

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

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

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 2008

Released: February 27, 2008

By the Commission:

I. INTRODUCTION

1. We have before us an application for review filed by Warren C. Havens (“Havens”) on May 4, 2006.¹ Havens seeks review of an April 4, 2006 *Order on Further Reconsideration* of the Wireless Telecommunications Bureau (“Bureau”).² The Bureau denied Havens’s March 24, 2005 petition for reconsideration or, in the alternative, for relief pursuant to Sections 1.2 or 1.41 of the Commission’s Rules,³ which sought reconsideration of a February 22, 2005 action by the Bureau’s Public Safety and Critical Infrastructure Division (“PSCID”).⁴ For the reasons discussed below, we deny the application for review.

II. BACKGROUND⁵

2. Havens filed the above-captioned Automated Maritime Telecommunications System (AMTS) applications in February 2000. Under former Section 80.475(a) of the Commission’s Rules as then in effect, AMTS applicants were required to serve a navigable inland waterway less than 150 miles in length in its entirety, and applicants proposing to serve such a waterway more than 150 miles in length were required to provide continuity of service along at least sixty percent of the waterway.⁶ The Bureau’s

¹ Application for Review (filed May 4, 2006) (“AFR”).

² Warren C. Havens, *Order on Further Reconsideration*, 21 FCC Rcd 3553 (WTB 2006) (“Bureau Order”).

³ 47 C.F.R. §§ 1.2, 1.41.

⁴ Warren C. Havens, *Order on Reconsideration*, 20 FCC Rcd 3995 (PSCID 2005) (“Order on Reconsideration”).

⁵ For a more thorough discussion of the procedural background of this matter, see Warren C. Havens, *Order*, 19 FCC Rcd 23196, 23196-99 ¶¶ 2-8 (WTB PSCID 2004) (“PSCID Order”).

⁶ 47 C.F.R. § 80.475(a) (1999).

Public Safety and Private Wireless Division (“PSPWD”)⁷ dismissed the applications in 2000 and 2001 because they did not meet the coverage requirements.⁸ Havens filed petitions for reconsideration, which were denied in 2001;⁹ a petition for further reconsideration, which was denied in 2001;¹⁰ applications for review, which were denied in 2002;¹¹ and appeals to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit),¹² which remain pending.

3. In 2002, the Commission adopted a geographic licensing approach for AMTS stations.¹³ Accordingly, it eliminated the service coverage requirements in Section 80.475(a) to permit AMTS geographic area licensees to place stations anywhere within their service areas.¹⁴ Havens filed a petition requesting that the dismissed applications be processed pursuant to the new geographic area coverage rules, and a petition requesting forbearance from or, in the alternative, waiver of the site-based coverage requirement. PSCID denied these petitions.¹⁵

4. Havens filed a petition for reconsideration, and requested leave to file the petition untimely.¹⁶ 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. While the petition was pending, the geographic area licenses encompassing the sites and channels requested in the above-captioned applications were granted to entities controlled by Havens, pursuant to the Commission’s

⁷ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See *Reorganization of the Wireless Telecommunications Bureau, Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

⁸ The Colorado applications were dismissed in November 2000 because they proposed coverage of approximately ten percent of the Arkansas River; PSPWD rejected Havens’s argument that the portion known as the Arkansas Headwaters was a body of water distinct from the Arkansas River. See Warren C. Havens, *Order*, 15 FCC Rcd 22296 (WTB PSPWD 2000). The Texas applications were dismissed in January 2001, because they proposed coverage of approximately fifty-five, forty-four, and forty-two percent, respectively, of the Trinity, San Antonio, and Lower Colorado Rivers; PSPWD rejected Havens’s argument that the applications satisfied the sixty-percent requirement because they proposed to cover as much of the waterways as could be served without causing interference to existing AMTS stations. See Warren C. Havens, *Order*, 16 FCC Rcd 2539 (WTB PSPWD 2001).

⁹ 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).

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

¹¹ 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).

¹² 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)).

¹³ 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).

¹⁴ *Id.* at 6702-03 ¶ 37.

¹⁵ See *PSCID Order*, 19 FCC Rcd at 23199-201 ¶¶ 9-13. PSCID 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.

¹⁶ The *PSCID Order* was released November 29, 2004. Petitions for reconsideration thus were due December 29, 2004. See 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f). Havens filed his petition for reconsideration on December 30, 2004.

competitive bidding procedures.¹⁷ PSCID denied the request for leave and dismissed the petition for reconsideration.¹⁸

5. Havens filed another petition for reconsideration. The Bureau denied the petition. The Bureau noted that Section 405(a) of the Communications Act of 1934, as amended, 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 of the Commission's action, and that this requirement applies even if the petition for reconsideration is filed only one day late.¹⁹ It also noted that "the D.C. Circuit 'has discouraged the Commission from accepting late petitions in the absence of extremely unusual circumstances,'"²⁰ and it concluded that "[d]ifficulty communicating with one's legal counsel does not constitute such circumstances."²¹ Havens then filed the instant application for review.

III. DISCUSSION

6. Section 1.115 of the Commission's Rules provides that any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.²² The Commission may grant the application for review in whole or in part, or it may deny the application with or without specifying its reasons.²³ For the reasons set forth below, we affirm the Bureau's decision and deny the application for review.

7. Havens argues that, contrary to the Bureau's conclusion, the reasons for his failure to meet the filing deadline constituted "extremely unusual circumstances" meriting consideration of the untimely petition for reconsideration.²⁴ He seeks to distinguish the D.C. Circuit's *Virgin Islands* decision, on which the Bureau relied, on the grounds that "Petitioner's problem was not 'miscommunication,' but a temporary and unpredictable technical glitch that . . . could neither have been predicted nor prevented."²⁵ We disagree. That Havens's difficulties were technical rather than practical does not bring this matter within the narrow exception to the filing deadline for "extremely unusual circumstances." The exception is limited to cases "such as new facts that were unknowable at the time of the action, or a party that did not have and could not have been expected to receive notice of the action through the exercise of

¹⁷ See Wireless Telecommunications Bureau Announces the Grant of 10 Automated Maritime Telecommunications System Licenses, *Public Notice*, 20 FCC Rcd 8244 (WTB 2005).

¹⁸ See *Order on Reconsideration*, 20 FCC Rcd at 3996-97 ¶ 6. PSCID concluded that it lacked authority to extend or waive the statutory thirty-day filing period for petitions for reconsideration.

¹⁹ See *Bureau Order*, 21 FCC Rcd at 3555 ¶ 5 (citing 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)).

²⁰ *Id.* (quoting *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*); *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086, 1091-92 & n.24 (D.C. Cir. 1976) (*Gardner*))).

²¹ *Id.* (citing *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*, 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."))).

²² 47 C.F.R. § 1.115(a).

²³ 47 C.F.R. § 1.115(g).

²⁴ See AFR at 5.

²⁵ *Id.* at 4-5.

prudence and due diligence, or a substantial shift in the state of the law.”²⁶ The instant matter is not such a case.²⁷

IV. CONCLUSION

8. We conclude based on the record before us that the Bureau acted properly in denying Havens’s petition for reconsideration. We therefore deny the application for review.

9. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 5(c) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155 and 405(a), and Sections 1.106 and 1.115 of the Commission’s Rules, 47 C.F.R. §§ 1.106 and 1.115, that the Application for Review filed by Warren C. Havens on May 4, 2006 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁶ Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Second Report and Order and Second Memorandum Opinion and Order*, ET Docket No. 95-18, 15 FCC Rcd 12315, 12360 ¶ 132 (2000) (citing *Virgin Islands*, 989 F.2d at 1237); see Biennial Regulatory 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 the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11479 n.8 (1999) (“The Commission [does not] consider as unusual or compelling [waiver requests] based upon claims that copying machines, delivery services or even, in most cases, inclement weather or illness, was responsible for the tardy filing.”) (quoting First Auction of Interactive Video and Data Service (IVDS) Licenses, *Order*, 10 FCC Rcd 5415 (WTB 1995); citing *Virgin Islands*, 989 F.2d at 1237); see also, e.g., Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Order*, CC Docket No. 96-128, 18 FCC Rcd 7615, 7616 n.6 (2003) (citing *Virgin Islands Tel. Corp.*, 7 FCC Rcd 4238 (1992), *aff’d in relevant part*, *Virgin Islands*, 989 F.2d 1231; *Gardner*, 530 F.2d 1086).

²⁷ We also find inapposite Havens’s reliance on Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 10463 (OGC 2005) (“*OGC Order*”). See AFR at 5-6. In that matter, the Office of General Counsel decided to address the merits of a late-filed petition for reconsideration because it “raise[d] questions going to the fundamental fairness and integrity of the 800 MHz proceeding.” *OGC Order*, 20 FCC Rcd at 10465 ¶ 9. Contrary to Havens’s interpretation, we do not read this decision as holding that untimely petitions for reconsideration should be considered if they purport to raise questions of fundamental fairness. Rather, we understand the Office of General Counsel to have concluded that it was in the public interest to address the questions raised in the petition because they related to the procedures to be followed prospectively in a proceeding affecting a large number of Commission licensees. In contrast, the present matter relates to a retrospective decision regarding one person’s applications. In addition, we note that Havens’s contention that Bureau staff has treated him unfairly with respect to the AMTS coverage requirement, see AFR at 3, has been addressed elsewhere. See *Mobex Network Services, LLC, Order on Reconsideration*, 22 FCC Rcd 665, 669 ¶ 15 (WTB MD 2007), *recon. and review pending*.

Havens also references a due process claim made in the petition for reconsideration, see *Bureau Order*, 21 FCC Rcd at 3555-56 ¶¶ 5-6, but simply states without analysis that the Bureau’s conclusion was “incorrect,” “irrelevant and frivolous.” See AFR at 6.