

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

In the Matter of	)	
	)	
REGIONET WIRELESS LICENSEE, LLC	)	File Nos. 853314-29, 853333-34
	)	
Petition for Reconsideration filed by	)	
Warren C. Havens of Grant of Licenses for	)	
Automated Maritime Telecommunications System	)	
Stations at Various Location in the United States	)	

**ORDER ON RECONSIDERATION**

**Adopted: September 6, 2001**

**Released: September 7, 2001**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On December 14, 2000, Warren C. Havens (Havens) filed a petition for reconsideration of the grant to Regionet Wireless Licensee, LLC (Regionet) of licenses to operate Automated Maritime Telecommunications System (AMTS) stations at various locations in the United States. For the reasons that follow, Havens's petition for reconsideration is dismissed.

2. *Background.* An AMTS is a specialized system of coast stations providing integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for tugs, barges, and other vessels on waterways.<sup>1</sup> AMTS licensees must provide continuity of service to either a substantial navigational area along a coastline; or sixty percent of one or more inland waterways.<sup>2</sup> However, a waterway that is less than 240 kilometers (150 miles) in length must be served in its entirety,<sup>3</sup> and waterways small enough to be served by a single station are not eligible for AMTS service.<sup>4</sup>

3. On May 17, 2000, Regionet filed applications to serve, *inter alia*, the Cape Fear and Haws Rivers;<sup>5</sup> Cooper, Congaree, Broad and Saluda Rivers;<sup>6</sup> and Savannah River<sup>7</sup> on AMTS channel block A (217.5125-217.9875 MHz).<sup>8</sup> On June 9, 2000, Regionet filed applications to serve, *inter alia*, the Cape Fear and Haws Rivers;<sup>9</sup> Cooper, Congaree, Broad and Saluda Rivers;<sup>10</sup> and Savannah River<sup>11</sup> on AMTS

<sup>1</sup> Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, RM-5712, 6 FCC Rcd 437, 437 ¶ 3 (1991).

<sup>2</sup> 47 C.F.R. § 80.475(a).

<sup>3</sup> *Id.*

<sup>4</sup> Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 25313, 25315 ¶ 7 (WTB PSPWD 1998), *aff'd*, *Order on Reconsideration*, 14 FCC Rcd 1050 (WTB PSPWD), *review denied*, *Memorandum Opinion and Order*, 14 FCC Rcd 19912 (1999).

<sup>5</sup> File Nos. 853265-68.

<sup>6</sup> File Nos. 853259-64.

<sup>7</sup> File Nos. 853269-70.

<sup>8</sup> *See Public Notice*, Report No. 2096 (rel. June 6, 2000).

<sup>9</sup> File Nos. 853314-17.

channel block B (217.0125-217.4875 MHz).<sup>12</sup> On July 6, 2000, Havens filed a petition to deny Regionet's channel block A applications. Havens argued<sup>13</sup> that these Regionet applications failed to comply with the requirements in the Commission's Rules designed to avoid AMTS interference to television reception.<sup>14</sup> No petitions to deny were filed against the channel block B applications. On November 8, 2000, we granted Regionet's applications to serve the Cape Fear and Haws Rivers; Cooper, Congaree, Broad and Saluda Rivers; and Savannah River on AMTS channel block B.<sup>15</sup>

4. On December 14, 2000, Havens filed a petition for reconsideration of the grant of the AMTS channel block B applications. Havens argues that some of these applications were mutually exclusive with either AMTS stations licensed to Paging System, Inc. or with pending Havens applications.<sup>16</sup> Havens also argues that some of Regionet's applications failed to comply with the Commission's service coverage requirements and/or television protection requirements.<sup>17</sup> On January 5, 2001, Regionet filed an opposition. On January 18, 2001, Havens filed a reply.

5. *Discussion.* Before we may assess the merits of Havens's petition, we must determine if the Commission's procedural requirements for filing a petition for reconsideration have been satisfied. In order to qualify as a party to the proceeding, a petitioner for reconsideration generally must have filed a valid petition to deny the subject applications, the grant of which the petitioner seeks to have reconsidered.<sup>18</sup> As noted, Havens did not file a petition to deny the above-captioned channel block B applications. Moreover, his petition to deny Regionet's channel block A applications cannot be extended, along with the arguments raised therein, to the separate proceeding regarding Regionet's channel block B applications.<sup>19</sup> For the foregoing reasons, we conclude that Havens did not become a party to the proceeding involving Regionet's channel block B applications.

6. Because Havens was not a party to the proceeding prior to the filing of the reconsideration petition, under the Commission's Rules, he has to demonstrate 1) that his interests were adversely affected by the Commission's grant of the above-captioned applications, and 2) that there was good reason why it was not possible for him to participate in the earlier stages of the proceeding.<sup>20</sup> We agree

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<sup>10</sup> File Nos. 853324-29.

<sup>11</sup> File Nos. 853333-34.

<sup>12</sup> *Public Notice*, Report No. 2099 (rel. June 27, 2000).

<sup>13</sup> Petition to Deny Applications at 9.

<sup>14</sup> See 47 C.F.R. §§ 80.215(h) (requiring an applicant proposing to locate an AMTS station within 129 kilometers (80 miles) of a Channel 10 television station and/or 169 kilometers of a Channel 13 television station to submit a plan to limit interference to television reception and imposing additional requirements where there are at least one hundred residences within both a proposed AMTS station's predicted interference contour and a Channel 10 or Channel 13 television station's Grade B contour), 80.475(a) (requiring such applicants to submit an engineering study clearly showing the means of avoiding interference).

<sup>15</sup> See *Public Notice*, Report No. 2119 (rel. Nov. 14, 2000).

<sup>16</sup> Petition for Reconsideration at 17-18.

<sup>17</sup> *Id.* at 8-11.

<sup>18</sup> See *San Luis Obispo Limited Partnership, Memorandum Opinion and Order and Forfeiture Order*, 11 FCC Rcd 9616, 9617 ¶ 3 (1996).

<sup>19</sup> See, e.g., *TPS Utilicom, Inc., Order*, DA 01-1833, ¶ 15 (WTB CWD rel. July 31, 2001) ("the possibility that the Commission would be asked to address such issues in petitions to deny filed against other applications does not justify TPS' failure to comply with the payment obligation of its own applications").

<sup>20</sup> 47 C.F.R. § 1.106(b)(1).

with Regionet that Havens has not demonstrated any reason why it was not possible for him to participate in the earlier stages of the proceeding.<sup>21</sup> Havens, in his reply to Regionet's opposition,<sup>22</sup> relies on a January 3, 2001 decision by the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch (Branch) granting Regionet an extension of time to file an opposition to the instant petition for reconsideration and Havens's petition for reconsideration of the dismissal of some of his applications.<sup>23</sup> Havens argues that the Branch's rationale in reaching this decision granted Regionet "standing" to file its opposition late, and also should be applied to grant Havens standing to have filed the instant petition.<sup>24</sup> We disagree. The Branch extended the time for filing oppositions by five and eight days, respectively, because the original due dates fell in the middle of the winter holiday season and because, given the suspension of the acceptance of AMTS applications, resolution of current applications should be decided on as complete a record as possible.<sup>25</sup> That the Branch's rationale supported allowing Regionet a brief extension of time to file an opposition cannot be used to bolster the procedural validity of the underlying petition. The issues are unrelated. Because it is in the public interest that all interested parties raise their arguments concerning an application in the earliest stages of a proceeding, parties seeking reconsideration who did not raise their arguments until after final action has been taken must explain why they could not have participated earlier in the proceeding.<sup>26</sup>

7. As noted above, Havens has not provided such an explanation. Because of this procedural defect in his petition for reconsideration, we find that Havens lacks standing now to challenge the grant of the above-captioned applications.<sup>27</sup> Therefore, we conclude that the petition must be dismissed.

8. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.106(b) of the Commission's Rules, 47 C.F.R. § 1.106(b), the petition for reconsideration filed by Warren C. Havens on December 14, 2000 IS DISMISSED.

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<sup>21</sup> Opposition at 3-4.

<sup>22</sup> Reply at 5.

<sup>23</sup> Letter from Scot Stone, Deputy Branch Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Martin W. Bercovici, Keller and Heckman LLP (Jan. 3, 2001).

<sup>24</sup> Reply at 5-7.

<sup>25</sup> *Id.* at 2.

<sup>26</sup> See Ogden Television, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 3116, 3117 ¶ 5 (MMB VSD 1992). On the other hand, the Commission's Rules do not require a party who files an opposition to the petition to provide such an explanation.

<sup>27</sup> See Sagir, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 8159 (2001); Gap Cellular, L.C., *Order*, 15 FCC Rcd 4540 (WTB CWD 2000); Bravo Cellular, *Order*, 15 FCC Rcd 4517 (WTB CWD 2000).

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

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau