



Federal Communications Commission
Washington, D.C. 20554

June 13, 2013

DA 13-1372

Warren C. Havens
2509 Stuart Street
Berkeley, CA 94705

Re: Request for Declaratory Ruling Concerning the Commission's Rules as Applied to Co-Channel Geographic and Site-based Automated Maritime Telecommunications System Licenses

Dear Mr. Havens:

This letter responds to your November 27, 2012 request, filed on behalf of yourself and Environmental LLC, Verde Systems LLC, Skybridge Spectrum Foundation, Intelligent Transportation Wireless LLC, Telesaurus Holdings GB LLC, and V2G LLC (collectively "Petitioners"), for a declaratory ruling concerning co-channel Automated Maritime Telecommunications System (AMTS) geographic and site-based licenses.¹ For the reasons stated below, we deny the request.

Pursuant to Section 80.385(b)(1) of the Commission's Rules, AMTS geographic licensees are required to locate their base stations at least 120 kilometers from the base stations of co-channel site-based incumbents, except that geographic licensees may on a case-by-case basis be permitted to locate their base stations closer if they provide 18 dB protection to the incumbent's predicted 38 dBu contour.² A site-based incumbent station's predicted 38 dBu signal contour depends in part on its effective radiated power (ERP),³ but the power limit for site-based AMTS stations in the rules and on their licenses is based on transmitter output power rather than ERP.⁴ Consequently, determining a station's ERP requires additional information, such as antenna gain and line loss.

We therefore "expect incumbent AMTS licensees 'to cooperate with geographic licensees in order to avoid and resolve interference issues. This includes, at a minimum, providing upon request sufficient information to enable geographic licensees to calculate the site-based station's protected contour.'"⁵ Where the site-based incumbent is unable or unwilling to provide this information, a geographic licensee must make assumptions about the site-based station's technical parameters, and explain those assumptions in the technical analysis accompanying its application to modify its license to add locations within 120 kilometers of a licensed co-channel site-based incumbent station.⁶ The co-

¹ Letter dated Nov. 27, 2012 from Warren C. Havens to Scot Stone and Jeff Tobias (Petition).

² 47 C.F.R. § 80.385(b)(1); see Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-247, 18 FCC Rcd 24391, 24394 ¶ 7 (2003).

³ See 47 C.F.R. § 80.765.

⁴ See 47 C.F.R. § 80.215(h)(5).

⁵ Dennis C. Brown, Esq., *Letter*, 24 FCC Rcd 4135, 4136 n.9 (WTB MD 2009) (*Brown Letter*) (quoting Northeast Utilities Service Co., *Order*, 24 FCC Rcd 3310, 3311 n.12 (WTB MD 2009) (*Northeast Utilities*), *recon. pending*), *aff'd*, Maritime Communications/Land Mobile, LLC, *Order on Reconsideration*, 25 FCC Rcd 3805 (WTB MD 2010) (*Maritime Communications/Land Mobile*).

⁶ See *Northeast Utilities*, 24 FCC Rcd at 3311 ¶ 3.

channel interference protection due a site-based incumbent that does not timely provide technical information to the geographic licensee will be based on the geographic licensee's assumptions, unless those assumptions are unreasonable.⁷

Section 80.70(a) of the Commission's Rules provides, "Coast stations which transmit on the same radio channel above 150 MHz must minimize interference by reducing radiated power, by decreasing antenna height or by installing directional antennas," and "stations at locations separated by less than 241 kilometers (150 miles) which transmit on the same radio channel above 150 MHz must also consider a time-sharing arrangement."⁸ Petitioners request a declaratory ruling that the predicted 38 dBu contour of a site-based incumbent AMTS licensee that fails to provide the co-channel geographic licensee with sufficient information to calculate the site-based station's protected contour may be calculated based on an assumed omnidirectional antenna with an antenna height of one-half of the licensed height above ground level and an ERP of ten watts.⁹ Petitioners also seek a ruling that the geographic licensee in this situation need protect only those frequencies actually used by the site-based licensee, rather than the entire channel block.¹⁰

We deny these requests. First, Section 80.70(a) is not the appropriate means for resolving interference disputes between geographic and site-based ATMS licensees. Rather, the co-channel interference protection that AMTS geographic licensees must afford site-based incumbents is specifically set forth in Section 80.385(b)(1),¹¹ rather than the more general Section 80.70. Moreover, we previously denied a request for a declaratory ruling that site-based incumbent AMTS licensees' predicted 38 dBu contours could be calculated based on an assumed ERP.¹² We noted there that when the rules on which the AMTS co-channel interference criteria are based were adopted, "the Commission expressly stated that the 38 dBu contours of incumbent licensees were to be calculated on the basis of actual operating parameters" rather than an assumed ERP.¹³ We also stated that using an assumed ERP could overprotect or underprotect individual stations.¹⁴ We conclude that defining the scope of a site-based licensee's protection requires a case-by-case analysis that cannot be made in the abstract.

⁷ See *id.* at 3315 ¶ 12.

⁸ 47 C.F.R. § 80.70(a).

⁹ See Petition at 4.

¹⁰ *Id.*

¹¹ See *Maritime Communications/Land Mobile*, 25 FCC Rcd at 3806 ¶ 3.

¹² See *Brown Letter*, 24 FCC Rcd at 3310-11.

¹³ *Id.* (citing Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order; Fifth Notice of Proposed Rule Making*, PR Docket No. 89-552, GN Docket No. 93-252 & PP Docket No. 93-253, 12 FCC Rcd 10943, 11026 ¶ 174 (1997); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Memorandum Opinion and Order on Reconsideration*, PR Docket No. 89-552, GN Docket No. 93-252 & PP Docket No. 93-253, 13 FCC Rcd 14569, 14604 ¶ 73 (1998)).

¹⁴ *Id.* at 3111.

We also deny Petitioners' request for a declaratory ruling that an AMTS geographic licensee must protect co-channel site-based incumbent stations only on those frequencies actually used by the site-based licensee. AMTS licensees are not required to use the entire channel block at any given time in order to retain their authorization for the entire block, so long as sufficient spectrum is put into operation to provide the authorized service.¹⁵

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, the request for declaratory ruling filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Skybridge Spectrum Foundation, Intelligent Transportation Wireless LLC, Telesaurus Holdings GB LLC, and V2G LLC on November 27, 2012 IS DENIED.

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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¹⁵ See Warren C. Havens, *Letter*, 17 FCC Rcd 15903, 15905 (WTB PSPWD 2002) (citing Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Memorandum Opinion and Order*, Gen. Docket No. 80-1, 88 FCC 2d 678, 692-93 ¶¶ 51-55 (1981); Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 11 FCC Rcd 5764, 5767 ¶ 10 (WTB PWD 1996)).