

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

In the Matter )
PAGING SYSTEMS, INC. ) Call Signs KYW912, WHW826, WQA212,
and ) WQA216, WQA221, WQA227
MARITIME COMMUNICATIONS/LAND ) Call Sign WRV374
MOBILE LLC )
Requests to Find Automatic Termination of )
Licenses )

ORDER

Adopted: July 13, 2012

Released: July 16, 2012

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

1. Introduction. We have before us two requests that the above-captioned licenses be found to have terminated automatically for failure to meet applicable coverage requirements. In the first request, Environmental LLC (Environmental) and Skybridge Spectrum Foundation (Skybridge) seek a finding that the licenses of Paging Systems, Inc. (PSI) for Automated Maritime Telecommunications System (AMTS) Stations KYW912, WHW826, WQA212, WQA216, WQA221, and WQA227 terminated. In the second request, Warren Havens, Environmental, Skybridge, and Intelligent Transportation & Monitoring Wireless LLC (collectively, Petitioners) seek a finding that the license of Maritime Communications/Land Mobile LLC (MC/LM) for AMTS Station WRV374 terminated. For the reasons stated below, we deny both requests.

2. Background. Prior to 2002, AMTS stations were licensed on a site-by-site basis. Section 80.49(a)(3) of the Commission’s Rules provided a two-year construction requirement, and Section 80.475(a) of the Commission’s Rules stated that “AMTS applicants proposing to serve portions of the Atlantic, Pacific or Gulf of Mexico coastlines must define a substantial navigational area and show how

1 Request to recognize automatic termination of Paging Systems, Inc’s site-based AMTS licenses along the Northeast Corridor blocking Petitioners[’] co-channel geographic AMTS licensed spectrum including its provision responsive to railroads[’] request for PTC systems under Congressional mandate (filed October 13, 2011) (October Request). PSI filed an opposition on October 26, 2011. Environmental and Skybridge filed a reply on November 7, 2011.

2 The license subsequently was assigned to Maritime Communications/Land Mobile, LLC, Debtor-in-Possession. See FCC File No. 0004851459 (filed August 26, 2011, accepted April 19, 2012).

3 Request to find automatic termination of Maritime Communications/Land Mobile LLC’s Site-Based AMTS licenses to serve the Atlantic Coast blocking Petitioners[’] co-channel geographic AMTS licensed spectrum including its provision responsive to railroads’ request for PTC systems under Congressional mandate (filed November 1, 2011) (November Request). Petitioners filed an errata version on November 2, 2011. Citations will be to the errata version. MC/LM filed an opposition on November 17, 2011. Petitioners filed a reply on November 28, 2011.

4 See 47 C.F.R. § 80.49(a)(3) (2001).

the proposed system will provide continuity of service for it.”<sup>5</sup> The above-captioned licenses for site-based AMTS stations at various locations along the Atlantic coast were granted between 1996 and 1998. The licensees notified the Commission that the facilities were constructed and commenced operation between 1998 and 2000.<sup>6</sup> In 2002, the Commission adopted geographic licensing rules for the AMTS service, and amended Section 80.475(a) to remove the language regarding the continuity of service requirement for site-based applicants.<sup>7</sup>

3. In the instant requests, Petitioners argue that the subject licenses terminated automatically pursuant to Section 1.946(c) of the Commission’s Rules<sup>8</sup> because they did not satisfy the continuity of service requirement in former Section 80.475(a).<sup>9</sup> In support of the requests, Petitioners provide engineering analyses concluding that these AMTS systems could not have provided the continuity of coverage because the individual stations’ service contours did not overlap.<sup>10</sup>

4. *Discussion.* Section 1.946(c) states,

If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires.<sup>11</sup>

Petitioners argue that because the subject licenses could not have met the continuity of service requirements, their authorizations terminated automatically.<sup>12</sup> The argument is based on the premise that continuity of was a “coverage . . . obligation[.]” for purposes of Section 1.946(c). This premise is flawed.

5. Section 1.946(c) was enacted as part of the Universal Licensing System (ULS) proceeding in 1998.<sup>13</sup> In this proceeding, the Commission intended, *inter alia*, to establish uniform procedures for using ULS to notify licensees about upcoming construction and coverage deadlines.<sup>14</sup> The Commission did not

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<sup>5</sup> See 47 C.F.R. § 80.475(a) (2001).

<sup>6</sup> The instant requests generally assume *arguendo* that the stations were constructed as licensed. We note, however, that the question of whether MC/LM’s site-based AMTS stations were properly constructed is pending in a separate proceeding, *see* Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, 26 FCC Rcd 6520, 6546 ¶ 61 (2011), and the question of whether PSI constructed Station WQA216 is pending in another proceeding, *see* Northeast Utilities Service Co., *Order*, 24 FCC Rcd 3310, 3313 ¶ 8 (WTB MD 2009), *recon. pending*. Our decision herein with respect to the instant requests is without prejudice to any determinations in those proceedings.

<sup>7</sup> 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, 6737 (2002); *see also, e.g.*, Amendment of the Commission’s Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391, 22400 n.84 (2003).

<sup>8</sup> 47 C.F.R. § 1.946(c).

<sup>9</sup> See October Request at 3; November Request at 4.

<sup>10</sup> See October Request at 4-10, Exhs. 1-2; November Request at 7-13, Exh. 1.

<sup>11</sup> 47 C.F.R. § 1.946(c); *see also* 47 C.F.R. § 1.955(a)(2).

<sup>12</sup> See October Request at 12; November Request at 4.

<sup>13</sup> See Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027 (1998).

<sup>14</sup> See *id.* at 21075 ¶ 103.

intend to change the underlying requirements.<sup>15</sup> In its discussion of the new procedures, the Commission used the term ‘construction requirement’ for site-based stations, and the term ‘coverage requirement’ for geographic licenses.<sup>16</sup> This distinction is clear from the language of the Part 80 rules at issue: Section 80.49(a)(3) provided that the authorization for a facility that was not placed in operation within the required period of time became invalid and had to be returned to the Commission for cancellation,<sup>17</sup> but Section 80.475(a) contained no such language. Thus, for purposes of Section 1.946(c), the relevant requirement with respect to automatic termination is the two-year construction period for each facility, rather than continuity of service.

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 5, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 303(r), and Section 1.41 of the Commission's Rules, 47 C.F.R. §§ 1.41, the informal request filed by Environmental LLC and Skybridge Spectrum Foundation on October 13, 2011 IS DENIED.

7. IT IS FURTHER ORDERED that the informal request filed by Warren Havens, Environmental LLC, Skybridge Spectrum Foundation, and Intelligent Transportation & Monitoring Wireless LLC on November 1 and 2, 2011 IS DENIED.

8. These actions are 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  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>15</sup> See *id.* at 21075 ¶ 104.

<sup>16</sup> See *id.* at 21074-75 ¶¶ 102-03; see also Clarification of Reconsideration Period and Effective Date for Termination of Wireless Radio Service Authorizations, *Declaratory Ruling*, WT Docket No. 05-23, 20 FCC Rcd 1494, 1494-95 ¶¶ 1-2 (WTB 2005) (referring to “completion of construction” and “satisfaction of coverage requirements,” and stating that “the effective termination date associated with an automatic license termination for all wireless radio service licensees that have construction or coverage performance requirements is the date the construction or coverage period expires”).

<sup>17</sup> See 47 C.F.R. § 80.49(a)(3) (2001).