

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

Adopted: April 2, 2013

Released: April 3, 2013

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. This *Order* dismisses a “Limited Appeal and Reservation” (Limited Appeal) filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation (collectively, Petitioners).¹ In 2011,² the Commission dismissed the Petitioners’ petitions for reconsideration of two Commission orders affirming decisions of the Wireless Telecommunications Bureau’s Mobility Division (Division) that dismissed as defective the Petitioners’ prior petitions for reconsideration of earlier orders in those proceedings.³ In 2012, the Division dismissed as repetitious the Petitioners’ petition for reconsideration of the Commission’s 2011 decision.⁴ The Limited Appeal notes the pendency of a separate proceeding involving some of the same parties,⁵ and appears to request that the Petitioners be permitted to file additional pleadings seeking reconsideration of the Commission’s 2011 decision in the

¹ Limited Appeal and Reservation (filed Dec. 5, 2012) (Limited Appeal). Motorola Solutions, Inc. filed an Opposition on December 19, 2012, and the Petitioners filed a Reply to Opposition to Limited Appeal and Reservation on December 31, 2012.

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

³ Motorola, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 455 (2010), *dismiss’g recon. of Order on Reconsideration*, 22 FCC Rcd 18649 (WTB MD 2007), *dismiss’g recon. of Order*, 22 FCC Rcd 579 (WTB MD 2007); Amendment of the Commission’s Rules Concerning Maritime Communications, *Fourth Memorandum Opinion and Order*, PR Docket No. 92-257, 25 FCC Rcd 5008 (2010), *dismiss’g recon. of Second Order on Further Reconsideration*, 24 FCC Rcd 4150 (WTB MD 2009), *dismiss’g recon. of Order on Further Reconsideration*, 23 FCC Rcd 329 (WTB MD 2008), *dismiss’g recon. of Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003), *deny’g recon. of Second Memorandum Opinion and Order and Fifth Report and Order*, 17 FCC Rcd 6685 (2002), *den’g recon. of Fourth Report and Order and Third Further Notice of Proposed Rule Making*, 15 FCC Rcd 22585 (2000).

⁴ Motorola, Inc., *Order on Reconsideration*, 27 FCC Rcd 13520 (WTB MD 2012).

⁵ Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (*HDO*).

event of a “favorable ruling” in the separate proceeding.⁶

2. The Limited Appeal is subject to dismissal for a number of reasons. To the extent that it seeks relief with respect to the Commission’s 2011 *Order on Reconsideration*, it is untimely. Even if it is construed as seeking relief with respect to the Division’s 2012 *Order on Reconsideration*, it is frivolous⁷ and unauthorized, for the Commission’s Rules do not provide for the filing of such a request.⁸ Moreover, the Limited Appeal ignores the fact that the 2011 Commission decision and the antecedent Commission and Division decisions that it affirmed rejected the Petitioner’s multiple petitions for reconsideration because those petitions failed to address the procedural issues which were the basis of the decisions for which reconsideration was sought, and instead attempted to relitigate substantive issues that were long ago resolved with administrative finality. The Limited Appeal, like those earlier pleadings, provides no basis for reopening the record on those issues.

3. 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 Limited Appeal and Reservation filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation on December 5, 2012 IS DISMISSED.

4. 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

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

⁶ See Limited Appeal at 2 (“Petitioners submit this limited appeal – under rules regarding an application for review, a petition for reconsideration, an informal request, and a declaratory ruling, and any other applicable rule --, and take the position that, and request the FCC to accept that, they may use any such favorable decision on said common elements and issues from the [*HDO* proceeding] (if and when they are forthcoming, by a FCC decision or a reviewing court decision) in the Instant Case, in a timely manner – *and without the Instant Case being deemed at that time stale, final, or otherwise unfit for said action*, including by a reservation of rights asserted herein.....”) (emphasis in original).

⁷ See, e.g., Warren C. Havens, *Third Order on Reconsideration*, 26 FCC Rcd 10888 (2011) (dismissing pleading as frivolous and repetitious). A pleading is subject to dismissal as frivolous if it is based on arguments that have been specifically rejected by the Commission or otherwise have no plausible basis for relief. *Id.* at 10892 ¶ 11.

⁸ See 47 C.F.R. §§ 1.45, 1.939 (describing authorized pleadings); see also, e.g., Secret Communications II, LLC, *Memorandum Opinion and Order*, 18 FCC Rcd 9139, 9139 ¶ 1 n.1 (2003) (dismissing unauthorized pleading pursuant to 47 C.F.R. § 1.45); *Llerandi v. FCC*, 863 F.2d 79, 86-87 (D.C. Cir. 1988) (upholding Commission’s refusal to consider unauthorized pleadings).