



Federal Communications Commission  
Washington, D.C. 20554

April 3, 2007

Mr. Warren Havens  
Intelligent Transportation  
2649 Benvenue Avenue, 2-3  
Berkeley, CA 94704

Re: FCC FOIA Control No. 2007-177

Dear Mr. Havens:

This letter responds to the Freedom of Information Act (FOIA) request of Intelligent Transportation (Transportation), by e-mail message dated February 17, 2007 (Transportation Submission), which was received by the Commission's FOIA Control Staff on February 20, 2007, and assigned the above FCC FOIA number. While initially that Submission was to be acted upon by March 20, 2007, in an e-mail message on that date, our Division extended that date ten working days to April 3, 2007, in light of the unusual circumstances cited in that message.

Claiming the information sought may be of decisional importance in matters now pending or that may be pending before the Commission and the courts, Transportation applied for expedited treatment of its Submission. In support of that application, Transportation also contends that the requestors include a foundation that plans to use its Automated Maritime Telecommunications System (AMTS) for nonprofit, charitable, scientific, and educational purposes and that expedited action is needed on the Submission to mitigate certain alleged damages.

Under section 0.461(h)(2) of the Commission's rules, expedited processing is granted to a requestor demonstrating a compelling need that is certified by the requestor to be true and correct to the best of his or her knowledge and belief.<sup>1</sup> We dismiss the Transportation application for such processing because it did not include the required certification.<sup>2</sup>

<sup>1</sup> 47 C.F.R. § 0.461(h)(1). For purposes of this section "compelling need" means that "the failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual" or "[w]ith respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity." See sections 0.461(h)(3)(i)-(ii) of the Commission's rules, 47 C.F.R. §0.461(h)(3)(i)-(ii).

<sup>2</sup> We also note Transportation did not either identify any imminent threats to an individual or establish that it was primarily engaged in disseminating information. Under section 0.461(h)(4)(ii) of the rules, 47 C.F.R.

While the scope of the Transportation Submission is broad and it lacks specificity in some areas, we understand it to include five general requests for Commission records related to section 80.475 of the Commission's Rules.<sup>3</sup> After summarizing the parts of each request below, we provide our responses.

1. Engineering Employed. Records were requested regarding the engineering employed "to consider or determine coverage and other technical requirements" in segments of what is now section 80.475<sup>4</sup> of the rules<sup>5</sup> and with reference to "any predecessor or successor form of said rule that applies to site-based AMTS" for any license application or "any other licensing related matter[s]."

Accordingly, we searched for records pertaining to the engineering employed to "consider or determine" those matters in the course of the Commission's processing of AMTS license applications or "any other licensing related matter[s]." In the course of these searches, we found one document in response to this part of the Transportation Submission. Regarding the interference potential from AMTS systems to TV reception, we found and have enclosed a copy of the July 1982 study of that potential which the Commission noted in its *AMTS Rules First R&O*.<sup>6</sup> We did not locate other documents that respond to this part of the Submission.

2. Engineering Staff. Regarding "all FCC staff persons who performed certain 'engineering,'" records were requested on "all [their] formal and other education and experience" and for records explaining "the authority of such persons to perform such engineering for the licensing matters involved."

a. We were not able to find records identifying those who performed engineering in connection with the licensing activities outlined in the Transportation

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§0.461(h)(4)(ii), Transportation may file with the General Counsel an application for review within five (5) working days of this dismissal of its application. *See also* section 1.115 of the Commission's rules, 47 C.F.R. §1.115.

<sup>3</sup> 47 C.F.R. §80.475.

<sup>4</sup> Specifically, Transportation first identifies a version of section 80.475(a) of the Commission's rules, 47 C.F.R. §80.475(a), that, based on an earlier version, became effective in 1991 and that the Commission partially deleted in 2002 (First Segment). *See* Amendment of Parts 2 and 80 of the Commission's Rules Applicable to the Automated Maritime Telecommunications System (AMTS), Gen. Docket No. 88-372, RM-5712, *First Report and Order*, 6 FCC Rcd 437 (1991) ("*AMTS Rules First R&O*") and Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92-257, *Fifth Report and Order*, 19 FCC Rcd 9918 (2002). Second, Transportation identifies a version of section 80.475(a)(1) that, based on an earlier version, became effective (as 80.475(b)(1)) in 1986 and that, for the most part, remains in effect (Second Segment). *See* Reorganization and Revision of Parts 81 and 83 of the Rules to Provide a New Part 80 Governing the Maritime Radio Services, PR Docket No. 85-145, *Report and Order*, 60 Rad. Reg. 2d (P&T) (1986).

<sup>5</sup> 47 C.F.R. §80.475.

<sup>6</sup> *See AMTS Rules First R&O*, 6 FCC Rcd at 437.

Submission. Even if we could identify those who did such engineering work, we would likely only find records of their education and experience in their Official Personnel Folder or similar personnel files which are not routinely available for public inspection under section 0.457(f) of the rules, 47 C.F.R. §0.457(f). If Transportation seeks to inspect such personnel files, the request must contain a statement of the reasons for such inspection and the facts in support thereof. *See* section 0.461(c) of the rules, 47 C.F.R. § 0.461(c).

b. Because we could not determine which, if any, of the identified staff persons did the engineering involved, we were not able to search for records authorizing such work. Under the Commission's rules, however, we note that chief of the relevant licensing bureau generally has delegated authority to perform certain functions including advising the Commission on such engineering and technical matters.

3. Computer Software. Records were requested regarding the "identification of all computer software used in the 'engineering'" referred to in the first request above. While the Commission makes available to its engineers and other staff computer software, we could not find records of the software actually used for the engineering referred in the first request above.

4. Document Systems. Records were requested with an "identification and description of the document filing, storage, location, and maintenance system[s] employed" for records covered by the first request above.

Commission records regarding the First and Second Segments of section 80.475, their predecessor rules and their successor rules can be found in the files related to the following three Commission proceedings: Private Radio (PR) Docket No. 85-145, General Docket No. 88-372, and PR Docket No. 92-257.

(1) PR Docket No. 85-145. Such docketed materials are generally available on the Commission's website and for inspection and copying at the Commission's offices. In accordance with the Commission's records retention schedule, however, the PR Docket No. 85-145 materials were forwarded for storage to a Federal records center. With the passage of time, the PR Docket No. 85-145 materials are now under the exclusive possession and control of the National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, Maryland 20740. Because these materials are neither in our possession or our control, they are not accessible pursuant to an FOIA request directed to this

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agency. See *Forsham v. Harris*, 445 U.S. 169 (1980) and Sidney Gelb on Request for Records, FOIA Control No. 9-232, *Memorandum Opinion and Order*, 78 FCC 2d 395 (1980). Should Transportation wish to access these materials through the Civilian Record Branch of NARA, arrangements can be made by contacting that office in writing or by telephone at (301) 837-3480.

(2) General Docket No. 88-372. Such docketed materials are generally available on the Commission's website and for inspection and copying at the Commission's offices. In accordance with Commission's records retention schedule, however, these materials were forwarded for storage to the National Records Holding Center (NRHC) in Suitland, Maryland. In view of the Transportation Submission, however, we arranged for the NRHC to return these materials temporarily to the Commission's headquarters at 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. At that address and by advance appointment for not more than thirty (30) calendar days from the date of this letter, we will make those files available for inspection and copying at applicable rates by Transportation or its representative. Because such files are now available for inspection and copying by Transportation or its representative under section 0.455 of the rules, 47 C.F.R. §0.455, we need not provide them in response to the Transportation Submission under section 0.461 of those rules, 47 C.F.R. § 0.461.

(3) PR Docket No. 92-257. Members of the public can find and duplicate files in this open docket by visiting the Commission's offices or by using the Electronic Comment Filing System (ECFS) on its web site ([www.fcc.gov](http://www.fcc.gov)). Thus, the comments and other materials in such docketed proceedings are records that are "routinely available" for inspection under section 0.453 of the Commission's rules. Because these materials are available under section 0.453, section 0.461 of the Commission's rules excludes them from those records that must be provided under FOIA. Accordingly, we are not providing them in response to the Transportation Submission.

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Commission records relevant to the routine processing of administrative licensing matters are available to the public at the Commission's website ([www.fcc.gov](http://www.fcc.gov)) or through the Universal Licensing System (<http://wireless.fcc.gov/uls>) under section 0.453 of the Commission's rules, 47 C.F.R. § 0.453. Records of licensing matters under Part 80 and its predecessors prior to 1999 (such as earlier records related to AMTS licensing) can be found in other databases that are available to the public under either 0.453 or 0.455 of the Commission's rules, 47 C.F.R. §§ 0.453, 0.455.

Because these materials are available under either section 0.453 or section 0.455, section 0.461 of the Commission's rules excludes them from those records that must be provided under FOIA. Accordingly, we are not providing them in response to the Transportation Submission.

5. Commission Personnel. Records were requested that identify "the FCC person[s] who made the recommendations and the ultimate decision[s]" regarding "all such licensing matters identified" in the first request above.

Specifically, records were requested on the "FCC person[s] who made the recommendations and the ultimate decision[s]" regarding the engineering "employed to consider or determine" the "coverage and other technical requirements" stated in "any predecessor or successor form" of the First and Second Rule Segments "that applied to site-based AMTS" in connection with the handling of license applications and "other licensing related matter[s]." We were not able to find records on those who made such recommendations. Those making "ultimate decisions" on these matters include members of the Commission and others acting pursuant to authority delegated by the Commission including groups of such persons. We were not able to find records on the specific individuals or groups that made such decisions.

Pursuant to Section 0.470(a)(1) of the Commission's rules, 47 C.F.R. §0.470(a)(1), commercial use requesters, such as Transportation, are to be assessed charges that recover the full direct cost of searching for, reviewing, and duplicating records sought pursuant to FOIA. The search cost associated with FOIA Control No. 2007-177 amounts to \$ 431.52, the fee for six hours of time spent by a GS-15 Attorney, pursuant to Section 0.467(a) of the Commission's Rules, 47 C.F.R. §0.467(a). There are no other charges associated with your request. Accordingly, the total charge for processing your FOIA request is \$ 431.52. The Financial Management Division, Office of Managing Director, Federal Communications Commission, will send you a bill for that amount in the near future. Payment by your remittance made payable to the Federal Communications Commission is due 30 days after receipt of the bill.

If you believe this to be a denial of your request, you may file an application for review with the FCC's Office of General Counsel within 30 days of the date of this letter. 47 C.F.R. §§ 0.461(j) and 1.115.

Questions regarding the foregoing may be referred to Allen A. Barna (202-418-1536) of the Mobility Division.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Derenge', written in a cursive style.

Thomas P. Derenge  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

Enclosure