

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

In the Matter of Application of	)	
	)	
PAGING SYSTEMS, INC.	)	FCC File No. 0002232564
	)	
Petition to Deny filed by Warren C. Havens,	)	
Intelligent Transportation & Monitoring Wireless	)	
LLC, Telesaurus-VPC, LLC, and Telesaurus	)	
Holdings GB LLC	)	

**ORDER**

**Adopted: March 23, 2006**

**Released: March 24, 2006**

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

1. *Introduction.* In this *Order*, we address a petition filed on October 24, 2005 by Warren C. Havens (Havens), Intelligent Transportation & Monitoring Wireless LLC (ITL), Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLV (collectively, Petitioners) to deny the above-captioned long-form application (Application) filed by Paging Systems, Inc. (PSI) for the Multiple Address Systems (MAS) licenses for which it was the high bidder in FCC Auction No. 59 (PTD).<sup>1</sup> We also address a Petition for Reconsideration (PFR) filed by the Petitioners seeking reconsideration of the grant to PSI of a waiver of the Auction No. 59 long-form filing deadline.<sup>2</sup> For the reasons set forth below, we deny both the PTD and the PFR.<sup>3</sup>

2. *Background.* MAS is a private fixed microwave radio service that operates on spectrum in the 900 MHz band for point-to-multipoint and multipoint-to-point communications.<sup>4</sup> On January 19, 2000, the Commission released the *MAS Report and Order*, which adopted rules to maximize the use of spectrum in the MAS service. Among other things, the rules adopted in the *MAS Report and Order* designated six channels pairs in the 928.85-929 MHz and 959.85-960 MHz bands, and twenty of the forty paired channels in the 932.0-932.5 MHz and 941.-941.5 MHz bands, to be licensed on a geographic area basis; established service areas based on Economic Areas; and provided for the licensing of MAS spectrum through competitive bidding.<sup>5</sup> The Wireless Telecommunications Bureau (Bureau) scheduled Auction No. 59 to begin on April 26, 2005, with 4,226 MAS licenses offered.<sup>6</sup> Auction No. 59 began as

<sup>1</sup> Petition to Deny (filed Oct. 24, 2005) (PTD).

<sup>2</sup> Petition for Reconsideration (filed Nov. 14, 2005) (PFR).

<sup>3</sup> We also have before us an Opposition to Petition to Deny filed by PSI on Oct. 31, 2005 (Opposition to PTD); a Reply to Opposition to Petition to Deny filed by the Petitioners on Nov. 7, 2005 (Reply); and an Opposition to Petition for Reconsideration filed by PSI on Nov. 29, 2005 (Opposition to PFR).

<sup>4</sup> See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, WT Docket No. 97-81, 15 FCC Rcd 11956, 11957 ¶ 1 (2000), corrected by Erratum, 15 FCC Rcd 16145, reconsideration granted in part, 16 FCC Rcd 12181 (2001) (*MAS Report and Order*).

<sup>5</sup> *MAS Report and Order*, 15 FCC Rcd at 11957-58 ¶ 2.

<sup>6</sup> See Multiple Address Systems Spectrum Auction Scheduled for April 26, 2005, *Public Notice*, 19 FCC Rcd 24445 (WTB 2004).

scheduled, and closed on May 18, 2005, with winning bids placed on 2,223 licenses by 26 bidders.<sup>7</sup> The *Auction Closing PN* established June 9, 2005, as the deadline for the winning bidders to submit the requisite long-form applications on FCC Form 601.

3. PSI was the high bidder for sixteen of the MAS licenses offered in Auction No. 59.<sup>8</sup> PSI failed to comply with the long-form filing deadline, however, submitting its FCC Form 601 on July 8, 2005. PSI, like three other Auction No. 59 applicants who also missed the long-form filing deadline, requested a waiver of that deadline.<sup>9</sup> On October 13, 2005, the Bureau's Public Safety and Critical Infrastructure Division (Division or PSCID) granted PSI's waiver request.<sup>10</sup> The Division found that PSI had demonstrated that a waiver was warranted under Section 1.925(b)(3) of the Commission's Rules<sup>11</sup> because granting such relief to PSI would not undermine the purpose of Section 1.2107(c), the rule which requires the timely filing of long-form applications,<sup>12</sup> and would serve the public interest.<sup>13</sup>

