

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

In the Matter of Applications of)	
)	
MOBEX NETWORK SERVICES, LLC)	
)	
To Renew Licenses for Automated Maritime)	File Nos. 0001370847, 0001370848,
Telecommunications System (AMTS) Stations in)	0001370850, 0001600664, 0001768691
Various Locations in the United States)	
)	
To Transfer Control of AMTS Licenses)	File No. 0001885281

ORDER

Adopted: December 23, 2004

Released: December 28, 2004

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

I. INTRODUCTION

1. Before us are petitions filed by Warren C. Havens (Havens) to deny applications filed by Mobex Network Services, LLC (Mobex) to renew its licenses for Automated Maritime Telecommunications System (AMTS) stations along the Great Lakes,¹ Erie Canal,² and Pacific Coast.³ Also before us is a petition filed by Havens to deny an application filed by Mobex to transfer control of its AMTS stations to Clarity GenPar, LLC (Clarity).⁴ For the reasons that follow, we grant the petitions to deny with respect to the Erie Canal stations, and deny the petitions to deny with respect to the other stations.

¹ Call Signs KCE278, KPB531, and KUF732. *See* File Nos. 0001370847, 0001370848, 0001370850 (filed July 2, 2003); Petition to Deny (filed Aug. 7, 2003) (Petition to Deny Great Lakes Renewal Applications). Mobex filed an opposition on August 19, 2003, and Havens filed a reply on August 29, 2003.

² Call Sign KCE240. *See* File No. 0001600664 (filed January 30, 2004); Petition to Deny (filed Mar. 4, 2004) (Petition to Deny Erie Canal Renewal Application). Mobex filed an opposition on March 17, 2004, and Havens filed a reply on March 23, 2004.

³ Call Sign KAE889. *See* File No. 0001768691 (filed June 10, 2004); Petition to Deny (filed July 16, 2004) (Petition to Deny Pacific Coast Renewal Application). Mobex filed an opposition on July 29, 2004, and Havens filed a reply on August 6, 2004 and a supplement on November 22, 2004.

⁴ Call Signs KAE889, KCE240, KCE278, KPB531, KUF732, KUZ515, KWS591, WHG693, WHG701-703, WHG 705-754, WHG 943, WHV733, WHV740, WHV843, WHW848, WRV374, WQBC300, WQX716. *See* File No. 0001885281 (filed Oct. 1, 2004); Petition to Deny (filed Nov. 5, 2004) (Petition to Deny Transfer of Control Application). Mobex filed an opposition on November 18, 2004, and Havens filed a reply on December 1, 2004. The application also seeks to transfer the licenses for Mobex's non-AMTS coast stations, Call Signs KA98265, WFN, WHX877, and WRD580, but Havens does not appear to contest the transfer of control of the non-AMTS licenses.

II. BACKGROUND

2. AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.⁵ Under former Section 80.475(a) of the Commission's Rules in effect when the licenses at issue were initially granted, AMTS applicants were required to serve a navigable inland waterway that is less than 150 miles in length in its entirety.⁶ Applicants proposing to serve a navigable inland waterway more than 150 miles in length were required to provide continuity of service along at least sixty percent of the waterway.⁷ Applicants proposing to serve a portion of the Atlantic, Pacific, or Gulf of Mexico coastline were required to provide continuity of service to a substantial navigational area.⁸ The substantial navigational area requirement also applied to the Great Lakes.⁹

3. The licenses for the Mobex stations at issue were granted between 1995 and 1999 under the Commission's former rules for site-based licensing of AMTS stations.¹⁰ Under the Commission's Rules, AMTS facilities must be constructed within a specified time and must remain operational in order for the license to remain valid.¹¹ In 2002, the Commission determined that the public interest would be served by licensing AMTS spectrum on a geographic basis, and resolving mutually exclusive applications through competitive bidding.¹² In April 2004, the Wireless Telecommunications Bureau (Bureau) announced that the auction of AMTS geographic licenses would commence in September 2004.¹³ In anticipation of the auction, the Bureau undertook a review of its licensing records—including requesting information from licensees, as needed—to determine whether all licensed AMTS facilities were properly constructed and operational.¹⁴ As a result of this audit, the Commission's licensing database was updated

⁵ 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) (*AMTS First Report and Order*).

⁶ 47 C.F.R. § 80.475(a).

⁷ *Id.*

⁸ *Id.*

⁹ See Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 17474, 17477 ¶ 6 (WTB PSPWD 1998) (*Great Lakes Order*).

