

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

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| In the Matter of Applications of |) | |
| |) | |
| VERDE SYSTEMS, LLC |) | File Nos. 0003875412, 0003875418 |
| |) | |
| For Modification of Licenses for Automated |) | |
| Telecommunications System Stations WQCP816 |) | |
| and WQCP817 |) | |
| |) | |
| and |) | |
| |) | |
| ENVIRONMENTEL LLC |) | File No. 0003875427 |
| |) | |
| For Modification of License for Automated |) | |
| Maritime Telecommunications System Station |) | |
| WQCP814 |) | |

ORDER

Adopted: July 13, 2010

Released: July 14, 2010

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order* dismisses or denies petitions to deny the above-captioned applications to modify Automated Maritime Telecommunications System (AMTS) station licenses to authorize operation on a private mobile radio service (PMRS) basis. Specifically, Verde Systems LLC (Verde) filed applications to modify its licenses for AMTS Stations WQCP816 and WQCP817,¹ and Environmental LLC (Environmental) filed an application to modify its license for AMTS Station WQCP814.² Maritime Communications/Land Mobile, LLC (MC/LM) filed a petition to deny the Verde applications,³ and a petition to deny the Environmental application.⁴ Paging Systems, Inc. (PSI) filed a petition to deny all three applications.⁵ For the reasons set forth below, we dismiss the petitions with respect to the Environmental application, and deny the petitions with respect to the Verde applications.

2. *Background.* The AMTS service originally was intended to provide public

¹ FCC File No. 0003875412, filed June 18, 2009 (WQCP816); FCC File No. 0003875418, filed June 18, 2009 (WQCP817).

² FCC File No. 0003875427, filed June 18, 2009, amended June 19, 2009.

³ Petition to Deny, filed July 31, 2009 (MC/LM-Verde Petition).

⁴ Petition to Deny, filed July 31, 2009 (MC/LM-Environmental Petition). Verde and Environmental jointly filed a consolidated opposition to the MC/LM petitions. Opposition to Petition to Deny and Suggestion for Sanctions, filed August 13, 2009 (Opposition to MC/LM Petitions). MC/LM filed a consolidated reply. Reply, filed August 24, 2009 (MC/LM Reply).

⁵ Petition to Dismiss or Deny, filed July 31, 2009 (PSI Petition). Verde and Environmental jointly filed an opposition. Opposition to Petition to Deny and Suggestion for Sanctions, filed August 13, 2009 (Opposition to PSI Petition). PSI filed a reply. Reply to Opposition to Petition to Deny and Suggestion for Sanctions, filed August 25, 2009 (PSI Reply).

correspondence service to tugs, barges, and other commercial vessels.⁶ AMTS stations are now licensed on a geographic basis,⁷ and are permitted to provide service to units on land subject to certain conditions,⁸ on either a commercial mobile radio service (CMRS) or PMRS basis.⁹ If an AMTS licensee wishes to offer PMRS in lieu of, or in addition to, CMRS, the licensee must “overcome the presumption that ... AMTS Stations are commercial mobile radio services.”¹⁰ In order to do so, the licensee must file an application to modify its authorization, and must submit a certification that sufficiently describes the proposed service to demonstrate that it is not CMRS.¹¹

3. The Section 20.9(b) certifications before us are virtually identical.¹² Each states that the licensee will operate solely on a PMRS basis on all of the licensed spectrum,¹³ without interconnection to the public switched telephone network, and excluding any CMRS.¹⁴ They add that the private internal use of the spectrum will include communications in support of Intelligent Transportation Systems for automatic vehicle location systems for government and private land and maritime vehicle fleets; smart grid energy distribution systems; and other forms of systems to improve the nation’s critical infrastructure and natural resources that are being planned or researched.¹⁵ The proposed operations would be conducted either directly under the licensee’s control, or indirectly by providing use of the spectrum

⁶ See 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, *on reconsideration*, *Memorandum Opinion and Order*, 88 F.C.C. 2d 678 (1981), *aff'd sub nom. WJG Tel. Co. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

⁷ 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, 6696 ¶ 24 (2002), *on recon.*, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003); *see also* 47 C.F.R. § 80.385. Incumbent site-based stations are grandfathered.

