

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

In the Matter of)
WARREN C. HAVENS) File Nos. 0001603151-0001603163
Request to Extend Construction Deadline for)
Certain VHF Public Coast Station Geographic)
Area Licenses)

ORDER

Adopted: April 19, 2004

Released: April 21, 2004

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

1. Introduction. On February 2, 2003, Warren C. Havens (Havens) requested1 a waiver and two-year extension of the five-year construction requirement applicable to his licenses for thirteen VHF public coast (VPC) Station Areas (VPCSA).2 For the reasons that follow, Havens's request is granted.

2. Background. Public coast stations are commercial mobile radio service (CMRS) providers that allow ships to send and receive messages and to interconnect with the public switched telephone network.3 Licensees may, however, modify their licenses to permit private mobile radio service (PMRS) instead of CMRS,4 and may provide service to units on land.5 VHF public coast station coverage

1 See File Nos. 0001603151-0001603163, Request for Partial Waiver (filed Mar. 27, 2003) (Request). Havens filed an identical request for each license at issue. On April 12, 2004, Havens supplemented the Request to add an alternative request that, if the two-year extension is denied, then he at least receive a one-year extension regarding those licenses affected by a pending licensing dispute, see Radiolink Corp., Memorandum Opinion and Order, 19 FCC Rcd 3908 (WTB PSCID 2004). See File Nos. 0001603151-0001603163, Supplemental Extension Request (filed Apr. 12, 2004) (Supplement). Because we grant the Request, we need not address the alternative request in the Supplement.

2 Call Signs WPOJ514 (Billings, MT-WY), WPOJ515 (Great Falls, MT), WPOJ516 (Missoula, MT), WPOJ517 (Casper, WY-ID-UT), WPOJ518 (Idaho Falls, ID-WY), WPOJ519 (Twin Falls, ID), WPOJ520 (Boise City, ID-OR), WPOJ521 (Reno, NV-CA), WPOJ522 (Salt Lake City-Ogden, UT-ID), WPOJ523 (Flagstaff, AZ-UT), WPOJ524 (Albuquerque, NM-AZ), WPOJ525 (Phoenix-Mesa, AZ-NM), and WPOJ526 (Tucson, AZ). We note that applications for the full assignment of the licenses for Call Signs WPOJ517, WPOJ518, WPOJ519, WPOJ520, and WPOJ522, and the partitioning of the licenses for Call Signs WPOJ514 and WPOJ523 were recently approved. See Public Notice, Rep. No. 1756 (WTB rel. Feb. 25, 2004); see also Havens Section 1.65 Report (filed Apr. 13, 2004). Because our licensing records at the time of the adoption of this Order indicate that the assignments have yet to be consummated, Havens remains the licensee of record, and the request therefore remains pending with respect to all thirteen licenses.

3 47 C.F.R. § 80.5; Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order, PR Docket No. 92-257, 13 FCC Rcd 19853, 19856 ¶ 3 (1998) (Third Report and Order).

4 See 47 C.F.R. § 20.9. Havens's applications to modify the licenses in question to permit PMRS were granted on March 22, 2004. See Public Notice, Rep. No. 1788 (WTB rel. Mar. 31, 2004).

5 See 47 C.F.R. § 80.123.

generally extends twenty to thirty miles from the transmitter.⁶ Geographic VPC licensees must demonstrate that they are providing substantial service within five years of the initial license grant, and again within ten years of the initial license grant.⁷ For inland VPCSAAs, the Commission has stated that the five-year substantial service requirement can be satisfied by coverage to one-third of the population of in the service area.⁸ Havens is the licensee for thirteen inland VPCSAAs. The licenses were granted on May 19, 1999, so the first construction date is May 19, 2004.

3. Havens states that he has contracted with Tait Radio Communications to provide innovative new “software defined radios” that will accommodate multiple open-standard digital over-the-air protocols and multiple frequency bands.⁹ Havens argues that this equipment will provide major technical and economic advantages over other equipment that is available for use in the VPC band, and will greatly facilitate the use of VPC licenses for wide-area PMRS systems.¹⁰ He states that the new equipment will not be commercially available until the third quarter of 2005.¹¹ Therefore, Havens requests a new deadline of May 19, 2006. Havens also states that he plans to permit the National Interagency Fire Center (NIFC), a Federal entity which coordinates responses to major fires and other emergencies in the United States, to use his VPC frequencies until he commences operations.¹²

4. On May 7, 2003, we sought comment on Havens’s request.¹³ Comments were received from MariTEL, Inc. (MariTEL) and the Wyoming Department of Transportation (Wyoming DOT), and reply comments were received from Havens.¹⁴

5. *Discussion.* Section 1.925 of the Commission’s Rules provides that a waiver of the Commission’s Rules may be granted if it is shown 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 unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative.¹⁵ We agree with Havens that a waiver is warranted under the circumstances presented.

6. Unique or unusual circumstances. Havens argues that inland VPC licenses do not have sufficient spectrum for viable competition in the CMRS marketplace, but do have sufficient spectrum for

⁶ *Third Report and Order*, 13 FCC Rcd at 19859 ¶ 9.

⁷ See 47 C.F.R. § 80.49(a)(1).

⁸ *Third Report and Order*, 13 FCC Rcd at 19871 ¶ 36.

⁹ Request at 2.

¹⁰ *Id.*

¹¹ *Id.* at 8.

¹² *Id.* at 3. Excluding any licenses the assignment of which subsequently is consummated.

¹³ Wireless Telecommunications Bureau Seeks Comment on Warren C. Havens Request to Extend Construction Deadline for Certain VHF Public Coast Station Geographic Area Licenses, *Public Notice*, 19 FCC Rcd 2323 (WTB PSCID 2004).

¹⁴ Reply comments were due Friday, March 5, 2004. Havens filed his comments on Monday, March 8, 2004, and requested leave to file untimely. Havens demonstrates in his request for leave that he submitted his reply comments to Federal Express on March 4, 2004, but weather conditions forced Federal Express to divert the flight, so the package was not delivered until March 8, 2004. Because no party will be prejudiced, and in the interest of resolving this matter on as full a record as possible, we grant Havens’s request for leave to file late reply comments.

¹⁵ 47 C.F.R. § 1.925(b)(3).

major private wireless systems.¹⁶ He also notes that the VHF band is particularly well-suited for cost-effective multi-site wide-area coverage.¹⁷ Havens argues that the most appropriate technology and equipment for such systems would be “software defined radios” that will accommodate multiple open-standard digital over-the-air protocols and multiple frequency bands, but such equipment is not yet commercially available.¹⁸ Havens states that he has a contractual arrangement with the only manufacturer that is developing such equipment to provide the equipment when it is ready.¹⁹

7. We disagree with Wyoming DOT’s assertion that “[t]here is no evidence that [Havens] has taken action to implement any service offerings in the subject spectrum.”²⁰ Rather, based on information before us, it appears that Havens had studied the market he plans to serve and identified specific advanced new equipment for that purpose.²¹ Moreover, Havens represents that he is prepared to implement old analog equipment to satisfy the construction requirement if his request is denied, but argues that the Commission should not, in effect, compel the construction of an obsolete network when a better alternative will soon be available.²²

8. Public interest. Havens argues that denial of his request will result in the use of inferior equipment that will not serve users’ needs as well, and will retard the development of new equipment by cutting off development thereof and additional innovation.²³ In addition, Havens argues that grant of a construction extension would serve the public interest because, during the interim, he will make spectrum available on a no-cost or not-for-profit basis to NIFC,²⁴ which needs additional spectrum in the areas covered by his licenses because a substantial proportion of the Nation’s forest fires occur there.²⁵

9. In similar circumstances, construction deadlines have been extended in order to permit licensees to implement new and innovative communications technologies.²⁶ We conclude that in this

¹⁶ Request at 4. As MariTEL notes, MariTEL Comments at 2, petitions for rulemaking have been filed that seek to amend the VPC rules to provide greater flexibility for PMRS operations. *See* RM-10743 (filed May 16, 2003 by MariTEL and June 13, 2003 by Mobex Network Services, LLC). Those petitions remain pending.

¹⁷ Request at 4.

¹⁸ *Id.* at 5-6.

¹⁹ *Id.* at 6.

²⁰ Wyoming DOT Comments at 1.

²¹ *See* Havens Reply Comments at 4, 9.

²² *Id.* at 10.

²³ Request at 12.

²⁴ Wyoming DOT asserts that, in the absence of a formal agreement, we should afford no weight to Havens’s statements regarding sharing spectrum with NIFC. *See* Wyoming DOT Comments at 2. Havens replies that he has made a formal offer, in which NIFC has expressed interest but not yet formally accepted. Havens Reply Comments at 10.

²⁵ Request at 9-10. The relief granted herein applies only to extension of the construction deadline, and does not authorize any operations by NIFC not otherwise authorized by the Commission’s Rules. Such operations would have to meet any applicable procedural requirements (*e.g.*, filing of a spectrum leasing application) and/or receive a separate rule waiver to the extent necessary.

²⁶ *See* MariTEL, Inc., *Order*, 18 FCC Rcd 24670, 24672 ¶ 8 (WTB PSPWD 2003), *review pending*; Request of Licensees in the 218-219 MHz Service for Waiver of the Five-Year Construction Deadline, *Order*, 14 FCC Rcd 5190, 5194 ¶ 8 (WTB PSPWD 1999); *see also* Extension of the Five-Year Build-Out Period for BTA Authorization Holders in the Multipoint Distribution Service, *Memorandum Opinion and Order*, 16 FCC Rcd 12593, 12506 ¶ 8 (MMB 2001); FCI 900, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11076-77 ¶ 6 (WTB 2001); Leap Wireless, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 19573, 19575-76 ¶¶ 7-9 (WTB CWD 2001).

instance, it is in the public interest to extend Havens's construction deadline to May 19, 2006, so that he may have additional time to procure and implement equipment that will enable him to offer advanced PMRS services.

10. 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 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Warren C. Havens on February 2, 2004 IS GRANTED.

11. 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
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