



Federal Communications Commission
Washington, D.C. 20554

December 8, 2009

DA 09-2563

Warren C. Havens
2649 Benvenue Ave., Suites 2-6
Berkeley, CA 94704

Re: Spectrum Tracking Systems, Inc. – Petition for Reconsideration

Dear Mr. Havens:

This letter addresses the petition for reconsideration that you filed on May 8, 2009 on behalf of Intelligent Transportation & Monitoring Wireless LLC and Skybridge Spectrum Foundation (“Petitioners”).¹ Petitioners seek partial reconsideration of the action² by the Mobility Division (“MD”) of the Wireless Telecommunications Bureau (“Bureau”) denying the request of Spectrum Tracking Systems, Inc. (“STS”) for an extension of time to complete the conversion of its Puerto Rico law enforcement tracking system (“LETS”) network from 217/219 MHz band spectrum to designated LETS channels in the 216 MHz band.³ For the reasons stated below, we deny the petition for reconsideration.

*Background.*⁴ STS provides maintenance, repair and training support for law enforcement tracking systems deployed with local, state and regional law enforcement agencies. If property equipped with STS’s sub-miniature radiofrequency transmitters is stolen, authorities can track the property’s location.⁵

In 1999, STS’s predecessor-in-interest was granted a waiver to allow it to continue operating its thirty-two LETS networks on 217/219 MHz band spectrum, which is designated for Automated Maritime Telecommunications Systems (“AMTS”),⁶ while it transitioned to the Low Power Radio Service (“LPRS”) LETS channels in the 216 MHz band.⁷ While STS’s predecessor-in-interest had requested seven to nine years to transition all of its LETS networks, the Bureau’s Public Safety and Private Wireless Division (PSPWD) granted only a five-year waiver, but said it would grant additional time if “substantial progress” were made in five years.⁸ In 2004, STS was granted a three-year extension of the waiver.⁹

¹ Petition for Reconsideration (filed May 8, 2009) (Petition).

² William K. Keane, Esq., *Letter*, 24 FCC Rcd 4145 (WTB MD 2009) (*2009 Letter*).

³ *See* 47 C.F.R. § 95.629(a).

⁴ For more detailed information regarding the background of this proceeding, see *2009 Letter* at 4145-48.

⁵ STS maintains fixed, mobile and portable receivers. Fixed receivers, located on the top of buildings or other structures, are connected to police computer dispatch systems.

⁶ *See* 47 C.F.R. § 80.385(a)(2).

⁷ *See* Letter dated June 22, 1999 from D’wana R. Terry, Chief, Public Safety and Private Wireless Division, to Jerome K. Blask, Esq., counsel for Metrocall.

⁸ *Id.* at 3.

⁹ *See* Letter dated May 26, 2004 from D’wana R. Terry, Chief, Public Safety and Critical Infrastructure Division (PSCID) to William K. Keane, Esq., counsel for STS (*2004 Letter*). (The Commission reorganized the Wireless

In 2004 and 2005, the Commission auctioned 217/219 MHz AMTS geographic licenses. Prospective bidders were advised that the LETS operations were authorized on the AMTS spectrum on a primary basis until 2007.¹⁰

In 2007, STS requested an additional three years to transition its remaining 217/219 MHz operations to the 216 MHz band, but MD granted only an eighteen-month extension, to January 1, 2009.¹¹ MD also stated that it did not anticipate granting any further extensions, and that any such requests should be accompanied by evidence of consent by the affected AMTS geographic licensee(s).¹²

On December 22, 2008, STS requested a nine-month further extension of time to conform its Puerto Rico operations to the Commission rules. Petitioners and related parties, who are the AMTS geographic licensees in Puerto Rico, opposed the extension request, arguing that allowing STS to continue using the 217/219 MHz spectrum would interfere with planned operations and would constitute a taking of spectrum rights. On April 8, 2009, MD denied the extension request, concluding that STS had already been given ample time to transition its Puerto Rico operations to LPRS channels.¹³ However, “[g]iven the valuable public safety benefits that STS’s LETS network provides,” MD did not require an immediate shutdown of STS’s Puerto Rico operations.¹⁴ Rather, MD gave STS sixty days to terminate its Puerto Rico operations or bring them into compliance with the Commission’s rules.¹⁵ On June 11, 2009, STS advised the Commission that it had terminated its Puerto Rico operations in compliance with MD’s decision.¹⁶

Discussion. In their petition for reconsideration, Petitioners state that they “do not disagree with the Order’s decision that STS must go off of the air and no longer continue its operations under the License with no further opportunity to extend,”¹⁷ but they “ask that the bases stated for the decision . . . to

Telecommunications Bureau effective November 13, 2003, and PSCID assumed the relevant duties of PSPWD. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).) PSCID noted that STS had transitioned fifteen of its thirty-two metropolitan area LETS channels operating on 217/219 MHz spectrum during the initial five-year term, and concluded that STS’s efforts constituted “substantial progress” toward complete transition to the LPRS channels. *2004 Letter* at 3.

¹⁰ *See* Automated Maritime Telecommunications Systems Spectrum Auction Scheduled for September 15, 2004, *Public Notice*, 19 FCC Rcd 9518, 9528 (WTB 2004); Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, *Public Notice*, 20 FCC Rcd 7811, 7821 (WTB 2005).

¹¹ *See* Letter dated June 19, 2007 from Scot Stone, Deputy Chief, Mobility Division, to William K. Keane, Esq., counsel for STS (*2007 Letter*). (Pursuant to a reorganization effective September 25, 2006, certain duties of PSCID were assumed by MD. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).) MD concluded that STS had not made “substantial progress” during the previous three-year extension. *2007 Letter* at 3.

¹² *2007 Letter* at 4.

¹³ *2009 Letter*, 24 FCC Rcd at 4148.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* Electronic mail dated June 11, 2009 from Ken Keane to Scot Stone.

¹⁷ *Petition* at 1.

deny the STS attempt at yet another free use of AMTS spectrum, be amended to reflect the facts and arguments Petitioners previously made.”¹⁸ As STS notes in its opposition to the petition,¹⁹ we will consider a petition for reconsideration only when the petitioner shows either a *material* error in the original order, or raises additional facts not known or existing at the time of petitioner's last opportunity to present such matters.²⁰ Petitioners’ request that we amend the rationale for denying STS’s extension request does not raise a material question, for the outcome of the matter would not change.

Additionally, Petitioners argue that STS should be sanctioned for operating without authority between the expiration of its prior extension on January 1, 2009 and MD’s April 8, 2009 decision ordering STS to cease operations within sixty days.²¹ We disagree. We conclude that MD implicitly authorized STS’s operations while the extension request was pending *nunc pro tunc*, for the same reasons that MD provided a sixty-day phase-out period rather than requiring immediate termination. Consequently, no sanctions are warranted.

Accordingly, IT IS 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 further reconsideration submitted by Intelligent Transportation & Monitoring Wireless LLC and Skybridge Spectrum Foundation on May 8, 2009, IS DENIED.

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

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¹⁸ *Id.* at 2

¹⁹ Opposition to Petition for Reconsideration at 1 (filed May 21, 2009).

²⁰ *See, e.g.,* Hill & Welch and Myers Keller Communications Law Group, *Second Memorandum Opinion and Order*, 22 FCC Rcd 5271, 5274 ¶ 7 (2007).

²¹ *See* Petition at 2.