⁸ See Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16965-66 ¶¶ 24-26 (1997), *recon. denied*, *Third Report and Order and Third Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998); *see also* 47 C.F.R. § 80.123.

⁹ See MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, 22 FCC Rcd 8971, 8976-78 ¶¶ 8-10 (2007) (*Coast Station Flexibility Order*), *recon. granted in part*, *Memorandum Opinion and Order*, 25 FCC Rcd 533 (2010) (*Coast Station Recon Order*); *see also* 47 C.F.R. §§ 20.9, 80.475(c).

¹⁰ See 47 C.F.R. § 20.9(b); *see also* 47 C.F.R. § 20.9(a), (a)(5).

¹¹ See 47 C.F.R. § 20.9(b)(1).

¹² We note that the certifications reference licenses in addition to the licenses for which modifications are being requested at this time. Specifically, the certifications for the WQCP816 and WQCP817 applications also reference Station WQCP815, and the certification for the WQCP814 application also references Stations WQCP810, WQCP811, WQCP812, WQCP813, WQGF313, WQGF314, and WQJV762. See FCC File No. 0003875412, Section 20.9(b) Certification at 1 (WQCP816 Certification); FCC File No. 0003875418, Section 20.9(b) Certification at 1 (WQCP817 Certification); FCC File No. 0003875427, Section 20.9(b) Certification at 1 (WQCP814 Certification). Because a modification application applies only to the license for which modification is specifically requested therein, grant of the subject applications would modify only the licenses for Stations WQCP814, WQCP816, and WQCP817, and the other referenced licenses would remain classified as CMRS. See FCC Form 601 Instructions, Feb. 2008 version, at 9 (explaining that a modification of license application is for the purpose of “request[ing] a change in the conditions of any data ... for a license during the term of that license”) (emphasis added).

¹³ The Environmental application does not apply to spectrum in the area that is proposed to be partitioned in application FCC File No. 0002195997, filed June 13, 2005. See WQCP814 Certification at 1, 5.

¹⁴ See WQCP816 Certification at 1, 3; WQCP817 Certification at 1, 3; WQCP814 Certification at 1, 3.

¹⁵ See WQCP816 Certification at 1-3; WQCP817 Certification at 1-3; WQCP814 Certification at 1-3.

through “FCC-permitted spectrum leases, management agreements, and joint ventures.”¹⁶

4. *Discussion. Environmental application.* Station WQCP814 is authorized to operate on the AMTS Channel Block B frequencies in the Mountain service area.¹⁷ Neither MC/LM nor PSI is licensed for any AMTS stations within that area. Claims to standing as a competitor to Environmental in other regions are unavailing.¹⁸ Consequently, we dismiss MC/LM’s petition to deny the Environmental application; and we dismiss PSI’s petition to deny in part, with respect to the Environmental application.¹⁹

5. *Verde applications.* Because MC/LM and PSI both are licensed for AMTS stations within the geographic areas covered by the Verde licenses at issue,²⁰ they have standing to petition to deny the Verde applications.²¹ They argue that the Section 20.9(b) certifications are defective because they are self-contradictory, and propose operations that would violate the Part 80 rules.

6. The petitioners argue that the certifications are self-contradictory because they say at one

¹⁶ See WQCP816 Certification at 3; WQCP817 Certification at 3; WQCP814 Certification at 3.

¹⁷ See 47 C.F.R. § 80.385(a)(3) for definitions of the AMTS geographic license areas.

¹⁸ See MC/LM-Environmental Petition at 1; MC/LM Reply at 2; PSI Petition at 2; PSI Reply at 2-3. That the Environmental application references other licenses, *see supra* note 12, does not accord MC/LM and PSI standing to challenge this application, even assuming *arguendo* that they would have standing to challenge applications to modify the referenced licenses. To establish standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury. *See, e.g., AT&T Wireless PCS, Inc., Order*, 15 FCC Rcd 4587, 4588 ¶ 3 (WTB CWD 2000), *citing Sierra Club v. Morton*, 405 U.S. 727, 73 (1972).

