

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

In the Matter of)	
)	
MOTOROLA, INC.)	File Nos. 0002438737-39, 0002438741-42,
)	0002438744, 0002438746, 0002438749,
Application for Consent to Partition and)	0002438759, 0002633764, 0002633769,
Disaggregate Licenses and Requests for Waiver of)	0002635143
Part 80 Rules to Permit Use of Maritime)	
Frequencies for Private Land Mobile Radio)	
Communications		

ORDER

Adopted: January 17, 2007

Released: January 19, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On January 20, 2006, MariTEL Mid-Atlantic, Inc., MariTEL Southern Atlantic, Inc., MariTEL Northern Atlantic, Inc., MariTEL Southern Pacific, Inc., MariTEL Northern Pacific, Inc., MariTEL Great Lakes, Inc., MariTEL Mississippi River, Inc., MariTEL Alaska, Inc., and MariTEL, Inc. (collectively, MariTEL) filed applications for consent to partition and disaggregate portions of sixteen VHF Public Coast (VPC) geographic licenses to Motorola, Inc. (Motorola).¹ On June 21, 2006, Data Radio Management Company, Inc. (DRM)² and Scott C. MacIntyre (MacIntyre)³ filed applications for consent to disaggregate portions of their VPC geographic licenses to Motorola. On June 30, 2006, SMR Systems, Inc. (SMR) filed an application for consent to partition and disaggregate portions of one VPC geographic license, and disaggregate portions of two VPC geographic licenses, to Motorola.⁴ Also filed were corresponding requests for waiver of Part 80 of the Commission's Rules to permit Motorola to provide this spectrum to third parties to satisfy public safety and other first responder requirements, and to be licensed under, and governed by, Part 90 of the Commission's Rules.⁵ For the reasons that follow, we grant the waiver requests to the extent indicated below, and will grant the above-

¹ See FCC File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759.

² See FCC File No. 0002633764.

³ See FCC File No. 0002633769.

⁴ See FCC File No. 0002635143.

⁵ See Description of Proposal and Request for Waiver at 13 (MariTEL Waiver Request); *see also* Description of Transaction and Request for Waiver at 9-10 (DRM Waiver Request); Description of Transaction and Request for Waiver at 9-10 (MacIntyre Waiver Request); Description of Transaction and Request for Waiver at 10-11 (SMR Waiver Request). In the alternative, Motorola seeks a waiver of Sections 80.105, 80.106, 80.123, 80.215, 80.303, and 80.371 of the Commission's Rules, 47 C.F.R. §§ 80.105, 80.106, 80.123, 80.215, 80.303, 80.371, to the extent applicable, in order to permit use of the frequencies for private land mobile radio (PLMR) communications. (We note that the Commission has proposed to amend Sections 80.123 and 80.371 to permit PLMR use of VPC frequencies. *See* Maritel, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2004).) It also requests a waiver of Section 80.123(e) to allow the base station equipment of its system to operate at higher transmitter output power and higher mobile power, consistent with the power levels permitted for operations licensed under Part 90. *See* MariTEL Waiver Request at 22.

captioned applications.

2. *Background.* As permitted under Section 80.60 of the Commission's Rules,⁶ MariTEL and SMR propose to partition and disaggregate VPC spectrum to Motorola, and DRM and MacIntyre propose to disaggregate spectrum to Motorola. MariTEL proposes to assign to Motorola all of its VPC spectrum (excluding areas that already have been assigned or are pending assignment to third parties) in VPC Service Areas (VPCSA) 1-7 and 9, which are the maritime VPCSA for the East (including Puerto Rico), West, and Gulf Coasts, Mississippi River, Great Lakes, and Alaska; and VPCSA 10, 12, 15, and 19-22, which are inland VPCSA in the upper Midwest and west Texas,⁷ except that MariTEL will retain a) all of the spectrum in areas that are within approximately thirty miles from the above-referenced coastlines and other major waterways; b) VHF maritime Channels 87B (161.975 MHz) and 88B (162.025 MHz), which are allocated internationally for Automatic Identification Systems (AIS)⁸; and c) VHF maritime Channel 88A (157.425 MHz).⁹ MariTEL believes that the retained spectrum will be sufficient for it to meet market demand for maritime services.¹⁰ MariTEL and Motorola also privately agree to field strength limitations to ensure that Motorola's operations do not adversely affect maritime

⁶ 47 C.F.R. § 80.60.

⁷ See MariTEL Waiver Request at 3. Currently, the maritime VPCSA licenses have a construction deadline for the five-year substantial service benchmark of May 19, 2006, and the deadline for MariTEL's inland VPCSA licenses is October 9, 2006. MariTEL has requested that these dates be extended. See FCC File Nos. 0002173596, 0002173600, 0002173608, 0002173613, 0002173617, 0002173620, 0002173628, 0002173635, 0002173639, 0002173651, 0002173652, 0002173653, 0002173654, 0002173656, 0002173657. Subsequently, MariTEL filed construction notifications indicating that it had met the benchmark for VPCSA 1-7, but it has not filed construction notifications with respect to its other VPCSA. See FCC File Nos. 0002637829, 0002637832, 0002637835, 0002637836, 0002637842, 0002637845, 0002637848. We note that MariTEL has represented in connection with the instant applications that it "will meet all construction requirements for the entire licensed area." See Exhibit B to Application for Assignment. We also note that the applicants have not here requested a waiver of the construction requirement in Section 80.49(a) of the Commission's Rules, 47 C.F.R. § 80.49(a). Consequently, our grant of the applications proposing to partition and disaggregate spectrum in VPCSA 9, 10, 12, 15, and 19-22 shall be conditioned on the outcome of the pending construction extension requests relating to those licenses.

⁸ 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 recently adopted rules to designate Channel 87B exclusively for AIS use in maritime VPC service areas, and sought comment on whether to designate Channel 87B exclusively for AIS use in inland VPC service areas. See Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, *Report and Order and Further Notice of Proposed Rule Making and Fourth Memorandum Opinion and Order*, WT Docket No. 04-344, 21 FCC Rcd 8892, 8904 ¶ 18, 8933 ¶ 58 (2006). Motorola also clarified that it does not intend to implement 12.5 MHz interstitial channels centered on frequencies 161.9625 MHz, 161.9875 MHz, or 162.0125 MHz because of possible interference to Channels 87B or 88B. See Letter dated Feb. 7, 2006 from Robert L. Pettit, Counsel for Motorola, Inc. to Larry S. Solomon, Esq., Spectrum Management Division, United States Coast Guard.

⁹ See MariTEL Waiver Request at 5-7. Specifically, MariTEL proposes to assign Channel 24 (157.200 MHz/161.800 MHz), Channel 84 (157.225 MHz/161.825 MHz), Channel 25 (157.250 MHz/161.850 MHz), Channel 85 (157.275 MHz/161.875 MHz), Channel 26 (157.300 MHz/161.900 MHz), Channel 86 (157.325 MHz/161.925 MHz), Channel 27 (157.350 MHz/161.950 MHz), Channel 87A (157.375 MHz), and Channel 28 (157.400 MHz/162.000 MHz) in the maritime VPCSA. Channels 84, 25, and 88 are not authorized under the licenses for VPCSA 10, 12, and 15, and Channels 25, 85, and 88 are not authorized under the licenses for VPCSA 19-22. See 47 C.F.R. § 80.371(c)(1). Consequently, the assignment application for the inland VPCSA does not include these frequencies for those VPCSA. We express no view at this time with respect to whether MariTEL will be able to satisfy the substantial service requirement for the inland VPCSA licenses with the remaining spectrum, particularly if the Commission subsequently designates Channel 87B exclusively for AIS use in inland VPC service areas. See note 8, *supra*.

