

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

In the Matter of Applications of	)	
	)	
WARREN C. HAVENS	)	
	)	
to Provide Automated Maritime	)	
Telecommunications System Stations at Various	)	File Nos. 852997-853009
Locations in Texas, and	)	
	)	
At Chaffee, Aspen, Colorado Springs, Copper	)	File Nos. 853010-853014
Mountain, and Leadville, Colorado	)	

**ORDER ON FURTHER RECONSIDERATION**

**Adopted: March 31, 2006**

**Released: April 4, 2006**

By the Acting Chief, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Further Reconsideration*, we address a petition for reconsideration or, in the alternative, for relief pursuant to Sections 1.2 or 1.41 of the Commission’s Rules<sup>1</sup> filed by Warren C. Havens (Havens) on March 24, 2005.<sup>2</sup> Havens seeks reconsideration of a February 22, 2005 action by the Public Safety and Critical Infrastructure Division<sup>3</sup> of the Wireless Telecommunications Bureau (Bureau).<sup>4</sup> The February 22, 2005 action dismissed Havens’s petition for reconsideration of the Division’s denial of Havens’s requests for relief from the Commission’s coverage requirements with respect to the above-captioned applications.<sup>5</sup> For the reasons discussed below, we deny the Petition.

2. *Background.*<sup>6</sup> Havens filed the above-captioned Automated Maritime Telecommunications System (AMTS) applications in February 2000. The applications were dismissed in 2000 and 2001<sup>7</sup> because they did not meet the AMTS coverage requirements then in effect.<sup>8</sup> Havens filed petitions for

<sup>1</sup> 47 C.F.R. §§ 1.2, 1.41.

<sup>2</sup> Petition for Reconsideration, And Requests in the Alternative of: “Order on Reconsideration” (filed March 24, 2005) (Petition).

<sup>3</sup> The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division (PSPWD) were assumed by the Public Safety and Critical Infrastructure Division (PSCID). See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003). Both PSCID and PSPWD will be referred to herein as the Division.

<sup>4</sup> Warren C. Havens, *Order on Reconsideration*, 20 FCC Rcd 3995 (PSCID 2005) (*Order on Reconsideration*).

<sup>5</sup> See Warren C. Havens, *Order*, 19 FCC Rcd 23196 (WTB PSCID 2004) (*Order*).

<sup>6</sup> For a more thorough discussion of the procedural background of this matter, see *id.* at 23196-99 ¶¶ 2-8.

<sup>7</sup> The Colorado applications were dismissed in November 2000, and the Texas applications were dismissed in January 2001. See Warren C. Havens, *Order*, 16 FCC Rcd 2539 (WTB PSPWD 2001); Warren C. Havens, *Order*, 15 FCC Rcd 22296 (WTB PSPWD 2000).

<sup>8</sup> Under former Section 80.475(a) of the Commission’s Rules in effect when the above-captioned applications were filed, AMTS applicants were required to serve a navigable waterway that is less than 150 miles in length in its

reconsideration, which were denied in 2001;<sup>9</sup> a petition for further reconsideration, which was denied in 2001;<sup>10</sup> applications for review, which were denied in 2002;<sup>11</sup> and appeals to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit),<sup>12</sup> which remain pending.

3. In 2002, the Commission adopted a geographic licensing approach for AMTS stations, and eliminated the prior coverage requirements.<sup>13</sup> In 2002, Havens filed a petition requesting that the dismissed applications be processed pursuant to the new geographic licensing rules. In 2003, Havens filed a petition requesting forbearance from or, in the alternative, waiver of the coverage requirements. The Division denied these petitions on November 29, 2004. It concluded that the applications could not be processed because they were no longer pending, and that, even if the applications were active, granting the requests would conflict with the public interest benefit identified in the Commission's decision to utilize geographic licensing.<sup>14</sup> The Division stated, "the Commission concluded . . . that the public interest . . . would be furthered by licensing AMTS spectrum through geographic area licensing rather than site-by-site licensing. Having made this determination, the Commission concluded that it would be contrary to the public interest to continue to process site-based applications."<sup>15</sup>

4. On December 30, 2004, Havens filed a petition for reconsideration, and requested leave to file the petition untimely.<sup>16</sup> Havens explained that the petition was filed one day late due to a technical problem beyond his control that delayed the electronic transmission of the petition to his legal counsel.<sup>17</sup> On February 22, 2005, the Division denied the request for leave and dismissed the petition for reconsideration. The Division concluded that it was without authority to extend or waive the statutory thirty-day filing period for petitions for reconsideration specified in Section 405(a) of the Communications Act of 1934, as amended (the Act), as implemented by Section 1.106(f) of the Commission's Rules.<sup>18</sup> In the last sentence of a supplement to the request for leave, filed January 15, 2005, Havens requested in the alternative that the request for leave be treated as an informal request for Commission action pursuant to Section 1.41.<sup>19</sup> The Division denied this relief for the same reasons that it

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entirety, and to provide continuity of service to at least sixty percent of a navigable waterway that is more than 150 miles in length. *See* 47 C.F.R. § 80.475(a) (1999).

<sup>9</sup> *See* Warren C. Havens, *Order on Reconsideration*, 16 FCC Rcd 18046 (WTB PSPWD 2001); Warren C. Havens, *Order on Reconsideration*, 16 FCC Rcd 9337 (WTB PSPWD 2001).

<sup>10</sup> *See* Warren C. Havens, *Order on Further Reconsideration*, 16 FCC Rcd 19240 (WTB 2001).

<sup>11</sup> *See* Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17588 (2002); Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17527 (2002).

<sup>12</sup> *See* Havens v. FCC, No. 02-1315 (D.C. Cir. filed Oct. 16, 2002) (requesting review of Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17527 (2002)); Havens v. FCC, No. 02-1316 (D.C. Cir. filed Oct. 16, 2002) (requesting review of Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17588 (2002)).

<sup>13</sup> *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 (2002).

<sup>14</sup> *See Order*, 19 FCC Rcd at 23199-201 ¶¶ 9-13.

<sup>15</sup> *Order*, 19 FCC Rcd at 23201 ¶ 13 (citing 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 ¶ 18 (2002)) (footnotes omitted).

<sup>16</sup> *See Order on Reconsideration*, 20 FCC Rcd at 3996 ¶ 4.

<sup>17</sup> *Id.* Havens also indicated that he could not have transmitted the petition to his legal counsel earlier, because the Division released a relevant decision on December 28, 2004, which Havens had to revise the petition to address. *Id.*

<sup>18</sup> *Id.* at 3996-97 ¶ 6.

<sup>19</sup> *Id.* at 3997 n.22.

declined, in its November 29, 2004 action, to grant Havens relief, as discussed above.<sup>20</sup> On March 24, 2005, Havens filed the instant reconsideration petition.

5. *Discussion.* Havens asserts that the Division erred in stating that it was without authority to extend or waive the deadlines in Sections 405 of the Act and 1.106 of the Commission's Rules.<sup>21</sup> We disagree. Section 405(a) of the Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the release date of the Commission's action.<sup>22</sup> The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.<sup>23</sup> Moreover, the D.C. Circuit "has discouraged the Commission from accepting late petitions in the absence of extremely unusual circumstances."<sup>24</sup> When the Commission has extended the period absent such circumstances, the court "conclude[d] that the Commission acted beyond its lawful authority when it entertained [a] belated petition for reconsideration."<sup>25</sup> Difficulty communicating with one's legal counsel does not constitute such circumstances.<sup>26</sup> We therefore conclude that it was appropriate not to waive or extend the deadline in this instance.<sup>27</sup>

6. Further, Havens argues<sup>28</sup> that it violates due process and the Administrative Procedure Act to apply the thirty-day deadline against him when he claims that the Commission fails to comply with the deadline in Section 405(a) of the Act, as implemented by Section 1.106(j) of the Commission's Rules, which provides that the Commission or designated authority shall take action on petitions for reconsideration relating to an instrument of authorization or license granted without a hearing within ninety days after the petition is filed.<sup>29</sup> Havens states that the thirty- and ninety-day deadlines serve the same purpose, *i.e.*, to ensure that final decisions on licensing matters are not unreasonably delayed, and he argues that the Commission or Bureau therefore must enforce both equally.<sup>30</sup> Havens cites prior petitions for reconsideration filed by him, or regarding his licenses, where the Commission did not act within ninety days, and concludes that "by its actions, the Bureau or Commission have authority, when they see

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<sup>20</sup> *Id.*

<sup>21</sup> See Petition at 2-5.

<sup>22</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>23</sup> See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 F.C.C. 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 F.C.C. 2d 909, 909-10 (1975); Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (WTB 1999).

<sup>24</sup> *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 200 (D.C. Cir. 2003) (citing *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (*Virgin Islands Tel. Corp.*); *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (*Reuters Ltd.*); *Gardner v. FCC*, 530 F.2d 1086, 1091-92 & n.24 (D.C. Cir. 1976)).

<sup>25</sup> *Reuters Ltd.*, 781 F.2d at 951-952.

<sup>26</sup> See *Freeman Engineering Associates, Inc. v. FCC*, 103 F.3d 169, 183-84 (D.C. Cir. 1997) ("difficulties with lawyers do not absolve one of responsibility for complying with the statutory filing deadline") (citing *Virgin Islands Tel. Corp.*, 989 F.2d at 1237 ("In this case, extenuating circumstances did not prohibit Vitelco from filing within the prescribed time limits. Vitelco's counsel freely admits that its tardiness was caused by miscommunications within the firm. Therefore, the Commission's refusal to entertain Vitelco's petition for reconsideration was justified.")).

<sup>27</sup> Havens cites a judicial decision from a different court involving a regulation of a different agency implementing a different statute for the proposition that the Commission can waive the deadline. See Petition at 4-5 (citing *Chicago, Milwaukee, St. Paul and Pac. R.R. v. ICC*, 756 F.2d 508 (7<sup>th</sup> Cir. 1985)). In light of the direct authority discussed above, we do not find this precedent persuasive.

<sup>28</sup> See Petition at 2-3.

<sup>29</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(j).

<sup>30</sup> See Petition at 2.

fit, to waive, suspend, or otherwise not apply the deadlines in Sec. 1.106 and Sec. 405.”<sup>31</sup> As expressly stated by the language of the statute, however, the requirement that the Commission act on a petition for reconsideration within ninety days applies to cases involving petitions relating to an instrument of authorization or license granted without a hearing. The petition for reconsideration that is the subject of the instant proceeding involves the dismissal of applications. Therefore, this provision of Section 405(a) is inapplicable, and we need not reach Havens’s assertions that the Commission violated his rights by treating the thirty- and ninety-day deadlines differently.

7. Finally, Havens argues that the Division could and should have ruled on his request under Sections 1.2 and 1.41 and of the Commission’s Rules, upon finding that the petition for reconsideration was filed beyond the thirty-day deadline.<sup>32</sup> As the Division explained in its November 29, 2004 action, however, such relief is not available because the above-captioned applications are no longer pending.<sup>33</sup>

8. *Conclusion.* We affirm, pursuant to Section 405 of the Act and Section 1.106 of the Commission’s Rules, the Division’s denial of Havens’s request for leave to file out of time and the dismissal of his December 30, 2004 petition for reconsideration. We conclude, based on the record before us, that the Division acted properly in denying the requested relief. We therefore deny his March 25, 2005 petition for reconsideration.

9. Accordingly, IT IS ORDERED pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Warren C. Havens on March 24, 2004 IS DENIED.

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

Catherine W. Seidel  
Acting Chief  
Wireless Telecommunications Bureau

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<sup>31</sup> See Petition at 1-2.

<sup>32</sup> See *id.* at 6. Havens also requests such relief in the present petition, if reconsideration is not granted. *Id.* at 1.

<sup>33</sup> See *Order*, 19 FCC Rcd at 23199-200 ¶¶ 9-10.