

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

In the Matter of)
REGIONET WIRELESS LICENSE, LLC)
Application for Renewal of WRV374, AMTS) File No. 443747
Stations along the Atlantic Coast)
Granted Applications for AMTS Stations at) File Nos. 853314-29, 853333-34
Various Locations)
Granted Applications, KCE240, AMTS)
Stations on the Erie Canal)
Granted Applications, KUF732, KPB531,)
KCE278, AMTS Stations on the Great Lakes)

MEMORANDUM OPINION AND ORDER

Adopted: November 3, 2003

Released: November 6, 2003

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

1. Introduction. On December 26, 2002, Warren C. Havens (Havens) filed a petition styled "Request for Commission Action Under 47 C.F.R. § 1.41, and Complaint Under § 208 of the Communications Act." By this petition, Havens seeks the revocation of several licenses for Automated Maritime Telecommunications System (AMTS) Stations held by Mobex Network Services, LLC (Mobex), parent corporation of Regionet Wireless Licensee, LLC (Regionet). Mobex has opposed Havens' Petition and Complaint. Havens has not replied. For the reasons stated below, we shall dismiss Havens' Petition and Complaint.

2. Background. An AMTS is a specialized system of coast stations providing integrated and interconnected voice and data communications, somewhat like a cellular phone system, for tugs, barges, and other vessels on waterways. AMTS licensees must provide continuity of service to either a substantial navigational area along a coastline, or sixty percent of one or more inland waterways.

1 Request for Commission Action Under 47 C.F.R. § 1.41, and Complaint Under § 208 of the Communications Act (filed Dec. 26, 2002) by Warren C. Havens (Petition and Complaint).

2 Opposition to Request for Commission Action Under 47 C.F.R. § 1.41, and Complaint Under § 208 of the Communications Act (filed January 8, 2003) by Mobex Network Services, LLC (Opposition).

3 Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), First Report and Order, RM-5712, 6 FCC Rcd 437, 437 ¶ 3 (1991).

4 47 C.F.R. § 80.475(a).

However, a waterway that is less than 240 kilometers (150 miles) in length must be served in its entirety,⁵ and waterways small enough to be served by a single station are not eligible for AMTS service.⁶

3. Since 2000, Havens has filed numerous petitions and other pleadings against Regionet and Mobex, including previous filings addressing matters that Havens raises in the instant Petition and Complaint.⁷ Havens states with respect to the instant pleading that “[m]ost of the material in the exhibits has been submitted before, but in filings, which the Commission found procedurally defective and dismissed, or otherwise chose not to respond to.”⁸ Havens maintains, however, that the instant Petition and Complaint is not defective.⁹

4. Havens states that Commission staff have informed him that he may file a request pursuant to Section 1.41 of the Commission’s Rules.¹⁰ Havens asserts that the information he presents is sufficient to warrant revocation of Mobex’s licenses.¹¹ Havens states that he holds AMTS licenses, as well as licenses in the 220 MHz, VPC, and LMS services “in most of the nation,” in his name and in the name of Telesaurus Holdings GB, LLC, in which Havens holds a majority controlling interest.¹² Havens states, too, that he would have applied for AMTS licenses to serve the areas covered by Regionet’s and Mobex’s licenses were both AMTS Blocks not already licensed,¹³ and that he intends to bid in future auctions of AMTS spectrum.¹⁴ Accordingly, Havens maintains that he has an interest in challenging the captioned applications.¹⁵

5. In opposition to Havens, Mobex states that Havens’ Petition and Complaint is simply the latest in a long series of filings by Havens against Regionet and Mobex since May 2000.¹⁶ Mobex argues that Havens’ Petition and Complaint is defective,¹⁷ because it combines a request directed to the Chief of the Wireless Telecommunications Bureau (Bureau) with a complaint pursuant to Section 208 of the Communications Act of 1934, as amended,¹⁸ in violation of Section 1.44(c) of the Commission’s Rules.¹⁹

⁵ *Id.*

⁶ Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 25313, 25315 ¶ 7 (WTB PSPWD 1998), *aff’d*, *Order on Reconsideration*, 14 FCC Rcd 1050 (WTB PSPWD), *review denied*, *Memorandum Opinion and Order*, 14 FCC Rcd 19912 (1999).

⁷ *See, e.g.*, Regionet Wireless Licensee, LLC, *Order on Reconsideration*, 16 FCC Rcd 16321 (WTB PSPWD 2001), *recon. denied*, *Order on Further Reconsideration*, 16 FCC Rcd 22097 (WTB PSPWD 2001), *review denied*, *Memorandum Opinion and Order*, 17 FCC Rcd 21263 (2002); Regionet Wireless Licensee LLC, *Order on Reconsideration*, 16 FCC Rcd 19375 (WTB PSPWD 2001), *review denied*, *Memorandum Opinion and Order*, 17 FCC Rcd 21269 (2002).

⁸ Petition and Complaint at Summary Page.

⁹ *Id.*

¹⁰ Petition and Complaint at 4.

¹¹ Petition and Complaint at 6-7.

¹² Petition and Complaint at 8.

¹³ Petition and Complaint at 8.

¹⁴ Petition and Complaint at 9.

¹⁵ Petition and Complaint at 8-12.

¹⁶ Opposition at 2-15.

¹⁷ Opposition at 16-17.

¹⁸ 47 U.S.C. § 208.

Havens' Petition and Complaint must therefore be dismissed, Mobex contends,²⁰ pursuant to Section 1.44(d) of the Commission's Rules.²¹ Mobex further argues that Havens fails to demonstrate standing to protest the applications in question, as Havens cites no station of his which is active and competes with Mobex in any of Mobex's service areas.²² Mobex contends that Havens' submission is not only an untimely filed petition for reconsideration of the Commission's decision in the *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257 and RM-9664,²³ permitting "a site-based licensee with one AMTS spectrum block to acquire the other block upon a showing of need,"²⁴ but also an untimely filed petition for reconsideration of Regionet Wireless License, LLC, *Order on Further Reconsideration*.²⁵

6. *Discussion.* Havens' Petition and Complaint, addressed to the Chief of the Bureau, seeks both revocation of certain of Mobex's licenses as well as resolution of complaints raised pursuant to § 208 of the Communications Act.²⁶ Section 1.44(c) of the Commission's Rules states that "[r]equests requiring action by any person or persons pursuant to delegated authority shall not be combined in a pleading with requests for action by any other person or persons acting pursuant to delegated authority."²⁷ While the Chief of the Bureau has delegated authority to act on requests for revocation of licenses pursuant to Sections 0.131(a) and 0.331 of the Commission's Rules,²⁸ authority to resolve complaints filed pursuant to Section 208 of the Communications Act is placed within the Commission's Enforcement Bureau pursuant to Section 0.111(a)(1) of the Commission's Rules.²⁹ Havens himself submits with his petition a copy of an electronic mail message from the Policy and Rules Branch of the Bureau's Public Safety and Private Wireless Division, noting that an informal request for Commission action pursuant to Section 1.41 of the Commission's Rules is a separate proceeding from a complaint to the Enforcement Bureau.³⁰ Section 1.44(d) of the Commission's Rules states that "[p]leadings which combine requests in a manner prohibited by paragraph . . . (c) of this section may be returned without consideration to the person who filed the pleading."³¹ Accordingly we shall dismiss Havens' Petition and Complaint.

¹⁹ 47 C.F.R. § 1.44(c).

²⁰ Opposition at 17.

²¹ 47 C.F.R. § 1.44(d).

²² Opposition at 17.

²³ 17 FCC Rcd 6685 (2002) ("*Second MO&O*").

²⁴ *Id.* at 6704.

²⁵ 16 FCC Rcd 22097.

²⁶ 47 U.S.C. § 208.

²⁷ 47 C.F.R. § 1.44(c).

²⁸ 47 C.F.R. § 0.131(a), 0.331.

²⁹ 47 C.F.R. § 0.111(a)(1). *See also* Section 0.131(a) of the Commission's Rules, 47 C.F.R. § 0.131(a), which excludes complaint proceedings within the responsibility of the Enforcement Bureau from the purview of the Wireless Telecommunications Bureau.

³⁰ Petition and Complaint at Exhibit 4.

³¹ 47 C.F.R. § 1.44(d).