¹⁰ The licenses initially were granted to Fred Daniel d/b/a Orion Telecom, who subsequently transferred control of the licenses to RegioNet Wireless Partnership, which subsequently assigned the licenses to RegioNet Wireless, LLC (RegioNet), which subsequently transferred control to Mobex.

¹¹ See 47 C.F.R. §§ 1.955(a), 80.49(a)(3).

¹² 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, 6694-96 ¶¶ 18-24 (2002) (*Second MO&O and Fifth R&O*), on reconsideration, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003) (*Third MO&O*).

¹³ See Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, *Public Notice*, 19 FCC Rcd 6274 (WTB 2004).

¹⁴ Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, *Public Notice*, 19 FCC Rcd 9518, 9526 n.54 (WTB 2004).

to verify the status and the technical information of currently licensed AMTS stations, and to delete listings for unconstructed facilities.

4. Between July 2003 and June 2004, Mobex filed the above-captioned applications to renew the licenses,¹⁵ and the applications subsequently appeared on public notice as accepted for filing.¹⁶ Between August 2003 and July 2004, Havens filed petitions to deny the applications.¹⁷

5. On October 1, 2004, Mobex filed the above-captioned application to transfer control of its AMTS licenses to Clarity,¹⁸ and the application subsequently appeared on public notice as accepted for filing.¹⁹ On November 5, 2004, Havens filed a petition to deny the application.²⁰

III. DISCUSSION

6. With respect to all of the licenses at issue, Havens argues that the activation notices that were filed contained numerous fatal defects,²¹ so the stations should not be deemed to have been timely constructed, and the licenses should be deemed to have automatically canceled pursuant to the Commission's Rules. Mobex contests Haven's contentions that the activation notices were defective.²² We need not address these arguments individually, for the purpose of a construction notification requirement is to confirm that licensees have met their responsibility, not to cancel the licenses for legitimately operating facilities.²³ The Bureau's review of AMTS construction and operational

¹⁵ See *supra* nn.1-3.

¹⁶ See *Public Notice*, Report No. 1543 (rel. July 9, 2003) (File Nos. 0001370847, 0001370848, 0001370850); *Public Notice*, Report No. 1733 (rel. Feb. 4, 2004) (File No. 0001600664); *Public Notice*, Report No. 1853 (rel. June 19, 2004) (File No. 0001768691).

¹⁷ See *supra* nn.1-3.

¹⁸ See *supra* n.4.

¹⁹ See *Public Notice*, Report No. 1956 (rel. Oct. 6, 2004).

²⁰ See *supra* n.4.

²¹ Havens states that the activation notices were defective because, for example, they were not submitted on FCC Form 601; the notices indicated when testing would commence, but not the commencement of "service," as required by the Commission's rules; the notices provided only approximate ("on or about") commencement dates; the notices provided intended future dates for when the facility would commence operating, rather than notification of when operations in fact commenced; and the notices indicated that construction had occurred at a location and/or with parameters other than as listed on the license, for which Mobex should have sought authorization via modification applications, rather than notifying the Commission of the changes via activation notices. See *Petition to Deny Great Lakes Renewal Applications* at 6-11; *Petition to Deny Erie Canal Renewal Applications* at 4-8; *Petition to Deny Pacific Coast Renewal Applications* at 6-8.

²² See *Great Lakes Opposition* at 2-6; *Erie Canal Opposition* at 3-4; *Pacific Coast Opposition* at 4-5.

²³ Northwest Communications Cooperative, *Memorandum Opinion and Order*, DA 04-3878, ¶ 6 (WTB BD rel. Dec. 10, 2004); American Mobile Telecommunications Association, *Order*, 19 FCC Rcd 9666, 9669 ¶ 8 (WTB PSCID/BD/MD 2004) (citing Biennial Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in (continued....))

information undertaken in anticipation of the AMTS auction confirmed that the vast majority of the facilities at issue were timely constructed. The additional information obtained during the Bureau's review is now reflected in our licensing database, and unconstructed facilities have been deleted. Even assuming *arguendo* that the initial activation notices were defective, deeming the licenses for the constructed stations to have automatically canceled as a result would not further the purpose of the construction notification requirement. We therefore conclude that it would not further the public interest to deny Mobex's renewal and transfer applications *en masse* based on defects in the activation notices for facilities that were in fact timely constructed. Moreover, even had the Bureau not brought its licensing information up to date, we believe that the defects and variations alleged by Havens would not constitute sufficient reason for denying the renewal or transfer applications.

7. Havens also raises narrower issues regarding specific call signs. With respect to Call Sign KCE240, he argues that the license should be deemed to have canceled automatically for failure to meet the construction requirement, because the activation notices reveal that the facilities were constructed after the construction deadline.²⁴ Mobex concedes that the stations were constructed late, due to an administrative error by its predecessor-in-interest regarding the construction deadline.²⁵ However, Mobex states that the stations have since provided continuous AMTS service to the maritime public, and argues that denying its renewal application would harm subscribers that have no practical alternative for continuous radio communications along the Erie Canal.²⁶ We agree with Havens that the fact that a license has changed hands does not, by itself, serve to cure prior defects, and that a licensee cannot "launder" a defective license by transferring or assigning it.²⁷ Under the Commission's Rules, a license cancels automatically if the licensee fails to meet the applicable construction requirement.²⁸ It is undisputed that the licensee of Call Sign KCE240 did not meet the applicable construction requirement. Therefore, we agree with Havens that the license canceled automatically,²⁹ and therefore cannot be renewed or assigned.³⁰ We will modify the Commission's licensing database to reflect cancellation of the license for Call Sign KCE240.³¹

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the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21076 ¶ 106 (1998)).

²⁴ See Petition to Deny Erie Canal Renewal Application at 4.

²⁵ See Erie Canal Opposition at 2. Specifically, Mobex states that RegioNet confused the construction periods for certain of its AMTS licenses, and believed that the construction deadline for Call Sign KCE240 was August 23, 2001, rather than July 14, 2001. The activation notices indicate that the facilities were constructed between August 2 and 15, 2001.

²⁶ *Id.* at 4.

²⁷ See Erie Canal Reply at 2; Petition to Deny Transfer of Control Application at 4.

²⁸ 47 C.F.R. §§ 1.955(a)(2), 80.49(a).

²⁹ Rural Metro Corp., *Order on Reconsideration*, 15 FCC Rcd 8551, 8559 ¶ 7 (WTB PSPWD 2000) (license for late-constructed station canceled automatically) (citing Amendment of Part 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Notice of Proposed Rule Making*, PR Docket No. 90-481, 5 FCC Rcd 6401 (1990)); JPJ Electronic Communications, Inc., *Order on Reconsideration*, 15 FCC Rcd 1325, 1326 ¶ 3 (WTB CWD PRB 1999) (same) (*JPJ*).

³⁰ See Elmont Trans Med Corp., *Order*, 18 FCC Rcd 18692, 18695 ¶ 11 (WTB PSPWD 2003) (license that canceled automatically cannot be renewed); *JPJ*, 15 FCC Rcd at 1326 ¶ 3 (license that canceled automatically cannot be assigned).

8. With respect to Call Sign KAE889, Havens argues the information obtained by the Bureau in its review of AMTS construction and operational information reveals that certain stations were not constructed, and that, as a result of the ensuing gap in the originally planned service area, the system did not cover a substantial navigational area, as required by former Section 80.475(a).³² As originally licensed, the service area was to run from San Diego to Seattle, and the failure to construct certain stations did in fact result in a coverage gap between San Francisco and Portland. Nonetheless, we conclude that the areas served by the constructed facilities, running from San Diego to San Francisco and from Portland to Seattle, both constitute substantial navigational areas that would satisfy former Section 80.475(a).³³ Therefore, contrary to Havens's assertion, the license should not be deemed to have canceled automatically for failure to meet the applicable construction requirement.³⁴

9. With respect to Call Signs KCE278, KPB531, KUF732, Havens notes that on May 10, 2000, Mobex's predecessor-in-interest requested a one-year construction extension on the grounds that it needed additional time to co-locate these stations with those of Paging Systems, Inc. (PSI),³⁵ which the Bureau's former Public Safety and Private Wireless Division granted on July 6, 2000.³⁶ Havens also notes that Mobex never co-located any of these stations with PSI, and instead constructed the licenses as granted.³⁷ Havens argues that because the stations were not co-located, the construction extension should be rescinded, and the licenses should be deemed to have canceled automatically for failure to construct

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³¹ Because there was no high bidder for the license encompassing the geographic area and spectrum block where Call Sign KCE240 was authorized to operate, *see* Automated Maritime Telecommunications System Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 18252 (WTB 2004), we would be amenable to a request from Mobex for special temporary authority pursuant to 47 C.F.R. § 1.931 to continue operating the facilities, so that existing users are not deprived of service.

³² *See* Petition to Deny Pacific Coast Renewal Application at 7-13; Pacific Coast Supplement at 5; Petition to Deny Assignment of Authorization Application at 10-11. Havens also questions whether the authorized facilities would have served a substantial navigational area of the Pacific Coast, because he doubts that some of the stations signal actually reached the coast. *See* Petition to Deny Pacific Coast Renewal Application at 13. We disagree with Havens, and note that at the time of the initial applications, different applicants used different predicted contours which the Commission accepted pending the outcome of the *Second MO&O and Fifth R&O* rulemaking proceeding. *See Second MO&O and Fifth R&O*, 19 FCC Rcd at 9918 n.139.

³³ *See Great Lakes Order*, 13 FCC Rcd at 17476 ¶ 5 ("the delineation of a substantial navigational area should be based on 'demographic and other considerations,' particularly 'coverage over marine shipping routes'") (quoting *AMTS First Report and Order*, 6 FCC Rcd at 439 ¶ 22).

³⁴ We also note that site-based incumbents are no longer required to satisfy the substantial navigational area requirement. *Third MO&O*, 18 FCC Rcd at 24401 ¶ 23; Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12305, 12306 n.6 (WTB PSPWD 2003) (citing *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6737). We question whether the public interest would be served by denying the renewal or transfer applications because of a failure to meet a requirement that no longer applies to the license.

³⁵ *See* Petition to Deny Great Lakes Renewal Applications at 8.

³⁶ *See* letter dated July 6, 2000 from Ramona Melson, Deputy Chief, Legal, Public Safety and Private Wireless Division, to Dennis C. Brown, Attorney at Law, counsel for RegioNet Wireless License, LLC.

³⁷ *See* Petition to Deny Great Lakes Renewal Applications at 8.

before the original construction deadline.³⁸ We have reviewed the July 6, 2000 letter, and we agree with Mobex that the construction extension was not conditioned on co-location of the stations with PSI.³⁹ When a construction extension is intended to depend on a particular condition, that requirement is set forth expressly.⁴⁰ We agree with Mobex that occasionally adjustments are needed when business plans change.⁴¹

IV. CONCLUSION AND ORDERING CLAUSES

10. We agree with Havens that the license for Call Sign KCE240 canceled automatically for failure to meet the construction requirement. Therefore, we grant Havens's petition to deny Mobex's renewal application 0001600664; and will modify the Commission's licensing records to reflect the cancellation of the license for Call Sign KCE240, and dismiss the application to renew the license. In all other respects, we are not persuaded that the petitions to deny filed by Havens demonstrate that the licenses for the stations at issue should be deemed to have canceled automatically for failure to meet construction/coverage requirements, or that Mobex otherwise should be disqualified from renewing or transferring the licenses. None of the other matters raised in Havens's petitions, individually or collectively, raise an issue as to whether it is in the public interest to grant the pending renewal and transfer applications. We therefore deny Havens's petitions to deny Mobex's renewal applications FCC File Nos. 0001370847, 0001370848, 0001370850, and 0001768691; and grant in part and deny in part Havens's petition to deny Mobex's transfer of control application FCC File No. 0001885281. The applications will be processed consistent with this *Order*.

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, the petition to deny filed by Warren C. Havens on August 7, 2003 IS DENIED with respect to FCC File Nos. 0001370847, 0001370848, and 0001370850; the petition to deny filed by Warren C. Havens on July 29, 2004 IS DENIED with respect to FCC File No. 0001768691; the petition to deny filed by Warren C. Havens on September 1, 2004 IS GRANTED with respect to FCC File No. 0001600664; and the petition to deny filed by Warren C. Havens on November 5, 2004 IS GRANTED IN PART AND DENIED IN PART to the extent set forth above with respect to FCC File No. 0001885281.

12. IT IS FURTHER ORDERED that the Commission's licensing records SHALL BE MODIFIED to reflect the cancellation of the license for Call Sign KCE240.

13. IT IS FURTHER ORDERED that application FCC File No. 0001600664 SHALL BE DISMISSED, and applications FCC File Nos. 0001370847, 0001370848, 0001370850, 0001768691, and 0001885281 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

³⁸ *Id.* at 9.

³⁹ See Opposition to Petition to Deny Great Lakes Renewal Applications at 4.

⁴⁰ See, e.g., State of Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 16315, 16327-28 ¶ 21 (WTB 2003) ("Given the large amount of spectrum associated with the ALMR system, we will add a condition to the extended implementation schedule whereby channels not loaded to at least fifty (50) units at the end of the extended implementation period cancel automatically.").

⁴¹ Cf. MariTEL, Inc., *Order*, 18 FCC Rcd 24670, 24672 ¶ 9 (WTB PSPWD 2003) (granting a construction request to allow time to implement new technology, but noting that the licensee can during the extended construction period decide whether the technology is feasible or permissible), *application for review pending*.

14. 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

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