

**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

Reply Comments

Replying Parties:  
Warren C. Havens (“Havens”)  
Telesaurus VPC LLC (“TCL”)  
AMTS Consortium LLC (“ACL”)  
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## Introduction

Paging Systems Inc. (“PSI”) accuses the Auctions Division in its “Comments” in this matter of conducting a “rigged” Auction 57.<sup>1</sup> The Division should not tolerate this libel. It is not only totally baseless, but like any libel it is directed at damaging the target, in this case, the integrity of the auctions process and Division staff. A brief history of PSI’s and its Counsel’s failures and abuse in AMTS licensing (all in FCC records) should be considered to understand PSI’s tactics and motives culminating in this libel. This and related matters are discussed below.

The Replying Parties listed on the preceding page (together, the “Commenters”), whose abbreviations are listed on the preceding page, individually and severally submit these Reply Comments. The background of the Replying Parties and their interest in AMTS including in Auction 61 is described in their Comments submitted in response to the PN listed above. Other than the Replying Parties, only Paging System Inc. (“PSI”) submitted “Comments” in response to this PN.

This filing is being (i) severed upon Counsel to PSI (see the email transmission of this filing), (ii) filed in the PSI Petition for Reconsideration proceeding discussed in the PSI “Comments” and noted below, along with a Request for Leave, (iii) filed in the pending petition to deny proceeding regarding PSI’s Form 601 in Auction 57, along with a Request for Leave.

## Reply Comments

1. PSI, in its introduction, states that PSI “ is a . . . CMRS provider offering service . . . on the west coast. . . from Mexico to Canada . . . and on the east coast from Maine to Puerto Rico . . . .” That is a sheer fabrication. PSI has a scattering of alleged stations still on ULS as

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<sup>1</sup> The only defect in Auction 57 is the Form 601 of PSI, defective for reasons noted in the pending petition to deny that application, and further noted below.

active along those vast coastlines as shown on ULS. PSI held on to many more AMTS stations along those coastlines for years, but in the 2004 AMTS audit PSI confessed it had never constructed them, and their construction deadlines passed years ago. This led to their deletion on ULS. This involved fraud and perjury as discussed below. Further, as noted further below, PSI's filings and lack of filings that are required of all CMRS operators before the FCC and State authorities demonstrate that the "service" PSI alleges above from its scattered remaining ULS listed stations does not exist. There is also no record of PSI "offering service"—CMRS service which by definition is to the general public for profit and interconnected, on public databases, including many on the Internet and in local city directories.

2. Nowhere in its Comments does PSI state that it has any intent to participate in Auction 61. PSI holds only B-Block AMTS incumbent stations. If it had intent to obtain more AMTS spectrum in auctions, it would have bid in Auction 57 for the B-block geographic licenses surrounding its alleged remaining scattered site-based stations. It did bid, but only with the bidding credits it obtained which were exactly enough for the one AMTS site-based region in which it had filed facially valid construction notices—the Great Lakes region. PSI's "Comments" on the Auction 61 PN, as shown below and as is transparent in reading them, are not related to any legitimate or even expressed interest in bidding in Auction 61, but for sanctionable reasons noted below.

3. The PSI "Comments" are an unauthorized filing with respect to a restricted proceeding—the PSI Petition for Reconsideration related to Auction 57—as its Counsel knows full well. PSI served a copy of its "Comments" on the Replying Parties not as a favor but because its nominal "comments" on the Auction 61 Public Notice were actually a "presentation" under Section 1.1102 (a communication directed to merits or outcome of a proceeding) on PSI's

Petition for Reconsideration to attempt to undo Auction 57. If not so copied they would be an impermissible *ex parte* communication under that Section. Since its “Comments” were actually a further brief on PSI’s Petition for Reconsideration, PSI had to file that brief in that proceeding along with a request for leave since the time for filing a Reply had long passed. PSI failed to do that. Instead, PSI clearly attempts to get away with an unauthorized second Reply via the guise of “Comments” on the Auction 61 PN.

4. The PSI “Comments” are an abuse of Commission process for the several reasons noted below. These “Comments” repeat *the same things* (but PSI attempted to slip in augmentation) that PSI has repeatedly stated in PSI’s Petition for Reconsideration proceeding in which it attempts to rescind Auction 57. PSI’s purpose is transparently self serving and anti-competitive: PSI is the holder of the B block AMTS incumbent stations, or alleged valid remaining stations (see footnote 5 below) in most of the US, and in Auction 57 PSI failed to qualify to bid for any but one geographic B-block license (which it bid for unopposed). Seeing others buy the geographic B-block licenses and thus obtain keen economic interests to expose bogus incumbent B-block stations, PSI is using desperate attempts to undo Auction 57 or at least cause damaging delay to the licensing of the high bidders (which it has succeeded in doing: see Comments submitted by the Replying Parties), and it now tries via bogus comments on the Auction 61 PN to hinder orderly Auction 61 proceedings *under existing valid rules*. Further, if PSI can delay or complicate Auction 61, as by such spurious “Comments,” it may further impede the Replying Parties from success in AMTS (if they buy Auction 61 licenses, adding to what they bought in Auction 57, that will increase their success) which impediment will reduce the likelihood of their further pursuit of the already-begun exposition of bogus PSI stations and related fraud and perjury (discussed below).

5. PSI's "Comments" shows that it has no chance *via* a Petition for Reconsideration, or in Comments, to *change existing rules* and *apply them retroactively*, which is what it is clearly seeking. PSI's alleged "new and novel" questions, and its alleged UC Berkeley expert professor's<sup>2</sup> theories, are unambiguously defective bases to change existing auction rules outside a proper rulemaking proceeding, nor could changed rules of the sort PSI seeks, even if properly promulgated, be used to undo an auction validly held under past rules. PSI's and PSI Counsel's actions are a deliberate abuse of process and should be severely sanctioned. They have already damaged the legitimate Auction 57 winners by the delays caused and costs of defense, and they now accuse the Auctions Division of unlawful rigging (see below). Also, if the Auction Division allows past legitimate auction winners, and itself, to be abused and publicly libeled in this way, it will have a severely chilling affect on future auctions.

6. Further, PSI and its Counsel now make, in its "Comments" on Auction 61, a new charge: that the Auctions Division "in essence" "**rigged**" Auction 57.<sup>3</sup> PSI and its Counsel know what the word means: "Rigged" means "to manipulate by deceptive or dishonest means, e.g., a

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<sup>2</sup> Havens and other on his staff knows UC Berkeley: they have lived in Berkeley for twenty years. UCB professors are no more neutral and objective than others: few in academia are neutral, objective and truly expert (as if the matter PSI writes of is a mature science), especially when paid for their expertise. And wherever there is one expert, there are many others with divergent expert views, whether for hire or not. If they believe their words, PSI and this professor can submit their theories in a proper request for rulemaking, and if the Commission finds merit in this, then their ideas will be subject to proper notice and comment by others, and no doubt differing "expert" views.

<sup>3</sup> PSI made no such charges against Auction 57 when applicants submitted their Forms 175, nor even with regard to the Forms 601 of the winning bidders. PSI made no challenges at all of these filings. PSI did not file any petition prior to the Auction with any such charges, nor was it a party to Mobex's petitions for various relief before and related to Auction 57, the denial of which it seek reconsideration. PSI waited until after the Auction to bring forth its theories. Apart from the other fatal defects in its attempts, PSI is impermissibly tardy in these challenges.

rigged election; to fix in advance.”<sup>4</sup> (The cute use of “in essence” doesn’t mask this outrageous charge.) PSI entirely failed its Comments as it did in its Petition for Reconsideration to support this outrageous claim. The Replying Parties agree with PSI that the FCC should decide on the PSI Petition for Reconsideration, but in so doing the FCC should impose severe sanctions upon PSI and its Counsel for their baseless and anticompetitive attempts to thwart—already partly achieved— an entirely legitimate auction which PSI failed to qualify for except for the one license it bid for unopposed. That its abusive attempts now rise to the level of charging that Auction 57 was “rigged” makes clear that PSI has something to hide. No one would charge the Auctions Division of rigging--especially with no evidence and when that party did not qualify to bid on any of the licenses it seek to quash but the one it won unopposed--unless that person had a desperate current purpose and history. The history of PSI in increasingly anticompetitive and unlawful actions, including fraud and perjury, to horde AMTS spectrum and block others is summarized in the below footnote and in the FCC filings referenced therein.<sup>5</sup> PSI now employs

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<sup>4</sup> Merriam Webster’s New Collegiate Dictionary.

<sup>5</sup> The matters summarized below are further described in the Replying Parties’ recent Petition for Reconsideration, and related Reply, of the *Order* released December 28, 2004, DA 04-4051. In the 2004 AMTS license audit, PSI admitted in writing that it never constructed a large percentage of the AMTS stations it held for years throughout the nation, where the rules provided that AMTS stations not timely constructed automatically terminate and must be returned to the Commission for cancellation. PSI submitted fraudulent and perjurious renewal applications for these unconstructed terminated stations. Further, PSI asserted in a petition for reconsideration to the Bureau that it was operating these stations that it knew it never built, in order to assert that it had met the required “continuity of coverage” test in AMTS and a need for greater protection from geographic licensees after the upcoming auction (Auction 57) so that it could maintain this required coverage. Based on these fraudulent assertions, the Bureau granted PSI greater protection. Then, in the proceeding noted in footnote 4 below, PSI, since its fraud was exposed and it could no longer assert the required coverage, took the position that the coverage requirement was only at the application stage, and it did not apply at the construction deadline or beyond. PSI and its Counsel knowingly conducted these and other rule violation, fraud, perjury, factual and rule-interpretation reversals, and other wrongdoing, all evidenced in the FCC records. The Replying Parties are presenting the preceding and related information to the Bureau in proper petitions. (The related information includes that PSI past and current

such desperate tactics to attempt not so much to eliminate competition, since PSI has clearly shown little capability to build and operate free site-based AMTS stations (see preceding footnote) or to bid for geographic AMTS licenses. Rather, PSI seeks to forestall investigations and pursuit by the high bidders in Auction 57 of the serious PSI wrongdoing under FCC and other US law for which PSI and its Counsel face serious liability before the FCC and other authorities.

### Conclusion

Since PSI has used the Auction 61 proceeding to submit a further tardy brief on an Auction 57 restricted proceeding, and since the Replying Parties are parties to that proceeding, they have herein replied (and as noted above, they will file a copy of this Reply in that proceeding). The Auctions Division is handling both that proceeding and this Auction 61 proceeding.

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claims before the FCC to be operating AMTS stations throughout many states of the nation is flatly belied by it not being registered in those states as required under by law of all operating businesses, and on PSI's FCC Form 499-A filings required of CMRS operators [AMTS is CMRS], where PSI lists almost none of the states in which it alleges to operate AMTS stations.)

By the above: **(1)** PSI first *artificially blocked* for years Havens and any competitor from seeking site-based AMTS licenses by *fraudulently* holding on to its unconstructed terminated station authorizations (which if admitted to would have caused termination of the entire licenses of which these stations were components due to lack of continuity of coverage). **(2)** Then PSI *fraudulently manipulated* the Bureau into granting to it greater protection from Auction 57 geographic licensees which *reduced the geography left to auction*. **(3)** Then, after failing to qualify for Auction 75 (except sufficiently to bid for the one license it bid for unopposed), it is trying desperate means to *block completion of licensing of the legitimate winners*, and now is *importing that abuse into Auction 61*. These matters are clear in FCC records.

It appears clear that PSI is now desperately trying not so much to eliminate competition, the “upside” (it has given up most attempts at AMTS competition--licensing, construction, and service--as evidenced by its failure to put up and spend much money in Auction 57, and before that by its failure to build a large percentage of all its licenses obtained for free), but to eliminate the parties from AMTS that have exposed and may further pursue PSI's and PSI Counsel's liability, the “downside,” that includes fraud, perjury, and other such serious matters that lead to far graver consequences before the FCC and other authorities than loosing some more licenses or loosing on a baseless petition to trash a valid Auction.

However, with respect to Auction 61, the PSI “Comments” should be seen for what they are: not any rule-based public interest argument, but a further spurious construct of an entity and its Counsel whose records before the FCC demonstrate devious means, even fraud and perjury, to horde spectrum, block competitors from legitimate licensing and public service, and then throw up smokescreens when those competitors begin to unravel this before appropriate authorities.

The Replying Parties, as noted in their Comments, are pursuing further AMTS spectrum in Auction 61 for specific high public-interest purposes, to a large extent via not-for-profit arrangements (stated for years in over a dozen FCC filings). They welcome legitimate competitors in AMTS and the other spectrum services in which they are involved, since that is healthy for the services, and they seek that others join in the same or similar high public-interest wireless purposes. They do not seek to waste time in contested matters before the FCC. However, in situations of massive prolonged abuse in a radio service in which they are involved, which is the case here, to protect their interests and pursue fair competition, they do contest such abuse and must ask the FCC to properly examine and decide the matter with serious sanctions to prevent future abuse

Respectfully,

Warren C. Havens  
Telesaurus VPC LLC  
AMTS Consortium LLC  
Telesaurus Holdings GB LLC

Electronically filed.  
February 26, 2005.