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

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MAY 15 2007

In the Matter of	)	
	)	
MARITEL, INC.	)	WT Docket No. 04-257
and	)	
MOBEX NETWORK SERVICES, LLC	)	RM-10743
	)	
Petitions for Rule Making to Amend the	)	
Commission's Rules to Provide Additional	)	
Flexibility for AMTS and VHF Public Coast	)	
Station Licensees	)	

FCC MAIL ROOM

**REPORT AND ORDER**

Adopted: May 9, 2007

Released: May 10, 2007

By the Commission:

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**I. INTRODUCTION AND EXECUTIVE SUMMARY**

1. In this *Report and Order*, we afford licensees of VHF Public Coast (VPC) stations and Automated Maritime Telecommunications System (AMTS) stations additional operational flexibility to provide service to units on land. Specifically, as proposed in the *Notice of Proposed Rule Making (NPRM)* in this proceeding,<sup>1</sup> we adopt rule changes to permit VPC and AMTS licensees to offer private

<sup>1</sup> MariTEL, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2004) (*NPRM*).

correspondence service<sup>2</sup> to units on land, *i.e.*, private land mobile radio (PLMR) service, in addition to the public correspondence service<sup>3</sup> they already are authorized to provide to units on land. However, in order to maintain their paramount role as providers of service to the maritime community, we decline to afford VPC and AMTS licensees unfettered discretion to provide PLMR service pursuant to technical and service rules other than those contained in Part 80 of the Rules,<sup>4</sup> which governs the Maritime Radio Service. We believe that our actions herein will enable VPC and AMTS licensees to compete more effectively against other commercial mobile radio service (CMRS) providers; facilitate more efficient use of VPC and AMTS spectrum; and provide an additional means to meet growing demand for spectrum by PLMR licensees and end users, including public safety and critical infrastructure industry (CII) entities. We also believe that our actions herein will not be in derogation of the core purpose for which these frequencies have been allocated: to serve the communications needs of marine vessels, especially with respect to communications in support of the safety of life and property at sea and on inland waterways.

## II. BACKGROUND

2. The Maritime Services provide for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways.<sup>5</sup> Public coast stations are an integral part of the Maritime Services, and traditionally have served the maritime community as CMRS providers, permitting ships to send and receive messages and to interconnect with the public switched telephone network.<sup>6</sup> The instant proceeding pertains to two classes of public coast stations: VPC stations and AMTS stations.<sup>7</sup> VPC stations were established to serve port and coastal areas using 156-162 MHz band frequencies that are allocated internationally for maritime service.<sup>8</sup> The AMTS service was established in 1981 as an alternative to traditional VPC service, primarily to meet the specialized needs of tugs, barges,

<sup>2</sup> Private correspondence consists of communications serving the user's business and operational needs.

<sup>3</sup> Public correspondence communications are personal or private communications between two or more persons. Reflecting that public correspondence service is offered by coast stations on a common carrier basis, public correspondence is defined more precisely under the Part 80 Maritime Service Rules as "[a]ny telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission." See 47 C.F.R. § 80.5.

<sup>4</sup> See 47 C.F.R. § 80.1 *et seq.*

<sup>5</sup> For a fuller description of the Maritime Services, see Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16953-54 ¶¶ 4-6 (1997) (*Second Report and Order*).

<sup>6</sup> See Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1448 ¶ 83 (1994); see also 47 C.F.R. § 20.9(a)(5).

<sup>7</sup> This proceeding does not pertain to high seas public coast stations. High seas public coast stations may use low frequency (.100-.160 MHz), medium frequency (.405-.525 and 2 MHz), and high frequency (HF) (4, 6, 8, 12, 16, 18/19, 22, and 25/26 MHz) band frequencies to serve vessels on the high seas, often hundreds or even thousands of miles from land. These stations are not permitted to serve units on land. See *Second Report and Order*, 12 FCC Rcd at 17020; see also Technology for Communications International, *Order*, 14 FCC Rcd 16173, 16176-77 ¶ 8 (WTB PSPWD 1999) (*TCI*) (denying a request for a waiver to permit a high seas public coast station to serve units on land because, due to their propagation characteristics, the use of HF frequencies for land mobile radio service creates a risk of interference to international communications that is not present when VHF frequencies are used to provide such service).

<sup>8</sup> The International Telecommunication Union *Radio Regulations* set forth the frequencies to be used for maritime communications, the geographic regions where these frequencies may be used, and the types of communications (*e.g.*, voice, telegraph, data) that may be transmitted on each frequency. See *NPRM*, 19 FCC Rcd at 15226 ¶ 2.

and other commercial vessels on inland waterways.<sup>9</sup> AMTS stations, which use 217/219 MHz frequencies,<sup>10</sup> were intended primarily to provide public correspondence service to such vessels, but in an *integrated manner not readily available from individual VPC stations.*<sup>11</sup> Although AMTS stations, from their inception, have been permitted to provide vessels with private mobile radio service as well as public correspondence service,<sup>12</sup> they also are required to be interconnected to the public switched telephone network.<sup>13</sup> There is no analogous interconnection requirement for VPC stations.

3. The Commission subsequently made significant changes to the Part 80 rules applicable to public coast stations that are of particular relevance to the instant proceeding. First, in 1997, the Commission amended its rules to permit VPC and AMTS stations to serve fixed and mobile units on land, in addition to marine vessels.<sup>14</sup> The Commission reasoned that giving VPC and AMTS stations the flexibility to provide service to units on land, subject to certain conditions, would permit them to compete more effectively with other CMRS providers.<sup>15</sup> At the same time, however, the Commission adopted measures to ensure that VPC and AMTS licensees would not avail themselves of this new flexibility in a manner that would diminish the service provided to vessels or otherwise undermine the core purpose of the maritime allocation. Thus, for example, the Commission limited land units to the Part 80 power limit of twenty-five watts, and mandated that priority be given to marine-originating communications.<sup>16</sup> The second significant rule change, adopted in 1998, established a geographic area licensing approach for VPC stations to replace the site-based licensing system that had been employed until then.<sup>17</sup> It also provided VPC geographic area licensees with the option of using their spectrum to provide either commercial or private mobile communications to vessels, instead of only public correspondence.<sup>18</sup> In

<sup>9</sup> AMTS stations were intended to provide integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for vessels transiting inland waterways. See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) Along the Mississippi River and Connecting Waterways, *Report and Order*, GEN Docket No. 80-1, 84 FCC 2d 875, 876 ¶ 2 (*IWCS Report and Order*), on reconsideration, *Memorandum Opinion and Order*, GEN Docket No. 80-1, 88 FCC 2d 678 (1981), *aff'd sub nom.* WJG Tel. Co. v. FCC, 675 F.2d 386 (D.C. Cir. 1982).

<sup>10</sup> See 47 C.F.R. § 80.385. In contrast to the frequencies allocated for VPC service domestically, the frequencies allocated for AMTS service are not included in any international maritime allocation, and thus do not provide a means of facilitating interoperable communications among vessels and maritime land stations of different nations.

<sup>11</sup> AMTS service can relieve vessel operators from having to change frequencies and contact new coast stations (which may have different call set-up and billing procedures) during their travel along waterways. See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-372, 6 FCC Rcd 437, 437 ¶ 3 (1991).

<sup>12</sup> *IWCS Report and Order*, 84 FCC 2d at 899-900 ¶¶ 91-92; see also 47 C.F.R. § 80.475(c).

<sup>13</sup> Warren C. Havens, *Order*, 18 FCC Rcd 7006, 7008 ¶ 5 (WTB PSPWD 2003); Warren C. Havens, *Letter*, 17 FCC Rcd 15903, 15904 (WTB PSPWD 2002) (citing *IWCS Report and Order*, 84 FCC 2d at 881 ¶ 19); see 47 C.F.R. § 80.5 (defining AMTS as "an automated, integrated and interconnected maritime communications system") (emphasis added).

<sup>14</sup> See *Second Report and Order*, 12 FCC Rcd at 16965 ¶ 24; see also 47 C.F.R. § 80.123.

<sup>15</sup> *Second Report and Order*, 12 FCC Rcd at 16965 ¶¶ 24-25.

<sup>16</sup> *Id.* at 16965-66 ¶¶ 25-26.

<sup>17</sup> See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19855-56 ¶ 1 (1998) (*Third Report and Order*). Under the site-based licensing approach, the VPC applicant proposed a base station site of its choosing by reference to geographic coordinates, and the service area was defined on the basis of predicted signal strength over the waterway to be served. Under a geographic licensing approach, applicants request licenses to serve predetermined (and generally larger) service areas.

