

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

In the Matter of)
AVALON COMMUNICATIONS)
CORPORATION)
Petition to Delete Frequency 162.025 MHz from)
License for Marine Public Coast Station WAH, St.)
Thomas, United States Virgin Islands)

ORDER PROPOSING MODIFICATION

Adopted: July 6, 2005

Released: July 7, 2005

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

1. Introduction. On April 11, 2005, the National Telecommunications and Information Administration (NTIA) requested that the Commission rescind the authorization of Marine Public Coast Station WAH, St. Thomas, United States Virgin Islands, licensed to Avalon Communications Corporation (Avalon), to transmit on frequency 162.025 MHz. For the reasons set forth below, we propose to modify Avalon's license to delete frequency 162.025 MHz.

2. Background. Marine VHF Channel 88 (ship transmit frequency 157.425 MHz/coast transmit frequency 162.025 MHz) is available under certain circumstances for use by public coast stations near the Canadian border, but is otherwise allocated exclusively for Federal Government use. In April 1986, Global Communications Corporation (Global) submitted a modification application and waiver request to add certain frequencies not ordinarily available to coast stations, including frequency 162.025 MHz, to the authorization for Station WAH. The Commission coordinated the request with NTIA's Interdepartment Radio Advisory Committee (IRAC), which granted authorization for Station WAH to use frequency 162.025 MHz in June 1986. The assignment was entered into the Government Master File (GMF) with a five-year expiration date, and any renewal of the authorization was conditioned on Station WAH again coordinating the use of the frequency with the IRAC. In November 1986, the former Private Radio Bureau granted Global's waiver request, and added frequency 162.025 MHz to the license for

1 Letter dated April 11, 2005 from Karl B. Nebbia, Deputy Associate Administrator, NTIA to Ronald Repasi, Federal Communications Commission (NTIA Letter).

2 See 47 C.F.R. §§ 2.106 n.US223, 80.371(c)(1)(i) n.3.

3 Global assigned the license for Station WAH to Avalon in 1996.

4 The IRAC is a committee of the Federal departments, agencies, and administrations that advises NTIA in assigning frequencies to Federal radio stations and in developing and executing policies, programs, procedures, and technical criteria pertaining to the allocation, management, and use of the spectrum. Amendment of Parts 2, 25, and 73 of the Commission's Rules to Implement Decisions from the World Radiocommunication Conference (Geneva, 2003) (WRC-03) Concerning Frequency Bands Between 5900 kHz and 27.5 GHz and to Otherwise Update the Rules in This Frequency Range, Report and Order, ET Docket No. 04-139, 20 FCC 6570, 6636 (2005).

5 The GMF is NTIA's database of Federal Government frequency assignments. It also includes non-Federal Government authorizations coordinated with NTIA. Id. at 6635.

6 See IRAC FAS Docket No. I8625476.

Station WAH.⁷ Due to administrative oversight, however, the condition requiring that use of frequency 162.025 MHz be re-coordinated with the IRAC was not added to the license, and the license was renewed (most recently in 2003) without re-coordination.

3. NTIA notes that Station WAH's use of frequency 162.025 MHz is no longer authorized, and requests that the license be corrected accordingly.⁸ It also indicates that Station WAH is causing interference to Automatic Identification System (AIS)⁹ operations on the frequency, resulting in a hazard to navigation for international shipping within approximately two hundred miles of St. Thomas.¹⁰

4. *Discussion.* We believe that NTIA's letter is most properly characterized as an informal request for Commission action under Section 1.41 of the Commission's Rules.¹¹ NTIA argues that IRAC's approval of the use of frequency 162.025 MHz was temporary, and renewal of the approval was specifically conditioned on the use being coordinated again with the IRAC. However, it appears that, due to administrative oversight, the renewal of the license for Station WAH was not coordinated with the IRAC. Under these circumstances, NTIA contends, the use of the frequency 162.025 MHz is no longer authorized and the frequency should be deleted from Avalon's license.

5. Based on our review of the record, we agree that Avalon's renewal applications should have been coordinated with the IRAC, as provided for in the initial authorization from NTIA. Consequently, grant of the applications was improper. Section 316 of the Communications Act of 1934, as amended,¹² provides the appropriate vehicle for resolving this matter. Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹³ We believe that modification of the license to remove frequency 162.025 MHz is appropriate, because Avalon's use of this Federal Government frequency is no longer authorized by IRAC. Further, the proposed modification would serve the public interest by reducing interference to marine safety communications and reducing potential hazards to navigation.

⁷ See Bureau Chief Waiver of Commission Rules, dated November 21, 1986, from Gary R. Stanford, Chief, Licensing Division, Private Radio Bureau.

⁸ See NTIA Letter at 1.

⁹ AIS is a maritime navigation safety communications system standardized by the International Telecommunication Union for use in collision avoidance and vessel monitoring and tracking. It employs on-board transponders, electronic charts, Differential Global Positioning System technology, and a technique called Self-Organizing Time Division Multiple Access to provide a VHF ship-to-ship and ship-to-shore radio service in which vessels and designated shore stations broadcast a unique identifier, coupled with safety-related data on, for example, ship positions, routes, dimensions, and navigational status. AIS-transmitted information can be received by similarly equipped vessels and shore stations in order to mitigate the risk of collisions and facilitate vessel monitoring and tracking. Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, Petition for Rule Making Filed by National Telecommunications and Information Administration, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 04-344, 19 FCC Rcd 20071, 20074 ¶ 5 (2004) (*AIS NPRM*) (citing Amendments of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Second Report and Order, Sixth Report and Order, and Second Further Notice of Proposed Rule Making*, WT Docket No. 00-48 & PR Docket No. 92-257, 19 FCC Rcd 3145, 3179 ¶ 64 (2004)).

¹⁰ See Letter dated March 1, 2005 from Joseph D. Hersey, Jr., United States Coast Guard to Karl B. Nebbia, Chairman, IRAC. NTIA's request that the Commission designate frequency 162.025 MHz exclusively for AIS is being addressed in a separate proceeding. See *AIS NPRM*.

¹¹ 47 C.F.R. § 1.41.

¹² 47 U.S.C. § 316.

¹³ 47 U.S.C. § 316(a). Section 316(a) requires that we notify the affected station(s) of the proposed modification(s) and the public interest reasons for the action, and afford at least thirty days to respond.

6. In accordance with Section 1.87(a) of the Commission's Rules,¹⁴ we will not issue a modification order until Avalon has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, Avalon must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. If no protest is filed, Avalon will have waived its right to protest the modification and will be deemed to have consented to the modification.

7. *Conclusion.* For the reasons stated above, we conclude that the grant of Avalon's renewal application was improper. As a result, we believe that the license for Station WAH, St. Thomas, United States Virgin Islands, should be modified to remove frequency 162.025 MHz in order to protect marine safety communications from harmful interference.

8. *Ordering Clauses.* ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of Commission's Rules, 47 C.F.R. § 1.41, that the request submitted by the National Telecommunications and Information Administration on April 11, 2005 IS GRANTED to the extent set forth herein, and IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Marine Public Coast Station WAH held by Avalon Communications Corporation, BE MODIFIED by removing the frequency 162.025 MHz.

9. IT IS FURTHER ORDERED that this *Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested to Avalon Communications Corporation, 7844 Mountain Top, St. Thomas, United States Virgin Islands 00802.

10. 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 COMMUNICATION COMMISSION

Michael J. Wilhelm
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¹⁴ 47 C.F.R. § 1.87(a).