

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Motions for Stay of Auction No. 57 and Requests)
for Dismissal or Disqualification)
)

ORDER

Adopted: September 14, 2004

Released: September 15, 2004

By the Chief, Auction and Spectrum Access Division, Wireless Telecommunications Bureau:

1. We have before us various motions to stay the Commission’s auction of licenses for Automated Maritime Telecommunications System (“AMTS”) spectrum (Auction No. 57), and related requests to dismiss or disqualify applicants and for other relief. Following the release by the Wireless Telecommunications Bureau of a public notice announcing procedures and minimum opening bids for Auction No. 57,¹ Warren C. Havens, Telesaurus Holdings GB LLC and Telesaurus VPC LLC filed a Petition for Partial Reconsideration seeking, among other things, the disqualification of Mobex Network LLC (“Mobex”) from participation in Auction No. 57 and a delay of the announced auction schedule.² Shortly before the August 20, 2004 upfront payment deadline, Mobex submitted several filings seeking a delay of the auction schedule and disqualification of the short-form applications filed by Telesaurus and AMTS Consortium, LLC.³ In these filings, Mobex requests that the Bureau issue a declaratory ruling on whether two commonly-controlled entities can participate in the same auction.⁴ Mobex asks that the Bureau dismiss the two short-form applications that are each controlled by Warren C. Havens,⁵ and stay

¹ Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd. 9518 (2004) (“*Auction No. 57 Procedures Public Notice*”).

² Petition for Partial Reconsideration of Warren C. Havens, Telesaurus Holdings GB LLC and Telesaurus VPC LLC filed June 25, 2004 (“Havens Petition for Reconsideration”); Request for Stay of Warren C. Havens, Telesaurus Holdings GB LLC and Telesaurus VPC LLC filed July 2, 2004 (“Havens Request for Stay”). These parties submitted a request to withdraw these filings on or about August 28, 2004. *See* *Withdrawal of Filings of Warren C. Havens, Telesaurus Holdings GB LLC and Telesaurus VPC LLC* filed August 28, 2004 (“Havens Withdrawal”).

³ Specifically, Mobex Network Services, LLC (Mobex) has filed: (i) Motion for Stay – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57, dated August 13, 2004 (“Motion to Stay Auction”); (ii) Request for Declaratory Ruling – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57, dated August 13, 2004 (“Request for Declaratory Ruling”); (iii) Motion for Stay – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57, dated August 13, 2004 (“Motion to Stay Upfront Payment Date”); and (iv) Informal Request for Action – Urgent Action Requested, Automated Maritime Telecommunications System, Auction #57, dated August 13, 2004 (“Motion to Dismiss”).

⁴ Request for Declaratory Ruling at 1.

⁵ Motion to Dismiss at 1.

the deadline for submission of upfront payments until thirty days after the Bureau resolves the Request for a Declaratory Ruling.⁶ Mobex further requests that the Bureau stay the start date for bidding in Auction No. 57 until thirty days after the Commission has lifted the requested stay of the deadline for submission of upfront payments.⁷ For the reasons set forth below, we dismiss the Havens filings, deny both of Mobex's motions for stays and its motion to dismiss, and confirm that there is no *per se* prohibition against participation in a spectrum auction by commonly-controlled entities.

I. BACKGROUND

2. On April 4, 2004, the Wireless Telecommunications Bureau ("Bureau") released a *Public Notice* announcing the scheduling of Auction No. 57 and seeking comment on a variety of procedures for Auction No. 57.⁸ The Bureau issued the *Auction No. 57 Comment Public Notice* pursuant to delegated statutory authority.⁹ Consistent with the Commission's statutory obligation to ensure that potential bidders have adequate time before the auction to familiarize themselves with the specific rules and procedures that will govern the auction, on May 26, 2004, the Bureau released a public notice announcing the procedures and minimum opening bids for Auction No. 57.¹⁰

3. On June 25, 2004, Warren C. Havens, Telesaurus VPC LLC, and Telesaurus Holdings GB LLC filed a Petition for Partial Reconsideration of the *Auction No. 57 Procedures Public Notice*. These entities also submitted a Request for Stay of Auction No. 57 on July 2, 2004. In these filings, the Petitioners sought to have the Bureau bar Mobex from participation in Auction No. 57 and delay the auction until such relief was granted.¹¹ Mobex filed a Limited Opposition to the Petition.¹²

⁶ Motion to Stay Upfront Payment Date at 1.

⁷ Motion to Stay Auction at 1. Telesaurus VPC LLC, AMTS Consortium, and Warren Havens (the "Responders") have filed pleadings in opposition, and Mobex responded. The Responders have filed: (i) Opposition to the Mobex § 1.41 Request to Dismiss the Applications of Telesaurus VPC LLC and AMTS Consortium LLC to Participate in Auction No. 57, dated September 8, 2004 ("Opposition to Motion to Dismiss"); (ii) Opposition to Request for Declaratory Ruling, AMTS Auction 57, dated September 7, 2004 ("Opposition to Request for Declaratory Ruling"); and (iii) Opposition to the Two Motions for Stay, AMTS Auction 57, dated September 7, 2004 ("Opposition to Motions for Stay"). In response, Mobex filed: (i) Reply to Opposition to Request for Declaratory Ruling, Automated Maritime Telecommunications System, Auction No. 57, dated September 14, 2004; (ii) Reply to Opposition to Motions for Stay, Automated Maritime Telecommunications System, dated September 14, 2004; and (iii) Reply to Opposition to Informal Request for Action, Automated Maritime Telecommunications System, dated September 14, 2004. Although it made this filing electronically with the Commission less than one day before the start of the bidding in Auction No. 57, Mobex chose to serve the other bidders via regular mail. Also, on September 14, 2004, Paging Systems, Inc. submitted a letter seeking a response to the ruling requested by Mobex in its Motion to Dismiss. Letter from Audrey P. Rasmussen to Marlene H. Dortch dated September 14, 2004.

⁸ "Auction of Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Comment Sought on Reserve Process or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, 19 FCC Rcd 6274 (2004) ("*Auction No. 57 Comment Public Notice*"); 47 U.S.C. § 309(j)(3)(E)(i).

⁹ 47 U.S.C. §§ 309(j)(3) and (15); 47 C.F.R. § 0.131(c).

¹⁰ 47 U.S.C. § 309(j)(3)(E)(i) (as amended by Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (establishing obligation of the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed before issuance of bidding rules, to permit notice and comment on proposed auction procedures")); *Auction No. 57 Procedures Public Notice*, 19 FCC Rcd. 9518.

¹¹ Havens Petition for Partial Reconsideration; Havens Request for Stay.

¹² Limited Opposition to Petition for Partial Reconsideration of Mobex dated July 8, 2004 ("Limited Opposition").

4. On August 4, 2004, the Bureau released its *Auction No. 57 Status Public Notice* which announced that five short-form (FCC Form 175) applications to participate in Auction No. 57 had been submitted.¹³ The *Auction No. 57 Status Public Notice* identified three applications accepted for filing and two applications that were “incomplete.”¹⁴ Among those accepted for filing were applications filed by Telesaurus-VPC, LLC (“Telesaurus”) and AMTS Consortium, LLC (“Consortium”), both of which applicants are controlled by Warren C. Havens.¹⁵ According to the Telesaurus and Consortium short-form applications, these entities have different ownership structures, although Mr. Havens is a controlling interest for each entity.¹⁶ Mobex was the third application accepted for filing. Thomas K. Kurian and Paging Systems, Inc. were provided with an opportunity to address deficiencies in their respective applications and resubmit them.¹⁷ After further review, the Bureau accepted these resubmitted applications.¹⁸ Mobex, however, did not submit an upfront payment and thus was not qualified to participate in Auction No. 57.¹⁹ One week prior to the upfront payment deadline for Auction No. 57, Mobex filed its request to have the Commission: (i) stay the start of bidding in Auction No. 57; (ii) stay the due date for upfront payments; (iii) declare that applications submitted by a commonly controlled entity cannot participate in a spectrum auction; and (iv) dismiss the applications of Warren Havens.²⁰

II. DISCUSSION

A. Havens Petition for Reconsideration and Request For Stay

5. In a filing dated August 28, 2004, following the release of the *Auction 57 Status Public Notice*, the Havens-affiliated entities withdrew their Petition for Partial Reconsideration and Request for Stay.²¹ Having reviewed the facts and circumstances surrounding the request to withdraw, we conclude that grant of this request would be in the public interest. Accordingly, Mobex’s related Limited Opposition is dismissed as moot.

B. Mobex’s Motion to Dismiss and Request for Declaratory Ruling

6. Mobex’s Motions to Stay Auction No. 57 and Stay the Due Date for the Upfront Payments

¹³ Automated Maritime Telecommunications System Spectrum Auction, *Public Notice*, DA 04-2468 (rel. August 4, 2004) (“*Auction No. 57 Status Public Notice*”). The five applications were received from (i) AMTS Consortium, LLC; (ii) Telesaurus-VPC, LLC; (iii) Mobex; (iv) Thomas K. Kurian; and (v) Paging Systems, Inc. *See id.*

¹⁴ *Id.* Applicants that had incomplete applications were provided with an opportunity to address the deficiencies with their applications.

¹⁵ *Id.*

¹⁶ The Responders state that Consortium and Telesaurus are not identical because Telesaurus has interest holders other than Havens. Further, according to the Responders, Consortium and Telesaurus have separate business plans and separate funds and accounting which they claim allows for different sources of capital. *See* Opposition to Request for Declaratory Ruling at 5, n. 13 and page 9. *Compare* FCC Form 175 filed by Telesaurus on July 19, 2004 with FCC Form 175 filed by Consortium on July 19, 2004. Short-form applications and other information concerning Auction No. 57 may be viewed at: <http://wireless.fcc.gov/auctions/57/>.

¹⁷ *Auction No. 57 Status Public Notice* at 1-2, Attachment B. *See* 47 C.F.R. § 1.2105(b)(2).

¹⁸ Automated Maritime Telecommunications System Spectrum Auction, *Public Notice*, DA 04-2721, (rel. August 27, 2004) (“*Auction No. 57 Qualified Bidders’ Public Notice*”) at 1, Attachment A.

¹⁹ *Auction No. 57 Qualified Bidders’ Public Notice* at Attachment C.

²⁰ *See* Motion to Stay Auction; Request for Declaratory Ruling; Motion to Stay Upfront Payment Date; Motion to Dismiss.

²¹ Havens Withdrawal.

rest entirely on its presumption that it will prevail on the merits of its Motion to Dismiss and Request for a Declaratory Ruling in which it contends that two commonly-controlled entities cannot participate as separate bidders in Auction No. 57 and its Motion to Dismiss both Havens' Applications. Thus, we begin by analyzing the merits of Mobex's Request for a Declaratory Ruling and Motion to Dismiss.

7. Mobex claims that it cannot "conceive of any legitimate reason why two or more commonly controlled entities would or should be permitted to participate in an auction in which both commonly controlled entities file to bid on the exact same licenses."²² Mobex lists what it believes are the reasons why Havens might want to participate in Auction No. 57 using two commonly controlled applicants.²³ Mobex claims that permitting two or more commonly controlled entities to participate in the same auction would be unfair to other bidders.²⁴

8. After review of the short-form applications, we have found that Telesaurus and Consortium's disclosure of their ownership structures and joint bidding agreements comply with the requirements for short-form applications.²⁵ Consistent with the Part 1 disclosure requirements,²⁶ Consortium and Telesaurus have each disclosed that: (i) Havens is the controlling interest for both applicants; (ii) Havens manages both applicants; and (iii) there is a joint bidding agreement between the two applicants.²⁷ Mobex does not dispute that both entities have made full disclosure. Rather Mobex argues that because both entities are commonly controlled, both applications should be dismissed.²⁸

9. Mobex says that it cannot conceive of any legitimate reason why two or more commonly controlled entities would or should be permitted to participate in an auction in which both commonly controlled entities bid on the exact same licenses. Mobex's inability to understand the underlying approach of Telesaurus and Consortium is not relevant to our determination. Significantly, Mobex has cited no rule or other authority that prohibits common control of two applicants seeking to participate in the same auction. Mobex also argues that if Havens wanted the licenses that he might win to be held by more than one entity, he could use one entity to bid, then make a *pro forma* assignment of licenses to be held by another entity.²⁹ For their part, Telesaurus and Consortium state that the two entities have separate business plans and separate funds and accounting which allows for different sources of capital.³⁰ Telesaurus and Consortium also argue that they would need to seek and obtain Commission approval before a transfer or assignment could be completed.³¹ We note that bidders may have other possible legitimate business reasons for proceeding in this fashion. For example, such an approach may facilitate implementation of different business plans, financing requirements, or marketing needs, avoid transactional costs in the secondary market, or meet other business needs. Moreover, we note that, although they share the same controlling interest, Telesaurus and Consortium have different ownership

²² Request for Declaratory Ruling at 2.

²³ *Id.* at 2-3.

²⁴ Request for Declaratory Ruling at 1-2.

²⁵ See 47 C.F.R. §§ 1.2105(a)(2)(viii), (ix); see also *Auction 57 Qualified Bidders Public Notice* (accepting Telesaurus and Consortium short-form applications).

²⁶ 47 C.F.R. §§ 1.2105 (a)(2)(viii-ix), 1.2105(c)(1).

²⁷ Consortium Form 175, Exhibits A and B (filed July 19, 2004).

²⁸ Motion to Dismiss at 1-3. Mobex does not explain why the infirmity it alleges would not be remedied by dismissing the application of just one of the two commonly-controlled entities.

²⁹ *Id.* at 2.

³⁰ Opposition to Motion for Declaratory Ruling at 5, 9.

³¹ *Id.* at 10.

structures.³²

10. We disagree with Mobex's contentions that we must forbid participation in an auction by two commonly-controlled entities because it would be *per se* anti-competitive or would necessarily facilitate gaming of the auction process. Mobex contends that participation in Auction No. 57 by both Telesaurus and Consortium would be anti-competitive because the two entities cannot be expected to compete against each other. We note, however, that there is no requirement that bidders compete against all other bidders in an auction. Mobex also ignores that bidders are expressly permitted to have a joint bidding agreements, joint marketing agreements, and post auction agreements concerning market structure.³³

11. Mobex asserts that Havens may be "badly motivated," and may intend for one of the applicants that he controls to be "a throw-away entity to be used and discarded when its purpose had been achieved."³⁴ To support this proposition, Mobex points out that Consortium reported having no gross revenue for the past three years.³⁵ According to Mobex, Havens could intend to use one of his two entities, more likely Consortium, to bid up the prices that other bidders must pay for licenses which Havens does not actually desire to win.³⁶ As an alternative, Mobex speculates that Consortium could raise bids licenses to excessive levels and then simply withdraw or vanish. Mobex fails to provide any factual support for these allegations. In our experience, we have found that it is not uncommon for applicants to form new entities to participate in spectrum auctions. We decline to draw any negative inference from that fact alone.

12. We disagree with Mobex's assertion that Mr. Havens would not incur any risk if one of the applicants that he controls fails to live up to its bid obligations.³⁷ Mobex fails to acknowledge that the Commission has established safeguards to protect against anti-competitive bid withdrawals or defaults. For example, bidders that withdraw high bids during an auction are subject to the bid withdrawal payments specified in section 1.2104(g) of the Commission's rules.³⁸ Moreover, in order to deter anti-competitive strategic bidding during the Auction No. 57, the Bureau has limited the number of rounds in which bidders may place withdrawals to two rounds.³⁹ Also, any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in section 1.2104(g)(2) of the Commission's rules.⁴⁰ Pursuant to section 1.2109(d) of the Commission's rules, bidders who are found to have violated anti-trust laws or the Commission's rules in connection with their participation in an auction may be subject to forfeiture of monies on deposit and may be barred from participation in future auctions.⁴¹

13. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or

³² See note 16, *supra*.

³³ 47 C.F.R. §§ 1.2105 (a)(2)(viii-ix), 1.2105(c)(1).

³⁴ Motion to Dismiss at 2.

³⁵ *Id.* at 1.

³⁶ Motion for Declaratory Ruling at 1-2.

³⁷ See Motion to Dismiss at 2.

³⁸ 47 C.F.R. § 1.2104(g).

³⁹ See *Auction No. 57 Procedures Public Notice*, 19 FCC Rcd at 9546-47.

⁴⁰ 47 C.F.R. § 1.2104(g)(2).

⁴¹ 47 C.F.R. § 1.2109(d).

bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.⁴² The upfront payment requirement also protects against insincere bidding.⁴³ In this case, Consortium and Telesaurus have each made substantial upfront payments, which the Bureau can use in part to satisfy any payment obligations that may be incurred by these bidders in connection with their bidding activity.⁴⁴

14. Finally, we are not persuaded by Mobex's argument that Havens's interest in two separate applications provides an informational advantage relative to other bidders and may effectively provide Havens with twice as many bidding waivers.⁴⁵ Mobex has not explained how one applicant could benefit the other with the use of bidding waivers. In this regard, we note that each bidder is required to meet its own bidding activity requirements without regard to the activity levels of any other participants in the auction (whether affiliated or not).⁴⁶

15. Mobex analogizes to a hypothetical situation in which one poker player could see, bet, raise, or fold another player's hand.⁴⁷ We do not see the parallels between card games and the Commission's competitive bidding processes, in which all bidders' actions are made public at the end of each bidding round. The competitive bidding process is designed to be transparent. Indeed, all applicants are required to disclose their ownership structures and the existence of any agreements or understandings which relate in any way to the licenses being auctioned.⁴⁸ Participation by a bidder in the auction reveals useful information to other bidders about its demand and valuations for licenses.⁴⁹ Such full information promotes an efficient auction process which increases the likelihood that the winning bidder will be the party that most highly values the license. We also note that the Bureau has reserved the right to stop an auction for any reason that affects the fair and competitive conduct of competitive bidding.⁵⁰ For these reasons, we find no basis to grant Mobex's Motion to Dismiss and Request for a Declaratory Ruling.

C. Mobex's Requests for Stay

16. We now turn to the merits of Mobex's Motions to Stay Auction No. 57 and Motion to Stay Upfront Payment Date. The Motion to Stay Upfront Payment Date and Motion to Stay the Auction are grantable if Mobex can show that: (i) Mobex is likely to prevail on the merits; (ii) Mobex will suffer irreparable harm, absent a stay; (iii) other interested parties will not be harmed if the stay is granted; and (iv) the public interest would favor a grant of the stay.⁵¹ The Bureau finds that Mobex fails to meet this standard. Mobex has not demonstrated that it is likely to prevail on the merits, that it will be irreparably harmed, and that other parties will not be harmed if the auction is stayed. Moreover, the public interest does not favor a stay.

⁴² 47 C.F.R. § 1.2109(d); *see also AMTS Procedures Public Notice*, 19 FCC Rcd at 9557.

⁴³ *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2377-81 ¶¶ 169-188 (1994).

⁴⁴ *See id.*, 9 FCC Rcd at 2379 ¶ 176.

⁴⁵ *See Motion for Declaratory Ruling* at 3.

⁴⁶ *See AMTS Procedures Public Notice*, 19 FCC Rcd at 9545-46.

⁴⁷ *Request for Declaratory Ruling* at 1-2.

⁴⁸ *See* 47 C.F.R. § 1.2105(a)(2).

⁴⁹ *See Banks Broadcasting, Inc.*, 18 FCC Rcd 10431, 10436 (WTB 2003).

⁵⁰ *See AMTS Procedures Public Notice*, 19 FCC Rcd at 9548-49.

⁵¹ *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)

1. Likelihood of Success

17. Mobex has failed in its effort to show that it will likely prevail on the merits of its argument that two commonly controlled entities cannot participate in the same auction. As discussed above, there is no prohibition in the Competitive Bidding Rules that prohibit the use of two commonly controlled entities in the same auction. Further, the Responders have made full disclosure of the common ownership interests, common management, and joint bidding arrangement. Moreover, the Responders have identified legitimate reasons such as financing, marketing, and development of business plans to substantiate why they chose to participate in Auction No. 57 as commonly controlled entities. For the foregoing reasons, the Bureau finds that there is no likelihood that Mobex will prevail on the merits of its argument that two commonly controlled entities may not participate in the same auction.

2. Irreparable Harm

18. Next, we analyze Mobex's claim that it "would be irreparably harmed by being put to a choice of either participating in a clearly unfair auction or forever foregoing a chance to bid on the offered licenses."⁵² An injury qualifies as "irreparable harm" only if it is both certain and great, it must be actual and not theoretical.⁵³ Thus, to demonstrate irreparable harm, Mobex must provide "proof indicating that the harm it alleges is certain to occur in the near future."⁵⁴ Mobex has supplied no such proof. In terms of harm to it, Mobex, as a nonqualified bidder is unable to demonstrate any concrete injury to it. Mobex decided not to preserve its place in Auction No. 57 by not submitting an upfront payment. Any harm that might flow to Mobex as a result of its decision to not participate in Auction No. 57 is harm that Mobex brought upon itself. To the extent that cash outlays would be required to participate in Auction No. 57, such funds would be refunded to Mobex is not successful in winning licenses (provided that it has not incurred any payment obligations as a result of its participation in the auction).⁵⁵ Thus, we find that Mobex has not met the second prong of the test to support its requested relief.⁵⁶

3. Harm to Others

19. Mobex next claims that other parties will not be harmed if the Bureau grants its Motion to Stay Auction No. 57 and Motion to Stay the Due Date for the Upfront Payment. In support of its position, Mobex notes that the decision to auction the AMTS licenses was made two years ago and a further delay would not, in Mobex's opinion, disadvantage any applicant.⁵⁷ Also, Mobex claims that all applicants would be benefited if the Bureau stays the due date for the upfront payments while it considers these last minute matters because the Commission does not pay interest on upfront payments.⁵⁸ We disagree with Mobex' claim of no harm to other Applicants. Delay would harm other applicants that have already undertaken numerous efforts to prepare for Auction No. 57, including the development of business plans, assessment of market conditions, and evaluation of the availability of equipment for AMTS spectrum and those that have expended resources, including funds, time, and efforts in the expectation that upfront payments would be due on August 20, 2004 and that an auction would begin on September 15, 2004. In light of the foregoing, the Bureau believes that it would be injurious to those

⁵² Motion to Stay at 1.

⁵³ *Wisconsin Gas Company v. FERC*, 758 F.2d 669, 674 (D.C. 1985).

⁵⁴ *Id.*

⁵⁵ *See, e.g.*, 47 C.F.R. § 1.2104(g) (bid withdrawal payments).

⁵⁶ *Cf.* Motion of Ranger Cellular and Miller Communications, Inc. for a Stay of Auction No. 45, 17 FCC Red 9320 (WTB 2002).

⁵⁷ Motion to Stay Auction at 1-2.

⁵⁸ Motion to Stay Upfront Payment at 1.

Applicants to stay the start of Auction No. 57.

4. Public Interest Considerations

20. Finally, the Bureau must consider whether the public interest warrants a stay of the due date for the upfront payment and start of Auction No. 57. We believe that the public interest is best served by maintaining the current schedule. One of the primary goals of the Commission's auction program is to ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public without delays, and promote the efficient and intensive use of the electromagnetic spectrum.⁵⁹ These goals can best be met by moving forward with Auction No. 57 licensing process and by maintaining the announced auction schedule. Thus, we find that the public interest would not be served by the grant of Mobex' motions for stays.

III. CONCLUSION

21. Accordingly, IT IS ORDERED pursuant to sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309(j)(3) and the authority delegated pursuant to section 0.331 of the Commission's rules, as amended, 47 C.F.R. §§ 0.131(c), 0.331, Petition for Partial Reconsideration filed by Warren C. Havens, Telesaurus Holdings GB LLC and Telesaurus VPC LLC on June 25, 2004, Request for Stay filed by Warren C. Havens, Telesaurus Holdings GB LLC and Telesaurus VPC LLC on July 2, 2004, and Limited Opposition to Petition for Partial Reconsideration of Mobex dated July 8, 2004, ARE DISMISSED.

22. IT IS FURTHER ORDERED that the Motion to Stay Auction No. 57, Motion to Stay Upfront Payment Due Date, Motion to Dismiss, and Request for a Declaratory Ruling filed by Mobex Network Services, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

⁵⁹ See 47 U.S.C. § 309(j)(3)(A) and (D).