

This decision, *FCC 00-300*, included in full below, contains:

We believe, however, that the current frequency allocation and assignment already allows for the rapid identification of any unlicensed transmitters or AMTS operators that might violate Commission rules. The Commission has generally exempted CMRS licensees operating on an exclusive basis in Commission defined service areas from station identification requirements.²³ The Commission concluded that the requirement is unnecessary because such licensees can readily be identified by information in our licensing records and other publicly available sources.²⁴ The Commission **declined** to exempt services licensed on a **station-by-station basis, because such licensees cannot readily be identified by reference to known geographic boundaries.**²⁵ While AMTS licenses are not based on Commission-defined service areas, they also are not licensed on a traditional site-by-site basis. Rather, each system must provide continuity of service to a specific navigable inland waterway or a substantial navigational area of coastline.²⁶ Because AMTS licensing is tied to fixed geographic features, we believe that the rationale for exempting geographically licensed CMRS operators applies, rather than the reason for continuing to require station identification by site-based licensees.

23 Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988, 8092 ¶ 216 (1994).
24 Id.
25 Id. at 8092 ¶ 217.
26 See 47 C.F.R. § 475(a) [sic] [§80.475(a)]

In the matter of RegioNet for Forbearance of §80.102, Order, by the Commission, *FCC 00-300*, August 23, 2000, at ¶ 7.

First, this is a **full Commission Order**, that originates as to the majority of the MCLM stations directly (those it got from RegioNet), and **15 of the 16** MCLM seeks to keep in the summary decision/ "settlement," and that applies to all MCLM stations by the controlling rule interpretations below since they are all site-based "incumbent" AMTS.

The above supports 80.475(a) (pre deletion of old continuity of service and coverage requirement)^[* a] argument that site based AMTS are only systems of stations, and they have to have overlapping coverage and service, and that has to be continuous in coverage and time.

And this applies to actual construction and operations, and not only to the application.^[* b]
This Order was purely about actual operating AMTS CMRS station and service that compete with other actually operating CMRS stations and service.

3. This order *also* show why allowing AMTS to be warehoused for years on end, decades in this case of Maritime and its predecessors, is highly anticompetitive and should, on that basis alone, be fully rejected and sanctioned. As the US Supreme Court wrote:

While Federal Communications Commission does not have power to enforce antitrust laws as such, it is permitted to take antitrust policies into account in making licensing decisions pursuant to "public interest" standard of Federal Communications Act of 1934 (47 USCS §§ 151 et seq.) governing broadcasters and Commission does have substantial discretion as to whether to proceed by rulemaking or by adjudication, and, in context of rule based on multifactor weighing process, every consideration need not be equally applicable to each individual case.

FCC v National Citizens Committee for Broadcasting (1978) 436 US 775, 56 L Ed 2d 697, 98 S Ct 2096, 3 Media L R 2409. See 47 USC §§ 313 and 314 (a licensee violation of antitrust law is also a violation of the Communications Act).

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^[* a] The deletion was after the time this rule was fully applied to all AMTS site-based stations as to any alleged timely and lawful construction-commencement of service, which subject to the FCC AMTS licensing application suspension and freeze orders. The deletion had no effect upon this rule's requirements. See also discussion on this rule §80.475(a) and topic in *DA 10-664* and *DA 09-793*.

^[* b] Maritime and the Enforcement Bureau attempt to argue that this §80.475 (in its form prior to modification in about year 2000 deleting the language on continuity of service and coverage) did not apply to actual operations.

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

In the Matter of)
REGIONET WIRELESS LICENSE, LLC)
Petition for Forbearance From Enforcement of)
Section 80.102 of the Commission's Rules)

ORDER

Adopted: August 11, 2000

Released: August 23, 2000

By the Commission:

RegioNet is predecessor of Mobex, predecessor of MCLM re the Issue (g) licenses. Regionet assigned to Mobex and it to MCLM 11 of the 12 licensed stations at issue in the "settlement" (all of them but the one in Pennsylvania on OH River).

I. INTRODUCTION

1. In this Order, we grant RegioNet Wireless License, LLC's ("RegioNet") petition for forbearance, filed on August 31, 1999, from the continued application of the station identification requirements of Section 80.102 of the Commission's Rules to Automated Maritime Telecommunications System (AMTS) stations. Section 80.102 requires stations in the Maritime Services using telephony to identify themselves, by giving their call sign, in English, at the beginning and end of each communication with any other station and at fifteen-minute intervals when transmission is sustained for more than fifteen minutes. Accordingly, effective with the release of this Order, AMTS stations are no longer required to identify themselves, by giving their call sign, in English, at the beginning and end of each communication with any other station and at fifteen minute intervals when transmission is sustained for more than fifteen minutes.