PSI also claims standing as an AMTS operator concerned that the applicants’ proposed use of Part 80 spectrum for PMRS would result in a *de facto* reallocation of the spectrum. *See* PSI Petition at 2-3. We find that this concern is too speculative to support standing in this context, and, in addition, that PSI has not demonstrated how such a concern is personally injurious to PSI. *See, e.g., Wireless Properties of Virginia, Inc., Memorandum Opinion and Order*, 23 FCC Rcd 7474, 7478 ¶ 9 (WTB BD 2008) (petitioners to deny could not broadly establish standing based on general assertions of license holdings). We also reject the suggestion that the pendency of pleadings filed by PSI against affiliates of the applicants with respect to Auctions Nos. 57 and 61 confers standing on PSI to challenge the applications here. *See* PSI Petition at 3, 6. Our resolution of the instant matter is without prejudice to any action that may be taken in other proceedings involving the same parties. In addition, we note that, after the filing of the instant PSI petition, PSI’s petitions in the Auction Nos. 57 and 61 proceedings were denied. *See* Petition for Reconsideration and Motion for Stay of Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 4036 (2010); Paging Systems, Inc. Petition for Reconsideration of Public Notice Announcing Procedures for Auction of Automated Maritime Telecommunications System Licenses (Auction 61), *Order on Reconsideration*, DA 10-1242 (WTB rel. July 1, 2010).

¹⁹ PSI requests that, should we determine that it lacks standing, we treat its pleading as an informal request for Commission action, under Section 1.41 of the Commission’s Rules, 47 C.F.R. § 1.41. *See* PSI Petition at 3 n.7. We decline to exercise our discretion to do so, because we address PSI’s arguments, and identical or similar arguments raised by MC/LM, *infra*. *See* Charles T. Crawford, *Memorandum Opinion and Order*, 17 FCC Rcd 19328, 19330 ¶ 6 (2002).

²⁰ Verde’s conclusory assertions that all of the petitioners’ licenses are invalid do not merit discussion in this proceeding. *See* Opposition to MC/LM Petitions at 8-9; Opposition to PSI Petition at 7-8.

²¹ We reject Verde’s argument that the petitions should be dismissed as deficient because they were not accompanied by an affidavit or declaration, pursuant to Sections 1.939(d) and 20.9(b)(2) of the Rules, 47 C.F.R. §§ 1.939(d), 20.9(b)(2). *See* Opposition to MC/LM Petitions at 1; Opposition to PSI Petition at 1. As MC/LM notes, Section 1.939(d) contains an exception to the affidavit requirement for matters of which official notice may be taken, and there is nothing in the petitions of which we cannot take official notice. *See* MC/LM Reply at 2. The arguments therein are based on alleged deficiencies in the certifications themselves, and do not depend on any external evidence, so our analysis is confined to the four corners of that document. Under these circumstances, we conclude that an affidavit is not necessary.

point that Verde will utilize the licensed spectrum solely for its internal private use, but at another point indicate that Verde may provide service, or make the spectrum available, to third parties by such means as spectrum leases, management agreements, and joint ventures.²² While Verde's representations could have been phrased more precisely to avoid conflating private internal use with the provision of service to third parties as a private carrier, it is clear from a reading of the certifications as a whole that Verde is representing that it may use the spectrum for its own private internal purposes, or provide for its use by third parties, or both. Given that both private internal use and private carriage are permissible PMRS uses of AMTS spectrum, we do not believe that there is any basis to reject the instant certifications as impermissibly contradictory or vague.²³ Importantly, Verde describes the contemplated PMRS uses, and expressly pledges that it will not provide any radio service that meets the definition of CMRS.²⁴ We conclude that these certifications provide a sufficient description of the proposed service.

7. We also reject the argument that the certifications are defective because Verde proposes to operate on a non-interconnected basis.²⁵ The Commission determined in 2007 that AMTS licensees should be relieved of the interconnection requirement when providing PMRS, and confirmed its intention in 2010.²⁶ We accordingly see no reason to reject Verde's certification based on its representation that it will provide PMRS on a non-interconnected basis.

