

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

In the Matter of	)	
	)	
MARITEL NORTHERN PACIFIC, INC.	)	FCC File Nos. 0003941632-33
MARITEL SOUTHERN PACIFIC, INC.	)	
	)	
Assignment of Authorization to PacifiCorp	)	
	)	
Request for Waiver of Part 80 of the	)	
Commission's Rules	)	

ORDER

Adopted: July 19, 2012

Released: July 20, 2012

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

1. *Introduction.* On August 24, 2009, MariTEL Northern Pacific, Inc. and MariTEL Southern Pacific, Inc. (collectively, MariTEL) filed applications to partition and disaggregate portions of their licenses for VHF Public Coast (VPC) stations WPOJ532 and WPOJ536, respectively, to PacifiCorp (Applications).<sup>1</sup> To facilitate its proposed use of the spectrum, PacifiCorp requests a waiver of the Part 80 Rules.<sup>2</sup> We also have before us a petition to dismiss or deny the Applications (Petition).<sup>3</sup> For reasons discussed below, we conclude that a waiver to permit PacifiCorp to use the assigned spectrum in support of its electric utility operations will serve the public interest in supporting critical infrastructure industry communications, will not preclude accommodation of maritime communications in the partitioned areas, and, as conditioned herein, will not pose a threat of harmful interference to maritime communications. Consequently, we grant the Waiver Request as set forth below, deny the Petition, and will process the Applications accordingly.

2. *Background.* In 2005, MariTEL filed applications to partition and disaggregate portions of these same two licenses to PacifiCorp, which requested waivers of the Part 80 Rules so that it could use the spectrum to support its electric utility operations.<sup>4</sup> In 2006, the Public Safety and Critical Infrastructure Division (PSCID) of the Wireless Telecommunications Bureau (Bureau) granted

<sup>1</sup> FCC File Nos. 0003941632, 0003941633 (both filed Aug. 24, 2009) (Applications).

<sup>2</sup> See Request for Waiver of Part 80 of the Commission's Rules, attached to the Applications (Waiver Request).

<sup>3</sup> See Petition to Dismiss or Deny, Or in the alternative Section 1.41 Request (filed Sept. 16, 2009 by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation (collectively, Petitioners)) (Petition). MariTEL and PacifiCorp each filed an opposition. See Opposition of MariTEL, Inc. (filed Sept. 28, 2009); Opposition of PacifiCorp (filed Sept. 30, 2009). The Petitioners filed a reply. See Reply to Oppositions to Petition to Dismiss or Deny, Or in the Alternative Section 1.41 Request (filed Oct. 13, 2009). In addition, Warren Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation filed a Supplement – New Facts, And Request to Accept on May 27, 2010.

<sup>4</sup> See FCC File Nos. 0001988156 (WPOJ532), 0001988415 (WPOJ536) (both filed June 13, 2005, amended Dec. 17, 2008 and Mar. 13, 2009).

PacifiCorp's waiver request only in part, in light of objections raised by the National Telecommunications and Information Administration (NTIA) on behalf of the United States Coast Guard (Coast Guard).<sup>5</sup> Specifically, PSCID granted the request to permit operations only more than twenty miles from the Pacific Ocean and Columbia River.<sup>6</sup> With respect to those areas, PSCID granted PacifiCorp's request for a waiver to permit private land mobile radio (PLMR) operations on VPC spectrum to be governed by Part 90 of the Commission's Rules only until resolution of the Commission's then-pending proceeding proposing to amend the Part 80 rules to permit PLMR use of VPC spectrum,<sup>7</sup> but stated that PacifiCorp ultimately would be subject to the rules adopted in that proceeding.<sup>8</sup>

3. PacifiCorp timely sought Commission review of PSCID's decision not to grant the waiver in areas within twenty miles of the Pacific Ocean and Columbia River, but in 2008, MariTEL and PacifiCorp, after consulting with the Coast Guard, amended those applications (and the waiver request) to reduce the number of VPC channels on which PacifiCorp proposed to operate near major waterways.<sup>9</sup> In 2009, the Bureau's Mobility Division<sup>10</sup> granted PacifiCorp's amended waiver request and consented to the amended assignment applications.<sup>11</sup> Because the Commission had in 2007 amended the Part 80 rules to permit PLMR use of VPC spectrum<sup>12</sup> and PacifiCorp represented that its proposed operations otherwise complied with Part 80, the only rule waiver that PacifiCorp required was of the requirement in Section 80.123(b) of the Commission's Rules<sup>13</sup> that priority be afforded to marine-originating communications.<sup>14</sup>

<sup>5</sup> See PacifiCorp, *Order*, 21 FCC Rcd 7762 (WTB PSCID 2006) (2006 Waiver Order).

<sup>6</sup> See *id.* at 7766 ¶ 9.

<sup>7</sup> See MariTEL, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2004).

<sup>8</sup> See 2006 Waiver Order, 21 FCC Rcd at 7766 ¶ 9. PacifiCorp was granted waivers of various Part 80 Rules, including Sections 80.105, 80.106, 80.123, 80.203, and 80.371, 47 C.F.R. §§ 80.105, 80.106, 80.123, 80.203, 80.371. See *id.* at 7763 n.3 (describing waiver request), 7767 ¶ 13 (conditionally granting waiver request except to the extent that PacifiCorp sought to operate on Channel 87B and surrounding interstitial channels, and to the extent it sought to operate within twenty miles of the Pacific coast or the Columbia River). The waived rules impose certain obligations on VPC licensees with respect to meeting maritime communications needs, establish power limits more stringent than those in Part 90, and require the use of equipment authorized under Part 80.

<sup>9</sup> Because the Bureau had not yet formally consented to the assignment applications, they remained in pending status and thus could be amended.

<sup>10</sup> Pursuant to a Commission reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

<sup>11</sup> See PacifiCorp, *Order*, 24 FCC Rcd 5796 (WTB MD 2009) (2009 Waiver Order). The Mobility Division also granted PacifiCorp's request to withdraw its application for review. *Id.* at 5800 ¶ 11.

<sup>12</sup> See 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), *aff'd*, *Order on Reconsideration*, 26 FCC Rcd 2491, *review dismissed*, *Second Memorandum Opinion and Order*, 26 FCC Rcd 16579 (2011).

<sup>13</sup> See 47 C.F.R. § 80.123(b).

<sup>14</sup> See 2009 Waiver Order, 22 FCC Rcd at 5798-800 ¶¶ 5-10. In 2010, the Commission confirmed that licensees operating pursuant to pre-2007 waivers that were conditioned on compliance with the rules eventually adopted in WT Docket No. 04-257 could not operate in conflict with those rules unless they obtained specific waivers of any rules with which they could not comply. See MariTEL, Inc. and Mobex Network Services, LLC, *Memorandum Opinion and Order*, WT Docket No. 04-257, 25 FCC Rcd 533, 537 ¶ 12 (2010), *aff'd*, *Order on Reconsideration*, 26 FCC Rcd 2491, *review dismissed*, *Second Memorandum Opinion and Order*, 26 FCC Rcd 16579 (2011).

4. Upon consummation of the assignment, PacifiCorp acquired the right to use certain VPC frequencies in those portions of the station WPOJ532 and WPOJ536 service areas that are within twenty miles from the Pacific Ocean and Columbia River, and the right to use those frequencies plus additional VPC frequencies in those portions of the service areas more than twenty miles from the Pacific Ocean and Columbia River; VHF maritime Channel 85 (157.275/161.875 MHz) was assigned only in areas more than twenty miles from the Pacific Ocean and Columbia River.<sup>15</sup>

5. Later in 2009, MariTEL filed the instant Applications for consent to assign Channel 85 to PacifiCorp in the station WPOJ532 and WPOJ536 service areas within twenty miles of the Pacific Ocean and Columbia River. PacifiCorp notes that most of the over-700,000 utility customers that it serves in Oregon, Washington, and California are in this area.<sup>16</sup> It also represents that the eventual assignment of Channel 85 to PacifiCorp within twenty miles of the Pacific Ocean and the Columbia River “was specifically contemplated as part of the discussions among PacifiCorp, MariTEL, and the ... Coast Guard regarding the assignment of VPC frequencies to PacifiCorp,” as noted in PacifiCorp’s amended waiver request in 2008.<sup>17</sup>

6. *Discussion.* The Petition argues that the Applications should be dismissed, denied, or held in abeyance due to questions about the basic character qualifications of Donald DePriest and for other reasons unrelated to the assignment of VPC spectrum to PacifiCorp.<sup>18</sup> In another matter involving MariTEL applications, we recently held that the issues raised by the Petition do not, under the Commission’s policies, constitute grounds to defer processing of MariTEL applications.<sup>19</sup> Consequently, we deny the Petition.

7. With respect to the use of Channel 85 within twenty miles of the Pacific Ocean and the Columbia River, we grant PacifiCorp the same waiver relief it was accorded with respect to other VPC spectrum in 2009. We credit the parties’ representations that, after the assignment is consummated, MariTEL will retain sufficient spectrum to accommodate maritime communication needs in areas within twenty miles of the Pacific Ocean and the Columbia River.<sup>20</sup> We agree with PacifiCorp that the same public interest considerations that warranted grant of the earlier waiver requests support grant of this waiver request.<sup>21</sup> We grant the waiver of the requirement in Section 80.123(b) that priority be afforded to marine-originating communications on the same conditions as in 2009: (1) that no interference be caused to current or future marine communications, including, but not limited, to Automatic Identification System (AIS) operations, and (2) if necessary, PacifiCorp will exercise its best efforts to adjust its operations in coordination with the maritime community so that the public safety needs of both

<sup>15</sup> See *2006 Waiver Order*, 21 FCC Rcd at 7763 ¶ 3; *2009 Waiver Order*, 24 FCC Rcd at 5798 ¶ 5.

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

<sup>17</sup> *Id.* at 8; see Amended Request for Rule Waiver (filed Dec. 16, 2008 by PacifiCorp and attached to FCC File Nos. 0001988156, 0001988415), at 7 n.11 (“Although the present applications do not propose assignment of channel 85 to PacifiCorp in the area that is within 20 miles of the Pacific ocean and Columbia River, PacifiCorp and MariTEL contemplate requesting consent to the assignment of channel 85 to PacifiCorp for [PMRS] use in the near future.”). Neither NTIA nor the Coast Guard has petitioned to deny, or otherwise indicated any opposition to, the present Applications and Waiver Request.

<sup>18</sup> See Petition at 2-3.

<sup>19</sup> See *MariTEL, Inc., Order*, 27 FCC Rcd 3256, 3259-62 ¶¶ 7-14 (WTB MD 2012), *recon. and review pending*.

<sup>20</sup> See Waiver Request at 2, 7-8; see also *2009 Waiver Order*, 24 FCC Rcd at 5799 ¶ 9 (accepting the parties’ representation that the spectrum retained by MariTEL would be sufficient to accommodate maritime needs, but also noting that if “the spectrum retained by MariTEL proves insufficient to accommodate maritime needs in the region, ... the parties will be required to adopt other means to ensure against blocked or delayed marine-originating calls”).

<sup>21</sup> See Waiver Request at 7.

PacifiCorp and the maritime community can be accommodated.<sup>22</sup> As so conditioned, we conclude that grant of the waiver of Section 80.123(b) is warranted under Section 1.925(b)(3) of the Rules.<sup>23</sup> In the event that the 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.

8. *Conclusion and Ordering Clauses.* For the reasons stated above, we grant PacifiCorp's waiver request, and will consent to the assignment applications for the requested frequencies. Because PacifiCorp's operations could, in some circumstances, present a potential for interference to maritime operations, or could preclude the use of these maritime frequencies in the national interest, the instant waiver request is granted on the express conditions that no interference is caused to current or future marine communications, including but not limited to AIS operations; and that, if necessary, PacifiCorp will exercise its best efforts to adjust its operations in coordination with the maritime community so that the public safety needs of both PacifiCorp and the maritime community can be accommodated. In addition, we deny the Petition, which provides no basis for dismissing, denying or deferring action on the Applications.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(r) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), and Sections 1.41 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.939, that the Petition to Dismiss or Deny, Or in the alternative Section 1.41 Request filed by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation on September 16, 2009, IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to 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 of Part 80 of the Commission's Rules filed by PacifiCorp in association with applications FCC File Nos. 0003941632 and 0003941633 IS GRANTED to the extent indicated above ON THE CONDITIONS set forth in paragraph 7.

11. IT IS FURTHER ORDERED that applications FCC File Nos. 0003941632 and 0003941633 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

12. 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, 0331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

<sup>22</sup> See *2009 Waiver Order*, 24 FCC Rcd at 5800 ¶ 11. PacifiCorp does not object to imposition of these conditions. See Waiver Request at 8.

<sup>23</sup> 47 C.F.R. § 1.925(b)(3). In addition, we accept PacifiCorp's certification that it will use the assigned spectrum for private mobile radio service (PMRS) operations. See Certification Pursuant to Section 20.9(b), attached to the Applications. We accordingly direct that the license to be issued to PacifiCorp, following its notification to the Commission of the consummation of the assignment, be designated as authorizing only PMRS use. VPC stations are presumptively treated as commercial mobile radio service providers, but VPC licensees are permitted to file applications to dedicate a portion of their spectrum for PMRS use and may be regulated as PMRS providers upon certifying that they will so operate. See 47 C.F.R. § 20.9(a)(5), (b).