

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

In the Matter of)	
)	
PAGING SYSTEMS, INC.)	File No. 0002232564
)	
Petition to Deny filed by Warren C. Havens,)	
Intelligent Transportation & Monitoring Wireless)	
LLC, Telesaurus-VPC, LLC, and Telesaurus)	
Holdings GB LLC)	

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 2009

Released: January 4, 2010

By the Commission:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* affirms the grant of a waiver to permit the late filing of long-form application after the conclusion of Auction No. 59. On April 9, 2007, Warren C. Havens, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC, and Telesaurus Holding GB, LLC (collectively “Petitioners”) filed an application for review¹ of an *Order on Reconsideration* by the Wireless Telecommunications Bureau (Bureau), Mobility Division (MD).² The *Order on Reconsideration* denied reconsideration of an *Order*³ by the Bureau’s former Public Safety and Critical Infrastructure Division (PSCID).⁴ The *Order* denied Petitioners’ petition to deny the above-captioned application filed by Paging Systems, Inc. (PSI) for Multiple Address System (MAS) licenses for which PSI was the high bidder in Auction No. 59, and Petitioners’ petition for reconsideration of PSCID’s decision granting PSI a waiver of the Auction No. 59 long-form filing deadline.⁵ For the reasons discussed below, we deny Petitioners’ application for review.

II. BACKGROUND

2. PSI was the high bidder for sixteen MAS licenses offered in Auction No. 59,⁶ but did not file its long-form application until approximately one month after the filing deadline.⁷ PSI therefore

¹ Application for Review (filed April 9, 2007) (AFR). On April 24, 2007, Paging Systems, Inc. (PSI) filed an Opposition to Application for Review (Opposition). On May 9, 2007, Petitioners filed a Reply to Opposition to Application for Review (Reply).

² Paging Systems, Inc., *Order on Reconsideration*, 22 FCC Rcd 4602 (WTB MD 2007) (*Order on Reconsideration*).

³ Paging Systems, Inc., *Order*, 21 FCC Rcd 3032 (WTB PSCID 2006) (*Order*).

⁴ Pursuant to a reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁵ Letter dated October 13, 2005, from Jeffrey S. Cohen, Deputy Chief, PSCID, to Audrey P. Rasmussen, Esq., Counsel for Paging Systems, Inc., 20 FCC Rcd 16194 (*Letter Order*).

⁶ See Multiple Address Systems Auction Closes: Winning Bidders Announced for Auction No. 59, *Public Notice*, 20 FCC Rcd 9551, Attachment A (WTB 2005).

⁷ Applications were due June 9, 2005, but PSI did not file until July 8, 2005.

requested a waiver of the long-form filing deadline. PSCID granted the waiver request, concluding that PSI had demonstrated that such relief was warranted under Section 1.925(b)(3) of the Commission's Rules⁸ because it would not undermine the purpose of the rule governing the timely filing of long-form applications,⁹ and would serve the public interest.¹⁰ PSCID explained that "[a]n underlying purpose of post-auction application deadlines is to ensure that winning bidders satisfy the Commission's qualification and eligibility requirements in a timely manner and so avoid 'delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction.'"¹¹ That purpose would not be undermined by granting a waiver to PSI, PSCID reasoned, because PSI had complied with all pre-auction filing requirements in Auction No. 59, including timely submission of its upfront payment; was found to be a qualified bidder; and had timely satisfied both its down payment and final payment obligations.¹² Finally, PSCID noted that its decision was consistent with Bureau precedent granting waiver relief for minor delinquencies that do not disrupt the auction process or delay the deployment of service, particularly the *Silver Palm*¹³ and *City Page*¹⁴ decisions.¹⁵

