

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

In the Matter of)	
)	
MOTOROLA, INC.)	File Nos. 0002438737-39, 0002438741-42,
)	0002438744, 0002438746, 0002438749,
Applications for Consent to Partition and)	0002438759
Disaggregate Licenses and Requests for Waiver of)	
Part 80 Rules to Permit Use of Maritime)	
Frequencies for Private Land Mobile Radio)	
Communications)	
)	
AMENDMENT OF THE COMMISSION’S)	PR Docket No. 92-257
RULES CONCERNING MARITIME)	
COMMUNICATIONS)	

ORDER ON RECONSIDERATION

Adopted: November 2, 2012

Released: November 5, 2012

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

1. *Introduction.* We have before us a petition¹ filed by Warren C. Havens (Havens), Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC (THL), Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation (collectively, Petitioners) for reconsideration an *Order on Reconsideration*² released by the Commission. The Commission dismissed as repetitious two petitions filed by the Petitioners for reconsideration of Commission decisions affirming decisions by the Wireless Telecommunications Bureau’s Mobility Division (Division) that dismissed as defective prior petitions for reconsideration filed by the Petitioners. For the reasons set forth below, we dismiss the petition as repetitious and otherwise plainly not warranting consideration by the Commission.

2. *Background.* In 2010, the Commission denied the Petitioners’ application for review of the Division’s dismissal³ of the Petitioners’ petition for reconsideration of the Division’s grant⁴ of the above-captioned applications to assign VHF public coast station spectrum from MariTEL, Inc. to

¹ See Petition for Reconsideration Based on New Facts, or in the Alternative Section 1.41 Request (filed Dec. 30, 2011) (New Petition). We also have before us oppositions filed by MariTEL, Inc. and Motorola Solutions, Inc. and a reply filed by the Petitioners. See Opposition of MariTEL, Inc. (filed Jan. 11, 2012); Opposition of Motorola Solutions, Inc. (filed Jan. 11, 2012); Reply to Oppositions to Petition for Reconsideration Based on New Facts, or in the Alternative Section 1.41 Request (filed Jan. 23, 2012).

² Motorola, Inc., *Order on Reconsideration*, 26 FCC Rcd 16581 (2011) (*Order on Reconsideration*).

³ Motorola, Inc., *Order on Reconsideration*, 22 FCC Rcd 18649 (WTB MD 2007). The Division dismissed the petition because the Petitioners did not explain why they could not have participated earlier in the proceeding. See *id.* at 18650-51 ¶ 6.

⁴ Motorola, Inc., *Order*, 22 FCC Rcd 579 (WTB MD 2007).

Motorola, Inc.⁵ Also in 2010, the Commission denied the Petitioners' application for review of the Division's dismissal⁶ of the Petitioners' petition for reconsideration of the Division's dismissal⁷ of the Petitioners' petition for reconsideration of the Commission's denial⁸ of the Petitioners' petition for reconsideration of the Commission's denial⁹ of the Petitioners' petition for reconsideration of the Commission's suspension¹⁰ of pending mutually exclusive Automated Maritime Telecommunications System (AMTS) applications pending the resolution of its proposal to transition the AMTS service to geographic licensing.¹¹

3. The Petitioners sought reconsideration of both 2010 Commission decisions, relying in each instance on what the Petitioners said were "new facts."¹² The Commission consolidated the proceedings and, in the *Order on Reconsideration*, dismissed both petitions. It concluded that neither petition addressed the propriety of the Division's procedural dismissals of the Petitioners' previous petitions for reconsideration, but each instead presented arguments going to the merits of the underlying licensing decisions.¹³ The Commission held that those arguments were irrelevant to the question of whether the Division's dismissals had been proper, and thus could not serve as the basis for reconsidering the Commission's affirmance of those dismissals.¹⁴

4. *Discussion.* The instant petition, like the petitions denied by the Commission in the *Order on Reconsideration*, does not address whether the Division acted correctly in dismissing the Petitioners' earlier petitions for reconsideration for procedural defects. It instead argues that recent court and Commission decisions – presented by the Petitioners as "new facts" – establish that the Commission

⁵ See Motorola, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 455 (2010). The Commission held that the Division properly dismissed the Petitioners' partial petition for reconsideration of the MariTEL-Motorola assignment applications because the Petitioners failed to explain why they could not have participated earlier in that proceeding.

⁶ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Order on Further Reconsideration*, PR Docket No. 92-257, 24 FCC Rcd 4150 (WTB MD 2009). The Division rejected as both untimely and unsupported the Petitioners' challenge to the conclusion of the Wireless Telecommunications Bureau (Bureau) that certain applications filed by Havens were mutually exclusive with another applicant's applications and rejected Petitioners' assertion that reconsideration was merited by evidence of bias by Bureau staff, noting that these allegations had been previously addressed. See *id.* at 4152-53 ¶¶ 6-7.

⁷ Amendment of the Commission's Rules Concerning Maritime Communications, *Order on Further Reconsideration*, PR Docket No. 92-257, 23 FCC Rcd 329 (WTB MD 2008).

⁸ Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391 (2003).

⁹ 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).

¹⁰ Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585 (2000).

¹¹ See Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Memorandum Opinion and Order*, PR Docket No. 92-257, 25 FCC Rcd 5008 (2010). The Commission held that the Division properly dismissed the Petitioners' petitions for reconsideration of the rulemaking-related licensing decisions as repetitious.

¹² See *Petition for Reconsideration Based on New Facts, And in the Alternative, Section 1.41 Request* (filed Feb. 3, 2010) (Motorola Petition); *Petition for Reconsideration Based on New Facts and Law, or in the alternative Section 1.41 Request* (filed May 26, 2010) (Public Coast Petition). THL was not a party to the Public Coast Petition. Havens was not a party to the Motorola Petition.

¹³ See *Order on Reconsideration*, 26 FCC Rcd at 16584 ¶¶ 7-8.

¹⁴ *Id.* at 16584 ¶ 8.

must always reach the substantive merits of the arguments in a pleading even if the pleading is procedurally defective.¹⁵ The suggestion that the Commission may never dismiss a pleading on procedural grounds is plainly incorrect.

5. Section 1.106(p) of the Commission's Rules provides that "[p]etitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s)" and lists reasons why a petition for reconsideration would plainly not warrant Commission consideration.¹⁶ We conclude that the instant petition plainly does not warrant consideration by the Commission. It fails to identify any material error, omission, or reason warranting reconsideration.¹⁷ Although the instant petition claims to be based on new facts, it does not provide any relevant new facts.¹⁸ It instead repeats arguments that already have been fully considered and rejected by the Commission,¹⁹ and, like the Petitioners' earlier pleadings in these proceedings, fails to address the procedural propriety of the Division's dismissals.²⁰ The instant petition is subject to dismissal for these reasons. It is also subject to dismissal as repetitious.²¹

¹⁵ See, e.g., New Petition at 6 (stating that a cited order "demonstrates that in any decision by the Commission, including a decision directly on, or is built upon [sic], a private party challenge to licensing actions, that [sic] the Commission must always deal with the substance of facts and law in the public interest, regardless of any actual or alleged procedural defects in the private party's attempt to pursue the public interest purposes underlying 47 USC Section 309(d) and Section 405, and related FCC rules on petitions to deny and administrative appeals"). The Petitioners also state that they are parties to a bankruptcy proceeding in which "new facts are becoming apparent" that may relate to the MariTEL-Motorola applications, but they do not explain how any facts that may be unearthed in the bankruptcy proceeding might bear on their failure to file a petition to deny those applications, or their failure to adduce any evidence or arguments that might excuse that omission for purposes of according them standing to file a petition for reconsideration of the Division's consent to those applications. In any event, the instant petition does not offer any new facts derived from the bankruptcy hearing, but only promises that the Petitioners may supply such facts in the indeterminate future. The Petitioners state that "[i]t is not yet possible to present the extensive documentation and draw conclusions regarding facts that are being discovered in this bankruptcy relevant to the Maritel Case. However, Petitioners will supplement this Petition once they are able to do so." *Id.* at 8.

¹⁶ See 47 C.F.R. § 1.106(p).

¹⁷ See 47 C.F.R. § 1.106(p)(1) (providing for the denial or dismissal of a petition for reconsideration of a Commission decision that "[f]ail[s] to identify any material error, omission, or reason warranting reconsideration").

¹⁸ See 47 C.F.R. § 1.106(p)(2) (providing for the denial or dismissal of a petition for reconsideration of a Commission decision which "[relies] on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of subsections (b)(2), (b)(3), or (c) of this subsection"). As noted *supra*, the only asserted "new facts" identified in the New Petition are court and administrative decisions, but the Petitioners do not demonstrate how these decisions establish a relevant *new* precedent rather than being consistent with pre-existing law, which, in the Petitioners' view, establishes that the Commission may not avoid addressing the substantive merits of a pleading even if the pleading is subject to dismissal for procedural deficiencies. See New Petition at 4-7.

¹⁹ See 47 C.F.R. § 1.106(p)(3) (providing for the denial or dismissal of a petition for reconsideration of a Commission decision which "[relies] on arguments that have been fully considered and rejected by the Commission within the same proceeding").

²⁰ See 47 C.F.R. § 1.106(p)(5) (providing for the denial or dismissal of a petition for reconsideration of a Commission decision which "[r]elate[s] to matters outside the scope of the order for which reconsideration is sought").

²¹ See 47 C.F.R. § 1.106(b)(3) (providing that a "petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious"); see also 47 C.F.R. 1.106(p)(8) (providing for a bureau's denial or dismissal of a petition for reconsideration of a Commission decision which "[r]elate[s] to an order for which reconsideration has been previously denied on similar grounds," with one exception not applicable here).

6. *Conclusion.* The Petitioners have presented no grounds for reconsideration of the Commission's denial of reconsideration of its denials of review of the Division's dismissals of the Petitioners' procedurally defective petitions for reconsideration. In addition, the deficiencies of the petition are such that it plainly does not warrant consideration by the Commission under the criteria set forth in Section 1.106 of the Rules. We accordingly dismiss the instant petition.

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration Based on New Facts, or in the Alternative Section 1.41 Request filed December 29, 2011 by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation, IS DISMISSED.

8. This action is taken under delegated authority pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau