

**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 ON RECONSIDERATION

Adopted: April 27, 2001

Released: May 1, 2001

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

1. *Introduction.* On December 15, 2000, Warren C. Havens (Havens) filed a petition for reconsideration of the *Order*¹ of the Public Safety and Private Wireless Division (Division) dismissing his applications for authority to construct and operate Automated Maritime Telecommunications System (AMTS) stations along a segment of the Arkansas River, known as the Arkansas Headwaters. For the reasons discussed below, Havens's 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.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 AMTS applicants who propose to serve a portion of coastline must provide continuity of service to a "substantial navigational area."⁵

3. On February 1 and 10, 2000, Havens filed the above-captioned applications for five AMTS stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado.⁶ The

¹ Applications of Warren C. Havens, *Order*, 15 FCC Rcd 22296 (WTB PSPWD 2000) (*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).

³ 47 C.F.R. § 80.475(a).

⁴ *Id.*

⁵ *Id.*

⁶ 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 Station, File No. 853013 (filed Feb. 10, 2000).

applications were placed on public notice on February 24, 2000.⁷ Havens proposed to provide AMTS service to a portion of the Arkansas River known as the Arkansas Headwaters, which begins in the Rocky Mountains, near Leadville, and runs 152 miles until it reaches the Pueblo Reservoir.⁸ Havens proposed to cover 146 miles of the Arkansas Headwaters,⁹ or about 10 percent of the approximately 1,450-mile Arkansas River.¹⁰ Havens noted that the proposed 146-mile coverage represents 96.1 percent of the Arkansas Headwaters,¹¹ which he argued should be considered a distinct body of water because there is a “break in navigability” after the Pueblo Reservoir.¹² Havens did not request a waiver of the AMTS coverage requirement.

4. The Division dismissed the applications in an *Order* released on November 15, 2000. The Division stated 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.¹³ The Division also noted that when the Commission allocated spectrum for AMTS use on the Mississippi River in 1981, the rules specifically listed the Arkansas River as one of the “navigable waterways” comprising the Mississippi River system.¹⁴ As a result, the Division found 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.¹⁵ Because Havens did not propose 60 percent coverage of the entire Arkansas River, his applications were dismissed as defective.¹⁶ On December 15, 2000, he filed a petition for reconsideration of the Division decision. On January 5, 2001, Regionet Wireless License LLC filed an opposition to the petition for reconsideration. On January 19, 2001, Havens filed a reply.

5. *Discussion.* Havens argues that the Arkansas River is comprised of two separate “corridors”: the Arkansas Headwaters, which is used for recreational boating, and a commercial barge corridor from Tulsa down river to the Mississippi River.¹⁷ He states that the Army Corps of Engineers and other federal

⁷ See Wireless Telecommunications Bureau Weekly Receipts and Disposals, Report No. 2081 (rel. Feb. 24, 2000).

⁸ 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).

⁹ Supplemental Statement at 4.

¹⁰ See *Concise Columbia Electronic Encyclopedia*, Third Edition, Columbia University Press (1994).

¹¹ Supplemental Statement at 4.

¹² *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).

¹³ *Order*, 15 FCC Rcd at 22297 ¶ 4.

¹⁴ *Id.* (citing 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)); 47 C.F.R. § 81.913(a) (1982)).

¹⁵ *Order*, 15 FCC Rcd at 22297 ¶ 4.

¹⁶ *Id.* at 22298 ¶ 5.

¹⁷ Havens Petition for Reconsideration at 2-3.

and state entities have recognized this fact.¹⁸ In this connection, Havens contends that the AMTS service coverage requirement should apply separately to these upper and lower segments of the Arkansas River.¹⁹ We believe that this argument is flawed because the Commission's Rules speak only of "waterways," not of "corridors" within waterways. As noted in the *Order*,²⁰ when the Commission allocated spectrum for AMTS use on the Mississippi River in 1981,²¹ the rules specifically listed the entire Arkansas River and not some segment thereof as one of the "navigable waterways" comprising the Mississippi River system.²² As also noted in the *Order*, when the Commission intended to treat a body of water as more than one waterway for AMTS purposes, it did so expressly.²³ Moreover, we note, as Havens points out,²⁴ that these rules were adopted in response to a petition by tug boat, tow boat and barge operators – *i.e.*, vessels that do not or cannot traverse the entire length of the Arkansas River. We do not believe that this backdrop changes the plain meaning of the rules to allow Havens to treat the commercial barge corridor and Arkansas Headwaters as distinct waterways.

6. Further, Havens is incorrect when he states that the Commission already has deemed the segment of the Arkansas River that flows from Tulsa to the Mississippi River to be a distinct navigable inland waterway.²⁵ In setting forth that segment of the river in PR Docket No. 92-257 as the coverage requirement for the VHF public coast station geographic licensees²⁶ (and proposing the same coverage

¹⁸ *Id.* at 5. Regionet argues that the categorization of rivers by other federal agencies or by state agencies does not bind the Commission. Regionet Opposition at 2, 5. Havens replies that the Commission's Rules refer to outside authority with respect to issues of navigability. Havens Reply to Opposition at 5.

¹⁹ Havens Petition for Reconsideration at 6. He argues that the segment of the Arkansas River between the Pueblo Dam Reservoir and Tulsa is not entirely navigable and that extending AMTS coverage to this part of the river would be illogical. *Id.* at 5.

²⁰ *Order*, 15 FCC Rcd at 22297 ¶ 4.

²¹ 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).

²² See 47 C.F.R. § 81.913(a) (1982).

²³ See *id.* (dividing Mississippi River into upper and lower sections); 47 C.F.R. § 81.913(a) (1985) (dividing Gulf of Mexico into eastern and western sections). Regionet argues that segregation of the rivers specified in GEN Docket No. 80-1 should be treated through rule making and not on an ad hoc basis through interpretation of a license application that was not accompanied by a waiver request. Regionet Opposition at 4. Havens contends that the Commission's Rules do not restrict AMTS licensing for inland navigable waterways to any particular list derived from past dockets or decisions. Havens Reply to Opposition at 5.

²⁴ Havens Petition for Reconsideration at 4.

²⁵ See *id.* at 3.

²⁶ See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19862 n.46, 19870 ¶ 34 (1998).

requirement for the AMTS geographic licensees²⁷) for the licensing area including the Arkansas River, the Commission only defined what portion of the river must be served by such licensees; it did not define the Arkansas River above and below Tulsa (or, to use another example from the same provision, the Pacific Ocean above and below the Arctic Circle) as two separate waterways.

7. Similarly, Havens is incorrect when he argues that the Division permitted AMTS service to distinct corridors of inland waterways in its *Great Lakes Order*.²⁸ In that decision, we concluded that, for purposes of the AMTS coverage requirement, the Great Lakes are a coastline area, not an inland waterway.²⁹ Thus, they are governed by the “substantial navigational area” requirement, which, unlike the requirement for inland waterways, can be satisfied by serving a distinct corridor.

8. Finally, Havens argues that had he characterized his applications as providing AMTS service to the various tributaries of the Arkansas Headwaters, rather than the Arkansas Headwaters itself, the inland waterway coverage requirement would be met.³⁰ Havens did not raise this argument earlier, and did not provide enough information in his applications or petition for reconsideration for us to determine whether the proposed stations would provide the requisite coverage to these tributaries. For example, it is not clear from the record how much of each tributary would be served, or whether each tributary is eligible for AMTS service.³¹

9. *Conclusion.* In view of the foregoing, we conclude 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.³² Because the Arkansas River is greater than 150 miles in length, an AMTS application that proposes to serve it can be granted only if the proposed system will provide continuity of service to at least 60 percent of the river.³³ In this case, Havens proposed to serve only 146 miles, or approximately 10 percent, of the Arkansas River. Therefore, Havens’s applications were properly dismissed as defective because they did not propose 60 percent coverage of the entire Arkansas River.³⁴

10. 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

²⁷ Amendment of the Commission’s Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22611 n.200 (2000).

²⁸ Havens Petition for Reconsideration at 7.

²⁹ Fred Daniel d/b/a Orion Telecom and Paging Systems, Inc. for Automated Maritime Telecommunications System Stations Along the Great Lakes, *Memorandum Opinion and Order*, 13 FCC Rcd 17474, 17477 ¶ 6 (WTB PSPWD 1998).

³⁰ Havens Petition for Reconsideration at 8.

³¹ Waterways that can be covered by a single station are ineligible for AMTS service. See Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 14 FCC Rcd 19912, 19916-17 ¶ 10 (1999).

³² *Id.*

³³ 47 C.F.R. § 80.475(a).

³⁴ See *Order*, 15 FCC Rcd at 22298 ¶ 5.

Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Warren C. Havens on December 15, 2000 IS DENIED.

11. 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