3. After PSI's long-form application was accepted for filing,¹⁶ Petitioners filed a petition to deny the application¹⁷ and a petition for reconsideration of the grant of a waiver of the filing deadline.¹⁸ In its 2006 *Order*, PSCID rejected Petitioners' argument that granting a waiver to PSI simply because PSI's counsel neglected to file a timely application would create a precedent that would encourage other applicants to likewise file applications after the deadline, would undermine the purpose of the filing deadline, and would be unfair to applicants who did file their applications on time.¹⁹ PSCID noted that the Petitioners failed to even attempt to distinguish the instant case from the cases that PSCID had cited as precedent when it granted the waiver.²⁰ PSCID also found that Petitioners' arguments that PSI should be disqualified to be a Commission licensee under the Commission's character qualifications policy – which did not allege any misconduct by PSI with respect to Auction No. 59 or MAS – did not constitute grounds to deny the instant application, and were more appropriately addressed in the pending

⁸ 47 C.F.R. § 1.925(b)(3). Section 1.925(b)(3) provides that the Commission "may grant a request for waiver if it is shown that ... (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."

⁹ 47 C.F.R. § 1.2107(c).

¹⁰ See *Letter Order*, 20 FCC Rcd at 16195-96. PSCID also granted waivers of the long-form filing deadline to three other Auction No. 59 applicants. See *Order*, 21 FCC Rcd at 3033 n.10.

¹¹ See *Letter Order*, 20 FCC Rcd at 16195, quoting Implementation of Section 309(j) of the Communications Act, Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2382 ¶ 197 (1994).

¹² *Id.*

¹³ *Silver Palm Communications, Inc., Order*, 17 FCC Rcd 6606 (WTB CWD 2002) ("*Silver Palm*") (granting waiver to permit filing of long-form application two weeks after deadline).

¹⁴ *City Page & Cellular Services, Inc., et al., Order*, 17 FCC Rcd 26109 (WTB CWD 2002) ("*City Page*") (granting waivers to permit filing of long-form applications thirteen to fifteen days after deadline).

¹⁵ See *Letter Order*, 20 FCC Rcd at 16195-96.

¹⁶ See Wireless Telecommunications Bureau Announces that Four Additional Applications for Multiple Address Systems Licenses Are Accepted for Filing, *Public Notice*, 20 FCC Rcd 16197 (WTB 2005).

¹⁷ Petition to Deny (filed October 24, 2005).

¹⁸ Petition for Reconsideration (filed November 14, 2005).

¹⁹ See *Order*, 21 FCC Rcd at 3035 ¶ 7.

²⁰ *Id.*

proceedings relating to the licenses and applications concerning which Petitioners alleged that PSI acted in a manner reflecting its unfitness to be a Commission licensee.²¹

4. Petitioners sought reconsideration, arguing, *inter alia*, that the *Order* relied on inapplicable precedent, and failed to recognize that the waiver gave PSI an unfair advantage.²² In its 2007 *Order on Reconsideration*, MD was unpersuaded by Petitioners' arguments that *Silver Palm* and *City Page* should be distinguished on the grounds that they involved somewhat shorter filing delays.²³ Instead, MD found it more significant that, as in those cases, PSI has quickly rectified the omission upon learning of it and the grant of PSI's waiver did not delay or otherwise adversely affect the auction process.²⁴ MD also found no basis to impute bad faith to PSI or to conclude that the late filing of the application was due to anything other than inadvertence,²⁵ and concluded that the brief delay in processing PSI's application attributable to its late filing did not afford PSI any advantage.²⁶ In addition, MD concluded that Petitioners' argument that the public interest component of the Section 1.925 waiver standard is "facially unconstitutional," for which Petitioners cited no authority, "[d]id not merit discussion."²⁷ Finally, MD concluded that Petitioners' challenges to PSI's basic character qualifications should first be resolved in the proceedings where they were pending, and that the Commission retained authority to take appropriate remedial action with respect to PSI's Auction No. 59 licenses based on the outcome of those proceedings.²⁸

III. DISCUSSION

5. The Commission will grant an application for review only if the applicant demonstrates that the staff's decision (1) conflicts with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law or policy that has not been previously resolved by the Commission; (3) involves precedent or policy that should be overturned or revised; (4) makes an erroneous finding as to an important or material question of fact; or (5) commits a prejudicial procedural error.²⁹

6. Petitioners very briefly set forth several arguments in their application for review, and also "request that the Commission review" their prior pleadings in this proceeding.³⁰ We will not undertake such a review. An application for review must set forth the specific issues that the petitioner

²¹ *Id.* at 3035-37 ¶¶ 8-10. PSCID observed that, notwithstanding Petitioners' allegations against PSI in those other proceedings, there had been no finding in any proceeding that PSI should be disqualified to hold Commission licenses, and that if the Commission were to conclude in the future that PSI has engaged in actionable misconduct, "it retains discretion to take whatever remedial action it deems appropriate under the circumstances presented, including revocation of the instant license." *Id.* at 3036-37 ¶ 10.

²² Petition for Reconsideration (filed April 26, 2006) (2006 PFR).

²³ See *Order on Reconsideration*, 22 FCC Rcd at 4605 ¶ 8. Petitioners also argued that *Silver Palm* and *City Page* were "incorrect as a matter of controlling law and thus should not be followed," see 2006 PFR at 2, but, as MD pointed out, Petitioners "offer[ed] no analysis in support of that contention." See *Order on Reconsideration*, 22 FCC Rcd at 4606 ¶ 8.

²⁴ See *Order on Reconsideration*, 22 FCC Rcd at 4605 ¶ 8.

²⁵ See *id.* at 4605 ¶ 7, 4606 ¶ 9.

²⁶ See *id.* at 4605 n.27, 4606 ¶ 9.

²⁷ See *id.* at 4606-07 ¶ 10.

²⁸ See *id.* at 4607 ¶ 11.

²⁹ See 47 C.F.R. § 1.115(b)(2)(i)-(v).

³⁰ See AFR at 2.

wishes the Commission to address; it generally is not an opportunity for review of the entire record.³¹ We therefore will address only the issues specifically presented in the application for review.³²

7. Petitioners argue that the *Silver Palm* and *City Page* should be distinguished from the present circumstances, in that PSI “gave no good reason” for the late filing “except that it forgot.”³³ They also argue that such inadvertence should not be grounds for grant of a waiver, because “[a]ny applicant can say that it forgot to file an application.”³⁴ We disagree. As PSCID pointed out, “In both of those earlier cases, as here, the failure to file a timely long-form application was due to the applicant’s ‘inadvertence [and/or] unawareness that the long-form application was due.’”³⁵ MD specifically concluded that, because PSI quickly rectified the omission upon learning of it and the post-auction licensing process was not adversely affected, grant of PSI’s waiver would, on balance, serve the public interest.³⁶ While we agree with Petitioners’ suggestion that mere inadvertence ordinarily would not constitute “unique or unusual circumstances” meriting grant of a waiver pursuant to Section 1.925(b)(3)(ii)³⁷ of the Commission’s Rules,³⁸ inadvertence can, as in the present matter, underlie a request for a waiver pursuant to Section 1.925(b)(3)(i)³⁹ on the grounds that the underlying purpose of the rule would not be served or would be frustrated by denying the waiver, and a waiver would serve the public interest. We note that waiver of the long-form filing deadline has been denied under other circumstances, where it would not serve the public interest.⁴⁰ With respect to the public interest component of the Section 1.925 waiver standard, we agree with MD that Petitioners’ unsupported assertion that “the Section 1.925 waiver standard is unconstitutional” does not merit discussion.⁴¹

8. Petitioners further argue that MD erred in not addressing PSI’s character qualifications, and express concern that if they did not prosecute the issue in this proceeding, they could be barred from raising it in the future with respect to PSI’s Auction No. 59 licenses.⁴² The Commission’s policy is that a licensee’s misconduct with respect to one station is not necessarily relevant to its qualifications to hold any station license, and “[i]f the Commission has not as an initial matter found that the allegations under consideration involve conduct likely to impact the future operations of other stations, there generally

³¹ 47 C.F.R. § 1.115(b).

³² Contrary to PSI’s contention, *see* Opposition at 2-3, we find that the application for review sets forth the issues sufficiently for us to address them. We also reject PSI’s argument that the application for review was defective due to untimely service. *See id.* at 1-2. That the envelope was postmarked the day after service was required does not indicate that service is untimely, for service by mail is complete upon mailing, 47 C.F.R. § 1.47(f), *i.e.*, upon deposit in a United States Postal Service mailbox, *see* Dena Pictures, Incorporated, *Memorandum Opinion and Order*, 90 F.C.C. 2d 105, 111 ¶ 17 (1982).

³³ *See* AFR at 2.

³⁴ *Id.*

³⁵ *Order*, 21 FCC Rcd at 3035 ¶ 7.

³⁶ *See Order on Reconsideration*, 22 FCC Rcd at 4605-06 ¶¶ 8-9.

³⁷ 47 C.F.R. § 1.925(b)(3)(ii).

³⁸ *See, e.g.*, LEOSAT Corporation, *Memorandum Opinion and Order*, 8 FCC Rcd 668, 670 ¶ 21 (1993).

³⁹ 47 C.F.R. § 1.925(b)(3)(i).

⁴⁰ *See* Kankakee Valley Broadcasting Co., Inc., *Memorandum Opinion and Order*, 22 FCC Rcd 8591, 8598 ¶ 14 (WTB ASAD 2007) (waiver denied where long form filed almost one year after it was due, and more than nine months after applicant discovered its error).

⁴¹ *See* AFR at 2.

⁴² *See id.* at 3.

appears to be no reason to condition or defer” processing of applications regarding other stations.⁴³ We “retain[] the right to impose limitations or take appropriate action against the other stations at a later time if circumstances warrant.”⁴⁴ Consequently, we agree with MD that Petitioners’ allegations regarding PSI’s character qualifications, which relate to other PSI licenses and are the subject of other pending proceedings,⁴⁵ are more appropriately addressed elsewhere.

9. Finally, at the end of their Reply, Petitioners argue for the first time that PSI’s application should not have been granted without a formal hearing.⁴⁶ An application for review may not rely on questions upon which the designated authority has been afforded no opportunity to pass.⁴⁷ Moreover, a reply to an opposition to an application for review “shall be limited to matters raised in the opposition.”⁴⁸ Therefore, we will not address this issue at this stage of the proceeding.

IV. CONCLUSION AND ORDERING CLAUSES

10. We conclude that Petitioners have failed to demonstrate that the *Order on Reconsideration* contains a material error or did not fully and fairly consider the arguments raised therein. We therefore deny the application for review.

11. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303(r), and Section 1.115 of the Commission’s Rules, 47 C.F.R. § 1.115, that the application for review filed Warren C. Havens, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC, and Telesaurus Holding GB, LLC on April 9, 2007 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴³ Policy Regarding Character Qualifications in Broadcast Licensing, *Report, Order and Policy Statement*, GEN Docket No. 81-500, 102 F.C.C. 2d 1179, 1224-25 ¶ 94 (1986).

⁴⁴ *Id.* at 1221 ¶ 85.

⁴⁵ See Paging Systems, Inc., *Order on Reconsideration*, 21 FCC Rcd 5848 (WTB PSCID 2006), *review pending*; Paging Systems, Inc., *Order on Reconsideration*, 22 FCC Rcd 4608 (WTB MD 2007), *review pending*.

⁴⁶ See Reply at 7.

⁴⁷ See 47 C.F.R. § 1.115(c).

⁴⁸ See 47 C.F.R. § 1.115(d).