

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

In the Matter of	)	
	)	
PAGING SYTEMS, INC.	)	File No. 0002257822
	)	
Application for Renewal of Automated Maritime	)	
Telecommunications System Stations in Hawaii	)	

**ORDER**

**Adopted: July 5, 2006**

**Released: July 7, 2006**

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

**I. INTRODUCTION**

1. On September 6, 2005, Warren C. Havens (Havens), AMTS Consortium LLC (ACL), Intelligent Transportation and Monitoring Wireless LLC (ITL), Telesaurus-VPC LLC (TVL), Telesaurus Holdings GB LLC (THL) (collectively “Havens” except where noted) filed a petition to deny<sup>1</sup> the above-captioned application of Paging Systems, Inc. (PSI) to renew the license for Automated Maritime Telecommunications System (AMTS) Station WHG545.<sup>2</sup> For the reasons that follow, Havens’s petition is granted in part and denied in part.

**II. BACKGROUND**

2. AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.<sup>3</sup> The Commission has designated two spectrum channel blocks for AMTS operation.<sup>4</sup> Under Section 80.475(a) of the Commission’s Rules as in effect when the license at issue was initially granted, AMTS applicants proposing to serve a portion of the Atlantic, Pacific, or Gulf of Mexico coastline were required to provide continuity of service to a “substantial navigational area.”<sup>5</sup> Under the Commission's Rules, AMTS facilities must be constructed within a specified time and must remain operational in order for the license to remain valid.<sup>6</sup>

3. The license at issue was granted on June 1, 1995, for a facility at Wailuku (Mt.

<sup>1</sup> Petition to Deny (filed September 6, 2005) (Petition). Warren C. Havens holds a controlling interest in ACL, ITL, TVL, and THL. *Id.* at 1 n.2.

<sup>2</sup> FCC File No. 0002257822 (filed July 28, 2005).

<sup>3</sup> 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. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991).

<sup>4</sup> AMTS Channel Blocks A (217.5-218/219.5-220 MHz) and B (217-217.5/219-219.5 MHz). See 47 C.F.R. § 80.383(a)(2).

<sup>5</sup> 47 C.F.R. § 80.475(a) (1998).

<sup>6</sup> See 47 C.F.R. §§ 1.955(a), 80.49(a)(3).

Haleakala), Hawaii. The license was modified on July 16, 1997, to authorize a second site at Honolulu, Hawaii. The stations are authorized to operate on Channel Block B. PSI notified the Commission that the Wailuku and Honolulu sites were constructed on August 7, 1997 and May 18, 1998, respectively. The license for Station WHG545 was renewed in 2000.

4. In 2002, the Commission determined that the public interest would be served by licensing AMTS spectrum on a geographic basis, and resolving mutually exclusive applications through competitive bidding.<sup>7</sup> In the initial AMTS auction, which closed on September 15, 2004, there was no winning bidder for the geographic licenses for Hawaii.<sup>8</sup> In the second AMTS auction (Auction 61), which closed on August 17, 2005, ACL was the high bidder for the Block A license for Hawaii, and PSI was the high bidder for the Block B license for Hawaii.<sup>9</sup> The Auction 61 applications remain pending.

5. On August 3, 2005, PSI's renewal application appeared on public notice as accepted for filing.<sup>10</sup> On September 2, 2005, Havens filed a petition to deny the application. As discussed below, the petition asserts, *inter alia*, that the Wailuku site was never validly constructed. On September 2, 2005, PSI requested an extension of time to October 15, 2005 to respond to the petition, on the grounds that it needed to locate archived records.<sup>11</sup> The Public Safety and Critical Infrastructure Division (Division) granted the request in part, and extended the time to September 26, 2005.<sup>12</sup> On September 14, 2005, Havens requested reconsideration or alternative relief of setting aside the extension of time.<sup>13</sup>

6. On September 26, 2005, PSI filed an opposition to the petition to deny.<sup>14</sup> On October 4, 2005, Havens requested an extension of time to November 15, 2005 to file a reply to the opposition.<sup>15</sup> The Division granted the request in part and extended the time to October 20, 2005.<sup>16</sup> On October 20, 2005, Havens replied to the opposition.<sup>17</sup>

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<sup>7</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, 6694-96 ¶¶ 18-24 (2002) (*Second MO&O and Fifth R&O*), on reconsideration, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003).

<sup>8</sup> See Automated Maritime Telecommunications System Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 18252 (WTB 2004).

<sup>9</sup> See Auction of Automated Maritime Telecommunications System Licenses Auction Closes, *Public Notice*, 20 FCC Rcd 13747 (WTB 2005).

