

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

In the Matter of Renewal Applications of)
)
 MOBEX NETWORK SERVICES, LLC) File Nos. 0001082495-0001082548
)
 for Automated Maritime Telecommunications)
 System Service Along the Mississippi River)

ORDER

Adopted: June 23, 2003

Released: June 25, 2003

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

1. *Introduction.* On December 13, 2002, Warren C. Havens (Havens) filed a petition to deny the above-captioned Mobex Network Services, LLC (Mobex) applications to renew its licenses for its Automated Maritime Telecommunications System (AMTS) stations along the Mississippi River. For the reasons that follow, we deny Havens's petition.

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.¹ The Commission has designated two spectrum channel blocks for AMTS operations.² While the Commission has not assigned both AMTS frequency blocks at one time to one licensee, it has permitted a licensee with one frequency block to obtain the other block upon a showing of need.³ Site-based AMTS licensees are afforded a renewal expectancy when their license term expires, provided that they have complied with applicable Commission rules and policies and the Communications Act of 1934, as amended.⁴

3. On August 11, 1982, the Commission granted Mobex's predecessor in interest, Waterway Communications System, Inc. (Watercom), the authority to construct and operate an AMTS along the Mississippi River.⁵ Watercom's system operated on AMTS Channel Block A. On March 2, 1984, Watercom's application for Channel Block B authorization for its Mississippi River system was placed on public notice.⁶ In the application for the additional frequency block, Watercom included a supporting

¹ 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).

² AMTS channel blocks A (217.5125-217.9875 MHz) and B (217.0125-217.4875 MHz). See 47 C.F.R. § 80.385(a)(2).

³ Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22607 ¶ 44 (2000) (*Fourth Report and Order and Third Further Notice*).

⁴ 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, 6909 ¶ 53 (2002) (*Fifth Report and Order*).

⁵ See Application of Waterway Communications System to Operate Inland Waterways Communications System, *Memorandum Opinion and Order*, FCC 82-360 (rel. Aug. 11, 1982) (*Watercom*).

⁶ *Public Notice*, No. 1211 (rel. Mar. 2, 1984).

traffic analysis, propagation test results, and studies of potential intra-system interference.⁷ Based on Watercom's showing of a need for AMTS Channel Block B, and in the absence of any petitions to deny, the Commission granted Watercom's application on April 5, 1984. On January 15, 1987, in a *Memorandum Opinion and Order*, the Commission denied a petition by Riverphone Inc. (Riverphone) seeking to modify or revoke Watercom's Channel Block B authorization.⁸ The Commission stated that during the Channel Block B application's 30-day petition to deny period, Riverphone failed to raise to the Commission any concerns regarding possible anti-competitive effects.⁹ The Commission stated that there was no evidence in the record to support Riverphone's assertion that Watercom applied for the Channel Block B spectrum for the purpose of blocking competition.¹⁰

4. On November 16, 2000, the Commission proposed a transition for its licensing approach for AMTS from site-based to geographic licensing.¹¹ In this connection, it sought comment on whether to permit a single licensee to acquire more than one frequency block in the same geographic area, either initially or by partitioning and disaggregation.¹² All of the commenters, including Mobex and Havens, argued that such a limitation was unnecessary.¹³ On April 8, 2002, in the *Fifth Report and Order* in PR Docket No. 92-257, the Commission concluded that prohibiting a single licensee from acquiring more than one AMTS frequency block in the same geographic area would be unnecessarily restrictive.¹⁴ The Commission concluded that, given the competing commercial mobile radio service providers, such as VHF public coast and 220-222 MHz, allowing one applicant to acquire both AMTS channel blocks in the same geographic area will not have anti-competitive consequences for the public.¹⁵ Furthermore, it noted no discernable harm to the public in granting both frequency blocks to Watercom along the Mississippi River.¹⁶ Therefore, the Commission stated that a single licensee would be permitted to acquire more than one AMTS frequency block in the same geographic area, either initially or by partitioning and disaggregation.¹⁷

5. On November 13, 2002, Mobex's applications to renew its AMTS Mississippi River stations were placed on public notice.¹⁸ On December 13, 2002, Havens filed a petition to deny, arguing that the applications should either be dismissed or processed only with respect to one frequency block. On December 23, 2002, Mobex filed an opposition. On January 9, 2003, Havens filed a reply.

⁷ *Watercom*, ¶ 3.

⁸ See Petition of Riverphone, Inc. to Modify or Revoke Licenses of Waterway Communications System, Inc., *Memorandum Opinion and Order*, 2 FCC Rcd 239 (1986).

⁹ *Id.* at 239-240 ¶ 10.

¹⁰ *Id.* at 240 ¶ 11.

¹¹ *Fourth Report and Order and Third Further Notice*, 15 FCC Rcd 22601 ¶ 30.

¹² *Id.* at 22607 ¶ 44.

¹³ See *Fifth Report and Order*, 17 FCC Rcd at 6704 ¶ 41.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* Notably, no entity sought reconsideration of these conclusions.

¹⁸ *Public Notice*, No. 1334 (rel. Nov. 13, 2002).

6. *Discussion.* As an initial matter, we agree with Havens that he has standing to file the subject petition. Havens's Location and Monitoring Service (LMS)¹⁹ geographic area licenses cover most of the area along the Mississippi River.²⁰ We believe that in certain instances, the need to locate and monitor mobile radio units could be equally met by AMTS or LMS. Contrary to what Mobex contends,²¹ standing is not conditioned on Havens demonstrating that his LMS geographic area licenses, as a whole, cover the entire portion of Mobex's integrated AMTS system. In view of the fact that there is significant service area overlap in this instance, and because it is conceivable that AMTS can compete with LMS for customers who need to locate and monitor mobile radio units, we conclude that Havens has standing in the instant matter.²²

7. With respect to the merits, Havens first argues that the applications do not comply with the Commission's policy regarding assignment of both AMTS frequency blocks to site-based AMTS licensees, because the applications do not demonstrate a need for both blocks.²³ Havens misconstrues the Commission's former policy. The principle was that we would not grant an *initial* application for both frequency blocks at the same time. Once granted, the license would be renewed provided that the licensee met the requirements for renewal. Thus, Mobex's applications are not defective under the Commission's policy regarding assignment of both AMTS frequency blocks to site-based AMTS licensees. Indeed, the licenses for the stations at issue have been renewed previously without any additional showing.

8. Next, Havens argues that Mobex should not be permitted to retain both channel blocks because the additional need forecast by Watercom in 1983 never materialized.²⁴ We agree with Mobex that a grant of Mobex's renewal applications is not conditioned on Mobex demonstrating that both AMTS channel blocks are being fully utilized.²⁵ Although some Commission-licensed services require a certain loading level as a condition of continued licensing,²⁶ AMTS is not one of them.

9. Finally, Havens argues that permitting Mobex to retain both frequency blocks is anti-competitive, because Mobex's Mississippi River AMTS authorization blocks all competition to obtain and use any AMTS spectrum in a large portion of the United States.²⁷ As noted above, the Commission determined in 1987 and 2002 that the grant of both frequency blocks to this system did not present any anti-competitive effects. Havens offers no new objective information to the contrary.

¹⁹ LMS provides the use of non-voice signaling methods to locate or monitor mobile radio units. LMS systems may transmit and receive voice and non-voice status and instructional information related to such units. See 47 C.F.R. § 90.7.

²⁰ Havens and the entity that Havens holds majority controlling interest, Telesaurus Holdings GB, LLC, have LMS authorization for the following Basic Economic Areas (BEA) that cover parts of the Mississippi River: BEA064, BEA072, BEA073, BEA076, BEA077, BEA083, BEA084, BEA089, BEA090, BEA095, BEA098, BEA101, BEA102, and BEA103.

²¹ Opposition at 17-18.

²² See American Mobilephone, Inc. and Ram Technologies, Inc., *Order*, 10 FCC Rcd 12297, 12298 ¶ 8 (1995).

²³ Petition to Deny at 3, 10-11.

²⁴ *Id.* at 2-3, 10-13. Havens also argues that the material submitted by Watercom in 1983 did not show a sufficient need to warrant grant of the second frequency block. *Id.* at 12-13. We conclude that it is too late for Havens to challenge the Commission's 1984 licensing decision, which is a final action.

²⁵ Opposition at 21.

²⁶ See, e.g., 47 C.F.R. §§ 90.633(b), 101.141(a)(3).

²⁷ Petition to Deny at 3.

10. *Conclusion.* Havens has not demonstrated any defect in Mobex's renewal applications under the Commission's rules and policies. Consequently, we deny Havens's petition to deny the applications.

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 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the petition to deny filed by Warren C. Havens on December 13, 2002 IS DENIED, and applications File Nos. 0001082495-0001082548 SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order*.

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