

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

In the Matter of
WIRELESS PROPERTIES OF VIRGINIA, INC.
Assignor
And
NEXTEL SPECTRUM ACQUISITION CORP.
Assignee
Applications for Assignment of Commercial
Educational Broadband Service Station
WQGK277
File No. 0002994751

MEMORANDUM OPINION AND ORDER

Adopted: May 6, 2008

Released: May 7, 2008

By the Acting Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On April 16, 2007, Wireless Properties of Virginia Inc. (WPV) filed an application to assign commercial Educational Broadband Service (EBS) Station WQGK277 to Nextel Spectrum Acquisition Corp. (Nextel Spectrum), a wholly owned subsidiary of the Sprint Nextel Corp. (Sprint Nextel). On May 9, 2007, Warren Havens, individually and as the President of AMTS Consortium LLC, Telesaurus Holdings GB LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC filed a Petition to Deny and, in the Alternative, an Informal Request to Dismiss or Deny the Application. For the reasons discussed below, we dismiss the Petition.

II. BACKGROUND

2. On April 6, 1992, American Telecasting, Inc. (ATI) filed an application for a new commercial EBS Station on the A channel group at Strasburg, Virginia. On November 22, 1993, an amendment substituted WPV for ATI as the applicant. On November 12, 2003, the 1992 Application was returned because the proposed tower structure appeared to require Federal Aviation Administration

1 File No. 0002994751 (filed Apr. 16, 2007) (Application).

2 Warren C. Havens, AMTS Consortium LLC, Telesaurus Holdings GB LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC, Petition to Deny and, in the Alternative, Informal Request to Dismiss or Deny (filed May 9, 2007) (Petition). We herein refer to the petitioning parties collectively as petitioners.

3 American Telecasting, Inc., File No. 9203937 (filed Apr. 6, 1992) (1992 Application).

4 Letter from William D. Freedman, Esq. to William F. Caton, Acting Secretary, FCC (filed Nov. 22, 1993).

(FAA) clearance and registration with the Commission.⁵ The Return Letter specifically notified WPV that “[a]mending your application without making all the necessary changes and/or providing the requested information may result in dismissal of your application pursuant to Section 73.3568. If you do not file an Amendment within 60 days of the date of this letter, your application will be dismissed.”⁶ WPV did not file an amendment within the required period. Instead, on January 13, 2004, WPV’s counsel submitted a letter informing the Commission that the proposed transmitter site “needed to be relocated to accommodate FAA clearance. . . .”⁷ WPV expressed its intent to amend its application to specify a new transmitter site but reported that additional interference consent letters were needed.⁸ On March 12, 2004, the 1992 Application was dismissed for failure to file an amendment within the time specified in the Return Letter.⁹ On March 19, 2004, WPV attempted to submit an amendment substituting a new transmitter site.¹⁰ The Post-Dismissal Amendment was returned on March 29, 2004.

3. WPV filed a petition seeking reconsideration of the dismissal and reinstatement of the 1992 Application on April 16, 2004.¹¹ On January 29, 2007, the Broadband Division (Division) of the Wireless Telecommunications Bureau (Bureau) granted the Reinstatement Petition.¹² The Division therefore ordered the processing of the 1992 Application and noted that, once a geographic service area license was granted to WPV around its originally proposed transmitter site, WPV could place transmitters within its geographic service area, subject to compliance with the appropriate technical rules.¹³ On February 12, 2007, the 1992 Application was granted, and WPV was issued a license to operate an EBS station on the A channel group in the Strasburg, Virginia, area under call sign WQ GK277.¹⁴ No petitions seeking reconsideration of the license grant were filed.

4. On April 16, 2007, WPV filed the instant application to assign BRS Station WQ GK277 to Nextel Spectrum. The parties contend that “[a]pproval of this assignment application is in the public interest because it will support Sprint Nextel’s ability to deploy broadband infrastructure more efficiently

⁵ Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC to Wilkinson Barker Knauer LLP (Nov. 13, 2003) (Return Letter).

⁶ Return Letter.

⁷ See Letter from Lee J. Rosen to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC (filed Jan. 13, 2004) (Rosen Letter).

⁸ See Rosen Letter.

⁹ The applicant was notified by letter, dated March 15, 2005. See Letter, Ref. No. 2624352 (Mar. 15, 2004) (Dismissal Letter). Public notice of the dismissal was given on March 17, 2004. See Wireless Telecommunications Bureau Site-by-Site Action, Report No. 1778 (rel. Mar. 17, 2004) at 13.

¹⁰ Letter from Mary N. O’Connor Esq. to FCC (Mar. 19, 2004) (Post-Dismissal Amendment).

¹¹ Wireless Properties of Virginia, Inc., Petition for Reconsideration and Reinstatement (filed Apr. 16, 2004) (Reinstatement Petition).

¹² Wireless Properties of Virginia, Inc., Application for New Educational Broadband Service Station on the A Channel Group at Strasburg, Virginia, *Order on Reconsideration*, 22 FCC Rcd 1324 (WTB BD 2007) (*Reinstatement Order*). The Division reinstated the application as originally filed because the amendment filed by WPV was no longer necessary to process the application due to changes in the BRS and EBS rules. See *id.*

¹³ *Id.* The Division also noted that, if the application were granted, WPV, like all EBS licensees, will be required to demonstrate substantial service by May 1, 2011. See *id.* (citing 47 C.F.R. § 27.14(e)).

¹⁴ See File No. 9203937. Public notice of the grant was released on April 4, 2007. See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 3046, *Public Notice* (rel. Apr. 4, 2007).

and develop wireless, interactive multimedia communications solutions for consumers in the Strasburg, Virginia area, using spectrum in the 2.5 MHz band.”¹⁵

5. On May 9, 2007, the petitioners filed the instant Petition. The petitioners contend that they have standing to file the instant Petition because they have license holdings as “shown in the Commission’s Records” that “can provide competitive services.”¹⁶ More specifically, the petitioners state that they hold “licenses in radios services in the same area as the Licenses that may offer competitive service to the Licenses.”¹⁷ The petitioners allege that “the license was improperly and invalidly granted” to WPV because ATI and WPV were allegedly ineligible to hold an EBS license.¹⁸ In addition, the petitioners claim that the Application is defective because of an answer provided by Nextel Spectrum to a “Basic Qualification” question on the Application.¹⁹ The petitioners also attempt to incorporate by reference pleadings filed by the petitioners in other proceedings²⁰ challenging the basic character qualifications of Maritime Communications/Land Mobile LLC (MC/LM) and Donald DePriest (DePriest), the controlling interest holder of WPV, to hold a Commission license.²¹ The petitioners claim that DePriest failed to identify himself as a director and officer of MC/LM and misrepresented information for the purpose of improperly claiming a bidding credit for MC/LM in Auction No. 61.²² The petitioners allege that the Bureau has ignored the facts and arguments presented by the petitioners in other proceedings.²³ Additionally, the petitioners presume that DePriest misrepresented his ownership in MariTel, Inc. (MariTel) because the ownership filing by WPV on October 22, 2006 differs from an ownership filing by MariTel on March 13, 2001.²⁴ Lastly, the petitioners claim to have presented the

¹⁵ Application, Public Interest Statement (filed Apr. 16, 2007).

¹⁶ Petition at 1 (internal citations omitted).

¹⁷ Petition at n.3. The petitioners specifically reference LMS Station WPOJ879, Public Coast Station WQCP811, and 218-219 MHz Service Station WPOK874. *Id.* The petitioners state that their “LMS and AMTS licenses and the equipment and services that are authorized can compete with any fixed wireless wideband or broadband licenses and services.” Petition at 2. The petitioners state that “AMTS and LMS are mobile services, however, mobile devices can be used in premises to replace fixed-installed wireless (or wired) communications devices.” Petition at 2. However, the petitioners do not actually identify a specific AMTS license held in the area.

¹⁸ Petition at 2-3.

¹⁹ Petition at 3. Specifically, Nextel Spectrum answered in the negative as to whether “the Assignee/Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission?” Application, Question 100. In an attached exhibit, Nextel Spectrum explained that Sprint Nextel has had no licenses revoked by the Commission; that an occasional application may be dismissed as Sprint Nextel holds hundreds of licenses; but that none were “based on a character issue as defined by the FCC’s Rules and policies.” Application, Exhibit 2.

²⁰ See *Wireless Properties of Virginia, Inc., Assignor, and Nextel Spectrum Acquisition Corp., Assignee*, File Nos. 0002755676, 0002695270, *Memorandum Opinion and Order*, 22 FCC Rcd 1287 (WTB BD 2007) (*WPV I*); *Maritime Communications/Land Mobile LLC, Application for New Automated Maritime Telecommunications System Stations*, File No. 002302255, *Order on Reconsideration*, 22 FCC Rcd 4780 (WTB MD 2007) (*MC/LM*).

²¹ Petition at 4-6.

²² Petition at 4-6.

²³ Petition at 6.

²⁴ See Petition at 7 (*citing* *Wireless Properties of Virginia, Inc.*, File No. 0002792309 (filed Oct. 22, 2006) (WPV Form 602); *MariTel, Inc.*, File No. 0002080704 (filed Mar. 13, 2001) (MariTel Form 602)).

Commission with sufficient *prima facie* evidence that WPV has been warehousing spectrum in seeking reconsideration of *WPVI*.²⁵

6. On May 18, WPV filed an opposition to the Petition.²⁶ WPV contends that the petitioners lack standing to petition for the denial of the instant assignment application.²⁷ In addition, WPV states that the petitioners failed to comply with the requirements set-forth in Section 1.49 of the Commission's Rules²⁸ for the filing of pleadings that exceed ten pages in length.²⁹ With respect to the eligibility of ATI and WPV to hold an EBS license, WPV contends that the Petition is an untimely attempt to seek reconsideration of the license grant.³⁰ WPV further states that the ownership information in its FCC Form 602 is correct.³¹ Moreover, WPV argues that the petitioners' contention that WPV is warehousing spectrum is without merit.³²

7. On June 4, 2007, the petitioners filed a reply.³³ The petitioners argue that WPV failed to refute the *prima facie* evidence contained in the Petition.³⁴ In addition, with respect to the issue of timeliness, the petitioners contend that "[a] party at any time can challenge a license when it was obtained by false representations and certifications including since those are not matters of fact that any potential challenger should need to investigate and disprove."³⁵ Moreover, the petitioners argue that the Petition conforms to Section 1.49 of the Commission's Rules³⁶ because it is allegedly less than ten pages once captions and exhibits are excluded from the calculation of the pleading's length.³⁷

III. DISCUSSION

8. Section 1.939(d) of the Commission's Rules requires that a petition to deny contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.³⁸ To establish party in interest standing, a petitioner must allege facts sufficient to demonstrate that grant of

²⁵ Petition at 7-8 (*citing* Maritime Communications/Land Mobile LLC, Opposition to Petition for Reconsideration, File No. 002302255 (Sept. 6, 2006)). The petitioners contend that DePriest therein stated that WPV has had no gross revenues since 1999 and "[t]here is no better evidence of warehousing than financial statements saying that a licensee has been doing nothing for years." Petition at 7.

²⁶ Wireless Properties of Virginia, Inc., Opposition to Petition to Deny (filed May 18, 2007) (Opposition).

²⁷ See Opposition at 1-2 (*citing* 47 C.F.R. § 1.939(d); Paging Systems, Inc., *Memorandum Opinion and Order*, 22 FCC Rcd 1294 (WTB BD 2007) (*PSI*)).

²⁸ 47 C.F.R. § 1.49.

²⁹ See Opposition at 2-3 (*citing* 47 C.F.R. § 1.49(b), (c)).

³⁰ See Opposition at 4. WPV notes that it is an even more untimely attempt to seek reconsideration of the filing of the application. See *id.*

³¹ See *id.*

³² See *id.* at 4-5.

³³ Warren C. Havens, AMTS Consortium LLC, Telesaurus Holdings GB LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC, Reply (filed June 4, 2007) (Reply).

³⁴ See Reply at 2-5.

³⁵ *Id.* at 2.

³⁶ 47 C.F.R. § 1.49.

³⁷ See Reply at 1.

³⁸ 47 C.F.R. § 1.939(d).

the subject applications would cause it to suffer a direct injury.³⁹ In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action.⁴⁰ Based on our review of the record in this proceeding, we find that the Petition fails to meet this standard.

9. We find that the Petition fails to contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioners, individually or collectively, have the requisite standing to file the instant Petition.⁴¹ The petitioners generally reference their license holdings as “shown in the Commission’s Records” that “can provide competitive services” in seeking broad standing to challenge the instant application to assign an EBS station in the Strasburg, Virginia area from WPV to Nextel Spectrum.⁴² However, the petitioners are required to specifically plead and establish standing in the Petition,⁴³ and we have rejected the petitioners’ attempts to broadly establish standing based on general assertions of license holdings.⁴⁴ We have also rejected the petitioners’ reliance on LMS Station WPOJ879, Public Coast Station WQCP811, and 218-219 MHz Service Station WPOK874 for standing to file a petition to deny against an application to assign an EBS station in the Strasburg, Virginia area from WPV to Nextel Spectrum.⁴⁵ The petitioners’ reliance on *Mobex* as precedent for such a broad declaration of standing is misplaced.⁴⁶ *Mobex* addressed the specific issue of whether, “in certain instances, the need to locate and monitor mobile radio units could be equally met by AMTS or LMS.”⁴⁷ *Mobex* does not

³⁹ See AT&T Wireless PCS, Inc., *Order*, 15 FCC Rcd 4587, 4588 ¶ 3 (WTB CWD 2000) (*AT&T Wireless*) (citing *Sierra Club v. Morton*, 405 U.S. 727, 73 (1972); Lawrence N. Brandt, *Memorandum Opinion and Order*, 3 FCC Rcd 4082 (1988)).

⁴⁰ *AT&T Wireless*, 15 FCC Rcd at 4588 ¶ 3 (citing *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72, 78 (1978)).

⁴¹ See 47 C.F.R. § 1.939(d)(1). Section 309(d)(1) of the Communications Act, as amended, permits any “party in interest” to file a petition to deny any application. 47 U.S.C. § 309(d)(1). To establish standing, a petitioner must show “(1) a distinct and palpable personal injury-in-fact that is (2) traceable to the respondent’s conduct and (3) redressable by the relief requested.” See Weblink Wireless, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 24642, 24647 ¶ 11 (WTB 2002); AT&T Corp., Complainant, v. Business Telecom, Inc., Defendants, *Order on Reconsideration*, 16 FCC Rcd 21750, 21753-21754 ¶ 7 (2001); Chris C. Hudgins, *Order on Reconsideration*, 16 FCC Rcd 7941 (2001).

⁴² Petition at 1 (citing *Mobex Network Services, LLC, for Modification of the Licenses for Automated Maritime Telecommunications System Call Sign WHV733, Order*, 18 FCC Rcd 12305 (WTB PSPWD 2003) (*Mobex*); *Mobex Networks, for Automated Maritime Telecommunications System Service Along the Mississippi River, Order*, 18 FCC Rcd 12309 (WTB PSPWD 2003)).

⁴³ See 47 C.F.R. § 1.939(d)(1).

⁴⁴ See *WPVI*, 22 FCC Rcd at 1291-1292 ¶ 10; see also *PSI*, 22 FCC Rcd at 1297 n.26 (rejecting “the petitioners’ attempt to broadly establish standing by generally referencing the petitioners’ ‘license holdings, as witnessed by the Commission’s ULS records’”).

⁴⁵ See *WPVI*, 22 FCC Rcd at 1291-1292 ¶ 10. In *WPVI*, the Division noted that the petitioners failed to explain how the referenced licenses are competitive with an EBS license in the Strasburg, Virginia area. See *id.* at 1291 ¶ 4. The petitioners still offer no explanation as to how 218-219 MHz Service Station WPOK874 is competitive with the subject BRS Station WQGK277, Strasburg, Virginia. See Petition at 1-2 (discussing the petitioners’ LMS and AMTS licenses).

⁴⁶ See Petition at 1.

⁴⁷ *Mobex*, 18 FCC Rcd at 12307 ¶ 5. Specifically, the former Public Safety and Private Wireless Division (PSPWD) of the Bureau concluded that it was conceivable for AMTS and LMS to compete for customers who need to locate and monitor mobile radio units. See *id.* Therefore, in *Mobex*, an LMS licensee was found to have standing to file a petition to deny against an application to modify AMTS facilities “in view of the fact that there was a service area overlap” where the need to locate and monitor mobile radio units could be equally met by the AMTS licensee or the LMS licensee within that service area. *Id.*

support the petitioners' broad presumption that holding LMS,⁴⁸ Public Coast,⁴⁹ or 218-219 MHz Service⁵⁰ licenses is sufficient to afford them standing to file the instant Petition against an application to assign a commercial EBS⁵¹ station in the Strasburg, Virginia area from WPV to Nextel Spectrum. We note that none of the referenced stations have been constructed, and the petitioners present no evidence that they are direct and current competitors with a BRS licensee in the Strasburg, Virginia area.⁵² Accordingly, we dismiss the Petition.

10. Although the Petition has been dismissed, it is in our discretion to informally consider its allegations.⁵³ Pursuant to Section 1.41 of the Commission's Rules,⁵⁴ requests for action may be submitted informally except where formal procedures are required. In this instance, we note that petitioners are clearly wrong when they argue that ATI, WPV, and Nextel Spectrum are not eligible to hold the license. Because the license in question is a commercial EBS license, WPV may freely hold and assign the license to an entity that does not meet the eligibility requirements normally applicable to EBS licensees.⁵⁵

11. In addition, we find that the remaining arguments made by the petitioners provide no basis for denying the Application. The Applicant's answer as to whether it had "any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission" does not render the

⁴⁸ LMS provides the use of non-voice signaling methods to locate or monitor mobile radio units. LMS systems may transmit and receive voice and non-voice status and instructional information related to such units. See 47 C.F.R. § 90.7.

⁴⁹ Public coast stations are commercial mobile radio service (CMRS) providers that allow ships to send and receive messages and to interconnect with the public switched telephone network. 47 C.F.R. § 80.5; Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19856 ¶ 3 (1998). Licensees may, however, modify their licenses to permit private mobile radio service (PMRS) instead of CMRS, and may provide service to units on land. See 47 C.F.R. § 20.9; 47 C.F.R. § 80.123.

⁵⁰ The 218-219 MHz Service is a short-distance communication service designed for licensees to transmit information, product, and service offerings to subscribers and receive interactive responses within a specified service area. Mobile operation is permitted. Rules permit both common carrier and private operations, as well as one- and two-way communications.

⁵¹ BRS provides integrated access to broadband technologies, including high-speed digital technologies that provide consumers integrated access to voice, high-speed data, video-on-demand, and interactive delivery services. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165, ¶ 9 (2004). Because the station in question is a commercial EBS station, it is functionally equivalent to a BRS station.

⁵² See, e.g., *Mobex*, 18 FCC Rcd at 12307 ¶ 5 (discussed above); see also *New World Radio, Inc. v. FCC*, 294 F.3d 164, 169-72 (D.C. Cir. 2002) (standing "is premised on the petitioner's status as a *direct* and *current* competitor whose bottom line may be adversely affected by the challenged government action," so no standing to challenge license grant that "is, at most, the first step in the direction of future competition" and thus economic injury dependent on "chain of events"); see also *KERM, Inc. v. FCC*, 353 F.3d 57, 61 (D.C. Cir. 2004) (no standing to challenge FCC decision not to pursue enforcement action against station that serves much of the same audience as petitioner where latter made only "bare allegations" of competitive injury without any evidence of adverse financial effects resulting from broadcast of disputed commercials) (*quoting Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002)).

⁵³ See 47 C.F.R. § 1.41.

⁵⁴ 47 C.F.R. § 1.41.

⁵⁵ See 47 C.F.R. §§ 27.4 (definition of commercial EBS licensee), 27.1201(d).

Application deficient.⁵⁶ An exhibit attached to the Application clearly states that Sprint Nextel has had no licenses revoked by the Commission; that an occasional application may be dismissed as Sprint Nextel holds hundreds of licenses; and that none were “based on a character issue as defined by the FCC’s Rules and policies”⁵⁷ Routine dismissals of applications do not generally raise basic character qualification issues. In addition, none of the parties contend that WPV has engaged in any misconduct with respect to Station WQ GK277. Rather, the petitioners resurrect arguments that have already been raised and rejected in opposing an application seeking to assign EBS and BRS stations from WPV to Nextel Spectrum as well as in other proceedings concerning WPV, MC/LM, and/or DePriest.⁵⁸ In *WPVI*, the Division found that the petitioners failed to make a showing that any violation of reporting obligations that did take place were of such a magnitude as to call WPV’s character qualifications into question.⁵⁹ We find that petitioners fail to present any changed circumstances or additional facts to compel a different result in this proceeding as that reached in *WPVI*,⁶⁰ and we deny the Petition’s request for informal action for the reasons set forth herein and in *WPVI*. Petitioners contend that we should in this proceeding address specific allegations that petitioners have raised in other licensing proceedings because petitioners believe that the Bureau has ignored the facts and arguments presented by petitioners in those proceedings.⁶¹ However, we decline to address allegations raised in other proceedings, as we find that those proceedings remain the more appropriate venues for addressing those specific allegations.⁶² Accordingly, we conclude that there is no basis for denying the Application.

IV. CONCLUSION AND ORDERING CLAUSES

12. We dismiss the Petition for lack of standing. To the extent we consider arguments raised in the Petition as an informal request for Commission action, we find that the petitioners have failed to demonstrate that assignment of EBS Station WQ GK277 from WPV to Nextel Spectrum would not serve the public interest.

13. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.939 of the Commission’s Rules, 47 C.F.R. § 1.939, that the Petition to Deny and, in the Alternative, an Informal Request to Dismiss or Deny the Application filed on May 9, 2007 by Warren Havens, individually and as the President of AMTS

⁵⁶ Application, Question 100.

⁵⁷ Application, Exhibit 2.

⁵⁸ See *WPVI*, 22 FCC Rcd at 1292 ¶ 12; *MC/LM*, 22 FCC Rcd at 4780-4787.

⁵⁹ See *WPVI*, 22 FCC Rcd at 1292 ¶ 12. We note that the petitioners allege that DePriest misrepresented his ownership in MariTel because the ownership filing by WPV on October 22, 2006 differs from an ownership filing by MariTel on March 13, 2001 – more than 67 months earlier. See Petition at 7 (*citing* WPV Form 602; MariTel Form 602).

⁶⁰ As noted by the Division in *WPVI*, the petitioners present no credible evidence that WPV is in fact warehousing spectrum for resale purposes. See *WPVI*, 22 FCC Rcd at 1292 ¶ 12; see also 47 C.F.R. § 1.948(i)(1) (defining trafficking or warehousing as “obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services....”). Contrary to the petitioners’ contentions, an applicant’s lack of revenue for certain years does not establish a *prima facie* case of warehousing.

⁶¹ Petition at 6-7.

⁶² On March 9, 2007, the Chief, Mobility Division, Wireless Telecommunications Bureau denied petitions for reconsideration filed by petitioners concerning the qualifications of Maritime Communications/Land Mobile, LLC and Donald R. DePriest. Maritime Communications/Land Mobile LLC, *Order on Reconsideration*, 22 FCC Rcd 4780 (WTB MD 2007). Havens has filed an application for review of that order, which is pending.

Consortium LLC, Telesaurus Holdings GB LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC, IS DISMISSED.

14. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.948 of the Commission's Rules, 47 C.F.R. § 1.948, that the licensing staff of the Broadband Division SHALL PROCESS the application filed by Wireless Properties of Virginia, Inc. (File No. 0002994751) in accordance with this *Memorandum Opinion and Order* and the applicable Commission's Rules.

15. 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

Blaise A. Scinto
Acting Chief, Broadband Division
Wireless Telecommunications Bureau