4. The Division explained that "[a]n underlying purpose of post-auction application deadlines is to ensure that winning bidders satisfy the Commission's qualification and eligibility requirements in a timely manner and so avoid 'delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction.'"<sup>14</sup> That purpose would not be undermined by granting a waiver to PSI, the Division reasoned, because PSI had complied with all pre-auction filing requirements in Auction No. 59, including timely submission of its upfront payment, was found to be a qualified bidder, and had timely satisfied both its down payment and final payment obligations.<sup>15</sup> Under these circumstances, the Division concluded, PSI's filing of its long-form application approximately one month after the deadline "will not unduly delay deployment of its service to the public, and thus not undermine or frustrate the purpose of the post-auction licensing process."<sup>16</sup> The Division also concluded that granting the requested waiver to PSI would serve the public interest because it would facilitate the

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<sup>7</sup> See Multiple Address Systems Auction Closes: Winning Bidders Announced for Auction No. 59, *Public Notice*, 20 FCC Rcd 9551 (WTB 2005) (*Auction Closing PN*).

<sup>8</sup> *Id.* at Attachment A.

<sup>9</sup> See Letter dated July 7, 2005, from Audrey P. Rasmussen, counsel to Paging Systems, Inc., to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, FCC.

<sup>10</sup> See Letter dated Oct. 13, 2005, from Jeffrey S. Cohen, Deputy Chief, PSCID, to Audrey P. Rasmussen, Esq., Counsel for Paging Systems, Inc., 20 FCC Rcd 16194 (*Waiver Order*). The Division also granted waivers to the other three late-filing applicants. See Letter dated Oct. 13, 2005, from Jeffrey S. Cohen, Deputy Chief, PSCID, to Bruce Henoch, Esq., Counsel for Nevada Power Company and Sierra Pacific Power Company, 20 FCC Rcd 16188; Letter dated Oct. 13, 2005, from Jeffrey S. Cohen, Deputy Chief, PSCID, to Bruce Henoch, Esq., Counsel for Repeater Network LLC, 20 FCC Rcd 16191. Due to the pendency of these waiver requests, the four late-filing applicants were not included in the initial public notice announcing the acceptance for filing of the Auction No. 59 MAS long-form applications. See Wireless Telecommunications Bureau Announces that Applications for Multiple Address Systems Licenses Are Accepted for Filing, *Public Notice*, 20 FCC Rcd 12037 (WTB 2005). When the waivers were granted on October 13, 2005, a second accepted for filing public notice was released for these four applicants. See Wireless Telecommunications Bureau Announces that Four Additional Applications for Multiple Address Systems Licenses Are Accepted for Filing, *Public Notice*, 20 FCC Rcd 16197 (WTB 2005).

<sup>11</sup> 47 C.F.R. § 1.925(b)(3).

<sup>12</sup> 47 C.F.R. § 1.2107(c).

<sup>13</sup> *Waiver Order*, 20 FCC Rcd at 16195-6.

<sup>14</sup> *Id.* at 16195, citing Implementation of Section 309(j) of the Communications Act, Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2382 ¶ 197 (1994).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

ability of the company to expand service to its existing customers in Fresno and Redding, California.<sup>17</sup> The Division stated, in that regard, that it accorded “considerable weight to PSI’s record of prior compliance with auction-related requirements.”<sup>18</sup> Finally, the Division noted that its decision was consistent with Commission precedent granting waiver relief for minor delinquencies that do not disrupt the auction process or delay the deployment of service.<sup>19</sup>

5. In both the PTD and the PFR, the Petitioners argue that the Division erred in granting PSI a waiver because PSI did not demonstrate good cause for such relief, and that granting a waiver in these circumstances does not serve the public interest.<sup>20</sup> The Petitioners also assert that PSI lacks the requisite character qualifications to be a Commission licensee, incorporating by reference several other pleadings filed by the Petitioners challenging the basic character qualifications of PSI in other proceedings.<sup>21</sup>

6. *Discussion.* We turn first to the Petitioners’ argument that the Division erred in granting PSI a waiver of the long-form filing deadline under the circumstances presented.<sup>22</sup> The Petitioners contend that the failure of PSI to file a timely long-form application was due solely to an error by counsel and therefore does not satisfy the criteria for grant of a waiver under Section 1.925 of the Rules or Commission precedent.<sup>23</sup> According to the Petitioners, the grant of the waiver to PSI is unfair to those applicants who timely filed their long-form applications, and it would undermine the purpose of Section

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<sup>17</sup> *Id.* at 16195-96.