2002, the Commission adopted a similar geographic area licensing approach for AMTS stations.<sup>19</sup>

4. As a result of these rule changes, VPC and AMTS stations currently are permitted under Part 80 to provide either public or private correspondence service to maritime vessels, but only public correspondence service to units on land. Section 80.123 of the Commission's Rules allows VPC and AMTS licensees to serve fixed and mobile units on land on a subsidiary basis, but authorizes only "public correspondence service to stations on land."<sup>20</sup> Section 80.475(c) of the Commission's Rules, which allows AMTS licensees to provide private radio services, by its terms limits the permissible communications to "the operational requirements of *ships* including transmissions of fuel, weather, position and supply reports."<sup>21</sup>

5. MariTEL, Inc. (MariTEL), a VPC station licensee, and Mobex Network Services, LLC (Mobex), an AMTS station licensee, filed petitions for rulemaking on May 16, 2003, and June 13, 2003, respectively.<sup>22</sup> The petitions requested amendment of the Part 80 rules to provide VPC and AMTS licensees with additional operational flexibility, primarily the ability to provide private correspondence service to units on land on a non-interconnected basis.<sup>23</sup> In the *NPRM*, released July 30, 2004, the Commission noted that "the prohibition against public coast stations providing private mobile radio service to land units appears to result from the interplay of sequentially enacted regulations."<sup>24</sup> In

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<sup>18</sup> See 47 C.F.R. § 20.9(b); *Third Report and Order*, 13 FCC Rcd at 19879 ¶ 54. This flexibility extended only to VPC geographic licensees, not to site-based VPC licensees. That is, Section 20.9(b) specifies that "VHF Public Coast Station *geographic area* licensees or applicants [may] offer service on a private mobile radio service basis" upon rebutting the presumption that they are CMRS providers. 47 C.F.R. § 20.9(b) (emphasis added). Thus, site-based VPC licensees have never been permitted to provide private correspondence service to vessels, and neither the Commission nor any party has proposed to remove that limitation in this proceeding. Consequently, the rule changes adopted *infra* permit VPC geographic licensees, but not site-based VPC licensees, to provide PLMR service.

<sup>19</sup> See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6718 ¶ 79 (2002) (*Fifth Report and Order*), *recon. granted in part, denied in part, Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003) (*Third Memorandum Opinion and Order*).

<sup>20</sup> See 47 C.F.R. § 80.123 (emphasis added).

<sup>21</sup> See 47 C.F.R. § 80.475(c) (emphasis added).

<sup>22</sup> Mobex subsequently assigned its AMTS stations to Maritime Communications/Land Mobile, LLC. See *Mobex Network Services, LLC, Order*, 20 FCC Rcd 17957 (WTB PSCID 2005), *aff'd, Order on Reconsideration*, 22 FCC Rcd 665 (WTB MD 2007), *recon. and review pending*.

<sup>23</sup> See *NPRM*, 19 FCC Rcd at 15225 ¶ 1.

<sup>24</sup> *Id.* at 15228 ¶ 7. The Commission explained that the language in Section 80.475(c) expressly limiting the provision of AMTS private correspondence service to "ships" may be due to the fact that the predecessor rule to Section 80.475(c) was enacted in 1981, when AMTS stations could provide service only to marine vessels because the Rules did not permit *any* service to units on land. Thus, the rule's language limiting private communications to the operational needs of "ships" did not have any limiting effect on the provision of AMTS private correspondence service until Section 80.123 was adopted in 1997, authorizing AMTS stations to provide service to units on land also. Similarly, at the time Section 80.123 was adopted, and written to authorize VPC stations to provide "public correspondence" service to units on land, VPC stations were allowed to provide only commercial services to maritime users. Therefore, the use of the term "public correspondence" in the rule did not create any meaningful new limitation; VPC stations were permitted to provide the same services to units on land that they had been permitted to provide to marine vessels. Only after VPC geographic licensees were permitted to choose between commercial and private mobile radio services in 1998 did the language take on this possibly unintended effect. The adoption of geographic licensing for VPC and AMTS stations, which expressly contemplates operations in areas with no navigable waterways, magnifies this possibly unintended effect. See *Third Report and Order*, 13 FCC Rcd

(continued...)

tentative agreement with MariTEL and Mobex, the Commission proposed to permit VPC and AMTS licensees to provide PLMR service.<sup>25</sup> The Commission reasoned that permitting VPC and AMTS licensees to elect to provide private as well as public correspondence service to units on land would promote spectrum efficiency and permit the licensees to compete more effectively against other CMRS providers, without jeopardizing vessel safety.<sup>26</sup> It proposed specifically to delete the reference to "public correspondence" in Section 80.123; remove the discussion of "ships" in Section 80.475(c); amend Section 20.9 to give AMTS geographic area licensees the same flexibility as VPC geographic area licensees to choose between commercial and private services; and amend Sections 80.5<sup>27</sup> and 80.475 to provide that AMTS stations do not have to be interconnected to the public switched telephone network when they provide PLMR service, but only when offering public correspondence service.<sup>28</sup> In addition to seeking comment on these proposals, the Commission asked interested parties to address how VPC and AMTS stations can technically and practically serve both maritime and land mobile radio interests in areas near navigable waterways, especially in the VPC service, where users may utilize different equipment, and how VPC and AMTS licensees providing land mobile radio service can ensure that priority would always be given to maritime communications.<sup>29</sup>

6. MariTEL also recommended in its petition for rulemaking that VPC geographic area licensees be given even greater operational flexibility, including the option of not providing any maritime public correspondence services at all, and freedom from Part 80 regulatory obligations (particularly Part 80 equipment standards and watch requirements) for stations that do not provide maritime public correspondence services.<sup>30</sup> The Commission declined to propose such rule changes, however, because it was concerned that they might undermine "the core purpose of the Maritime Services – providing for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways."<sup>31</sup> It stated that its objective in this proceeding was only to relax the Part 80 regulations to allow for more efficient use of the spectrum, not to take actions "that would effectively create a *de facto* reallocation or otherwise remove this spectrum from the maritime community."<sup>32</sup> The Commission tentatively concluded that MariTEL's proposal to permit licensees to routinely operate pursuant to rules other than those in Part 80 could result in such a *de facto* reallocation, and was inappropriate and unnecessary given the new flexibility to provide PLMR service that the Commission was proposing to afford VPC and AMTS licensees.<sup>33</sup>

7. Lastly, the Commission invited comment on whether it should amend the rules to permit VPC channels to be used for port operations and ship movement services, either in simplex or duplex

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at 19866 ¶ 25; *Fifth Report and Order*, 17 FCC Rcd at 6703 ¶ 37; see also 47 C.F.R. §§ 80.371(c)(4), 80.385(b) (permitting operation anywhere within the geographic licensee's region).

<sup>25</sup> See *NPRM*, 19 FCC Rcd at 15228-29 ¶¶ 7-9.

<sup>26</sup> *Id.*

<sup>27</sup> See 47 C.F.R. § 80.5.

<sup>28</sup> See *NPRM*, 19 FCC Rcd at 15229 ¶¶ 8-9.

<sup>29</sup> *Id.* at 15229 ¶ 8.

<sup>30</sup> *Id.* at 15229 ¶ 10. MariTEL recommended that a VPC licensee be governed by the rules applicable to the particular service it elects to provide.

<sup>31</sup> *Id.* at 15230 ¶ 13.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 15230-31 ¶ 13.

mode.<sup>34</sup> It noted that the International Telecommunication Union (ITU) *Radio Regulations*, Appendix S18, permit the channels to be used for that purpose and in that manner, and explained that the Commission generally has sought to conform its allocations of maritime spectrum to those of the ITU, consistent with the public interest.<sup>35</sup> Following that course here, the Commission suggested, would serve not only the goal of promoting international compatibility but also the goal of enhancing licensee flexibility.<sup>36</sup>

### III. DISCUSSION

#### A. VPC and AMTS Provision of Private Correspondence Service to Units on Land

8. After reviewing the comments filed in response to the *NPRM*,<sup>37</sup> we conclude that, as proposed, VPC and AMTS licensees should have authority to provide private correspondence service to units on land. With one exception, the commenters all favor providing VPC and AMTS licensees with this additional operational flexibility, and they cite a number of public interest benefits to be derived from adopting the proposed amendments to Sections 80.123, 80.475(c), and 20.9.<sup>38</sup> We agree with commenters that these rule amendments will allow VPC and AMTS licensees to compete more effectively with other CMRS licensees;<sup>39</sup> promote spectrum efficiency by putting to use excess capacity that otherwise might remain fallow;<sup>40</sup> allow a wide array of entities, and in particular public safety and CII entities, to meet their PLMR communications requirements when they otherwise would be unable to do so or could do so

<sup>34</sup> *Id.* at 15231 ¶ 14. Channels used in full-duplex mode allow transmissions to occur in two directions simultaneously, *i.e.*, both parties can communicate at once. In simplex mode, the channel is used for one-way communications, so that one party only transmits on the channel and the other party only receives on the channel. (In half-duplex mode, both parties can transmit on the channel but only one at a time, as with a walkie-talkie.) See Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 04-344, 19 FCC Rcd 20071, 20084 n.103 (2004) (*AMS NPRM*).

<sup>35</sup> See *NPRM*, 19 FCC Rcd at 15231 ¶ 14..

<sup>36</sup> *Id.*

<sup>37</sup> See Appendix A, *infra*, for a list of parties filing comments or reply comments in response to the *NPRM*, as well as the abbreviations or acronyms by which they are referred to in the text.

<sup>38</sup> See, *e.g.*, Havens Comments at 2; MariTEL Comments at 3; Mobex Comments at 2; RTCM Comments at 2; PacifiCorp Reply Comments at 2; PSI Comments at 1-3. PSI says it supports the proposal to permit AMTS licensees to provide PLMR service, but does not mention VPC licensees. PSI Comments at 1. Havens supports providing this flexibility only to service providers who acquired geographic licenses at auction. See Havens Reply Comments at 2-4. In addition, in a filing styled Clarifications of Comments, Havens clarifies that his comments are meant to pertain only to inland VPC licensees, and not to maritime VPC licensees. See Havens Clarification of Comments at 1; see also *Third Report and Order*, 13 FCC Rcd at 19862-63 ¶¶ 15-16 (distinguishing inland and maritime VPC licenses). We address these requests to limit flexibility to only a subset of VPC and/or AMTS licensees in para. 12, *infra*.

