

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

In the Matter of	)	
	)	
PAGING SYSTEMS, INC.	)	FCC File No. 0001883916
	)	
Petition to Deny filed by Warren C. Havens, AMTS Consortium, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC	)	
	)	

**ORDER ON RECONSIDERATION**

**Adopted: May 22, 2006**

**Released: May 24, 2006**

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Reconsideration*, we address a petition<sup>1</sup> filed jointly on May 23, 2005 by Warren C. Havens (Havens), AMTS Consortium, LLC (AMTS Consortium), Telesaurus-VPC, LLC (Telesaurus), and Telesaurus Holdings GB LLC (collectively, Petitioners) for reconsideration of an April 22, 2005 *Order* by the Public Safety and Critical Infrastructure Division (Division) of the Wireless Telecommunications Bureau (Bureau).<sup>2</sup> The *Order* denied Petitioners' petition to deny<sup>3</sup> the above-captioned long-form application filed by Paging Systems, Inc. (PSI) at the conclusion of the first auction for Automated Maritime Telecommunications System (AMTS) licenses. For the reasons set forth below, we deny the petition.

2. *Background.* In 1981, the Commission designated spectrum for AMTS operations at the request of tug, towboat, and barge operators, who had complained that the existing ship-shore communications service was not adequate to meet their needs.<sup>4</sup> Under former Section 80.475(a) of the Commission's Rules, applicants proposing to serve portions of the U.S. coastline were required to define a "substantial navigational area," and show how the proposed system would provide continuity of service for

<sup>1</sup> Petition for Reconsideration (filed May 23, 2005) (Petition for Reconsideration).

<sup>2</sup> Paging Systems, Inc., *Order*, 20 FCC Rcd 8145 (WTB PSCID 2005) (*Order*).

<sup>3</sup> Petition to Deny (filed Nov. 22, 2004) (Petition to Deny).

<sup>4</sup> See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, GEN Docket No. 80-1, 84 F.C.C. 2d 875, 876 ¶ 2 (1981), *on recon.*, *Memorandum Opinion and Order*, 88 F.C.C. 2d 678 (1982), *aff'd sub nom.* WJG Tel. Co. v. FCC, 675 F.2d 386 (D.C. Cir. 1982). The Commission originally allocated spectrum for AMTS use on the Mississippi River, then expanded the authorized service area to the Gulf Intracoastal Waterway in 1982, the Gulf of Mexico in 1984, and nationwide in 1991. See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-372, 6 FCC Rcd 437 (1991); Amendment of Parts 2, 81 and 83 of the Rules to Add the Gulf of Mexico to the Authorized Service Areas of Maritime Mobile Systems Operating in the 216-220 MHz Band, *Report and Order*, GEN Docket No. 84-18, 56 Rad. Reg. 2d (P & F) 1613 (1984); Amendment of Parts 2, 81 and 83 of the Rules to Add the Gulf Intracoastal Waterway to the Authorized Service Area of Inland Waterways Communications Systems, *Report and Order*, GEN Docket No. 81-822, 51 Rad. Reg. 2d (P & F) 440 (1982). In 1997, the Commission adopted rules to permit AMTS public coast stations to provide commercial service to units on land, as well as maritime vessels. See *Public Coast Second Report and Order*, 12 FCC Rcd at 16965 ¶ 24; 47 C.F.R. § 80.123.

the area.<sup>5</sup> AMTS stations were required to be placed in operation within eight months of license grant, or, pursuant to former Section 80.49(a)(2) of the rules, “the authorization [would] become[] invalid and must be returned to the Commission for cancellation.”<sup>6</sup> In 1998, PSI was authorized to provide service on AMTS Channel Block B<sup>7</sup> at various locations along the Great Lakes, under Call Signs KBP347, KSC779, and WDT539.<sup>8</sup> Subsequently, one Petitioner (Havens) was authorized to operate on AMTS Channel Block B in various other locations throughout the United States.<sup>9</sup>

3. In 2002, the Commission adopted a geographic licensing scheme for AMTS stations.<sup>10</sup> Accordingly, the Commission eliminated the service coverage requirements in Section 80.475(a), in order to permit AMTS geographic area licensees to place stations anywhere within their service area, so long as incumbent operations are protected and certain other requirements are met.<sup>11</sup>

4. In the public notice setting forth the procedures for the auction of AMTS geographic area licenses, the Bureau instructed potential bidders “to investigate and consider the extent to which AMTS frequencies are occupied by incumbents” when formulating their bidding strategies, and stated that potential applicants were “solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of” the geographic licenses being auctioned.<sup>12</sup> The Bureau also cautioned potential bidders:

The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases . . . . Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

**Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid.**<sup>13</sup>

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<sup>5</sup> See 47 C.F.R. § 80.475(a) (2001). While the coverage requirement for coastlines specifically referred only to the Atlantic, Pacific, and Gulf of Mexico coastlines, it was interpreted to also include the Great Lakes. See Fred Daniel d/b/a Orion Telecom and Paging Systems, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 17474, 17477 ¶ 6 (WTB PSPWD 1998).

<sup>6</sup> See 47 C.F.R. § 80.49(a)(2) (1998).

<sup>7</sup> Assignable AMTS frequencies are divided into two frequency groups, A and B, each with twenty channel pairs. Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 17005 ¶ 111 (1997) (*Public Coast Second Report and Order*); see 47 C.F.R. § 80.385.

<sup>8</sup> *Public Coast Second Report and Order*, 12 FCC Rcd at 17479 ¶¶ 11-13, 16-18.

<sup>9</sup> Specifically, Stations WHV211, Las Vegas, Nevada; WHV257, Flagstaff, Arizona; WHV287, Phoenix, Arizona; WHV523, Salt Lake City, Utah; WHV653, Clinghouse, Nevada; and WPSQ413, Fort Collins, Colorado.

<sup>10</sup> See Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6686 ¶ 2 (2002) (*Public Coast Fifth Report and Order*).

<sup>11</sup> See *id.* at 6702-03 ¶ 37, 6737.

<sup>12</sup> 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, 9527 (WTB 2004) (*Procedures PN*); see also Automated Maritime Telecommunications System Spectrum Auction: 4 Qualified Bidders, *Public Notice*, 19 FCC Rcd 20452, 20456 (WTB 2004).

<sup>13</sup> *Procedures PN*, 19 FCC Rcd at 9529-30.

5. In order to revise the licensing database to delete facilities determined not to be properly constructed and operational, Commission staff did undertake a review of the AMTS licensing records.<sup>14</sup> Specifically, the Bureau sent inquiry letters to the licensees of AMTS stations for which the construction information in the Commission's records was missing or unclear. In response, PSI reported that it had not constructed certain stations authorized under its Great Lakes licenses,<sup>15</sup> so Bureau staff deleted the unconstructed locations from the licensing database on July 22, 2004 (shortly after the deadline for filing short-form applications for the auction, but prior to the deadline for submission of upfront payments).<sup>16</sup>

6. The first AMTS auction was held on September 15, 2004.<sup>17</sup> PSI was the high bidder for the Channel Block B license for the Great Lakes region; AMTS Consortium and Telesaurus were the high bidders for the Channel Block B licenses for the remainder of the continental United States.<sup>18</sup> On November 22, 2004, Petitioners filed a petition to deny PSI's long-form application.

7. On October 14, 2004, PSI filed petitions seeking to set aside the results of the auction, re-open the application process, and allow bidders to select additional markets in a newly instituted auction of the licenses available in the auction.<sup>19</sup> PSI argued that the auction was anticompetitive because the Commission permitted AMTS Consortium and Telesaurus to participate, notwithstanding that Havens controls both entities. The Bureau denied PSI's petitions on April 21, 2005, finding no basis for overturning the results of the auction.<sup>20</sup>

8. On April 22, 2005, the Division denied Petitioners' petition to deny. With respect to Petitioners' argument that PSI, by seeking to set aside the auction results, effectively sought dismissal or denial of its application, the Division declined to construe PSI's October 14, 2004 petitions seeking to set aside the results of the auction as requests to dismiss or deny its application. The Division noted that the Commission's rules do not allow an applicant to petition for denial of its own application, and that PSI specifically requested the processing of its application in the event that its arguments regarding the Petitioners' participation in the auction were not sustained.<sup>21</sup> The Division also rejected Petitioners' argument that, due to PSI's failure to construct its authorized stations, PSI was required to return its Great Lakes authorizations to the Commission for cancellation, and that the invalid incumbency information that PSI maintained in the Commission's licensing database caused Petitioners not to bid on the Channel Block B license for the Great Lakes region. The Division concluded that Petitioners were solely

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<sup>14</sup> *Id.* at 9529 n.54. The Bureau stated that it intended to complete the review prior to the commencement of the auction. *See id.*

<sup>15</sup> *See* letter dated June 22, 2004 from Audrey Rasmussen to Tracy Simmons, Associate Chief, Public Safety and Critical Infrastructure Division.