<sup>10</sup> See *Public Notice*, Report No. 2217 (rel. August 3, 2003).

<sup>11</sup> Request for Extension of Time (filed September 13, 2005).

<sup>12</sup> Email dated September 14, 2005 from Scot Stone, Deputy Chief, Public Safety and Critical Infrastructure Division to Audrey Rasmussen.

<sup>13</sup> Petition for Reconsideration or Alternative Relief (filed September 14, 2005) (Petition for Reconsideration). PSI filed an opposition to this request. Opposition to Petition for Reconsideration or Alternative Relief (filed September 29, 2005) (Opposition to Reconsideration).

<sup>14</sup> Opposition to Petition to Deny (filed September 26, 2005) (Opposition to Petition). PSI later filed a supplement to substitute an original executed declaration signed by David Kling for a faxed copy. Supplement to Opposition to Petition to Deny (filed September 27, 2005).

<sup>15</sup> Waiver Request for Extension of Time to File Reply to Opposition to Petition to Deny (filed October 4, 2005).

<sup>16</sup> Email dated October 13, 2005 from Scot Stone, Deputy Chief, Public Safety and Critical Infrastructure Division to Warren Havens.

<sup>17</sup> Warren C. Havens filed a reply, and ACL, ITL, TVL and THL filed a reply. Havens Reply (filed October 20, 2005); Reply to Opposition to Petition to Deny (filed October 20, 2005) (ACL Reply).

7. On October 6, 2005, PSI requested leave to file a supplement to its opposition to the petition to deny,<sup>18</sup> to indicate that PSI had decided to abandon the Wailuku site, and no longer sought renewal of the authorization for that facility.<sup>19</sup> On October 21, 2005, Havens filed an opposition to the motion for leave.<sup>20</sup>

### III. DISCUSSION

8. *Procedural matters.* As an initial matter, we dismiss Havens's petition for reconsideration or alternative relief setting aside the grant of an extension of time for PSI to file an opposition to the petition to deny. Grant of an extension of time is an interlocutory action.<sup>21</sup> Section 1.106 of the Commission's Rules specifically prohibits petition for reconsideration of interlocutory actions.<sup>22</sup> That Havens alternatively requested relief under Section 1.41 of the Rules does not exempt the petition from dismissal, for a party cannot evade the procedural requirements of Section 1.106 by concurrently requesting the same relief under Section 1.41.<sup>23</sup> Finally, if we were to consider the merits of the petition, we would deny it. Contrary to the assertion in the petition, Havens was not prejudiced by the extension because the extension did not delay the overall review and resolution of the petition to deny. Moreover, Havens is incorrect about alleged procedural defects,<sup>24</sup> because, as PSI points out,<sup>25</sup> Section 1.45(e) of the Commission's Rules permits *ex parte* disposition of requests for extension of time without waiting for the filing of oppositions or replies.<sup>26</sup>

9. In addition, we grant PSI's motion for leave to file a supplement indicating that it has decided to abandon the Wailuku site. Havens argues that the supplement should not be accepted because PSI should not be permitted to avoid a resolution of the question of whether the site was ever properly constructed and operational.<sup>27</sup> We conclude, however, that the supplement provides information that is relevant to the instant proceeding, consideration of which does not prejudice Havens's interest. That PSI provided this information by means of a supplement to its opposition to Havens's petition to deny the application to renew the license for Station WHG545, rather than in an application to modify the license for Station WHG545, should not affect whether we consider the information.

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<sup>18</sup> Motion for Leave to File Supplement to Opposition to Petition to Deny (filed October 6, 2005).

<sup>19</sup> See Supplement to Opposition to Petition to Deny (filed October 6, 2005).

<sup>20</sup> Opposition to Motion for Leave to File Supplement (filed October 21, 2005) (Opposition to Motion). PSI filed a reply to the opposition. Reply to Opposition to Motion for Leave to File Supplement (filed November 11, 2005) (Reply to Motion).

<sup>21</sup> See Amendment of Section 1.4 of the Commission's Rules Relating to Computation of Time, *Memorandum Opinion and Order*, 15 RCC Rcd 9583, 9584 ¶ 3 (2000); Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing When Formal Complaints Are Filed Against Common Carriers, *Report and Order*, CC Docket No. 96-238, 12 FCC Rcd 22497, 22496 ¶ 238 (1997).

<sup>22</sup> See 47 C.F.R. § 1.106(a)(1).

<sup>23</sup> See Jason Bennett, *Letter*, 20 FCC Rcd 17193, 17194 & n.14 (MB AD 2005); see also, e.g., Adelpia Business Solutions Long Haul, L.P., *Order*, 15 FCC Rcd 18329, 18331-32 ¶ 3 (WTB PSPWD 2000) (indicating that how a pleading is captioned does not govern how it should be treated).

