

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

In the Matter of Applications of
WARREN C. HAVENS
for Automated Maritime Telecommunications
System Stations at Various Locations in Texas
FCC File Nos. 852997-853009

ORDER ON RECONSIDERATION

Adopted: October 9, 2001

Released: October 12, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. On March 2, 2001, Warren C. Havens (Havens) filed a petition for reconsideration of the January 31, 2001 Order of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division (Division) dismissing the above-captioned applications to operate Automated Maritime Telecommunications System (AMTS) stations at various locations in Texas. For the reasons that follow, the petition for reconsideration is denied.

2. Background. AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels. Under Section 80.475(a) of the Commission's Rules, AMTS applicants who propose to serve a navigable inland waterway that is less than 150 miles in length must serve that waterway in its entirety. On the other hand, AMTS applicants who propose to serve a navigable inland waterway that is more than 150 miles in length must provide continuity of service along at least 60 percent of the waterway. Finally, waterways that can be covered by a single station are ineligible for AMTS service.

3. On February 24, 2000, Havens's applications for AMTS channel block B stations to serve the Trinity River, Lower Colorado River, and San Antonio River were placed on public notice. Havens

1 Warren C. Havens, Order, 16 FCC Rcd 2539 (WTB PSPWD 2001) (Order).

2 See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), First Report and Order, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991) (AMTS First Report and Order).

3 47 C.F.R. § 80.475(a).

4 Id.

5 See Fred Daniel d/b/a Orion Telecom, Memorandum Opinion and Order, 14 FCC Rcd 19912, 19916-17 ¶ 10 (1999).

6 FCC File Nos. 852997-853002.

7 FCC File Nos. 853007-853009.

8 FCC File Nos. 853003-853006.

9 See Wireless Telecommunications Bureau Weekly Receipts and Disposals, Report No: 2081 (rel. Feb. 24, 2000).

applied for six AMTS stations that would serve 236 miles, or 55.5 percent, of the 425-mile Trinity River.<sup>10</sup> He applied for four AMTS stations that would serve 87.5 miles, or 43.7 percent, of the 200-mile San Antonio River.<sup>11</sup> He also applied for three AMTS stations that would serve 120 miles, or 42 percent, of the 286-mile Lower Colorado River.<sup>12</sup> Havens conceded that he proposed to serve less than 60 percent of each waterway, but argued that the applications nonetheless satisfied the coverage requirement because in each case he was proposing to serve 100 percent of the waterway that could be served without causing interference to the Waterway Communications System, Inc. (Watercom) AMTS channel block B stations located near the Texas coastline.<sup>13</sup> The Division rejected this argument, and on January 31, 2001, dismissed the above-captioned applications because they did not propose 60 percent coverage of the entire Trinity River, Lower Colorado River, or San Antonio River.<sup>14</sup> On March 2, 2001, Havens filed a petition for reconsideration. On March 15, 2001, Regionet Wireless Licensee LLC (Regionet)<sup>15</sup> filed an opposition. On March 27, 2001, Havens filed a reply.

4. *Discussion.* Havens first argues that the applications should be granted because, if tributaries are taken into account, the proposed stations would satisfy the coverage requirement for the specified waterways.<sup>16</sup> Specifically, with regard to the Trinity River and the associated connecting waterways he identifies,<sup>17</sup> Havens argues that 407 of the combined 596 miles are covered (68 percent). With regard to the Lower Colorado River and the associated connecting waterways he identifies,<sup>18</sup> he argues that 276 of the combined 442 miles are covered (62.4 percent). With regard to the San Antonio River and the associated connecting waterways he identifies,<sup>19</sup> he argues that 183.5 of the combined 296 miles are covered (62 percent).<sup>20</sup> We reject this method of calculating the length of a particular navigable inland waterway for purposes of determining whether the AMTS coverage requirement is met. The requirement of 60 percent service coverage, by its express terms, applies to “each of one or more navigable inland waterways”<sup>21</sup> and not to the combined mileage of the waterway and any applicant-selected tributaries. The Commission, as a general matter, has routinely and consistently treated tributaries as separate waterways for purposes of the AMTS rules.<sup>22</sup>

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<sup>10</sup> Supplemental Statement in Support of Applications Filed by Warren C. Havens to Serve the Trinity River with Six AMTS Radio Stations, at 4 (dated Jan. 24, 2000).

<sup>11</sup> Supplemental Statement in Support of Applications Filed by Warren C. Havens to Serve the San Antonio River with Four AMTS Radio Stations, at 4 (dated Jan. 24, 2000).

<sup>12</sup> Supplemental Statement in Support of Applications Filed by Warren C. Havens to Serve the Lower Colorado River with Three AMTS Radio Stations, at 4 (dated Jan. 24, 2000).

<sup>13</sup> *Order*, 16 FCC Rcd at 2540 ¶ 3. Watercom argued in a petition to deny Havens’s applications that the proposed stations would cause it interference unless there was a 150-mile separation. *Id.* at 2541-42 ¶ 5. In rejecting this argument, the Division expressed concern that requiring overly conservative co-channel interference protection would be spectrally inefficient. *Id.*

<sup>14</sup> *Id.* at 2542 ¶¶ 6-7.