<sup>39</sup> See MariTEL Comments at 3; PSI Comments at 2.

<sup>40</sup> See MariTEL Comments at 3; PSI Comments at 3; PacifiCorp Reply Comments at 2, 10-11. We concur with PacifiCorp that our actions herein will facilitate more intense use of underutilized spectrum, in accord with the principles set forth in the Commission's Spectrum Policy Task Force Report, see Spectrum Policy Task Force, ET Docket No. 02-135, *Report* (rel. Nov. 2002), and is consistent with the spectrum efficiency goals reflected in maritime rulemaking proceedings and the secondary markets proceeding. See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 00-230, 18 FCC Rcd 20604 (2003); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rule Making*, WT Docket No. 00-230, 19 FCC Rcd 17503 (2004).

only at greater expense or less effectively;<sup>41</sup> reflect a recognition that geographic area licenses in these services are able to provide service in areas remote from coasts or navigable waterways;<sup>42</sup> and potentially lead to improvements in maritime service offerings by augmenting the business opportunities and financial resources of VPC and AMTS licensees.<sup>43</sup> In addition, there appears to be significant demand to use these frequencies for PLMR services, including public safety and traditional dispatch services, while demand to use the frequencies for maritime public correspondence communications seems to be waning, due in large part to the availability to mariners of cellular, PCS, and satellite services.<sup>44</sup>

9. NTIA/USCG argues that restrictions should be placed on the flexibility of VPC licensees to provide private correspondence service to land units, in order to ensure that this new operational flexibility does not result in a *de facto* reallocation of maritime spectrum to land mobile radio use.<sup>45</sup> Specifically, it suggests a requirement that a certain percentage of the VPC licensee's business or customer base within one hundred miles of navigable waterways be "for maritime customer service."<sup>46</sup> NTIA/USCG says that while allowing VPC stations to offer public correspondence service to units on land on an ancillary basis benefited the maritime community by allowing VPC licensees to "have a customer base large enough to ensure that VPC service to mariners was reliable and available at a reasonable cost,"<sup>47</sup> removing the public correspondence limitation from Section 80.123 "is a significant departure from the original intent of this provision as it would allow use of the channels to be essentially reallocated from use by the maritime community."<sup>48</sup> NTIA/USCG does not explain why it believes that allowing VPC licensees to provide private correspondence service to units on land presents any greater threat of a *de facto* reallocation than allowing VPC licensees to provide public correspondence service to units on land.<sup>49</sup> Based on the record before us, we can discern no basis for differentiating between public correspondence service and private correspondence service in this regard.<sup>50</sup> In addition, we are concerned

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<sup>41</sup> See MariTEL Comments at 3 & n.8; Havens Reply Comments at 1-2; PacifiCorp Reply Comments at 2, 5-8. PacifiCorp explains that, given the proximity of VPC frequencies to the VHF spectrum commonly employed by public safety and CII entities, such entities "would be able to realize considerable synergies in connection with the use of VPC spectrum, including the ability to use existing equipment and base stations as part of an integrated network." It also notes that the existing spectrum allocations for public safety and CII licensees, in the VHF band and elsewhere, are becoming increasingly congested, and that the VHF band has propagation characteristics that make it particularly attractive to such licensees. See PacifiCorp Reply Comments at 5-8.

<sup>42</sup> See PSI Comments at 3.

<sup>43</sup> See RTCM Comments at 2; NTIA/USCG Comments at 2.

<sup>44</sup> See Mobex Comments at 2-3; PSI Comments at 3; PacifiCorp Reply Comments at 9.

<sup>45</sup> See NTIA/USCG Comments at 2. NTIA/USCG does not oppose providing this additional flexibility to AMTS licensees because AMTS licensees, unlike VPC licensees, do not operate on spectrum recognized internationally as a maritime allocation. *Id.*; see also NTIA/USCG Reply Comments at 2.

<sup>46</sup> NTIA/USCG Comments at 2; *cf.* Havens Clarification at 1 (suggesting that additional flexibility be afforded to inland VPC licensees, but not maritime VPC licensees).

<sup>47</sup> NTIA/USCG Comments at 2.

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., County of Placer, California, Order, 20 FCC Rcd 3657, 3662 ¶ 13 (WTB PSCID 2005) (noting that Section 80.123 was never deemed a reallocation of spectrum) (*County of Placer*).

<sup>50</sup> In any event, and for reasons discussed *infra*, we are continuing to require that VPC (and AMTS) licensees operate under a Part 80 regulatory framework when providing service to units on land unless they request and receive a waiver to operate otherwise. The requirement to operate under the Part 80 rules absent a waiver will provide a regulatory safeguard reducing the likelihood that VPC provision of PLMR service, or the leasing of spectrum to PLMR users, could result in a *de facto* reallocation of maritime spectrum, and the waiver process will (continued....)

that giving VPC licensees less flexibility to provide PLMR service than we give AMTS licensees would be inconsistent with Commission precedent promoting regulatory symmetry between the VPC and AMTS services with respect to serving units on land.<sup>51</sup> Finally, given that we do not collect information identifying VPC licensees' customers, it is not apparent how the NTIA/USCG suggested restriction would be enforced, and whether imposition of such a restriction would result in a substantial regulatory burden for VPC licensees without significant concomitant public interest benefits.

10. We conclude, therefore, that the current rules are unnecessarily restrictive for VPC and AMTS licensees alike, and we accordingly amend Sections 80.123, 80.475(c), and 20.9, as proposed. That is, we amend Section 80.123 by removing the reference to "public correspondence" in the introductory paragraph; we amend Section 80.475(c) by removing the references to ships and ship stations; and we amend Section 20.9(b) to expressly include AMTS licensees among those licensees eligible to rebut the presumption that they are CMRS providers.<sup>52</sup>

11. In addition, we will amend Sections 80.5 and 80.475(d) to eliminate the interconnection requirement for AMTS stations providing private correspondence service.<sup>53</sup> We can discern no justification for retaining an interconnection requirement for the provision of private radio service. We believe AMTS licensees should have the option to provide interconnected CMRS service<sup>54</sup> or non-interconnected private correspondence service as marketplace demand dictates. We note that the commenters addressing this issue are in unanimous agreement that there is no reason to retain this interconnection requirement for private correspondence service.<sup>55</sup>

12. We decline to limit the types of VPC or AMTS licensees or end users/lessees that should be permitted to take advantage of the added operational flexibility to provide or receive PLMR service.

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provide a mechanism to monitor and assess proposals that could raise such concerns. *See, e.g., County of Placer, 20 FCC Rcd 3657; Commonwealth of Virginia, Order, 19 FCC Rcd 15454 (WTB PSCID 2004)* (granting waivers of the Part 80 Rules for PLMR use of maritime spectrum after assessing potential impact on maritime users).

<sup>51</sup> *See, e.g., Fifth Report and Order, 17 FCC Rcd at 6687 ¶ 3* (stating that it is a Commission goal to "enhance regulatory symmetry among maritime CMRS providers"). We acknowledge, however, that the Commission has held that "[t]he importance of AMTS stations to maritime safety does not equal that of VPC stations, which, for example, have safety watch requirements not applicable to AMTS stations." *Id.* at 6707 ¶ 48.

<sup>52</sup> We also remove the "public correspondence" qualifiers in Section 80.371(c)(1)(i) of the Rules, 47 C.F.R. § 80.371(c)(1)(i), and Section 80.479(a) of the Rules, 47 C.F.R. § 80.479(a), to conform with our decision herein and the other rule amendments.

<sup>53</sup> In addition to removing the word "interconnected" from the definition of AMTS in Section 80.5, we also remove the word "integrated" from the definition, as requested by Havens. *See Havens Comments at 2.* Havens correctly notes that the Commission has eliminated the requirement that an AMTS system have two or more integrated sites that together provide continuity of coverage. *See Third Memorandum Opinion and Order, 18 FCC Rcd at 24400-01 ¶ 23 n.84* (explaining that "the Commission eliminated the continuity of service requirement [in] the *Fifth Report and Order,*" through the amendment therein of Section 80.475(a), and that the Commission's intention to eliminate the continuity of service requirement is further evidenced by the fact that the Commission there "did not require incumbent AMTS licensees seeking to partition spectrum to maintain any minimum area of coverage, or otherwise condition approval of partitioning requests on continued conformance with former Section 80.475(a)"); *see also* 47 C.F.R. § 80.60(a)(2).

<sup>54</sup> We nonetheless retain the interconnection requirement for CMRS offerings by AMTS licensees because no commenter has suggested that that requirement be eliminated.

<sup>55</sup> *See Havens Comments at 2; Mobex Comments at 3; RTCM Comments at 2-3.* In response to concerns raised by Mobex, we modify the proposed wording of the amendment of Section 80.475 to clarify that AMTS licensees may provide non-interconnected private correspondence service either instead of or in addition to interconnected commercial service. *See Mobex Comments at 4.*

In particular, we reject Havens' argument that the Commission should not accord such flexibility to site-based incumbent AMTS licensees, but only to geographic area AMTS licensees.<sup>56</sup> Havens contends that authorizing incumbent site-based licensees to provide PLMR service would (a) be contrary to the Commission's decision to freeze the licensing of new or expanded site-based AMTS stations in preparation for the AMTS auction (because giving the incumbent licensees additional flexibility is akin to allowing them to expand their coverage or to access additional spectrum); (b) be contrary to the Commission's auction policies; (c) facilitate incumbents "squatting" on AMTS spectrum; (d) be inequitable to Havens;<sup>57</sup> and (e) be inconsistent with the principle, reflected in Section 80.70(c) of the Rules,<sup>58</sup> that a transfer of a site-based incumbent licensee's spectrum to the geographic area licensee for the overlying service area is presumed to be in the public interest.<sup>59</sup> We disagree. We find no basis in policy, precedent or equity to treat site-based incumbent licensees less favorably than geographic area licensees in terms of operational flexibility. The Commission has not previously made a distinction between site-based and geographic AMTS licensees in terms of their authority to provide service to land units or to provide private correspondence service to vessels,<sup>60</sup> and we are not persuaded that it is necessary or warranted by the public interest to introduce such a regulatory dichotomy here. Contrary to Havens' implication, the Commission has not previously adopted or pursued a policy favoring the termination of site-based AMTS service as soon as possible in order to maximize the ability of the encompassing geographic area licensee to consolidate its spectrum holdings and operate without concern about protecting site-based operations from interference. Rather, the Commission stated in the *Fifth Report and Order*, "We conclude that allowing incumbent licensees to continue operating under the terms of their current station licenses will further the public interest by avoiding interruption of the services they provide."<sup>61</sup>

#### B. Ensuring that Maritime Communications Have Priority

13. As noted, the Commission requested comment in the *NPRM* on how VPC and AMTS stations can technically and practically serve both land mobile radio interests and maritime communications interests in areas near navigable waterways, especially in the VPC service, where maritime and land mobile radio users may utilize different equipment; and, on how VPC and AMTS

<sup>56</sup> See Havens Reply Comments at 2.

<sup>57</sup> Havens claims that he was aggrieved by Commission decisions that necessitated his having to compete at auction for AMTS licenses that he had applied for under the pre-auction licensing rules. See Havens Reply Comments at 4. The Commission has already addressed this contention and found it to be without merit; thus, we will not revisit it here. See *Fifth Report and Order*, 17 FCC Rcd at 6691-92 ¶¶ 14-16.

<sup>58</sup> See 47 C.F.R. § 80.70(c).

<sup>59</sup> See Havens Reply Comments at 2-4.

<sup>60</sup> Indeed, the Commission generally has afforded site-based and geographic AMTS licensees the same flexibility. See, e.g., *Fifth Report and Order*, 17 FCC Rcd at 6709 ¶ 53 (permitting incumbents to partition and disaggregate on the same terms as geographic licensees).

<sup>61</sup> See *id.* at 6699 ¶ 31. Although the Commission added that it also believed that it is in the public interest to provide geographic area licensees with the opportunity to consolidate spectrum if an incumbent fails to construct, discontinues operations, or otherwise has its license terminated, and it codified in Section 80.70(c) a determination that applications to assign or transfer spectrum from site-based licensees to the geographic area licensee are deemed to be in the public interest, this policy does not support measures that would accord disparate treatment to site-based licensees in order to create disincentives for such licensees to continue operating. For additional substantiation that the Commission did not intend to craft its AMTS rules to encourage or accelerate the termination of service by site-based AMTS licensees, see *Third Memorandum Opinion and Order*, 18 FCC Rcd at 24401 ¶¶ 23-24 (requiring geographic licensees to comply with a more rigorous standard than initially established – 18 dB protection (in lieu of the initially established 10 dB protection) to a predicted 38 dBu service contour – to protect site-based incumbent operations from interference).

stations providing land mobile radio service can meet their obligation to ensure that maritime communications are afforded priority.<sup>62</sup> In response, MariTEL, Mobex, and PSI all contend that there will be no problem in ensuring that maritime communications always receive priority.<sup>63</sup> MariTEL explains that it is unlikely that the same equipment will be employed for land mobile and maritime purposes, and that MariTEL contemplates that it will provide a marine data service using one set of equipment, along with channels dedicated exclusively to maritime use, and separate equipment and channels for land mobile communications.<sup>64</sup> According to MariTEL, if maritime and land mobile users do not share the same channels, the requirement to ensure priority for maritime communications is satisfied.<sup>65</sup> MariTEL requests that the Commission expressly endorse this approach by clarifying that as long as a licensee provides maritime service over a sufficient area to satisfy the coverage requirement in Section 80.49 of the Rules,<sup>66</sup> the licensee is free to provide land mobile radio service on its other channels and in other areas.<sup>67</sup> Havens also supports this approach.<sup>68</sup> Mobex concurs that the most practical means of ensuring priority for maritime communications is for licensees to use some of their channels for maritime communications exclusively and other channels for land mobile communications exclusively.<sup>69</sup> Mobex adds, however, that it contemplates a system design which allows a maritime unit to access a land mobile-designated channel when all of the maritime-designated channels are busy.<sup>70</sup>

14. NTIA/USCG opposes the approach favored by MariTEL and Havens, contending that it is based on a mistaken understanding of the maritime service obligations of maritime licensees.<sup>71</sup> NTIA/USCG, joined by RTCM, favors a requirement that licensees proposing to provide PLMR service (or lease spectrum for that purpose) submit individualized showings of how the proposed operation will ensure priority for maritime communications.<sup>72</sup> NTIA/USCG says a case-by-case approach to evaluating the sufficiency of plans to ensure priority for maritime communications is preferable to a fixed standard that could prove inflexible and costly for licensees.<sup>73</sup>

<sup>62</sup> See *NPRM*, 19 FCC Rcd at 15229 ¶ 8.

<sup>63</sup> See MariTEL Comments at 4-5; Mobex Comments at 3-4; PSI Comments at 3. PSI "assures the Commission that it will at all times provide priority to its maritime users," but does not explain how. See PSI Comments at 3.

<sup>64</sup> See MariTEL Comments at 4; MariTEL Reply Comments at 4. MariTEL adds that it "will ensure that whatever maritime system it employs will have sufficient capacity."

<sup>65</sup> See MariTEL Comments at 4-5; see also MariTEL Reply Comments at 4 (reiterating that using separate channels for maritime and land mobile communications should fully address concerns about maritime priority and interference to maritime communications, and adding that, if MariTEL at some future point determines to carry maritime and land mobile traffic on the same channels, "it will employ technology that allows maritime traffic to override, to the extent necessary, any land traffic").

<sup>66</sup> See 47 C.F.R. § 80.49.

<sup>67</sup> See MariTEL Comments at 4-5; MariTEL Reply Comments at 4.

<sup>68</sup> See Havens Comments at 3.

<sup>69</sup> See Mobex Comments at 3-4.

<sup>70</sup> *Id.*

<sup>71</sup> NTIA/USCG says that MariTEL misconstrues the nature of its obligation to provide maritime service by viewing it "in a commercial sense only," and failing to recognize that, because these frequencies are allocated for maritime safety purposes, they must remain available for maritime use even when there is limited traffic on the frequencies. NTIA/USCG adds that MariTEL's formulation overlooks the possibility that, even in areas where there is no need for maritime service, high-powered land mobile operations may cause interference to maritime communications some distance away. See NTIA/USCG Comments at 2-3; see also NTIA/USCG Reply Comments at 2.

<sup>72</sup> See NTIA/USCG Comments at 2; RTCM Comments at 2

<sup>73</sup> See NTIA/USCG Comments at 2.

15. Section 80.123(b) of the Commission's Rules specifies that each public coast station "must afford priority to marine-originating communications through any appropriate electrical or mechanical means."<sup>74</sup> Although the rule does not prescribe a particular technology or method of ensuring priority, the Commission clearly contemplated at the time it adopted this requirement that licensees would utilize technology that could identify the source of a given communication on a channel that is used for both maritime and land mobile communications.<sup>75</sup> We agree, however, that using separate channels for maritime and land mobile traffic can serve as a reasonable basis for meeting the maritime priority requirement under appropriate circumstances. Specifically, if a licensee wishes to meet the maritime priority requirement by designating discrete channels for maritime and for land mobile, it must also ensure that the maritime channel capacity is sufficient to ensure against blocked or delayed marine-originating calls. Under a separate-channels approach, therefore, we would expect the licensee to either incorporate a mechanism allowing maritime communications to override communications on the land mobile channels when necessary, as Mobex contemplates, or regularly monitor the adequacy of the channel capacity dedicated to maritime communications by whatever measure or combination of measures is deemed appropriate. Thus, we decline to rule that a separate-channels approach, in any form and without regard to the channel capacity designated for maritime use, automatically satisfies the maritime priority requirement.<sup>76</sup> We emphasize that the rules do not prescribe or prefer any particular means of ensuring priority for maritime communications, but simply require that, whatever approach the licensee employs, it must in fact ensure that priority is accorded to maritime communications in a meaningful sense, *i.e.*, that maritime communications are transmitted immediately, reliably, and accurately.

16. In addition, we decline to require maritime licensees proposing to provide or lease spectrum for PLMR service to routinely submit, as a prerequisite, a plan explaining how priority will be accorded to maritime communications. The Commission declined to impose such a requirement on VPC and AMTS licensees proposing to provide public correspondence radio service to units on land.<sup>77</sup> Further, we believe that adding a private correspondence option to their land mobile operations, without any other change in the rules governing VPC/AMTS service to land units, does not greatly increase the likelihood that the maritime licensees will be unable or unwilling to provide priority for maritime communications. Routinely requiring the submission and the evaluation of such plans for ensuring maritime priority, even where the licensee intends to operate in accordance with the Part 80 rules, would represent an unnecessary paperwork burden for licensees, and could unnecessarily delay implementation of arrangements to provide, or lease spectrum for, PLMR operations that would serve the public interest.

17. Finally, Havens requests that the Commission clarify that "if an operator of a public coast system is not in fact serving any maritime radio users..., it has no obligation to provide priority to

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<sup>74</sup> See 47 C.F.R. § 80.123(b).

<sup>75</sup> See *Second Report and Order*, 12 FCC Rcd at 16964 ¶ 23 (stating that "electrical or mechanical means can be used to determine the origin of radio signals, permitting a public coast station to afford priority to maritime communications. For example, a network of directional antennas, satellite or terrestrial positioning data, or codes embedded in the radio signal could be used to determine whether the signal originated from a vessel or a land unit.") MariTEL observes that "[t]his can be easily accomplished by using an unique identifier for each subscriber; a feature that is readily available for both Part 80 and Part 90 voice and data radios." *Ex parte* Letter, dated July 12, 2005, from Dan Smith, President and CEO, MariTEL, to Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, FCC at 1 (MariTEL July 12 *Ex parte* Letter).

<sup>76</sup> We note, for example, that MariTEL represents that in designating separate channels for maritime and land mobile use, it would ensure that the maritime channels provide "sufficient capacity" for maritime traffic, but does not define or otherwise elaborate on how it would determine what constitutes "sufficient capacity." See MariTEL Comments at 4; MariTEL Reply Comments at 4.

<sup>77</sup> See *Third Report and Order*, 13 FCC Rcd at 19867 ¶ 27.

maritime communications.”<sup>78</sup> In other words, Havens asserts that a licensee that chooses to provide only private correspondence service, and authorizes only land-based units to operate on its private system, has no obligation to afford priority to marine-originating traffic because the system will carry no marine-originating traffic. We reject any assertion that some public coast licensees should be relieved of the requirement to accord priority to maritime communications, absent a waiver. Irrespective of the merits of the separate-channels approach discussed above as a means of satisfying the requirement for maritime priority, the clarification apparently requested by Havens – that the requirement does not even apply to some public coast systems – is inconsistent with Commission precedent holding that the requirement is essential to ensure the integrity of the maritime allocation of this spectrum.<sup>79</sup> Even if the licensee does not provide public correspondence service, it is obligated to handle any distress and safety communications it receives from maritime vessels.<sup>80</sup> We note that this interpretation of the marine priority requirement is consistent with the Commission’s recent holding that the VPC safety watch requirement applies equally to stations that serve units on land.<sup>81</sup> Similarly, the marine priority requirement in Section 80.123 applies to any station with navigable waterways within its coverage area, regardless of how much or how little marine-originating traffic the licensee expects to receive. Consequently, the clarification requested by Havens is denied, and we reiterate the obligation of all public coast station operators to accord priority to marine-originating communications regardless of their respective service offerings and subscribers.

### C. Requests for Additional Flexibility to Provide Land Mobile Service

18. In the *NPRM*, the Commission declined to propose that VPC licensees be afforded even greater flexibility with respect to providing land mobile radio services, as requested by MariTEL in its petition for rulemaking. The Commission was concerned that providing the additional flexibility requested by MariTEL, including the flexibility to choose not to provide any maritime public correspondence service, and to have VPC station operations conform to the rules typically applicable to the type of service provided, rather than to the Part 80 requirements, would be inconsistent with the Commission’s demonstrated commitment “to maintaining the core purpose of the Maritime Services – providing for the unique distress, operational, and personal communications need of vessels on sea and on inland waterways.”<sup>82</sup> The Commission tentatively concluded that “implementation of MariTEL’s proposed rule changes would undermine that purpose by, in effect, reallocating Part 80 spectrum for primary land mobile radio use.”<sup>83</sup> After reviewing the comments addressing this question, we decline to amend the Part 80 rules as requested by MariTEL. We remain concerned that providing VPC and AMTS licensees and lessees with such largely unfettered freedom and discretion to use VPC and AMTS spectrum for non-Part 80-compliant operations might lead to a *de facto* reallocation of the spectrum from

<sup>78</sup> See Havens Comments at 3.

<sup>79</sup> See *Second Report and Order*, 12 FCC Rcd at 16964 ¶ 25 (expressing the Commission’s intention to “require[e] public coast stations to give priority to maritime traffic, without regard to the number of land units being served”).

<sup>80</sup> See *id.* at 16965 ¶ 26 (indicating that “[i]n order to preserve the core purpose of the internationally allocated marine radio spectrum,” the requirements for public coast stations serving units on land “allow operational flexibility while ensuring that distress and safety communications from vessels at sea are given priority”); 47 C.F.R. § 80.475(c) (“In emergency and distress situations, services must be provided without prior arrangements.”).

<sup>81</sup> See Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, *Second Report and Order*, *Sixth Report and Order*, and *Second Further Notice of Proposed Rule Making*, WT Docket No. 00-48, 19 FCC Rcd 3120, 3149 ¶ 57 (2004).

<sup>82</sup> See *NPRM*, 19 FCC Rcd at 15230 ¶ 13.

<sup>83</sup> *Id.* The Commission also tentatively concluded that the additional flexibility requested by MariTEL was unnecessary if the Commission were to adopt, as we now do, the Commission’s proposals in the *NPRM*. *Id.* at 15230-31 ¶ 13.

maritime to land mobile use.

19. The commenters generally agree with the principle that maritime spectrum, and in particular the VPC frequencies, should not be reallocated or any action taken to remove the spectrum from the maritime community.<sup>84</sup> Any such action, commenters state, would jeopardize the maritime community's ability to meet its operational, safety and security communications needs.<sup>85</sup> NTIA/USCG contends that it would be especially inappropriate to adopt a rule authorizing VPC licensees or lessees to operate under non-Part 80 rules whenever they are engaged in land mobile radio operations because the VPC spectrum is the only available, interoperable maritime spectrum above 26 MHz.<sup>86</sup> As such, "[i]t represents the only resource available to meet both the present and the future technological and communications needs of the maritime community where interoperability with international shipping and domestic entities (e.g., ships, tugs, port authorities, marine exchanges, etc.) is needed."<sup>87</sup> The record does not reveal any disagreement with the general proposition that the Commission should not adopt any measure that might result in a *de facto* reallocation of maritime spectrum or otherwise reduce the existing spectrum resources available to the maritime community. The question before us, then, is whether the proposals in the record to give VPC and AMTS licensees greater flexibility in providing land mobile radio service may have such an undesired effect. NTIA/USCG and other opponents of the proposals argue that, as the Commission tentatively concluded in the *NPRM*, providing VPC and AMTS licensees with the requested additional flexibility would indeed compromise the integrity of the maritime allocation of these channels.<sup>88</sup> On the other hand, proponents of such flexibility claim that it would not in fact lead to a *de facto* reallocation of maritime spectrum.<sup>89</sup>

20. We are not persuaded that we should adopt the recommendations of MariTEL and others

<sup>84</sup> See NPMRC Comments at 1; NTIA/USCG Comments at 3; PSHSSC Comments at 1; RTCM Comments at 3. MariTEL agrees that VPC spectrum should "continue to serve the maritime marketplace," but does not believe that adoption of its recommendations for additional VPC licensee flexibility would be inconsistent with that principle. See MariTEL Comments at 4.

<sup>85</sup> See NPMRC Comments at 1; PSHSSC Comments at 1. NPMRC and PSHSSC each request that the Commission require that only equipment approved for Part 80 operations be permitted for use in land mobile radio operations on VPC frequencies near navigable waters, in order to prevent potential interference with vessels operating at sea and in Canadian waters adjacent to the State of Washington. See NPMRC Comments at 1; PSHSSC Comments at 1. However, Section 80.123(d) of the Commission's Rules, 47 C.F.R. § 80.123(d), already authorizes the use of equipment approved under Part 22 or Part 90, as well as equipment approved under Part 80, when public coast stations provide service to units on land. See para. 23, *infra*. We did not propose to amend this rule provision in the *NPRM*, and NPMRC and PSHSSC have not provided any explanation of why this rule provision should be changed. We also note that Section 80.123(g) of the Commission's Rules, 47 C.F.R. § 80.123(g), provides that a land station operating on public coast spectrum "must cease operation immediately upon written notice by the Commission to the associated public coast station that the land station is causing harmful interference to marine communications."

<sup>86</sup> NTIA/USCG Comments at 3; see also NTIA/DHS Reply Comments at 1.

<sup>87</sup> *Id.* While conceding that it is "outside the scope of this rulemaking," NTIA/USCG offers examples of where additional maritime spectrum may be necessary in the future, citing homeland security and public safety interoperability; use of duplex repeaters for purposes such as the Coast Guard's Vessel Traffic Services (VTS) program or public/maritime safety interoperability; recreational boaters; commercial fishing vessels; and alternate Automatic Identification System (AIS) channels. It concludes, "Reallocating or impeding the ... VPC spectrum from the maritime community would have a devastating impact on the future of United States maritime safety, commerce and security." *Id.* at 3-5; see also NTIA/DHS Reply Comments at 1 (fully supporting NTIA/USCG's comments regarding the need for additional VHF maritime spectrum to be allocated for interoperability between first responders and vessels). NTIA/USCG is correct that any proposal to allocate additional spectrum to maritime use is beyond the scope of the instant proceeding.

<sup>88</sup> See, e.g., NTIA/USCG Comments at 3; NTIA/USCG Reply Comments at 2; RTCM Comments at 3.