<sup>16</sup> Short-form applications were due July 19, 2004, and upfront payments were due August 20, 2004. *Procedures PN*, 19 FCC Rcd at 9539, 9541.

<sup>17</sup> Automated Maritime Telecommunications System Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 18252, 18252 (WTB 2004) (*Auction Closing PN*).

<sup>18</sup> *Id.* at 18258. Specifically, AMTS Consortium was the high bidder for the Channel Block B licenses for the Northern Atlantic, Mid-Atlantic, Southern Atlantic, and Mountain regions (as well as the Alaska region); and Telesaurus was the high bidder for the Channel Block B licenses for the Mississippi River, Southern Pacific, and Northern Pacific regions.

<sup>19</sup> PSI Petition for Reconsideration (filed Oct. 14, 2004); PSI Motion for Stay (filed Oct. 14, 2004).

<sup>20</sup> *See* Petition for Reconsideration and Motion for Stay of Paging Systems, Inc., *Order*, 20 FCC Rcd 8087 (WTB 2005), *recon. pending*.

<sup>21</sup> *See Order*, 20 FCC Rcd at 8148 ¶ 10 (citing Very High Frequency (VHF) Public Coast Spectrum in the 156-162 MHz Bands, *Memorandum Opinion and Order*, 14 FCC Rcd 8218, 8220 ¶ 6 (WTB PSPWD 1999)).

responsible for exercising due diligence in investigating geographic licenses for which they considered bidding, as noted in the public notice setting forth the auction procedures.<sup>22</sup> The Division also noted that Petitioners were on notice that the Bureau was conducting a review of the AMTS licensing information, and that they could have submitted sufficient upfront payments to enable them to bid on the license for the Great Lakes region if the results of the Bureau's review made the license attractive.<sup>23</sup> The Division did not deem it necessary, in the context of the petition to deny, to resolve the question of whether PSI's Great Lakes licenses should be deemed to have terminated in their entirety.<sup>24</sup>

9. *Discussion.* The petition for reconsideration primarily argues that the Division erred by failing to address the argument in the petition to deny regarding PSI's character to be a Commission licensee, and that "PSI's misrepresentations, fraudulent behavior and false certifications . . . should disqualify it as a Commission licensee."<sup>25</sup> In fact, however, the petition to deny did not present this argument. Rather, the petition asserted that various alleged transgressions by PSI—including its failure to construct its authorized stations or surrender the licenses, and its petitions seeking to set aside the results of the auction—constituted "anti-competitive tactics to unfairly reduce competition and any challenges to its incumbent licenses and hold prisoner spectrum that it never properly constructed."<sup>26</sup> This argument relates to PSI's actions with respect to its Great Lakes licenses. The body of the petition to deny did not argue that PSI lacks the character to hold any Commission license, as the petition for reconsideration now asks us to hold.<sup>27</sup> We therefore conclude that the Division did not err in not addressing an argument not presented in the petition to deny.<sup>28</sup>

10. Next, Petitioners argue that on July 22, 2004, Bureau staff should have deleted from the licensing database not only PSI's unconstructed locations, but all of its licensed Great Lakes locations, on the grounds that the remaining stations do not satisfy the former Section 80.475(a)'s continuity of service requirement.<sup>29</sup> They also state that they would have bid on the Channel Block B license for the Great Lakes region had the Bureau done so, but that it is not reasonable to expect Petitioners to have bid based

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<sup>22</sup> *See id.* at 8148-49 ¶ 11.

<sup>23</sup> *See id.* at 8149 ¶ 11.

<sup>24</sup> *See id.* at 8149 n.33.

<sup>25</sup> *See* Petition for Reconsideration at 4; *see also id.* at 4-12.

<sup>26</sup> *See* Petition to Deny at 15.

<sup>27</sup> Indeed, the word 'character' does not appear in the petition to deny. While the penultimate sentence of the "Conclusion" section does state that "[the Commission] should punish PSI for repeated willful violations noted herein, . . . including by disqualification of PSI as a licensee or license applicant," *see* Petition to Deny at 15, this single, late reference is not sufficient to raise a character issue. *Cf.* Echostar Communications Corporation, *Hearing Designation Order*, 17 FCC Rcd 20559, 20579 n.139 (2002) ("Commission precedent often requires past FCC rule violations to be coupled with legitimate 'evidence in the record to contravene the Applicants' assertions that they are currently running their businesses in a 'responsible matter' in order to raise a real character issue.") (quoting Southern New England Telecommunications Corporation, *Memorandum Opinion and Order*, 13 FCC Rcd 21292, 21306-07 ¶ 27 (1998)).

<sup>28</sup> With respect to the merits of the argument, we note that Havens has raised similar arguments with respect to another AMTS licensee that he contends lacks the requisite character because it filed defective activation notices, renewal applications, and similar filings with respect to its site-based AMTS licenses, and that we have held that these allegations (even assuming that the filings were inaccurate) do not raise a character issue meriting denial of a license application. *See* Mobex Network Services, LLC, *Order*, 20 FCC Rcd 17957, 17957-58 ¶ 2 (WTB PSCID 2005) (citing Mobex Network Services, LLC, 19 FCC Rcd 24939, 24941-43 ¶¶ 6-9 (WTB PSCID 2004), *recon. pending*), *recon. pending*.

<sup>29</sup> *See* Petition for Reconsideration at 14.

on speculation regarding what action the Bureau would take.<sup>30</sup> We disagree. As the Division noted, Petitioners were solely responsible for their own due diligence, and the Commission made no representations or guarantees regarding the accuracy or completeness of incumbency information in the licensing database. Petitioners' current argument goes only to the degree of uncertainty that they believe they encountered, but does not change these basic notions.<sup>31</sup> Moreover, given that site-based incumbents are no longer required to satisfy the substantial navigational area requirement,<sup>32</sup> we question whether the public interest would be served by denying PSI's geographic license application because of an alleged failure<sup>33</sup> to meet a requirement that no longer applies to these site-based licenses.<sup>34</sup>

11. Finally, Petitioners assert that the PSI petitions seeking to set aside the results of the auction constituted petitions to deny its own application, because grant of the requested relief would have resulted in dismissal or denial of PSI's application.<sup>35</sup> The Division understood this when it concluded that the petitions were not requests to dismiss or deny PSI's application. Petitioners' slightly restated argument does not change that conclusion.

12. For the aforementioned reasons, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration of *Order* DA 05-1119 IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau

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<sup>30</sup> *Id.* at 14-15.

<sup>31</sup> *Cf.* Smith-Bagley, Inc. & WWC License L.L.C., *Order*, 20 FCC Rcd 2361, 2373-74 ¶ 30 (WTB MD 2005) ("The due diligence public notices remind potential bidders in the competitive bidding process of two things. The first is that certain filings may remain pending before the Commission after the auction closes, the resolution of which may affect the availability of the spectrum in any given market. Second, the Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases, including the accuracy or completeness of information that incumbent licensees have provided. The public notices are intended to seek out information from the public to correct errors in the Commission databases and to assist potential bidders in taking steps that might help them determine the actual value of the white space in the market in which they are bidding. Importantly, the Commission issues subsequent due diligence public notices to update information regarding both filings and corrections to database information as that information becomes available before the auction. We find no reason, and McElroy provides none, to mandate that suggestions intended to assist potential bidders in the context of competitive bidding be used as a pre-condition to eligibility as an applicant in this proceeding.").

<sup>32</sup> *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391, 24401 ¶ 23 (2003); Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12305, 12306 n.6 (WTB PSPWD 2003) (citing *Public Coast Fifth Report and Order*, 17 FCC Rcd at 6737).

<sup>33</sup> PSI contends that the remaining sites provide continuity of service to substantial navigational areas, as required by former Section 80.475(a), but it does not substantiate that claim. *See* Opposition to Petition for Reconsideration at 5 n.11.

<sup>34</sup> *Cf.* Mobex Network Services, LLC, *Order*, 19 FCC Rcd 24939, 24943 n.34 (WTB PSCID 2004), *recon. pending*.

<sup>35</sup> *See* Petition for Reconsideration at 14-15.