II. BACKGROUND

2. RegioNet is a current AMTS licensee. An AMTS is a specialized system of public coast stations providing integrated, interconnected marine voice and data communications for tugs, barges, and other commercial vessels as they move along a waterway. AMTS offers different services from those available from individual VHF public coast stations, by relieving vessel operators from having to change

1 47 C.F.R. § 80.102.

2 Petition for Forbearance filed by RegioNet Wireless License, LLC (filed August 31, 1999) (Petition).

3 47 C.F.R. § 80.102(a)(1).

4 47 C.F.R. § 80.102(a)(2).

5 Petition at 1.

6 47 C.F.R. §§ 80.5, 80.385(a)(1); Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order and Second Further Notice of Proposed Rule Making, 12 FCC Rcd 16949, 17004 ¶ 111 (1997) (Maritime Second Report and Order).

frequencies and contact new coast stations (which may have different call set-up and billing procedures) during their travel along waterways.⁷ In 1994, the Commission classified public coast stations, including AMTS stations, as commercial mobile radio services (CMRS).⁸ In 1997, the Commission adopted rules to permit VHF and AMTS public coast stations to also serve units on land.⁹

3. The CMRS marketplace in which AMTS providers compete is substantially less regulated and more competitive than most telecommunications markets. The competitive nature of the CMRS market is due, in part, to the Commission's willingness to evaluate and, when appropriate, forbear from enforcing regulations or provisions of the Communications Act ("the Act") that could stifle competition.¹⁰ Under Section 10 of the Act, the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carrier or services, in any or some of its geographic markets if a three-pronged test is met.¹¹ Specifically, Section 10 requires forbearance if we determine that:

forbearance applies only to CRMS. FCC has not authority to forbear otherwise.

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.¹²

III. DISCUSSION

4. RegioNet argues that the station identification requirement is unnecessary with respect to AMTS.¹³ It notes that AMTS operators are issued a license for a system of coast stations and mobile

⁷ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, 6 FCC Rcd 437, 437 ¶ 3 (1991) (*AMTS First Report and Order*); 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, *Report and Order*, 84 FCC 2d 875, 876 ¶ 3, *on reconsideration*, *Memorandum Opinion and Order*, 88 FCC 2d 678 (1981), *aff'd sub nom. WJG Tel. Co. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

⁸ Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411, 1448 ¶ 83 (1994); *see also* 47 C.F.R. § 20.9.

⁹ *Maritime Second Report and Order*, 12 FCC Rcd at 16964 ¶ 24; *see* 47 C.F.R. § 80.123.

¹⁰ *See* Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 16857, 16860-61 ¶¶ 8-9 (1998).

¹¹ 47 U.S.C. § 160(a)(1)-(3). Subsection (d) of Section 10 prohibits forbearance from Section 251(c) and Section 271 of the Act until certain conditions are met. *See* 47 U.S.C. § 160(d).

¹² 47 U.S.C. § 160(a).

¹³ Petition at 3-4.

units,¹⁴ and the frequencies are assigned only to one system in a particular area.¹⁵ In addition, RegioNet indicates that the current AMTS licensees all use equipment that is not compatible with the other licensees' systems.¹⁶ As a result, subscribers of one AMTS operator cannot contact or be contacted by another AMTS licensee. Therefore, RegioNet argues, this licensing approach and operational realities obviate the need for AMTS systems to identify themselves in order to make the source of its transmissions known to those receiving them, because an AMTS subscriber has no doubt as to the identity of the system with which he or she is communicating.¹⁷

5. In order to forbear from the continued enforcement of Section 80.102 with respect to AMTS stations, we must determine whether such an action would satisfy the three-pronged Section 10 forbearance test. Satisfaction of the first prong of the test requires a finding that enforcement of this rule is not necessary to ensure that the charges, practices, classifications, or regulations of AMTS systems are just and reasonable and are not unjustly or unreasonably discriminatory.¹⁸ Because we do not foresee a situation in which forbearance from enforcement of the rule would allow AMTS operators to have charges, practices, or classifications that are unjust, unreasonable, or unjustly or unreasonably discriminatory, we conclude that the first prong of the forbearance test is satisfied.

6. Satisfaction of the second prong of the test requires a finding that enforcement of the rule is not necessary for the protection of consumers.¹⁹ Generally, station identification rules provide some consumer protection, primarily by ensuring that the source of a transmission is known to those receiving them.²⁰ We agree with RegioNet, however, that the requirement does not serve this purpose with respect to AMTS, where a consumer will always know which AMTS provider he or she is utilizing because of his or her contractual relationship with that provider, and because the subscriber's equipment is not compatible with other AMTS providers' systems. We also do not find any other consumer protection directly attributable to the Section 80.102 requirement. As a result, we conclude that enforcement of Section 80.102 is unnecessary for the protection of consumers.

