

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

In the Matter of Applications of)	
)	
MOBEX NETWORK SERVICES, LLC)	
)	
To Renew Licenses for Automated Maritime)	File Nos. 0001370847, 0001370848,
Telecommunications System (AMTS) Stations in)	0001370850, 0001600664, 0001768691
Various Locations in the United States)	
)	
To Transfer Control of AMTS Licenses)	File No. 0001885281
)	
To Assign AMTS Licenses)	File No. 0002197542

ORDER ON RECONSIDERATION

Adopted: January 22, 2007

Released: January 23, 2007

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This *Order on Reconsideration* addresses two petitions for reconsideration filed by Warren C. Havens and certain entities in which he has a controlling interest (collectively “Havens,” except where noted). In a December 28, 2004 *Order*,¹ the Public Safety and Critical Infrastructure Division (Division)² granted in part and denied in part Havens’ petitions to deny applications filed by Mobex Network Services, LLC (Mobex) to renew licenses for Automated Maritime Telecommunications System (AMTS) stations along the Great Lakes,³ Erie Canal,⁴ and Pacific Coast⁵; and his petition to deny an application filed by Mobex to transfer control of its AMTS stations to Clarity GenPar, LLC (Clarity).⁶ On January 27, 2005, Havens requested reconsideration of the Division’s decisions.⁷ The transfer to

¹ Mobex Network Services, LLC, *Order*, 19 FCC Rcd 24939 (WTB PSPWD 2004) (*Clarity Order*).

² Pursuant to a Commission reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

³ Call Signs KCE278, KPB531, and KUF732. See File Nos. 0001370847, 0001370848, 0001370850 (filed July 2, 2003).

⁴ Call Sign KCE240. See File No. 0001600664 (filed January 30, 2004).

⁵ Call Sign KAE889. See File No. 0001768691 (filed June 10, 2004).

⁶ Call Signs KAE889, KCE240, KCE278, KPB531, KUF732, KUZ515, KWS591, WHG693, WHG701-703, WHG 705-754, WHG943, WHV733, WHV740, WHV843, WHW848, WRV374, WQBC300, WQX716. See File No. 0001885281 (filed Oct. 1, 2004). The application also sought to transfer the licenses for Mobex’s non-AMTS coast stations, Call Signs KA98265, WFN, WHX877, and WRD580, but Havens did not appear to contest the transfer of control of the non-AMTS licenses.

⁷ The petition was filed by Warren C. Havens, AMTS Consortium LLC (ACL), Telesaurus-VPC LLC (TVL), and Telesaurus Holdings GB LLC (THL).

Clarity was not consummated, and Mobex subsequently filed an application to assign its AMTS licenses to Marine Communications/Land Mobile, LLC (MC/LM).⁸ Havens also filed a petition to deny the assignment application and in a November 9, 2005 *Order*, the Division denied Havens' petition.⁹ On December 9, 2005, Havens requested reconsideration of the Division's decision.¹⁰ For the reasons discussed below, we dismiss in part and deny in part Havens' January 27, 2005 petition, and deny his December 9, 2005 petition. In addition, we address a "Request for Relief from Frivolous Pleadings" filed by Mobex.

II. BACKGROUND

2. *General.* AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.¹¹ The licenses for the stations at issue were granted between 1995 and 1999 under the Commission's former rules for site-based licensing of AMTS stations.¹² Under former Section 80.475(a) of the Commission's Rules, AMTS applicants were required to serve a navigable inland waterway that is less than 150 miles in length in its entirety; applicants proposing to serve a navigable inland waterway more than 150 miles in length were required to provide continuity of service along at least sixty percent of the waterway; and 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.¹³ AMTS facilities must be constructed within a specified time and must remain operational in order for the license to remain valid.¹⁴

3. 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.¹⁵ In April 2004, the Wireless Telecommunications Bureau (Bureau) announced that the auction of AMTS geographic licenses would commence in September 2004.¹⁶ In anticipation of the

⁸ Call Signs KAE889, KCE278, KPB531, KUF732, WHG693, WHG701-703, WHG 705-754, WHV733, WHV740, WHV843, WHW848, WRV374. See File No. 0002197542 (filed June 13, 2005).

