

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

In the matter of)
)
Petition for Reconsideration by) DA 05-1047
Warren C. Havens, AMTS Consortium, LLC,)
Telesaurus-VPC, LLC and)
Telesaurus Holdings GB LLC)
)
)
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MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2007

Released: January 31, 2007

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address a petition for reconsideration filed by Warren C. Havens, AMTS Consortium, LLC ("ACL"), Telesaurus-VPC, LLC ("TVL") and Telesaurus Holdings GB LLC (collectively the "Havens Parties").

II. BACKGROUND

2. On February 2, 2005, the Bureau released the Auction No. 61 Comment Public Notice announcing that Auction No. 61 would commence on August 3, 2005, and seeking comment on procedures for an auction of ten AMTS licenses that were offered but unsold in the Commission's previous AMTS auction, Auction No. 57.

1 Petition for Reconsideration by Warren C. Havens, AMTS Consortium, LLC., Telesaurus-VPC, LLC and Telesaurus Holdings GB LLC (filed May 23, 2005) ("Petition").

2 "Automated Maritime Telecommunications System Auction Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auctions Procedures for Auction No. 61," Public Notice, 20 FCC Rcd 7811 (2005) ("Auction No. 61 Procedures Public Notice").

3 "Automated Maritime Telecommunications System Auction Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auctions Procedures for Auction No. 61," Public Notice, 20 FCC Rcd 2057 (2005) ("Auction No. 61 Comment Public Notice").

3. By way of background, Auction No. 57 had closed a few months earlier, on September 15, 2004.⁴ In that previous auction, two entities controlled by Mr. Havens, ACL and TVL, were high bidders on 8 of the 10 AMTS licenses won in that auction.⁵

4. On February 18, 2005, the Havens Parties filed comments in response to the *Auction No. 61 Comment Public Notice*.⁶ The Havens Parties requested that the Commission postpone the start of Auction No. 61, pending release of a ruling upon a petition for reconsideration of an order arising out of Auction No. 57 that, among other things, denied a request to bar the Havens-controlled entities, ACL and TVL, for participation in that prior auction.⁷ The Havens Parties contended that the reconsideration request had delayed the award of licenses won in Auction No. 57 and had damaged ACL's and TVL's business plans, valuation, and ongoing financing activities.⁸ The Havens Parties also argued that delay of the auction would give the Commission adequate time to clarify questions raised in the Havens Comments concerning interference protection standards applicable to the licenses being offered in Auction No. 61.⁹ The party that filed the Auction No. 57-related petition for reconsideration, Paging Systems, Inc. ("PSI"), also filed comments in which it asked the Bureau to delay Auction No. 61 until the Commission ruled on its petition.¹⁰

5. The Bureau denied these requests in the *Auction No. 61 Procedures Public Notice*, determining that the public interest would be served by conducting the auction as scheduled.¹¹ The Bureau reasoned that, "while Section 309(j)(3)(E)(ii), [of the Communications Act of 1934, as amended] directs the Commission to provide interested parties adequate time to prepare prior to an auction, the statute also requires that the Commission promote several other objectives in exercising its competitive bidding authority, including the rapid deployment of new technologies and services to the public."¹² After balancing these objectives, the Bureau "determine[d] that the public interest would be served by proceeding with the auction as scheduled."¹³ The Bureau noted that the Havens Parties had "made no showing that they have not been afforded adequate time to prepare for Auction No. 61."¹⁴ The Bureau was not persuaded by the Havens Parties' arguments that issues concerning interference protection gave rise to undue uncertainty, pointing out that potential bidders had been afforded many years to understand the "heavy presence of incumbents in this spectrum" and that the Havens Parties and PSI were "already providing AMTS services."¹⁵ Moreover, the Bureau observed that it had issued a ruling on PSI's Auction

⁴ See Automated Maritime Telecommunications System Spectrum Auction Closes; Winning Bidders Announced, *Public Notice*, 19 FCC Rcd 18,252 (2004).

⁵ See *id.*

⁶ Comments by Warren C. Havens, AMTS Consortium, LLC, Telesaurus-VPC, LLC and Telesaurus Holdings GB LLC, at 3-5 (filed Feb. 18, 2005) ("Havens Comments").

⁷ Havens Comments at 3-5. See also Motions for Stay of Auction No. 57 and Requests for Dismissal or Disqualification, *Order*, 19 FCC Rcd 20482 (ASAD/WTB 2004).

⁸ See *Auction No. 61 Procedures Public Notice*, 20 FCC Rcd at 7824, citing Havens Comments at 3-5.

⁹ See *id.*, citing Havens Comments at 6-8.

¹⁰ Comments by Paging Systems, Inc. at 3, 7 (filed Feb. 26, 2005).

¹¹ See *Auction No. 61 Procedures Public Notice*, 20 FCC Rcd at 7826.

¹² *Id.*, 20 FCC Rcd at 7826, citing 47 U.S.C. 309(j)(3)(E)(ii).

¹³ *Id.* at 7826.

¹⁴ *Id.* at 7825.

¹⁵ *Id.*

No. 57-related petition for reconsideration on the same day as the release of the *Auction No. 61 Procedures Public Notice*, and had resolved the outstanding legal issues raised therein.¹⁶

6. During Auction No. 61, ACL and Intelligent Transportation and Monitoring Wireless, LLC, (“ITMW”), another affiliate controlled by Havens, were the high bidders on five of the ten AMTS licenses sold during the auction.¹⁷ On December 29, 2006, the Commission granted ACL and ITMW their five AMTS licenses.¹⁸

III. DISCUSSION

7. We deny the Petition for Reconsideration because it raises no new facts nor arguments that the Bureau has not already addressed. Section 1.106 of the Commission’s rules permits parties to file petitions for reconsideration of actions by the Commission or by delegated authority.¹⁹ Under Commission precedent, reconsideration is only appropriate when the petitioner shows either 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.²⁰ A petition that simply reiterates arguments previously considered and rejected will be denied.²¹ In the instant petition, the Havens Parties repeat arguments that the Bureau already considered and rejected in the *Auction No. 61 Procedures Public Notice*.

8. Specifically, the Havens Parties repeat arguments that the Bureau erred in finding that they were not harmed by the delay caused by PSI’s Petition for Reconsideration and motion for stay; and postponement of Auction No. 61 will permit the Commission to issue a ruling that clarifies how bidders should address interference issues raised by incumbent licensees.²² In the *Auction No. 61 Procedures Public Notice*, the Bureau concluded that “there has been no showing that any harm has flowed to any person or entity during the pendency of PSI’s Petition for Reconsideration.”²³ The Havens Parties contend that “[o]ne does not have to ‘prove’ what is obvious and accepted in business practice,” but offer to provide written evidence in a confidential filing.²⁴ To date, the Havens Parties have provided no such evidence. The Petition fails to acknowledge the Bureau’s guidance in the *Auction No. 61 Procedures Public Notice* in which bidders were reminded that they were bound to follow the ruling that had been rendered by the Auctions and Spectrum Access Division unless and until that order was changed or

¹⁶ *Id.*

¹⁷ See Automated Maritime Telecommunications System Spectrum Auction Closes; Winning Bidders Announced, *Public Notice*, 20 FCC Rcd 13,747 (2005).

¹⁸ The Commission granted ITMW’s applications for the following three call signs: WQGF310 (AMT001 - Northern Atlantic); WQGF311 (AMT003 - Southern Atlantic); and WQGF312 (AMT009 - Alaska). The Commission granted ACL’s applications for the following two call signs: WQGF313 (AMT007 - Northern Pacific); and WQGF314 (AMT008 - Hawaii). “Wireless Telecommunications Bureau Grants Ten Automated Maritime Telecommunications Systems Licenses,” Report No. AUC-61-H (Auction No. 61), 2006 WL 3833416, DA 06-2621, at Attachment A (rel. Dec. 29, 2006).

¹⁹ 47 C.F.R. § 1.106(a)(1).

²⁰ See WQAM License Limited Partnership, *Memorandum Opinion and Order*, 15 FCC Rcd 13549, 13549 ¶ 2 (2000) (citing 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)).

²¹ *Id.*; see also, e.g., Gaines, Bennett Gilbert, *Memorandum Opinion and Order*, 8 FCC Rcd 3986 (Rev. Bd. 1993).

²² Petition at 1-5.

²³ *Auction No. 61 Procedures Public Notice*, 20 FCC Rcd. at 7825.

²⁴ Petition at 3.

modified.²⁵ Since the Auction No. 57-related matter had been resolved, the *Auction No. 61 Procedures Public Notice* found that there had “been no showing that any harm has flowed to any person or entity during the pendency” of the Auction No. 57-related proceeding.²⁶ Further, the Bureau rejected the claim that Section 309(j)(3)(E)(ii)’s “statutory requirement to provide prospective bidders with time to develop a business plan and evaluate the availability of equipment requires the Commission to postpone an auction until every external factor that might influence a bidder’s business plan is resolved with absolute certainty.”²⁷

9. Moreover, we note that, despite their claims of harm, the Havens Parties successfully participated in Auction No. 61. ACL and ITMW, which are both controlled Mr. Havens, were successful in the auction, having won five of the ten AMTS licenses sold during Auction No. 61.²⁸ The Commission granted their five licenses on December 29, 2006.²⁹

10. The Petition presents no new facts and fails to demonstrate any material error by the Bureau in resolving this issue. The Petition simply restates the same arguments that the Bureau addressed in the *Auction No. 61 Procedures Public Notice*. We conclude, based on the record before us, that the Bureau properly denied the request to delay the start of Auction No. 61.

IV. ORDERING CLAUSE

11. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1, 4(i), 4(j), 303(r), and 309(j)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309(j)(3) and the authority delegated pursuant to Section 0.331 of the Commission’s rules, as amended, 47 C.F.R. §§ 0.131(c), 0.331, that the Petition for Reconsideration filed by Warren C. Havens, AMTS Consortium, LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC on May 23, 2005 IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau

²⁵ *Id.*

²⁶ *Auction No. 61 Procedures Public Notice*, 20 FCC Rcd at 7825.

²⁷ See *Auction No. 61 Procedures Public Notice*, 20 FCC Rcd at 7825-26, citing Request of Southern Communications Services, Inc. and the United Telecom Council for Postponement of Auction No. 55, *Order*, 18 FCC Rcd 25,880 (2003). See also Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703, 6707 ¶ 9 (2006).

²⁸ See note 17, *supra*.

²⁹ See note 18, *supra*.