

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

In the Matter of	)	
	)	
STATE OF MISSOURI	)	FCC File No. 0004835315
	)	WT Docket No. 12-133
Request for Waiver of Part 80 Power Limits for	)	
Public Safety Land Mobile Operations on	)	
Maritime Frequencies	)	

**ORDER**

**Adopted: January 25, 2013**

**Released: January 25, 2013**

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

1. *Introduction.* We have before us the above-captioned application for consent for Motorola Solutions, Inc. (Motorola) to partition and disaggregate spectrum under its license for VHF Public Coast (VPC) Station WQHE711 to the State of Missouri (the State), and an accompanying request for waiver of Section 80.123(e) of the Commission's Rules<sup>1</sup> to permit the State to operate mobile units with higher power than permitted by the VPC rules.<sup>2</sup> For the reasons set forth below, we grant the waiver request and will process the application.

2. *Background.* In 2007, the Wireless Telecommunications Bureau's Mobility Division (Division) substantially granted the applications of MariTEL, Inc. and related entities (MariTEL) for consent to assign VPC spectrum to Motorola, and corresponding requests for waivers to permit Motorola to provide this spectrum to third parties to satisfy public safety and other first responder requirements.<sup>3</sup> The assignment applications were granted on the conditions that operations would not cause harmful interference to current or future marine communications, including but not limited to Automatic Identification System (AIS)<sup>4</sup> operations; and operation would not be conducted at locations within thirty miles of a coastline or major waterway.<sup>5</sup> MariTEL retained all of its VPC spectrum in areas within thirty miles of coastlines and other major waterways.<sup>6</sup>

<sup>1</sup> 47 C.F.R. § 80.123(e).

<sup>2</sup> See FCC File No. 0004835315, Description of Application and Request for Waiver (Waiver Request).

<sup>3</sup> See Motorola, Inc., *Order*, 22 FCC Rcd 579 (*Motorola Order*), *recon. dismissed*, *Order on Reconsideration*, 22 FCC Rcd 18649 (WTB MD 2007), *review denied*, *Memorandum Opinion and Order*, 25 FCC Rcd 455 (2010), *recon. dismissed*, *Order on Reconsideration*, 26 FCC Rcd 16581 (2011), *recon. dismissed*, *Order on Reconsideration*, 27 FCC Rcd 13520 (WTB MD 2012), *recon. pending*.

<sup>4</sup> 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. See generally, e.g., Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, *Second Report and Order*, WT Docket No. 04-344, 23 FCC Rcd 13711 (2008).

<sup>5</sup> *Motorola Order*, 22 FCC Rcd at 585 ¶ 13. The Division subsequently clarified that the prohibition on operation within thirty miles of coastlines and other major waterways applies to both base stations and mobile or portable radios. See MariTEL Southern Pacific, Inc., *Order*, 27 FCC Rcd 10978, 10978-79 n.5 (WTB MD 2012) (*MariTEL Southern Pacific Order*), *recon. pending*.

<sup>6</sup> *Motorola Order*, 22 FCC Rcd at 580 ¶ 2.

3. Also in 2007, the Commission amended the Part 80 rules to afford VPC licensees additional operational flexibility to provide service to units on land.<sup>7</sup> Specifically, the Commission provided that VPC licensees could use the spectrum for private land mobile radio (PLMR) service, provided that certain conditions are met, including complying with Part 80 technical limits and providing priority for marine-originating communications.<sup>8</sup> The Part 80 technical rules limit VPC mobile units to twenty-five watts transmitter output power (TPO) and eighteen watts effective radiated power (ERP).<sup>9</sup>

4. In 2012, Motorola filed the instant application for consent to the partial assignment of Station WQHE711 to the State in the southern and northern portions of Missouri.<sup>10</sup> The State seeks this spectrum in order to construct twenty-four base stations and operate associated mobile units to support a PLMR system to meet the communication needs of its public safety and homeland security operations.<sup>11</sup> The State will abide by the limitations on the assignment to Motorola and the Part 80 technical rules, except that it requests a waiver to permit the operation of mobile units with fifty watts TPO and forty-five watts ERP.<sup>12</sup>

5. The assignment application went on public notice on May 2, 2012,<sup>13</sup> and on May 31, 2012, we sought comment on the waiver request.<sup>14</sup> No comments were received.

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 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.<sup>15</sup> We conclude that the waiver request 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. Power levels permitted for transmitters used for operations licensed under Part 90 of the Commission's Rules typically are higher than the Part 80 power limit. The State proposes to operate with power levels consistent with its Part 90 facilities. Motorola argues that allowing the State to operate mobile units with fifty watts TPO and forty-five watts ERP is unlikely to cause interference to maritime

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<sup>7</sup> MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971 (2007), *on recon.*, *Memorandum Opinion and Order*, 25 FCC Rcd 533 (2010), *recon. denied*, *Order on Reconsideration*, 26 FCC Rcd 2491, *review dismissed*, *Second Memorandum Opinion and Order*, 26 FCC Rcd 16579 (2011).

<sup>8</sup> See 47 C.F.R. § 80.123. VPC stations are presumptively treated as commercial mobile radio service providers. See 47 C.F.R. § 20.9(a)(5). VPC licensees are permitted, however, to file applications to dedicate a portion of their licensed spectrum for private mobile radio service (PMRS), and may be regulated as PMRS providers upon certifying that they will so operate. See 47 C.F.R. § 20.9(b).

<sup>9</sup> 47 C.F.R. § 80.215(e)(1).

<sup>10</sup> See Waiver Request, Exhibit A for specific frequencies to be partitioned and disaggregated.

<sup>11</sup> See Waiver Request at 1.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Public Notice*, Report No. 7732 (WTB rel. May 2, 2012).

<sup>14</sup> See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver of Part 80 Power Limits for State of Missouri Public Safety Land Mobile Radio Operations on Maritime Frequencies, *Public Notice*, WT Docket No. 12-133, 27 FCC Rcd 5868 (WTB MD 2012).

<sup>15</sup> 47 C.F.R. § 1.925(b)(3); see also *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

operations or adversely affect priority to maritime communications. Motorola indicates that the State's mobile units will have zero antenna gain and some line loss, and consequently will pose no more potential for interference than mobile units operating under the Part 80 power limit with a gain of 3 dB.<sup>16</sup> Additionally, Motorola states that the +5 dBu contour of the State's operations will not extend to or overlap major navigable waterways.<sup>17</sup> Based on the record before us, it appears that Motorola's request to permit the operation of the State's mobile units with fifty watts TPO and forty-five watts ERP does not pose an interference threat to maritime operations. Consequently, we grant the waiver request.

8. VPC stations are required to maintain a safety watch on marine VHF channel 16 under certain conditions<sup>18</sup> and afford priority to marine-originating communications.<sup>19</sup> Motorola states that MariTEL will meet these requirements on the spectrum that it retains in areas within thirty miles of major waterways, and suggests that a waiver of those requirements for the State therefore is not necessary.<sup>20</sup> We conclude that a waiver is necessary, for these requirements apply to each VPC licensee.<sup>21</sup> Given that MariTEL retains VPC spectrum to provide service to vessels in the major waterways off the partitioned area, it appears from the record before us that the channel 16 watch will be maintained and marine-originating communications will receive the same priority as they would in the absence of partitioning and disaggregation to the State. We therefore conclude that a waiver of these requirements is warranted under the circumstances presented.<sup>22</sup> In the event that the VPC spectrum retained by MariTEL proves insufficient to accommodate maritime needs in the region, however, the parties will be required to adopt other means to ensure against blocked or delayed marine-originating calls.<sup>23</sup>

9. *Conclusion.* For the reasons stated above, we will grant the instant application. We recognize the importance of interference-free maritime communications. We do not believe, however, that the record before us demonstrates that the State's proposed operations pose a sufficient interference threat to warrant denying the request. The request is granted on the express conditions that no interference is caused to current or future marine communications, including but not limited to AIS and eNavigation<sup>24</sup> operations; and that, if necessary, the State will exercise its best efforts to adjust its operations in coordination with the maritime community so that the public safety needs of both the State and the maritime community can be accommodated.

10. 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 Motorola Solutions, Inc. on April 27, 2012, IS GRANTED ON THE CONDITIONS set forth in paragraph 9, and that application FCC File No. 0004835315 SHALL BE PROCESSED consistent with this *Order*.

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<sup>16</sup> See Waiver Request at 3.

<sup>17</sup> *Id.*

<sup>18</sup> See 47 C.F.R. § 80.303.

<sup>19</sup> See 47 C.F.R. § 80.123(b).

<sup>20</sup> See Waiver Request at 2.

<sup>21</sup> See *MariTEL Southern Pacific Order*, 27 FCC Rcd at 10983 ¶ 12 (citing *PacifiCorp, Order*, 24 FCC Rcd 5796, 5799 n.35 (WTB MD 2009)).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> eNavigation is defined as the harmonized creation, collection, integration, exchange and presentation of maritime information onboard and shore by electronic means to enhance berth to berth navigation and related services, for safety and security at sea and protection of the marine environment. See Report to Maritime Safety Committee, IMO Sub-Committee on Safety of Navigation, 53rd session, Agenda item 22, NAV 53/22, 14 August 2007.

11. 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

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