

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

In the Matter of)
Automated Maritime Telecommunications) DA 05-194
System Spectrum Auction Scheduled) (Dated February 2, 2005)
For August 3, 2005)

To the Chief, Wireless Telecommunications Bureau

Comments

Errata Copy Filed 2-19-05*

Commenting Parties:
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Telesaurus VPC LLC (“TCL”)
AMTS Consortium LLC (“ACL”)
Telesaurus Holdings GB LLC (“THL”)

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February 18, 2005

* Minor spelling, grammatical, and other “typographical” mistakes are corrected herein. Deletions are shown by strike throughs, and additions by boxes around the subject text. This is being submitted after the close of 2-18-05, a Friday, but before the opening of the next business day.

Introduction

The Commenting Parties listed on the preceding page (together, the “Commenters”),¹ whose abbreviations are listed on the preceding page, individually and severally submit these Comments. Comment 1 below is by Havens, ACL, and TVL only.

The Commenting Parties, individually, severally, and via new entities they are in the process of setting up and capitalizing, will bid in Auction 61 for all of the licenses to be sold. ACL and TVL were the high bidders for all but two of the licenses sold in Auction 57, and Havens also holds site-based AMTS licenses, as well as applications that were dismissed or denied for site-based AMTS licenses that are kept pending on appeal (appeals before the Commission and the DC Circuit Court). Accordingly, Commenters have a major interest in AMTS and in Auction 61.

They have described in many FCC dockets over many years (regarding AMTS, LMS, 5.9 GHz DSRC, 4.9 GHz, VPC, the Nextel 800 MHz proceeding, the Spectrum Task Force, etc.), as well as in filings and presentations before the US DOC-NTIA, DOJ, DHS, DOA-NIFC (Boise), NPS, ~~NTIA~~, DOT-ITS America, and various critical-infrastructure and public safety trade associations (UTC, AAR, APCO, ITS America, etc.) their purpose for seeking nationwide as much of the spectrum in 217-222 MHz as they may obtain, which is, in brief, to use this 200 MHz spectrum in dual-band dual-mode nationwide wireless networks for US Intelligent Transportation Systems (public and private applications, in profit and not-for-profit programs), public safety, critical infrastructure, and environmental monitoring. The band other than the 200 MHz is the 900 MHz LMS band, the 6-MHz wide A block of which Havens and THL hold in approximately 80% of the nation. The 200 MHz is ideal for wide area coverage and applications

¹ Havens is the controlling interest holder in and President of these three LLC’s listed under in the Commenting Parties list on page 1.

in 80% of the land mass of the nation that is less populated, and the 900 MHz is ideal for the remaining 20% of the land mass which contains the urban centers. (There would be overlays as well.) The Commenters are currently engaged in multiple technology and equipment development contracts with wireless equipment design and manufacturing companies to develop both traditional narrowband and new wideband radios for these bands and these purposes. Commenters seek additional AMTS spectrum for these purpose and thus intend to bid in Auction 61.

Comments and Requests

1. Commenters request that the Bureau postpone, as described below, the dates related to Auction 61: the deadlines for submission of Form 175, Upfront Payments, commencement of Auction 61, and all other deadlines and dates for required and permitted action by Auction 61 applicants (each, an “Auction Date”). For the number of days that the public release of the decision upon the Petition for Reconsideration filed by Paging Systems Inc. (“PSI”) on October 14, 2004 that sought reconsideration of an Order with regard to Auction 57,² (the “PSI Petition”)^{3 4} is after January 12, 2005, each Auction Date would be postponed by that numbers of days, plus an additional thirty days.

² Order, DA 04-2983, released September 15, 2004.

³ Herein, by the “PSI Petitions,” we mean as well the Request for Stay filed by PSI in conjunction with the Petition for Reconsideration described above, and all other communications filed by PSI in support of or in relation to this Petition for Reconsideration and this Request for Stay.

⁴ Commenters do not comment here on the substance or merits of the PSI Petitions. They refer to these matters here for the purposes stated that relate to Auction 61 timing. However, Commenters will file a copy of these Comments in the PSI Petitions proceeding and in so doing serve a copy on counsel to PSI and other parties or possible parties to that proceeding.

The reasons for this request are as follows. The FCC had a clear obligation under its rule Section 1.106(j)⁵ and under the related Section 405 of the Communications Act, to decide upon this PSI Petition within 90 days, which was January 12, 2005. No party petitioned to deny the Forms 601 of ACL and TVL, and these entities made “full and timely payment of winning bids” per rule Sec. 1.2109, which states that “. . . Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees.” However, the subject licenses were not, after such full and timely payment, awarded. The reason, as noted to Commenters by Bureau staff (Mr. Scott Stone and Mr. Howard Davenport), that it has not decided upon the Forms 601 of ACL and TVL is due to the PSI Petition.

This effectively granted the PSI Request for Stay, which sought to delay a decision on these Forms 601 until a decision on the PSI Petition for Reconsideration. Requests for Stay must meet stringent well-established criteria to be granted. (The Bureau expressly denied an attempt by Mobex to delay and then stay Auction 57. After ~~holding~~ the FCC held Auction 57, PSI, not a party to the Mobex attempts, essentially attempted a same thing.) However, the FCC has not in any release given any cause for granting, expressly or effectively, this Request for Stay, which it has in fact done.

