

424 Fed.Appx. 3, 2011 WL 2118229 (C.A.D.C.)

(Not Selected for publication in the Federal Reporter)

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also District of Columbia Rules 32.1, 36. (Find CTADC Rule 32.1 and Find CTADC Rule 36)

United States Court of Appeals,
District of Columbia Circuit.
Warren C. HAVENS, Appellant

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

Nos. 02–1359, 02–1360.
May 24, 2011.

Background: Petitioner sought review of Federal Communications Commission's (FCC's) orders, [17 F.C.C.R. 21263](#) and [17 F.C.C.R. 21269](#), denying reconsideration of decisions to grant “block B” licenses to petitioner's competitor and to renew competitor's licenses to provide particular wireless services.

Holdings: The Court of Appeals held that:

- (1) petitioner was not party to competitor's “block B” license proceedings, and
- (2) FCC's interpretation of rule so as to procedurally bar petition was reasonable.

Affirmed.

West Headnotes

[1] Telecommunications 372 1038

372 Telecommunications

372IV Wireless and Mobile Communications
[372k1036](#) Licenses and Authorizations
[372k1038](#) k. Cellular telephones. **Most**

Cited Cases

Petitioner did not become party to competitor's proceeding for “block B” initial license to provide wireless services simply by filing petition for Federal Communications Commission (FCC) to deny competitor's “block A” initial license, where competitor's application for each license appeared on separate public notices, and thus triggered separate filing periods for petitions to deny those applications and separate licensing proceedings.

[2] Telecommunications 372 1038

372 Telecommunications

372IV Wireless and Mobile Communications

[372k1036](#) Licenses and Authorizations

[372k1038](#) k. Cellular telephones. **Most**

Cited Cases

Petitioner's “general informal request” did not make him party to competitor's proceeding for “block B” initial license to provide wireless services, and petitioner failed to argue to Federal Communications Commission (FCC) staff that it did, precluding petitioner from asserting that argument when he sought review from FCC. [47 C.F.R. § 1.115\(c\)](#).

[3] Telecommunications 372 1038

372 Telecommunications

372IV Wireless and Mobile Communications

[372k1036](#) Licenses and Authorizations

[372k1038](#) k. Cellular telephones. **Most**

Cited Cases

Telecommunications 372 1055

372 Telecommunications

372IV Wireless and Mobile Communications

[372k1055](#) k. Judicial review or intervention.

Most Cited Cases

Federal Communications Commission's (FCC's) interpretation of rule regarding parties to license applications, so as to procedurally bar petition for review of FCC decisions granting “block

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B” licenses to petitioner's competitor and renewing competitor's licenses to provide particular wireless services, was reasonable, was neither arbitrary nor capricious, and did not violate FCC's statutory duty, where, pursuant to that duty, FCC determined, before granting application for license, that public interest, convenience, and necessity would be served. Communications Act of 1934, § 309, 47 U.S.C.A. § 309; 47 C.F.R. § 1.106(b)(1).

*4 Appeals from Orders of the Federal Communications Commission.

Before: SENTELLE, Chief Judge, and GINSBURG and GARLAND, Circuit Judges.

JUDGMENT

PER CURIAM.

**1 These appeals were considered on the record from the Federal Communications Commission (FCC) and on the briefs filed by the parties. See FED R.APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. See D.C. CIR. R. 36(d). It is

ORDERED and **ADJUDGED** that the orders of the Federal Communications Commission be affirmed.

The staff of the Federal Communications Commission denied Warren Havens' petitions for reconsideration of the staff's decisions to (1) grant “block B” licenses to his competitor, Regionet; and (2) renew Regionet's license to provide particular wireless services. Havens then applied for review by the Commission of the denials of reconsideration. The relevant regulation permits petitions for reconsideration from “any party to the proceeding” or “any other person whose interests are adversely affected” who can show “good reason why it was not possible for him to participate in the earlier stages of the proceeding.” 47 C.F.R. § 1.106(b)(1). The Commission denied Havens' applications for review on the ground that his petitions for reconsideration

were procedurally infirm because he was neither a party to the earlier proceedings nor able to show good reason why he had not participated. Havens now appeals from the Commission's denials of his applications for review.

[1] With respect to his first petition for reconsideration, Havens argues that by filing a petition to deny Regionet's block A initial license, he became a party to the block B initial license proceeding. The Commission, however, reasonably found that he did not, as those “two sets of applications appeared on separate public notices, which triggered separate petition to deny filing periods and separate licensing proceedings.” *Regionet Wireless License, LLC, Order on Further Reconsideration*, 16 FCC Rcd. 22097, 22099 (Dec. 17, 2001). Havens did not argue before the Commission that he had good reason for failing to participate, and we therefore lack jurisdiction to consider that argument on appeal. See 47 U.S.C. § 405(a).

[2] With respect to his second petition, the FCC found that Havens' “general informal request” did not make him a party to the proceeding, and that he had failed to argue to the staff that it did. *Regionet Wireless License, LLC, Memorandum Opinion and Order*, 17 FCC Rcd. 21269, 21270 (Oct. 25, 2002). Accordingly, the FCC reasonably found that Havens was barred by 47 C.F.R. § 1.115(c) from asserting this argument in his application for review by the Commission. See *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C.Cir.2003). Havens argues in the alternative that the FCC's thirty-day period during which he could have petitioned for denial of Regionet's relicensing was too short—*5 providing “good reason” why he was not a party to the proceeding. The FCC reasonably rejected this argument.

[3] Finally, Havens argues that the FCC's interpretation of 47 C.F.R. § 1.106(b)(1), as procedurally barring his petition, is arbitrary and capricious because it violates the agency's duty under 47 U.S.C. § 309 to determine, before it grants an application for a license, whether “the public interest,

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convenience and necessity” would be served thereby. We defer to an agency’s interpretation of its own regulation as long as it is reasonable and does not violate federal law. *See Stinson v. United States*, 508 U.S. 36, 45, 113 S.Ct. 1913, 123 L.Ed.2d 598 (1993). Here, the Commission’s interpretation of § 1.106(b)(1) is reasonable because it is consistent with the plain terms of the regulation, and it does not contravene § 309 because the agency reasonably concluded that the public interest is served by finality. *Cf. Valley Telecasting Co. v. FCC*, 336 F.2d 914, 917, 919 (D.C.Cir.1964) (holding that, in § 309, the Congress “manifested unmistakably a purpose to advance a policy of finality in administrative litigation” and “clearly recognized that sound regulation has procedural as well as substantive elements, and that ‘the public interest, convenience, and necessity’ comprehends both”).

****2** The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See Fed. R.App. P. 41(b); D.C.Cir. R. 41.*

C.A.D.C.,2011.

Havens v. F.C.C.

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