

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)

AUCTION NO. 61)

**Auction of Automated Maritime
Telecommunications System (AMTS)
Licenses Scheduled for August 3, 2005**)

DA 05-194

To: Chief, Wireless Telecommunications Bureau

**MOTION TO ACCEPT RESPONSE TO REPLY COMMENTS
AND RESPONSE TO REPLY COMMENTS**

Paging Systems, Inc. (“PSI”), by its attorneys, submits its Motion to Accept Response to Reply Comments and Response to Reply Comments in connection with the Reply Comments filed pursuant to the Wireless Telecommunications Bureau (“Bureau”) request in the *Public Notice*, Auction of Automated Maritime Telecommunications System (“AMTS”) Licenses Scheduled for August 3, 2005.¹ The Reply Comments were filed by Warren C. Havens, Telesaurus-VPC, LLC (“TVL”), AMTS Consortium, LLC (“AMTS”) and Telesaurus Holdings GB, LLC (“THB”) (collectively, the “Commenters”) on February 26, 2005. The Reply Comments were due on or before February 25, 2005.²

¹ *Public Notice*, DA 05-194, released February 2, 2005.

² The Commenters’ Reply Comments were filed one day late and on that basis alone, should be disregarded. The filing date was a date certain, not a date that required any calculation to assess. No request for leave to file out of time was submitted with the Reply Comments.

I.

MOTION TO ACCEPT RESPONSE TO REPLY COMMENTS

1. Pursuant to the Federal Communications Commission (“FCC” or “Commission”) Rule Section 1.41, PSI requests that the Bureau accept this Response to Reply Comments. The Reply Comments were irrelevant, as not limited to matters raised in PSI’s Comments which went to the viability of Auction No. 61,³ unsupported or insupportable by fact or by law or scandalous pursuant to Section 1.52 of the Rules.

2. Grant of this motion is necessary in order to allow basic procedural fairness to PSI. Consideration of the Commenters' Reply Comments with the offensive paragraphs, which have no basis in fact and are irrelevant to the Comments filed by PSI, would not only be procedurally incorrect, but would be grossly unfair to PSI if the Bureau does not allow a response.

II.

RESPONSE TO REPLY COMMENTS

A. Introduction

3. PSI submits that it is long past the time that the Bureau should hold the Commenters to the same standards as any attorney that practices before the Commission. The Commenters have been “practicing” *pro se* at the FCC for many years. The Bureau should require them to adhere to the same ethical standards. It must not allow the non-attorney status of the Commenters to prevent it from enforcing its code of professional behavior on the Commenters. It is submitted, for example, that Rule Sections 1.52 and 1.24(a) should apply to

³ Reply comments must be limited to matters raised previously. *See, for example*, Rule Sections 1.45(c) and 1.106(h).

the Commenters with respect to making unsubstantiated claims and scurrilous personal attacks. The Commenters' attacks include accusing PSI of "libel" and PSI and its Counsel of "failures and abuse in AMTS licensing."⁴ These attacks amount to accusations of violations of Federal law, which are very serious matters *and* they are not substantiated by any facts. They are merely biased commentaries by the Commenters, who have everything to gain by these reckless statements. The Commenters must be held to a proper standard or denied the right to participate in Commission proceedings. In well-known cases, the FCC has barred non-attorneys from participating at the FCC for "viciously abusing and harassing opposing parties, counsel...."⁵ Further, libel damages were awarded for statements that certain non-lawyers made during the course of FCC proceedings.⁶ The bottom line is that the Bureau must control the Commenters.

B. Discussion

4. In the first paragraph of the Introduction, the discussion in the first three sentences pertain to the word "rigged" used by PSI in its Comments. This discussion is a "misconstruction" by the Commenters for their own advantage. Rigged can also mean "to put together...in a makeshift or hurried fashion,"⁷-- in this case, without sufficient review of an issue of first impression, which resulted in an unfair auction. This was the meaning PSI intended. PSI used that word with no intention of accusing the Auctions Division or its hard-

⁴ Reply Comments at p. 2.

