

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

In the Matter of)	
)	
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC)	FCC File No. 0002303355
)	
PAGING SYSTEMS, INC.)	FCC File No. 0002296956
)	
Petitions to Deny filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus-VPC LLC, and Telesaurus Holdings GB LLC)	

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 jointly by Warren C. Havens (Havens), Intelligent Transportation & Monitoring Wireless LLC (ITMW), AMTS Consortium, LLC (AMTS Consortium), Telesaurus-VPC, LLC (TVL), and Telesaurus Holdings GB LLC (THL) (collectively, Petitioners¹) 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 or designate for hearing the long-form application² filed by Maritime Communications/Land Mobile, LLC (MC/LM).³ In a separate petition, the Petitioners request that the Commission deny the long-form application⁴ filed by Paging Systems, Inc. (PSI).⁵ For the reasons set forth below, we deny both petitions.

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.⁶ The Commission has designated two

¹ Havens holds a controlling interest in the other Petitioners.

² FCC File No. 0002303355 (filed Sept. 7, 2005) (MC/LM Application).

³ Petition to Deny, Amended and Erratum (filed Nov. 14, 2005) (MC/LM Petition).

⁴ FCC File No. 0002296956 (filed Aug. 31, 2005, amended Sept. 23, 2005) (PSI Application).

⁵ Petition to Deny (filed Nov. 10, 2005) (PSI Petition).

⁶ 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*, (continued...)

spectrum channel blocks for AMTS operations.⁷ In 2002, the Commission adopted a geographic licensing approach for AMTS stations.⁸ The Commission also determined to use competitive bidding to license geographic area AMTS stations.⁹ On August 17, 2005, the Commission completed the auction of ten AMTS licenses in Auction No. 61.¹⁰ MC/LM was the winning bidder for the Block A licenses covering the Mid-Atlantic, Mississippi River, Great Lakes, and Southern Pacific regions.¹¹ PSI was the high bidder for the Block B license for the Hawaii region.¹² ITMW (A-Block licenses for Northern Atlantic, Southern Atlantic, and Alaska regions) and AMTS Consortium (A-Block licenses for Northern Pacific and Hawaii regions) were the winning bidders for the remaining licenses offered in Auction No. 61.¹³ 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.¹⁴

3. *MC/LM Petition.* The Petitioners filed the MC/LM Petition on November 14, 2005,¹⁵

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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 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.

⁷ 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).

⁸ 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).

⁹ *Id.* at 6687 ¶ 2.

¹⁰ 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*). 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. See Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, *Public Notice*, 20 FCC Rcd 7811, 7816 (WTB 2005).

¹¹ See *Auction Closing PN*, 20 FCC Rcd at 13755.

¹² *Id.*

¹³ *Id.*

¹⁴ 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) (*Accepted for Filing PN*).

¹⁵ Under the pleading cycle set forth in the *Accepted for Filing PN*, petitions to deny were due November 10, 2005, ten days after release of the *Accepted for Filing PN*; oppositions were due November 17, 2005, five business days after the deadline for petitions to deny; and replies were due November 24, 2005, five business days after the deadline for filing oppositions. *Id.*; see also 47 C.F.R. § 1.2108(b)-(c). As initially released, however, the *Accepted for Filing PN* omitted Appendix A listing the specific applications found acceptable for filing. The Bureau accordingly issued an *Erratum* two days later, on November 2, 2005 (*Erratum*), reissuing the *Accepted for Filing PN* with Appendix A, and making additional minor corrections. Both Havens and MC/LM requested that the Commission extend the pleading cycle due to the delayed release of Appendix A. See "Petition for Reconsideration (for correction and re-issuance)," filed by Warren Havens on November 1, 2005 (*Petition for Reconsideration of Pleading Cycle*); Letter dated November 2, 2005, from Dennis C. Brown, Counsel for MC/LM, to Marlene H. Dortch, Secretary, FCC re: Emergency Request – Auction 61 (*Emergency Request*). We agree to the extent of providing the parties an additional two days beyond the pleading cycle set forth in the *Accepted for Filing PN* in which to file their pleadings, and we accordingly grant in part the *Petition for Reconsideration of Pleading Cycle* and grant the *Emergency Petition*. Pursuant to this relief, we accept into the record the Petition to Deny, Amended