<sup>24</sup> See Petition for Reconsideration at 5-6.

<sup>25</sup> See Opposition to Reconsideration at 2-3.

<sup>26</sup> See 47 C.F.R. § 1.45(e).

<sup>27</sup> See Opposition to Motion at 2.

10. *Discussion.*<sup>28</sup> Havens primarily contends that PSI never constructed the Wailuku facility.<sup>29</sup> Havens states that Hawaii's Department of Land & Natural Resources, Land Division and the University of Hawaii, Institute of Radio Astronomy, which control the Mt. Haleakala site, advised him that they have no record of a permit or lease to PSI.<sup>30</sup> PSI presents evidence that the facility was timely constructed. PSI also responds that Havens's assertions are based on hearsay, and establish no more than that certain entities lacked information about PSI's station, but do not bear on whether the station was constructed.<sup>31</sup> Havens asserts that PSI constructed at most a small test facility that should not be deemed to satisfy the construction requirement.<sup>32</sup> We need not resolve this dispute because, as noted above, PSI no longer seeks to renew the authorization for the Wailuku site.

11. The petition makes additional arguments regarding the validity of PSI's license for Station WHG545. Havens argues that the activation notices filed by PSI are defective because they were not signed by officers of PSI and the notices contain vague language.<sup>33</sup> As we stated when Havens raised similar arguments with respect to another AMTS licensee, "the purpose of a construction notification requirement is to confirm that licensees have met their responsibility, not to cancel the licenses for legitimately operating facilities. . . . Even assuming *arguendo* that the initial activation notices were defective, deeming the licenses for the constructed stations to have automatically canceled as a result would not further the purpose of the construction notification requirement."<sup>34</sup> We again conclude that it would not further the public interest to deny a renewal application based on alleged defects in the activation notices. Havens also argues that the fact that, in Auction 61, PSI bid only on the Channel

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<sup>28</sup> Havens argues that he has standing to file the petition to deny because THL holds a Location and Monitoring Service (LMS) geographic area license for Hawaii (Station WPTH951) that potentially can compete with Station WHG545. Petition at 2; ACL Reply at 2. PSI contends that Havens lacks standing because none of the petitioners is licensed to operate any AMTS system that is in direct competition with Station WHG545, and the LMS station is not constructed or operating. Opposition to Petition at 2-3. It is questionable whether the mere *potential* for competition suffices to confer standing under Section 309(d)(1) of the Act, 47 U.S.C. § 309(d)(1), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939. See *New World Radio, Inc. v. FCC*, 294 F.3d 164, 169-72 (D.C. Cir. 2002) (standing "is premised on the petitioner's status as a *direct* and *current* competitor whose bottom line may be adversely affected by the challenged government action," so no standing to challenge license grant that "is, at most, the first step in the direction of future competition" and thus economic injury dependent on "chain of events"); see also *KERM, Inc. v. FCC*, 353 F.3d 57, 61 (D.C. Cir. 2004) (no standing to challenge FCC decision not to pursue enforcement action against station that serves much of the same audience as petitioner where latter made only "bare allegations" of competitive injury without any evidence of adverse financial effects resulting from broadcast of disputed commercials) (quoting *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002)). Because PSI no longer seeks to renew the authorization for the Wailuku site, the standing issue is moot with respect to that facility. With respect to the authorization for the Honolulu site, the issues raised by Havens are of sufficient importance to warrant a substantive response. Therefore, we decline to reach the question of standing and instead will treat Havens's petition as an informal complaint.

<sup>29</sup> See Petition at 2-6; ACL Reply at 3-5.

<sup>30</sup> Petition at 2-3; ACL Reply at Exhibit 1.

<sup>31</sup> See Opposition to Petition at 4-6.

<sup>32</sup> See ACL Reply at 3-5.

<sup>33</sup> See Petition at 4-5.

<sup>34</sup> *Mobex Network Services, LLC, Order*, 19 FCC Rcd 24939, 24941-42 ¶ 6 (WTB PSCID 2004) (*Mobex*) (citing Northwest Communications Cooperative, *Memorandum Opinion and Order*, 19 FCC Rcd 23812, 23814 ¶ 6 (WTB BD 2004); American Mobile Telecommunications Association, *Order*, 19 FCC Rcd 9666, 9669 ¶ 8 (WTB PSCID/BD/MD 2004) (citing Biennial Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21076 ¶ 106 (1998))), *recon. pending*.

Block B license for Hawaii demonstrates that PSI knew that its license for Station WHG545 was invalid, because PSI otherwise would have bid on Channel Block A in order to expand its spectrum holdings and reduce competition.<sup>35</sup> We draw no such inference from this bidding pattern, for there are legitimate reasons for bidding on a geographic license that encompasses spectrum encumbered by one's site-based station(s), such as to permit modification and expansion.<sup>36</sup>

12. Finally, Havens raises additional arguments with respect to the Honolulu site: that the authorization for the Honolulu site cannot stand alone, because that facility does not cover a "substantial navigational area";<sup>37</sup> and that in any event the Honolulu facility should be deemed non-operational because PSI has never offered service to the public.<sup>38</sup> PSI asserts that these arguments should not be considered, because they were raised in a reply brief to which PSI had no opportunity to file a responsive pleading.<sup>39</sup> We agree. Section 1.45(c) of the Commission's Rules requires that replies be limited to matters raised in the opposition.<sup>40</sup> Havens offers no explanation why these arguments could not have been raised earlier.<sup>41</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

13. Because PSI no longer seeks to renew its authorization for the Wailuku facility of Station WHG545, we grant the petition to deny PSI's renewal application with respect to that site. We will modify the Commission's licensing records to reflect the cancellation of the authorization for location 1 of Station WHG545. Havens has not demonstrated, however, that the renewal application should be denied with respect to the Honolulu facility.

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<sup>35</sup> See Petition at 6-7.

<sup>36</sup> See, e.g., Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Second Report and Order*, PR Docket No. 93-144, 12 FCC Rcd 19079, 19097 ¶ 41 (1997) ("We expect that in many instances, incumbents on the lower channels will bid for EA licenses on those channels to consolidate their existing holdings.").

<sup>37</sup> See ACL Reply at 5-6.

<sup>38</sup> *Id.* at 6-8.

<sup>39</sup> See Reply to Motion at 4.

<sup>40</sup> See 47 C.F.R. § 1.45(c).

<sup>41</sup> Moreover, were we to consider the arguments, we would reject them. Regarding the coverage requirement, the term "substantial navigational area," which was not defined in Section 80.475(a), was interpreted flexibly to permit single-station systems on islands. Fred Daniel d/b/a Orion Telecom, *Order on Reconsideration*, 14 FCC Rcd 1050, 1055 n.43 (WTB PSPWD 1999). (Contrary to Havens's interpretation, that decision does not indicate that single-station island systems were permissible only when the station's coverage was "very extensive." See ACL Reply at 5.) We also note that site-based incumbents are no longer required to satisfy the substantial navigational area requirement. Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391, 24401 ¶ 23 (2003); Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12305, 12306 n.6 (WTB PSPWD 2003) (citing *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6737). We question whether the public interest would be served by denying the renewal application because of a failure to meet a requirement that no longer applies to the license. *Mobex*, 19 FCC Rcd at 24943 n.34. Regarding service to the public, we note that, unlike other rule parts, see, e.g., 47 C.F.R. §§ 22.946(a), 90.155(f), Part 80 does not expressly provide that a commercial mobile radio service station will not be deemed to have commenced operation until it provides service to at least one unaffiliated party. We decline to infer such a requirement in the context of the present matter. See Amendment of Parts 1, 81 and 87 of the Commission's rules to require notification upon commencement of service of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services, *Report and Order*, SS Docket No. 78-137, 69 F.C.C. 2d 2175, 2175 ¶ 2 (1978) (indicating that the rule requires only "the commencement of station operations").

14. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the petition filed by Warren C. Havens, AMTS Consortium LLC, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus-VPC LLC, Telesaurus Holdings GB LLC, on August 7, 2003 IS GRANTED IN PART AND DENIED IN PART to the extent set forth herein, and application FCC File No. 0002257822 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

15. IT IS FURTHER ORDERED that the Commission's licensing records SHALL BE MODIFIED to reflect the cancellation of the authorization for location 1 of Station WHG545.

16. IT IS FURTHER ORDERED that the petition for reconsideration or alternative relief, filed by Warren C. Havens, AMTS Consortium LLC, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus-VPC LLC, Telesaurus Holdings GB LLC, on September 14, 2006, IS DISMISSED.

17. IT IS FURTHER ORDERED that the request for leave to file a supplement to its opposition to the petition to deny, filed by Paging Systems, Inc. on September 27, 2006, IS GRANTED.

18. IT IS FURTHER ORDERED that the motion for leave to file a supplement to its opposition to the petition to deny, filed by Paging Systems, Inc. on October 6, 2006, IS GRANTED.

19. 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