

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

In the Matter of	)	
	)	
INTELLIGENT TRANSPORTATION & MONITORING WIRELESS LLC	)	File Nos. 0007204440-00072024472, 0007204474—007204727, 0007204729- 0007204793
	)	
352 Applications for Renewal of Multiple Address System Licenses	)	
	)	
SKYBRIDGE SPECTRUM FOUNDATION	)	File Nos. 0007206392-0007206411, 0007206417-0007206459, 0007206461- 0007206517, 0007206519-0007206578, 0007206580-0007206439, 0007206641- 0007206752
	)	
352 Applications for Renewal of Multiple Address System Licenses	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 14, 2018**

**Released: August 14, 2018**

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

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we dismiss for lack of standing the Petition to Deny filed by SNAPS Holding Company (SHC) against the above-captioned renewal applications of Intelligent Transportation & Monitoring Wireless LLC (ITL) and of Skybridge Spectrum Foundation (Skybridge) for 704 Multiple Address System (MAS) licenses (collectively, the 704 MAS Renewal Applications).<sup>1</sup>

**II. BACKGROUND**

2. MAS is a radio communications service that operates on 3.2 megahertz of spectrum in the 900 MHz band, licensed under Part 101 of the Commission’s rules.<sup>2</sup> In 2000, the Commission designated the 928/959 MHz bands and twenty of the forty paired channels in the 932/941 MHz bands to be licensed on a geographic area basis using Economic Areas.<sup>3</sup> The Commission has held two auctions of MAS licenses. In the first, Auction 42, held in November 2001, the Commission sold 878 licenses.<sup>4</sup> In the second, Auction 59, held in April and May, 2005, the Commission sold 2223 licenses.<sup>5</sup>

<sup>1</sup> SNAPS Holding Company, Petition to Deny (filed May 6, 2016) (Petition).

<sup>2</sup> See Amendment of the Commission’s Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Report and Order*, 15 FCC Rcd 11956 (2000) (*MAS Report and Order*).

<sup>3</sup> *MAS Report and Order*, 15 FCC Rcd at 11957-58, para. 2.

<sup>4</sup> See *Multiple Address Systems Spectrum Auction Closes – Winning Bidders Announced*, Public Notice, 16 FCC Rcd 21011 (WTB 2001).

<sup>5</sup> See *Multiple Address Systems Spectrum Auction Closes – Winning Bidders Announced*, Public Notice, 20 FCC Rcd 9551 (WTB 2005).

3. Originally, the licenses at issue here were assigned to ITL, which won 352 MAS licenses in Auction 59.<sup>6</sup> On March 29, 2006, ITL's long form application was granted, and it was issued licenses for each of the markets for which it was the winning bidder.<sup>7</sup> Under Section 101.1325(b) of the Commission's Rules, ITL had until March 29, 2011, or five years after its licenses were granted, to provide service to at least one-fifth of the population within each service area or to demonstrate "substantial service."<sup>8</sup> Rather than file construction notifications on March 29, 2011, however, ITL filed applications seeking an extension of time to construct the licenses and applications seeking to disaggregate the 352 licenses into 704 licenses and assign 352 of those licenses to Skybridge.<sup>9</sup> Under the assignment applications, Skybridge agreed to assume the performance obligations for the entire Economic Area in which the individual licenses are located, as permitted by section 101.1323(c) of the Commission's rules. The Wireless Telecommunications Bureau ("Bureau") granted the applications for extensions of time to construct the licenses and the applications to disaggregate the 352 licenses.<sup>10</sup>

4. On February 6, 2016, the Wireless Telecommunications Bureau ("Bureau") accepted applications seeking consent to the transfer of control of ITL and Skybridge to Susan L. Uecker in her capacity as a receiver.<sup>11</sup> Until the appointment of Ms. Uecker, ITL and Skybridge were two of multiple entities that were under the control of Warren Havens.<sup>12</sup>

5. Six weeks later, on March 28, 2016, Ms. Uecker filed applications to renew ITL's 352 MAS licenses.<sup>13</sup> The next day, March 29, 2016, Ms. Uecker filed two sets of applications with respect to Skybridge's MAS licenses – applications for a 12 month extension of time to demonstrate substantial service, and separate applications to renew the licenses.<sup>14</sup> In a separate order being released today, we deny the Skybridge applications for extension of time and note that the Skybridge licenses automatically terminated on March 29, 2016.<sup>15</sup>

6. A month later, on May 6, 2016, SHC filed mutually exclusive applications for the 704 MAS licenses and a Petition to Deny the renewal applications that Ms. Uecker had filed on behalf of ITL and Skybridge for their respective MAS licenses.<sup>16</sup> SHC argues that ITL and Skybridge should be denied a renewal expectancy for the MAS licenses because neither entity makes any showing whatsoever that

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<sup>6</sup> See *Multiple Address Systems Spectrum Auction Closes – Winning Bidders Announced for Auction No. 59*, Public Notice, 20 FCC Rcd 9551, 9560 (WTB 2005).

