

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

In the Matter of)
)
WARREN C. HAVENS)
)
Petition for Declaratory Ruling or Waiver)
Regarding Section 80.123 and Other)
Commission's Rules as Applied to Automated)
Maritime Telecommunications System Licenses)

ORDER

Adopted: April 7, 2003

Released: April 18, 2003

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

1. *Introduction.* We have before us a petition for declaratory ruling or, in the alternative, waiver regarding the Commission's rules that govern Automated Maritime Telecommunications System (AMTS) licensees, filed by Warren C. Havens (Havens) on October 7, 2002.¹ For the reasons that follow, we deny both the petition for declaratory ruling and the waiver request.

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 Pursuant to Section 80.475(c) of the Commission's Rules, in lieu of public correspondence service,³ an AMTS system may provide private coast station communications related to the operational requirements of ships.⁴ In addition, Section 80.123 of the Commission's Rules permits AMTS stations to provide public correspondence service to stations on land, as long as marine-originating traffic is given priority.⁵

3. Havens holds a number of AMTS licenses.⁶ He seeks to use his licensed facilities to provide non-interconnected dispatch service and other non-public correspondence service to units on land.⁷ On

¹ Warren C. Havens Petition for Declaratory Ruling and in the Alternative, Based on the Ruling, Petition for Rule Waiver (filed Oct. 7, 2002 and supplemented Oct. 9, 2002) (Petition).

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 See 47 C.F.R. § 80.5 ("Any telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission").

⁴ See 47 C.F.R. § 80.475(c).

⁵ See 47 C.F.R. § 80.123; see also Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6702-03 ¶ 37 (2002) (*Fifth Report and Order*).

⁶ Call Signs WHV211, WHV257, WHV287, WHV523, WHV653, and WPSQ413.

⁷ Havens states that he would like to offer the type of private mobile radio service (PMRS) that is defined in 47 C.F.R. § 20.3, as well as 47 C.F.R. § 22.99 dispatch service, and machine-to-machine data communications which may be connected to a private data network. Petition at 3.

August 15, 2002, the Public Safety and Private Wireless Division (Division), in response to two Havens petitions for declaratory ruling, concluded that the Commission's Rules require that each AMTS system be interconnected to the public switch telephone network (PSTN),⁸ even if the station carries only private coast communications.⁹ The Division also concluded that AMTS stations are not permitted to offer private communications to stations on land,¹⁰ because Section 80.475(c) specifically limits AMTS non-public correspondence to "private coast station communications related to the operational requirements of ships."¹¹ On October 7, 2002, Havens filed another petition for declaratory ruling seeking clarification that AMTS licensees may provide non-interconnected non-public correspondence service to units on land.¹² In the alternative, he requests a waiver to permit him to offer such service.

4. *Petition for Declaratory Ruling.* We reiterate our previous conclusion that the Commission's rules do not permit AMTS licensees to provide non-interconnected private service to units on land. We find none of Havens's arguments to the contrary to be persuasive. Section 80.123 allows AMTS stations to "provide public correspondence service to units on land."¹³ "Public correspondence" is defined in Section 80.5 of the Commission's Rules as "[a]ny telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission."¹⁴ Havens argues that the term "public correspondence" as used in Section 80.123 includes non-interconnected private service.¹⁵

5. We agree with Havens that nothing in the definition of "public correspondence" requires interconnection to the PSTN.¹⁶ However, we remind Havens that, as we previously concluded, regardless of the end user (*i.e.*, ship station, land unit or fixed station), an AMTS *system* that carries the public correspondence communication must be interconnected.¹⁷ Havens appears to argue that the

⁸ See Warren C. Havens, *Letter*, 17 FCC Rcd 15903, 15904 (WTB PSPWD 2002) (Havens Letter). The Division noted, however, that although it requires that each *system* be interconnected to the PSTN, it does not require that each base station in a system be individually interconnected to the PSTN. Consequently, so long as the ability to interconnect any mobile unit in contact with any base station is maintained, not every base station in a system needs to be interconnected. In addition, we stated that there is no requirement that all services offered by an AMTS operator include interconnection to the PSTN. *Id.* at 15904-05.

⁹ *Id.* at 15904-05.

¹⁰ See *id.* at 15907.

¹¹ See *id.*; see also 47 C.F.R. § 80.475(c) (emphasis added).

¹² Specifically, Havens posits three questions, each of which essentially restates the issue of whether AMTS licensees may offer non-interconnected non-public correspondence service to units on land. His first question is whether the Havens Letter concluded that AMTS carrying private coast communications in lieu of public correspondence service, pursuant to Section 80.475(c), are not permitted to serve units on land. Petition at 5. His second question is whether the term "public correspondence," as used in Section 80.123, encompasses his contemplated non-interconnected private communications. *Id.* at 14. Finally, he asks whether, pursuant to Sections 20.9(b) and 80.123 of the Commission's Rules, and the Commission's decision in Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*), AMTS stations may provide non-interconnected PMRS either in addition to or in lieu of interconnected commercial mobile radio service (CMRS). Petition at 21. Given the overlap among the issues as framed by Havens, we will not address them separately, but as part of a broader discussion.

¹³ 47 C.F.R. § 80.123.

¹⁴ 47 C.F.R. § 80.5.

¹⁵ Petition at 11-14.

¹⁶ See *id.* at 12.

¹⁷ See Havens Letter, 17 FCC Rcd at 15904-05.

interconnection requirement no longer applies, because the purpose of the requirement was to enable maritime vessels to communicate with parties on land via the PSTN, and the Commission has adopted geographic licensing rules for AMTS that will allow licensees to serve areas that have no maritime traffic.¹⁸ We disagree. First, we note that Havens is seeking a declaratory ruling or waiver with respect to his site-based AMTS licenses, so the operations of future geographic licensees are not at issue. Next, we note that nothing in Section 80.123 or the proceeding adopting it¹⁹ suggests that AMTS operational rules apply differently regarding service to units on land.²⁰ Similarly, the changes to the AMTS coverage requirement to permit service to non-maritime areas did not eliminate either the interconnection requirement for AMTS systems or the designation of AMTS as a maritime communications service, as evidenced by the continuing requirement that AMTS site-based and geographic area licensees must still ensure that marine-originating traffic is given priority and certain major waterways are served.²¹

6. Finally, Havens argues that the Commission has afforded AMTS licensees the option to carry public or private correspondence, and that this flexibility extends to service to units on land. We disagree. First, as discussed above, Section 80.123 expressly limits service to units on land to “public correspondence.” Second, as noted previously,²² the only service in addition to public correspondence that Section 80.475(c) permits AMTS stations to provide is “private coast station communications related to the operational requirements of ships.”²³ Havens’s reliance²⁴ on Section 20.9²⁵ and the *Third Report and Order* in PR Docket No. 92-257²⁶ is misplaced, for those items govern public coast stations in the 156-162 MHz (VPC) band, and not AMTS stations. Contrary to Havens’s contention, the Commission’s decision in GN Docket No. 93-252, did not provide all CMRS providers, including AMTS, the flexibility to dedicate a portion of their spectrum to PMRS.²⁷ Moreover, in PR Docket No. 92-257, the Commission sought comment on its proposal to extend this regulatory status flexibility specifically to VPC licensees.²⁸ To

¹⁸ See Petition at 12-13, 20-21 (citing *Fifth Report and Order*, 17 FCC Rcd 6685, 6702-03 ¶ 37). Havens also suggests that service to fixed land units, such as telemetry and telecommand, does not require interconnection. Petition at 13, 20-21. Such communications do not come within the definition of “public correspondence,” and thus are not permitted by Section 80.123. Contrary to Havens’s suggestion, see Petition at 7 & n.4, the recent amendment of Section 80.207 to add digital emissions to the list of authorized AMTS emissions, see 47 C.F.R. § 80.207(d) (as amended by *Fifth Report and Order*, 17 FCC Rcd at 6730), did not in any way expand the scope of Section 80.123.

¹⁹ See 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, 16964-65 ¶¶ 23-26 (1997) (*Public Coast Second Report and Order*).

²⁰ The one exception is that units on land may use equipment authorized under Parts 22, 80, or 90 of the Commission’s Rules, 47 C.F.R. Parts 22, 80, 90, while ship stations must use equipment authorized under Part 80. Compare 47 C.F.R. § 80.123(d) with 47 C.F.R. § 80.43. The absence of any other listed exceptions suggests that there are no other exceptions. See *United States of America v. Davis*, 978 F.2d 415, 418 (8th Cir. 1992) (the maxim *expressio unius est exclusio alterius* dictates that an expressly stated exception impliedly excludes all other exceptions).

²¹ See *Fifth Report and Order*, 17 FCC Rcd at 6702-03 ¶ 37.

²² See Havens Letter, 17 FCC Rcd at 15906.

²³ 47 C.F.R. § 80.475(c).

²⁴ See Petition at iii, 15-17.

²⁵ 47 C.F.R. § 20.9.

²⁶ Amendment of the Commission’s Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19855 n.3 (1998).

²⁷ Petition at 16 (citing *CMRS Second Report and Order*, 9 FCC Rcd at 1460-63 ¶¶ 118-123).

²⁸ See *Public Coast Second Report and Order*, 12 FCC Rcd at 16999 ¶¶ 99-100.

date, the Commission has not proposed to extend to AMTS licensees any greater flexibility regarding the provision of private communications than is currently allowed under Section 80.475(c).

7. *Waiver Request.* Havens requests, in the event we disagree with the arguments in his petition for declaratory ruling, that we grant a waiver of those requirements that prevent AMTS provision of non-interconnected private communications to land units.²⁹ We may grant a waiver request if it is demonstrated that 1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or 2) the “unique or unusual circumstances of the instant case” make application of the rules “inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”³⁰

8. Havens argues that application of the Commission’s rules in the instant case would frustrate their underlying purpose. He asserts that the underlying purpose of the subject rules is to allow AMTS the same flexibility for provision of private communications that other CMRS services, such as PCS and VPC, are allowed.³¹ This is incorrect. As indicated above, the Commission has not proposed to extend to AMTS licensees any greater flexibility regarding the provision of private communications than is currently allowed under Section 80.475(c). In fact, the Commission’s purpose in permitting public coast stations to provide service to units on land was to enable licensees to supplement their commercial revenues in order to support and facilitate expanded commercial service to marine traffic.³² Therefore, in the instant case, we find no conflict between the prohibition on providing private communications service to units on land and the rules’ underlying purpose.

9. Moreover, we find that Havens presents us with a broad policy statement, not unique or unusual circumstances that are factually specific to his circumstances, when he states that his waiver request should be granted because (1) application of the interconnection requirement will frustrate the AMTS provision of data telemetry and telecommand-SCADA; (2) the equipment currently available on a commercially feasible basis for AMTS service is designed primarily for non-interconnected private land communications; and (3) AMTS service will be at a competitive disadvantage with other CMRS providers if AMTS is only allowed to provide interconnected public correspondence, rather than non-interconnected private communications, to land units.³³ A grant of such a broad waiver request would apply equally to all AMTS licensees, and would constitute, in essence, a de facto amendment of the Commission’s Rules. We decline to grant such a request.³⁴ Rather, such relief would more appropriately be the subject of a rulemaking request.

10. *Conclusion.* The Commission’s rules require that AMTS systems be interconnected to the PSTN. Under certain conditions, the rules permit non-interconnected mobile-to-mobile communications service to ship and land units so long as the AMTS system that provides that service is interconnected. In lieu of the public correspondence communications that AMTS stations can provide ships and, pursuant to Section 80.123, for land units, the Commission permits the AMTS provision of private coast station communications that is related to the operational requirements of *ships*. For the foregoing reasons, we

²⁹ Petition at 6.

³⁰ 47 C.F.R. § 1.925(b)(3).

³¹ Petition at 7.

³² See *Public Coast Second Report and Order*, 12 FCC Rcd at 16963-65 ¶¶ 22-25.

³³ Petition at 7-9.

³⁴ See *Nextel Communications Inc., Order*, 14 FCC Rcd 11678, 11691-92 ¶ 31 (WTB 1999) (quoting *Verilink Corp.*, 10 FCC Rcd 8914, 8916 ¶ 6 (1995); *Riverphone, Memorandum Opinion and Order*, 3 FCC Rcd 4690, 4692 ¶ 12 (1988)).

deny Havens's petition for declaratory ruling because the Commission's rules do not permit AMTS provision of private communications to land units. In addition, because Havens has not demonstrated that this prohibition frustrates the purpose of the AMTS rules or that there are unique or unusual circumstances present, we also deny his request to waive the Commission's rules in order to permit provision of such service.

11. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.2 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.2, 1.925, the petition for declaratory ruling or, in the alternative, rule waiver filed by Warren C. Havens on October 7, 2002 is DENIED.

12. 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

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