

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

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

ORDER

Adopted: January 29, 2001

Released: January 31, 2001

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

I. INTRODUCTION

1. On March 24, 2000, Waterway Communications System, Inc. (Watercom) filed a petition to deny certain applications of Warren C. Havens (Havens) for authority to operate Automated Maritime Telecommunications System (AMTS) stations at various locations in Texas.¹ For the reasons discussed below, we dismiss the above-captioned applications for AMTS stations that would serve the Lower Colorado River,² the San Antonio River,³ and the Trinity River.⁴

II. BACKGROUND

2. AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.⁵ Under Section 80.475(a) of the Commission's Rules, AMTS applicants who propose to serve a navigable inland waterway that is

¹ Havens filed applications for AMTS stations that would serve the Trinity River (FCC File Nos. 85299-853001), San Antonio River (FCC File Nos. 853003-83006), and Lower Colorado River (FCC File Nos. 853008-853009). Watercom petitioned to deny most of these applications, specifically, FCC File Nos. 852999-853001, 853003-853006, and 853008-853009. In addition, Watercom petitioned to deny Havens's applications for AMTS stations that would serve the Guadalupe River (FCC File Nos. 853033 and 853034) and the Brazos River (FCC File Nos. 853041 and 853042). The Guadalupe River and Brazos River applications will be addressed in a future order. On April 10, 2000, Havens filed an opposition to Watercom's petition to deny. On April 18, 2000, Watercom filed a reply.

² FCC File Nos. 853007-853009.

³ FCC File Nos. 853003-853006.

⁴ FCC File Nos. 852997-853002.

⁵ 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*).

less than 150 miles in length must serve that waterway in its entirety.⁶ 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.⁷

3. On February 24, 2000, Havens's applications for AMTS channel block B stations along the Trinity River, Lower Colorado River, and San Antonio River were placed on public notice.⁸ Havens applied for six AMTS stations that would serve 236 miles, or 55.5 percent, of the 425-mile Trinity River.⁹ He applied for four AMTS stations that would serve 87.5 miles, or 43.7 percent, of the 200-mile San Antonio River.¹⁰ He also applied for three AMTS stations that would serve 120 miles, or 42 percent, of the 286-mile Lower Colorado River.¹¹ Havens acknowledges that he proposes to serve less than 60 percent of each waterway.¹² Nevertheless, he argues that in each case he is proposing to serve 100 percent of the waterway that can be served without causing interference to Watercom's seven AMTS channel block B stations that are located near the Texas coastline.¹³

III. DISCUSSION

4. In its petition to deny, Watercom offers two reasons why we should deny the Havens applications. First, Watercom argues that Havens really intends to provide service to land-based, rather than maritime, users with his proposed AMTS stations.¹⁴ Under the Commission's Rules, however, an AMTS station may provide public correspondence service to stations on land so long as priority is given to marine-originating communications.¹⁵ The Commission has determined that it is in the public interest to permit AMTS stations to serve units on land because it expands the range of communications services that

⁶ 47 C.F.R. § 80.475(a).

⁷ *Id.*

⁸ See Wireless Telecommunications Bureau Weekly Receipts and Disposals, Report No: 2081 (rel. Feb. 24, 2000).

⁹ 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) (Trinity River Statement).

¹⁰ 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) (San Antonio River Statement).

¹¹ 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) (Lower Colorado River Statement).

¹² Trinity River Statement at 4; San Antonio River Statement at 4; Lower Colorado River Statement at 4.

¹³ Trinity River Statement at 5; San Antonio River Statement at 5; Lower Colorado River Statement at 5.

¹⁴ Petition to Deny at 2-5. Watercom also argued that Havens is attempting to serve non-maritime users in Dallas, Austin, and San Antonio, Texas, with stations that operate on both channel block A (Guadalupe River and Brazos River) and channel block B (Trinity River, Lower Colorado River, and San Antonio River), thereby gaining a monopoly on AMTS frequencies in these particular metropolitan areas. *Id.* at 4-5. We believe that it will be more appropriate to address the merits of this argument when we reach final resolution of Havens's applications for the Guadalupe River system and Brazos River system, which, as previously indicated, will be the subject of a future order.

¹⁵ 47 C.F.R. § 80.123.

such stations may offer and fosters a regulatory environment in which AMTS stations may effectively compete against other commercial mobile radio service providers.¹⁶ In addition, we have concluded that an AMTS licensee is entitled to add a station to a system when the intended purpose of that station is to primarily serve units on land, so long as the station continues to give priority to marine-originating communications.¹⁷ Thus, even if Watercom is correct and Havens's true intention is to serve units on land (which Havens denies¹⁸), this fact alone would not constitute a sufficient reason to deny the applications.

5. Watercom also contends that Havens's proposed stations will cause interference to its seven AMTS stations that are located near the Texas coastline.¹⁹ Watercom has calculated that its stations' receivers are sensitive to co-channel signals that are transmitted from an omnidirectional antenna at a distance of 150 miles, and that all of Havens's proposed AMTS stations would operate within 150 miles of Watercom stations.²⁰ While the Commission's Rules do not specifically define a service area for AMTS stations,²¹ we believe that Watercom's suggestion of a 150-mile separation is excessive. First, we note that a number of Watercom stations are within 150 miles of co-channel facilities, and we have no record of interference complaints from Watercom regarding the operations of such facilities.²² In addition, Watercom's calculations do not consider the fact that Havens proposes to use directional antennas oriented away from Watercom's stations, and to afford 12 dB protection at each Watercom station's predicted 17 dBu V/m contour.²³ We are concerned that requiring overly conservative co-channel interference protection, such as Watercom's suggested 150-mile protective separation, would be spectrally inefficient because it would prevent licensees from re-using spectrum in areas that could be served without harming other licensees.²⁴ For the foregoing reasons, we are not persuaded by Watercom's argument that grant of Havens's applications for AMTS stations will cause harmful interference.

¹⁶ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16964 ¶ 24 (1997) (*Second Report and Order*).

¹⁷ See Application of Fred Daniel d/b/a Orion Telecom for an Automated Maritime Telecommunications System Station at Corona, California, *Memorandum Opinion and Order*, 14 FCC Rcd 3837, 3839 ¶ 4 (WTB PSPWD 1999).

¹⁸ Opposition at 3 n.6.

¹⁹ Petition to Deny at 2.

²⁰ Petition to Deny, Analysis of Potential Interference Between Proposed Warren Havens AMTS and Existing Watercom AMTS at 2-3.

²¹ *Second Report and Order*, 12 FCC Rcd at 17008 ¶ 117.

²² For example, Paging System, Inc.'s (PSI's) Chicago station is within 89 miles of Watercom's Tonica, Illinois station and 28 miles of Watercom's Lockport, Illinois station, which is also within 123 miles of PSI's Port Washington, Wisconsin station. Similarly, PSI's Lakewood, Ohio station is within 95 miles of Watercom's Hookstown, Pennsylvania station and 137 miles of Watercom's Brownsville, Ohio station.

²³ Trinity River Statement at 5; San Antonio River Statement at 5; Lower Colorado River Statement at 5. We note that 12 dB at the 17 dBu contour is the co-channel interference protection standard the Commission's Rules require for VHF (156-162 MHz) public coast stations. 47 C.F.R. § 80.773(a).

²⁴ Amendment of the Commission's Rules Concerning Maritime Communications, *Memorandum Opinion and Order*, PR Docket No. 92-257, 14 FCC Rcd 8804, 8806 ¶ 5 (1999).

6. We nonetheless note that under Section 80.475(a) of the Commission's Rules, 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.²⁵ The purpose of this rule is to provide assurance that a substantial portion of the waterway will be continuously served by an integrated system, thus maximizing the ease of communications for vessels traveling along that waterway.²⁶ As indicated, Havens proposes to serve less than 60 percent of the Trinity River, Lower Colorado River, and San Antonio River.²⁷ However, with respect to each river, Havens argues that he is proposing to serve 100 percent of what can be served without causing interference to Watercom's stations.²⁸ Havens argues that proposing coverage to "100 percent of the available portion of the waterway" should be deemed to satisfy the coverage requirement set forth in Section 80.475(a). We disagree. The rule, by its express terms, requires coverage of 60 percent of the entire waterway, not 60 percent of some portion of the waterway selected by the applicant. Therefore, we find that Havens's above-captioned applications are defective because they do not propose 60 percent coverage of the entire Trinity River, Lower Colorado River, or San Antonio River.²⁹

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 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), FCC File Nos. 852997-853009, filed by Warren C. Havens on February 1 and 10, 2000 ARE DISMISSED.

8. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the petition to deny FCC File Nos. 852999-853001, 853003-853006, 853008-853009, filed by Waterway Communications, Inc., on March 24, 2000 IS DENIED.

9. 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.

²⁵ 47 C.F.R. § 80.475(a).

²⁶ *AMTS First Report and Order*, 6 FCC Rcd at 439-440 ¶¶ 22-25.

²⁷ Trinity River Statement at 4; San Antonio River Statement at 4; Lower Colorado River Statement at 4.

²⁸ Trinity River Statement at 5; San Antonio River Statement at 5; Lower Colorado River Statement at 5.

²⁹ 47 C.F.R. § 1.934(d).

FEDERAL COMMUNICATIONS COMMISSION

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