¹⁰ See MariTEL Waiver Request at 4-5.

communications.¹¹

3. The other assignors, whose license regions do not contain any areas that are within approximately thirty miles of the above-referenced coastlines and other major waterways, propose similar arrangements. DRM proposes to assign to Motorola all of its VPC spectrum¹² in inland VPCSA 36, which covers parts of Arizona, Nevada, and Utah, except that DRM will retain VHF maritime Channel 87 (157.375 MHz/161.975 MHz).¹³ MacIntyre proposes to assign to Motorola all of his VPC spectrum¹⁴ in inland VPCSA 23 and 38, which cover portions of Colorado and New Mexico, except that MacIntyre will retain VHF maritime Channel 87 (157.375 MHz/161.975 MHz).¹⁵ SMR proposes to assign to Motorola all of its VPC spectrum, except that SMR will retain VHF maritime Channel 87 (157.375 MHz/161.975 MHz), in inland VPCSA 17 and 18,¹⁶ which cover parts of Texas,¹⁷ and in certain parts of VPCSA 14¹⁸ consisting of particular counties¹⁹ in Montana, Nebraska, and North Dakota.²⁰

¹¹ *Id.* at 7-8. Specifically, MariTEL and Motorola agree that field strength from Motorola's base stations may exceed +5 dBu, except (1) in areas that would affect existing agreements between MariTEL and third parties; (2) along the Atlantic, Pacific, Great Lakes, and Gulf of Mexico coastlines; (3) along the Mississippi River upriver to Cairo, Illinois, on Channels 27, 87A, and 28; and (4) along the upper Mississippi, Missouri, Ohio, Tennessee, Arkansas, Red, and Columbia Rivers on Channels 87A and 28. MariTEL and Motorola have agreed that MariTEL may operate base stations with a field strength of up to +21 dBu at these boundaries.

¹² See DRM Waiver Request at 4. Specifically, DRM proposes to assign Channel 24 (157.200 MHz/161.800 MHz), Channel 85 (157.275 MHz/161.875 MHz), Channel 26 (157.300 MHz/161.900 MHz), Channel 86 (157.325 MHz/161.925 MHz), Channel 27 (157.350 MHz/161.950 MHz), and Channel 28 (157.400 MHz/162.000 MHz). Channels 84, 25, and 88 are not authorized under this license. See 47 C.F.R. § 80.371(c)(1).

¹³ DRM represents in connection with the instant application that it "will meet all construction requirements for the entire licensed area." See Exhibit B to Application for Assignment. DRM previously notified the Commission that it satisfied the construction requirement for the license. See FCC File No. 0001731521.

¹⁴ See MacIntyre Waiver Request at 4. Specifically, MacIntyre proposes to assign Channel 24 (157.200 MHz/161.800 MHz), Channel 85 (157.275 MHz/161.875 MHz), Channel 26 (157.300 MHz/161.900 MHz), Channel 86 (157.325 MHz/161.925 MHz), Channel 27 (157.350 MHz/161.950 MHz), and Channel 28 (157.400 MHz/162.000 MHz). Channels 25, 85, and 88 are not authorized under these licenses. See 47 C.F.R. § 80.371(c)(1).

¹⁵ MacIntyre represents in connection with the instant application that he "will meet all construction requirements for the entire licensed area[s]." See Exhibit B to Application for Assignment. We express no view at this time with respect to whether MacIntyre will be able to satisfy the substantial service requirement for the licenses when he is licensed only for Channel 87, particularly if the Commission subsequently designates Channel 87B exclusively for AIS use in inland VPC service areas. See note 8, *supra*. We also note that the applicants have not here requested a waiver of the construction requirement in Section 80.49(a) of the Commission's Rules, 47 C.F.R. § 80.49(a).

¹⁶ See SMR Waiver Request at 4. Specifically, SMR proposes to assign Channel 24 (157.200 MHz/161.800 MHz), Channel 84 (157.225 MHz/161.825 MHz), Channel 26 (157.300 MHz/161.900 MHz), Channel 86 (157.325 MHz/161.925 MHz), Channel 27 (157.350 MHz/161.950 MHz), and Channel 28 (157.400 MHz/162.000 MHz). Channels 84, 25, and 88 are not authorized under this license. See 47 C.F.R. § 80.371(c)(1).

¹⁷ SMR represents in connection with the instant application that it "will meet all construction requirements for the entire licensed area[s]." See Exhibit B to Application for Assignment. SMR previously notified the Commission that it satisfied the construction requirement for VPCSA 17 and 18. See FCC File Nos. 0001200606, 0002792006.

¹⁸ See SMR Waiver Request 4. Specifically, SMR proposes to assign Channel 24 (157.200 MHz/161.800 MHz), Channel 84 (157.225 MHz/161.825 MHz), Channel 26 (157.300 MHz/161.900 MHz), Channel 86 (157.325 MHz/161.925 MHz), Channel 27 (157.350 MHz/161.950 MHz), and Channel 28 (157.400 MHz/162.000 MHz). Channels 25, 85, and 88 are not authorized under these licenses. See 47 C.F.R. § 80.371(c)(1).

¹⁹ Specifically, Carter County, Montana; Grant, Sheridan, and Cherry Counties, Nebraska; and Adams County, North Dakota.

4. Motorola notes that previous waivers have been granted to permit individual public safety entities to utilize VPC spectrum,²¹ and that therein and elsewhere the Commission has noted that operating in the VHF band is often advantageous for certain providers of public safety services.²² Motorola also contends that the VHF frequencies it would make available to public safety agencies and other first responders would facilitate implementation of new VHF systems.²³ Motorola also observes that many conventional analog VHF radio systems are antiquated, are in disrepair, and are incapable of expanding to accommodate an increasing need for emergency communications capability.²⁴ To address these issues, many of which stem from the lack of sufficient Part 90 VHF spectrum, Motorola plans to convert VPC frequencies into 12.5 kHz narrowband channels and make them available to support private land mobile use by third parties, primarily public safety entities and other first responders.²⁵ Motorola submits that the Commission before has issued waivers similar to that requested here. In the past, each user had to file a separate waiver request. Motorola submits that such individual requests serve no purpose and are administratively burdensome and unnecessarily costly. It is therefore requesting a “blanket” comprehensive waiver that would apply to all users of VPC spectrum made available by Motorola and therefore obviate the need for individual waiver requests. Finally, it asserts that granting it the requested blanket waiver would more efficiently permit service on these channels by public safety, homeland security, and other private land mobile users.²⁶

5. The Commission published notice of the filing of the MariTEL assignment applications on January 25, 2006,²⁷ the DRM and MacIntyre assignment applications on June 28, 2006,²⁸ and the SMR assignment application on July 5, 2006.²⁹ No petitions to deny were filed.

6. *Discussion.* Section 1.925 of the Commission's Rules provides that the Commission may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be

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²⁰ SMR represents in connection with the instant application that it “will meet all construction requirements for the entire licensed area[s].” See Exhibit B to Application for Assignment. SMR previously notified the Commission that it satisfied the construction requirement for VPCSA 14. See File No. 0001200608.

²¹ 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); see also PacifiCorp, *Order*, DA 06-1414 (WTB PSCID rel. July 10, 2006) (assignment from MariTEL to PacifiCorp); 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) (assignment from Warren C. Havens to PacifiCorp).

²² See MariTEL Waiver Request at 9-11, 17-18; see also DRM Waiver Request at 5-7, 13-16; MacIntyre Waiver Request at 5-7, 13-16; SMR Waiver Request at 6-8, 14-17.

²³ See MariTEL Waiver Request at 9-11, 17-18.

²⁴ See *id.* at 2.

²⁵ *Id.* at 1, 17.

²⁶ *Id.* at 11.

²⁷ *Public Notice*, Report No. 2377 (WTB rel. Jan. 25, 2006).

²⁸ *Public Notice*, Report No. 2557 (WTB rel. Jun. 28, 2006).

²⁹ *Public Notice*, Report No. 2563 (WTB rel. Jul. 5, 2006).

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, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.³⁰ Based on the record before us, we conclude that the waiver requests should be granted. Specifically, we conclude that the underlying purpose of the subject rules would not be served by application to the instant case, and grant of the requested waivers would be in the public interest.

7. As noted above, we have granted previous requests to allow the partitioning and disaggregation of VPC spectrum for use in public safety radio systems. We agree with Motorola that these actions have furthered the public interest by increasing capacity, enhancing interoperability and increasing the effectiveness of the applicants' public safety and homeland security communications systems.³¹ We also concluded that those waivers did not frustrate the underlying purpose of the VPC rules.³² We believe that the same factors that warranted grant of those waivers are present here. The increased availability of alternate communications services to maritime community by a variety of communications providers, such as cellular operators, personal communications service licensees, specialized mobile radio operators and mobile satellite service providers have reduced the need for VHF spectrum in maritime areas. Further, the large geographic areas associated with the partitioned area make maritime VHF spectrum available in areas that are not located near waterways or coastal areas and therefore not needed for maritime communications. Further, use of this maritime spectrum will enhance public safety systems in the partitioned areas where alternative usable VHF spectrum is not readily available. We therefore grant Motorola's requests for a waiver of the Part 80 rules to permit PLMR operations on VPC spectrum and make such operations subject to Part 90 of the Commission's Rules.³³

8. Motorola's request, however, is unclear in two respects. First, it lacks specificity about the class of entities that would be eligible to use the spectrum at issue. Motorola says that the "*primary* purpose of this proposal is to support public safety and homeland security communications systems," and that the waivers will benefit "public safety and *other users* (such as utilities) performing functions in support of public safety and homeland security."³⁴ However, the waiver request also contemplates "enterprise" users.³⁵ We are concerned that the term "primary purpose" and the reference to "public safety and other users" could be construed to allow unspecified "other" entities that do not provide public safety services to gain access to the spectrum at issue. To resolve that concern, we specify that eligibility for the instant spectrum extends only to entities providing "public safety services" within the meaning of that term in Section 337(f)(1) of the Communications Act of 1934, as amended, *i.e.*, services the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by state or local government entities or by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services, and that are not made commercially

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

³¹ *See* MariTEL Waiver Request at 9-11; *see also* DRM Waiver Request at 5-7; MacIntyre Waiver Request at 5-7; SMR Waiver Request at 6-8.

³² *See Placer Order*, 20 FCC Rcd at 3660 ¶ 7; *Virginia Order*, 19 FCC Rcd at 15456 ¶ 5.

³³ The grant is conditioned on the outcome of the pending rulemaking proceeding proposing to amend Sections 80.123 and 80.371 to permit PLMR use of VPC frequencies. *See* Maritel, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2004). That is, users of Motorola's system 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.

³⁴ *See* MariTEL Waiver Request at 5 n.9, 12 n.34 (emphasis added).

³⁵ *Id.* at 5 n.9.

available to the public.³⁶ Thus, to the extent that Motorola seeks discretion to put the spectrum to “enterprise use” in areas where Motorola concludes that the spectrum is not needed for public safety operations, the request is denied.

9. Second, the proposal admits of multiple interpretations concerning how eligible entities would be authorized. Motorola avers that it intends to utilize the spectrum in the partitioned and disaggregated areas “primarily in support of the private land mobile operations of third parties as permitted by Commission rules—including through further assignment or spectrum leasing.”³⁷ It requests that the waivers, if granted, be “deem[ed] ... to be applicable to the users, lessees, and subsequent licensees of Motorola’s spectrum without the need for such entities to submit and await the grant of an additional or further similar waiver.”³⁸ Motorola also proposes that any authorization for use of the spectrum pursuant to the waiver contain the following conditions:

- (1) any future operations would be identical to those proposed herein and, in particular, would not cause harmful interference to the U.S. Coast Guard or other maritime operators;
- (2) such users, lessees, and subsequent licensees would file for prior approval or notify the FCC, as applicable, in accordance with FCC rules and regulations; and
- (3) such entities would be eligible to use the spectrum and their use would be permissible.³⁹

As we understand Motorola’s proposal, each user would obtain authorization either by way of an assignment application, or by way of spectrum leasing or similar arrangement. With that understanding, we believe that Motorola’s proposal is sufficient to provide the Commission with the information necessary to identify the source of interference to maritime, or other, communications should it occur. In addition, we concur with Motorola that it will be more administratively efficient and less burdensome on users if we extend the scope of the waiver so that it applies to all of the eligible entities described *supra*. Thus, eligible users will be relieved of the burden of filing waiver requests, and the Commission’s resources will be conserved because it would not need to process such requests.

10. We also agree with Motorola⁴⁰ that the proposed operations should be subject to the same conditions that were imposed in the previous orders to prevent interference to maritime communications.⁴¹ Specifically, we expressly condition our grant of the applications and waiver requests on users of Motorola’s system not causing interference to current or future marine communications,

³⁶ 47 U.S.C. § 337(f)(1); *see also* 47 C.F.R. § 90.523. The Commission has not “attempt[ed] to delineate every type of nongovernmental organization [NGO] that would be eligible, because there are countless variations on how NGO use might present itself among states and localities nationwide. We believe that the certification from one of our licensees provides a reasonable measure of confidence that the NGO has received authorization from a governmental entity that is appropriate under the circumstances.” The 4.9 GHz Band Transferred from Federal Government Use, *Memorandum Opinion and Order and Third Report and Order*, WT Docket No. 00-32, 18 FCC Rcd 9152, 9159 ¶ 17 (2003) (citing *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, First Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Rcd 152, 181 ¶ 56 (1998) (*700 MHz Public Safety First Report and Order*)). However, the Commission has indicated that entities such as utilities and pipelines are examples of potential NGO licensees. *See 700 MHz Public Safety First Report and Order*, 14 FCC Rcd at 188 ¶ 72.

³⁷ *See* MariTEL Waiver Request at 12; *see also* DRM Waiver Request at 9; MacIntyre Waiver Request at 9; SMR Waiver Request at 10.

³⁸ *See* MariTEL Waiver Request at 12.

³⁹ *Id.*

⁴⁰ *See id.* at 11, 14.

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

including but not limited to AIS operations. We will not require prior technical coordination, but we expect Motorola and such future users as may gain access to the spectrum, whether by assignment of license or otherwise, to work closely with the United States Coast Guard and National Telecommunications and Information Administration 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 that MariTEL and Motorola agreed to field strength limitations as discussed in footnote 11, *supra*.

11. We further find that approval of the above-captioned applications, as conditioned herein will serve the public interest, convenience, and necessity.⁴² Specifically, we find that grant of the captioned applications, with the associated waiver relief and conditions, will provide additional needed spectrum resources for the applicants' public safety and homeland security communications systems, as discussed in paragraph 7, *supra*, without adversely affecting maritime communications

12. *Conclusion.* We will grant the assignment applications for the requested frequencies. However, because operations on the instant spectrum could, in some circumstances, present a potential for interference to maritime operations, the instant waiver requests are granted on the express condition that users may not cause interference to current or future marine or other communications, including but not limited to AIS operations. Additionally this waiver does not apply to, and users must not operate at, any location within thirty miles of a coastline or other major navigable waterway, and must meet agreed upon field strength limitations. We also grant Motorola's request for a waiver of Part 80 of the Commission's Rules to permit the proposed 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.

13. For reasons set forth above, IT IS ORDERED, pursuant to 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 Requests for Waiver filed by Motorola, Inc. in association with applications FCC File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, and 0002438759 on January 20, 2006; FCC File Nos. 0002633764 and 0002633769 on June 21, 2006; and FCC File No. 0002635143 on June 30, 2006, ARE GRANTED TO THE EXTENT 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;

-- Operations authorized hereunder may not be conducted at locations within thirty miles of a coastline or major navigable waterway; and must meet agreed upon field strength limitations;

-- 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, and

-- Grant of applications FCC File Nos. 0002438737 and 0002438749 is conditioned on the resolution of FCC File Nos. 0002173639, 0002173651, 0002173652, 0002173653, 0002173654, 0002173655, 0002173656, and 0002173657.

In all other respects, the Requests for Waiver ARE DENIED.

14. IT IS FURTHER ORDERED that applications FCC File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759, 0002633764, 0002633769, and

⁴² See 47 U.S.C. § 310(d)

0002635143 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau