

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

In the Matter of)
PACIFICORP) File Nos. 0001988156 and 0001988415
and)
MARITEL SOUTHERN PACIFIC, INC. and)
MARITEL NORTHERN PACIFIC, INC.)
Request for Waiver of Part 80 Rules to Permit Use)
of Maritime Frequencies for Private Land Mobile)
Radio Communications)

ORDER

Adopted: July 7, 2006

Released: July 10, 2006

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

1. Introduction. On June 13, 2005, MariTEL Northern Pacific, Inc. and MariTEL Southern Pacific, Inc. (collectively, MariTEL) filed two applications for consent to partition and disaggregate portions of two VHF Public Coast (VPC) geographic licenses to PacifiCorp. On a related note, PacifiCorp also filed a corresponding request for waiver of Part 80 of the Commission's Rules to permit it to use the frequencies to upgrade its analog communications system used to support critical power utility operations. PacifiCorp proposes that its system, which will be used only for internal, safety purposes, be licensed under, and governed by, Part 90 of the Commission's Rules; in the alternative, PacifiCorp seeks a waiver of relevant provisions of Part 80. For the reasons that follow, we grant the waiver request in part. Accordingly, the above-captioned applications will be granted in part and dismissed in part.

2. Background. PacifiCorp is an electrical utility company that operates in portions of Utah, Oregon, Wyoming, Washington, Idaho and California. PacifiCorp states that its conventional analog radio system is severely congested, difficult to maintain, and not capable of meeting or expanding to meet its critical power utility operations and emergency communications needs. PacifiCorp states that the VHF band offers the most workable spectrum and, because its current system uses VHF frequencies, allows for an easier transition to a new system and lower transition costs. However, sufficient Part 90 VHF

1 See FCC File Nos. 0001988156, 0001988415.

2 PacifiCorp Request for Waiver of Various Part 80 Rules to Operate VPC Stations as Part 90 PLMR Stations (Waiver Request).

3 In the alternative, PacifiCorp seeks a waiver of Sections 80.105, 80.106, 80.123, 80.203, 80.213 and 80.371 of the Commission's Rules to permit use of the frequencies for private land mobile radio (PLMR) communications. It also requests a waiver of Section 80.123(e) to allow the base station equipment of its system to operate with 125 watts transmitter output power and up to 100 watts mobile power, maximum, consistent with the power levels permitted for operations licensed under Part 90. PacifiCorp also seeks a waiver of the Section 80.123(f) prohibition on mobile-to-mobile communications on land.

4 See Waiver Request at 4-5.

spectrum was not available.⁵ To address its needs, PacifiCorp developed a plan to integrate VPC frequencies into its existing system, thereby minimizing engineering needed to maintain and improve its coverage.⁶

3. Consequently, as permitted under Section 80.60 of the Commission's Rules,⁷ MariTEL proposes to partition and disaggregate VPC spectrum to PacifiCorp. PacifiCorp seeks to acquire from MariTEL, which holds the geographic licenses for VPC Service Areas 6 (Call Sign WPOJ536) and 7 (Call Sign WPOJ532), VPC spectrum in portions of Oregon, northern California, southern Washington, and western Idaho.⁸ MariTEL proposes to assign all of its VPC spectrum in the partitioned areas to PacifiCorp, except that MariTEL would retain VHF maritime Channels 85 and 87 within twenty miles from the Pacific Ocean and Columbia River.⁹ Channel 87B (161.975 MHz) is one of two frequencies allocated internationally for Automatic Identification Systems (AIS).¹⁰ MariTEL believes that the retained spectrum will be sufficient for it to meet market demand for maritime services in the area.¹¹ MariTEL and PacifiCorp also privately agree to field strength limitations to ensure that PacifiCorp's operations do not adversely affect maritime operations.¹²

4. The assignment applications went on public notice on June 22, 2005.¹³ On July 6, 2005, the National Telecommunications and Information Administration (NTIA) filed a petition to deny the assignment applications.¹⁴ On July 20, 2005, MariTEL filed an opposition to NTIA's petition.¹⁵

5. *Discussion.* Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) 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 (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable,

⁵ *Id.* at 5.

⁶ *Id.* at 4.

⁷ 47 C.F.R. § 80.60.

⁸ Specifically, the applications propose to partition and disaggregate spectrum in the Oregon counties of Curry, Josephine, Jackson, Klamath, Lake, Coos, Douglas, Lane, Deschutes, Crook, Grant, Baker, Jefferson, Wheeler, Linn, Benton, Lincoln, Polk, Marion, Clackamas, Yamhill, Tillamook, Clatsop, Columbia, Multnomah, Hood River, Washington, Wasco, Sherman, Gilliam, Morrow, Umatilla, Union, and Wallowa; in the California counties of Del Norte, Siskiyou, and Modoc; in the Washington counties of Pacific, Wahkiakum, Cowlitz, Clark, Lewis, Skamania, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, Asotin, Whitman, and Adams; and in the Idaho counties of Idaho, Lewis, Nez Perce, Latah, Clearwater, Shoshone, Benewah, Kootenai, Bonner, and Boundary.

⁹ *See* Waiver Request at 7

¹⁰ AIS is an international maritime navigation safety communications system adopted by the International Maritime Organization and Safety of Life at Sea Convention intended for collision avoidance, monitoring and tracking. The Commission has proposed to designate Channel 87B exclusively for AIS use in maritime VPC service areas, including VPCSA 6 and 7. *See generally* Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 04-344, 19 FCC Rcd 20071 (2004).

¹¹ *See* Waiver Request at 7-8.

¹² *Id.* at 8.

¹³ *Public Notice*, Report No. 2185 (WTB rel. June 22, 2005).

¹⁴ *See* Letter dated July 6, 2005 from Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA to Catherine Seidel, Acting Chief, Wireless Telecommunications Bureau (NTIA Petition).

¹⁵ Opposition of MariTEL, Inc. to Petition to Deny (filed July 20, 2005) (MariTEL Opposition).

unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶ Based on the record before us, we conclude that the waiver request should be granted in part and denied in part. Specifically, we grant the waiver request except that PacifiCorp will not be authorized to operate on Channel 87B and the surrounding interstitial channels,¹⁷ and PacifiCorp will not be authorized to operate the subject facilities within twenty miles of the Pacific coast or the Columbia River.¹⁸ With these limitations, we conclude, as discussed in further detail below, that the underlying purpose of the subject rules would not be served by application to the instant case and grant of the requested waiver would be in the public interest.

6. As an initial matter, we note that we have granted similar requests to allow the partitioning and disaggregation of VPC spectrum for use in public safety radio systems.¹⁹ In addition, we have permitted the assignment of VPC spectrum to PacifiCorp for PLMR use farther inland than the areas at issue in the instant applications.²⁰ However, we note that past requests have not involved the extensive coastal and major river coverage as that proposed herein. NTIA and the Coast Guard point out that the instant waiver request seeks authority for PacifiCorp to operate on VPC frequencies along approximately 450 miles of the Pacific coast, and along the Columbia River. This portion of the Pacific coast has major commercial shipping lanes and substantial recreational boating traffic. The Columbia River has six major ports, and is among the busiest port areas in the United States.²¹ As on past occasions, NTIA and the U.S. Coast Guard (Coast Guard) oppose grant of the applications on the grounds that granting the requested waivers would amount to a reallocation of frequencies from maritime mobile to land mobile service in the partitioned areas.²² NTIA and Coast Guard argue that the present request is different, because it involves a vast area of navigable ocean and river waterways containing some of the busiest ports in United

¹⁶ 47 C.F.R. § 1.925(b)(3); *see also* WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

¹⁷ *I.e.*, 161.95625-161.96250 MHz, 161.96250-161.96875 MHz, 161.96875-161.98125 MHz, 161.98125-161.98750 MHz, and 161.98750-161.99375 MHz.

¹⁸ *I.e.*, 161.78750-161.80625 MHz, 161.80625-161.81250 MHz, 161.81250-161.81875 MHz, 161.81875-161.83125 MHz, 161.83125-161.83750 MHz, 161.83750-161.84375 MHz, 161.84375-161.85625 MHz, 161.85625-161.86250 MHz, 161.86250-161.86875 MHz, 161.86875-161.88125 MHz, 161.88125-161.88750 MHz, 161.88750-161.89375 MHz, 161.89375-161.90625 MHz, 161.90625-161.91250 MHz, 161.91250-161.91875 MHz, 161.91875-161.93125 MHz, 161.93125-161.93750 MHz, 161.93750-161.94375 MHz, 161.94375-161.95625 MHz, 161.95625-162.00625 MHz, and 162.00625-162.0125 MHz.

¹⁹ *See* County of Placer, California, *Order*, 20 FCC Rcd 3657 (WTB PSCID 2005) (assignment from MariTEL to County of Placer) (*Placer Order*); Commonwealth of Virginia, *Order*, 19 FCC Rcd 15454 (WTB PSCID 2004) (assignment from MariTEL to Commonwealth of Virginia) (*Virginia Order*); Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1852 (WTB rel. June 9, 2004) (FCC File Nos. 0001662537, 0001662656) (assignment from Warren C. Havens to State of Montana); Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1411 (WTB rel. Feb. 5, 2003) (FCC File No. 0001132016) (assignment from MariTEL to State of South Dakota).

²⁰ *See* Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1816 (WTB rel. Apr. 28, 2004) (FCC File Nos. 0001554439, 0001554477); licenses for Call Signs WPOJ517 (VPC Service Area 27—Casper, Wyoming-Idaho-Utah), WPOJ518 (VPC Service Area 31—Idaho Falls, Idaho-Wyoming), WPOJ519 (VPC Service Area 32—Twin Falls, Idaho), WPOJ520 (VPC Service Area 33—Boise City, Idaho-Oregon), WPOJ522 (VPC Service Area 35—Salt Lake City-Ogden, Utah-Idaho), WQAA636 (VPC Service Area 28—Billings, Montana-Wyoming), WQAA637 (VPC Service Area 37—Flagstaff, Arizona-Utah).

²¹ *See* NTIA Petition at 2; Letter dated July 3, 2005 from, Joseph D. Hersey, Jr., U.S. Coast Guard, Chief, Spectrum Management Division, to Fredrick R. Wentland, Chief Associate Administrator, Office of Spectrum Management, NTIA at 2-3 (Coast Guard Letter), attached to NTIA Petition.

²² *Id.*

States.²³ We again conclude that this is not a reason to reject the proposed transaction in its entirety.²⁴ We note that MariTEL asserts that the geographic scope of the present proposal does not render it fundamentally different from the previous cases, and that what matters is not the expanse of ocean and waterways involved, but the impact on maritime communications in those areas.²⁵

7. With respect to the instant matter, Coast Guard offers a technical propagation analysis that it says demonstrates that PacifiCorp's base stations could cause harmful interference to maritime communications up to one hundred miles offshore and completely cover the approaches to the Columbia River.²⁶ Coast Guard further contends, based on this propagation analysis, that PacifiCorp's mobile stations could cause harmful interference to maritime communications up to sixty miles off shore and along the Columbia River. MariTEL replies that these estimates of interference are overstated and that the technical analysis is incomplete and unreliable, and represents the "worst case" rather than likely coverage.²⁷ MariTEL also maintains that granting the applications does not eliminate its ability to provide maritime communications because there are methods, such as directional antennas and terrain shielding, to avoid its land mobile operations interfering with maritime communications.²⁸ In addition, MariTEL observes that the VPC rules already permit it to offer services beyond traditional voice-based maritime public correspondence, notwithstanding the objection of NTIA and Coast Guard to such use.²⁹

8. With respect to Channel 87B, NTIA and the Coast Guard state that PacifiCorp's proposed operations could cause interference to AIS operations, and thus adversely affect the safe navigation of vessels in or near navigable waterways, and could impair the Coast Guard's ability to perform its mission.³⁰ In this regard, we note that we did not authorize PLMR use of Channel 87B in connection with the previous similar waivers granted to Virginia and Placer County.³¹ PacifiCorp contends that its plan to use Channel 87B only in designated inland areas, and the agreed upon field strength limits, will preserve the spectrum for AIS.³² We note, however, that the geographic set-back proposed by MariTEL and PacifiCorp is substantially less than the set-back we deemed insufficient in Virginia for use of Channel 87B.³³ Thus, we agree with the Coast Guard that even with the proposed protection for Channel 87B along the coastline and waterways, PacifiCorp's proposed operations could cause harmful interference to AIS communications. We recognize the importance of interference-free AIS operations and other maritime communications. We therefore deny the waiver request with respect to Channel 87B and the surrounding interstitial frequencies.

9. We do not believe, however, that the record before us demonstrates that PacifiCorp's

²³ See NTIA Petition at 2; Coast Guard Letter at 1.

²⁴ See *Placer Order*, 20 FCC Rcd at 3662 ¶ 13; *Virginia Order*, 19 FCC Rcd at 15457 ¶ 7.

²⁵ See MariTEL Opposition at 5.

²⁶ See Coast Guard Letter at 5-6; see also Figures 1-4 attached to Coast Guard Letter.

²⁷ See MariTEL Opposition at 9. Because PacifiCorp's request for waiver did not provide specific technical details, Coast Guard assumed what it believes are reasonable technical parameters designed to provide good land mobile coverage. Its technical analysis assumes 125 watts power for fixed stations using an omnidirectional antenna at 60 meters above ground and 100 watts power for mobiles using 10-meter antennas. See Coast Guard Letter at 5-6.

²⁸ See MariTEL Opposition at 6.

²⁹ *Id.* at 9.

³⁰ See NTIA Petition at 2; Coast Guard Letter at 2.

³¹ See *Virginia Order*, 19 FCC Rcd at 15459 ¶ 11; *Pacer Order*, 20 FCC Rcd at 3658 ¶ 4.

³² See Waiver Request at 8.

³³ See *Virginia Order*, 19 FCC Rcd at 15457 ¶ 8.

proposed operations on frequencies other than Channel 87B and the surrounding interstitial channels pose a sufficient interference threat to warrant a complete denial of the waiver request. The waiver granted to Virginia permitted operations on frequencies other than Channel 87B only in areas set back from coastlines and other waterways.³⁴ We believe that such a limitation is appropriate in this instance, as well. Consequently, we grant the requested waiver on the frequencies other than Channel 87 and the surrounding interstitial channels³⁵ only with respect to operations more than twenty miles from the Pacific Ocean and Columbia River. As PacifiCorp and MariTEL note,³⁶ the Commission has proposed to amend the Part 80 rules to permit its PLMR use of VPC spectrum.³⁷ MariTEL observes that the present waiver request is consistent with the Commission's proposal.³⁸ We therefore grant PacifiCorp's request for a waiver of the Part 80 rules to permit PLMR operations on VPC spectrum in these areas to be governed by Part 90 of the Commission's Rules, conditioned on the outcome of the pending rulemaking proceeding.³⁹ As noted above, we have granted similar waivers in the past,⁴⁰ and we believe that the same factors that warranted grant of those waivers are present in the instant matter, as well.

10. Because the proposed PLMR operations in Virginia and Placer County were near areas of substantial marine activity, we imposed conditions on the waivers in order to address the interference concerns raised by NTIA and Coast Guard,⁴¹ and we will impose the same conditions in this instance. Specifically, we expressly condition our grant of the applications and waiver request on PacifiCorp not causing interference to current or future marine communications, including but not limited to AIS operations. We will not require prior technical coordination with NTIA, but we expect PacifiCorp to work closely with the Coast Guard and NTIA to ensure that all contemplated operations pose no unacceptable potential for interference to marine communications, and to act quickly in the event interference is reported. We note the concern of the Coast Guard and NTIA that the geographic scope of instant waiver request poses a greater potential for harm to maritime communications. We conclude, however, that this condition, coupled with the geographic limitation discussed above, is sufficient to address these concerns.

11. Finally, we note that MariTEL and PacifiCorp propose that each party be independently responsible for the construction requirement in its respective areas.⁴² The first construction benchmark for the two VPC geographic licenses at issue was May 19, 2006, but MariTEL filed requests to extend that date before the instant applications were filed.⁴³ Subsequently, however, MariTEL filed notifications that it had satisfied the first construction benchmark for the two licenses.⁴⁴ Satisfaction of the construction requirement moots the pending extension requests, in which case the first construction

³⁴ See *id.* at 15454 ¶ 2.

³⁵ See *supra* n.17.

³⁶ See Waiver Request at 8; MariTEL Opposition at 7.

³⁷ See MariTEL, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2004).

³⁸ See MariTEL Opposition at 7.

³⁹ That is, PacifiCorp ultimately will be subject to the rules adopted in WT Docket No. 04-257, but will be permitted to operate pursuant to this waiver until such rules take effect.

⁴⁰ See *supra* n.20.

⁴¹ See *Placer Order*, 20 FCC Rcd at 3662-63 ¶ 15; *Virginia Order*, 19 FCC Rcd at 15458-59 ¶ 10.

⁴² See FCC File Nos. 0001988156, 0001988415 at Schedule B.

⁴³ See FCC File Nos. 0002173608, 0002173628.

⁴⁴ See FCC File Nos. 0002637848, 0002637845. One of these notifications has been accepted, while the other has been returned for MariTEL to provide additional information.

benchmark for these licenses will not be extended. Clearly, PacifiCorp cannot be expected meet a construction deadline that has already passed. Therefore, on our own motion, we extend the first construction benchmark for the licenses to be granted to PacifiCorp by two years, to May 19, 2008.

12. *Conclusion.* We will grant the assignment applications for the requested frequencies, excluding Channel 87B and the surrounding interstitial frequencies, but only in areas more than twenty miles from the Pacific Ocean and the Columbia River. Because PacifiCorp's operations could, in some circumstances, present a potential for interference to maritime operations, the instant waiver request is granted on the express condition that no interference is caused to current or future marine communications, including but not limited to AIS operations. We also grant PacifiCorp's request for a waiver of Part 80 of the Commission's Rules to permit its PLMR operations on VPC spectrum to be governed by Part 90 of the Commission's Rules, subject to the resolution of the pending rulemaking proceeding, WT Docket No. 04-257. In addition, on our own motion, we extend PacifiCorp's first construction benchmark for the licenses at issue to May 19, 2008.

13. For reasons set forth above, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver filed by PacifiCorp in association with application FCC File Nos. 0001988156 and 0001988415 on June 13, 2005, IS GRANTED TO THE EXTEND STATED HEREIN AND ON THE FOLLOWING CONDITIONS:

--No interference may be caused to current or future marine communications, including but not limited to AIS operations; and

--Grant of the waiver is conditioned on compliance with any rules adopted as a result of the pending Notice of Proposed Rule Making in WT Docket No. 04-257.

In all other respects, the Request for Waiver IS DENIED.

14. IT IS FURTHER ORDERED that applications File Nos. 0001988156 and 0001988415 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules, and the licenses at issue shall be modified accordingly. The first construction benchmark for the licenses shall be May 19, 2008.

15. 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

Michael J. Wilhelm
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