<sup>15</sup> Watercom and Regionet are both controlled by Mobex Communications, Inc.

<sup>16</sup> Petition for Reconsideration at 2.

<sup>17</sup> Clear Fork, West Fork, Elm Fork, and East Fork.

<sup>18</sup> Lake Travis, Pedernales River, Town Lake, Lake Austin, the waterway that connects Walter E. Long Lake to Lower Colorado River, and the waterway that connects Lake Bastrop to Lower Colorado River.

<sup>19</sup> Cibalo Creek, and the waterway that connects Calaveras Lake to San Antonio River.

<sup>20</sup> *Id.* at 14-16.

<sup>21</sup> 47 C.F.R. § 80.475(a).

<sup>22</sup> See Amendment of Parts 2, 81 and 83 of the rules to add the Gulf Intracoastal Waterway to the authorized service area of Inland Waterways Communications Systems, *Report and Order*, GEN Docket No. 81-822, 51 R.R. 2d (P&F) (continued....)

5. Next, Havens argues that he should be treated similarly to certain Regionet AMTS station applications, which he contends did not comply with the service coverage requirement but were nonetheless granted.<sup>23</sup> Although the Regionet applications did not meet the service coverage requirement with respect to the inland waterways, we find that it was reasonable for the staff to conclude that they nonetheless appeared to be grantable as extensions of Regionet's existing West Coast system. Moreover, Regionet is allowed to provide coverage to these inland waterways because the Commission's rules expressly permit service to vessels operating beyond the served waterway.<sup>24</sup> Finally, to the extent that granting any of these Regionet applications could have been erroneous, we do not believe they would provide a basis for granting Havens's applications.<sup>25</sup>

6. Finally, Havens argues that the Division misinterpreted Section 80.475(a), because the *Order* is contrary to the rule's intent and is anti-competitive in that it results in only Watercom being able to propose AMTS service to the waterways at issue.<sup>26</sup> We note that the purpose of the service coverage requirement is to ensure that there is interoperability over a major portion of one or more waterways,<sup>27</sup> not, as Havens contends,<sup>28</sup> simply to place AMTS spectrum in service to the public. The Commission concluded that serving this purpose requires 60 percent coverage.<sup>29</sup> Consequently, we continue to believe that the *Order* is consistent with the purpose of Section 80.475(a). Moreover, both the Commission<sup>30</sup> and the D.C. Circuit<sup>31</sup> have previously rejected the argument that the 60 percent requirement is anti-competitive. That the rule may in some cases have what might be considered harsh results does not render it invalid, or the Division's interpretation of it incorrect.<sup>32</sup>

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440, 443 ¶ 15 (1982) (indicating that "adjacent lakes, bays, feeder canals and the like" are not part of a waterway for purposes of the AMTS (formerly IWCS) coverage requirement, but may be served pursuant to the rule now codified at 47 C.F.R. § 80.477(c)); *see also* 47 C.F.R. § 81.913(a) (1982) (setting out Mississippi River and its tributaries as separate waterways).

<sup>23</sup> Petition for Reconsideration at 4-6.

<sup>24</sup> 47 C.F.R. § 80.477(c).

<sup>25</sup> *See* Applications of Fred Daniel d/b/a Orion Telecom, *Order on Reconsideration*, 14 FCC Rcd 1050, 1055 n.43 (WTB PSPWD 1999) (citing Quinnipiac College, *Memorandum Opinion and Order*, 8 FCC Rcd 6285, 6286 ¶ 12 (1993)).

<sup>26</sup> Petition for Reconsideration at 6-8. He further argues that granting this "exclusive option" to Watercom contradicts the reason given to deny Watercom's suggested 150-mile separation protection (*i.e.*, such a separation would prevent the re-use of spectrum by other licensees). *Id.*

<sup>27</sup> *See AMTS First Report and Order*, 6 FCC Rcd at 440 ¶ 25.

<sup>28</sup> Petition for Reconsideration at 9.

<sup>29</sup> 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, 696 ¶¶ 69-70 (1981).

<sup>30</sup> *Id.* at 696-97 ¶¶ 69-71.

<sup>31</sup> *WJG Tel. Co. v. FCC*, 675 F.2d 386, 391 (D.C. Cir. 1982).

<sup>32</sup> *See, e.g.*, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7262 ¶ 101 (1994); Holy Spirit Harvest Church, Inc., *Hearing Designation Order*, 7 FCC Rcd 3043, 3044 ¶ 4 (MMB ASD 1992) (although the Commission's cut-off rules have caused harsh results in particular cases, the Commission's strict enforcement is necessary to promote the purposes behind the rules).

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration of the dismissal of FCC File Nos. 852997-853009, filed by Warren C. Havens on March 2, 2001 IS DENIED.

8. 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

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau