

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

In the Matter of

WARREN C. HAVENS
ENVIRONMENTAL LLC
Petition for Reconsideration
)
) File No.0002168979
) Call Sign: WHV287
)

ORDER ON RECONSIDERATION

Adopted: March 23, 2015

Released: March 23, 2015

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. By this action, we affirm for the second time our decision to deny a fourth construction extension to Warren Havens (Havens) for an Automated Maritime Telecommunications System (AMTS) license under call sign WHV287. Specifically, we address a petition filed by Havens and Environmental LLC (Environmental) collectively, Petitioners seeking, inter alia, reconsideration of our 2012 Order. In response to Havens' 2007 Petition, the 2012 Order affirmed our 2007 dismissal of his application for renewal and denial of a fourth extension request for the above license in the AMTS service and the related termination of that license. The 2012 Petition asks that we hold that application in abeyance pending the outcome of certain proceedings and the issuance of rulings under Sections 1.2 or 1.41 of our Rules.

1 Warren Havens and Environmental LLC, Petition for Reconsideration, File No. 0002168979, Call Sign WHV287, Protective, Condition Request or Petition for Reconsideration And Related Requests (i) for Holding in Abeyance and (ii) for Ruling under §§ 1.2 or 1.41 (filed Mar. 19, 2012) (2012 Petition).

2 Environmental LLC was formerly known as AMTS Consortium LLC (ACL). See 2012 Petition at 8.

3 Warren C. Havens, Petition for Reconsideration, File No. 0002168979, Order on Reconsideration, 27 FCC Rcd 1702 (WTB MB 2012) (2012 Order).

4 In the Matter of Warren C. Havens, File Nos. 0002168979 and 0002168992, Petition for Reconsideration (filed Mar. 26, 2007) (2007 Petition). The 2007 Petition also sought reconsideration of the denial of a Havens' request for an extension of time to construct another AMTS Station (Station WHV653, File No. 0002168992). However, Havens later withdrew that Petition with respect to that license. See Partial Withdrawal of Petitions for Reconsideration, Letter, dated Oct. 26, 2007, from Scot Stone, Deputy Chief, Mobility Div., Wireless Telecommunications Bur., FCC, to Warren Havens, ACL.

5 See Request for Extension of Construction Deadline and License Renewal for Stations WHV287 and WHV653, Letter dated Feb. 23, 2007, from Thomas Derenge, Deputy Chief, Mobility Div., WTB, FCC, to Warren C. Havens at 2-3 (2007 Denial Letter). The 2007 Denial Letter declined to grant the extension of construction deadline requested by Havens on July 7, 2006, regarding Stations WHV287 and WHV653 (2006 Extension Request) and dismissed the applications for renewal of these two licenses filed on May 20, 2005.

6 Because we dismissed this application in 2007, we treat Petitioners request to hold it in abeyance as a request to both return that application to "pending" status and to, then, hold it in abeyance. See 2007 Denial Letter at 2-3.

7 Under Section 1.2(a) of its Rules, 47 C.F.R. § 1.2(a), the Commission "may, in accordance with section 5(d) of the Administrative Procedure Act, on motion . . . issue a declaratory ruling terminating a controversy or removing uncertainty."

8 Under Section 1.41 of those Rules, 47 C.F.R. § 1.41, "[e]xcept where formal procedures are required under the provisions of [Chapter I-Federal Communications Commission], requests for action may be submitted informally."

(continued....)

For the reasons below, we deny that Petition and the other requests for relief.

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.¹⁰ 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.¹¹ The Bureau's Public Safety and Private Wireless Division (PSPWD) granted the extension request and extended the construction deadline to July 12, 2003.¹² On April 7, 2003, Havens requested another extension on the grounds that development of the anticipated equipment had been delayed, but Havens was pursuing other equipment.¹³ PSPWD granted the second extension request and extended the construction deadline to July 12, 2005.¹⁴

3. In 2002, the Commission adopted a geographic area licensing approach for AMTS stations, but incumbent site-based stations continued to be authorized under the terms of their existing licenses.¹⁵ In a later auction, ACL (which Havens controls) obtained the AMTS Block B license for the same geographic area that covered the site-based Station WHV287 but Thomas K. Kurian (Mr. Kurian) obtained the co-channel AMTS Block A geographic license for the same area, which overlaid Station WHV287.¹⁶

4. On May 20 and 25, 2005, respectively, Havens filed an application to renew the license for Station WHV287,¹⁷ and requested another extension of the construction deadline. The Bureau's Public Safety and Critical Infrastructure Division (PSCID)¹⁸ 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.¹⁹ 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.²⁰

5. Also in 2005, Mr. Kurian filed an application to assign to ACL the AMTS Block A

(...continued from previous page)

⁹ 2012 Petition at 2, 6.

¹⁰ See 47 C.F.R. § 80.49(a)(2) (2001).

¹¹ See Request for Partial Waiver (filed Apr. 1, 2002) (FCC File No. 0000830502).

¹² See Letter, dated May 3, 2002, from John J. Schauble, Chief, Policy and Rules Branch, PSPWD, WTB, FCC, to Warren C. Havens.

¹³ See Request for Partial Waiver, and Extension of Time under § 1.946(e) (filed Apr. 7, 2003) (FCC File No. 0001266344).

¹⁴ See Letter, dated May 14, 2003, from Scot Stone, Deputy Chief, PSPWD, WTB, FCC, to Warren C. Havens.

¹⁵ See Amendment of the Commission's Rules Concerning Maritime Communications, *Fifth Report and Order*, 17 FCC Rcd 6685, 6699 ¶ 31 (2002).

¹⁶ See Wireless Telecommunications Bureau Announces the Grant of 10 Automated Maritime Telecommunications System Licenses, *Public Notice*, 20 FCC Rcd 8244 (WTB 2005).

¹⁷ FCC File No. 0002168979. The license expiration date for Station WHV287 was July 12, 2005.

¹⁸ 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).

¹⁹ See Letter, dated July 8, 2005, from Scot Stone, Deputy Chief, PSCID, WTB, FCC, to Warren C. Havens at 2.

²⁰ *Id.* at 2 n. 9.

geographic license for the area that included the Station WHV287 locations.²¹ Pappammal Kurian (Ms. Kurian) filed an objection, which PSCID denied on April 3, 2006.²² 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 that Havens and ACL had agreed that Havens would terminate the license for Station WHV287 upon the finalization of the assignment to ACL of the Block A geographic license for that area, but Havens wished to preserve the option to construct the Station WHV287 locations if Ms. Kurian's petition for reconsideration were granted.²³ The Bureau's Mobility Division²⁴ 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 decision, and therefore was not due to circumstances beyond the licensee's control.²⁵

Consequently, the Mobility Division dismissed Havens' pending renewal application and terminated the subject license.²⁶ On March 26, 2007, Havens and ACL filed the 2007 Petition for reconsideration of that decision.²⁷

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.²⁸ On October 18, 2007, Mr. Kurian withdrew the application to assign to ACL the AMTS Block A geographic license for the area that overlaid the Station WHV287 locations.²⁹

8. On February 17, 2012, the Mobility Division denied the 2007 Petition finding that, while the pendency of Ms. Kurian's petition for reconsideration was beyond Haven's control it did not prevent him from constructing the facilities authorized under the subject license.³⁰ Accordingly, the Division confirmed the determination in the *2007 Denial Letter* that Havens' failure to construct under that license was, thus, the result of a business decision, and, therefore, not grounds for further extension.³¹ Regarding

²¹ FCC File No. 0002196859.

²² See Letter, dated April 3, 2006, from Michael J. Wilhelm, Chief, PSCID, WTB, FCC, to Byron L. Mills, Esq.

²³ See Waiver Request for Limited Construction Deadline Extension (filed July 6, 2006) (FCC File No. 0002168979) (July 2006 Request).

²⁴ 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).

²⁵ See *2007 Denial Letter* at 2-3 (footnote omitted).

²⁶ *Id.* at 3.

²⁷ See 2012 Petition, n. 1.

²⁸ 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).

²⁹ 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).

³⁰ See *2012 Order*, 27 FCC Rcd at 1704, ¶ 9.

³¹ *Id.*

Havens' claim that he had been treated unfairly because he was denied a fourth consecutive construction extension for the subject station, the Division noted that the Commission had earlier rejected Havens' claims of Bureau bias against him.³² On March 19, 2012, Petitioners filed the 2012 Petition.

9. *Discussion.* Section 1.106(c) provides that a petition for reconsideration that relies on facts not previously presented may be granted only if (i) the facts relate to events that occurred or circumstances that changed after the last opportunity to present such matters; (ii) the facts were unknown to petitioner until after the last opportunity to present such matters, and petitioner could not have learned of them sooner through the exercise of ordinary diligence; or (iii) consideration of the facts is required in the public interest.³³ Below we review the assertions in the 2012 Petition and we address them in the context of Section 1.106 and other applicable Commission rules and policies.

10. Petitioners contend the *2012 Order* improperly interpreted Havens' July 2006 Request.³⁴ They submit that the *2012 Order* incorrectly concluded, on the basis of that Request, that "he chose not to construct the site-based facilities because he . . . expected ACL to acquire the co-channel license."³⁵ To the contrary, Petitioners contend the record shows Havens had good cause not to construct and that the *2012 Order* erred because it "impermissibly mixes" Havens, the sole party in the above renewal application, with a separate entity, Environmental LLC.³⁶

11. To begin, the *2012 Order* did recognize the distinction between Havens and the AMTS Consortium, LLC (ACL), now known as Environmental LLC, and made correct references to each or both. Contrary to Petitioners' assertions, the *2012 Order* did not assume Havens had or would assign the subject license to ACL; it made only passing reference to the fact (noted by Havens himself in his July 2006 Petition) that his business plan was to build out AMTS spectrum under the geographic A-Block license that Mr. Kurian was expected to assign to ACL and that, after the completion of that assignment, Havens planned to request cancellation of the subject license.³⁷

12. Moreover, any alleged "mixing" of these entities does not change the findings in the *2007 Denial Letter*, confirmed on reconsideration in the *2012 Order*, that the licensee's failure to timely construct under the subject license was not due to any circumstances beyond the licensee's control, that this failure was the result of a business decision, and, therefore, such a decision was not grounds under our Rules for any further extension of the applicable construction deadline.³⁸ In addition, Petitioners note Havens' earlier claims that he had "good cause" not to complete construction under the subject license by the applicable deadline. For example, while Havens had claimed an extension of the applicable deadline would be in the public interest, *inter alia*, by "allowing more cost-effective service to the public,"³⁹ we see no such public interest in such an extension. To the contrary, we find that any such extension primarily would confer a commercial advantage on Havens and that such a finding supports the determination in the *2007 Denial Letter*, confirmed on reconsideration in the *2012 Order*, that his failure to timely construct under the subject license was the result of a business decision on his part.⁴⁰

³² *Id.*

³³ 47 C.F.R. §1.106(c)(1), (2).

³⁴ 2012 Petition at 3.

³⁵ *Id.* at 3 (citing *2012 Order*, 27 FCC Rcd at 1704, ¶ 9).

³⁶ 2012 Petition at 3.

³⁷ *2012 Order*, 27 FCC Rcd at 1704, ¶¶ 8-9.

³⁸ *2007 Denial Letter* at 2-3, *2012 Order* 27 FCC Rcd at 1704, ¶ 9.

³⁹ 2007 Havens Petition at 2.

⁴⁰ *2007 Denial Letter* at 2-3, *2012 Order*, 27 FCC Rcd at 2704, ¶ 9.

Accordingly, we reject Petitioners' claim that we should reconsider the *2012 Order* because of alleged confusion over the identity of the parties. We also reject their claims that Havens had "good cause" not to complete such construction by the applicable deadline.

13. Petitioners identify two Federal court proceedings⁴¹ in which Havens, *et al.*, assert misconduct by others under the anti-trust laws in connection with the contemplated transfer by Mr. Kurian to ACL of the relevant AMTS Block A geographic area license. Assuming *arguendo* that the alleged misconduct in connection with the contemplated transfer was a matter beyond Havens' control and that, as a result of this or other litigation, Havens would be able to obtain that transfer, Petitioners make no claim that this misconduct prevented him from timely completing the required construction under the subject license. Thus, these misconduct allegations and the related legal proceedings provide no basis to revisit the decision in the *2007 Denial Letter*, reaffirmed in the *2012 Order*, that Havens' failure to timely construct under the subject license was a business decision on his part and not caused by circumstances beyond his control.⁴²

14. Petitioners assert the *2012 Order* did not adequately address a claim of Commission bias in Havens' 2012 Petition because, in response, they contend the *Order* only cited a Commission order that was subject to a pending petition for reconsideration.⁴³ First, until modified by the Commission or a court of competent jurisdiction, a Commission order remain in full force and effect. Accordingly, a pending petition for reconsideration of such an order does not render it less valid.⁴⁴

15. Second, in response to Havens' generalized assertion of bias against him in the 2007 denial of his fourth request for extension of the construction deadline applicable to the subject license, the *2012 Order* cited the Commission's *2010 Mobex Order* which had rejected similar bias claims by him.⁴⁵ We find *2012 Order* adequately addressed Haven's generalized bias claims by citing the *2010 Mobex Order* because the latter included, *inter alia*, the following from an earlier order: "Absent specific factual allegations of improper actions or motivations on the part of members of the Commission's staff bald assertion of possible bias is totally inappropriate."⁴⁶

16. Under Section 1.2 or Section 1.41 of the Rules,⁴⁷ Petitioners contend we should consider their 2012 Petition because it contains new facts regarding alleged Commission prejudice against Havens that arose after he filed his 2007 Petition. They submit that Commission decisions in certain other proceedings demonstrate prejudice against Havens and that such alleged prejudice supports their claim

⁴¹ 2012 Petition at 2 (*citing* Skybridge Spectrum Foundation *et al.* v. MOBEX Network Services, LLC, *et al.*, D. N.J., No. 2:08-cv-03094-KSH-PS (filed June 20, 2008) and Maritime Communications/Land Mobile, LLC, Debtor, Bankr. N.D., Miss. (Aberdeen), No. 11-13463-NPO (filed Aug. 1, 2011).

⁴² It appears Petitioners seek to involve the Commission in a contractual dispute between Havens, *et al.*, and certain others regarding the possible transfer to ACL of the disputed AMTS Block A geographic license. The parties to such contractual disputes must pursue their remedies in the appropriate court or courts and not before the Commission.

⁴³ *Id.* at 4 (*citing* *2012 Order*, 27 FCC Rcd at 1704, ¶ 9).

⁴⁴ See 47 U.S.C. § 405(a) ("No [petition for reconsideration before the Commission] shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission."). See also, 47 C.F.R. § 1.106(n) ("without special order of the Commission, the filing of a petition for reconsideration will not excuse any person from complying with any decision, order, or requirement of the Commission . . .").

⁴⁵ Mobex Network Services, LLC, *et al.*, File Nos. 0001370847, 0001370848, 0001370850, 0001768691, *et al.*, Memorandum *Opinion and Order*, 25 FCC Rcd 3390 (2010) (*2010 Mobex Order*).

⁴⁶ See *2010 Mobex Order*, 25 FCC Rcd at 3396 n.52 (*citing* Michael D. Bramble, Memorandum *Opinion and Order*, 58 F.C.C. 2d 565, 578 n.30 (1976).

⁴⁷ 47 C.F.R. §§ 1.2, 1.41.

that the *2012 Order*, denying his 2012 Petition, was a product of “further clear prejudice against Havens.”⁴⁸ Specifically, Petitioners claim that the decisions in two Commission orders⁴⁹ and certain decisions by a Commission administrative law judge⁵⁰ all demonstrate prejudice against Havens apparently because those decisions were, to some extent, adverse to him. First, we decline to address those claims of prejudice in this proceeding because Havens has, or has had, ample opportunity to raise such claims in those other proceedings. Second, we note the mere existence of decisions adverse to Havens is not evidence of bias against him.⁵¹ Finally, the staff’s willingness to grant three extensions of the deadline to complete construction under the subject license suggests prejudice has not been a factor in this proceeding.

17. In view of the foregoing, we affirm the decisions in the *2012 Order* rejecting the 2007 Petition and affirming the *2007 Denial Letter* because Petitioners have not demonstrated any defect in that *Order* under the Commission’s rules and policies. We note that grant of a petition for reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.⁵² In addition, a petition for reconsideration that simply reiterates arguments previously considered and rejected will be denied.⁵³

18. Upon review of the 2012 Petition, we find Petitioners have failed to demonstrate that the *2012 Order* contains a material error, or did not fully and fairly consider the arguments made in that Petition. Accordingly, we find no reason to return the 2007 Application to pending status and to hold it in abeyance.⁵⁴ As there are no remaining controversies to be addressed or uncertainties to be resolved, we find no need for the declaratory ruling requested by Petitioners under Section 1.2(a) of the Rules⁵⁵ and no basis for taking separate action under Section 1.41 of the Rules.⁵⁶

19. *Conclusion.* We conclude that the *2012 Order* properly denied the 2007 Petition pursuant to Section 1.106(c).⁵⁷ We therefore deny 2012 Petition and affirm the *2012 Order*.

⁴⁸ 2012 Petition at 4.

⁴⁹ Petitioners claim two Commission orders, regarding the imposition on Havens of certain sanctions, demonstrate bias against him. 2012 Petition at 5-6 (*citing Third Reconsideration Order*), (Commission proposes to impose sanctions on Havens), and Warren C. Havens, Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications Systems at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado, File Nos. 852997-853009, 853010-853014, *Memorandum Opinion and Order*, 27 FCC Rcd 2756 (2012) (Commission imposes limited sanctions on Havens)).

⁵⁰ Petitioners claim several actions by the Administrative Law Judge in a pending proceeding demonstrate prejudice against Havens. 2012 Petition at 4-5. *See* Maritime Communications/Land Mobile, LLC, Participant in Auction 61 and Licensee of Various Authorizations in the Wireless Radio Services, Applicant for Modification of Various Authorizations in the Wireless Radio Services, *et al.*, EB Docket No. 11-71, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, 26 FCC Rcd 6520 (2011) and later orders in this docket.

⁵¹ *See, e.g.*, Barnes Enterprises, *Memorandum Opinion and Order*, 66 F.C.C. 2d 499, 501-02 ¶ 6 (1977). *See also* Mobex Network Services, LLC, *Order on Reconsideration*, 22 FCC Rcd 665, 669 ¶ 15 (WTB MD 2007).

⁵² *See* Application of WWIZ, Inc., *Memorandum Opinion and Order*, 37 F.C.C. 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert denied*, 383 U.S. 967 (1966). *See also*, 47 C.F.R. § 1.106(c).

⁵³ *Id.*; *see also* Gaines, Bennett Gilbert, *Memorandum Opinion and Order*, 8 FCC Rcd 3986 (Rev. Bd. 1993).

⁵⁴ *See* n. 6, *supra*.

⁵⁵ 47 C.F.R. § 1.2(a).

⁵⁶ 47 C.F.R. § 1.41.

⁵⁷ 47 C.F.R. § 1.106(c).

20. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(r), and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Protective, Condition Request or Petition for Reconsideration And Related Requests (i) for Holding in Abeyance and (ii) for Ruling under §§ 1.2 or 1.41, filed March 19, 2012, by Warren Havens and Environmental LLC, IS DENIED.

21. 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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau