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FCC Mail Room

**Subject:** Re: 7 26 12 EB Docket No. 11-71 Maritime Communications/Land Mobile
**Date:** Wednesday, August 1, 2012 10:10:37 AM PT
**From:** Warren Havens <warren.havens@sbcglobal.net>
**To:** 'Richard Sippel' <Richard.Sippel@fcc.gov>
**CC:** 'Pamela Kane' <Pamela.Kane@fcc.gov>, 'Brian Carter' <Brian.Carter@fcc.gov>, 'Emily Marshall' <Emily.Marshall@fcc.gov>, feldman@fhhlaw.com <feldman@fhhlaw.com>, rjk@telcomlaw.com <rjk@telcomlaw.com>, ESchwalb@eckertseamans.com <ESchwalb@eckertseamans.com>, rmiller@gardere.com <rmiller@gardere.com>, cole@fhhlaw.com <cole@fhhlaw.com>, mjp@catalanoplache.com <mjp@catalanoplache.com>, jsheldon@fr.com <jsheldon@fr.com>, ajc@catalanoplache.com <ajc@catalanoplache.com>, czdebski@eckertseamans.com <czdebski@eckertseamans.com>, 'Denise Villarreal' <Denise.Villarreal@fcc.gov>, rhj@commlawgroup.com <rhj@commlawgroup.com>, wright@khlaw.com <wright@khlaw.com>, 'Mary Gosse' <Mary.Gosse@fcc.gov>, richards@khlaw.com <richards@khlaw.com>, jstobaugh@telesaurus.com <jstobaugh@telesaurus.com>, GHull@eckertseamans.com <GHull@eckertseamans.com>

Mr. Sippel,

My office will file a copy of this email and its attachments with the Secretary and provide service copies.

**If the matters you decided on/ instructed today including to me* will be stated in an Order or other writing (apart from the transcript), then please provide that.**

*This includes items decided/ instructed by Judge Sippel directed to me, as to information to provide (or provide again, etc.).

In this regard--

(1) I noted today at the prehearing (which I attended by phone) two Wireless Bureau Orders as to the site-based licenses' protected service-area or "footprint" in response to statements made today by, I was told, counsel for Pinnacle as to its operating a radio system on the basis of its asserted "footprints" and asserted "fill-in stations" under the footprints. Judge Sipple asked me to provide those.

I responded that I had been asked that previously, and I had already provided them. The Judge asked I provide them again: The citations are DA 10-664 and DA 09-793, copies attached hereto.

(2) There are related pleadings in the proceedings of these two decisions before the Wireless Bureau, and some related Orders. One is includes the FCC "suspension" that later became a permanent "freeze" as to any expansion of the existing-AMTS-systems service contours (or footprint) and frequencies. *In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92-257, *4th R&O and 3rd FNPRM, FCC 00-370,* ¶¶ 76, 77. This suspension was made final in *2nd MO&O and 5th R&O, FCC 02-74,* ¶¶ 82, 83:

> 76. ... we are suspending acceptance of applications for new licenses, applications to modify existing licenses, and amendments to applications for new licenses or modifications, for AMTS (217-220 MHz) ... except....
>
> 77. We will continue to accept and process applications for such frequencies involving renewals, transfers, assignments, and modifications, and amendments to such applications, that propose neither to expand a station's (or AMTS system's) service area or to obtain additional spectrum....

In the above, "station" is a defined term in the definitions of Part 80 (and Part 2): from §80.5: "Station. One or more transmitters or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on radiocommunication services."

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"System" in AMTS rule §80.54 means a "system of coast stations and mobile units (subscribers)."

(3) As I indicated today (and previously): These issues (the Maritime alleged-stations' actual service contours, if any, and related matters) are also part of SkyTel's Shearman Act 1 case in US District Court NJ, and discovery is proceeding as to Maritime's alleged site-based stations in NJ and the rest of the nation (which is substantially parallel to issue (g) in this FCC Hearing, but under antitrust law in the NJ action).

If you request or direct further information, please let me know.

Respectfully,
Warren Havens
for myself and SkyTel-H legal entities

Federal Communications Commission
Washington, D.C. 20554

April 8, 2009

DA 09-793

Dennis C. Brown, Esq.
8124 Cooke Court
Suite 201
Manassas VA 20109-7406

RE: Request by Maritime Communications/Land Mobile, LLC for clarification of Sections 80.385 and 80.215 of the Commission's Rules

Dear Mr. Brown:

This letter responds to your December 18, 2008, request, filed on behalf Maritime Communications/Land Mobile, LLC (MC/LM), that we clarify certain rules governing the Automated Maritime Telecommunications System (AMTS) service.[1] As set forth below, we agree in part with your proposed interpretations.

First, you request that we clarify Section 80.385(b)(1) of the Commission's Rules, which provides that AMTS geographic licensees may locate stations within 120 kilometers of co-channel site-based AMTS licensees only upon a showing that at least 18 dB protection will be provided to the site-based licensee's predicted 38 dBu signal level contour.[2] You note that the maximum permissible effective radiated power (ERP) for many AMTS stations is one thousand watts,[3] and propose that, for purposes of calculating a site-based AMTS station's predicted 38 dBu signal contour, the site-based station be assumed to operate with one thousand watts ERP, rather than the maximum ERP of which the station is actually capable.

We decline to adopt your proposed interpretation. Instead, we conclude that the Commission intended for an AMTS geographic licensee's obligation to provide co-channel interference protection to an incumbent site-based station to be based on the site-based station's actual operating parameters. The Commission based the AMTS co-channel interference protection rules on the analogous rules governing the spectrally adjacent 220-222 MHz service.[4] When it adopted those rules, the Commission expressly stated that the 38 dBu contours of incumbent licensees were to be calculated on the basis of actual

[1] Letter dated Dec. 18, 2008 from Dennis C. Brown to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

[2] *See* 47 C.F.R. § 80.385(b)(1).

[3] Specifically, AMTS stations with an antenna height up to 61 meters that are located more than 129 or 169 kilometers, respectively, from a Channel 10 or 13 television station. *See* 47 C.F.R. § 80.215(h)(1).

[4] *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, 6700 ¶ 31 (2002) (*Fifth Report and Order*) (holding that "AMTS geographic licensees should adhere to the co-channel interference protection standard that is used in the adjacent 220-222 MHz band"), *on recon.*, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003). We note, moreover, that the language of Section 80.385(b)(1) follows the analogous 220-222 MHz service rules. *Compare* 47 C.F.R. § 80.385(b)(1) *with* 47 C.F.R. §§ 90.723(k), 90.763(b)(1)(ii).

operating parameters, rather than maximum permissible operating parameters.[5] In denying reconsideration of those rules, the Commission noted that providing protection to incumbents based on their theoretical maximum operating facilities, rather than on their actual operating facilities, would be spectrally inefficient and disserve the public interest.[6] This concern applies equally to the AMTS service.[7] Moreoever, assuming that incumbent site-based stations are operating with one thousand watts ERP would underprotect any stations not subject to the ERP limit that are operating with a higher ERP, which also would be contrary to the Commission's intent.[8] Finally, basing the AMTS geographic licensee's co-channel interference protection obligations on the site-based station's actual operating parameters is consistent with our recent decision applying the AMTS interference protection rules to determine whether a geographic licensees' proposed stations provided the requisite protection to co-channel site-based stations.[9]

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[5] *See* 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) (stating that "[t]he predicted 38 dBuV/m contour of the Phase I licensees will be calculated based on the licensee's authorized effective radiated power (ERP) and antenna height-above-average-terrain (HAAT) – not on the maximum allowable ERP and HAAT provided in our rules for the 220-222 MHz band").

[6] *See* 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) ("If we were to assume that all 220 MHz Phase I licensees are operating at the maximum power and antenna height for the 220 MHz service . . . when many are not operating at such parameters and may never operate at such parameters, we could force Phase II licensees to provide considerably greater protection to co-channel Phase I licensees than necessary, and thereby potentially deny service to the public in areas beyond the Phase I licensee's actual 38 dBu service contour").

[7] It is our understanding that MC/LM is concerned that, unless Section 80.385(b) is interpreted as requested, there exists the potential for a geographic AMTS licensee to interpose a station between two of the incumbent's stations. The Commission has concluded, however, that such a scenario will not occur if the incumbent licensee constructed its system in compliance with the then-existing requirement to maintain continuity of service, *see* 47 C.F.R. § 80.475(a) (1999). *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391, 22401 ¶¶ 23-24 (2003).

[8] *See Fifth Report and Order*, 17 FCC Rcd at 6699-6700 ¶ 31 ("We conclude that allowing incumbent licensees to continue operating under the terms of their current station licenses will further the public interest by avoiding interruption of the services they provide."); *cf.* Ralph Haller, *Letter*, 23 FCC Rcd 4714, 4716 (WTB/PSHSB 2008) (declining to adopt interpretation of Section 90.187 of the Commission's Rules that would underprotect incumbents with respect to new mobile-only stations).

[9] *See* Northeast Utilities Service Company, *Order*, DA 09-643, ¶¶ 11-12 (WTB MD rel. Mar. 20, 2009). As we noted in that decision, we 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." *Id.* at n.12 (citing *Fifth Report and Order*, 17 FCC Rcd at 6704 ¶ 39). This is necessary because a station's predicted 38 dBu signal contour is a function of its ERP, *see* 47 C.F.R. § 73.699 Figs. 10-10c, 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, *see* 47 C.F.R. § 80.215(h)(5), and determining a station's ERP requires additional information, such as antenna gain and line loss. *See* Amendment of the Commission's Rules Concerning Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Radio Services, *Report and Order*, WT Docket No. 02-318, 20 FCC Rcd 1966, 1970 ¶ 9 (2005) (citing Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, *Report and Order*, WT Docket No. 01-146, 18 FCC Rcd 3948, 3954 ¶¶ 12-13 (2003)).

Second, you request that we clarify that a ship station that is transmitting with an output power of fifty watts pursuant to Section 80.215(i)(1)-(2) of the Commission's Rules is permitted to operate with an ERP of up to thirty-six watts. We agree with this interpretation. Section 80.215 provides,

> A ship station must have a transmitter output [(TPO)] not exceeding 25 watts and an ERP not exceeding 18 watts. The maximum transmitter output power is permitted to be increased to 50 watts under the following conditions: (1) Increases exceeding 25 watts are made only by radio command from the controlling coast stations; and (2) The application for an equipment authorization demonstrates that the transmitter output power is 25 watts or less when external radio commands are not present.[10]

Although Section 80.215(i) expressly authorizes only an increase in transmitter output power under the specified circumstances, and not an increase in ERP, it is evident that the Commission contemplated a corresponding increase in ERP.[11] Interpreting the rule to limit ERP to eighteen watts even when the station is operating with fifty watts TPO would defeat the Commission's purpose in allowing the exceptions to the general twenty-five watt TPO limit.[12] We accordingly clarify Section 80.215(i), as requested, concluding that ship station transmitters operating with a transmitter output power of fifty watts pursuant to that rule may have an ERP of up to thirty-six watts during such operation.

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(d), and Section 1.2 of the Commission's Rules, 47

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[10] 47 C.F.R. § 80.215(i).

[11] *See* 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, 685 ¶ 24, 686 ¶ 28 (1981) (noting that the proponent of the rule, Waterway Communications Systems, Inc. (Watercom), expressly asked that the Commission "authorize[] ship station transmitter power be increased to a maximum of 50 watts provided the power is automatically reduced to produce an ERP not exceeding 18 watts within the grade B contour of a protected television station", and explaining that "Watercom requests that the rules be revised to allow ship transmitters to employ up to 50 watts output power provided the system is designed to automatically reduce power to an ERP not exceeding 18 watts when the vessel is in the grade B contour of protected television station").

[12] *See id.* at 688 ¶ 36 ("Accordingly, we will amend . . . the rules substantially as requested by Watercom to permit [AMTS] ship station transmiters [sic] to utilize maximum output power of 50 watts provided power is automatically reduced to an ERP not exceeding 18 watts wherever it has not been specifically shown that television reception within the grade B contour is unlikely to be affected").

C.F.R. § 1.2, the request filed by Maritime Communications/Land Mobile, LLC on December 18, 2008 IS GRANTED IN PART and DENIED IN PART to the extent indicated herein.

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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

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

| | |
|---|---|
| In the Matter of | ) |
| | ) |
| MARITIME COMMUNICATIONS/LAND MOBILE, LLC | ) |
| | ) |
| WARREN HAVENS, ENVIRONMENTEL LLC, INTELLIGENT TRANSPORTATION & MONITORING LLC, SKYBRIDGE SPECTRUM FOUNDATION | ) |
| | ) |
| Petitions for Reconsideration | ) |

**ORDER ON RECONSIDERATION**

**Adopted: April 16, 2010** **Released: April 19, 2010**

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

1. *Introduction.* This *Order on Reconsideration* denies two petitions for reconsideration of a declaratory ruling interpreting two rules governing Automated Maritime Telecommunications System (AMTS) operations. We have before us two petitions for reconsideration, one filed by Maritime Communications/Land Mobile, LLC (MC/LM),[1] and one filed jointly by Warren Havens, Environmentel LLC, Intelligent Transportation & Monitoring LLC, and Skybridge Spectrum Foundation (collectively, Havens),[2] each seeking reconsideration of a *Letter Ruling* by the Mobility Division (Division), Wireless Telecommunications Bureau.[3] For reasons discussed below, we deny both petitions for reconsideration.

2. *Background.* Section 80.215 of the Commission's Rules sets forth the AMTS transmitter power limits. Coast stations are limited to fifty watts transmitter output power (TPO),[4] with an additional limit[5] of one thousand watts effective radiated power (ERP) for certain coast stations.[6] Ship stations generally are limited to twenty-five watts TPO and eighteen watts ERP,[7] but Section 80.215(i) permits a TPO of fifty watts under certain conditions.[8]

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[1] Petition for Partial Reconsideration, filed May 8, 2009 (MC/LM Petition).

[2] Petition for Reconsideration and Comments Erratum Copy, filed May 8, 2009 (Havens Petition). MC/LM filed an opposition. Maritime Communications/Land Mobile, LLC, Opposition to Petition for Reconsideration, filed May 21, 2009 (MC/LM Opposition).

[3] Dennis C. Brown, *Letter*, 24 FCC Rcd 4135 (*Letter Ruling*).

[4] *See* 47 C.F.R. § 80.215(c)(1), (h)(5).

[5] *See* MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971, 8986 ¶ 24 (2007).

[6] Specifically, stations with an antenna height of 61 meters or less that are more than 169 kilometers from a Channel 13 television (TV) station or more than 129 kilometers from a Channel 10 TV station. *See* 47 C.F.R. § 80.215(h)(1).

[7] *See* 47 C.F.R. § 80.215(e)(2), (i).

[8] Specifically, increases exceeding twenty-five watts are made only by radio command from the controlling coast station, and the TPO is twenty-five watts or less when external radio commands are not present. *See* 47 C.F.R. § 80.215(i)(1), (2).

3. Section 80.385(b)(1) of the Commission's Rules sets forth the co-channel interference protection that AMTS geographic area licensees must afford site-based incumbents. Generally, a geographic licensee must locate its stations at least 120 kilometers from co-channel site-based incumbent stations, but shorter separations are permitted if at least 18 dBu protection will be provided to the site-based licensee's predicted 38 dBu signal level contour.[9]

4. In 2008, MC/LM asked the Division to clarify Sections 80.385(b)(1) and 80.215(i). With respect to Section 80.385(b)(1), MC/LM requested that the Division clarify that, for purposes of calculating a site-based station's predicted 38 dBu contour, the site-based station should be assumed to operate with one thousand watts ERP, irrespective of its actual ERP.[10] The Division denied this request, concluding that the Commission intended for an AMTS geographic licensee to provide interference protection to a co-channel site-based licensee of the basis of the latter's actual ERP.[11] The Division observed that the AMTS co-channel interference protection standard was based on the standard for the spectrally adjacent 220-222 MHz (220 MHz) service, and that the Commission has stated that the 38 dBu contours of incumbent 220 MHz stations are to be calculated on the basis of their actual, rather than theoretical maximum, operating parameters.[12] The Division further noted that adopting MC/LM's interpretation of Section 80.385(b)(1) would run counter to the goal of promoting efficient spectrum use, because it could foreclose AMTS geographic licensees from providing service even in areas that were not receiving service from an incumbent site-based station.[13]

5. With respect to Section 80.215(i), MC/LM requested that the Division clarify that a ship station operating with a TPO of fifty watts pursuant to Section 80.215(i) is permitted to operate with an ERP of up to thirty-six watts.[14] The Division so clarified the rule, agreeing that "[a]lthough Section 80.215(i) expressly authorizes only an increase in [TPO] under the specified circumstances, and not an increase in ERP, it is evident that the Commission contemplated a corresponding increase in ERP."[15]

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[9] *See* 47 C.F.R. § 80.385(b)(1).

[10] *See* Letter dated Dec. 18, 2008, from Dennis C. Brown to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, at 2 (MC/LM Request).

[11] *See Letter Ruling*, 24 FCC Rcd at 4135-36.

[12] *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).

[13] *Id.* at 4136 & n.6. The Division also observed that assuming that site-based incumbent AMTS stations are operating with one thousand watts ERP would underprotect stations not subject to the ERP limit that are operating with a higher ERP. *Id.* at 4136. The Division further noted that basing AMTS geographic licensees' interference protection obligations on the site-based stations' actual operating parameters was consistent with a recent Division decision in a licensing matter. *Id.*, *citing* Northeast Utilities Service Company, *Order*, 24 FCC Rcd 3310 (WTB MD 2009) (*NUSCO Order*), *recon. pending*. (MC/LM faults the Division's reliance on the *NUSCO Order*, inasmuch as the question of how to calculate a site-based incumbent's predicted 38 dBu contour was not contested in that case. *See* MC/LM Petition at 8. The Division did not rely on the *NUSCO Order*; rather, it only noted that the *NUSCO Order* and *Letter Ruling* were consistent in this regard. There is no reason to believe that the Division would have resolved MC/LM's declaratory ruling request any differently in the absence of the *NUSCO Order*.)

[14] *See* MC/LM Request at 2.

[15] *See Letter Ruling* at 4137, *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, 685 ¶ 24, 686 ¶ 28 (1981). The Division reasoned that interpreting Section 80.215(i) as limiting ERP to eighteen watts even when the ship station is permitted to operate with fifty watts TPO "would defeat the Commission's purpose in allowing the exceptions to the general twenty-five watt TPO limit." *Id.*

6. *Discussion.* MC/LM seeks reconsideration of the Division's first holding, that AMTS geographic licensees need only provide co-channel interference protection on the basis of incumbent site-based licensees' actual ERP, rather than an assumed ERP of one thousand watts. First, MC/LM contends that the Division's interpretation is based on a misplaced reliance on the 220 MHz rules.[16] The Division did not, itself, rely on the 220 MHz rules. Rather, the Division correctly noted that the Commission, when it adopted Section 80.385(b)(1), expressly stated that the rule was based on the 220 MHz rules.[17] MC/LM further argues that the 220 MHz interference rules are not instructive because the authorized station ERP is set forth on the face of each 220 MHz license, but not on AMTS licenses.[18] MC/LM's observation regarding the absence of authorized ERP from AMTS licenses is correct, but does not require that we abandon the use of actual ERP for determining co-channel interference protection. Indeed, the Division directly addressed this issue, pointing out that AMTS site-based licensees are expected to cooperate with geographic licensees in avoiding and resolving interference issues, and that this obligation requires, at minimum, that the site-based licensee "provid[e] upon request sufficient information to enable geographic licensees to calculate the site-based station's protected contour."[19]

7. Finally, MC/LM argues that the Commission's interpretation of Section 80.385(b)(1) is inconsistent with the statutory mandate for equal treatment of licensees in the same service, regardless of whether the licenses were obtained though auction or other means.[20] MC/LM contends that the Division's interpretation of Section 80.385(b)(1) effectively permits AMTS geographic licensees, but not AMTS site-based licensees, to operate with an ERP of one thousand watts, notwithstanding that Section 80.215 does not differentiate between geographic and site-based licensees.[21] We disagree. Section 80.215 imposes the same maximum power limit on geographic and site-based licensees, regardless of the Division's interpretation of how to calculate an incumbent's predicted 38 dBu contour for purposes of co-channel interference protection pursuant to Section 80.385(b)(1). As discussed above, that interpretation is based on the Commission's decision to protect site-based incumbents' existing operations, rather than

[16] *See* MC/LM Petition at i, 3-8.

[17] *See Letter Ruling*, 24 FCC Rcd at 4135, *citing* 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, 6700 ¶ 31 (2002) (*AMTS 5th R&O*) ("AMTS geographic licensees should adhere to the co-channel interference protection standard that is used in the adjacent 220-222 MHz band"), *on recon., Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003). MC/LM argues that the paragraph cited by the Division, read in its entirety, reflects that the Commission's concern was to protect incumbent licensees from geographic licensees, and not *vice versa*, and therefore "supports MC/LM's position." *See* MC/LM Petition at 6. That both Section 80.385(b)(1) and the cited paragraph address a concern over interference from geographic licensees to site-based incumbents is evident, and the Division suggested nothing to the contrary. MC/LM infers, from the Commission's statement in the referenced paragraph that incumbent licensees should be permitted to operate under the terms of their current licenses, an intent to protect incumbents on the basis of an ERP of one thousand watts. *Id.* at 7. We conclude, however, that the Commission's concern was to avoid disruption of *existing* AMTS service, rather than to indefinitely preserve an incumbent licensee's ability to expand its facilities to the maximum permitted ERP. *See AMTS 5th R&O*, 17 FCC Rcd at 6699 ¶ 31 ("allowing incumbent licensees to continue operating under the terms of their current station licenses will further the public interest by avoiding interruption of the services they provide"), 6701 ¶ 34 (prohibiting incumbents from modifying their licenses in any manner that extends the service area).

[18] *See* MC/LM Petition at 6-7. AMTS site-based licenses authorize a maximum power based on TPO. MC/LM asserts that, in contrast to the situation in the 220 MHz service, a geographic AMTS licensee would not be able to ascertain the protected area of a site-based AMTS station if the protected area is based on actual ERP rather than the maximum ERP allowed under Part 80. *Id.* at 7.

[19] *See Letter Ruling*, 24 FCC Rcd at 43136 n.9, *citing NUSCO Order*, 24 FCC Rcd at 331 n.12, *citing AMTS 5th R&O*, 17 FCC Rcd at 6704 ¶ 39.

[20] *See* MC/LM Petition at 8-9, *citing* 47 U.S.C. § 309(j)(6)(D).

[21] *Id.* at 9-10.

protecting the maximum possible contour. We accordingly deny the MC/LM petition for reconsideration.

8. Havens seeks reconsideration of the Division's second holding, that ship stations operating with an output power of fifty watts pursuant to Section 80.215(i) may operate with an ERP of up to thirty-six watts, to the extent that the holding is applicable to land mobile units.[22] Havens argues that power limits established for the maritime service are not appropriate for land mobile radio operations.[23] We note, however, that Section 80.123(e) specifically provides that transmitter power for land mobile units associated with AMTS coast stations "shall be set in accordance with the limits set in Section 80.215 for ship stations."[24] This forecloses any argument that Section 80.215(i) should be construed to apply differently to land mobile units.[25] We accordingly deny the Havens petition.

9. *Conclusion and Ordering Clauses.* We conclude that the Division properly interpreted Section 80.385(b)(1) as specifying that a geographic AMTS licensee locating a station within 120 kilometers of a co-channel site-based AMTS station must make a showing that at least 18 dB protection will be provided to the site-based station's predicted 38 dBu signal level contour, as determined by reference to the site-based station's actual operating ERP, rather than an assumed ERP of one thousand watts. We also conclude that the Division's clarification, that AMTS ship stations operating with a transmitter power output of fifty watts under the conditions set forth in Section 80.215(i) may exceed eighteen watts ERP, applies equally to land mobile stations associated with an AMTS coast station. We therefore deny the petitions for reconsideration.

10. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration filed by Maritime Communications/Land Mobile, LLC, on May 8, 2009, and the Petition for Reconsideration and Comments Erratum Copy filed on May 8, 2009, by Warren Havens, Environmentel LLC, Intelligent Transportation & Monitoring LLC, and Skybridge Spectrum Foundation, ARE 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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

[22] *See* Havens Petition at 2-3.

[23] *Id.* at 3. According to Havens, more "refined" rules are required for today's land mobile radio systems, with, for example, higher power levels in rural areas than in urban areas, and a separate standard for maritime service along coastlines and major waterways. *Id.*

[24] *See* 47 C.F.R. § 80.123(e).

[25] As Havens and MC/LM both acknowledge, any party who believes that the rules governing TPO and/or ERP limits for land mobile units authorized under AMTS licenses should be modified can file a petition for rulemaking to that end. *See* Havens Petition at 3; MC/LM Opposition at 3.

Certificate of Service

I, Warren Havens, certify that I have, on this 1st day of August 2012, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing filing to the following:[1]

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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