

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Amendment of the Commission’s Rules) WT Docket No. 04-344
Regarding Maritime Automatic)
Identification Systems)
)

**REPLY TO OPPOSITION
TO PETITION FOR RECONSIDERATION**

Pursuant to Section 405 of the Communications Act of 1934, 47 U.S.C. §405, and Section 1.429 of the Commission’s Rules, 47 C.F.R. §1.429, PacifiCorp hereby submits its Reply to Motorola, Inc.’s Opposition to PacifiCorp’s Petition for Reconsideration (“Petition”) of the Commission’s *Second Report and Order*, FCC 08-208, released September 19, 2008, in the above-captioned matter (*Second R&O*).¹ As explained herein, PacifiCorp urges the Commission to dismiss the objections raised by Motorola and expeditiously grant PacifiCorp’s Petition.

Unfortunately, it appears that Motorola misunderstood PacifiCorp’s Petition when it suggested that PacifiCorp’s Petition “seeks to reduce the transition period afforded to incumbent public safety licensees on Channels 84 or 85.” To the contrary, at no time did PacifiCorp request that the grandfathering period for Public Safety entities licensed on VHF Public Coast (VPC) Channels 84 or 85 should be reduced. Rather, PacifiCorp has explicitly requested that the grandfathering period for Channel 87B licensees should be extended to at least six months beyond the date when an incumbent Public Safety entity on replacement Channel 84 or 85

¹ Public notice of PacifiCorp’s Petition was published on January 29, 2009 (74 Fed.Reg. 5117). See also Amendment of the Commission’s Rules Regarding Maritime Automatic Identification Systems, *Second Report and Order*, 23 FCC Rcd 13711 (2008) (*Second R&O*).

cancels its license pursuant to the procedure established in the *Second R&O*. This request in no way further limits or reduces the period of time for Public Safety entities to transition from Channels 84 or 85.

In addition, the alternative channel plans put forth by PacifiCorp are a natural and logical outgrowth of actions already contemplated and taken by the Commission, and would merely complete the prior efforts by the Commission to “restore the operating capacity” of inland VPCSA licensees, while at the same time providing Public Safety licensees with access to an additional 12.5 kHz channel to support their operations. Conversely, Motorola’s request for further rulemaking could delay the Commission’s resolution of this proceeding.

I. Background

In the *Second R&O*, the Commission reallocated VPC Channel 87B for AIS operations in the inland VHF Public Coast Station Areas (VPCSAs) in order to permit expansion of AIS to areas far removed from coastal waters. The Commission also reallocated VPC Channels 84 and 85, which are currently reserved for public safety interoperability in the inland VPCSAs, for VPC use to make up for the loss of Channel 87 in these areas.

However, in adopting the related grandfathering and transition requirements, the Commission significantly undermined the ability of certain geographic area licensees on VPC Channel 87, such as PacifiCorp, to make a seamless transition to replacement Channels 84 and 85. The end result is that while PacifiCorp must vacate Channel 87B in its inland VPCSAs by March 2, 2011, it will not have access to replacement Channels 84 or 85 in some areas until as much as 13 years later because of the grandfathered use of those channels by incumbent site-based licensees.

PacifiCorp therefore requested reconsideration of these grandfathering and transition provisions to permit PacifiCorp, and similarly situated licensees, an opportunity to make a seamless transition to replacement channels. First, PacifiCorp requested that the Commission revise the grandfathering rights for incumbent licensees on Channel 87 in circumstances where it will not be possible for the Channel 87 licensee to make a seamless transition to replacement Channels 84 or 85 due to the presence of other grandfathered licensees on those channels. Specifically, PacifiCorp recommended that the Commission provide such a licensee on Channel 87B with two options: (1) the right to use Channel 87B until a date that is six months after the date the incumbent licensee on Channels 84 or 85 cancels its license for such usage, or (2) the right to apply for an available exclusive-use channel in the VHF band (*e.g.*, such as a VHF channel allocated under Part 22 of the FCC's Rules) that can be used by the Channel 87B licensee until a date that is six months after the incumbent licensee on Channels 84 or 85 cancels its license for such usage.

Second, PacifiCorp requested that the Commission provide relief for VPC licensees who will suffer a net loss of spectrum because of inability to use both of the interstitial channels associated with replacement Channels 84 and 85. PacifiCorp recommended that the Commission allow inland VPCSA licensees to divide an existing 25 kHz channel into two 12.5 kHz channels. While PacifiCorp believes this would provide the optimal solution, an alternative would be to allocate to Public Safety the interleaved channel between Channel 84 and 25 (commonly referred to as Channel 284), as well as the 12.5 kHz channel centered in VPC Channel 25 (commonly referred to as Channel 425) in all of the inland VPCSAs in lieu of Channel 25.

MariTEL, Inc. and Motorola filed responses to PacifiCorp's Petition. MariTEL expressed its support for PacifiCorp's proposal to "provide an equitable spectrum replacement"

and further stated that “PacifiCorp accurately demonstrates that the public safety set-aside channel to be used as replacement spectrum will only facilitate VPC licensees use of one 12.5 kHz channel and the FCC’s decision does not account for the loss of the interstitial channels that would otherwise be available.”²

Motorola raised two objections to the Petition. First, Motorola stated that it opposed the Petition “to the extent it seeks to reduce the transition period afforded to incumbent public safety licensees on Channels 84 or 85, including the State of Wyoming.”³ Second, Motorola opposed PacifiCorp’s alternative channel plans, stating that “Motorola acknowledges that even if there are certain advantages to the plan outline by PacifiCorp, the Commission should issue a public notice and seek comment on the plan through a separate or further rulemaking rather than through this reconsideration proceeding.”⁴

As discussed herein, the Commission should dismiss the objections raised by Motorola and expeditiously grant PacifiCorp’s Petition.

II. PacifiCorp Does Not Request that the Commission Reduce the Transition Period Afforded to Incumbent Public Safety Licensees on Channels 84 or 85.

Unfortunately, it appears that Motorola misunderstood PacifiCorp’s Petition. PacifiCorp did not request that the grandfathering period for Public Safety licensees on Channels 84 or 85 should be reduced. Rather, PacifiCorp requested that the grandfathering period for Channel 87B licensees should be extended to at least 6 months beyond the date when an incumbent on replacement Channel 84 or 85 cancels its license.

² MariTEL Reply at 1.

³ Motorola Opposition at 2.

⁴ *Id.* at 3.

More specifically, PacifiCorp recommended that that the Commission provide existing licensees of Channel 87B with two options for continuing their operations in circumstances where it will not be possible for the licensee to make a seamless transition to replacement Channels 84 or 85. These options would enable a Channel 87B licensee to operate on frequencies other than Channels 84 and 85 during the 15-year transition period for incumbent Public Safety licensees to vacate Channels 84 and 85. This limited relief would avoid the problem mentioned above whereby PacifiCorp and similarly situated licensees of Channel 87B must vacate Channel 87B in the inland VPCSA by March 2, 2011, but will not have access to replacement Channels 84 and 85 in some areas until 13 years later. Neither of these options would affect the grandfathering period for Public Safety licensees on Channels 84 or 85, as Motorola suggests.

III. PacifiCorp's Recommended Adjustments to the Channel Plan Are a Natural and Logical Outgrowth of the Commission's Long-Standing Efforts in the AIS Proceeding.

PacifiCorp's proposed adjustments to the inland VPCSA channel plan will ensure that inland VPCSA licensees, such as PacifiCorp, receive access to comparable spectrum as part of their transition to Channels 84 or 85, and are a natural and logical outgrowth of actions contemplated in the *Further Notice* and taken by the Commission in the *Second Report & Order* to "restore the operating capacity" of inland VPCSA licensees.⁵

⁵ See *Public Service Commission v. FCC*, 906 F.2d 713, 717-718 (DC. Cir. 1990) (finding that the adoption of a unified separation manual was a "logical outgrowth" of the rule proposed, and stating that "a reasonable attempt to accommodate commentators by responding to their suggestions for changes does not render a final rule something other than a logical outgrowth of the original proposal"); Amendment of Section 22.501(a) of the Rules to Allow the 35 and 43 MHz Frequency Bands to be Used for One-way Paging on an Exclusive Basis in the Public Land Mobile Service, *Order on Reconsideration*, 60 RR 2d 226, 228 (1986) (stating that the Commission's decision to grandfather existing two-way systems until 1988 was a natural

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In the *Further Notice*, the Commission asked if it would be appropriate to redesignate Channels 25, 84 or 85 for VPC use “in order to avoid a negative impact on inland VPCSA licensees.”⁶ Based upon the comments, the Commission developed a grandfathering and transition framework in which it made Channels 84 and 85 available to inland VPCSA licensees. The Commission declared that this framework was “equitable because it will restore the operating capacity of these licensees, who, unlike the maritime VPCSA licensees, were under no pre-existing obligation to make any of their licensed spectrum available for AIS.”⁷ Unfortunately, in reality, the plan contained in the *Second R&O* did not fully “restore the operating capacity” of inland VPCSA licensees because it reduced the licensees’ access from potentially three 12.5 kHz channels to, at the most, two 12.5 kHz channels. PacifiCorp, therefore, merely proposes two options for completing the process already begun by the Commission.

In its Opposition, Motorola argues that under the plan established by the Commission in the *Second R&O* inland VPCSA licensees, such as PacifiCorp, were provided with 50 kHz of replacement spectrum in exchange for losing access to the 25 kHz Channel 87B and adjacent interstitial channels. Therefore, Motorola’s argument continues, these inland VPCSA licensees have been fully compensated.

Unfortunately, Motorola’s argument fails to account for the differences between frequencies that are allocated for coast/base and ship/mobile operations and the fact that these

outgrowth of its decision on Reconsideration not to retain the technical restrictions protecting two-way systems from harmful interference).

⁶ Amendment of the Commission’s Rules Regarding Maritime Automatic Identification, *Report and Order and Further Notice of Proposed Rule Making and Fourth Memorandum Opinion and Order*, 21 FCC Rcd 8892, 8934-35 (2006) (*Further Notice*).

⁷ *Second R&O*, 23 FCC Rcd at 13724-25.

allocations are not interchangeable. The three 12.5 kHz channels associated with Channel 87B are coast/base station frequencies, but the “additional” 25 kHz of spectrum associated with Channels 84A and 85A are ship/mobile frequencies. As Motorola acknowledges by suggesting that the Commission consider relaxing its restrictions on use of the ship/mobile side of the channels for coast/based station use, the need for base station frequencies in a private land mobile system cannot simply be met with additional mobile frequencies. Of course, should the Commission allow PacifiCorp and other similarly situated inland VPCSA licensees to “split” the existing 25 kHz channel assignment, as recommended by PacifiCorp, Channel 84 or 85 would be an adequate replacement for Channel 87B. In the end, the additional mobile frequencies associated with Channels 84 and 85, without more, are not substitutes for the loss of Channel 87B and the interstitials and, therefore, do not “restore the operating capacity” of inland VPCSA licensees.

A number of other factors suggest that the Commission should reject Motorola’s request to seek further comments. First, the timing of this proceeding is of significance. Not only has the Commission been working since 2004 in this proceeding to ensure the “expeditious and effective implementation in the United States of maritime [AIS],” which is “a critical component of our Nation’s homeland security, as well as an important tool for enhancing maritime safety,”⁸ but the *Second R&O* put a two-year timetable on the transition of inland VPCSA licensees to Channels 84 and 85. In order to successfully make this transition and ensure continued viability of their business models, the inland VPCSA licensees on Channel 87B not only require access to fully comparable spectrum, but also resolution of this proceeding in a timely manner.

⁸ *Further Notice*, 21 FCC Rcd at 8893.

The *Further Notice* in this proceeding was released on July 24, 2006 and the *Second R&O*, which responded to the comments filed on the *Further Notice*, was not released until September 19, 2008 – almost twenty-six months later. Even assuming that the Commission is able to initiate a further rulemaking notice, process the additional rounds of comments suggested by Motorola, and issue a decision in an expedited manner, at best it can be assumed that the Commission would not be able to resolve this matter until shortly before the conclusion of the inland VPCs’ two-year transition period, or even after the transition period. Such delay could result in requests by inland VPCSA licensees for extensions of time to make the transition from Channel 87B to Channels 84 and 85, which would further delay the transition of AIS operations to Channel 87B.

Second, it is significant that Motorola has not objected to the merits of the alternative plans proposed by PacifiCorp. Indeed, these proposals are actually beneficial to Public Safety entities because either option would permit these entities to access two 12.5 kHz channels after the transition of Channels 84 and 85 to inland VPCSA licensees instead of simply one 12.5 kHz channel, as currently planned.⁹ In addition, permitting PacifiCorp, as well as other similarly situated licensees, to “split” existing 25 kHz channels would not adversely affect other licensees that continue to operate on 25 kHz channels or 12.5 kHz interstitial channels in accordance with

⁹ PacifiCorp notes that the Commission found it in the public interest to grant the State of Wyoming’s waiver request to use offset 12.5 kHz channels because it would encourage efficient use of VPC spectrum. Request for Waiver of Section 90.20(g)(2)(i), 90.20(g)(5)(ii) and 90.20(g)(5)(v) of the Commission’s Rules, *Order*, 23 FCC Rcd 10310, 10312-13 (2008) (“To the extent Wyoming would operate on three narrowband 12.5 kHz bandwidth channels in the same amount of spectrum that would support only two 25 kHz bandwidth channels, Wyoming’s proposed use would be consistent with the Commission goals of encouraging spectrum efficiency.”).

current rules.¹⁰ Motorola's request for further rulemaking would simply delay the natural and logical resolution of this proceeding, which is of benefit to all parties.

Third, it is also noteworthy that none of the fourteen entities that filed comments and/or reply comments to the *Further Notice* filed an opposition to the Petition.¹¹ If any of these interested parties had any objections to the FCC's granting of the Petition, one can assume based on their prior actions that they would have informed the Commission of such a position. In fact, Motorola does not even directly object to the alternative plans, but instead simply suggests that there be another round of comments on the issue. Therefore, it would appear unnecessary to hold a further rulemaking.

IV. Conclusion

PacifiCorp urges the Commission to dismiss the objections raised by Motorola and expeditiously grant PacifiCorp's Petition for Reconsideration. As discussed above, despite Motorola's suggestions to the contrary, PacifiCorp did not request that the grandfathering period for Public Safety entities licensed on VHF Public Coast (VPC) Channels 84 or 85 be reduced. Rather, PacifiCorp has explicitly requested that the grandfathering period for Channel 87B licensees be extended, which in no way limits or reduces the period of time for Public Safety entities to transition from Channels 84 or 85. In addition, the adjustments to the channel plan put forth by PacifiCorp are a natural and logical outgrowth of actions already contemplated in the *Further Notice* and taken by the Commission in the *Second R&O*, and would merely complete the efforts by the Commission to "restore the operating capacity" of inland VPCSA licensees,

¹⁰ An inland VPCSA licensee may only operate on an interstitial channel if it is authorized on the two adjacent 25 kHz channels or if it has reach an agreement with the neighboring 25 kHz licensee. Permitting the "splitting" of 25 kHz channels would not require any changes to these prior arrangements.

¹¹ See *Second R&O*, 23 FCC Rcd at 13735.

while at the same time providing Public Safety licensees with access to an additional 12.5 kHz channel for their operations. The fact that none of the parties that filed comments and/or reply comments to the *Further Notice* have raised any concerns regarding the alternative plans presented by PacifiCorp, and that granting Motorola's request for further comments could delay the transition of inland Channel 87B licensees to Channels 84 and 85, further compels the rejection of Motorola's Opposition.

WHEREFORE, THE PREMISES CONSIDERED, PacifiCorp respectfully requests that the Commission take action in this proceeding consistent with the views expressed herein.

Respectfully submitted,

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Certificate of Service

I, Megan Donahue, certify that on April 30, 2009, I caused a true and accurate copy of the foregoing “Reply to Opposition to Petition for Reconsideration” to be sent by first class mail, postage prepaid, to each of the following:

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