Mr. Damir assist companies I manage, including in FCC matters before courts, etc.)

From: Roger Noel <Roger.Noel@fcc.gov>
To: Warren Havens <warren.havens@sbcglobal.net>
Cc: d brown <d.c.brown@att.net>; audrey rasmussen <arasmussen@hallestill.com>; jstobaugh@telesaurus.com
Sent: Thu, March 10, 2011 12:29:40 PM
Subject: RE: Section 1.41 request, regarding recurring factual exhibits

Mr. Havens: Thanks for your email.

As I read your request, the relief you seek is inconsistent with the Commission's Rules and thus grant would require a waiver of the rules. However, you have indicated that you do not seek a rule waiver. Therefore the division is unable to grant your request.

Roger Noel
Chief, Mobility Division, WTB-FCC

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Wednesday, March 09, 2011 1:47 AM
To: Roger Noel
Cc: d brown; audrey rasmussen; jstobaugh@telesaurus.com; Warren Havens
Subject: Section 1.41 request, regarding recurring factual exhibits

Mr. Noel,

I submit here a request under FCC rule Section 1.41.
(Of course, please relay this to another FCC staff person if you are not the most appropriate person to handle this.)

Please reply as soon as convenient, if possibly by the end of this week.

For reasons presented below, grant of this Request will substantially reduce burdens on FCC staff and the parties.

As far as I can tell, I am not making a presentation here on the substance of any proceeding or matter before the FCC, nor indicating any interest in timing. This is regarding procedure. However, I also cc here legal counsel for the licensees of the "Subject Licenses" defined below.

Background

If you recall, with regard to certain petitions several companies I manage expected to file at the end of Auction 87, you responded to a question I raised as to whether my companies could refer to, and incorporate by reference, fairly extensive court case pleadings with exhibits they have previously filed in a case against the FCC in the US 9th Circuit Court of Appeals (that were also in FCC records), rather than restate and re-attached the same materials in said Auction 87 pleadings. You agreed that could be done, and the companies then did that.

There are similar matters I ask about here, as follows.

The matters involve licensing applications by companies that hold AMTS licenses (other than companies I manage, listed below) (the "Subject Licenses"), such as to assign the licenses in whole or in part.

- From time to time, my companies have submitted, and they may continue in cases to submit in the future, petitions (such as petitions to deny) challenging licensing applications involving the Subject Licenses.
- Based on the history of the Subject Licenses, and certain related actions and investigations, *there is a large body of documents that contain factual information submitted as appended factual materials in past petitions challenging the Subject Licenses* (in the range of a thousand pages at this time) and in addition, it is possible there will be additional factual materials that may be found for use as additional appended factual materials, in the event future challenge petitions are filed.
- Said factual materials apply to the Subject Licenses and the subject licensees: thus, it is likely to be relevant to any future challenge pleadings: herein called "Common Factual Documentation." (There may be additional factual information particular to a future licensing application: I do not address those in my Request below: their quantity is likely to be relatively modest.)
- Due to the nature of said Common Factual Documentation, and related legal arguments, the past challenge petitions and possible future ones directly or indirectly involve a large number of parties which must be served (some as direct parties, others due to FCC ex parte rules, strictly adhered to): many dozens at this time, as is shown in recent-past challenge petitions regarding the Subject Licenses.
- This dozens of parties to be served, multiplied by the number of pages of said related factual documentation, results in a range of ten thousand or possibly more pages per petition service (my office could give a more precise estimate, during work hours, if you want that).

Request

In the circumstance, what I request is the following:

- Permission to file on ULS, under the Subject Licenses, the above noted Common Factual Materials, with a summary list of each document, and a document number for reference.
- In any future challenge petition pleading, reference and incorporation by reference of some or all the Common Factual Materials that would, at such time, be in Commission records (on ULS under the Subject Licenses) and easily accessible.

Reasons for Grant

If this Request is granted, it will reduce the burdens on FCC staff and all parties in review of the Common Factual Materials with regard to each pleading, and with regard to review of any other pleading that also draws from the Common Factual Materials, since, under grant of the Request:

- (a) Said Common Factual Materials will not be submitted repeatedly with successive challenge pleadings which may involve changes in said materials, and would require review to see if any materials were changed. Instead, if the Request is granted, any changes would be submitted as a new item to the Common Factual Materials.
- (b) Said materials will be understood by reviewers (explained in any challenge pleading) as residing in one place and in one form: on ULS under the Subject Licenses and in PDF form, including some items in color, in better resolution, etc. (and not also in served hard copy without color, with poorer resolution, etc.)
- (c) The Requested procedure will also reduced the need for tens of thousands of pages of hard copy production and mailing by my companies, and additional burdens of recipients: in receipt, logging, processing and storage of thousands of pages by the dozens of parties served (only burdens, with no benefits). This is also environmentally objectionable.
- (d) The Request will create a more consolidated, simple, organized set of factual materials presented by my companies than if the Request is not granted.

There will be no prejudice to any party involved if the Request is granted: no loss of time or reduction in information, etc., only efficiency improvements.

In addition, as you know, ULS was created for efficiencies (and accuracy) of electronic filing and documentation. The recent Commission decision to implement electronic service to parties is also for similar efficiency. My Request above is for like reasons.

No Rule Waiver Sought

This Request does not involve any waiver of any rule, including the FCC rule for service, Section 1.47. If the Request is granted, service will be fully in accord with Section 1.47 as it exists now, and as it may be amended (after amendments are in legal effect). This Request only deals with factual matters that would already be in FCC records, clearly identified and quickly available on ULS, as described above.

Respectfully,

Warren Havens

Individually, and as

President of:

Skybridge Spectrum Foundation

ATLIS Wireless LLC

V2G LLC

Environmentel LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

Berkeley California

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CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 19th day of April, 2011, the foregoing **OPPOSITION TO APPLICATION FOR REVIEW OR IN THE ALTERNATIVE SECTION 1.41 REQUEST** was served on the following persons by first-class United States mail, postage prepaid:

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s/ Gladys L. Nichols _____