

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

In the Matter of Applications of)	
)	
WARREN C. HAVENS)	File Nos. 853010-853014
)	
for Automated Maritime Telecommunications)	
System Stations at Chaffee, Aspen, Colorado)	
Springs, Copper Mountain, and Leadville,)	
Colorado)	

ORDER

Adopted: November 13, 2000

Released: November 15, 2000

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

1. *Introduction.* On February 1 and 10, 2000, Warren C. Havens (Havens) filed the above-captioned applications for authority to construct and operate Automated Maritime Telecommunications System (AMTS) stations along a portion of the Arkansas River, known as the Arkansas Headwaters.¹ For the reasons discussed below, we dismiss the applications.

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.² 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.³ 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 for at least 60 percent of the waterway.⁴

3. On February 24, 2000, Havens's applications for five AMTS stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado, that would serve the portion of the Arkansas River known as the Arkansas Headwaters, were placed on public notice.⁵ Havens states that this portion of the Arkansas River begins in the Rocky Mountains, near Leadville, and continues another 152

¹ Applications for Authority to Construct and Operate AMTS Stations, File Nos. 853010, 853011, 853012, 853014 (filed Feb. 1, 2000); Application for Authority to Construct and Operate AMTS Stations, File No. 853013 (filed Feb. 10, 2000).

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).

³ 47 C.F.R. § 80.475(a).

⁴ *Id.*

⁵ See Wireless Telecommunications Bureau Weekly Receipts and Disposals, Report No. 2081 (rel. Feb. 24, 2000).

miles until it reaches the Pueblo Reservoir.⁶ Havens proposes to cover 146 miles of the Arkansas Headwaters,⁷ or 10.1 percent of the approximately 1,450-mile Arkansas River.⁸ Havens notes that the proposed 146-mile coverage represents 96.1 percent of the Arkansas Headwaters,⁹ which he argues should be considered a distinct body of water because there is a “break in navigability” after the Pueblo Reservoir.¹⁰

4. *Discussion.* Havens requests that we treat the portion of the Arkansas River that is known as the Arkansas Headwaters as a distinct waterway. It appears that Havens’s request is premised on his belief that a “break in navigability,” which he suggests occurs after the Pueblo Reservoir, serves as a line of demarcation that separates the Arkansas Headwaters from the rest of the Arkansas River. We disagree. In this connection, we note that the Commission’s Part 80 rules are devoid of any provision allowing applicants to “subdivide” a waterway when that waterway is commonly mapped as a single geographic unit. As a result, we find that as the term “navigable inland waterway” is used in the Commission’s Part 80 rules, the Arkansas Headwaters is part of the 1,450-mile Arkansas River and is not a distinct waterway. Further, we believe that it is worth noting that when the Commission allocated spectrum for AMTS use on the Mississippi River in 1981,¹¹ the rules specifically listed the Arkansas River as one of the “navigable waterways” comprising the Mississippi River system.¹² The Commission did not specifically treat a portion of the Arkansas River, such as the Arkansas Headwaters, as a separate waterway. The only river that was treated as more than one waterway was the Mississippi itself, which was divided into upper and lower sections for purposes of the AMTS coverage requirements.¹³ Similarly, the Commission expressly treated the Gulf of Mexico (Gulf) as comprising distinct waterways by dividing it into eastern and western sections¹⁴ when the rules were revised in 1984 to permit AMTS service in the Gulf.¹⁵ Notably, the

⁶ Supplemental Statement in Support of Applications Filed by Warren C. Havens to Serve the Arkansas Headwaters River (Arkansas Headwaters Recreation Area) with a Series of AMTS Radio Stations at 4 (filed Jan. 24, 2000) (Supplemental Statement).

⁷ *Id.*

⁸ *See the Concise Columbia Electronic Encyclopedia*, Third Edition, Columbia University Press (1994).

⁹ Supplemental Statement at 4.

¹⁰ *Id.* at 1 n.11; Electronic Mail Message from Warren C. Havens to Kimberly Kleppinger and Scot Stone, Federal Communications Commission (dated Aug. 29, 2000).

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, *Report and Order*, GEN Docket No. 80-1, 84 FCC 2d 875, 876 ¶ 2, *on reconsideration*, *Memorandum Opinion and Order*, GEN Docket No. 80-1, 88 FCC 2d 678 (1981), *aff’d sub nom. WJG Tel. Co. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

¹² *See* 47 C.F.R. § 81.913(a) (1982).

¹³ *Id.*

¹⁴ *See* 47 C.F.R. § 81.913(a) (1985).

¹⁵ *See* Amendment of Parts 2, 81 and 83 of the Rules to Add the Gulf of Mexico to the Authorized Service Areas of Inland Waterways Communications Systems, *Report and Order*, GEN Docket No. 84-18, 56 Rad. Reg. 2d (P&F) 1613, 1616 ¶ 17 (1984). The list of rivers comprising the Mississippi River system was removed at this time, to streamline the rules.

Commission has not made any rule changes affecting the coverage requirement for inland waterways since that time. Therefore, we conclude that the Arkansas River remains a single waterway for purposes of the coverage requirements under the Commission's AMTS rules, and that a licensee may not choose to serve only the Arkansas Headwaters.

5. Because the Arkansas River is greater than 150 miles in length, an AMTS application that proposes to serve this river can be only granted if it is demonstrated that the proposed system will provide continuity of service to at least 60 percent of the river.¹⁶ In this case, Havens proposes to serve only 146 miles, or approximately 10.1 percent, of the Arkansas River. Therefore, Havens's above-captioned applications are dismissed as defective because they do not propose 60 percent coverage of the entire Arkansas River.¹⁷

6. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 C.F.R. §§ 154(i), 303(r), and Sections 1.934(d) and 80.475(a) of the Commission's Rules, 47 C.F.R. §§ 1.934(d), 80.475(a), that File Nos. 853010-853014, filed by Warren C. Havens on February 1 and 10, 2000 ARE DISMISSED.

7. 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

¹⁶ 47 C.F.R. § 80.475(a).

¹⁷ 47 C.F.R. § 1.934(d).