(continued...)

arguing that the Commission should deny or designate issues against the MC/LM Application, and should in any event defer processing the MC/LM Application pending the outcome of federal litigation that, according to the Petitioners, pertains to related matters.¹⁶ The Petitioners allege that MC/LM lacks the basic qualifications to be an AMTS licensee because it is engaged in a conspiracy with other entities – Mobex Network Services LLC (Mobex), the National Rural Telecommunications Cooperative (NRTC), and PSI – to violate Federal antitrust laws and the Communications Act of 1934, as amended, and to commit mail and wire fraud.¹⁷ They allege more specifically in this proceeding that MC/LM has failed to disclose its real-party-in-interest¹⁸ as well as other information relevant to its eligibility for bidding credits in Auction No. 61,¹⁹ cooperated with Mobex and NRTC to restrain AMTS competition,²⁰ and colluded with PSI in Auction No. 61.²¹ As discussed in further detail and for the reasons set forth below, we deny the MC/LM Petition.

4. A petition to deny must satisfy a two-step test. First, it must set forth “specific allegations of fact sufficient to show that ... a grant of the application would be *prima facie* inconsistent with [the public interest].”²² Second, the petition must present a “substantial and material question of fact” concerning whether the grant of the application would serve the public interest.²³ Based on our review of the record in this proceeding, we find that the MC/LM Petition does not meet this standard. Rather, it contains broad, conclusory assertions of wrongdoing on the part of MC/LM, and then relies for substantiation on cross-referenced exhibits that, in fact, do not support those assertions.

5. The MC/LM Petition largely rests on claims that MC/LM failed to disclose certain agreements and arrangements with Mobex, NRTC and PSI, and that MC/LM has conspired and colluded with those entities for anticompetitive purposes.²⁴ The record, however, does not establish the existence of any such agreements, arrangements, or conspiracies. For example, the Petitioners state that “NRTC clearly has an understanding or arrangement, if not a signed formal agreement,” with MC/LM and Mobex that, according to the Petitioners, is evidenced by the information in Exhibits 2 through 6 of the MC/LM Petition.²⁵ The Petitioners, however, do not explain, and we cannot discern, what particular information

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and Erratum, as filed by the Petitioners on November 14, 2005, as well as the Opposition filed by MC/LM on November 18, 2005 (MC/LM Opposition), and the Reply filed by the Petitioners on November 28, 2005 (MC/LM Reply). Consequently, we deny MC/LM’s motion to strike the Petition filed on November 14, 2005. Versions of the MC/LM Petition filed by Petitioners after November 14, 2005, however, are untimely, and have not been considered. *See, e.g., Warren C. Havens, Memorandum Opinion and Order*, 17 FCC Rcd 17588, 17593 ¶ 13 (2002) (denying Havens leave to file untimely supplement to timely pleading).

¹⁶ *See* MC/LM Petition at 1.

¹⁷ *See, e.g., id.* at 2-3, 25.

¹⁸ *See, e.g., id.* at 3.

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ *Id.*

²² 47 U.S.C. § 309(d)(1); *see also Astroline Communications Co. v. FCC*, 857 F. 2d 1556, 1562 (D.C. Cir. 1988) (*Astroline*).

²³ 47 U.S.C. § 309(d)(2); *see also Astroline*, 857 F. 2d at 1562.

²⁴ MC/LM affirmatively represents that it has no affiliation with Mobex, NRTC, or PSI. *See* MC/LM Opposition at 1, 3-4.