Accordingly, the FCC has breached the above stated obligation to act on the PSI Petition within 90 days, it has inappropriately granted extraordinary relief to PSI by effectively granting

⁵ Sec. 1.106(j) provides: “. . . Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.” The PSI Petitions “relates to an instruments of authorization granted without hearing, namely, the licenses to be issued to high bidders in Auction 57 who met the requirements for grant of their Forms 601. Soon after this 90 date deadline passed, Havens, for himself, ACL, and TVL, ~~have~~ brought this 90 day deadline to the attention of the WTB staff who are processing the Forms 601 of ACL and TVL from Auction 57 and who are processing the PSI Petitions. Thus, the Commenters s acted promptly to seek compliance with this deadline.

its Request for Stay, and it has failed to award the licenses to ACL and TVL from Auction 57 as called for “upon [these LLC’s] full and timely payment of winning bids and any applicable late fees.” ACL and TVL in all respects followed FCC rules in achieving and fully paying for its winning bids in Auction 57, and these failures by the FCC have resulted in substantial delays and damages to ACL’s and TVL’s business plans, valuation, and ongoing financing activities. These FCC failures are to the detriment of ACL, TVL, Havens (as their majority interest holder) and his other LLC, THL including with respect to their preparing for Auction 61. This will prejudice all of the Commenters in relation to any other Auction 61 applicant who has not been subject to these failures. When a company invests considerable sums in an FCC auction, and a comparable sum in indirect costs over several years to work towards an auction (as the Commenters have, including per their nationwide dual-band plans described above), and when the FCC then acts as it has described above, these investments are put at substantial and undeserved risk, and this ramifies directly into various impediments, devaluation, and less ability to favorably continue with financing and other plans, which for these entities include Auction 61 for reasons described above.

The Commenters appreciate the extensive workload of the Auctions staff and their need to attend to the recently closed Auction 58, a major auction. The Commenters have participated in many FCC auctions thus far (220 MHz (2), VPC (2), LMS (2), and AMTS (1)), and have always been a major winners, and fully and timely paid. All their short- and long-forms were accepted. The Commenters appreciated the efficient work of the Auctions Division in all these matters. However, the above facts and rules have indeed given rise to the above damaging and prejudicial situation, and this postponement request should thus be carefully considered.

The above requested postponement will be relatively minor if the FCC soon decides, as it should (being already well past the 90 day deadline noted above), ~~decide~~ upon the PSI Petition, and the Forms 601 of ACL and TVL. The requested postponement is appropriate for reasons set forth above.

The request, as described above, requests a postponement of the Auction Dates that is the above-noted period of time beyond the 90-day deadline, plus 30 additional days. The requests includes the 30 additional days since (i) that is the time after the noted decisions on the PSI Petition, and the related decision on the Forms 601 of ACL and TCL, that will be allowed for possible further petitions related to these decisions, and moreover, (ii) that is a reasonable period of time after any delayed major decision (that, in this case, are inappropriately already far late due to FCC failures described) for the affected parties to assess the decisions and be able to formulate their plans in relation to them, in this case, with respect to preparation for Auction 61 by ACL and TVL.

2. In relation to and supportive of Request 1 above, is the following. The FCC should not commence activity on Auction 61 until it has completed Auction 57 which will not be completed until it decides upon the PSI Petition and the Forms 601 of the high bidders (but here, the Commenters s are only speaking for the Forms 601 of ACL and TVL). If, as noted above, the FCC is too busy for whatever internal reasons (lack of staff, need to attend to the major Auction 58, etc.) to complete Auction 57 within the dates set in its own rules and the Communications Act (as described above) then it should not embark on another auction, Auction 61, for the remainder of the spectrum not sold in Auction 57. Rule or no rule (on this particular point), this is just bad business practice, and buying and using FCC licenses is a business.

3. An additional, but secondary, reason that it is appropriate to affect a short postponement of the Auction Dates is that it is difficult to comprehend the true extent of the major encumbrances to all of the geographic licenses being sold in Auction 61 (except the one small B block license). These A block licenses being sold are, as shown in FCC records, extensively encumbered by existing stations on ULS (most major markets on the East, West, Great Lakes, Gulf Coast and Mississippi River Basin, and some other areas). Per various communications between the licensee involved and FCC staff, and in various FCC Orders on AMTS over the years, it is not fully clear what is the geographic interference contours of the incumbent stations. There is no rule that defines the interference contour. It is, however, defined in text of an Order as 20 dBu. The licensee involved, in communications with FCC staff, appears to assert that it can use up to 1,000 watts ERP at all of its stations since the rules appear allow that as maximum power. At 1,000 watts ERP, a 20 dBu contour creates (depending on the height above average terrain) an extremely large geographic contour. However, as just noted, it is not clear in the rules as to whether this 20 dBu contour can be created by using 1,000 watts ERP or only the ERP that the station is actually using, and in regards to the latter, this data is not on ULS except for a few stations where this can be calculated or estimated where a gain antenna is given (the power out of the transmitter is always given, but whether the antenna system produces any gain or not cannot be determined in most cases).

Further, rule 80.475(a), in the form that was in effect when all incumbent A block stations were issued and when their construction deadlines passed, and when the AMTS licensing freeze was implemented s, required that certain named details of the proposed stations be provided from which the ERP and any particular contour (such as a 20 dBu contour) could be determined. Section 80.49 required construction by a deadline of the required coverage specified

in 80.475(a) which as just noted required these site details. When the licensees reported construction by the deadline, however, it was simply not made clear what they constructed, at least in many cases.

The purpose of the above is to explain that an applicant for auction 61, to know what they are actually bidding for, must do a lot of due diligence to ascertain, or even guess, at what geographic contours such applicant will have to protect if ~~they~~ succeeds in buying a license. This would be made far easier if the FCC had a rule-based “interference contour” rather than one only noted in a rulemaking order, and if ULS had the required stations details from which one can calculate the geographic contours that must be protected. For this reason also, the modest postponement requested above is appropriate.

4. The Commenters agree with the other major aspects proposed by the above-captioned public notice.

Respectfully submitted,

Warren C. Havens
(Filed electronically)

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