

applications filed by MariTEL, Inc., and its nine subsidiaries (collectively, MariTEL) to transfer, modify, renew, or assign VHF Public Coast (VPC) station licenses be dismissed, denied, or held in abeyance, or (in one case) that grant of the applications be reconsidered.² The Havens Petitioners filed petitions for reconsideration³ and (in one case) an application for review⁴ of the Division's decisions. For the reasons set forth below, we deny the petitions for reconsideration and dismiss the application for review.

2. *Background.* The Havens Petitioners' pleadings with respect to the above-captioned applications were based primarily on allegations concerning Donald DePriest (DePriest) and Maritime Communications/Land Mobile LLC (MC/LM). The Havens Petitioners alleged that DePriest and MC/LM made misrepresentations, lacked candor, and committed other misconduct in connection with MC/LM's filing and prosecution of its application for Automated Maritime Telecommunications System licenses for which MC/LM was the winning bidder in the Commission's Auction No. 61. After investigating these matters, the Commission designated a hearing to consider the basic character qualifications of DePriest and MC/LM.⁵ The Havens Petitioners asserted that MariTEL's basic character qualifications also were at issue because DePriest controlled MariTEL at the time of the alleged MC/LM-related misconduct. DePriest denied that he controlled MariTEL during the relevant period.⁶ In June 2008, however, MariTEL filed transfer of control applications to divest DePriest of control, and stated that no single entity would control MariTEL after the transaction. The applications were granted under the Commission's Immediate Approval Procedures (IAP).⁷

3. The Havens Petitioners filed a "Petition to Deny and Petition for Reconsideration" of the grant of the applications, noting the conflicting representations regarding DePriest's control of MariTEL, and arguing that DePriest controlled MariTEL and lacked the character qualifications to be a Commission licensee. They also argued that the filing of the applications and later consummation of the transaction were not "authorized acts" of MariTEL. The Havens Petitioners later filed petitions arguing that applications filed by MariTEL between November 2008 and November 2009 to modify, renew, and partition and disaggregate its VPC licenses also should be dismissed, denied, or held in abeyance in light of questions about DePriest's character qualifications. They contended primarily that MariTEL's licenses may be subject to revocation based on DePriest's misconduct, so none of MariTEL's applications should be granted, if at all, until the issues regarding DePriest's qualifications are resolved at hearing.

4. In the *April 3 Order*, the Division denied the Havens Petitioners' pleadings with respect to MariTEL's transfer of control, modification, and renewal applications. It explained that, under the Commission's Character Qualifications Policy, the Commission will withhold action only on applications

² MariTEL, Inc., *Order*, 27 FCC Rcd 3256 (WTB MD 2012) (*April 3 Order*); MariTEL Mississippi River, Inc., *Order*, 27 FCC Rcd 7676 (WTB MD 2012) (*July 11 Order*); MariTEL Northern Pacific, Inc., *Order*, 27 FCC Rcd 8153 (WTB MD 2012) (*July 19 Order*); MariTEL Southern Pacific, Inc., *Order*, 27 FCC Rcd 10978 (WTB MD 2012) (*September 10 Order*).

³ See Petition for Reconsideration (filed May 4, 2012) (*April 3 Order PFR*); Petition for Reconsideration (filed Aug. 13, 2012) (*July 11 Order PFR*); Petition for Reconsideration (filed Aug. 20, 2012) (*July 19 Order PFR*); Petition for Reconsideration (filed Oct. 11, 2012) (*September 10 Order PFR*). MariTEL filed oppositions to the *April 3*, *July 19*, and *September 10 Order PFRs*. PacifiCorp also filed an opposition to the *July 19 Order PFR*. The Havens Petitioners filed replies to the oppositions.

⁴ See Application for Review (filed May 4, 2012) (AFR). MariTEL's opposition to the *April 3 Order PFR* also addresses the AFR. The Havens Petitioners filed a separate reply with respect to the AFR.

⁵ 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 (2011) (*OSC/HDO*).

⁶ See *id.* at 6527 ¶ 19 & n.35.

