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

In the Matter of	)	
	)	
CORNERSTONE SMR, INC.	)	File No. 0003098334
Application for Auction 72	)	
	)	
Petition to Deny filed by Warren C. Havens,	)	
AMTS Consortium LLC, and Telesaurus-VPC	)	
LLC	)	

ORDER

Adopted: April 22, 2009 **Released: April 22, 2009**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. In this *Order*, we address a petition (Petition)[1] filed jointly by Warren C. Havens (Havens), AMTS Consortium LLC (AMTS Consortium), and Telesaurus-VPC LLC (collectively, Petitioners) to deny the long-form application[2] filed by Cornerstone SMR, Inc. (Cornerstone) at the conclusion of Auction 72. The Petitioners request that the Commission dismiss Cornerstone's application as defective or, in the alternative, designate it for hearing. For the reasons set forth below, we deny the Petition.

I. BACKGROUND

2. On December 12, 2006, the Wireless Telecommunications Bureau (Bureau) announced an auction of ninety-four Phase II 220 MHz Service licenses (Auction 72).[3] AMTS Consortium and Cornerstone submitted applications to participate in Auction 72, and were identified as qualified to bid in the auction.[4] Whether an applicant qualifies for a bidding credit in a Commission auction is determined by the cumulative gross revenues of the applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.[5] Shortly before the commencement of Auction 72, AMTS Consortium requested that Cornerstone be disqualified from participating in the auction because of an alleged failure by Cornerstone to disclose information in its short-form application regarding certain ownership interests or affiliations required under Commission rules.[6] The Bureau's Auctions and Spectrum Access Division denied AMTS Consortium's request on the grounds that it would be more prudent to address such allegations after the

[1] *See* Petition to Deny, filed by Warren C. Havens, AMTS Consortium LLC, and Telesaurus-VPC LLC, at 1 (filed Aug. 10, 2007) (Petition). On August 13, 2007, Havens filed an amendment to the Petition to amend the certificate of service. *See* Amended Certificate of Service (filed Aug. 13, 2007). AMTS Consortium LLC is now known as Environmentel LLC. *See*, *e.g.*, FCC File No. 0003649429 (filed Nov. 14, 2008).

[2] FCC File No. 0003098334 (filed July 5, 2007).

[3] *See* Auction of Phase II 220 MHz Spectrum Scheduled for June 20, 2007, *Public Notice*, 21 FCC Rcd 14305 (WTB 2006).

[4] *See* Auction of Phase II 220 MHz Service Spectrum Licenses; Five Bidders Qualified to Participate in Auction No. 72, *Public Notice*, 22 FCC Rcd 10064 (WTB 2007).

[5] 47 C.F.R. § 1.2110(b)(1)(i).

[6] *See* Request Under Section 1.41 Including Emergency Action Prior to Auction No. 72 (submitted June 19, 2007).

winning bidders submitted their long-form applications, when there would be greater opportunity for investigation of such allegations.[7]

3. On June 27, 2007, the Commission completed Auction 72, with five bidders winning seventy-six licenses.[8] Cornerstone was the winning bidder for twelve licenses; AMTS Consortium was the winning bidder for forty-four licenses.[9] On July 31, 2007, the Bureau issued a Public Notice announcing that the long-form applications filed in Auction 72 had been accepted for filing, and announcing the deadlines to file petitions to deny.[10] In its application, Cornerstone indicated that its attributed average gross revenues for the three years preceding the auction were $161,621.67, and that it therefore qualified for a bidding credit as a very small business.[11]

4. On August 10, 2007, the Petitioners filed the Petition, arguing that the Commission should either dismiss Cornerstone's application as defective or designate the application and the issues raised by the Petitioners for hearing.[12] The Petitioners allege that the application is "incurably defective" for failure to disclose "the interest holders with control, affiliates, and the related attributable gross revenues," as well as other information relevant to Cornerstone's eligibility for bidding credits in Auction 72.[13] On August 17, 2007, Cornerstone filed an opposition asserting that its short- and long-form applications included "ALL required information with respect to affiliates and attributable revenues."[14] On August 24, 2007, the Petitioners filed a reply.[15] On August 31, 2007, Cornerstone filed a surreply,[16] and the Petitioners filed an opposition to the surreply.[17]

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[7] *See* Warren Havens, *Letter*, 22 FCC Rcd 11163, 11163 (WTB ASAD 2007), *recon. pending* (Havens Letter Ruling). On June 20, 2007, AMTS Consortium filed a Petition for Reconsideration of the Havens Letter Ruling, which it supplemented on July 19, 2007. Because the present Order renders moot all of the arguments raised in the Petition for Reconsideration and supplement, the Petition for Reconsideration will be dismissed as moot.

[8] *See* Auction of Phase II 220 MHz Service Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 72, *Public Notice*, 22 FCC Rcd 11573 (WTB 2007).

[9] *Id.*

[10] *See* Wireless Telecommunications Bureau Announces that Applications for Phase II 220 MHz Service Licenses Are Accepted for Filing, *Public Notice*, 22 FCC Rcd 13915 (WTB 2007) (stating that petitions to deny were due on August 10, 2007, oppositions were due on August 17, 2007, and replies were due on August 24, 2007).

[11] *See* Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, *Public Notice*, 22 FCC Rcd 3404, 3422 (WTB 2007) (stating that a bidder with average annual gross revenues that do not exceed three million dollars will receive a thirty-five percent discount on its winning bid).

[12] The Petition also argues that the Commission should award the licenses for which Cornerstone was the high bidder to the next highest bidder without a defective application. *See* Petition at 15.

[13] *See id.* at 4

[14] Opposition to Petition to Deny, filed by Cornerstone SMR, Inc., at 1 (filed Aug. 17, 2007) (Opposition) (emphasis in original).

[15] Reply to Opposition to Petition to Deny, filed by Warren C. Havens, AMTS Consortium LLC, and Telesaurus-VPC LLC (filed Aug. 24, 2007) (Reply).

[16] Response to Reply to Opposition to Petition to Deny, filed by Cornerstone SMR, Inc. (filed Aug. 31, 2007) (Response). Cornerstone requests that the Bureau consider its Response although the filing of such a response is contemplated neither in the rules, *see* 47 C.F.R. § 1.2108, nor in Bureau's public notice setting forth the procedures for filing petitions to deny. *See* Response at 1. In the interest of a complete record, and because the Response was served on all parties this proceeding, we grant Cornerstone's request for leave to file the Response.

[17] Notice and Preliminary Opposition to Response (filed Aug. 31, 2007). The Petitioners assert that Cornerstone's Opposition was defective and should be disregarded because it was not signed by an authorized person as required by Section 1.52 of the Commission's Rules, 47 C.F.R. § 1.52, and was not supported by an affidavit as required by

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II. DISCUSSION

5. A petition to deny must set forth "specific allegations of fact sufficient to show that … a grant of the application would be prima facie inconsistent with [the public interest, convenience, and necessity]."[18] If the Commission finds that a prima facie case has been made, then, and only then, must the Commission determine whether a substantial and material question of fact has been presented.[19] If the Commission finds that no substantial or material question of fact has been presented, it need not hold an evidentiary hearing.[20] Based on our review of the record in this proceeding, we find that the Petition does not meet this standard. The Petitioners claims of wrongdoing by Cornerstone are factually unsupported, legally unsound, or do not warrant denial of Cornerstone's application.

6. *Disclosure and Attribution of Controlling Interests*. Section 1.2110(b)(3)(ii) of the Commission's Rules provides that where an applicant cannot identify controlling interests, the gross revenues of all interests holders are attributable to the applicant.[21] The Petitioners argue that because no entity or individual holds at least a ten percent interest in Cornerstone, there are no controlling interests, and Cornerstone was required to attribute the gross revenues of all of its interest holders and their affiliates.[22] We agree with Cornerstone[23] that the applicable provision is Section 1.2110(c)(2)(ii)(F) of the Commission's Rules, which provides that "[o]fficers and directors of the applicant shall be considered to have a controlling interest in the applicant."[24] We therefore conclude that Cornerstone appropriately identified its directors (Charles Robin Scott, David Boucher, and Mark Duff)[25] and officers (Mark Duff and Wayne Keil) as its controlling interests, and was not required to identify all of its interest holders.

7. *Disclosure and Attribution of Affiliates*. The Petitioners also argue that Cornerstone failed to disclose a number of affiliates, including its predecessors-in-interest, other Commission licensees that Cornerstone operates under certain management agreements, and parties with which Cornerstone has "contracts for essential services."[26] We disagree. The Commission's rules require attribution of the gross revenues of an applicant's predecessors-in-interest only where the applicant has been in existence for less

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Section 1.2108(c) of the Commission's Rules, 47 C.F.R. § 1.2108(c). *See* Reply at 1. We note, however, that because the Opposition was filed electronically, the filer's typed name in the signature block of the Opposition is sufficient to satisfy the Commission's rule regarding electronic signatures, which provides that "a signature will be considered any symbol executed or adopted by the party with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses." 47 C.F.R. § 1.52. We also note that with its Response, Cornerstone provided a sworn affidavit signed by an authorized person with personal knowledge supporting the Opposition.

[18] 47 U.S.C. § 309(d)(1); *see also* Brookfield Development, Inc. and Colorado Callcom, *Memorandum Opinion and Order*, 19 FCC Rcd 14385, ¶ 16 (2004) (*Brookfield*); Astroline Communications Co. v. FCC, 857 F. 2d 1556, 1562 (D.C. Cir. 1988) (*Astroline*).

[19] 47 U.S.C. § 309(d)(2); *see also Brookfield*, 19 FCC Rcd 14385 at ¶ 16; *Astroline*, 857 F. 2d at 1562.

[20] *Id.*

[21] 47 C.F.R. § 1.2110(b)(3)(ii).

[22] *See* Petition at 5-9.

[23] *See* Response at 5-6.

[24] 47 C.F.R. § 1.2110(c)(2)(ii)(F).

[25] The Petitioners appear to contend that Cornerstone did not identify all of its directors, but the Petition offers no evidence of undisclosed directors. *See* Petition at 11. Cornerstone specifically affirms that the long-form application identified all of the company's directors. *See* Response at 6 n.9.

[26] *See* Petition at 11.

than three years prior to the auction.[27] Cornerstone was incorporated on June 5, 2002[28] – well over three years before submitting its short-form application to participate in Auction 72 – and therefore need not attribute the gross revenues of any predecessors-in-interest. Further, Cornerstone explains that the 220 MHz licensees that the Petitioners argue should be deemed affiliates as a result of management agreements actually are 220 MHz systems previously acquired by Cornerstone, not separate companies which Cornerstone controls, and that the gross revenues from those systems were included in what Cornerstone reported.[29] Finally, we agree with Cornerstone that the record does not demonstrate that any of its "contracts for essential services" creates an affiliate relationship under the Commission's rules.[30] We therefore conclude that the Petitioners' arguments lack factual support.

8. *Disclosure and Attribution of Affiliates of Controlling Interests*. In addition, the Petitioners allege that Cornerstone failed to disclose, and attribute the gross revenues of, all of the affiliates of its officers and directors. First, the Petitioners note that at least some of the officers and directors are married, and argue that Cornerstone should have disclosed the spouses' gross revenues pursuant to the Commission's spousal attribution rule.[31] The Petitioners do not, however, provide any evidence that any of those spouses had any attributable gross revenues during the period in question, and Cornerstone specifically represents that they did not.[32] The Petitioners fail to offer any specific evidence to contradict Cornerstone's assertion; therefore, we find no failure to disclose.

9. Next, the Petitioners allege that Cornerstone failed to disclose affiliates arising from Mr. Keil's positions as a director or officer of certain other entities.[33] Although officers and directors of an *applicant* are deemed to be in control of the applicant under Section 1.2110(c)(2)(ii)(F) of the Commission's Rules,[34] the same presumption does not apply to the officers and directors of non-applicant entities. Instead, Mr. Keil must be in actual control of these other entities in order for such entities to be considered affiliates of Cornerstone.[35] The Petitioners have provided no evidence that Mr. Keil actually controls any of these entities. Accordingly, we conclude on the record before us that these entities are not affiliates requiring disclosure under our rules.

10. The Petitioners also argue that Cornerstone failed to disclose affiliates identified in a list of entities registered with the Florida Department of State, Division of Corporations, for which Mr. Keil is designated an officer or registered agent; and in a private placement memorandum dated January 1, 2003 discussing the business interests of Cornerstone's other officers and directors.[36] Cornerstone

[27] 47 C.F.R. § 1.2110(o).

[28] *See* Petition at Exhibit 5, Amendment and Restated Articles of Incorporation of Cornerstone.

[29] *See* Response at 9.

[30] *See id.* ("Petitioners have simply listed any companies with whom Cornerstone has had any sort of business relationship and unilaterally classified all such companies as prohibited 'affiliates.'").

[31] *See* Petition at 10; *see also* 47 C.F.R. § 1.2110(c)(5)(iii)(A).

[32] *See* Response at 6-7. While Cornerstone notes that these spouses have personal net worth, including personal salaries, Cornerstone correctly concludes that such personal net worth is not attributable to the applicant. *See, e.g.,* 47 C.F.R. § 1.2110(c)(2)(ii)(F) ("the personal net worth, including personal income of the officers and directors of an applicant is not attributed to the applicant").

[33] *See* Petition at 10. Specifically, Mr. Keil is (or was) a member of the Executive Board and Board of Directors of Beth Torah Benny Rok Campus, and the South Eastern Regional Board of United Synagogue of the Conservative Movement. Mr. Keil is also the house vice president of his synagogue. *See* Petition at Exhibit 2.

[34] 47 C.F.R. § 1.2110(c)(2)(ii)(F).

[35] *See* 47 C.F.R. § 1.2110(c)(5)(i).

[36] Petition at 10-11.

responds that, with one exception, the entities listed by the Florida Department of State either never came into being or no longer exist.[37] Cornerstone also states that the private placement memorandum is "outdated and no longer factually accurate" and was superseded by the information in Cornerstone's short- and long-form applications,[38] and that, with one exception, its officers and directors no longer control any of those entities.[39] We will address the exceptions *infra*. With respect to the other entities identified by the Petitioners, we note that Cornerstone's responses are not themselves conclusive of the matter, for they do not specifically address whether any of its officers or directors controlled any of those entities during the three years preceding the auction. Nonetheless, because the Petitioners have not presented evidence that any of those entities were so controlled during that period, we conclude that the record before us does not support the Petitioners' claims.

11. With respect to the one still-existing entity in the Florida Department of State listing, Sebastian Enterprises, Inc. (SEI), Cornerstone states that SEI was formed for the sole purpose of paying Mr. Keil's salary from Cornerstone, is not a functioning, operational business, and generates no independent income.[40] Cornerstone admits, however, that Mr. Keil does control SEI within the meaning of the Commission's rules.[41] We conclude that Cornerstone should have identified SEI as an affiliate in its application. The Commission's definition of "affiliate" for purposes of determining designated entity status includes any entity "directly or indirectly controlled by a third party … that also controls or has the power to control the applicant …."[42] Cornerstone cites no authority, and we are aware of none, for its position that the gross revenues of an entity controlled by one of its officers need not be attributed to the applicant if the entity was formed for the purpose of paying the officer's salary. Because SEI's average gross revenues over the three years preceding the auction were $83,607,[43] adding them to Cornerstone's gross revenues of $161,621 would not affect its status as a very small business. Nonetheless, we will defer processing the application until Cornerstone amends it to reflect SEI's gross revenues.

12. Similarly, with respect to the one entity identified in the private placement memorandum that Cornerstone concedes is controlled by one of its officers or directors, Cornerstone explains that Metcalf & Scott (M&S), is an accounting firm in which Mr. Scott is a fifty-percent partner.[44] Messrs. Scott and Metcalf provide accounting services and bill their clients for such services, and M&S then pays them salaries.[45] Cornerstone argues that because M&S essentially exists to pay the salaries of Messrs. Scott and Metcalf and does not generate income through the sale of retail items or the acquisition of assets, it is akin to SEI and therefore any gross revenues should not be attributed to Cornerstone.[46] We disagree. The Commission's rules require the gross revenues of all affiliates to be disclosed under its attribution rules. As a fifty-percent partner, Mr. Scott has the ability to control M&S,[47] so its gross revenues are attributable to Cornerstone. Because the average gross revenues of M&S for the three years

[37] *See* Response at 7 n.12.

[38] *See* Opposition at 2.

[39] *See* Response at 7.

[40] *See id.* at 7-8 ("this company was merely a corporate vehicle for the payment of Mr. Keil's personal salary as an officer of Cornerstone").

[41] *See id.* at 7.

[42] 47 C.F.R. § 1.2110(c)(5)(i)(C).

[43] Response at 8 n.13.

[44] *See id.* at 8.

[45] *Id.*

[46] *See id.*

[47] *See* 47 C.F.R. § 1.2110(c)(5)(i)(A).

preceding the auction amount to $320,597,[48] adding them to Cornerstone's gross revenues would not affect its status as a very small business. Nonetheless, we will defer processing the application until Cornerstone amends it to reflect the gross revenues of M&S.

13. *Amendment or Dismissal of Application.* The Petitioners argue that Cornerstone cannot now amend its application to include additional affiliates and gross revenues because reporting additional interest holders would result in a change of control, which would be a prohibited major amendment.[49] As we concluded above, however, Cornerstone was not required to report any additional interest holders. The Petitioners also argue that Cornerstone cannot now amend its application to include additional gross revenues from affiliates of its controlling interests because the additional gross revenues would change Cornerstone's eligibility for a bidding credit, which also would constitute a major amendment.[50] As we concluded above, however, the additional revenues that Cornerstone must disclose do not appear to change its bidding credit eligibility.[51] Consequently, we perceive no obstacle to Cornerstone amending its application as discussed above.

14. In addition, the Petitioners argue that *McKay v. Wahlenmaier* (*McKay*)[52] and *Superior Oil Company v. Udall* (*Superior Oil*),[53] constitute precedent requiring dismissal of the Cornerstone application as defective.[54] As we held in another proceeding involving the Petitioners, the legal authority cited by the Petitioners is inapposite.[55] Both cases are distinguishable on their facts. In *McKay*, the court determined that it was error for the Secretary of the Interior to issue an oil and gas lease to an applicant whose application *was found by the Secretary* to be defective.[56] Despite the Secretary's finding that the application in question was defective, and his acknowledgment that the award of a lease to an unqualified applicant *must be* cancelled under the then-prevailing law, the Secretary had effectively determined that the defect in the winning application had been harmless, and so did not disqualify the applicant. In doing so, the court held, the Secretary had disregarded the Department's own administrative precedent.[57] Similarly, in *Superior Oil*, it was central to the court's holding that an "authorized officer" of the

[48] Response at 8.

[49] *See* Petition at 4, 9.

[50] *See id.* at 11-12.

[51] Moreover, we concluded in another matter involving the Petitioners that amending a long-form application to add gross revenues that *reduce* the applicant's eligibility for a bidding credit is a permissible minor amendment. *See* Maritime Communications/Land Mobile, LLC, *Order on Reconsideration*, 22 FCC Rcd 4780, 4786-87 ¶ 10 (WTB MD 2007) (*MC/LM*), *recon. and review pending*. The Petitioners characterize this decision as "an aberration," citing Lee Peltzman, *Letter*, 22 FCC Rcd 13523 (WTB ASAD/MB VD 2007) (*Peltzman*). *See* Petition at 9 n.9. *Peltzman* involved a licensee that filed a mutually exclusive application for a digital companion channel for its existing low-power television station. After the short-form filing deadline, the applicant assigned the license for its existing television station to a third party. This resulted in a undisputed change of ownership, and therefore is clearly distinguishable from *MC/LM* and the present matter.

[52] McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955) (*McKay*).

[53] Superior Oil Company v. Udall, 409 F.2d 1115 (D.C. Cir. 1969) (*Superior Oil*).

[54] *See* Petition at 13-16.

[55] *See MC/LM*, 22 FCC Rcd at 4784-85 ¶ 8.

[56] *See McKay*, 226 F.2d at 40. The Secretary determined that the application was defective because it was filed by an individual who failed to list in his application his interests as a shareholder in a corporation applying for the same lease, circumventing a policy that only one application could be filed per applicant in any particular drawing. *See also id*. at 42 (noting that "[t]he Secretary had expressly found that [the winning applicant] had obtained the lease in contravention of the regulation which required him to disclose his interests in corporate leases …").

[57] *Id*. at 40.

Department had determined that the subject application was "unacceptable" because it was unsigned.[58] Indeed, *the Secretary himself acknowledged* in that case that the absence of a signature was a substantive "deficiency in [the subject applicant's] bid [that] cannot be waived."[59] In both *McKay* and *Superior Oil*, therefore, the lease was awarded to an applicant notwithstanding an administrative finding that the application was incurably defective. In contrast, notwithstanding the Petitioners' claims, we find that the Cornerstone application is not incurably defective. In this regard, the instant case is akin to the one presented in *Biltmore Forest Broadcasting FM, Inc. v. FCC* (*Biltmore Forest*).[60] In *Biltmore Forest,* the court specifically distinguished the case before it from *McKay* and *Superior Oil* because in the case before it there had been no Commission determination that an omission in an application rendered the application incurably defective, only an argument to that effect by a competing auction participant.[61] The same factor distinguishes the instant case from *McKay* and *Superior Oil*. We conclude, therefore, that the Petitioners have not substantiated their claim that we must dismiss Cornerstone's application as defective.

15. *Ex Parte Communications*. Cornerstone states that it "worked closely with attorneys and staff at the FCC during the application process and asked many questions to ensure that everything was filed correctly."[62] The Petitioners argue that once AMTS Consortium challenged Cornerstone's short-form application, the entire auction, including the long-form application process, became a restricted proceeding with respect to Cornerstone, so any such communications regarding Cornerstone's long-form application constituted prohibited *ex parte* communications.[63] We disagree. As Cornerstone notes, the communications at issue pertained not to the challenged short-form application, but to Cornerstone's long-form application.[64] Because the long-form application had yet to be filed, the Petitioners were not parties to it.[65] Accordingly, Cornerstone was permitted to communicate with Commission staff regarding the filing of its own long-form application. Based on our review of the record, we do not find evidence of prohibited *ex parte* communications between Cornerstone and the Commission.

16. *Conclusion*. We conclude that Cornerstone must amend its long-form application to reflect the gross revenues of SEI and M&S before we take action on it.[66] If Cornerstone fails to so amend the application within thirty days of the release of this *Order*, the application will be dismissed. Based on our review of the record, we also conclude that, pursuant to Section 309(d) of the Communications Act of 1934, as amended, the Petitioners have not provided a basis to dismiss or designate issues against the application. We accordingly deny the Petition. In addition, because this Order renders moot all of the

[58] *See Superior Oil*, 409 F.2d at 1118-19.

[59] *Id*. at 1119.

[60] Biltmore Forest Broadcasting FM, Inc. v. FCC, 321 F.3d 155 (D.C. Cir. 2003).

[61] *Id*. at 161.

[62] *See* Opposition at 1.

[63] *See* Reply at 2.

[64] *See* Response at 3.

[65] *See* 47 C.F.R. § 1.1202(d)(1) Note 1; *see also* Amendment of 47 C.F.R. § 1.1200 *Et Seq.* Concerning Ex Parte Presentations in Commission Proceedings, *Report and Order*, GC Docket No. 95-21, 12 FCC Rcd 7348, 7356 ¶ 24 (1997) ("[P]rior to the point where long-form applications are filed and formally opposed, mutually exclusive applicants in auction proceedings may freely communicate with the Commission concerning their applications, so long as the application has not become subject to ex parte restrictions for some other reason, *e.g.*, the applicant has filed a waiver request that has been formally opposed.").

[66] In addition, we remind Cornerstone of its continuing obligation under Section 1.65(a) of the Commission's Rules, 47 C.F.R. § 1.65(a), to update its application to provide the Commission with any other information of decisional significance.

arguments raised in AMTS Consortium's Petition for Reconsideration of the Havens Letter Ruling, we dismiss the Petition for Reconsideration as moot.

III. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Sections 1.939 and 1.2108 of the Commission's Rules, 47 C.F.R. §§ 1.939, 1.2108, the Petition to Deny application File No. 0003098334 filed by Warren C. Havens, AMTS Consortium LLC, and Telesaurus-VPC LLC on August 10, 2007, IS DENIED.

18. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.3 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.925, the Request for Leave to File Unauthorized Response filed by Cornerstone SMR, Inc. on August 31, 2007, IS GRANTED.

19. IT IS FURTHER ORDERED that Cornerstone SMR, Inc. SHALL AMEND application FCC File No. 0003098334 within thirty days of the release date of this *Order* to reflect the additional gross revenues discussed in paragraphs 11 and 12, *supra*, or the application shall be dismissed. In the event that the application is so amended, it will be processed in accordance with this *Order*.

20. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by AMTS Consortium LLC, on June 20, 2007, and supplemented on July 19, 2007, is DISMISSED AS MOOT.

21. 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