<sup>89</sup> See, e.g., MariTEL Comments at 4-5; MariTEL Reply Comments at 3-5; PacifiCorp Reply Comments at 10.

for the requested additional operational flexibility.<sup>90</sup> MariTEL argues<sup>91</sup> that any VPC or AMTS spectrum used for land mobile purposes should not be subject to Part 80 requirements such as the Channel 16 watch requirement<sup>92</sup> or the Part 80 transmit power limits.<sup>93</sup> Providing such additional flexibility, MariTEL contends, could obviate the need for the Commission to continue to grant waivers of the Part 80 rules whenever applicants propose to use VPC or AMTS spectrum for land mobile radio communications, including public safety use.<sup>94</sup> MariTEL adds that it is illogical to apply Part 80 maritime rules to land mobile radio service operations, and that denying licensees and lessees the option to operate under Part 90 (or, with respect to CMRS to land units, Part 22) rules is unnecessarily restrictive.<sup>95</sup> In addition, denying this additional flexibility in the use of VPC and AMTS spectrum would, in MariTEL's view, be inconsistent with the policy goals of permitting licensees to provide services that are responsive to market demand and promoting spectrum efficiency because it could result in frequencies going unused in areas where, absent regulatory barriers, they could be used for land mobile radio service.<sup>96</sup> PacifiCorp generally echoes MariTEL's arguments about the benefits of giving licensees this additional flexibility, and, like MariTEL, disputes the notion that providing such flexibility is tantamount to a *de facto* reallocation of maritime spectrum.<sup>97</sup>

21. While adopting rules permitting VPC and AMTS spectrum to be used to provide service to land units in accordance with a Part 22 or Part 90 regulatory framework, at the licensee's or lessee's discretion, might provide a number of benefits in terms of efficiency and operational flexibility, we remain concerned that allowing such routine use of VPC and AMTS frequencies pursuant to non-maritime radio service rules does create a risk of a *de facto* reallocation of this spectrum from maritime to land mobile use. Heretofore, the Commission has not wavered in its commitment to ensure that VPC and AMTS services benefit primarily the maritime community, and we reaffirm that commitment here. In

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<sup>90</sup> Having determined that, absent a waiver, a VPC station's provision of private correspondence service to land units should continue to be governed by the Part 80 rules, including Section 80.123(g), which mandates that such VPC PLMR services may be provided only on a non-interference basis to marine communications, we find it unnecessary to adopt MariTEL's recommendation to amend Section 80.773, 47 C.F.R. § 80.773, to provide that "[w]here one VPC licensee is using a frequency to provide maritime service, all co-channel VPC licensees using the same frequency for land-based services shall ensure that the ratio of desired to undesired signal strengths must be at least 12 dB within the maritime areas served by a VPC licensee providing maritime services." See MariTEL July 12 *Ex parte* Letter at 2.

<sup>91</sup> See MariTEL Comments at 5.

<sup>92</sup> See 47 C.F.R. § 80.303.

<sup>93</sup> See 47 C.F.R. §§ 80.123(e), 80.215(c).

<sup>94</sup> See MariTEL Comments at 5-6.

<sup>95</sup> See MariTEL Reply Comments at 5.

<sup>96</sup> *Id.* MariTEL also states that NTIA/USCG's opposition to this proposal is based on an unwarranted concern that it would reduce the spectrum available for maritime service, and on the false premise that VPC licensees currently are required to provide public correspondence services to the maritime community in all maritime areas. *Id.* at 4-5.

<sup>97</sup> See PacifiCorp Reply Comments at 9-10. PacifiCorp emphasizes that application of certain Part 80 requirements to CII use of VPC spectrum is especially problematic. PacifiCorp states that relief from maritime-specific obligations such as the Channel 16 watch requirement and the Part 80 transmit power limits is critical for utilities relying on VPC spectrum for private internal communications. To illustrate, PacifiCorp explains that it "uses its currently licensed VHF spectrum to support utility operations that require its field personnel to conduct highly sensitive and complex operations in the proximity of high voltage wires or other dangerous components of the power grid. In this regard, work performed by line crews requires their whole focus, and any deviation from protocol could result in severe injury or death. Any requirement to provide priority to another's communications or to fulfill a watch obligation, therefore, is not merely an inconvenience, it is a potential distraction that may have serious and immediate consequences." *Id.* at 9.

light of that commitment, coupled with our limited experience to date with land mobile radio use of VPC and AMTS spectrum and the consequent difficulty in anticipating how a rapid growth in non-Part 80-compliant land mobile operations using VPC or AMTS spectrum might affect the maritime community, we believe it prudent to continue to require VPC and AMTS licensees to comply with Part 80, unless they demonstrate, on a case-by-case basis, that relief is warranted. Reliance on the waiver process ensures that new proposals for the use of maritime spectrum outside of a Part 80 framework receive close scrutiny to prevent any unintended erosion of the maritime allocation.<sup>98</sup>

22. We also decline to clarify that, under Section 80.123(d) of the Rules,<sup>99</sup> the "radio equipment used on land" that can be authorized under Part 22 or Part 90, as well as Part 80, refers to both base station and end-user equipment. Havens requests such a clarification.<sup>100</sup> The Commission made clear in adopting Section 80.123(d) that the provision applies only to end-user equipment. The Commission stated, "Land units must be type accepted under Part 80, 90, or 22 of our rules and must be limited to 25 watts transmitter output power."<sup>101</sup> That the reference to "land units" does not include base station equipment is evident from the reference in the immediately following sentence to "[m]obile units on land," which in context clearly refers to those same "land units," *i.e.*, end-user equipment.<sup>102</sup> We conclude, therefore, that Section 80.123(d) requires that base station equipment be certified under Part 80.

23. We take this opportunity to clarify that mobile units certified under Parts 22 or 90 are permitted to operate in conjunction with base station equipment certified under Part 80. Although Section 80.203(b) of the Rules proscribes the certification under Part 80 of transmitters that can be programmed using external controls to operate on channels not authorized for maritime use (such as channels allocated for Part 22 or Part 90 use),<sup>103</sup> a mobile unit certified under Part 22 or Part 90 may also be certified under Part 80, for land mobile use pursuant to Section 80.123(d), provided that the only additional functionality, beyond the functionality of the device as certified under Part 22 or Part 90, is the capability to operate on the public correspondence channels authorized for use by the associated public coast station, and the unit does not exceed the twenty-five-watt transmitter output power limit for maritime frequencies and otherwise fully complies with the technical parameters of Part 22 or Part 90.<sup>104</sup> The addition of capability to manually program Part 80 channels necessitates recertification of the device and labeling with a separate FCC ID number.<sup>105</sup>

24. Havens additionally requests clarification that, under Section 80.215(h) of the Rules,<sup>106</sup>

<sup>98</sup> It is noteworthy in this regard that the Commission did not amend the Part 80 rules to allow VPC and AMTS licensees to provide *any* service to units on land until it had developed a considerable amount of experience with such offerings pursuant to the waiver process. *See TCI*, 14 FCC Rcd at 16177 ¶ 8 (noting that the Commission amended the rules to authorize land mobile service in the first place "only after eleven years of individual waivers resulted in no interference complaints [from maritime users]").

<sup>99</sup> 47 C.F.R. § 80.123(d).

<sup>100</sup> *See* Havens Comments at 3.

<sup>101</sup> *See Second Report and Order*, 12 FCC Rcd at 16965 ¶ 26.

<sup>102</sup> *Id.*

<sup>103</sup> *See* 47 C.F.R. § 80.203(b).

<sup>104</sup> We note that this is consistent with the intent of Section 80.203(b) to "inhibit operation of VHF maritime transmitters on unauthorized [*i.e.*, non-maritime] frequencies," rather than to restrict authorized land mobile operations on maritime frequencies. *See Amendment of the Maritime Service Rules (Part 80) to restrict the frequency selection capability of VHF transmitters to maritime frequencies*, *Report and Order*, PR Docket No. 88-507, 4 FCC Rcd 5680, 5680 ¶ 6 (1989).

<sup>105</sup> *See* 47 C.F.R. § 2.1043(a).

<sup>106</sup> 47 C.F.R. § 80.215(h).

"if, for a particular station, a licensee may use the stated 1000 watts ERP [effective radiated power] under the conditions stated that allow for it, then the licensee may achieve this 1000 watts ERP by any combination of power into the antenna and antenna gain."<sup>107</sup> As we understand Havens' request, he seeks a clarification that would in effect allow AMTS licensees to operate without limitation as to transmitter power, as measured at the input terminals to the station antenna, provided that the ERP does not exceed the one thousand watt maximum specified in Section 80.215(h)(1).<sup>108</sup> However, such operation could in fact violate Section 80.215(h)(5) of the Rules,<sup>109</sup> which limits AMTS transmitter power, as measured at the input terminals to the antenna, to fifty watts or less.<sup>110</sup> We therefore decline to provide the requested clarification.

25. Finally, we decline Havens' request that we "clarify" that, in light of the rule changes adopted *supra*, there are no Part 80 rules "that the Commission interprets or may interpret to restrict use of AMTS or VPC licenses for private mobile radio service...."<sup>111</sup> We agree with NTIA/USCG<sup>112</sup> that the requested ruling is framed far too broadly to be adopted, even if we were to find merit in the arguments requesting additional flexibility. Moreover, as explained in the preceding paragraphs, we decline to eliminate all restrictions on the use of VPC or AMTS spectrum for private correspondence.

26. We take this opportunity to provide prospective waiver applicants with some guidance regarding some of the factors that will be considered in evaluating requests for waivers of the Part 80 rules, in order to reduce potential administrative burdens, delay and uncertainty. As a preliminary matter, we note that waivers of the Part 80 rules by parties seeking to use VPC or AMTS spectrum for land mobile radio operations are, like other waivers of the rules pertaining to Wireless Radio Services, assessed under the criteria set forth in Section 1.925 of the Commission's Rules.<sup>113</sup> In that context, we will expect such waiver applicants to explain, *inter alia*, how they intend to provide priority to maritime

<sup>107</sup> See Havens Comments at 3.

<sup>108</sup> 47 C.F.R. § 80.215(h)(1).

<sup>109</sup> 47 C.F.R. § 80.215(h)(5).

<sup>110</sup> See Warren C. Havens, *Order*, 18 FCC Rcd 26509 (2003) (*Havens Forbearance Petition Order*) (denying Havens' petition for forbearance from the power limit in Section 80.215(h)(5)). Havens filed a petition for reconsideration of the *Havens Forbearance Petition Order* on January 20, 2004. As our discussion *supra* underscores, we remain unpersuaded that AMTS licensees should be relieved of the Section 80.215(h)(5) transmitter power limit, whether through forbearance, "clarification," or otherwise. In particular, we find nothing in the petition for reconsideration of the *Havens Forbearance Petition Order* that would undermine the Commission's conclusion that Havens' petition for forbearance contained "no engineering information establishing that [the Commission] could forbear from applying the power limitation in section 80.215(h)(5) without it resulting in interference to other AMTS stations, or to other co- or adjacent channel services." See *Havens Forbearance Petition Order*, 18 FCC Rcd at 26510 ¶ 4. We continue to believe that the fifty watt transmitter power limit in Section 80.215(h) is essential to protect AMTS and other stations from such co-channel and adjacent channel interference, notwithstanding the independent one thousand watt ERP limit in Section 80.215(h)(1). We therefore deny Havens' petition for reconsideration of the *Havens Forbearance Petition Order*.

<sup>111</sup> See Havens Comments at 2. MariTEL endorses Havens' proposal, agreeing that it would obviate the need for waivers when public safety entities and others seek to employ maritime spectrum for PLMR service. See MariTEL Reply Comments at 5-6.

<sup>112</sup> See NTIA/USCG Reply Comments at 2.

<sup>113</sup> See 47 C.F.R. § 1.925(b)(3) (providing that the Commission may grant a waiver of the rules pertaining to wireless radio services "if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative").

communications or why they believe the requirement should be waived.<sup>114</sup> Second, the distance of a proposed land mobile radio operation from the nearest navigable waterways will be a factor in evaluating whether to grant the requested waiver(s); the greater the distance, the more favorably the waiver request will be viewed.<sup>115</sup> Third, with respect to requested waivers of Part 80 technical requirements, such as power limits and emission masks, the magnitude of the divergence from Part 80 will be considered in evaluating the waiver. Relatively small variations from the Part 80 technical requirements will be viewed more favorably than larger variations. Fourth, a showing that alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose will be a factor militating in favor of grant of a waiver. Fifth, although we are not confining PLMR use of VPC and AMTS spectrum to public safety or CII entities, a showing that authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security will be a factor militating in favor of granting the waiver(s).

#### D. Use of VPC Spectrum for Port Operations and Ship Movement Communications

27. In the *NPRM*, the Commission also invited comment on whether to amend the rules to provide additional flexibility to VPC licensees and spectrum users by allowing the VPC channels to be used for port operations and ship movement services, either in a simplex or duplex mode.<sup>116</sup> Such an amendment, the Commission noted, would align the Part 80 treatment of these frequencies with their treatment in the *ITU Radio Regulations*.<sup>117</sup>

28. We are not persuaded on the present record that the Part 80 rules governing the VPC channels need to be amended in order to avoid inconsistency with the *ITU Radio Regulations*. While the commenting parties generally favor such a rule change,<sup>118</sup> they do so because they believe that it would provide a potential resource to meet the growing demand for spectrum for port operations and ship movement communications,<sup>119</sup> and would also serve the public interest in "promoting compatibility with international shipping and increased flexibility."<sup>120</sup> However, there is no existing regulatory impediment to the use of the VPC channels for port operations and ship movement communications. VPC geographic

<sup>114</sup> If the applicant does not seek a waiver of the priority requirement, but instead intends to comply with that requirement, and satisfactorily demonstrates how it will achieve such compliance, that showing will be a factor favoring grant of the waiver(s).

<sup>115</sup> We are neither requiring as an absolute precondition to waiver relief that the proposed land mobile radio operation be located at a fixed minimum distance from the nearest navigable waterway, nor establishing a "safe harbor" distance beyond which a proposed land mobile radio operation would be presumed to be entitled to waiver relief. We note, however, that the Coast Guard has suggested that a distance of one hundred miles from navigable waterways might be a meaningful threshold. See *NTIA/USCG Comments* at 2. We also note that the Commission, in adopting rules (no longer in effect) permitting the limited use of the marine VHF band public correspondence frequencies by eligibles in the Industrial and Land Transportation Radio Services, previously established a requirement that such use be confined to areas at least 116 kilometers (72 miles) from navigable waterways. See *Amendment of the Commission's Rules Concerning Maritime Communications, First Report and Order*, PR Docket No. 92-257, 10 FCC Rcd 8419, 8425 ¶ 12 (1995) (adopting 47 C.F.R. § 90.283(d), which was deleted in the *Third Report and Order*); see also *Second Report and Order*, 12 FCC Rcd at 16955 ¶ 7.

<sup>116</sup> See *NPRM*, 19 FCC Rcd at 15231 ¶ 14.

<sup>117</sup> *Id.*

<sup>118</sup> See *NTIA/USCG Comments* at 5; *NPMRC Comments* at 1; *PSHSSC Comments* at 1; *RTCM Comments* at 3.

<sup>119</sup> See *NTIA/USCG Comments* at 5. *NTIA/USCG* states that addressing the growing demand for port operations and ship movement communications is of vital importance to United States trade and security. *Id.*; see also *NTIA/DHS Reply Comments* at 1 (emphasizing that "[t]he safety and protection of territorial waters, ports and waterways, is an integral element of our national homeland security strategy").

<sup>120</sup> See *RTCM Comments* at 3.

licensees are permitted to provide private correspondence service to the maritime community,<sup>121</sup> and no party has suggested that they could not provide port operations and/or ship movement communications service under that authority.<sup>122</sup> To the extent that there is any confusion on this matter, we hereby clarify that port operations and ship movement communications are a type of private correspondence service that may be provided on VPC channels pursuant to Section 20.9(b) of the Commission's Rules.

29. Although the Part 80 rules currently do not permit the use of VPC spectrum on a simplex basis,<sup>123</sup> whereas the ITU *Radio Regulations* authorize such simplex operation,<sup>124</sup> we do not view this as creating a fundamental incompatibility between Part 80 and the *Radio Regulations*. The ITU does not mandate that the use of VPC channels for port operations and ship movement communications be on a simplex basis, but only authorizes simplex operation on a permissive basis.<sup>125</sup> In addition, the current record does not indicate support from any VPC licensee for authorizing simplex use of the VPC channels, for this or any other purpose.<sup>126</sup> Given that commenters generally provide no analysis of the interference impact of simplex operations on VPC channels in port areas,<sup>127</sup> based on the record before us, we are disinclined to amend the rules now to permit such simplex operations solely on speculation that VPC licensees or lessees may desire to operate in simplex mode in the future.<sup>128</sup> We retain discretion to revisit this issue if it appears in the future that the prohibition on simplex communications would preclude implementation of an agreed-upon service offering or secondary markets transaction.

#### IV. CONCLUSION

30. In this WT Docket No. 04-257 *Report and Order*, the Commission provides VPC and

<sup>121</sup> See 47 C.F.R. § 20.9(b).

<sup>122</sup> With respect not only to port operations and ship movement communications, but also to other private radio services that may be desired by the maritime community, MariTEL states "no further action is required by the FCC" and that MariTEL is "prepared to satisfy those needs today and the FCC has provided it with the flexibility to do so." MariTEL Reply Comments at 8.

<sup>123</sup> Compare 47 C.F.R. § 80.371(c)(1)(i) (listing duplex channels) with 47 C.F.R. § 80.371(b)(2) (specifying exhaustively the frequencies available to public coast stations for simplex operation, all of which are in the MF band).

<sup>124</sup> See ITU Radio Regulations, Appendix S18, APS18-3, note (m).

<sup>125</sup> Note (m) to Appendix S18, as adopted at WRC-2000, specifies that the subject VPC channels "may be operated as single frequency channels, subject to special arrangement between interested or affected administrations." *Id.* (emphasis added).

<sup>126</sup> MariTEL says it sees "no economic value in using its licensed channels in simplex mode," and does not contemplate simplex use of the channels in its business plans. See MariTEL Comments at 7.

<sup>127</sup> AAR, alone among the commenters, addresses in some detail the potential interference implications of simplex port operations and ship movement communications on VPC channels. AAR argues that, if the Commission authorizes simplex communications in the maritime VHF band, it should also adopt a safeguard to protect co-channel and adjacent channel railroad communications near ports. AAR notes that, of the fifty-nine paired-frequency channels designated in Appendix S18 for VHF maritime mobile use, there are eighteen channels with a coast station frequency that overlaps the PLMR channels used by railroads in the United States pursuant to Section 90.35(c) of the Commission's Rules, 47 C.F.R. § 90.35(c). See AAR Comments at 3. AAR says it has no objection to the alignment of the VPC channels as discussed in the *NPRM*, provided that the Commission includes a footnote indicating that simplex use is not permitted for any VPC channels identified in Appendix S18 that are also identified as subject to railroad frequency coordination in Section 90.35. *Id.* at 6. AAR's request is moot in light of our determination not to authorize simplex communications on VPC channels at this time.

<sup>128</sup> Cf. *Third Report and Order*, 13 FCC Rcd at 19865 ¶ 23 (declining to permit mobile-to-mobile communications in coastal areas largely because the record contained insufficient information regarding channel capacity and co-channel interference protection).

AMTS licensees with significant additional operational flexibility by allowing them to provide service to land units on a private correspondence basis. Allowing these coast stations to provide such private land mobile radio service, in addition to public correspondence service, is a logical extension of prior rulemaking decisions expanding operational and technical flexibility for coast station services, and comports with the Commission's policies of favoring a level playing field in CMRS competition, relying to the extent feasible on marketplace forces to determine the nature of services offered, facilitating efficient use of the scarce spectrum resource, and making additional spectrum available for public safety communications. At the same time, the Commission here reaffirms its longstanding commitment to ensure that the spectrum allocated for maritime communications is available, first and foremost, to satisfy the communications needs of the maritime community. That commitment is reflected in the decision to continue to require coast station licensees and lessees to request and obtain waivers before providing service to units on land pursuant to the rules generally applicable to land mobile radio services, rather than the rules generally applicable to maritime radio service. Although codifying provisions that would obviate the need for such waivers could provide some public interest benefits, those benefits are outweighed by the concern that giving VPC and AMTS licensees that much additional flexibility could contribute, over time, to a *de facto* reallocation of VPC and AMTS spectrum from its core maritime purpose.

## V. PROCEDURAL MATTERS

### A. Regulatory Flexibility Act

31. As required by the Regulatory Flexibility Act (RFA),<sup>129</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the rules adopted in this *Report and Order*. The FRFA for the *Report and Order* is contained in Appendix C. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>130</sup>

### B. Paperwork Reduction Act

32. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

### C. Further Information

33. For further information, contact Jeffrey Tobias, Mobility Division, Wireless Telecommunications Bureau, (202) 418-1617, or TTY (202) 418-7233, or via electronic mail at [jeff.tobias@fcc.gov](mailto:jeff.tobias@fcc.gov).

34. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). This *Report and Order* can also be downloaded at: <http://www.fcc.gov/>.

<sup>129</sup> See 5 U.S.C. § 604.

<sup>130</sup> See 5 U.S.C. § 801(a)(1)(A).

**VI. ORDERING CLAUSES**

35. Accordingly, **IT IS ORDERED**, pursuant to the authority of Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c), that Parts 20 and 80 of the Commission's Rules **ARE AMENDED** as set forth in the attached Appendix B, effective thirty days after publication in the Federal Register.

36. **IT IS FURTHER ORDERED** that the late-filed comments, reply comments and clarifications of comments of Warren Havens, Telesaurus Holdings GB, LLC, Telesaurus-VPC, LLC and AMTS Consortium, LLC, and the late-filed reply comments of the U.S. National Telecommunications and Information Administration/U.S. Department of Homeland Security, in response to the *Notice of Proposed Rule Making* in WT Docket No. 04-257 **ARE ACCEPTED**.

37. **IT IS FURTHER ORDERED** that the petition for reconsideration filed by Warren C. Havens on January 20, 2004 **IS DENIED**.

38. **IT IS FURTHER ORDERED** that the Commission's Consumer Information Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX A

*Commenting Parties*Comments<sup>131</sup>

Association of American Railroads (AAR)  
MariTEL, Inc. (MariTEL)  
Mobex Network Services, LLC (Mobex)  
National Telecommunications and Information Administration/United States Coast Guard (NTIA/USCG)  
North Pacific Marine Radio Council (NPMRC)  
Paging Systems, Inc. (PSI)  
Puget Sound Harbor Safety and Security Committee (PSHSSC)  
Radio Technical Commission for Maritime Services (RTCM)  
Warren Havens, Telesaurus Holdings GB, LLC, Telesaurus-VPC, LLC and AMTS Consortium, LLC  
(together, Havens)

Reply Comments

AAR  
Havens, with Havens Clarifications of Comments  
MariTEL  
NTIA/USCG  
NTIA/Department of Homeland Security (NTIA/DHS)  
PacifiCorp

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<sup>131</sup> The Havens comments, reply comments and clarifications of comments were filed late, as were the NTIA/DHS reply comments. We accept the late-filed Havens comments, reply comments, and clarifications of comments, and the NTIA/DHS reply comments, in the interest of having as complete a record as possible on which to base our decisions herein. We remind commenters, however, that we reserve discretion to disregard late-filed comments or unauthorized pleadings.

**APPENDIX B****Final Rules**

Chapter I of Title 47 of the Code of Federal Regulations, Parts 20 and 80 are proposed to be amended as follows:

**Part 20 – Commercial Mobile Radio Services**

1. The authority citation for Part 20 continues to read as follows:

**AUTHORITY:** Secs. 4, 10, 251-254, 303, and 332; 47 U.S.C. 154, 160, 251-254, 303, and 332, unless otherwise noted.

2. Section 20.9 is amended by revising paragraphs (b) and (b)(1) to read as follows:

**§ 20.9 Commercial mobile radio service.**

\* \* \* \* \*

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, and automated maritime telecommunications system (AMTS) licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service, VHF Public Coast Station, or AMTS service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3. Any application requesting to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

\* \* \* \* \*

**Part 80 – Stations in the Maritime Services**

1. The authority citation for Part 80 continues to read as follows:

**AUTHORITY:** Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by revising the definition of automated maritime telecommunications system as follows:

**§ 80.5 Definitions.**

\* \* \* \* \*

Automated maritime telecommunications system (AMTS). An automatic maritime communications system.

\* \* \* \* \*

3. Section 80.123 is amended by revising the introductory paragraph to read as follows:

**§ 80.123 Service to stations on land.**

Marine VHF public coast stations, including AMTS coast stations, may provide service to stations on land in accordance with the following:

\* \* \* \* \*

4. Section 80.371 is amended by revising the text of paragraph (c)(1)(i) to read as follows:

**§ 80.371 Public correspondence frequencies.**

\* \* \* \* \*

(c) \* \* \* \* \*

(1) (i) The frequency pairs listed in this paragraph are available for assignment to public coast stations for communications with ship stations and units on land.

\* \* \* \* \*

5. Section 80.475 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).**

\* \* \* \* \*

(c) An AMTS system may provide private mobile radio service in addition to or instead of public correspondence service. However, such communications may be provided only to stations whose licensees make cooperative arrangements with the AMTS coast station licensees. In emergency and distress situations, services must be provided to ship stations without prior arrangements.

(d) AMTS systems providing private mobile radio service instead of, or in addition to, public correspondence service are not required to be interconnected to the public switched network when providing such private mobile radio service. AMTS systems providing public correspondence service must be interconnected to the public switched network, but the licensee may also offer non-interconnected services.

6. Section 80.479 is amended by revising paragraph (a) to read as follows:

**§ 80.479 Assignment and use of frequencies for AMTS.**

(a) The frequencies assignable to AMTS stations are listed in subpart H of this subpart.

\* \* \* \* \*

## APPENDIX C

## Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>132</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (NPRM)* in this proceeding.<sup>133</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>134</sup>

**A. Need for, and Objectives of, the Rules Adopted in the Report and Order**

The rules adopted in the *Report and Order* are intended to provide VHF public coast station (VPC) and Automated Maritime Telecommunications Service (AMTS) stations with the additional flexibility to offer non-interconnected private correspondence communications to units on land.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

No comments were submitted specifically in response to the IRFA. In addition, no commenter has opposed the rule amendments adopted herein based on their potential economic impact on small entities. These rule amendments do not impose any new requirements or compliance burdens on any affected entity, but rather benefit such entities by providing them with additional operational flexibility.

**C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>135</sup> The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>136</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>137</sup> A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>138</sup>

The adopted rules would affect licensees using AMTS and VPC spectrum. In the *Third Report and Order* in PR Docket No. 92-257, the Commission defined the term "small entity" specifically

<sup>132</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>133</sup> See *MariTEL, Inc. and Mobex Network Services, LLC, Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2004) (*NPRM*).

<sup>134</sup> See 5 U.S.C. § 604.

<sup>135</sup> 5 U.S.C. § 603(b)(3).

<sup>136</sup> *Id.* § 601(6).

<sup>137</sup> *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.* § 601(3).

<sup>138</sup> Small Business Act, 15 U.S.C. § 632 (1996).

applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19893 (1998) (citing 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812). Below, we provide the economic census category and data for wireless entities, which encompasses public coast stations.

*Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>139</sup> and "Cellular and Other Wireless Telecommunications."<sup>140</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>141</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>142</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>143</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>144</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

The *Report and Order* does not impose any reporting, recordkeeping, or other compliance requirements on small entities.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."<sup>145</sup>

<sup>139</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>140</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>141</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>142</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>143</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>144</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>145</sup> 5 U.S.C. § 603(c)(1)-(4).

The rules adopted in the *Report and Order* will not have any adverse economic impact on small entities. To the contrary, they remove existing regulatory restrictions on the affected entities.<sup>146</sup>

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

None.

**Report to Congress:** The Commission will send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>147</sup> In addition, the Commission will send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and the Final Regulatory Flexibility Analysis (or summaries thereof) also will be published in the Federal Register.<sup>148</sup>

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<sup>146</sup> We note that we may also have certified this rule under 5 U.S.C. § 605(b).

<sup>147</sup> See *id.* § 801(a)(1)(A).

<sup>148</sup> See *id.* § 604(b).