8. Nor are we persuaded that Verde's proposal is defective because it does not reconcile the proposed use with the Section 80.475(c) requirement to provide emergency service to ship stations and the Section 80.123(b) requirement to afford priority to marine-originating communications.²⁷ No rule requires a Section 20.9(b) certification to explain how the proposed PMRS operation will comply with these requirements. In fact, the Commission specifically declined to adopt a rule that would require AMTS licensees, as a prerequisite to providing PMRS, to submit such a plan, finding that such a requirement would unnecessarily burden licensees and delay implementation of beneficial PMRS operations.²⁸ We therefore see no impediment to acceptance of a Section 20.9(b) certification that does

²² See MC/LM Petition at 2; PSI Petition at 4-5.

²³ Nothing in Section 20.9 limits the PMRS use of AMTS spectrum to private internal communications, as opposed to private carriage. Both types of communications are encompassed by the Part 20 definition of PMRS. See 47 C.F.R. § 20.3; see also 47 U.S.C. § 332(d)(3). When the Commission has sought to differentiate between private internal use and private carriage for regulatory purposes, it has done so explicitly. See, e.g., Amendment of the Commission's Rules Regarding Multiple Address Systems, *Memorandum Opinion and Order*, WT Docket No. 97-81, 16 FCC Rcd 12181, 12189-90 ¶¶ 16-19 (2001) (providing that certain frequencies may be used for private internal communications but not the provision of private carrier communications).

²⁴ The Commission has stated that, in passing on Section 20.9(b) certifications, it intends, "as in other license contexts ... to rely primarily upon applicants' representations regarding their regulatory status," with the understanding that "i[f] a public coast station licensee who is authorized to provide only PMRS or non-common carrier service actually provides CMRS or common carrier service under that license, it will be subject to appropriate enforcement action." See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19879 ¶ 54 (1998), *recon. denied*, *Memorandum Opinion and Order*, 14 FCC Rcd 8804 (1999).

²⁵ See MC/LM Petition at 2; PSI Petition at 3.

²⁶ See *Coast Station Flexibility Order*, 22 FCC Rcd at 8972-72 ¶ 2, 8978 ¶ 11 ("We can discern no justification for retaining an interconnection requirement for the provision of private radio service. We believe AMTS licensees should have the option to provide interconnected CMRS service or non-interconnected private correspondence service as marketplace demand dictates."); *Coast Station Recon Order*, 25 FCC Rcd at 537-38 ¶ 13 (amending Section 80.385(a)(1) to conform to the *Coast Station Flexibility Order*'s amendments to Sections 80.5 and 80.475(d)).

²⁷ See MC/LM Petition at 2; PSI Petition at 3-4.

²⁸ See *Coast Station Flexibility Order*, 22 FCC Rcd at 8981 ¶ 16.

not specifically address how the proposed PMRS operations would be consistent with the Part 80 AMTS rules.²⁹

9. *Conclusion and Ordering Clauses.* The Section 20.9(b) certifications submitted with the subject applications sufficiently describe the applicants' proposed PMRS operations to demonstrate that such operations will not be within the definition of CMRS. Concerns regarding how the applicants will be able to undertake such operations while still complying with their Part 80 obligations to provide service to the maritime community can be addressed in the event that the applicants apply for waivers of the relevant Part 80 rules.

10. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the petition to deny filed by Maritime Communications/Land Mobile, LLC on July 31, 2009, against Applications File Nos. 0003875412 and 0003875418 IS DENIED.

11. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the petition to deny filed by Maritime Communications/Land Mobile, LLC on July 31, 2009, against Application File No. 0003875427 IS DISMISSED.

12. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the petition to dismiss or deny filed by Paging Systems, Inc., on July 31, 2009, against Applications File Nos. 0003875412, 0003875418, and 0003875427 IS DISMISSED IN PART and DENIED IN PART, as set forth above.

13. 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

Scot Stone
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²⁹ We expect Verde to comply with all relevant Part 80 requirements, even as a PMRS provider, unless and until it obtains a waiver of such requirements. Should Verde file a waiver request in the future in connection with its PMRS operations, any concerns regarding a diminution in maritime service can be addressed then, as can PSI's concerns about any *de facto* reallocation of the spectrum from maritime to land mobile use. See PSI Petition at 5.