<sup>7</sup> Skybridge Spectrum Foundation, Request for Limited Extension of Construction Deadlines (filed Mar. 29, 2016) (Skybridge Request) at 2-3.

<sup>8</sup> See 47 C.F.R. § 101.1325(b).

<sup>9</sup> Skybridge Request at 2.

<sup>10</sup> See *Wireless Telecommunications Bureau Assignment of License Authorizations, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Eligibility Event Applications, and Designated Entity Annual Reports Action*, Public Notice, Report No. 10431 (Apr. 15, 2015) at 2; File Nos. 0004668905-0004669256 (granted Sep. 8, 2014).

<sup>11</sup> File Nos. 0007060862 (ITL) and 0007061847 (Skybridge) (filed Dec. 17, 2015, accepted Feb. 6, 2016).

<sup>12</sup> Skybridge Request at 2-3.

<sup>13</sup> See e.g. File No. 0007204448. The file numbers of the ITL renewal applications are contained in the Appendix to this *Memorandum Opinion and Order*.

<sup>14</sup> The Appendix to Skybridge Spectrum Foundation, *Memorandum Opinion and Order*, DA 17-XXX (WTB BD 2017) (*Skybridge Extension MO&O*) contains the file numbers of the applications for extension of time and applications for renewal of license.

<sup>15</sup> See *Skybridge Extension MO&O*.

<sup>16</sup> Petition.

they have constructed anything in connection with the 704 MAS licenses.<sup>17</sup> SHC argues that the Bureau has rejected arguments similar to the arguments made by ITL and Skybridge in connection with other licenses issued to licensees controlled by Warren Havens.<sup>18</sup> SHC further argues that it should be awarded the 704 MAS licenses because in its mutually exclusive applications it commits to begin construction in certain markets within 12 months and to satisfy all applicable construction and coverage requirements within 48 months of being awarded the licenses.<sup>19</sup>

7. On May 16, 2016, Ms. Uecker filed an Opposition to the Petition to Deny on behalf of ITL and Skybridge.<sup>20</sup> Ms. Uecker argues that the Commission should dismiss the Petition to Deny because SHC does not have standing and because the Petition is otherwise without merit.<sup>21</sup> First, she maintains that SHC is not a “party in interest” because its mutually exclusive applications for the 704 MAS licenses were not properly filed.<sup>22</sup> Because these applications are improper, she argues, they offer no basis for SHC to assert an interest in the 704 MAS Renewal Applications.<sup>23</sup> In fact, the SHC applications were found to be defective, and have been dismissed.<sup>24</sup> Second, Ms. Uecker maintains that SHC’s arguments concerning Warren Havens are irrelevant because she controls the licenses as the court-appointed receiver for both ITL and Skybridge.<sup>25</sup> She notes that as the receiver, she is obligated to preserve the value of the licenses.<sup>26</sup> Third, she maintains that because the Commission has previously recognized that ITL has no construction, geographic coverage, or substantial service obligations, SHC is incorrect in its understanding of ITL’s buildout obligations.<sup>27</sup>

8. On May 26, 2016, SHC filed a Reply to Opposition to Petition to Deny.<sup>28</sup> SHC argues that it has standing because it filed mutually exclusive applications for the 704 MAS licenses, which the Commission had not at the time of the Petition determined to be either improperly filed or otherwise defective.<sup>29</sup> SHC also argues that, even if the competing applications were dismissed, it would still have standing under *Jacksonville Broadcasting Corp. v. FCC*.<sup>30</sup>

9. In the alternative, SHC argues that the Commission should reach the merits of the petition to deny without regard to Petitioner’s standing as a “party in interest.”<sup>31</sup> SHC cites four cases in which the Commission disposed of Petitions to Deny filed by Warren Havens individually or in concert

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<sup>17</sup> Petition at 3.

<sup>18</sup> Petition at 4-5.

<sup>19</sup> Petition at 5.

<sup>20</sup> Susan Uecker, Opposition of Intelligent Transportation & Monitoring Wireless LLC and Skybridge Spectrum Foundation to Petition to Deny (filed May 16, 2016) (Opposition).

<sup>21</sup> Opposition at 1.

<sup>22</sup> Opposition at 2.

<sup>23</sup> Opposition at 2.

<sup>24</sup> Letter from Stephen C. Buenzow, Deputy Chief, Broadband Division, FCC Wireless Telecommunications Bureau, to Elizabeth R. Sachs, Esq. and Todd B. Lantor, Esq., Lukas, Nace, Guitierrez & Sachs, LLP (July 5, 2016).

<sup>25</sup> Opposition at 4-5.

<sup>26</sup> Opposition at 5.

<sup>27</sup> Opposition at 6.

<sup>28</sup> SNAPS Holding Company, Reply to Opposition to Petition to Deny (filed May 26, 2016) (Reply).

<sup>29</sup> Reply at 1-2.

<sup>30</sup> Reply at 2, n.5. *Jacksonville Broadcasting Corp. v. Federal Communications Commission*, 348 F.2d 75 (1965).

<sup>31</sup> Reply at 2.

with Havens licensees without addressing standing and in two of those proceedings, the Commission decided the substantive issues raised by Havens and Havens licensees.<sup>32</sup>

### III. DISCUSSION

10. The Commission's rules require that a petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party in interest.<sup>33</sup> To establish party-in-interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.<sup>34</sup> In addition, petitioners must demonstrate a causal link between the claimed injury and the challenged action.<sup>35</sup> To demonstrate a causal link, petitioners must establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested.<sup>36</sup> An organization may meet these standards in its own right or may demonstrate that one or more of its members meets them.<sup>37</sup> As discussed below, SHC fails to establish party-in-interest standing, and accordingly, we dismiss the SHC Petition to Deny.

11. SHC has not shown that it is a "party-in-interest" because it has not alleged facts sufficient to demonstrate that a grant of the 704 MAS Renewal Applications would cause it to suffer a direct injury. SHC based its assertion of "party-in-interest" status on its filing of mutually exclusive applications for the 704 MAS licenses.<sup>38</sup> As noted above, however, those applications, were defective and have been dismissed.<sup>39</sup> The fact that the dismissal came after the Petition to Deny was filed is immaterial; SHC's applications were always defective and thus could not serve to create standing. SHC cannot show that it will suffer a direct injury if Ms. Uecker's renewal applications on behalf of ITL and Skybridge are granted because SHC never had any valid mutually exclusive applications.

12. SHC further maintains that, even if the Commission were to dismiss its mutually exclusive applications (as it ultimately did), SHC still has standing under *Jacksonville Broadcasting Corp. v. FCC*,<sup>40</sup> in which the court held that a disqualified applicant had standing to appeal the grant of a license.<sup>41</sup> We disagree. The Court of Appeals has limited *Jacksonville Broadcasting Corp. v. FCC* by clarifying that "one who seeks to overturn a Commission licensing decision in the capacity of a disappointed applicant must actually apply, and must do so in timely fashion."<sup>42</sup> Indeed, the Court in *Coalition for the Preservation of Hispanic Broadcasting* overruled *Jacksonville Broadcasting* to the extent that case was inconsistent with the requirement to file a timely application. Since SHC did not file a timely application within a window in which comparative renewal applications could be filed, *Coalition for the Preservation of Hispanic Broadcasting* supports a conclusion that SHC lacks standing.

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<sup>32</sup> Reply at 2 citing *Cornerstone SMR, Inc.*, Order, 27 FCC Rcd 5900 (WTB MD 2012); *Paging Systems, Inc.*, Order on Reconsideration and Order, 25 FCC Rcd 5762 (WTB MD 2010); *Mobex Network Services, LLC*, Order, 19 FCC Rcd (WTB PS&CID 2004); *Paging Systems, Inc.*, Order, 24 FCC Rcd 5309 (WTB MD 2009).

<sup>33</sup> 47 C.F.R. § 1.939(d).

<sup>34</sup> *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235, para. 7 (WTB 1995) (*Wireless Co.*), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

<sup>35</sup> *Wireless Co.*, 10 FCC Rcd at 13235 ¶ 7.

<sup>36</sup> *Id.*

<sup>37</sup> See, e.g., *Friends of the Earth, Inc.*, 18 FCC Rcd 23622, paras. 2-3 (2003).

<sup>38</sup> See Reply at 1-2.

<sup>39</sup> Letter from Stephen C. Buenzow, Deputy Chief, Broadband Division, FCC Wireless Telecommunications Bureau, to Elizabeth R. Sachs, Esq. and Todd B. Lantor, Esq., Lukas, Nace, Guitierrez & Sachs, LLP (July 5, 2016).

<sup>40</sup> *Jacksonville Broadcasting Corp. v. Federal Communications Commission*, 348 F.2d 75 (1965).

<sup>41</sup> Reply at 2, n.5.

<sup>42</sup> *Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 931 F.2d 73, 79 (D.C. Cir. 1991).

13. SHC also argues that we should reach the merits of the case without regard to whether it has standing.<sup>43</sup> While it is true that we have discretion to consider SHC's pleading as an informal objection,<sup>44</sup> we find no reason to do so in this case because we can address the pertinent issues without considering the petition to deny. As noted above, we have denied Skybridge's extension requests. Because Skybridge failed to comply with the performance obligations attached to its licenses, Skybridge's 352 MAS licenses automatically cancelled on March 29, 2016, its construction deadline. Thus, with respect to the Skybridge licenses, we have essentially granted the relief SHC seeks. As explained above, there are no performance obligations attached to ITL's 352 disaggregated MAS licenses. Thus, SHC's argument for denying the 704 Renewal Applications does not apply to ITL.

#### IV. CONCLUSION AND ORDERING CLAUSES

14. For the reasons set forth above, we dismiss SHC's petition to deny the 704 MAS Renewal Applications.

15. Accordingly, IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.939, the petition to deny filed by SNAPS Holding Company on May 16, 2016 IS DISMISSED.

16. 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

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>43</sup> See *supra* n.30.

<sup>44</sup> See, e.g., *Applications of Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14021 n.335 (2005) ("*Sprint-Nextel*") (citing *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21547 n.196 (2004)).