<sup>18</sup> *Id.* at 16196.

<sup>19</sup> *Id.*, citing *Silver Palm Communications, Inc., Order*, 17 FCC Rcd 6606 (WTB CWD 2002) (*Silver Palm*); *City Page & Cellular Services, Inc., et al., Order*, 17 FCC Rcd 26109 (WTB CWD 2002) (*City Page*).

<sup>20</sup> PTD at 1-2; PFR at 1-5; *see also* Reply at 2-5.

<sup>21</sup> PTD at 2-4; Reply at 5-7; PFR at 5-6.

<sup>22</sup> PSI challenges the Petitioners’ standing to file the PTD and PFR. *See* Opposition to PTD at 2-4; Opposition to PFR at 3-4. However, PSI apparently recognizes that at least ITL would have standing as a competing bidder against PSI in Auction No. 59. *See* Opposition to PTD at 2; *see also High Plains Wireless, L.P. v. FCC*, 276 F.3d 599, 605 (D.C. Cir. 2002) (holding that auction participant had standing to challenge award to another of a license for which it bid). PSI suggests, however, that even ITL should not be accorded standing because its Auction No. 59 application had not been granted when the PTD was filed. *See* Opposition to PTD at 2 (stating that, “at best, only ITL would have standing to file a petition to deny the PSI auction application. However, its application in the auction is merely pending.”). However, PSI cites neither precedent nor any logical reason to withhold standing from an auction participant whose application remains pending, while according standing to that auction participant after its application has been granted. We believe ITL has standing to file the PTD and PFR as a competing bidder against PSI in Auction No. 59, and we therefore need not address the standing of the other Petitioners inasmuch as ITL’s standing as a competing auction participant is sufficient by itself to bring the issues raised in the PTD and PFR before us. *See* Opposition to PTD at 2-4; Reply at 1-2. In addition, given our disposition of this matter, we do not reach PSI’s other procedural challenge to the PFR, which asserts that service of the PFR on PSI’s counsel was defective under Section 1.47 of the Commission’s Rules, 47 C.F.R. § 1.47. *See* Opposition to PFR at 2-3.

<sup>23</sup> PTD at 1-2; Reply at 2-5; PFR at 2-5. The Petitioners contend that counsel’s omissions must be imputed to the applicant, citing Section 217 of the Communications Act of 1934, as amended, 47 U.S.C. § 217. Reply at 2-3; PFR at 3-4. However, the grant of the waiver to PSI was not based in any way on a determination that counsel’s omissions should not be imputed to the applicant. The Petitioners also argue that PSI’s late filing of its long-form application undermines PSI’s real-party-in-interest representations and PSI’s assertion that it will use its Auction No. 59 MAS licenses to serve existing subscribers. *See* PTD at 2. The Petitioners do not persuasively explain why that is so, and adduce no evidence to support these arguments, and, thus, we reject them as pure conjecture.

1.2107(c) were the Commission to grant waivers of that rule whenever the applicant or counsel claims that it simply forgot to file the long-form application on time.<sup>24</sup>

7. The Petitioners are mistaken in asserting that there is no precedent for granting a waiver in this context.<sup>25</sup> As the Division noted in the *Waiver Order*, providing waiver relief to PSI under the circumstances presented is consistent with the waivers granted in *Silver Palm* and *City Page*.<sup>26</sup> In both of those earlier cases, as here, the failure to file a timely long-form application was due to the applicant's "inadvertence [and/or] unawareness that the long-form application was due."<sup>27</sup> In both of those cases, it was determined that rigid enforcement of the filing deadline would not serve the public interest, and that waiver relief was warranted, based on a number of factors that apply equally to PSI: the applicants' record of compliance with all previous auction filing requirements; the applicants' satisfaction of their payment obligations in advance of the long-form filing deadline; the absence of any evidence of bad faith on the part of the applicants; the quick action taken by the applicants to rectify the omission upon learning of it; the fact that the post-auction licensing process was not significantly delayed or adversely affected by the late filings; and the delay in deployment of new or additional service that would stem from denial of the waiver requests and dismissal of the applications.<sup>28</sup> Moreover, the *Silver Palm* and *City Page* decisions themselves were consistent with earlier decisions granting waivers for "minor, inadvertent post-auction delinquencies that did not disrupt the auction process or undermine the Commission's policy of facilitating rapid implementation of reliable communications service to the public."<sup>29</sup> The Petitioners do not even mention the *Silver Palm* and *City Page* decisions, much less attempt to distinguish them from the instant case. In sum, we are unpersuaded that it was error to grant a waiver of the long-form filing deadline to PSI. Rather, we continue to believe that the grant of the waiver to PSI is warranted under Section 1.925 and consistent with Commission precedent.<sup>30</sup>

8. We also are unpersuaded that we should deny the Application based on the Petitioners' argument that PSI lacks the basic character qualifications to be a Commission licensee. In support of this argument, the Petitioners rely on allegations they have made in other licensing proceedings involving PSI, and they incorporate by reference those earlier pleadings.<sup>31</sup> Given that the Petitioners have not alleged

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<sup>24</sup> PTD at 2; Reply at 2-5; PFR at 3. The Petitioners also argue that the waivers granted to the three other Auction No. 59 applicants who filed their long-form applications late do not support the grant of such a waiver to PSI inasmuch as those applicants offered what the Petitioners deem to be more substantial explanations of why they failed to meet the filing deadline. Reply at 2, 5; PFR at 3.

<sup>25</sup> See, e.g., PTD at 2 (contending that the *Waiver Order* "establishes a bad precedent").

<sup>26</sup> *Waiver Order*, 20 FCC Rcd at 16196 n.16; see also Opposition to PTD at 4-5.

<sup>27</sup> See *Silver Palm*, 17 FCC Rcd at 6606 ¶ 3; *City Page*, 17 FCC Rcd at 26110 ¶ 3.

<sup>28</sup> See *Silver Palm*, 17 FCC Rcd at 6607 ¶¶ 7-8; *City Page*, 17 FCC Rcd at 22611-12 ¶¶ 7-8.

<sup>29</sup> PCS Partners, L.P., *Order*, 16 FCC Rcd 4738, 4740 ¶ 8 (WTB CWD 2001); Pinpoint Communications, Inc., *Order*, 14 FCC Rcd 6421, 6425 ¶ 10.

<sup>30</sup> We accordingly deny the PFR in full. In the PFR, the Petitioners also reiterate the arguments they raise in the PTD regarding PSI's basic character qualifications. See PFR at 5-6. However, we do not believe those arguments are germane to the waiver issue. That is, if PSI were deemed basically unqualified to be a Commission licensee, its application would have to be dismissed regardless of its compliance with the long-form filing deadline. Thus, a waiver of the long-form filing deadline would be of no benefit to it. In any event, we address these arguments in ruling on the PTD.

<sup>31</sup> PTD at 2-3. Specifically, the Petitioners incorporate by reference (a) a petition for reconsideration, filed May 23, 2005, seeking reconsideration of an order – Paging Systems, Inc., *Order*, 20 FCC Rcd 8145 (WTB PSCID 2005) (*PSI AMTS Order*) – denying their petition to deny a PSI application for an Automated Maritime Telecommunications System (AMTS) license; (b) the petition to deny and the reply to opposition they filed against that PSI AMTS application, FCC File No. 0001883916; and (c) a petition to deny and other pleadings they filed

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facts as to the basic character qualifications of PSI with respect to the instant Application or with respect to the provision of MAS service, those earlier allegations have relevance here only if they can support a finding that PSI lacks the requisite basic character qualifications to hold *any* Commission license. As discussed below, we find that the PTD does not provide a basis for denying the application on basic character qualifications grounds.

9. The Petitioners' pleadings in the *PSI AMTS Order* proceeding concern PSI's alleged failure to construct certain site-based AMTS stations in the Great Lakes region, and its representations to the Commission pertaining thereto.<sup>32</sup> On April 22, 2005, the Division released the *PSI AMTS Order*, in which it rejected the Petitioners' argument that, due to its alleged failure to construct those site-based AMTS stations, PSI was required to return the licenses for those stations to the Commission for cancellation, and that PSI's failure to do so caused the Petitioners to forego bidding on the Channel Block B license for the Great Lakes Region in the September 2004 AMTS auction, Auction No. 57.<sup>33</sup> The Petitioners' pending petition for reconsideration of that decision argues that the Division erred by failing to address the Petitioners' argument that PSI's alleged "misrepresentations, fraudulent behavior and false certifications" with respect to the construction status of the site-based Great Lakes stations should disqualify PSI to hold any license.<sup>34</sup> With respect to PSI's renewal application for Station WHG545, the Petitioners similarly contend that PSI has falsely represented that the station has been constructed and is operational, and that PSI should be disqualified on the basis of that allegedly false representation.<sup>35</sup>

10. As noted by PSI,<sup>36</sup> specific findings and legal conclusions regarding the construction status of, and PSI's representations regarding, the Great Lakes AMTS stations and AMTS Station WHG545 are more appropriately considered in the pending proceedings involving those stations, rather than the instant proceeding. To date, there has been no finding against PSI in either of those proceedings, or in any other proceeding, of a disqualifying lack of character. In the absence of such a finding, or at least a determination in one of those other proceedings that PSI's basic qualifications to hold any Commission license should be designated for hearing, we see no basis to deny the instant Application. Even if it is ultimately determined that PSI's applications misstated the construction status of the AMTS stations in question, as alleged by the Petitioners, it would not necessarily call into question PSI's basic qualifications.<sup>37</sup> In any event, should the Commission determine in the future that PSI is not qualified to be a Commission licensee due to misrepresentations or lack of candor, it retains discretion to take whatever remedial action it deems appropriate under the circumstances presented, including revocation of

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against PSI's application to renew the license for AMTS Station WHG545, FCC File No. 0002257822. See PTD at 2-3 & nn.4-5.

<sup>32</sup> See *PSI AMTS Order*, 20 FCC Rcd at 8148 ¶ 9.

<sup>33</sup> *Id.*

<sup>34</sup> See Petition for Reconsideration [of *PSI AMTS Order*] at 4 (filed May 23, 2005).

<sup>35</sup> See Petition to Deny [FCC File No. 0002257822] (filed September 6, 2005).

<sup>36</sup> Opposition to PTD at 6; Opposition to PFR at 6-7.

<sup>37</sup> We note that Havens, the real party in interest for all of the Petitioners, repeatedly has raised similar arguments with respect to another AMTS licensee that he contends lacks the requisite character qualifications because it filed defective activation notices, renewal applications, and similar filings with respect to its site-based AMTS licenses. However, we have held that those 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, Order*, 19 FCC Rcd 24939, 24941-43 ¶¶ 6-9 (WTB PSCID 2004), *recon. pending*.

the instant license.<sup>38</sup>

11. *Conclusion.* For the reasons set forth above, we conclude that the Division did not err in waiving Section 1.2107(c) of the Rules to permit PSI to file its MAS long-form application after the specified deadline. We also conclude that the Petitioners' allegations in other pending proceedings regarding the construction status of PSI's AMTS stations, and PSI's representations to the Commission concerning same, do not provide a sufficient basis for denying the Application on the grounds that PSI is not qualified to hold the subject MAS licenses.

12. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the petition to deny filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLV on October 24, 2005, IS DENIED.

13. 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, the petition for reconsideration filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLV on November 14, 2005, IS DENIED.

14. 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>38</sup> See 47 U.S.C. § 312. We emphasize that our determination to grant the instant Application does not prejudice the resolution of the other referenced proceedings.