7. The third prong of the Section 10 forbearance test requires that we find that forbearance from applying the rule in question is consistent with the public interest.²¹ Station identification serves the public interest by assisting enforcement agencies in the rapid identification of signal sources to quickly identify stations guilty of rule infractions and to determine whether signals originate at a legally licensed

¹⁴ 47 C.F.R. § 80.54.

¹⁵ Amendment of the Maritime Services Rules to Permit Operation on Frequencies Offset from Assigned AMTS Channels, *Order*, 4 FCC Rcd 5221, 5221 ¶¶ 2, 8 (1989).

¹⁶ Petition at 3 n.3.

¹⁷ *Id.* at 4-5.

¹⁸ 47 U.S.C. § 160(a)(1).

¹⁹ 47 U.S.C. § 160(a)(2).

²⁰ See Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Services, *Report and Order*, 4 FCC Rcd. 4719, 4724 ¶ 49 (1989).

²¹ 47 U.S.C. § 160(a)(3).

station.²² We believe, however, that the current frequency allocation and assignment already allows for the rapid identification of any unlicensed transmitters or AMTS operators that might violate Commission rules. The Commission has generally exempted CMRS licensees operating on an exclusive basis in Commission-defined service areas from station identification requirements.²³ The Commission concluded that the requirement is unnecessary because such licensees can readily be identified by information in our licensing records and other publicly available sources.²⁴ The Commission declined to exempt services licensed on a station-by-station basis, because such licensees cannot readily be identified by reference to known geographic boundaries.²⁵ While AMTS licenses are not based on Commission-defined service areas, they also are not licensed on a traditional site-by-site basis. Rather, each system must provide continuity of service to a specific navigable inland waterway or a substantial navigational area of coastline.²⁶ Because AMTS licensing is tied to fixed geographic features, we believe that the rationale for exempting geographically licensed CMRS operators applies, rather than the reason for continuing to require station identification by site-based licensees. We further believe that forbearance from Section 80.102 will not complicate the resolution of any interference complaints because AMTS applicants must notify nearby television stations that may potentially receive interference when they apply for an AMTS license, and AMTS licensees are subject to an affirmative duty must not to cause interference to such television stations.²⁷

8. In addition, in determining whether forbearing from a regulation is in the public interest, we must consider whether forbearance will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.²⁸ If we determine that forbearance will promote competition among providers of telecommunications services, that determination may be the basis of a finding that the forbearance is in the public interest.²⁹ As a CMRS carrier, AMTS systems directly compete with cellular and personal communications services (PCS) systems.³⁰ As noted above, neither cellular nor PCS providers are subject to a station identification

²² Amendment of Section 74.682 of the Commission's Rules and Regulations Concerning Station Identification of Television Auxiliary Broadcast Stations, *Report and Order*, 5 FCC 2d 767, 769 ¶ 10 (1966).

²³ Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988, 8092 ¶ 216 (1994).

²⁴ *Id.*

²⁵ *Id.* at 8092 ¶ 217.

²⁶ See 47 C.F.R. § 475(a). [that is typo, it means 80.475(a)]

²⁷ See 47 C.F.R. §§ 80.215(h), 80.475(a)(2); *AMTS First Report and Order*, 6 FCC Rcd at 437 ¶ 5. This, of course, is in addition to AMTS licensees' general obligation not to cause harmful interference. See 47 C.F.R. §§ 1.934(e)(2), 80.92.

²⁸ 47 U.S.C. § 160(b).

²⁹ *Id.*

³⁰ See Fred Daniel d/b/a/Orion Telecom, *Memorandum Opinion and Order*, 14 FCC Rcd 19912, 19918-919 ¶ 12 (1999).

requirement similar to that of Section 80.102.³¹ We agree with RegioNet that granting AMTS system operators forbearance from further compliance with Section 80.102 is in the public interest because it would allow all three competing services to operate under similar requirements.³²

IV. CONCLUSION

9. Based upon the record before us, we find that the Section 10 standard is satisfied for 47 C.F.R. § 80.102 with respect to AMTS coast and ship stations. We grant RegioNet's petition and will forbear from requiring AMTS stations to comply with this provision.

V. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, the Petition for Forbearance filed by RegioNet Wireless Licenses, LLC on August 31, 1999, IS GRANTED to the extent discussed above.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

³¹ Part 24 of the Commission's Rules, 47 C.F.R. Part 24, which governs PCS contains no provision for station identification while Section 22.313 of the Commission's Rules, 47 C.F.R. § 22.313(a)(1), specifically exempts cellular operators from station identification.

³² Petition at 5.