

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

In the Matter)	
)	
WARREN C. HAVENS)	File Nos. 0002168979
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: February 17, 2012

Released: February 17, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Warren C. Havens (Havens) and AMTS Consortium LLC (ACL) seek reconsideration of an action by the Mobility Division of the Wireless Telecommunications Bureau (Bureau) that denied Havens's request for an extension of time to construct Automated Maritime Telecommunications System (AMTS) Station WHV287, and dismissed his application to renew the license for that station.¹ For the reasons set forth below, we deny the petition for reconsideration.

2. *Background.* On July 12, 2000, Havens was granted a license for Station WHV287, which authorized operation on AMTS Channel Block A at four locations in Arizona. Site-based AMTS stations were required to be constructed and placed into operation within two years of the license grant.² On April 1, 2002, Havens requested an extension of the construction period on the grounds that superior AMTS equipment was being developed and would soon be available.³ The Bureau's Public Safety and Private Wireless Division (PSPWD) granted the extension request and extended the construction deadline to July 12, 2003.⁴ On April 7, 2003, Havens requested another extension of the construction period on the grounds that development of the anticipated equipment had been delayed, but Havens was pursuing other equipment.⁵ PSPWD granted the second extension request and extended the construction deadline to July 12, 2005.⁶

3. In 2002, the Commission adopted a geographic licensing approach for AMTS stations, but incumbent site-based stations continued to be authorized under the terms of their existing licenses.⁷ In the ensuing auction, ACL (which Havens controls) obtained the AMTS Block B geographic license for the

¹ Petition for Reconsideration (filed Mar. 26, 2007) (Petition). The Petition also sought reconsideration of the denial of a request by Havens for an extension of time to construct another AMTS station (FCC File No. 0002168992 regarding Station WHV653), but Havens subsequently withdrew the Petition with respect to that license. See Letter dated Oct. 26, 2007 from Scot Stone, Deputy Chief, Mobility Division to Warren Havens.

² See 47 C.F.R. § 80.49(a)(2) (2001).

³ See Request for Partial Waiver (filed Apr. 1, 2002) (FCC File No. 0000830502).

⁴ See Letter dated May 3, 2002 from John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division to Warren C. Havens.

⁵ See Request for Partial Waiver, and Extension of Time under § 1.946(e) (filed Apr. 7, 2003) (FCC File No. 0001266344).

⁶ See Letter dated May 14, 2003 from Scot Stone, Deputy Chief, Policy and Rules Branch, Public Safety and Private Wireless Division to Warren C. Havens.

⁷ See Amendment of the Commission's Rules Concerning Maritime Communications, *Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6699 ¶ 31 (2002).

area that included the Station WHV287 locations, and Thomas K. Kurian (Mr. Kurian) obtained the AMTS Block A geographic license for that area.⁸

4. On May 20 and 25, 2005, respectively, Havens filed an application to renew the license for Station WHV287,⁹ and requested another extension of the construction deadline on the grounds that a proceeding to modify a mutually exclusive private land mobile radio (PLMR) license that had been granted in error was still pending.¹⁰ The Bureau's Public Safety and Critical Infrastructure Division (PSCID)¹¹ granted the third extension request and extended the construction deadline to July 7, 2006, but stated that it "d[id] not contemplate any further" extensions.¹² In addition, PSCID indicated that it would hold the renewal application in abeyance until it received notification that the station had been constructed, because it did not yet have any basis for determining whether the standard for license renewal had been met.¹³

5. Also in 2005, Mr. Kurian filed an application to assign the AMTS Block A geographic license for the area that included the Station WHV287 locations to ACL.¹⁴ Pappammal Kurian (Ms. Kurian) filed an objection, which PSCID denied on April 3, 2006.¹⁵ Ms. Kurian filed a petition for reconsideration on May 3, 2006.

6. On July 7, 2006, Havens requested another extension of the construction deadline, on the grounds that Ms. Kurian's petition for reconsideration remained pending, and Havens and ACL had agreed that Havens would terminate the license for Station WHV287 upon the finalization of the assignment to ACL, but Havens wished to preserve the option to construct the Station WHV287 locations if Ms. Kurian's petition for reconsideration were granted.¹⁶ The Bureau's Mobility Division¹⁷ denied the fourth extension request, stating

Section 1.946(e) expressly states that "[a]n extension request may be granted if a licensee shows that failure to meet a construction or coverage deadline is due to involuntary loss of site or other causes beyond its control." Havens' Extension Request does not meet this standard. We find that the failure to construct was the result of the licensee's business

⁸ See Wireless Telecommunications Bureau Announces the Grant of 10 Automated Maritime Telecommunications System Licenses, *Public Notice*, 20 FCC Rcd 8244 (WTB 2005).

⁹ FCC File No. 0002168979. The license expiration date for Station WHV287 was July 12, 2005.

¹⁰ See Waiver Request (filed May 25, 2005) (FCC File No. 2175557).

¹¹ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of PSPWD were assumed by PSCID. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

¹² See Letter dated July 8, 2005 from Scot Stone, Deputy Chief, Public Safety and Critical Infrastructure Division to Warren C. Havens, at 2 (*PSCID Letter*). By this time, the mutually exclusive PLMR license had been modified. See Radiolink Corporation, *Order of Modification*, 20 FCC Rcd 12024 (WTB PSCID 2005).

¹³ See *PSCID Letter* at 2 n.9.

¹⁴ FCC File No. 0002196859.

¹⁵ See Letter dated April 3, 2006 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division to Byron L. Mills, Esq.

¹⁶ See Waiver Request for Limited Construction Deadline Extension (filed July 6, 2006) (FCC File No. 0002168979).

¹⁷ Pursuant to a Commission reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

decision, and therefore was not due to circumstances beyond the licensee's control.¹⁸

Consequently, the Mobility Division dismissed the pending renewal application and terminated the license.¹⁹ On March 26, 2007, Havens and ACL filed a petition for reconsideration of the Mobility Division's decision.²⁰

7. On April 7, 2007, the Mobility Division denied Ms. Kurian's petition for reconsideration of the denial of her objection to the assignment application.²¹ On October 18, 2007, Mr. Kurian withdrew the application to assign the AMTS Block A geographic license for the area that included the Station WHV287 locations to ACL.²²

8. *Discussion.* Havens and ACL argue that the pendency of Ms. Kurian's petition for reconsideration of the denial of her objection to Mr. Kurian's application to assign the AMTS Block A geographic license for the area that included the Station WHV287 locations to ACL was a circumstance beyond Haven's control that merited an extension of the construction deadline.²³ They also argue that the Mobility Division's denial of Havens's request is part of a pattern of Bureau bias against him.²⁴ We disagree, and deny the instant petition for reconsideration.

9. While the pendency of Ms. Kurian's petition for reconsideration was beyond Havens's control, it did not prevent him from constructing the facilities authorized under his license for Station WHV287. Instead, he chose not to construct the site-based facilities because he believed that it would be more cost-effective to operate pursuant to the geographic license that he expected ACL to acquire from Mr. Kurian. Havens's failure to construct the site-based facilities was thus the result of a business decision, and therefore not grounds for a further construction extension.²⁵ Finally, with respect to Havens's claim that he was treated unfairly because he was denied a fourth construction extension for Station WHV287, we note that the Commission has rejected Havens's claims of Bureau bias against him.²⁶

10. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 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 and AMTS Consortium

¹⁸ See Letter dated Feb. 23, 2007 from Thomas Derenge, Deputy Chief, Mobility Division to Warren C. Havens at 2-3 (*Denial Letter*) (footnote omitted).

¹⁹ *Id.* at 3.

²⁰ See Petition, *supra* note 1.

²¹ See Thomas K. Kurian, *Order on Reconsideration*, 22 FCC Rcd 7318, *recon. dismissed*, *Order on Further Reconsideration*, 22 FCC Rcd 13223, *recon dismissed*, *Second Order on Further Reconsideration*, 22 FCC Rcd 20970 (WTB MD 2007).

²² See generally Thomas K. Kurian, *Memorandum Opinion and Order*, 25 FCC Rcd 13863 (2010), *aff'd sub. nom* Environmental, LLC v. FCC, 661 F.3d 80 (D.C. Cir. 2011).

²³ See Petition at 2.

²⁴ *Id.* at 3.

²⁵ As the Mobility Division noted, "it is well established that business decisions do not qualify as grounds for relief of our regulatory requirements." See *Denial Letter* at 3 (citing, e.g., Globalstar, L.P., *Memorandum Opinion and Order*, 18 FCC Rcd 1249 (IB 2003); Panamsat License Corp., *Memorandum Opinion and Order*, 15 FCC Rcd 18720 (IB 2000)). Havens and ACL cite no precedent to the contrary.

²⁶ See, e.g., Mobex Network Services, LLC, *Memorandum Opinion and Order*, 25 FCC Rcd 3390, 3395-96 ¶ 11 (2010), *recon. pending*.

LLC on March 26, 2007 IS DENIED.

11. 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

Thomas Deringe
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau