

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

In the Matter of )
REGIONET WIRELESS LICENSEE, LLC ) File Nos. 853314-29, 853333-34
Granted Applications to Provide Automated )
Maritime Telecommunications System Stations )
at Various Location in the United States )

ORDER ON FURTHER RECONSIDERATION

Adopted: December 13, 2001

Released: December 17, 2001

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

1. Introduction. On October 9, 2001, Warren C. Havens (Havens) filed a petition for reconsideration of the Public Safety and Private Wireless Division's (Division) Order on Reconsideration that dismissed on procedural grounds his petition to reconsider the grant of the above-captioned applications to Regionet Wireless Licensee, LLC (Regionet) to operate Automated Maritime Telecommunications System (AMTS) stations on AMTS channel block B at various locations in the United States.1 For the reasons that follow, this petition for reconsideration is denied.

2. Background. On May 17, 2000, Regionet filed applications to serve, inter alia, the Cape Fear and Haws Rivers;2 Cooper, Congaree, Broad and Saluda Rivers;3 and Savannah River4 on AMTS5 channel block A (217.5125-217.9875 MHz).6 On June 9, 2000, Regionet filed applications to serve, inter alia, the Cape Fear and Haws Rivers;7 Cooper, Congaree, Broad and Saluda Rivers;8 and Savannah River9 on AMTS channel block B (217.0125-217.4875 MHz).10 On July 6, 2000, Havens filed a petition to deny Regionet's channel block A applications. Havens argued11 that these Regionet applications failed to comply with the requirements in the Commission's Rules designed to avoid AMTS interference to

1 Regionet Wireless License, LLC, Order on Reconsideration, 16 FCC Rcd 16321 (WTB PSPWD 2001) (Recon Order).

2 File Nos. 853265-68.

3 File Nos. 853259-64.

4 File Nos. 853269-70.

5 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. 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).

6 See Public Notice, Report No. 2096 (rel. June 6, 2000).

7 File Nos. 853314-17.

8 File Nos. 853324-29.

9 File Nos. 853333-34.

10 Public Notice, Report No. 2099 (rel. June 27, 2000).

11 Petition to Deny Applications at 9.

television reception.<sup>12</sup> No petitions to deny were filed against the above-captioned 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>13</sup>

3. On December 14, 2000, Havens filed a petition for reconsideration of the grant of the channel block B applications. In an *Order on Reconsideration*, released on September 7, 2001, the Division dismissed the petition<sup>14</sup> on the grounds that Havens neither was a party to the proceeding prior to the filing of the reconsideration petition, nor demonstrated that there was good reason why it was not possible for him to participate in the earlier stages of the proceeding, as required by Section 1.106(b)(1) of the Commission's Rules.<sup>15</sup> Contrary to Havens's contention, the Division stated that his petition to deny Regionet's channel block A applications could not be extended, along with the arguments raised therein, to the separate proceeding regarding Regionet's channel block B applications.<sup>16</sup> The Division also disagreed with Havens's assessment of 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 oppositions to the petition and to Havens's petition for reconsideration of the dismissal of his applications to serve a portion of the Arkansas River.<sup>17</sup> Specifically, the Division rejected Havens's contention that the Branch's rationale in reaching this decision (*i.e.*, given the suspension of the acceptance of AMTS applications, resolution of current applications should be decided on as complete a record as possible) granted Regionet "standing" to file its opposition late, and that as applied to the instant matter, it would grant Havens standing to file his December 14, 2000 petition for reconsideration.<sup>18</sup>

4. On October 9, 2001, Havens filed a petition for reconsideration of the *Order on Reconsideration*. On October 31, 2001, Regionet filed an opposition. On November 5, 2001, Havens filed a reply.

5. *Discussion.* Havens continues to argue that the Branch's rationale underlying its January 3, 2001 decision to grant Regionet an extension of time to file oppositions to two of his petitions for reconsideration set a precedent of providing standing to an entity that heretofore had not been a party to the proceeding.<sup>19</sup> We affirm our previous conclusion that the Branch's decision allowing Regionet a brief

---

<sup>12</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>13</sup> See *Public Notice*, Report No. 2119 (rel. Nov. 14, 2000).

<sup>14</sup> *Recon Order*, 16 FCC Rcd at 16322-23 ¶¶ 5-7.

<sup>15</sup> 47 C.F.R. § 1.106(b)(1).

<sup>16</sup> *Recon Order*, 16 FCC Rcd at 16322 ¶ 5.

<sup>17</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>18</sup> *Recon Order*, 16 FCC Rcd at 16322-23 ¶ 6.

<sup>19</sup> Petition for Reconsideration at 2-4. We disagree with Havens when he contends that Regionet's request for an extension of time to file an opposition was granted "implicitly if not explicitly" under Section 1.106(c). *Id.* at 4. Section 1.106(c) does not relate to the timeliness of an opposition filing, nor does it relate to the procedural validity of a petition for reconsideration, *i.e.*, whether the petition was filed by a party to the proceeding. Rather, 47 C.F.R. § 1.106(c) describes the circumstances that warrant a grant on the merits of a procedurally valid petition for reconsideration. Therefore, Havens's reference to Section 1.106(c) in the instant matter is entirely misplaced. We

(continued....)

extension of time to file an opposition cannot be used to bolster the procedural validity of Havens's petition for reconsideration. The issues are unrelated because the Commission places greater procedural demands on a party that files a petition for reconsideration, which challenges a specific Commission action,<sup>20</sup> than on a party that files an opposition thereto, which is merely a responsive pleading.<sup>21</sup>

6. In addition, Havens continues to argue that his petition to deny Regionet's channel block A applications should be extended to the channel block B applications because both sets of applications in effect sought authorization for the same AMTS system.<sup>22</sup> He states that the only aspect of the channel block A and B applications that was different was the spectrum block and therefore, the channel block B applications should not be viewed as new applications, but merely as amendments of the channel block A applications.<sup>23</sup> We are not persuaded by Havens's contentions and affirm our previous conclusion that 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. Although the authorizations requested in the channel block A and B applications arguably can be deemed to constitute a single system, our rules specifically provide for the filing of petitions to deny *applications*, not *systems*.<sup>24</sup> The two sets of applications appeared on separate public notices, which triggered separate petition to deny filing periods and separate licensing proceedings.<sup>25</sup> Therefore, contrary to what Havens contends, we conclude that the channel block B applications cannot be viewed in form or substance as amendments to the channel block A applications.<sup>26</sup>

7. Havens also argues that three Regionet channel block B applications are mutually exclusive with his pending applications, thereby making him a party to the proceeding.<sup>27</sup> We disagree. Division staff reviewed the Regionet applications before placing them on public notice, and concluded that there was no mutual exclusivity.<sup>28</sup> Nothing in Havens's present petition demonstrates that this conclusion was incorrect.

8. Finally, we note that reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until

---

(...continued from previous page)

also note that Havens seems to confuse the Division's dismissal of his petition for reconsideration under Section 1.106(b)(1) as being an issue of timeliness. *See* Petition for Reconsideration at 2-4. The petition was not procedurally defective on the basis of being untimely filed, because it was indeed filed within thirty days of the public notice that announced the Regionet license grants. *See* 47 C.F.R. § 1.106(f). Rather, it was procedurally defective because Havens was not a party to the proceeding and did not explain why it was not possible for him to participate in the earlier stages of the proceeding. *See* 47 C.F.R. § 1.106(b)(1).

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

<sup>21</sup> Compare 47 C.F.R. § 1.106(b)(1) with 47 C.F.R. § 1.106(g).

<sup>22</sup> Petition for Reconsideration at 6-8.

<sup>23</sup> *Id.* at 6-7.

<sup>24</sup> *See* 47 C.F.R. § 1.939; *see also* 47 U.S.C. § 309(d).

<sup>25</sup> *See* 47 C.F.R. §§ 1.933, 1.945(a).

<sup>26</sup> Even if we were to assume *arguendo* that the channel block B applications amended the channel block A applications, it would be considered a major amendment, 47 C.F.R. § 1.929(a)(6), which would trigger a new petition to deny filing period. 47 C.F.R. § 1.945(a).

<sup>27</sup> Petition for Reconsideration at 8.

<sup>28</sup> Where there is mutual exclusivity, a note to that effect will appear on the accepted for filing public notice.

after the petitioner's last opportunity to present such matters.<sup>29</sup> A petition that simply reiterates arguments previously considered and rejected will be denied.<sup>30</sup> In the instant petition, Havens repeats several arguments that we already considered and rejected in the *Order on Reconsideration*. For example, Havens repeats his arguments that the Branch's rationale underlying its decision to grant Regionet an extension of time to file an opposition has set a precedent of providing standing to an entity that heretofore had not been a party to the proceeding,<sup>31</sup> and that his petition to deny Regionet's channel block A applications should be extended to the channel block B applications.<sup>32</sup> Havens newly argues that his petition of December 14, 2000 should be accepted under Section 1.106(c).<sup>33</sup> We disagree. Section 1.106(c), which describes the circumstances that warrant a grant of a petition for reconsideration on the merits, assumes that the petition is procedurally valid.<sup>34</sup> It has no relevance to a procedurally defective petition.

9. In the alternative, Havens requests that he be allowed to re-file his December 14, 2000 petition for reconsideration with the new facts and circumstances that he describes in the instant petition included in the re-filing.<sup>35</sup> He bases this request on Section 1.106(c) of the Commission's Rules.<sup>36</sup> Again, Havens has misconstrued Section 1.106(c). As noted above, this provision pertains only to what substantive arguments may be raised in a procedurally adequate petition. Regardless of how this new or re-filed petition is characterized, we view it as procedurally defective. On November 14, 2000, the Commission announced in a public notice that the above-captioned channel block B applications were granted.<sup>37</sup> Because a petition for reconsideration of this grant needed to be submitted by December 14, 2000, a petition filed on October 9, 2001 would be late.<sup>38</sup> The thirty-day filing period for filing petitions for reconsideration is statutory and is not routinely waived by the Commission.<sup>39</sup> For the reasons given, we find no extraordinary circumstances surrounding this particular filing by Havens.

10. *Conclusion.* Because it is in the public interest that all interested entities raise their arguments concerning an application in the earliest stages of a proceeding, those seeking reconsideration that were not parties to the proceeding must explain why they could not have participated earlier in the proceeding.<sup>40</sup> As noted above, Havens was not a party to the proceeding, and did not provide such an explanation. Because of this procedural defect in his petition for reconsideration of December 14, 2000,

---

<sup>29</sup> See *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(c).

<sup>30</sup> *Id.*; see also Gaines, Bennett Gilbert, *Memorandum Opinion and Order*, 8 FCC Rcd 3986 (Rev. Bd. 1993).

<sup>31</sup> *Recon Order*, 16 FCC Rcd at 16323 ¶ 6.

<sup>32</sup> *Id.* at 16322 ¶ 5.

<sup>33</sup> Petition for Reconsideration at 4, 9.

<sup>34</sup> See *infra* note 19.

<sup>35</sup> Petition for Reconsideration at 10-11.

<sup>36</sup> *Id.* (citing 47 C.F.R. § 1.106(c)).

<sup>37</sup> *Public Notice*, Report No. 2119 (rel. Nov. 14, 2000).

<sup>38</sup> 47 C.F.R. § 1.106(f).

<sup>39</sup> 47 U.S.C. § 405(a); see, e.g., Stephen E. Powell, *Memorandum Opinion and Order*, 11 FCC Rcd 11925, 11926 ¶ 5 (1996) (citing *Reuters, Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986)).

<sup>40</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.

we affirm our previous finding that Havens lacked standing to challenge the grant of the above-captioned applications.<sup>41</sup> Therefore, we affirm the dismissal of his December 14, 2000 petition for reconsideration.

11. 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 of the *Order on Reconsideration* filed by Warren C. Havens on October 9, 2001 IS DENIED.

12. 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

---

<sup>41</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).