

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

In the Matter of	)	
	)	
REGIONET WIRELESS LICENSE, LLC	)	File No. 443747
	)	
Renewal of License for AMTS Station WRV374	)	
to Provide Automated Maritime	)	
Telecommunications System Service	)	
to the Atlantic Coast	)	

**ORDER ON RECONSIDERATION**

**Adopted: October 31, 2001**

**Released: November 2, 2001**

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

1. *Introduction.* On August 1, 2001, Warren C. Havens (Havens) filed a petition for reconsideration of the grant of an application to renew the license of Regionet Wireless License, LLC (Regionet) to provide Automated Maritime Telecommunications System (AMTS) service to the Atlantic Coast under Call Sign WRV374. For the reasons that follow, the petition for reconsideration is dismissed.

2. *Background.* AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.<sup>1</sup> For licenses issued prior to January 12, 2001, the Commission requires that AMTS stations be placed in operation within eight months from the date the license was granted.<sup>2</sup>

3. There are twenty-seven AMTS stations authorized under Call Sign WRV374. The initial grant dates for these stations range from 1996 to 2000.<sup>3</sup> On October 15, 1999, Regionet requested a one-year extension "to complete construction of the authorized facilities" associated with Call Sign WRV374.<sup>4</sup> On October 28, 1999, the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, extended the construction deadline to November 30, 2000.<sup>5</sup> The information in the construction notifications Regionet subsequently filed indicates that some

<sup>1</sup> See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991).

<sup>2</sup> 47 C.F.R. § 80.49(a)(2) (2000). The construction period is now two years. See 47 C.F.R. § 80.49(a)(3).

<sup>3</sup> Eight grants occurred on May 30, 1996; one on June 3, 1996; six on August 26, 1997; one on June 1, 1998; five on February 1, 1999; five on July 12, 1999; and one on February 10, 2000.

<sup>4</sup> Regionet Wireless License, LLC, Request for Extension of Time to Construct Automated Maritime Telecommunications System WRV374 at 1.

<sup>5</sup> Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Fred Daniel, Regionet Wireless License, LLC (dated Oct. 28, 1999).

of the stations were not constructed until after November 30, 2000, or were constructed at different locations or with different antenna heights from what was authorized.<sup>6</sup>

4. Regionet's application to renew its license for Call Sign WRV374 was accepted for filing on May 9, 2001.<sup>7</sup> No petitions to deny were filed. The application was granted on July 2, 2001.<sup>8</sup> On August 1, 2001, Havens filed a petition for reconsideration of this grant. On August 14, 2001, Regionet filed an opposition. On August 27, 2001, Havens filed a reply.

5. *Discussion.* Before we may assess the merits of Havens's reconsideration 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 application that is the subject of the licensing action of which the petitioner seeks reconsideration.<sup>9</sup> As noted above, neither Havens nor any other entity filed a petition to deny the license renewal application for Call Sign WRV374. For that reason, we conclude that Havens did not become a party to this proceeding prior to the Branch's grant of the subject renewal application.

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 application, and 2) that there was good reason why it was not possible for him to participate in the earlier stages of the proceeding.<sup>10</sup> We agree with Regionet that Havens has not provided a creditable reason why he was unable to participate in the earlier stages of the proceeding.<sup>11</sup>

7. Havens, in his reply to Regionet's opposition, argues that he could not participate earlier in the proceeding because when the renewal application was accepted for filing, he needed more than thirty days to collect the information and complete the engineering studies that were the basis of his petition for reconsideration.<sup>12</sup> Havens also argues that if Regionet had submitted an engineering analysis with its renewal application, he would not have had to conduct the analysis himself and, thus, would have been able to timely file a petition to deny.<sup>13</sup> We do not find these arguments persuasive. If Havens believed that Regionet's renewal application was defective because it did not include an engineering study, then the appropriate course of action under such circumstances would have been to timely file a petition to deny rather than delaying the filing of his petition to conduct the study himself. Moreover, based on contacts with Branch staff, Havens's efforts to collect information regarding Call Sign WRV374 were

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<sup>6</sup> By November 30, 2000, Regionet completed construction of the sixteen stations whose grant date preceded 1999. In the case of nine of those stations, the antenna height was raised 180-270 feet above the authorized height and in the case of four of those stations, the antenna height was lowered. Regionet also moved six of the sixteen stations to locations that were within a half-mile from the initial location of record. The construction of the stations authorized on February 1, 1999 was completed on January 30, 2001, except that the station at Conway, South Carolina, was constructed as of November 8, 2000. The construction of the stations authorized on July 12, 1999 was completed on June 11, 2001 and July 9, 2001. The station authorized on February 10, 2000 was constructed as of June 11, 2001.

<sup>7</sup> *Public Notice*, Report No. 849 (rel. May 9, 2001).

<sup>8</sup> *Public Notice*, Report No. 908 (rel. July 11, 2001).

<sup>9</sup> See *San Luis Obispo Limited Partnership, Memorandum Opinion and Order and Forfeiture Order*, 11 FCC Rcd 9616, 9617 ¶ 3 (1996).

<sup>10</sup> 47 C.F.R. § 1.106(b)(1).

<sup>11</sup> See *Opposition* at 1-2.

<sup>12</sup> *Reply* at 2-4.

<sup>13</sup> *Id.* at 4.

completed by Havens around the time of the November 30, 2000 construction deadline.<sup>14</sup> We therefore believe that Havens had at his disposal much of the information that he would eventually use to support his petition for reconsideration during the thirty-day period for filing a petition to deny that commenced when the renewal application was accepted for filing.<sup>15</sup> Instead of filing a petition to deny at this point or, at the very least, requesting an extension of time to file a petition to deny, Havens elected to allow the filing period for petitions to deny to lapse. As a result, Havens did not raise any arguments opposing the subject renewal application until after it was granted.

8. 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>16</sup> As noted above, Havens has not provided a creditable explanation. Because of this procedural defect in his petition for reconsideration, we find that Havens lacks standing now to challenge the grant of the renewal of the captioned license.<sup>17</sup> Therefore, we conclude that the petition must be dismissed.

9. 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 August 1, 2001 IS DISMISSED.

10. 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

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<sup>14</sup> According to Commission sign-out records, Havens's information collection request regarding Call Sign WRV374 (which included applications, attachments, licenses, activation letters, waivers, etc.) was completed during the period of November 2 through November 16, 2000. Shortly after this time period, he was given copies of the requested information.

<sup>15</sup> 47 C.F.R. § 1.939(a)(2).

<sup>16</sup> See *Ogden Television, Inc., Memorandum Opinion and Order*, 7 FCC Rcd 3116, 3117 ¶ 5 (MMB VSD 1992).

<sup>17</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).