

**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	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 30, 2009**

**Released: January 4, 2010**

By the Commission:

1. *Introduction.* This *Memorandum Opinion and Order* affirms the dismissal of a defective petition for reconsideration. We deny an application for review filed jointly by AMTS Consortium LLC, Telesaurus-VPC LLC, Telesaurus Holding GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation (collectively “Petitioners”).<sup>1</sup> Petitioners seek review of an *Order on Reconsideration* by the Mobility Division (Division), Wireless Telecommunications Bureau (Bureau).<sup>2</sup>

2. *Background.* MariTEL<sup>3</sup> filed the above-captioned applications for consent to assign VHF Public Coast (VPC) spectrum to Motorola, Inc. (Motorola), and associated requests for waivers 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. No petitions to deny the applications were filed.<sup>4</sup> The Division substantially granted the waiver requests,<sup>5</sup> and indicated that the Bureau would consent to the assignment applications.<sup>6</sup>

3. Petitioners requested partial reconsideration of the Division’s *Order*. The Division dismissed the petition as procedurally defective. Specifically, the Division concluded that the petition was untimely

<sup>1</sup> Application for Review (filed Nov. 19, 2007) (AFR).

<sup>2</sup> Motorola, Inc., *Order on Reconsideration*, 22 FCC Rcd 18649 (WTB MD 2007) (*Order on Reconsideration*).

<sup>3</sup> The applications were filed by the following entities, which are referred to collectively as MariTEL: 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.

<sup>4</sup> The Bureau published public notice of the filing of the applications. *See Public Notice*, Report No. 2377 (WTB rel. Jan. 25, 2006).

<sup>5</sup> *See* Motorola, Inc., *Order*, 22 FCC Rcd 579, 583-85 ¶¶ 7-13 (WTB MD 2007) (*Order*). The *Order* also addressed applications from other licensees to assign VPC spectrum to Motorola, but those applications are not at issue herein.

<sup>6</sup> *Id.* at 585-86 ¶ 14. The Bureau published notice of its consent twelve days after the *Order* was released. *See Public Notice*, Report No. 2900 (WTB rel. Jan. 31, 2007).

because it was filed more than thirty days after the *Order* was released,<sup>7</sup> and improper because Petitioners did not explain why they could not have participated earlier in the proceeding.<sup>8</sup> Petitioners then filed the instant application for review.<sup>9</sup>

4. *Discussion.* Section 1.106(b)(1) of the Commission's Rules provides that a petition for reconsideration filed by a person who is not already a party to the proceeding must "show good reason why it was not possible for him to participate in the earlier stages of the proceeding."<sup>10</sup> Petitioners state that they could not have participated in the earlier stages of the proceeding because their petition for reconsideration relied on facts that arose too late or could not have been ascertained earlier.<sup>11</sup> They do not, however, identify any facts that arose too late for them to participate earlier, or explain why they could not, through the exercise of ordinary diligence, have ascertained such facts earlier.<sup>12</sup> Consequently, we deny the application for review.<sup>13</sup>

5. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115(g) of the Commission's Rules, 47 C.F.R. § 1.115(g), the Application for Review filed jointly by AMTS Consortium LLC, Telesaurus-VPC LLC, Telesaurus Holding GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation on November 19, 2007, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>7</sup> See *Order on Reconsideration*, 22 FCC Rcd at 18650 ¶ 5 (citing 47 C.F.R. § 1.106(f)). The Division noted that the petition was filed within thirty days of the public notice announcing the Bureau's consent to the assignment applications, but concluded that it was untimely because the *Order* was the action for which reconsideration was sought. See *id.* at 18650 n.14.

<sup>8</sup> See *id.* at 18650-51 ¶ 6 (citing 47 C.F.R. § 1.106(b)(1)). The Division dismissed the Petitioners' alternative request that their petition be treated as an informal request pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, concluding that "a party cannot evade the procedural requirements of Section 1.106 by concurrently requesting the same relief under Section 1.41." *Id.* at 18651 ¶ 7 (citing Paging Systems, Inc., *Order*, 21 FCC Rcd 7225, 7227 ¶ 8 (WTB PSCID 2006) (citing Jason Bennett, *Letter*, 20 FCC Rcd 17193, 17194 & n.14 (MB AD 2005); Adelpia Business Solutions Long Haul, L.P., *Order*, 15 FCC Rcd 18329, 18331-32 ¶ 3 (WTB PSPWD 2000)), *review pending*).

<sup>9</sup> MariTEL filed an opposition on December 4, 2007. No reply was filed.

<sup>10</sup> See 47 C.F.R. § 1.106(b)(1).

<sup>11</sup> See AFR at 1.

<sup>12</sup> The Division noted the same flaw in the petition for reconsideration. See *Order on Reconsideration*, 22 FCC Rcd at 18651 ¶ 6 & n.17.

<sup>13</sup> Petitioners also argue that the Division should have addressed the merits of the petition for reconsideration regardless of whether it was timely. See AFR at 1. In light of our resolution of Petitioners' first argument, we need not address questions relating to the timeliness of the petition for reconsideration. See, e.g., Ponce Broadcasting Corp., *Memorandum Opinion and Order*, 10 FCC Rcd 11289, 11289 n.3 (1995).