

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

In the Matter of)	
)	
COUNTY OF COLUMBIA, NEW YORK)	FCC File No. 0006637147
)	WT Docket No. 15-72
Request for Waiver of Part 80 Power Limits for)	
Land Mobile Operations on Maritime Frequencies)	

ORDER

Adopted: July 22, 2015

Released: July 22, 2015

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 WQHE714 to the County of Columbia, New York (the County), and an accompanying request for waiver of Section 80.123(e) of the Commission's Rules¹ to permit the County to operate mobile units with higher power than permitted by the VPC rules.² 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.³ 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)⁴ operations; and operation would not be conducted at locations within thirty miles of a coastline or major waterway.⁵ MariTEL retained all of its VPC spectrum in areas within thirty

¹ 47 C.F.R. § 80.123(e).

² See FCC File No. 0006637147, Description of Application and Request for Waiver (Waiver Request).

³ 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. dismissed*, *Order*, 28 FCC Rcd 4239 (WTB MD 2013). The original assignment was to Motorola, Inc., which subsequently changed its name to Motorola Solutions, Inc. See FCC File No. 0004575101.

⁴ 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).

⁵ *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. denied*, *Order on Reconsideration and Order*, 28 FCC Rcd 7080 (WTB MD 2013), *recon. dismissed*, *Second Order on Reconsideration*, 29 FCC Rcd 12827 (WTB MD 2014), *recon. dismissed*, *Third Order on Reconsideration*, 30 FCC Rcd 3702 (WTB MD 2015).

miles of coastlines and other major waterways.⁶

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.⁷ 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.⁸ The Part 80 technical rules limit VPC mobile units to twenty-five watts transmitter output power (TPO) and eighteen watts effective radiated power (ERP).⁹

4. In 2015, Motorola filed the instant application for consent to partially assign Station WQHE714 to the County in the Upper Hudson region of New York.¹⁰ The County seeks this spectrum in order to construct 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.¹¹ The County 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 fifty watts ERP.¹²

5. The assignment application went on public notice on March 18, 2015,¹³ and we sought comment on the waiver request on March 23, 2015.¹⁴ 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.¹⁵ 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 waiver would be in the public interest.

7. Power levels permitted for transmitters used for operations licensed under Part 90 of the

⁶ *Motorola Order*, 22 FCC Rcd at 580 ¶ 2.

⁷ *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).

⁸ *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).

⁹ 47 C.F.R. § 80.215(e)(1).

¹⁰ Specifically, Motorola seeks to disaggregate VHF channels 224, 284, 485, 426, and 286 in an area encompassing the County.

¹¹ *See* Waiver Request at 1.

¹² *Id.* at 2-3.

¹³ *Public Notice*, Report No. 10360 (WTB rel. Mar. 18, 2015).

¹⁴ *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver of Part 80 Power Limits for County of Columbia, New York Land Mobile Radio Operations on Maritime Frequencies, *Public Notice*, WT Docket No. 15-72, 30 FCC Rcd 2642 (WTB MD 2015).

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

Commission's Rules typically are higher than the Part 80 power limit. The County proposes to operate with power levels consistent with its Part 90 facilities. Motorola argues that allowing the County to operate mobile units with fifty watts TPO and fifty watts ERP is unlikely to cause interference to maritime operations or adversely affect priority to maritime communications. Motorola indicates that the County's mobile units will have limited 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.¹⁶ Additionally, Motorola states that the +5 dBu contour of the County's operations will not extend to or overlap major navigable waterways.¹⁷ Based on the record before us, it appears that Motorola's request to permit the operation of the County's mobile units with fifty watts TPO and fifty watts ERP does not pose an interference threat to maritime operations. Consequently, we grant the waiver request.¹⁸

8. VPC stations are required to maintain a safety watch on marine VHF channel 16 under certain conditions¹⁹ and afford priority to marine-originating communications.²⁰ 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 County therefore is not necessary.²¹ We conclude that a waiver is necessary, for these requirements apply to each VPC licensee.²² 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 County. We therefore conclude that a waiver of these requirements is warranted under the circumstances presented.²³ 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.²⁴

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 County'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 eNavigation²⁵ operations; and that, if necessary, the County will exercise its best efforts to adjust its operations in coordination with the maritime community so that the public safety needs of both the County and the maritime community can be accommodated.

10. For reasons set forth above, IT IS ORDERED, pursuant to the authority of Sections 4(i)

¹⁶ See Waiver Request at 3.

¹⁷ *Id.*

¹⁸ See State of Missouri, *Order*, 28 FCC Rcd 375, 376-77 ¶ 8 (WTB MD 2013) (granting similar waiver request).

¹⁹ See 47 C.F.R. § 80.303.

²⁰ See 47 C.F.R. § 80.123(b).

²¹ See Waiver Request at 2.

²² See *MariTEL Southern Pacific Order*, 27 FCC Rcd at 10983 ¶ 12 (citing *PacifiCorp, Order*, 24 FCC Rcd 5796, 5799 n.35 (WTB MD 2009)).

²³ *Id.*

²⁴ *Id.*

²⁵ 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.

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 March 13, 2015, IS GRANTED ON THE CONDITIONS set forth in paragraph 9, and that application FCC File No. 0006637147 SHALL BE PROCESSED consistent with this *Order*.

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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau