

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

In the Matter of)	
)	
INTELLIGENT TRANSPORTATION & MONITORING WIRELESS LLC)	FCC File No. 0002304206
)	
AMTS CONSORTIUM LLC)	FCC File No. 0002302769
)	
Petitions to Deny filed by Maritime Communications/Land Mobile, LLC and Paging Systems, Inc.)	

ORDER

Adopted: August 2, 2006

Released: August 3, 2006

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

1. *Introduction.* In this *Order*, we address petitions filed separately by Paging Systems, Inc. (PSI)¹ and Maritime Communications/Land Mobile, LLC (MC/LM)² (collectively, Petitioners) to deny two long-form applications filed at the conclusion of Auction No. 61, the second auction for Automated Maritime Telecommunications System (AMTS) licenses. The Petitioners request that the Commission deny the long-form applications filed by Intelligent Transportation & Monitoring Wireless LLC (ITMW) and AMTS Consortium, LLC (AMTS Consortium). For the reasons set forth below, we deny the petitions filed by PSI and MC/LM.

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.³ The Commission has designated two

¹ PSI filed one petition to deny both of the above-captioned applications. Petition to Deny (filed Nov. 10, 2005) (PSI Petition).

² MC/LM filed separate, but substantially identical, petitions to deny each of the above-captioned applications. Petition to Deny Application FCC File No. 0002302769 (filed Nov. 10, 2005) (MC/LM AMTS Consortium Petition); Petition to Deny Application FCC File No. 0002304206 (filed Nov. 10, 2005) (MC/LM ITMW Petition).

³ 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 Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Report and Order and* (continued...)

spectrum channel blocks for AMTS operations.⁴ In 2002, the Commission adopted a geographic licensing scheme for AMTS stations.⁵ The Commission also determined to use competitive bidding to license geographic area AMTS stations.⁶ On August 17, 2005, the Commission completed the auction of ten AMTS licenses in Auction No. 61.⁷ (The licenses available in Auction No. 61 were those for which there was no winning bidder in the first AMTS auction, Auction No. 57, which closed on September 15, 2004.⁸) ITMW was the winning bidder for the Block A licenses covering the Northern Atlantic, Southern Atlantic, and Alaska regions.⁹ AMTS Consortium was the high bidder for the Block A licenses for the Northern Pacific and Hawaii regions.¹⁰ PSI (B-Block license for Hawaii region) and MC/LM (A-Block licenses for Mid-Atlantic, Mississippi River, Great Lakes, and Southern Pacific regions) were the winning bidders for the remaining licenses offered in Auction No. 61.¹¹ On October 31, 2005, the Wireless Telecommunications Bureau (Bureau) issued a Public Notice announcing that the long-form applications filed in Auction No. 61 had been accepted for filing.¹²

3. *Discussion.* The Petitioners argue that the above-captioned applications should be denied because Warren C. Havens (Havens) is a controlling interest for both ITMW and AMTS Consortium. Specifically, the Petitioners allege that the auction activity of the Havens-controlled entities was anticompetitive; constituted non-competitive bidding or bid-rigging, a *per se* violation of antitrust law; and violated the Commission's anti-collusion rules.¹³

4. We note, however, that the Bureau has already addressed the permissibility of commonly controlled entities participating in the same auction. Two entities controlled by Havens filed short-form applications to participate in Auction No. 57. MC/LM's predecessor-in-interest, with support from PSI, sought to dismiss the applications on the grounds that the participation of commonly controlled entities would be anticompetitive. Before the commencement of Auction No. 57, the Bureau's Auctions and Spectrum Access Division (Division) rejected this argument. The Division held that that the Commission's rules do not preclude participation by commonly controlled applicants.¹⁴ The Division explained that many legitimate business reasons could support such action, that the Commission's rules

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Second Further Notice of Proposed Rule Making, PR Docket No. 92-257, 12 FCC Rcd 16949, 16965 ¶ 24 (1997); 47 C.F.R. § 80.123.

⁴ 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. § 80.385(a)(2).

⁵ 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).

⁶ *Id.* at 6687 ¶ 2.

⁷ See Auction of Automated Maritime Telecommunications System Licenses Closes: Winning Bidders Announced for Auction No. 61, *Public Notice*, 20 FCC Rcd 13747 (WTB 2005) (*Auction Closing PN*).

⁸ See Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, *Public Notice*, 20 FCC Rcd 7811, 7816 (WTB 2005) (*Auction Procedures PN*), *recon. pending*.

⁹ See *Auction Closing PN*, 20 FCC Rcd at 13755.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Wireless Telecommunications Bureau Announces that Applications for Automated Maritime Telecommunications System Licenses Are Accepted for Filing, *Public Notice*, 20 FCC Rcd 17066 (WTB 2005).

¹³ See PSI Petition at 4-11; MC/LM AMTS Consortium Petition at 5-8; MC/LM ITMW Petition at 5-8.

¹⁴ Motions for Stay of Auction No. 57 and Requests for Dismissal or Disqualification, *Order*, 19 FCC Rcd 20482, 20486 ¶ 10 (WTB ASAD 2004).

have a number of safeguards to confront anticompetitive bid withdrawals or defaults, and that commonly controlled entities do not have any informational advantage relative to other bidders.¹⁵ After Auction No. 57 closed, the Bureau denied PSI's petition for reconsideration of the Division's decision and its motion to stay the processing of the Havens-controlled entities' long-form applications. The Bureau rejected an economic analysis submitted by PSI for the proposition that the presence of commonly controlled entities dissuades other bidders, concluding instead that an increase in the number of bidders may provide more price information to other auction participants and reduce opportunities for collusion or other anticompetitive conduct.¹⁶ The Bureau stated further, "We have been presented with no evidence that would undermine our conclusion that the presence of two commonly controlled entities is permissible and does not adversely affect the interest of other bidders. . . . No one has provided any evidence of anticompetitive bidding in Auction No. 57."¹⁷ The Bureau also concluded that the prohibition in Section 1.937(d) of the Commission's Rules¹⁸ on filing conflicting applications was not germane, because while the commonly controlled entities participated in the same auction, they did not file conflicting license applications.¹⁹ On the same date, the Bureau also denied PSI's request to prohibit the participation of ITMW and AMTS Consortium in Auction No. 61.²⁰ Based on this Bureau precedent, we conclude that the participation of commonly controlled ITMW and AMTS Consortium in Auction No. 61 does not constitute grounds to deny their long-form applications.

5. *Conclusion.* We find, in sum, that, pursuant to Section 309(d) of the Communications Act of 1934, as amended, the Petitioners have not provided a basis to deny the ITMW and AMTS Consortium applications. We accordingly deny the petitions to deny.

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the Petitions to Deny applications FCC File Nos. 0002302769 and 0002304206 filed by Paging Systems, Inc. and Maritime Communications/Land Mobile, LLC on November 10, 2005, ARE DENIED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.313 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁵ *Id.* at 20485-87 ¶¶ 9-14.

¹⁶ Petition for Reconsideration and Motion for Stay of Paging Systems, Inc., *Order*, 20 FCC Rcd 8097, 8090-92 ¶ 7-10 (WTB 2005) (*Bureau Order*), *review pending*.

¹⁷ *Id.* at 8092 ¶ 12.

¹⁸ 47 C.F.R. § 1.937(d).

¹⁹ *Bureau Order*, 20 FCC Rcd at 3093-94 ¶ 14.

²⁰ *Auction Procedures PN*, 20 FCC Rcd at 7821-22.