

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

In the Matter of
WARREN C. HAVENS
Request for Forbearance from Section
80.215(h)(5) of the Commission's Rules

ORDER

Adopted: December 15, 2003

Released: December 19, 2003

By the Commission:

I. INTRODUCTION

1. On March 25, 2003, Warren C. Havens (Petitioner) filed a petition for forbearance, under section 10 of the Communications Act, as amended (the Act), requesting that the Commission forbear from applying section 80.215(h)(5) of the Commission's Rules for all current and future Automated Maritime Telecommunications System (AMTS) licenses or, in the alternative, for Petitioner's AMTS stations. For the reasons set forth below, we deny Petitioner's forbearance petition.

II. BACKGROUND

2. Pursuant to section 80.215(h)(5) of the Commission's Rules, the transmitter power for AMTS coast stations, as measured at the input terminals to the station antenna, must be fifty watts or less. Petitioner argues that application of this rule is unnecessary because section 80.215(h)(1) of the Commission's Rules limits the effective radiated power (ERP) of AMTS coast stations to one thousand watts, so there is no need to also limit the transmitter input power. Petitioner also avers that regulating the power of AMTS transmitters solely by ERP would provide licensees with greater flexibility in determining the best combination of input power and antenna gain. Petitioner states that in order to comply with section 80.215(h)(5) and maintain the current ERP of his AMTS stations, he must use high gain antennas, which are more expensive to purchase, operate, and maintain than low gain antennas.

1 Petition for Forbearance, filed by Warren C. Havens (dated Mar. 24, 2003) (Petition).

2 47 U.S.C. § 160.

3 AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels. See, e.g., 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).

4 47 C.F.R. § 80.215(h)(5).

5 Id. § 80.215(h)(1).

6 Petition at 2.

7 Id.

8 Id. at 2-3.

Petitioner argues that forbearance from the section 80.215(h)(5) input power limit would enable him to maintain the ERP of his AMTS stations with a low gain antenna, the use of which will enable accelerated as well as lower-cost service to end users.<sup>9</sup> Based on the foregoing reasons, Petitioner asserts that forbearance would be in the public interest.<sup>10</sup>

### III. DISCUSSION

3. We must consider whether section 10 of the Act permits the forbearance sought by the Petitioner in this proceeding. Under section 10 of the Act, the Commission shall forbear from applying any regulation or any provision of the Act to telecommunications carriers or telecommunications services, or classes thereof, when, along with two other factors, forbearance is “consistent with the public interest.”<sup>11</sup> We believe that the basis of the Petitioner’s request is to afford AMTS licensees the authority to increase input power beyond fifty watts so long as the licensee does not exceed the station’s authorized ERP. We note, as an initial matter, that the Petitioner’s argument is premised on a misreading of the Commission’s rules. Specifically, AMTS stations are not authorized for a particular ERP; rather, they are authorized for a particular transmitter power.<sup>12</sup> When it adopted AMTS licensing and operational rules in 1981, the Commission, based on engineering information submitted by commenters, specifically adopted a transmitter power limit.<sup>13</sup> In section 80.215(h)(1), the Commission also imposed an additional limit of one thousand watts ERP for many AMTS stations.<sup>14</sup> This additional limitation was imposed in order to allow the use of directional antennas to reduce the interference potential to television reception.<sup>15</sup>

4. While the one thousand-watt ERP limitation in section 80.215(h)(1) serves to reduce interference potential to television reception, the Petitioner has submitted no engineering information establishing that we could forbear from applying the power limitation in section 80.215(h)(5) without it resulting in interference to other AMTS stations, or to other co- or adjacent channel services. We therefore cannot conclude on the present record that forbearance would be in the public interest. For the foregoing reasons, we deny the above-captioned forbearance petition. Moreover, to the extent that Petitioner questions the basic framework for regulating AMTS interference, a notice-and-comment rulemaking proceeding would appear to be a more appropriate vehicle for change than a forbearance request.<sup>16</sup>

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> In addition to the public interest, the Commission must determine that (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers. 47 U.S.C. § 160(a).

<sup>12</sup> See, e.g., license for Call Sign WHV211 (setting forth power limit of fifty watts, but not specifying authorized ERP).

<sup>13</sup> 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*, 84 F.C.C. 2d 875, 884 ¶¶ 27-28, 894 ¶ 66, 907 (1981) (*IWCS R&O*).

<sup>14</sup> Specifically, those located more than 105 miles from a Channel 13 TV station or 80 miles from a Channel 10 TV station, and having an antenna height of 200 feet or less. See 47 C.F.R. § 80.215(h)(1).

<sup>15</sup> See *IWCS R&O*, 84 F.C.C. 2d at 917.

<sup>16</sup> The Commission, however, recently completed a broad review of the AMTS rules, see, e.g., 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 (2002). We note that while Havens participated in

(continued...)

5. Accordingly, IT IS ORDERED pursuant to sections 4(i), 10(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 160(c), 303(r), and section 1.53 of the Commission's Rules, 47 C.F.R. § 1.53, the petition for forbearance filed by Warren C. Havens on March 25, 2003, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

(...continued from previous page)

that proceeding, he did not raise any issue concerning alternative effective parameters for limiting AMTS coast station power.