⁹ Mobex Network Services, LLC, *Order*, 20 FCC Rcd 17957 (WTB PSPWD 2005) (*MC/LM Order*). The application also sought to assign the licenses for Mobex's non-AMTS coast stations, Call Signs KA98265, WFN, WHX877, and WRD580, but Havens did not appear to contest the assignment of the non-AMTS licenses.

¹⁰ The petition was filed by Warren C. Havens, ACL, TVL, THL, and Intelligent Transportation and Monitoring Wireless LLC (ITL).

¹¹ 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).

¹² The licenses initially were granted to Fred Daniel d/b/a Orion Telecom, who subsequently transferred control of the licenses to RegioNet Wireless Partnership, which subsequently assigned the licenses to RegioNet Wireless, LLC, which subsequently transferred control to Mobex.

¹³ 47 C.F.R. § 80.475(a) (2001). The substantial navigational area requirement also applied to the Great Lakes. See Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 17474, 17477 ¶ 6 (WTB PSPWD 1998).

¹⁴ See 47 C.F.R. §§ 1.955(a), 80.49(a)(3).

¹⁵ 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).

¹⁶ See Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004: Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, 19 FCC Rcd 6274 (WTB 2004).

auction, the Bureau undertook a review of its licensing records—including requesting information from licensees, as needed—to determine whether all licensed AMTS facilities were properly constructed and operational.¹⁷ As a result of this audit, the Commission’s licensing database was updated to verify the status and the technical information of currently licensed AMTS stations, and to delete listings for unconstructed facilities. The initial AMTS auction (Auction No. 57) was completed on September 15, 2004.¹⁸ Ten of the twenty available licenses received high bids, including eight for which the high bidders were entities controlled by Warren C. Havens.¹⁹ The applications were granted in 2005.²⁰

4. The auction of the remaining AMTS geographic licenses (Auction No. 61) was completed on August 17, 2005.²¹ Entities controlled by Warren C. Havens were the high bidders for five licenses, and MC/LM was the high bidder for four licenses.²² The applications were granted in 2006.²³

5. *Clarity Order.* Mobex’s applications to renew its Great Lakes, Erie Canal, and Pacific Coast AMTS licenses appeared on public notice as accepted for filing between July 2003 and June 2004,²⁴ and Havens filed petitions to deny the applications between August 2003 and July 2004. Mobex’s application to transfer control of its AMTS licenses to Clarity appeared on public notice as accepted for filing in October 2004,²⁵ and Havens filed a petition to deny the application in November 2004.

6. In the *Clarity Order*, released on December 28, 2004, the Division granted Havens’ petitions with respect to the Erie Canal stations, and denied the petitions with respect to the other stations. The Division agreed with Havens that the authorizations for the Erie Canal stations canceled automatically because the facilities were not timely constructed.²⁶ The Division rejected Havens’ broader argument that all of the authorizations should be deemed to have canceled automatically because the station activation notifications were defective. The Division concluded that it would not further the public interest to deny Mobex’s renewal and transfer applications *en masse* based on defects in the activation notices for facilities that were in fact timely constructed.²⁷ Finally, with respect to Havens’ argument that the Great Lakes system was not timely constructed because a one-year construction extension was granted to allow Mobex to co-locate the stations with those of Paging Systems, Inc. (PSI)

¹⁷ 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, 9526 n.54 (WTB 2004).

¹⁸ See Automated Maritime Telecommunications System Spectrum Auction Closes: Winning Bidders Announced, *Public Notice*, 19 FCC Rcd 18252, 18252 (WTB 2004).

¹⁹ See *id.* at 18258.

²⁰ See Wireless Telecommunications Bureau Announces the Grant of 10 Automated Maritime Telecommunications System Licenses, *Public Notice*, 20 FCC Rcd 8244 (WTB 2005).

²¹ See Auction of Automated Maritime Telecommunications System Licenses Closes: Winning Bidders Announced for Auction No. 61, *Public Notice*, 20 FCC Rcd 13747, 13747 (WTB 2005).

²² See *id.* at 13755.

²³ See Wireless Telecommunications Bureau Grants Ten Automated Maritime Telecommunications Systems Licenses, *Public Notice*, DA 06-2621 (WTB rel. Dec. 29, 2006).

²⁴ See *Public Notice*, Report No. 1543 (rel. July 9, 2003) (File Nos. 0001370847, 0001370848, 0001370850); *Public Notice*, Report No. 1733 (rel. Feb. 4, 2004) (File No. 0001600664); *Public Notice*, Report No. 1853 (rel. June 19, 2004) (File No. 0001768691).

²⁵ See *Public Notice*, Report No. 1956 (rel. Oct. 6, 2004).

²⁶ See *Clarity Order*, 19 FCC Rcd at 24942 ¶ 7.

²⁷ See *id.* at 24942 ¶ 6. Moreover, the Division concluded that the defects and variations alleged by Havens would not constitute sufficient reason for denying the renewal or transfer applications. *Id.*

but Mobex did not co-locate the stations, the Division concluded that the construction extension was not conditioned on co-location, so the failure to co-locate did not result in rescission of the extension.²⁸ On January 27, 2005, Havens requested reconsideration of the *Clarity Order*.²⁹

7. On June 16, 2005, Mobex informed the Division that the transfer of control to Clarity would not be consummated. Consequently, the transfer application was dismissed on June 17, 2005.³⁰

8. *MC/LM Order*. Mobex's application to assign its AMTS licenses to MC/LM appeared on public notice as accepted for filing in June 2005,³¹ and Havens filed a petition to deny the application in July 2005. In the *MC/LM Order*, released on November 9, 2005, the Division denied the petition because it raised the same arguments regarding the status of the licenses that the Division had rejected in the *Clarity Order*, and presented no new information.³² On December 9, 2005, Havens requested reconsideration of the *MC/LM Order*.³³

²⁸ See *id.* at 24944 ¶ 9.

²⁹ Petition for Reconsideration (filed January 27, 2005) (*Clarity Petition*). On February 7, 2005, Mobex filed an Opposition to Petition for Reconsideration. Opposition to Petition for Reconsideration (filed February 7, 2005) (*Clarity Opposition*). On February 8, 2005, PSI filed an Opposition to Petition for Reconsideration. Opposition to Petition for Reconsideration (filed February 8, 2006). On February 22, 2005, Havens filed a Reply to the Oppositions. Reply to Opposition to Petition for Reconsideration (filed February 22, 2006). On March 1, 2005, PSI filed a Motion to Strike. Motion to Strike (filed March 1, 2005). PSI moved to strike particular sentences and paragraphs of Havens' reply on the grounds that statements contained therein are irrelevant, beyond the scope of the oppositions, or scandalous. We agree that much of the reply is not germane to whether the *Clarity Order* should be reconsidered, and our conclusions herein do not rely those statements. We are capable, however, of disregarding the extraneous portions of the reply without making selective deletions. We therefore deny the motion to strike. See Kentucky Central Television, Inc. (WKYT-TV), *Memorandum Opinion and Order*, 14 F.C.C.2d 189, 191 n.8 (Rev. Bd. 1968) ("While the Board's deliberations are not facilitated by statements of the type complained of, they are not such as to warrant the relief requested.").

On February 6, 2006, Havens filed a Supplement to Petition for Reconsideration and Request to Accept Supplement to Petition for Reconsideration. Supplement to Petition for Reconsideration (February 3, 2006); Request to Accept Supplement to Petition for Reconsideration (February 6, 2006). The material in the supplement, consisting largely of pleadings from litigation involving Mobex, could have been presented earlier in this proceeding, and is of limited probative value. Consequently, the Request to Accept Supplement to Petition for Reconsideration is denied. See, e.g., 47 C.F.R. § 1.45; Kim Shaw Wong, *Memorandum Opinion and Order*, 11 FCC Rcd 11928, 11930 ¶ 7 (1996).

³⁰ See Notice of Dismissal, File No. 0001885281.

³¹ See *Public Notice*, Report No. 2185 (rel. June 22, 2005).

³² See *MC/LM Order*, 20 FCC Rcd at 17957-58 ¶ 2.

³³ Petition for Reconsideration (filed December 9, 2005) (*MC/LM Petition*). On December 22, 2005, Mobex filed an Opposition to Petition for Reconsideration. Opposition to Petition for Reconsideration (filed December 22, 2005); Erratum to Opposition to Petition for Reconsideration (filed December 23, 2005) (*MC/LM Opposition*). On January 11, 2006, Warren C. Havens and THL filed a reply; and ACL, ITL, and TVL filed a reply. Havens Reply (filed January 11, 2006); Reply to Opposition to Petition for Reconsideration (filed January 11, 2006).

On January 27, 2006, Mobex filed a Surreply and a Motion to Accept Unauthorized Filing seeking to respond to new matters raised in the replies. Surreply (filed January 27, 2006); Motion to Accept Unauthorized Filing (filed January 27, 2006). On February 9, 2006, Havens filed an Opposition to Motion to Accept Unauthorized Filings and Brief Comment on the Surreply. Opposition to Motion to Accept Unauthorized Filings and Brief Comment on the Surreply (filed February 9, 2006). We agree with Havens that the material in the surreply could have been presented earlier in this proceeding. Consequently, the Motion to Accept Unauthorized Filing is denied.

III. DISCUSSION

9. *Clarity Petition*. As an initial matter, we note that Havens' petition for reconsideration is moot with respect to the Division's denial of his petition to deny the application to transfer control of Mobex's AMTS licenses to Clarity, in light of the parties' decision not to consummate the transaction. We therefore dismiss the petition in part. With respect to the applications to renew the licenses, we agree with Mobex that the *Clarity Petition* is, in part, "merely a rehash of arguments which [Havens] had raised and which had been fully considered."³⁴ For example, Havens again asserts that the licenses for some of the stations at issue should be deemed to have canceled pursuant to the Commission's rules for failure to construct because of certain defects in the activation notices,³⁵ and that some stations should be deemed to have been constructed out of time because a construction extension granted to allow additional time to co-locate with certain PSI facilities should be rescinded due to Mobex's failure to co-locate.³⁶ As noted above, the Division rejected these arguments in the *Clarity Order*.³⁷ We need not address them again.

10. Havens makes additional arguments, which he states should have been addressed in the *Clarity Order*. He asserts that the *Order* "ignored" the fact that "Mobex had to either construct the licenses by the deadlines or turn them back in for cancellation."³⁸ As the *Clarity Order* noted, the Bureau reviewed the construction and operational information for the licenses for the stations at issue in anticipation of the AMTS auction, confirmed that the vast majority of the facilities at issue were timely constructed, and deleted the unconstructed facilities from the Commission's licensing database.³⁹ Thus, as discussed above, the *Clarity Order* clearly recognized Mobex's construction requirement (and, indeed, terminated the authorizations for Mobex's Erie Canal system for failure to meet the deadline), but simply disagreed with Havens' contentions that the other licenses were not timely constructed. Havens also asserts that Mobex's failure to turn in those licenses was anticompetitive in that it dissuaded others from bidding more aggressively for the relevant geographic licenses.⁴⁰ The Division rejected this argument when Havens raised it in the context of MC/LM's Auction No. 61 long-form application.⁴¹ We need not discuss it again here.

11. Havens also argues that the stations at issue should be deemed not to have been constructed as required because the stations failed to provide the coverage required under former Section 80.475(a). Specifically, he presents contour maps⁴² to support his argument that the licensed facilities do not sufficiently cover the relevant waterways; and in some cases do not even provide overlapping coverage, resulting in single-station "systems" that were not permissible under the AMTS site-based licensing rules.⁴³ We note that the contours in Havens' maps are based on the service contour adopted by the Commission for purposes of determining the co-channel protection to which site-based incumbents

³⁴ *Clarity Opposition* at 3 (citing *WWIZ, Inc.*, 37 F.C.C. 684 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)).

³⁵ See *Clarity Petition* at 6-7, 14-15.

³⁶ *Id.* at 14-15.

³⁷ See *Clarity Order*, 19 FCC Rcd at 24941 ¶ 6, 24944 ¶ 9.

³⁸ See *Clarity Petition* at 2.

³⁹ See *Clarity Order*, 19 FCC Rcd at 24940-41 ¶ 3.

⁴⁰ See *Clarity Petition* at 2-3.

⁴¹ See *Maritime Communications/Land Mobile, LLC, Order*, 21 FCC Rcd 8794, 8798-99 ¶ 8 (WTB PSCID 2006) (*Auction 61 Order*).

⁴² See *Clarity Petition* at 22-27.

⁴³ See *Clarity Petition* at 7-8, 10-12, 15-16.

would be entitled from geographic licensees.⁴⁴ Prior to the implementation of geographic licensing, the Commission's AMTS rules did not specify a service contour, and applicants were permitted to file applications, and demonstrate that the coverage requirement would be met, based on the reasonable service contour of their choice.⁴⁵ We reject Havens' suggestion that site-based licenses that were granted on the basis of predicted service contours demonstrating adequate coverage should retroactively be deemed to have terminated based on the Commission's subsequent adoption (for a different purpose) of a smaller service contour.⁴⁶

12. Finally, Havens argues that the licenses at issue should be deemed to have terminated for failure to construct because it is "common knowledge" that the model of base station equipment utilized by Mobex was not capable of integrated operation in a multi-station system, as required under the site-based AMTS rules.⁴⁷ Site-based AMTS stations in a licensed system were required to "be connected, thereby ensuring seamless communication throughout the system for a vessel traveling along a served waterway."⁴⁸ This requirement was intended to meet the needs of tug, towboat, and barge operators for a ship-shore communications service that would not require users to reestablish contact with different public coast stations as they traveled along a waterway.⁴⁹ Havens appears to construe the requirement to mean that the system architecture had to enable a user on one site to contact users on other sites by routing the call directly between base stations.⁵⁰ Mobex argues that Havens misconstrues the scope of the requirement.⁵¹ We need not resolve this issue, however, because we agree with Mobex that Havens has not demonstrated that Mobex's systems lacked this capacity, assuming *arguendo* that it was required.⁵²

13. *MC/LM Petition.* Havens raises a number of the same issues in the petition for reconsideration of the *MC/LM Order* as in the petition for reconsideration of the *Clarity Order*.⁵³ Those issues are discussed above, and need not be revisited. Havens also presents "new facts and evidence" that the licenses for the Pacific Coast and Chicago stations automatically terminated for permanent discontinuance of operations.⁵⁴ The "evidence" consists of pleadings from litigation between Mobex and parties unrelated to Havens, which were filed before Havens filed his petition to deny Mobex's

⁴⁴ See 47 C.F.R. § 80.385(b)(1).

⁴⁵ See *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6699 n.139.

⁴⁶ See *Clarity Opposition* at 4 ("Those standards have no applicability to Havens' attempt to assess retroactively an AMTS system's extent of coverage for purposes of ascertaining compliance with an abandoned rule which was never intended to be applied to renewal of a station license.").

⁴⁷ See *Clarity Petition* at 9.

⁴⁸ Warren C. Havens, *Letter*, 17 FCC Rcd 15903, 15905 (WTB PSPWD 2003).

⁴⁹ See *Paging Systems, Inc., Order on Reconsideration*, 21 FCC Rcd 5848, 5848 ¶ 2 (WTB PSCID 2006) (citing 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, *Report and Order*, 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)).

⁵⁰ See *Clarity Petition* at 9-10.

⁵¹ See *Clarity Opposition* at 4.

⁵² See *id.* at 5.

⁵³ See, e.g., *MC/LM Petition* at 9 (arguing that the stations at issue should be deemed not to have been constructed as required because the stations failed to provide the coverage required under former Section 80.475(a)), 11-14 (arguing that the licenses for some of the stations at issue should be deemed to have canceled pursuant to the Commission's rules for failure to construct because of certain defects in the activation notices).

⁵⁴ *Id.* at 14.

application to assign its AMTS licenses to MC/LM.⁵⁵ We agree with Mobex that Havens could have used the information at that time, and cannot now bring forth the information only after receiving an adverse decision.⁵⁶ Moreover, we do not believe that consideration of the pleadings “is required in the public interest”⁵⁷ because they are of limited probative value: Mobex expressly denies the operative claims, both in the pleadings and in opposition to Havens’ reliance thereon.⁵⁸

14. Havens alleges that Mobex lacks the basic qualifications to be an AMTS licensee because it is engaged in a conspiracy with MC/LM to violate Federal antitrust laws and the Communications Act of 1934, as amended, and to commit mail and wire fraud; and because MC/LM failed to disclose its real party in interest in its Auction No. 61 application.⁵⁹ The Division concluded that Havens’ arguments in these respects did not raise even a *prima facie* case for denying MC/LM’s Auction No. 61 long-form application.⁶⁰ We conclude here that Havens has not demonstrated grounds for reconsidering the *MC/LM Order*. Similarly, we conclude that Mobex’s failure to update the required FCC Form 602 (FCC Ownership Disclosure Information for the Wireless Telecommunications Services),⁶¹ which has since been remedied,⁶² does not demonstrate an intent to mislead competitors or launder its licenses, or call into question MC/LM’s character qualifications.

15. Havens also appears to argue that it was improper for the Division to release the *MC/LM Order* while the petition for reconsideration of the *Clarity Order* remained pending.⁶³ However, he cites no authority, and we are aware of none, constraining the Division’s discretion with respect to the sequence in which pending matters are addressed.⁶⁴ In addition, Havens asserts that the Division was not impartial in deciding the *MC/LM Order*:

Petitioner’s position, in accord with the extensive record, is that the FCC Delegated Authority staff (the “DA”) involved in the Order were not impartial and objective in deciding the Order, including due to having made extensive past errors in granting to Mobex (including its predecessors) the Licenses, renewals, and various relief when such actions clearly were contrary to applicable FCC rules and the Communications Act. When Petitioner’s [sic] pointed out such errors, the DA acted as an interested party and defended the errors by avoiding clear facts in the record and applicable law that Petitioner’s [sic] presented and that otherwise could not possible [sic] be missed had the DA been objection [sic]. Petitioner further assert [sic] that such impartial [sic] action directly blocked and curtailed Petitioner from competing with Mobex and [MC/LM] (and affiliates) in AMTS licenses and service nationwide, and this is a clear violation of anti-trust law.⁶⁵

⁵⁵ See *id.* at Exhibits 2 and 3.

⁵⁶ See *MC/LM Opposition* at 4-5 (citing *Beehive Tel. Co. v. FCC*, 180 F.3d 314 (D.C. Cir. 1999)).

⁵⁷ 47 C.F.R. § 1.106(c)(2).

⁵⁸ See *MC/LM Opposition* at 5.

⁵⁹ See *MC/LM Petition* at 3-5, 8, 11-16.

⁶⁰ See *Auction 61 Order*, 21 FCC Rcd at 8796-97 ¶¶ 5-7.

⁶¹ See *MC/LM Petition* at 6-7.

⁶² See *MC/LM Opposition* at 4.

⁶³ See *MC/LM Petition* at 9-10.

⁶⁴ See *Geostar Corporation, Memorandum Opinion and Order*, 2 FCC Rcd 5875, 5875 ¶ 4 (CCB 1987).

⁶⁵ *MC/LM Petition* at 3.

The test for disqualification of a staff member from an adjudicatory proceeding on grounds of bias or the appearance of bias is whether "a disinterested observer may conclude that [the decisionmaker] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it."⁶⁶ Havens' conclusory allegations include no evidence to support such a finding.⁶⁷ Finally, Havens argues that this proceeding should be held in abeyance pending the outcome of federal litigation involving the parties.⁶⁸ The Division declined this suggestion when Havens raised it in connection with MC/LM's Auction No. 61 long-form application,⁶⁹ and we decline it in this proceeding as well.

16. *Request for Relief from Frivolous Filings.* In a petition filed on November 7, 2005, Mobex asserts that Havens has filed a long string of frivolous pleadings against it, and requests that Havens be required to obtain leave of the Commission before being permitted to file any new pleading relating to AMTS or Mobex.⁷⁰ As the Commission has warned, it "intends to fully utilize its authority to discourage and deter the filing of [frivolous] pleadings and to impose appropriate sanctions where such pleadings are filed."⁷¹ We are aware that Havens frequently filed petitions to deny applications filed by Mobex and its predecessor-in interest, and now appears to file petitions to deny MC/LM's applications as a matter of routine. "The Commission has authorized its Bureaus and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission's processes. Given the Commission's goal of encouraging participation in FCC proceedings, however, it only considers the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear."⁷² In this regard, we note that Havens has on occasion raised valid objections with which the Division has concurred.⁷³ Consequently, we will not at this time impose any sanctions against Havens. We reserve discretion to revisit the issue, however, if presented with egregious circumstances, such as repeated pleadings premised on allegations that were previously adjudicated in MC/LM's favor. We hereby expressly warn Havens that he may face summary dismissal of his pleadings or the alternative procedure of prior screening of his pleadings should he file abusive or harassing pleadings with the agency, and that we may consider imposing other sanctions authorized by the Communications Act.⁷⁴

⁶⁶ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding For Commercial Broadcast And Instructional Television Fixed Service Licenses, *First Report and Order*, MM Docket No. 97-234, 13 FCC Rcd 15920, 16007 ¶ 215 (1998) (citing Metropolitan Council of NAACP Branches v. FCC, 46 F.3d 1154, 1164-65 (D.C. Cir. 1995) (citing Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583, 591 (D.C. Cir. 1970))).

⁶⁷ *MC/LM Petition* at 3. Havens also makes a one-sentence argument to the effect that Division's decision under delegated authority was an abuse of discretion that resulted from an unconstitutionally overbroad delegation of power from Congress to the Commission. Havens provides no analysis or authority to support the argument.

⁶⁸ See *MC/LM Petition* at 17.

⁶⁹ See *Auction 61 Order*, 21 FCC Rcd at 8799 ¶ 9.

⁷⁰ Request for Relief from Frivolous Pleadings (filed Nov. 7, 2005) (*Mobex Request*); see also *MC/LM Opposition* at 3.

⁷¹ See Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

⁷² Litigation Recovery Trust, *Memorandum Opinion and Order*, 17 FCC Rcd 21852, 21857-58 ¶ 11 (2002) (*Litigation Recovery Trust*).

⁷³ See *Clarity Order*, 19 FCC Rcd at 24942 ¶ 7; Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12305, 12307-08 ¶ 6 (WTB PSPWD 2003); Regionet Wireless, LLC, *Order*, 16 FCC Rcd 2534, 2536-37 ¶ 7 (WTB PSPWD 2001).

⁷⁴ See *Litigation Recovery Trust*, 17 FCC Rcd at 21858 ¶ 11.

IV. CONCLUSION AND ORDERING CLAUSES

17. In view of the foregoing, we affirm the actions denying Havens' petitions to deny Mobex's applications to renew the licenses at issue and to assign them to MC/LM, because Havens did not demonstrate any defect under the Commission's rules and policies. We note that reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁷⁵ A petition that simply reiterates arguments previously considered and rejected will be denied.⁷⁶ After reviewing Havens' petitions, we believe that he has failed to demonstrate that the *Clarity Order* or the *MC/LM Order* contains a material error, or did not fully and fairly consider the arguments raised therein. Consequently, we deny Havens' petitions for reconsideration.

18. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Warren C. Havens, AMTS Consortium LLC, Telesaurus-VPC LLC, and Telesaurus Holdings GB LLC on January 27, 2005 IS DISMISSED IN PART AND DENIED IN PART to the extent set forth above.

19. IT IS FURTHER ORDERED that the Motion to Strike filed by Paging Systems, Inc., on March 1, 2005 IS DENIED.

20. IT IS FURTHER ORDERED that the Request to Accept Supplement to Petition for Reconsideration filed by Warren C. Havens, AMTS Consortium LLC, Telesaurus-VPC LLC, and Telesaurus Holdings GB LLC on February 6, 2006 IS DENIED.

21. IT IS FURTHER ORDERED that the petition for reconsideration filed by Warren C. Havens, AMTS Consortium LLC, Intelligent Transportation and Monitoring Wireless LLC, Telesaurus-VPC LLC, and Telesaurus Holdings GB LLC on December 9, 2005 IS DENIED.

22. IT IS FURTHER ORDERED that the Motion to Accept Unauthorized Filing filed by Mobex Network Services, LLC, on January 27, 2006 IS DENIED.

23. IT IS FURTHER ORDERED that the Request for Relief from Frivolous Pleadings filed by Mobex Network Services, LLC, on November 7, 2005 IS DENIED.

24. 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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

⁷⁵ See *WWIZ, Inc.*, 37 F.C.C. 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(c).

⁷⁶ *Id.*; see also Gaines, Bennett Gilbert, *Memorandum Opinion and Order*, 8 FCC Rcd 3986 (Rev. Bd. 1993).