⁵ See *Anthony R. Martin-Trigona*, 592 F.Supp. 1566, 1568 (D. Conn, 1984)("The affidavits also detail Martin-Trigona's penchant for viciously abusing and harassing opposing parties, counsel, and, in the words of the Court of Appeals, 'anyone [else] who so much as crosses his path,' *In re Martin-Trigona*, 737 F. 2d at 1254, 1263 (2nd Cir. 1984). As this court has previously found, see *In re Martin-Trigona*, *supra*, F. Supp at 1264 para. 12., in findings affirmed by the Court of Appeals, *In re Martin-Trigona*, 737 F. 2d at 1259-1260, Martin-Trigona's harassment and defamations cause emotional distress and injury to his victims and subject them to embarrassment among professional colleagues, insurers, and the general public. As in all such situations, the truth takes all too long to overcome the lie." See also, *Nationwide Communications, Inc.*, 13 FCC Rcd 5654 (1998).

⁶ *Lothschuetz v. Carpenter Radio Co.*, 898 F.2d 1200 (1990).

⁷ See Webster's New World Dictionary, 1225.

working staff of anything improper. It should be noted that there are six meanings listed in the Webster's Dictionary for the verb "rig," but the Commenters, of course, picked the one that puts PSI in the worst light at the FCC. Additionally, further discussion in the fourth and fifth sentences of the first paragraph in the Introduction is irrelevant to the discussion of the Comments on Auction No. 61; unfounded; and it is also a personal attack that is "scandalous."⁸ This discussion should be disregarded by the staff.

5. The statements in Paragraph 1 are irrelevant to the discussion in the Auction No. 61 Comments. Paragraph 1 is also a personal attack that is "scandalous," not to mention libelous.⁹ The Commenters state that PSI "confessed" and that it had committed "fraud and perjury." Such egregious remarks are totally unfounded, unsupported by any shred of evidence and untrue.

6. Likewise, the Bureau should disregard Paragraph 2. It is irrelevant to the discussion concerning Auction No. 61, as well as being a vicious personal attack on PSI, that is "scandalous."

7. Paragraph 3 is unsupported or insupportable by fact or by law, in that the PSI Comments speak directly to the issues and the subject matter of Auction No. 61.¹⁰ These are the same matters that the Commenters acknowledged in their own Comments filed on February 18, 2005, when they requested a delay of the Auction.¹¹

⁸ See 47 CFR §1.52. This section must apply to both attorneys and "A party that is not represented by an attorney..."

⁹ See, Footnote 6, *supra*.

¹⁰ PSI Comments at ¶2. In this paragraph, the Commenters, all non-lawyers, gratuitously "elucidate" on the *ex parte* rules for the FCC legal staff.

¹¹ Commenters' Comments at ¶1.

8. Again in Paragraph 4, the Commenters rail about subjects that are irrelevant to the issues raised in PSI's Comments. Further, the Paragraph contains scandalous personal attacks on PSI, in that it accuses PSI of "fraud and perjury." These statements are unsupported by the FCC records. The Bureau must hold the Commenters accountable for them.

9. Paragraph 5 is not relevant to the matters discussed in PSI's Comments; instead, it is vicious and scandalous. As PSI stated in Paragraph 2, the Commenters have "spun" the word "rigged" out of its original context and is using its misconception mightily to discredit PSI before the Bureau. PSI believes the staff is diligent and hard working. There has been no effort to dishonor it by PSI.

10. Paragraph 6 also constitutes a personal attack and it therefore is scandalous and does not conform to Section 1.24(a)(2). As stated above, there are six meanings listed in the Webster's Dictionary for "rigged," but the Commenters "spun" one that places PSI in a negative position before the FCC staff. Rigged can also mean thrown together, without thorough examination. The Commenters have no support for their statements about PSI's intent: this fanciful construction has no basis in fact. Further, in this paragraph, the Petitioner charge PSI with "anticompetitive and unlawful actions, including fraud and perjury to horde AMTS spectrum."¹² Such statements are libelous and have no place in administrative proceedings, without unqualified facts to support them.¹³

11. In the Conclusion, the second paragraph and the last sentence of final paragraph are irrelevant to PSI's Comments concerning Auction No. 61, as well as scandalous. They should be disregarded as personal attacks.

¹² Reply Comments at ¶6.

¹³ Individuals with legal training generally understand the appropriate limits in statements before administrative agencies.

III.

CONCLUSION

12. For all of the reasons presented herein, PSI requests that the Bureau accept the Motion to Accept the Response to Reply Comments and the Response to Reply Comments.

Respectfully submitted,
PAGING SYSTEMS, INC.



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CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 8th day of March, 2005, the foregoing **MOTION TO ACCEPT RESPONSE TO REPLY COMMENTS AND RESPONSE TO REPLY COMMENTS** was served on the following person by first-class United States mail, postage prepaid:

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/s/ Gladys L. Nichols
Gladys L. Nichols