²⁵ *See* MC/LM Petition at 14.

in those Exhibits supposedly supports that allegation.²⁶ MC/LM acknowledges that it entered into a memorandum of understanding with NRTC for the possible lease of spectrum to NRTC, which it disclosed in its short-form application, but this memorandum of understanding expired by its own terms without a final agreement during the course of the auction.²⁷

6. Similarly, the Petitioners accuse MC/LM of colluding with PSI in Auction No. 61.²⁸ In support of this accusation, however, the Petitioners offer only what can most properly be characterized as “circumstantial” evidence.²⁹ The Petitioners further allege that MC/LM, in concert with Mobex and NRTC, committed “tortious [sic] interference” by attempting to convince a third party to breach a contract with AMTS Consortium to partition and assign certain AMTS spectrum.³⁰ Again, however, nothing in the cross-referenced Exhibits substantiates that allegation.³¹

7. The Petitioners also challenge the ownership information provided by MC/LM in its Auction No. 61 applications. In this regard, they state that MC/LM failed to accurately identify the real-party-in-interest on either its short-form or long-form application, and that, under Delaware law, MC/LM “was not a valid legal entity to apply for and participate in the auction.”³² It appears that the Petitioners are contending that the general partner of MC/LM changed at some point, and that MC/LM failed to amend its certificate of limited partnership within ninety days of the change, which, according to the Petitioners, means that MC/LM was not a valid entity under Delaware law when it participated in the auction or filed its applications.³³ The Petitioners also argue that this omission resulted in a change in the control of MC/LM that occurred after the submission of the short-form application, and was thus

²⁶ For example, in Exhibit 5, which is intended by the Petitioners to demonstrate that MC/LM has an affiliate relationship with NRTC, the first document is a declaration by Jack Harvey, NRTC’s Senior Vice President, Business Operations, in which he attests, *inter alia*, that “NRTC and MCLM are not affiliates and share no identity of interests. Neither controls the other, directly or indirectly, or has the power to do so.” *Id.* at 42 and Exhibit 5, Document 1, Declaration of Jack Harvey, at ¶ 13. The other documents included in Exhibit 5 purporting to demonstrate MC/LM’s alleged relationship with NRTC are a non-disclosure agreement between NRTC and *the Petitioners*, an email to NRTC from *Havens*, and a third party’s declaration that does not provide any persuasive evidence of the alleged relationship. *Id.* at Exhibit 5, Documents 2, 3 and 5.

²⁷ See MC/LM Opposition at 4 n.4.

²⁸ *Id.* at 18-19.

²⁹ The Petitioners state, “[MC/LM] only bid on the [Hawaii] A-Block, except for token bids on the B-Block license in rounds far below its bidding limit for the Hawaii A-Block license. PSI, which alleged before the FCC . . . to hold two valid B-block AMTS stations in Hawaii, bid only on the B-block license, in spite of the A-Block license being unencumbered. It is clear that if PSI actually had valid B-Block site based stations . . ., then there would be little value in buying the B-block geographic spectrum since it would add little or no territory. It must be concluded that PSI and Maritime explicitly or implicitly made the bidding arrangement that is described above and that is clear in the records of Auction 61.” *Id.* at 19. We find this reasoning unpersuasive. We note, moreover, that PSI has for years sought only B-Block licenses, while MC/LM’s predecessor-in-interest applied only for A-Block licenses. See Fred Daniel d/b/a Orion Telecom and Paging Systems, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 17474, 17474 nn.1-2 (WTB PSPWD 1998) (PSI and Orion filed mutually exclusive applications for both AMTS channel blocks, then PSI withdrew its A-Block requests and Orion withdrew its B-Block requests). MC/LM categorically denies the existence of any agreement or collusion with PSI regarding Auction No. 61. See MC/LM Opposition at 3.

³⁰ See MC/LM Petition at 24.

³¹ The supporting exhibit consists of two letters, neither of which demonstrates tortious conduct on the part of MC/LM or even mentions Mobex or NRTC. *Id.* at 37 & Exhibit 3.

³² *Id.* at 12.

³³ *Id.* at 10-13. *But see, e.g., id.* at n.13 (stating that, “under Delaware law, it is not clear that the old general partner resigned or was removed, and if not, then that also makes the short and long forms inaccurate”).

impermissible absent a rule waiver.³⁴ Yet the MC/LM Petition does not identify the allegedly undisclosed real-party-in-interest,³⁵ and does not explain how any of the Exhibits evidences a change in control of MC/LM.³⁶ While the Petitioners assert that most of their exhibits are self-explanatory,³⁷ we find the Exhibits neither self-explanatory nor persuasive. We note, moreover, that MC/LM expressly denies that any change of control of MC/LM occurred during the relevant period.³⁸ We conclude, therefore, that the Petitioners have failed to substantiate their allegation of a real-party-in-interest violation.³⁹

8. Petitioners also assert that MC/LM's application should be denied because certain incumbent AMTS licenses held by Mobex, which is now controlled by MC/LM, are no longer valid, and MC/LM's concealment of this invalidity fraudulently dissuaded the Petitioners from bidding more aggressively on the licenses for the relevant geographic areas.⁴⁰ We note, however, that we rejected an

³⁴ *Id.* at 13 (stating that “at the time of submitting the short form, there was no General Partner with authority under Delaware law, and when the amended certificate was filed in August, only then was it effective and such alleged new General Partner able to act,” and that “such a change in control after submission of the short form required a waiver”).

³⁵ In the MC/LM Reply, the Petitioners state for the first time that they are alleging that, after MC/LM filed its short-form application, control of MC/LM changed from Sandra M. DePriest to her husband, Donald R. DePriest, but then subsequently changed back to Sandra M. DePriest or – it is not clear from the pleading – to Sandra DePriest and Donald R. DePriest jointly. See MC/LM Reply at 2 (alleging that control of MC/LM “changed from Sandra DePriest as listed, to (1) Donald R. DePriest who was in control of the General Partner of the Limited Partnership that owns all of [MC/LM], then (2) to Sandra (after the Limited Partnership, in August 2005, effected under Delaware law effected [sic] a change to a new General Partner that Sandra controlled, then – rather, in all periods – to Donald and Sandra since they are married, not estranged, and have no court-recognized separation agreement”).

³⁶ The Petitioners argue that their Exhibit 1 demonstrates that MC/LM failed to disclose the real-party-in-interest. See MC/LM Petition at 11, 12, 14. But in an Addendum to the MC/LM Petition that further explains the significance of the various exhibits, the Petitioners indicate that the documents in Exhibit 1 are intended primarily to show discrepancies in the signatures of the DePriests, without explaining how such signature discrepancies, even if validated by expert handwriting analysis, might support their underlying allegations. *Id.* at 33 & Exhibit 1. Exhibit 2, which also is intended to demonstrate “that Sandra DePriest has as affiliates Donald R. DePriest and numerous other parties,” contains documentation that appears to establish little more than that the DePriests have occupied positions as directors or officers at the same broadcast stations, and that they live together. *Id.* at 35 & Exhibit 2. MC/LM represents that Sandra M. DePriest has a history of operating her own businesses and has practiced for many years as a communications attorney, and that “her professional life is separate and distinct from that of her husband.” See MC/LM Opposition at 4.

³⁷ See MC/LM Petition at 10.

³⁸ See MC/LM Opposition at 2 (stating that, “[a]t all times from the filing of MC/LM's Form 175 application to the date of the filing of the instant Opposition, Sandra M. DePriest has held one hundred percent control of MC/LM”).

³⁹ Although we thus have no basis for finding that Sandra M. DePriest is not the real-party-in-interest in MC/LM, it does appear that MC/LM should have included Donald R. DePriest as a disclosable interest holder in its showing of designated entity eligibility. See MC/LM Reply at 2-3. The MC/LM Application lists only Communications Investments, Inc., Sandra M. DePriest, and S/RJW Partnership, L.P., as disclosable interest holders. Under Section 1.2110(c)(5)(iii)(A) of the Commission's Rules, 47 C.F.R. § 1.2110(c)(5)(iii)(A), however, “[b]oth spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.” MC/LM's application and pleadings forthrightly explain that Donald R. DePriest is the husband of Sandra M. DePriest, and we have nothing in the record to suggest that MC/LM lacked candor as to their marital status. Therefore, the omission of Donald R. DePriest as a disclosable interest holder in the MC/LM designated entity showing is not potentially disqualifying, and provides no basis for granting the MC/LM Petition. It remains, however, that Donald R. DePriest's gross revenues may be relevant to MC/LM's eligibility for the bidding credit that it seeks. The Division will address this issue separately.

⁴⁰ See MC/LM Petition at 15-18.

analogous argument with respect to Havens's petition to deny PSI's Auction No. 57 application when we held that bidders such as the Petitioners are solely responsible for exercising due diligence in investigating geographic licenses for which they bid.⁴¹ In addition, in connection with Havens's petition to deny the application to transfer control of these licenses from Mobex to MC/LM, we rejected Havens's arguments that the licenses automatically terminated for non-construction or permanent discontinuance.⁴²

9. Having determined that the Petitioners have presented no basis upon which to deny the MC/LM Application or to designate it for hearing,⁴³ we also discern no reason to hold the MC/LM Application in abeyance pending the outcome of federal litigation, as requested by the Petitioners.⁴⁴ The litigation apparently involves antitrust and other allegations brought by the Petitioners in the United States District Court for the Northern District of California.⁴⁵ Our understanding is that MC/LM was not a litigant in the case when the Petition was filed,⁴⁶ and the Petitioners do not explain why they believe that "the facts and findings from Related Litigation as it proceeds will be relevant to this proceeding."⁴⁷ We therefore decline to defer processing of the MC/LM Application indefinitely during the pendency of the court case.⁴⁸

10. *PSI Petition.* The Petitioners filed the PSI Petition on November 10, 2005, arguing that the Commission should deny the PSI Application.⁴⁹ The Petitioners assert that PSI's application should be denied because PSI's incumbent site-based B-Block license in Hawaii is no longer valid, and PSI's concealment of this invalidity fraudulently dissuaded the Petitioners from bidding more aggressively on the B-Block license for that geographic area.⁵⁰ They also allege that PSI cooperated with MC/LM to restrain AMTS competition,⁵¹ and colluded with MC/LM in Auction No. 61.⁵² The Petitioners also filed a

⁴¹ See *Paging Systems, Inc., Order*, 20 FCC Rcd 8145, 8148-49 ¶ 11 (WTB PSCID 2005), *aff'd*, *Order on Reconsideration*, DA 06-1078 (WTB PSCID rel. May 24, 2006).

⁴² See *Mobex Network Services, LLC, Order*, 20 FCC Rcd 17957, 17958 ¶ 2 (WTB PSCID 2005), *recon. pending*.

⁴³ The Petitioners also argue that certain petitions to deny filed against their own applications for auctioned AMTS licenses constitute an abuse of process, but they only cite petitions to deny filed by Mobex and PSI, not anything filed by MC/LM. See MC/LM Petition at 24. (MC/LM says it had no involvement, whatsoever, in those Mobex and PSI filings. See MC/LM Opposition at 4.)

⁴⁴ See MC/LM Petition at 2.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.*; MC/LM Opposition at 5.

⁴⁷ See MC/LM Petition at 7.

⁴⁸ Under the Commission's *Character Qualifications Policy*, adjudicated determinations of antitrust violations or similar anti-competitive misconduct may be considered as bearing on the basic qualifications of a licensee or applicant. See Policy Regarding Character Qualifications in Broadcast Licensing; Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, 5 FCC Rcd 3252, 3252 ¶ 6 (1990), *recon. granted in part, Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 3448 (1991). In the event of a judicial adjudication that MC/LM engaged in such misconduct, the Commission has ample discretion to designate MC/LM's basic character qualifications for hearing, or take other appropriate measures at that time. In the absence of such adjudication, we do not believe further action is warranted. The adjudication requirement does not apply to *FCC-related* misconduct, but we have determined here, for reasons discussed in the text, that the Petitioners have failed to provide a sufficient basis for finding that MC/LM has engaged in any such misconduct.

⁴⁹ See PSI Petition at 1. PSI filed an opposition. Opposition to Petition to Deny (filed Nov. 18, 2005) (PSI Opposition). The Petitioners filed a reply. Reply to Opposition to Petition to Deny (filed Nov. 28, 2005).

⁵⁰ See PSI Petition at 2-7.

⁵¹ *Id.* at 2.

Motion to Hold in Abeyance requesting that the Commission defer processing the PSI Application pending the outcome of federal litigation that, according to the Petitioners, pertains to related matters.⁵³ As discussed below, we deny the PSI Petition and the Motion to Hold in Abeyance.

11. As an initial matter, PSI contends that Havens, THL and TVL lack standing because none of these petitioners is licensed to operate an AMTS system that is in direct competition with PSI.⁵⁴ The Petitioners argue that he and THL have standing because THL holds a Location and Monitoring Service geographic area license for Hawaii that potentially can compete with PSI.⁵⁵ Given that the standing of ACL and ITL as competing auction participants is sufficient by itself to bring the issues raised before us, we need not address the standing of the other Petitioners.

12. With respect to the Petitioners' argument that PSI's application should be denied because PSI fraudulently concealed the invalidity of its incumbent site-based B-Block license in Hawaii, we again note that we rejected an analogous argument with respect to Havens's petition to deny PSI's Auction No. 57 application when we held that bidders such as the Petitioners are solely responsible for exercising due diligence in investigating geographic licenses for which they bid.⁵⁶ In addition, in connection with Havens's petition to deny PSI's application to renew its site-based B-Block license in Hawaii, we rejected Havens's arguments that the license automatically terminated for non-construction or permanent discontinuance.⁵⁷ Also, as noted above, we conclude that the Petitioners have not substantiated their allegations that PSI and MC/LM colluded or conspired against the Petitioners. Finally, for the reasons discussed above, we discern no reason to hold the PSI Application in abeyance pending the outcome of federal litigation, as requested by the Petitioners.

13. *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 dismiss or designate issues against the MC/LM and PSI applications. We accordingly deny the petitions to deny. We also deny the Motion to Hold in Abeyance.

14. For the aforementioned reasons, 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 Petition to Deny application FCC File No. 0002303355 filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium, LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC on November 14, 2005, IS DENIED.

15. IT IS FURTHER 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, that the Petition for Reconsideration of the pleading cycle filed by Warren Havens on November 1, 2005, IS GRANTED to the extent described above.

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⁵² *Id.* at 7.

⁵³ Motion to Hold in Abeyance (filed Nov. 10, 2005). PSI filed an opposition. Opposition to Motion to Hold in Abeyance (filed Nov. 18, 2005).

⁵⁴ See PSI Opposition at 3.

⁵⁵ See PSI Petition at 1.

⁵⁶ See Paging Systems, Inc., *Order*, 20 FCC Rcd 8145, 8148-49 ¶ 11 (WTB PSCID 2005), *aff'd*, *Order on Reconsideration*, 21 FCC Rcd 5848 (WTB PSCID 2006).

⁵⁷ See Paging Systems, Inc., *Order*, DA 06-1401 (WTB PSCID rel. July 7, 2006).

16. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Emergency Request regarding the pleading cycle filed by Maritime Communications/Land Mobile, LLC on November 2, 2005, IS GRANTED.

17. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.3 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.925, the Request to Accept Apparently Late Filing Of Petition to Deny filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium, LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC on November 14, 2005, IS GRANTED IN PART to the extent described above.

18. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the Motion to Strike filed by Maritime Communications/Land Mobile, LLC on November 18, 2005, IS DENIED.

19. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.45 of the Commission's Rules, 47 C.F.R. § 1.45, the Amended Erratum Request to Accept Apparently Late Filing Of Petition to Deny filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium, LLC, Telesaurus-VPC, LLC (Telesaurus), and Telesaurus Holdings GB LLC on November 16, 2005, IS DISMISSED.

20. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.45 of the Commission's Rules, 47 C.F.R. § 1.45, the Reply to Opposition to Petition to Deny Erratum Version filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium, LLC, Telesaurus-VPC, LLC (Telesaurus), and Telesaurus Holdings GB LLC on November 30, 2005, IS DISMISSED.

21. IT IS FURTHER 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 Petition to Deny application FCC File No. 0002296956 and the Motion to Hold in Abeyance filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium, LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC on November 10, 2005, ARE DENIED.

22. 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