⁷ See 47 C.F.R. § 1.948(j)(2).

encompassed in a hearing designation order, rather than all of the designated licensee's applications.⁸ The Division acknowledged the possibility that misconduct by DePriest could ultimately be imputed to MariTEL and appropriate measures could ensue upon a determination of actionable misconduct.⁹ It noted, however, that the *OSC/HDO* did not designate issues against MariTEL despite MariTEL's representation that it had been controlled by DePriest, and that there was no evidence in the record of wrongdoing by MariTEL itself.¹⁰ The Division therefore concluded that, consistent with the Character Qualifications Policy, it would not withhold processing of the MariTEL applications due to the pendency of the hearing involving DePriest and MC/LM.¹¹

5. The Division also found no merit in the Havens Petitioners' arguments relating to control of MariTEL. Among other things, it rejected their contention that the applications were not authorized by MariTEL, stating that the "dispute regarding DePriest's role at MariTEL does not establish or even imply that no person had authority to act on the company's behalf," and finding no evidence that the applications were not authorized by its Board of Directors or signed by persons vested with authority to act on MariTEL's behalf.¹² The Division also held that the "Petition to Deny and Petition for Reconsideration" opposing the transfer of control applications must be treated only as a petition for reconsideration inasmuch as it was filed after the applications were granted.¹³

6. In subsequent orders, the Division denied the Havens Petitioners' petitions to deny, dismiss, or hold in abeyance MariTEL's applications to partition and disaggregate VPC spectrum, noting that the arguments opposing those applications had been found in the *April 3 Order* to be without merit.¹⁴

7. The Havens Petitioners filed a petition for reconsideration of each Division decision, and also an application for review of the *April 3 Order* with respect to the transfer of control applications.

8. *Discussion.* The Havens Petitioners contend that the *April 3 Order* incorrectly "suggests that DePriest's chara[c]ter is not relevant to the Applications since the FCC has not designated the applications or Maritel or its licenses for a hearing."¹⁵ They assert that the *OSC/HDO* and the underlying investigation demonstrate that MariTEL's character qualifications should be investigated prior to action on any MariTEL application,¹⁶ and argue that the applications to partition and disaggregate spectrum should not have been granted because DePriest stood to benefit from the transactions.¹⁷

9. We disagree. The *April 3 Order* only observed that the Commission's longstanding policy is that if the basic qualifications of the licensee (and particular applications or licenses) have been designated for hearing, proceedings involving the licensee's other licenses will not be encumbered with

⁸ See *April 3 Order*, 27 FCC Rcd at 3259-61 ¶¶ 7-12 (citing Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement, 102 FCC 2d 1179, 1223-25 ¶¶ 92-95, recon. denied, 1 FCC Rcd 421 (1986)).

⁹ *Id.* at 3260 ¶ 9 & n.34.

¹⁰ *Id.* at 3260 ¶ 9, 3261 ¶ 12.

¹¹ *Id.* at 3261 ¶ 12.

¹² *Id.* at 3262 ¶ 14.

¹³ *Id.* at 3257 n.11.

¹⁴ See *July 11 Order*, 27 FCC Rcd at 7676 ¶ 1; *July 19 Order*, 27 FCC Rcd at 8155 ¶ 6; *September 10 Order*, 27 FCC Rcd at 10980 ¶ 6.

¹⁵ See *April 3 Order* PFR at 8.

¹⁶ *Id.* at 5-6.

¹⁷ See *July 20 Order* PFR at 2-4; *September 10 Order* PFR at 2-4.

consideration of the pending character allegations made in the principal proceeding.¹⁸ Even now, the Havens Petitioners offer no analysis, and cite to no precedent, that calls into question the Division's application of the Character Qualifications Policy¹⁹ and its decisions not to "deny, dismiss or defer acting on applications that have not been designated for hearing, involving licenses that have not been designated for hearing, filed by applicants that have not been designated for hearing."²⁰ We therefore find this argument to be without merit.

10. The Havens Petitioners reiterate their argument that the transfer of control applications were not properly certified by MariTEL because no one at MariTEL was authorized to file them,²¹ and they contend that the Division exceeded the Commission's authority by addressing "matters of State law jurisdiction" in deciding the disputed issue of who controlled MariTEL.²² This is incorrect. The *April 3 Order* simply rejected the argument that MariTEL's applications must be deemed unauthorized, and hence defective under the Commission's Rules, due to the dispute as to who controlled MariTEL when MC/LM filed its Auction No. 61 application.²³

11. The Havens Petitioners also argue that their pleading opposing the transfer of control applications should have been treated as a petition to deny rather than a petition for reconsideration because the applications were not eligible for IAP processing due to the questions regarding control of the company.²⁴ As discussed above, the questions regarding control of MariTEL did not render the transfer of control applications defective. The applications were properly granted under the IAP process, because they were "sufficiently complete" and otherwise met the requirements for IAP processing in Section 1.948(j)(2) of the Rules.²⁵ Moreover, even if IAP processing had been inappropriate, the filing of a petition for reconsideration does not by itself reverse the challenged action and return it to pending status for further processing. The Havens Petitioners' pleading against the transfer of control applications was therefore properly treated as a petition for reconsideration.²⁶

¹⁸ See *April 3 Order*, 27 FCC Rcd at 3260-61 ¶¶ 10-11.

¹⁹ The Havens Petitioners say that the *April 3 Order* construed the Character Qualifications Policy in a manner "at odds with controlling court precedent," but do not cite any court decisions to support this conclusory statement. See *April 3 Order* PFR at 8. (In the *July 20 Order* PFR, they cite a decision regarding piercing the corporate veil under Delaware law, but it has no relevance to the present matter. See *July 20 Order* PFR at 2 (citing *BH S & B Holdings LLC vs. Bay Harbour Master Ltd.*, 420 B.R. 112 (Bankr. S.D.N.Y. 2009)).)

²⁰ *April 3 Order*, 27 FCC Rcd at 3261 ¶ 12.

²¹ See *April 3 Order* PFR at 2-4.

²² *Id.* at 3.

²³ See *April 3 Order*, 27 FCC Rcd at 3262 ¶ 14. Contrary to the Havens Petitioners' contention that the Division denied their petition "based in part on facts that it won't even release to Petitioners," see *April 3 Order* PFR at 7, the Division relied solely on matters of record, and the bases for its conclusions were fully explained. Moreover, the Division made no factual finding as to who controlled MariTEL at any particular time. See *April 3 Order*, 27 FCC Rcd at 3259-61 ¶¶ 8-12.

²⁴ See *April 3 Order* PFR at 2, 4-5.

²⁵ See 47 C.F.R. § 1.948(j)(2).

²⁶ See *Progeny LMS LCC, Order*, 27 FCC Rcd 5871, 5877 ¶ 16 (WTB MD 2012) ("In the *Secondary Markets Report and Order*, the Commission applied the IAP Rules to all wireless services and clearly stated that, if an application is acted on pursuant to IAP, the correct vehicle for challenging such an action is a petition for reconsideration. Since the Application was granted pursuant to the Commission's IAP rules, the Petition must be considered a petition for reconsideration.") (citing *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, WT Docket No. 00-230, 19 FCC Rcd 17503, 17557-17558 ¶ 110 (2004)) (footnotes omitted), *review pending*.

12. Finally, we dismiss the application for review of the *April 3 Order*. Section 1.104(b) of the Rules provides that a party may file either a petition for reconsideration or an application for Commission review of an action taken on delegated authority, but not both.²⁷ The dismissal is without prejudice to the filing of an application for review of this *Order on Reconsideration and Order*.²⁸

13. *Conclusion and Ordering Clauses.* For reasons discussed above, we deny the Havens Petitioners' petitions for reconsideration and dismiss without prejudice their application for review of the Division's decisions denying their petitions filed against the above-captioned applications. As explained above and in the previous decisions, the Commission will withhold action only on applications encompassed in a hearing designation order, rather than all of the designated licensee's applications. The Havens Petitioners have provided no reason to depart from this policy.

14. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Sections 1.104 and 1.115 of the Commission's Rules, 47 C.F.R. §§ 1.104, 1.115, the Application for Review filed by Warren C. Havens, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Environmental-2 LLC, Intelligent Transportation & Monitoring Wireless LLC, and V2G LLC on May 4, 2012, IS DISMISSED without prejudice.

15. IT IS FURTHER 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 Reconsideration filed by Warren C. Havens, Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation, Verde Systems LLC, Environmental LLC, Environmental-2 LLC, Intelligent Transportation & Monitoring Wireless LLC, and V2G LLC on May 4, 2012 IS DENIED.

16. IT IS FURTHER 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 Reconsideration filed by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation on August 13, 2012 IS DENIED.

17. IT IS FURTHER 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 Reconsideration filed by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation on August 20, 2012 IS DENIED.

18. IT IS FURTHER 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 Reconsideration filed by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation on October 11, 2012 IS DENIED.

19. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of

²⁷ See 47 C.F.R. § 1.104(b). It appears that the Havens Petitioners filed the AFR, which simply incorporates by reference the arguments in the *April 3 Order* PFR, in order to preserve their right to further contest the grant of the transfer of control applications lest a petition for reconsideration with respect to those applications be subject to dismissal as repetitious pursuant to Section 1.106(k)(3) of the Rules, 47 C.F.R. § 1.106(k)(3) ("A petition for reconsideration of an order which has been previously been denied on reconsideration maybe dismissed by the staff as repetitious."). See AFR at 1-2; *April 3 Order* PFR at 2.

²⁸ See Touch Tel Corporation, *Order on Reconsideration*, 26 FCC Rcd 16482, 16484 ¶ 7 (WTB BD 2011).

the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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