

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

In the Matter of)
)
Regionet Wireless Licensee LLC)
) CC Docket No. 92-105
Request for Partial Waiver of 711 Dialing)
Code Requirement)
)

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 2001

Released: September 28, 2001

By the Chief, Policy Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address a Petition for Partial Waiver of Section 64.603 of the Commission’s rules filed by Regionet Wireless Licensee LLC (Regionet) for a portion of its Automated Maritime Telecommunications System (AMTS) service.¹ Section 64.603 of the Commission’s rules requires all common carriers providing telephone voice transmission services to provide, by October 1, 2001, access via the 711 dialing code to all telecommunications relay services (TRS) as a toll-free call.² These carriers must also conduct ongoing education and outreach programs publicizing the availability of 711 access to TRS by October 1, 2001.³

2. Based on our review of Regionet’s petition, we grant a partial waiver of the Commission’s 711 dialing code requirements insofar as they would apply to that portion of Regionet’s AMTS service identified by the petitioner, as more fully described below.

II. BACKGROUND

3. Regionet provides AMTS, a commercial mobile radio service, throughout the coastal zones and inland waterways of the United States. Regionet seeks a waiver only with respect to its “inland system” that was constructed in 1985-86 and which serves the Mississippi, Illinois, and Ohio Rivers and the Gulf Intracoastal Waterway.⁴ Regionet has approximately 1,000 subscriber units installed on vessels operating along the inland waterways. Ninety-nine percent of Regionet’s inland service is utilized by the barge and towing industry. Other customers consist of four commercial passenger vessels operating on the inland waterways and several working vessels of the United States Corps of Engineers.

¹ Regionet Wireless Licensee LLC Request for Partial Waiver of 711 Dialing Code Requirement (filed Jan. 26, 2001).

² 47 C.F.R. § 64.603.

³ 47 C.F.R. § 64.604(c)(3)

⁴ The AMTS stations are licensed under the call signs WHG 693, 701-03, 705-754.

4. Regionet seeks a waiver of Section 64.603 of the Commission's rules with regard to its inland system for its service to commercial vessels, including vessels operated by the Corps of Engineers or other government agencies. It does not seek a waiver with regard to its inland system service to passenger vessels, or with regard to its other AMTS services.

III. DISCUSSION

5. Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke, amend, or waive, for good cause shown, a Commission rule.⁵ In addition, Section 1.925 of the Commission's rules provides that the Commission may grant a waiver upon a showing either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶ Based on the information submitted in Regionet's petition, we find that a waiver of the 711 dialing code requirements is justified in this case.

6. The 711 rules were intended to "improve the uniformity and efficiency of services provided through TRS for the benefit of TRS users and members of the general public with whom they communicate."⁷ Regionet asserts that it supports these goals and intends to comply with the 711 requirements to the extent that its services are utilized by members of the general public.⁸ Regionet argues however, that the commercial environment on vessels on the inland waterways is different and that application of the 711 rules to these services would not serve to further the goals of the Americans with Disabilities Act⁹ and the *711 Order*.¹⁰ Specifically, Regionet points to the inherent hazards and physical demands required to work on commercial vessels and asserts that, according to relevant federal regulations and guidelines addressing the occupational qualifications for licensed mariners, there is little likelihood that that TRS will be required by crew members aboard commercial vessels served by Regionet's AMTS inland system.¹¹ Regionet notes that U.S. Coast Guard's guidelines indicate that, for a vessel to be operated safely it is "essential" that crewmembers be physically fit and free of debilitating illness or injury.¹² Regionet asserts that these guidelines, as well as *bona fide* occupational qualifications established for licensed and unlicensed vessel personnel, require sufficient speech and hearing capability so that employees operating or working on these vessels are not within the class intended to be served by the *711 Order*.¹³ Regionet argues further that the upgrades to the AMTS system architecture to comply

⁵ 47 C.F.R. § 1.3.

⁶ 47 C.F.R. § 1.925(b)(3). See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983). We also note that under Section 0.331 of the Commission's rules, the Wireless Telecommunications Bureau has delegated authority to act on waiver petitions so long as they do not raise novel questions of law or policy which cannot be resolved under outstanding Commission precedents and guidelines. 47 C.F.R. § 0.331(a)(2).

⁷ See *711 Dialing for Nationwide Access to Telecommunications Relay Services*, CC Docket No. 92-105, FCC 00-257, __ FCC Rcd __ (rel. Aug. 9, 2000), 65 Fed. Reg. 54,799 at para. 24 (Sept. 11, 2000) (*711 Order*).

⁸ Regionet Petition at 3.

⁹ Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990) (adding Sec. 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

¹⁰ Regionet Petition at 3.

¹¹ *Id.* at 3-5 (citing U.S. Coast Guard regulations and guidelines indicating that a hearing or speech disability may prevent an individual from being considered physically qualified to work aboard seafaring vessels).

¹² Regionet Petition at 5.

¹³ *Id.* at 5-6.

with the rule would be unduly burdensome because modifications to each of the 1,000 AMTS vessels or mobile stations would be necessary. This is complicated by the fact that the vessels typically remain in constant motion and service calls for vessel electronics under these circumstances are extremely expensive. Regionet estimates that the cost of retrofitting the customer equipment could amount to approximately \$400,000.¹⁴

7. In light of these considerations, we find that grounds for a waiver exists in this case. A waiver appears warranted in these circumstances because the goals underlying the 711 rule would not be served by application to Regionet's AMTS service since it is unlikely that persons with hearing disabilities would be employed by the vessels that are customers of this service. In addition, the unique and unusual factual circumstances of the instant case weigh in favor of granting the relief requested. Regionet seeks a waiver only with respect to the portion of its system that is used on board its commercial vessels; it does not seek a waiver with regard to its inland system service to passenger vessels, which are more likely to contain people with hearing disabilities and who would most benefit from the 711 rules. As a result, we find that a grant of the requested waiver would be in the public interest in this case.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 1.3 and 1.925 of the Commission's regulations, 47 C.F.R. §§ 1.3, 1.925, that the petition filed by Regionet Wireless Licensee LLC IS GRANTED to the extent herein described.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith, Chief, Policy Division
Wireless Telecommunications Bureau

¹⁴ *Id.* at 7.