

FILED/ACCEPTED

JAN 10 2012

92-257

Danielle BarnesFederal Communications Commission
Office of the Secretary

From: Scot Stone
Sent: Thursday, December 29, 2011 1:38 PM
To: 'Warren Havens'; 'Jimmy Stobaugh'
Cc: 'Dennis C. Brown'; 'Jason Smith'; 'DeSoto, Kurt'; 'kurtdesoto@wileyrein.com'; 'xreardon@earthlink.net'; 'rpettit@wileyrein.com'; 'Audrey Rasmussen'; 'dhill@hallestill.com'; Marlene Dortch; Roger Noel
Subject: RE: Request for Extensions of Time to File Pleadings re: Certain FCC Orders, Expedited Action Requested

Messrs. Havens and Stobaugh:

The 30-day deadline for filing a petition for reconsideration of an action by the Commission or by any designated authority within the Commission is statutory, *see* 47 U.S.C. Sec. 405(a), and thus cannot be waived or extended. *See, e.g.,* TV Communications Network, Inc., *Order on Reconsideration*, 26 FCC Rcd 14891 (2011). Therefore, to the extent that you seek extensions of time to file petitions for reconsideration, the request IS DENIED.

The 30-day deadline for filing an application for review of an action on delegated authority, however, is embodied only in a Commission rule, and therefore can be waived. *See, e.g.,* Skybridge Spectrum Foundation, *Memorandum Opinion and Order*, 26 FCC Rcd 13800, 13800 n.1 (2011). To the extent that you seek an extension of time to file applications for review of DA 11-1952 and DA 11-1953, the request IS GRANTED IN PART, and both deadlines are extended to **January 9, 2012**. (No extension of time to file an application for review of FCC 11-174 is warranted because the Commission's rules do not authorize the filing of an application for review of a Commission-level action. *See* MarITEL, Inc. and Mobex Network Services, LLC, *Second Memorandum Opinion and Order*, FCC 11-173, para. 3 (rel. Nov. 29, 2011).)

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. Secs. 0.131, 0.331.

Scot Stone
 Deputy Chief, Mobility Division
 Wireless Telecommunications Bureau
 Federal Communications Commission

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Thursday, December 29, 2011 8:23 AM
To: Marlene Dortch; Roger Noel; Scot Stone
Cc: Dennis C. Brown; Jason Smith; DeSoto, Kurt; kurtdesoto@wileyrein.com; xreardon@earthlink.net; rpettit@wileyrein.com; Audrey Rasmussen; dhill@hallestill.com; Jimmy Stobaugh
Subject: Re: Request for Extensions of Time to File Pleadings re: Certain FCC Orders, Expedited Action Requested

Further addition below - before start of business- no need for anyone to read previous email versions.

(The previous versions was filed under the captioned file numbers and docket in the three Orders subject of this Request.

This version will be filed the same, later today once Petitioners are in their office in business hours.)

From: Warren Havens <warren.havens@sbcglobal.net>
To: "Marlene.Dortch@fcc.gov" <Marlene.Dortch@fcc.gov>; "roger.noel@fcc.gov" <roger.noel@fcc.gov>; Scot Stone <Scot.Stone@fcc.gov>
Cc: Dennis C. Brown <d.c.brown@att.net>; Jason Smith <jsmith@maritelusa.com>; "DeSoto, Kurt"

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1/9/2012

<KDeSoto@wileyrein.com>; "kurtdesoto@wileyrein.com" <kurtdesoto@wileyrein.com>; "xreardon@earthlink.net" <xreardon@earthlink.net>; "rpettit@wileyrein.com" <rpettit@wileyrein.com>; Audrey Rasmussen <ARasmussen@HallEstill.com>; "dhill@hallestill.com" <dhill@hallestill.com>; Jimmy Stobaugh <jstobaugh@telesaurus.com>; Warren Havens <warren.havens@sbcglobal.net>

Sent: Wednesday, December 28, 2011 10:34 PM

Subject: Re: Request for Extensions of Time to File Pleadings re: Certain FCC Orders, Expedited Action Requested

An addition is hereby made to the below, and some reformatting.

This amended version will be filed on ULS and EFCS under the captions of the subject Orders.

- W. Havens

From: Jimmy Stobaugh <jstobaugh@telesaurus.com>

To: "Marlene.Dortch@fcc.gov" <Marlene.Dortch@fcc.gov>; "roger.noel@fcc.gov" <roger.noel@fcc.gov>; Scot Stone <Scot.Stone@fcc.gov>

Cc: Warren Havens <warren.havens@sbcglobal.net>; Jimmy <jstobaugh@telesaurus.com>; Dennis C. Brown <d.c.brown@att.net>; Jason Smith <jsmith@maritelusa.com>; "DeSoto, Kurt" <KDeSoto@wileyrein.com>; "kurtdesoto@wileyrein.com" <kurtdesoto@wileyrein.com>; xreardon@earthlink.net; rpettit@wileyrein.com; Audrey Rasmussen <ARasmussen@HallEstill.com>; dhill@hallestill.com

Sent: Wednesday, December 28, 2011 6:47 PM

Subject: Request for Extensions of Time to File Pleadings re: Certain FCC Orders, Expedited Action Requested

To: Marlene Dortch Secretary FCC, Attention: the Commission

To: Wireless Telecommunications Bureau, Attention: Roger Noel and Scot Stone

Initial Notes:

- Due to the due dates currently set (today and tomorrow, as discussed below), Petitioners ask that this request be decided by close of business East Coast time today.
- Petitioners believe that this request can be addressed at the Bureau level for reasons indicated below, including the new facts and evidence to be presented.
- Also, Petitioners noted that they obtain an auto response from the email of the Secretary, Marlene Dortch, stating that she is out of the office, and do not know if anyone else at her office is processing email for the FCC at the Commission level. The other FCC staff that are being sent this email may, in this case, pass this email on to any other person that may act for Ms. Dortch in this circumstance.

Re: Request for Extensions of Time to File Pleadings, Expedited Action Requested

A copy of this will be filed under the file numbers and docket number in the caption of FCC 11-174. In addition, oral notice has been given to the parties via their counsel or contact copied on this email.

The undersigned parties ("Petitioners") intend to file a formal pleading, associated with and at the same time as requests under Sections 1.41 and 1.2, in response to FCC 11-174, Order on Reconsideration, released November 29, 2011, regarding license assignment applications from MariTel to Motorola, Inc. and certain licensing matters of Petitioners in Docket No. 92-257 (the "Order").

The further formal pleading will present what are clearly new facts and evidence that have arisen after Petitioners' pleadings disposed of in the Order, including but not limited to facts and evidence in (1) the HDO, FCC 11-64, released April 19, 2011, and evidence that has arisen in the hearing under the HDO, which are of decisional importance to matters disposed of in the Order,*** and (2) the Chapter 11 bankruptcy court case of Maritime Communications/Land Mobile LLC (various evidence brought out in

discovery and filings made in the case),*** and that if properly considered may result in grant of the relief sought by Petitioners regarding the matters captioned in the Order, and further should be considered in the public interest (even if there are procedural defects, which Petitioners believe is not the case in these proceedings thus far, and will not be the case with regard to the contemplated further formal pleading under relevant case law, and the FCC practice of responding to Section 1.41 requests that demonstrate reasons for response in the public interest).

 *** This substantial new information bears directly and otherwise upon issues in FCC 11-174, and (see below) DA 11-1953.

The Order presents certain complex issues of procedural law that are not clear in Section 1.106 combined with Section 1.115, and case precedent on those two rules. Petitioners plan to present a request under Section 1.2 for clarification, so that they will know how to proceed in the two matters captioned in the Order, and to ask that the further formal pleading, indicated above, will be held in abeyance until the Commission addresses the Section 1.2 request. Petitioners plan to proceed as just stated for administrative efficiency, including so that Petitioners do not make certain procedural arguments that they believe are sustainable under the direct reading of the rules and certain case precedents, where on the other hand Commission staff might have a different reading and point to other precedent. Due to the complexities involved, completing the draft of the Section 1.2 request takes substantial time. Further, the formal pleading to also ask for processing under Section 1.41 in the alternative requires completion of substantial analysis of recently obtained evidence and associated with the hearing under HDO, FCC 11-64, and the chapter 11 bankruptcy of Maritime Communications/Land Mobile LLC that pertain to both matters captioned in the Order. For example, in recent weeks there have been many filings in the bankruptcy case, shown on the PACER online federal court case document system, and transcripts from depositions and an all day hearing in the bankruptcy case.

Petitioners pursued obtaining an expedited copy of the transcript of the all day hearing and obtained a copy last week. Petitioners have to complete analysis of that transcript along with scores of documents and deposition testimony also filed in the bankruptcy that were subject of the all day hearing.

Petitioners have only had several business days for completing the above tasks due to the holiday season.

In addition, Petitioners have due on Friday two formal pleadings in response to two Bureau orders:

(i) *Order and Order on Reconsideration*, DA 11-1953, regarding assignment by Motorola of certain VPC spectrum. This involves substantially the same issues and new facts indicated above regarding the Order, FCC 11-174. Thus, without an extension, Petitioners would need to complete and file two formal pleadings indicated above, one tomorrow and one on Friday.

(ii) In addition, Petitioners plan to file an appeal of Order on Reconsideration, DA 11-1952, (regarding a certain licensing action by Paging Systems, Inc. ["PSI"]) in which Petitioners plan to submit a Section 1.2 request to obtain clarity on underlying issues of law, so that they may proceed with administrative efficiency regarding substance of what to prosecute versus withdraw. However, at the same time, Petitioners would present a protective filing with the substance of the relief requested, subject to a decision on the Section 1.2 request (the substantive request would be held in abeyance until the procedural issues are clarified in response to the Section 1.2 request). Petitioners also obtained last week new facts relevant to issues to be presented in the just noted pleadings in a court case not involving PSI, in a sworn statement regarding PSI and its controller and certain PSI FCC matters: Petitions could not have earlier with reasonable diligence obtained this information, but found it inadvertently when seeking facts pertinent to the parties in that case. Petitioners need the additional time requested below, to submit the above noted pleadings, to process this new information, undertake related investigations, and complete the pleadings.

On an equitable basis, where parties in multiple FCC proceedings are faced with many FCC decisions that the Commission has chosen to issue on or about the same date, causing a deadline to appeal (if said parties have good cause for appeal) within a short window (in this case 30 days), then it is equitable to extend the appeal period on at least the more complex cases.

- In this regard, the Commission issued within two days, the Order, FCC 11-174, and DA 11-1952 and DA 11-1953, and two other Orders regarding administrative appeals filed by Petitioner (five in total).

Petitioners do not seek here any extension of time to file any responsive pleading to said two other Orders (Petitioners have not completed their analysis as to whether they will file any such further appeal).

Further, the Administrative Law Judge in the FCC formal hearing under HDO FCC 11-64 (noted above) ordered that SkyTel (a term used in said Hearing for Petitioners) and the FCC Enforcement Bureau cooperate and consolidate certain discovery undertakings in the hearing, which SkyTel is doing including in recent weeks, via its counsel in the case (Drinker Biddle law firm, primarily). On the SkyTel- Petitioners side, this involves months of discovery, hearing and pleading undertakings in the related bankruptcy case involving MCLM (MCLM has asked the ALJ and obtained various delays in the hearing, by pleading various allegations, suggested "Second Thursday" future action before the FCC (not in the hearing) and for various relief: MCLM to date effectively obtained said relief, delaying the hearing, but shifting to the bankruptcy certain matters that otherwise would have progressed in the hearing, including as to discovery. The point made in this paragraph relevant to the requested extensions of time to file, is that SkyTel has had to use major time, resources and expense in the last month, especially the last several weeks, in the just-note matters, in response to the ALJ directives, and to benefit the FCC purposes stated in the HDO, FCC 11-64. This is additional good cause for grant of these extension requests.

Finally, we note that the FCC release date of these Orders resulted in the deadlines for any appeal by Petitioners to fall in the middle of the Christmas to New Year holiday period: a period in which many persons in business and government take off, or partly off (for example, as shown by auto-response emails from parties copied on this email, stating that they will be off until after Jan 1). The FCC has in the past recognized this, alone, as a reason to grant a substantial extension. See. e.g. In the Matter of Virtual Geosatellite, LLC; Request for Two-Week Extension of Performance Bond Filing Deadline, DA 07-222, 22 FCC Rcd 938; 2007 FCC LEXIS 3105, January 25, 2007:

We find that the unique circumstance of a new satellite system license issued to a new entrant on the eve of the Christmas holiday season merits a limited waiver of the bond rule. A two-week extension will provide Virtual Geo with the benefit of 30 calendar days in which business offices are fully staffed and operational before having to post the bond. This amount of time is consistent with the time available to licensees whose licenses were issued at any other time of the year. n8

----- Footnotes -----

n8 In other contexts, the Commission has recognized the difficulty of meeting deadlines that fall near the end-of-year-holidays due to unavailability of necessary personnel. The Commission has granted shortextensions of time in such situations. See, e.g., Fibertech Networks, LLC, Petition for Rulemaking, Order, 21 FCC Rcd 155 (Wireline Comp. Bur. 2006); Wireline Competition Bureau Grants Motion for Extension of Time to File Opposition to Request for Stay in the Communications Assistance for Law Enforcement Act and Broadband Access and Services Proceeding, Public Notice, 18 FCC Rcd 26307 (Wireline Comp. Bur. 2003); AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, Order, 18 FCC Rcd 13108 (Wireline Comp. Bur. 2003).

For the above reasons, especially considered together, Petitioners request:

(i) that the time period to file the above-noted additional formal pleadings (and the associated Section 1.2 requests) of Order, FCC 11-174, and Order and Order on Reconsideration, DA 11-1953, be extended until January 19, 2012, or as much time as the FCC may decide, and

(ii) that the due date for a formal pleading regarding Order on Reconsideration, DA 11-1952, be extended to January 9, 2012, or as much time as the FCC may decide (given that January 2nd is a federal holiday, January 9th would be an effective one week extension).

Since the current filing deadlines are tomorrow and Friday, Petitioners request expedited action on this request.

The form of the further formal pleading of Order, FCC 11-174 would be based upon new facts indicated above, including substantial exhibits to show the documentary evidence. Petitioners are in the process of researching precedents that may clarify whether such a further formal pleading should be presented under Section 1.106(b) and (c), or Section 1.115(g). For that reason, Petitioners are using above "further formal pleading".

Sincerely,

/s/

Warren Havens,
Jimmy Stobaugh

Warren Havens
President
Skybridge Spectrum Foundation
Environmental LLC
Intelligent Transportation & Monitoring Wireless LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
V2G LLC

Cc: Kurt DeSoto, counsel to Motorola

Robert L. Pettit, counsel to Motorola

Jason Smith, President, Maritel

Dennis Brown, legal counsel to Maritime Communications/Land Mobile LLC (and formerly Mobex)

Audrey Rasmussen, counsel to Paging Systems, Inc.

David L. Hill, counsel to Paging Systems, Inc. (Ms. Rasmussen's voicemail said she is out and will have access to email but not voicemail. Therefore, oral notice was also left with Mr. Hill.)

John Reardon, President, Mobex (Note: Petitioners attempted to call Mr. Reardon at 703-299-4452 as listed on Call sign WLN611, but that number is no longer in service. In addition, Petitioners contacted Robert Gurs, who is also listed on the just noted call sign as a contact for Mobex, but Mr. Gurs informed Petitioners' representative that he is no longer counsel to Mobex and that Mr. Reardon should be contacted. Petitioners do not know if Mr. Brown still represents Mobex, but if so, then he has been given notice and is copied here. Also, Petitioners are using here the email they have that has functioned for Mr. Reardon in the past.)