

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

In the Matter of)	
)	
PAGING SYSTEMS, INC.)	File No. 0005733853
)	
VERDE SYSTEMS LLC)	File No. 0005735474
)	
and)	
)	
SKYBRIDGE SPECTRUM FOUNDATION)	File No. 0005735519
)	
Applications for Assignment of Licenses)	

ORDER AND ORDER ON RECONSIDERATION

Adopted: August 21, 2013

Released: August 22, 2013

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

1. *Introduction.* In this *Order and Order on Reconsideration*, we address a petition by Maritime Communications/Land Mobile, LLC Debtor-in-Possession (MC/LM) (1) to dismiss or deny the above-captioned application of Paging System, Inc. (PSI) to assign Automated Maritime Telecommunication System (AMTS) spectrum to Verde Systems LLC (VSL) and (2) for reconsideration of the consent to the above-captioned applications of VSL and Skybridge Spectrum Foundation (Skybridge) to assign AMTS spectrum to PSI.¹ For the reasons stated below, we dismiss the petition.

2. *Background.* PSI holds AMTS Block B² geographic³ licenses in AMTS Areas (AMTSAs) 5 (Great Lakes) and 8 (Hawaii),⁴ and AMTS Block B site-based licenses in AMTSAs 6 (Southern Pacific), 7 (Northern Pacific), and 8. VSL, Skybridge, and affiliated entities (collectively, the Havens entities)⁵

¹ Petition to Dismiss or Deny and Petition for Reconsideration (filed May 8, 2013) (Petition). PSI filed an opposition, as did VSL and Skybridge. *See* Paging Systems, Inc., Opposition to Petition to Dismiss or Deny and Petition for Reconsideration (filed May 22, 2013) (PSI Opposition); Verde Systems LLC and Skybridge Spectrum Foundation LLC, Opposition to Petition to Dismiss or Deny and Petition for Reconsideration (filed May 22, 2013) (VSL/Skybridge Opposition). MC/LM filed a reply. *See* Reply (filed June 3, 2013) (Reply).

² The Commission has designated two spectrum blocks for AMTS operations: Blocks A (217.5-218/219.5-220 MHz) and B (217-217.5/219-219.5 MHz). *See* 47 C.F.R. § 80.385(a)(2).

³ In 2002, the Commission adopted a geographic licensing approach for AMTS spectrum and later assigned the geographic licenses by competitive bidding procedures, but provided that site-based incumbent licensees could continue to operate. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685 (2002).

⁴ Stations WQCP808 and WQGF308.

⁵ *See, e.g.*, Maritime Communications/Land Mobile, LLC, EB Docket No. 11-71, *Memorandum Opinion and Order*, FCC 13-107, n.1 (rel. Aug. 5, 2013).

hold AMTS Block B geographic licenses in all of the AMTSAs not held by PSI, including AMTSA 6.⁶ PSI and the Havens entities have had numerous disputes before the Commission and in other forums. As part of a comprehensive settlement of these matters, PSI filed an application to assign its AMTS geographic licenses to VSL,⁷ and VSL and Skybridge filed applications to partition their licenses for AMTS Stations WQCP816⁸ and WQJW656⁹ to assign AMTS Block B spectrum in southern California to PSI. The assignments to PSI were consented to pursuant to the Commission's Immediate Approval Procedures,¹⁰ while the assignment to VSL remains pending.

3. MC/LM holds AMTS Block A geographic licenses in AMTSAs 2, 4, 5, and 6.¹¹ It filed a petition seeking dismissal or denial of PSI's application and reconsideration of the consent to the applications of VSL and Skybridge, arguing that PSI and the Havens entities have argued before the Commission that the other lacks the character and fitness to be a Commission licensee, which disqualifies them to hold the licenses they now seek to acquire.¹² MC/LM argues that the proposed assignment transactions should not be permitted to proceed until the Commission resolves the allegations raised in the parties' pleadings in other proceedings.¹³

4. *Discussion.* We conclude that MC/LM lacks standing to challenge the above-captioned applications, and accordingly dismiss its petition. Section 1.939(d) of the Commission's Rules requires that a petition to deny contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest.¹⁴ To establish standing as a party in interest, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.¹⁵ In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged

⁶ Specifically, they hold AMTS Block B geographic licenses in AMTSAs 1 (Northern Atlantic), 2 (Mid-Atlantic), 3 (Southern Atlantic), 4 (Mississippi River), 6, 7, 9 (Alaska), and 10 (Mountain). They also hold AMTS Block A geographic licenses in AMTSAs 1, 3, 7, and 8.

⁷ See FCC File No. 0005733853.

⁸ See FCC File No. 0005735474.

⁹ See FCC File No. 0005735519.

¹⁰ See 47 C.F.R. § 1.948(j)(2).

¹¹ It also holds AMTS Block A site-based licenses in AMTSAs 1-7, and AMTS Block B site-based licenses in AMTSAs 2, 3, 4, and 5. All of MC/LM's licenses are subject to a pending Commission proceeding to determine, *inter alia*, whether MC/LM engaged in misrepresentation and/or lack of candor when it obtained its geographic licenses, failed to construct and/or maintain in operation its site-based stations, and is qualified to be and remain a Commission licensee. See *Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, 26 FCC Rcd 6520, 6547 ¶ 62 (2011). The allegations underlying the hearing proceeding were initially brought to the Commission's attention by the Havens entities. See *id.* at 6525-26 ¶¶ 13-18.

¹² See Petition at 2-7.

¹³ See *id.* at 3. MC/LM also states that the applications are procedurally in violation of the "greenmail" rule, 47 C.F.R. § 1.935. See *id.* at 2. We agree with PSI, VSL, and Skybridge, however, that this rule is not relevant to the instant matter, for it applies only to requests to *dismiss* applications, amendments, or pleadings. See PSI Opposition at 4; VSL/Skybridge Opposition at 5.

¹⁴ 47 C.F.R. § 1.939(d).

¹⁵ See, e.g., *Petition for Reconsideration of Various Auction 87 Public Notices, et al.*, 27 FCC Rcd 4374, 4382 ¶ 21 (WTB MD & ASAD 2012) (*Auction 87 Order*); AT&T PCS Wireless PCS, Inc., *Order*, 15 FCC Rcd 4587, 4588 ¶ 3 (WTB CWD 2000) (*AT&T Wireless*) (citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); Lawrence N. Brandt, *Memorandum Opinion and Order*, 3 FCC Rcd 4082 (CCB DFD 1988) (*Brandt*)).

action,¹⁶ and that any injury would be redressable by the relief requested.¹⁷ Similarly, Section 1.106(b)(1) of the Commission's Rules provides that a petition for reconsideration filed by an entity that is not a party to the proceeding must demonstrate how its interests are adversely affected by the Commission's action.¹⁸ When evaluating standing, the Commission applies the same test that courts employ in determining whether a person has standing under Article III to appeal a court order: the person must show "(a) a personal injury-in-fact that is (2) 'fairly traceable' to the defendant's conduct and (3) redressable by the relief requested."¹⁹

5. MC/LM fails to meet these requirements. It bases its standing claim on the fact that it holds AMTS geographic licenses for the Southern Pacific and Great Lakes areas.²⁰ It argues that if the instant applications are granted, MC/LM would "face economic injury by having to face new competition from [VSL] in the Southern Pacific geographic area and would have to face new competition from PSI in the Great Lakes geographic area."²¹ The Commission has consistently viewed the claims of injury due to new competition in the marketplace as remote and speculative, and not sufficient to establish a direct injury required to show standing.²² Moreover, MC/LM offers no explanation for how it would be adversely affected by competing with the Havens entities in the Great Lakes and PSI in southern California instead of *vice versa*.

6. In the event that we find that it lacks standing, MC/LM asks that its petition be treated as an informal request for Commission action under Section 1.41 of the Commission's Rules.²³ Acceptance of MC/LM's request pursuant to Section 1.41 is discretionary.²⁴ In support of its request, MC/LM states only that treating its petitions as an informal request is desirable due to "the public interest in the matter."²⁵ We find that this is insufficient.²⁶

¹⁶ *Auction 87 Order*, 27 FCC Rcd at 4382 ¶ 21; *AT&T Wireless*, 15 FCC Rcd at 4588 ¶ 3 (citing *Duke Power v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72, 78 (1978)).

¹⁷ *Auction 87 Order*, 27 FCC Rcd at 4382 ¶ 21; *Weblink Wireless, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 24642, 24647 ¶ 11 (WTB 2002).

¹⁸ 47 C.F.R. § 1.106(b)(1); *AT&T Corp. v. Business Telecom, Inc., Order on Reconsideration*, 16 FCC Rcd 21750, 21751-52 ¶ 5 (2001) (*AT&T Corp.*).

¹⁹ *See SunCom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386, 1387-88 (D.C. Cir. 1996) (quoting *Branton v. FCC*, 993 F.2d 906, 908 (D.C. Cir. 1993) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984))); *AT&T Corp.*, 16 FCC Rcd at 21752-53 ¶ 7.

²⁰ *See* Petition at 2.

²¹ *See* Reply at 2.

²² *See* Petition for Reconsideration of Various Auction 87 Public Notices, et al., *Memorandum Opinion and Order*, 27 FCC Rcd 4374, 4385 ¶ 28 (WTB MD & ASAD 2012). The Commission has consistently held that claims predicated on the addition of new competitors in the marketplace amount to a "remote" or "speculative" injury and are insufficient to confer standing. *See, e.g., Brandt*, 3 FCC Rcd at 4083 ¶ 9; *Improving Public Safety Communications in the 800 MHz Band, Order*, WT Docket 02-55, 26 FCC Rcd 5004 (PSHSB 2011) (*800 MHz Order*).

²³ 47 C.F.R. § 1.41.

²⁴ *See National Ready Mixed Concrete Co., Memorandum Opinion and Order*, 23 FCC Rcd 5250, 5251 n.12 (2008); *see also* Charles T. Crawford, et al. *Memorandum Opinion and Order*, 17 FCC Rcd 19328, 19329 (2002) (stating that the Commission is not obligated to consider informal requests).

²⁵ *See* Reply at 2 n.2.

²⁶ *See, e.g., 800 MHz Order*, 26 FCC Rcd at 5009 ¶ 17. In addition, as the Commission has noted, "a party cannot evade the procedural requirements of Section 1.106 by concurrently requesting the same relief under Section 1.41." *See Motorola, Inc., Memorandum Opinion and Order*, 25 FCC Rcd 455, 456 n.8 (2010) (quoting *Motorola, Inc.*,

(continued....)

7. *Conclusion.* MC/LM has not demonstrated that it has standing to challenge the above-captioned applications. Therefore, we dismiss its petition.

8. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 309, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405, and Sections 1.106 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.939, that the Petition to Dismiss or Deny and Petition for Reconsideration filed by Maritime Communications/Land Mobile, LLC Debtor-in-Possession on May 8, 2013 IS DISMISSED, and application File No. 0005733853 SHALL BE PROCESSED consistent with this *Order and Order on Reconsideration* and the Commission's Rules.

9. 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

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Order on Reconsideration, 22 FCC Rcd 18649, 18651 ¶ 7 (WTB MD 2007)). We see no reason why this does not apply equally to Section 1.939.