7. We note as well that Havens states that the materials presented in his petition “are presentations . . . previously presented to the Commission . . .”³² With respect to Regionet’s license to provide AMTS service to the Atlantic Coast under Call Sign WRV374, Havens has had a full opportunity to be heard by the Commission. On May 9, 2001, the Bureau accepted Regionet’s above-captioned application to renew its license for Call Sign WRV374 for filing.³³ Havens did not file a petition to deny, but merely submitted an informal request concerning Regionet’s AMTS station activation letters.³⁴ The Bureau granted Regionet’s application on July 2, 2001.³⁵ On August 1, 2001, Havens filed a petition for reconsideration of this grant, which was dismissed for Havens’ lack of standing.³⁶ Havens filed an application for review of this decision on December 3, 2001, which the Commission denied on October 10, 2002.³⁷

8. Similarly, with respect to Regionet’s license to operate AMTS stations on AMTS channel block B at various locations in the United States, on June 9, 2000, Regionet filed applications to serve, *inter alia*, the Cape Fear and Haws Rivers,³⁸ Cooper, Congaree, Broad and Saluda Rivers,³⁹ and the Savannah River⁴⁰ on AMTS channel block B (217.0125-217.4875 MHz).⁴¹ Havens did not file a petition to deny these applications. The Bureau granted Regionet’s applications on November 8, 2000.⁴² On December 14, 2000, Havens filed a petition for reconsideration of this grant, which was dismissed for Havens’ lack of standing.⁴³ Havens sought reconsideration of this dismissal, which was denied on December 13, 2001.⁴⁴ Havens filed an application for review of this decision on January 17, 2002, which the Commission denied on October 10, 2002.⁴⁵ Similarly, Havens’ complaint of a single applicant’s acquisition of both AMTS blocks in a given region was fully heard by the Commission in the *Second MO&O*.⁴⁶ Against the backdrop, while Section 1.41 is available as a procedural vehicle by which persons

³² Petition and Complaint at 13. Though Havens states that he included some supplementary information as well, *id.* at 14, this supplementary information consists of citations to and excerpts from other petitions filed by Havens with the Commission, prior correspondence, and copies of license records.

³³ Wireless Telecommunications Bureau, Site-by-Site Accepted for Filing, *Public Notice*, Report No. 849 (WTB May 9, 2001).

³⁴ Letter via electronic mail from Warren Havens, President and Jimmy Stobaugh, Operations Manager, Telesaurus Holdings GB, LLC, to Scot Stone and Kimberly Kleppinger, Federal Communications Commission (dated June 26, 2001). This letter concerned the Erie Canal and Great Lakes AMTS Stations as well.

³⁵ Wireless Telecommunications Bureau, Site-by-Site Action, *Public Notice*, Report No. 908 (WTB July 11, 2001).

³⁶ Regionet Wireless License, LLC, *Order on Reconsideration*, 16 FCC Rcd 19375 (WTB PSPWD 2001).

³⁷ Regionet Wireless License, LLC, *Memorandum Opinion and Order*, 17 FCC Rcd 21269 (2002).

³⁸ File Nos. 853314-17.

³⁹ File Nos. 853324-29.

⁴⁰ File Nos. 853333-34.

⁴¹ *Public Notice*, Report No. 2099 (rel. June 27, 2000).

⁴² *Public Notice*, Report No. 2119 (rel. Nov. 14, 2000).

⁴³ Regionet Wireless License, LLC, *Order on Reconsideration*, 16 FCC Rcd 16321 (WTB PSPWD 2001).

⁴⁴ Regionet Wireless License, LLC, *Order on Further Reconsideration*, 16 FCC Rcd 22097 (WTB PSPWD 2001).

⁴⁵ Regionet Wireless License, LLC, *Memorandum Opinion and Order*, 17 FCC Rcd 21263 (2002).

⁴⁶ See note 23, *supra*.

can obtain relief, particularly in matters not covered by formal procedures,⁴⁷ we see no reason to address repetitive petitions.⁴⁸

9. 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 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the "Request for Commission Action Under 47 C.F.R. § 1.41, and Complaint Under § 208 of the Communications Act" filed by Warren C. Havens on December 26, 2002 IS DISMISSED.

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

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁴⁷ *E.g.*, Sagir, Inc. and N.E. Colorado Cellular, Inc., *Memorandum Opinion and Order*, FCC 03-182, footnote 24 (rel. July 23, 2003).

⁴⁸ *See, e.g.*, Rogers Radiocall, Inc., *Memorandum Opinion and Order*, 98 FCC 2d 1293, 1298-99 (1984). *Cf.* Sagir, Inc. and N.E. Colorado Cellular, Inc., *supra*, at ¶ 17 (repetitive petitions for reconsideration denied); WT Docket No. 98-143 and RM-9148, RM-9150, RM-9196, *Notice of Proposed Rule Making*, 13 FCC Rcd 15798, 15808 (1998) (repetitive petitions for rule making dismissed); *Memorandum Opinion and Order*, CC Docket No. 78-72, 2 FCC Rcd 6642 (1987) (repetitive petitions for reconsideration dismissed).