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

In the Matter of	)	
	)	
MOTOROLA, INC.	)	FCC 11-174
	)	
Application for Consent to Partition and Disaggregate *and Assign* Licenses, and Requests for Waiver of Part 80 Rules to Permit Use of Maritime Frequencies for Private Land Mobile Radio Communications	)	File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759, 0002633764, 0002633769, 0002635143
	)	
Amendment of the Commission's Rules Concerning Maritime Communications	)	PR Docket No. 92-257
	)	

To: Office of the Secretary
Attn: Wireless Telecommunications Bureau
(which may deliver to the Commission, if appropriate)

Limited Appeal[1] and Reservation

Petitioners hereby submit this limited appeal (the "Appeal") of the Order.

As reflected in the Order and in Petitioners pleading in this matter, this case presented by Petitioners (the "Instant Case") in large part draws from (and has common elements and issues with) other Petitioners' cases involving Maritel, and the matter under FCC 11-64, where the FCC has accepted the case's facts and arguments as procedurally acceptable (raised in a relevant licensing action) (the "First Case").

Petitioners, in the Instant Case, take the position that upon a decision in First Case, if favorable to Petitioners, would be controlling or persuasive as to the same issues in the Instant Case as to the common elements and issues.

[1] The defined terms used herein have the same meaning as in the petition for reconsideration that was dismissed by the *Order on Reconsideration*, DA 12-1774, released November 5, 2012. (the "Order" or "Order on Recon").

Petitioners submit this limited appeal -- under rules regarding an application for review, a petition for reconsideration, an informal request, and a declaratory ruling, and any other applicable rule--, and take the position that, and request the FCC to accept that, they may use any such favorable decision on said common elements and issues from the First Case (if and when they are forthcoming, by a FCC decision or a reviewing court decision) in the Instant Case, in a timely manner—*and without the Instant Case being deemed at that time stale, final, or otherwise unfit for said action*, including by a reservation of rights asserted herein (together, the "Procedure").

By this position and request, Petitioners do not waive or abandon any different position they have taken in the past or make take in the future, in any other case before the FCC.

They take this position and make this request herein, and ask the FCC to promptly accept this Procedure in an appropriate ruling, whether under Section 1.2 or other rule. If the FCC issues such a ruling, Petitioners will have good cause to consider its applicability in other cases they may have pending, or may later bring (or further act under). If the FCC does not issue such a ruling, then Petitioner may consider this position to place them at unacceptable risk to take the same position in other cases.

Support for the position includes the following, from the DC Circuit Court in

> FURTHER ORDERED that the motion to dismiss be granted. Because of the pendency of petitioner's request for administrative reconsideration, the agency order petitioner challenges is not a final reviewable order with respect to petitioner, and his petition for review is incurably premature. See Wade v. FCC, 986 F.2d 1433, 1434 (D.C. Cir. 1993) (per curiam); TeleSTAR, Inc. v. FCC, 888 F.2d 132, 134 (D.C. Cir. 1989); United Transp. Union v. ICC, 871 F.2d 1114, 1116-18 (D.C. Cir. 1989). Once the agency rules on petitioner's request for administrative reconsideration, whether by granting or denying it on the merits or by denying petitioner permission to file the administrative reconsideration, the agency order(s) become "final" and petitioner may seek review.

The finding and ruling that "once the agency rules … denying petitioner permission to file the administrative reconsideration, the agency order(s) become "final" and petitioner may

seek review," is applicable to "seek[ing] review" whether before the DC Circuit Court on a FCC licensing matter (as in the above-quoted case), or before the FCC.

> "Due process of law is [process which], following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and whenever necessary to the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. Any legal proceeding enforced by public authority, whether sanctioned by age or custom or newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty and justice, must be held to be due process of law."

Hagar v. Reclamation Dist., 111 U.S. 701, 708 (1884); *Accord*, Hurtado v. California, 110 U.S. 516, 537 (1884).

FCC can join proceedings that have similar issued. Or it may bifurcate a license proceeding, and decide on one issue prior to or by a different procedure than another.

269 F.3d 1098 (D.C. Cir. 2001)

Verizon Telephone Companies, et al., Petitioners
v.
Federal Communications Commission and United States of America, Respondents
Sprint Corporation, et al., Intervenor

United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT
Decided November 9, 2001

> The FCC is, however, quite correct to point out that, under a well-established principle of finality, when a tribunal elects to resolve the issue of liability in a particular action while reserving its determination of damages on that liability, that decision generally is not considered "final" for purposes of judicial review. See Franklin v. District of Columbia, 163 F.3d 625, 628 (D.C. Cir. 1998) ("In damage and injunction actions, a final judgment in a plaintiff's favor declares not only liability but also the consequences of liability--what, if anything, the defendants must do as a result."); see also Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737, 744 (1976) (holding that a summary judgment order imposing liability is not considered final under 28 U.S.C. 1291 where "assessment of damages or awarding of other relief remains to be resolved"). This basic understanding of finality is the norm not only in civil litigation, but also in the administrative context, at least where the relevant statute does not embrace a non-traditional view of finality. See, e.g., Rivera-Rosario v. United States Dept. of Agric., 151 F.3d 34, 37 (1st Cir. 1998) ("A final decision in an adjudicatory proceeding is one

that resolves not only the claim but, if liability is found, also the relief to be afforded."); Washington Metro. Area Transit Auth. v. Dir., Office of Workers' Comp. Programs, 824 F.2d 94 (D.C. Cir. 1987); accord AAA Eng'g & Drafting, Inc. v. Widnall, 129 F.3d 602, 603 (Fed. Cir. 1997) (holding that an order of the Armed Service Board of Contract Appeals was not final because it resolved only "entitlement" (liability) while reserving decision as to "quantum" (damages)).

Respectfully:

Environmenel LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Verde Systems LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Telesaurus Holdings GB LLC, by:

[Filed electronically. Signature on file.]
Warren Havens
President

Intelligent Transportation & Monitoring Wireless LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Skybridge Spectrum Foundation, by

[Filed electronically. Signature on file.]
Warren Havens
President

[Filed electronically. Signature on file.]

_____
Warren Havens, Individually

Address for each above entity:

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December 5, 2012

Declaration

I, Warren C. Havens, individually and as President of Petitioners, hereby declare, under penalty of perjury, that the foregoing filing, was prepared pursuant to my direction and control and that all of the factual statements and representations, of which of I have direct, personal knowledge, contained therein are true and correct.

/s/

[Filed Electronically. Signature on File.]

_____

Warren C. Havens

December 5, 2012

Certificate of Service

I, Warren Havens, certify that I have, on this 5th day of December 2012, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing filing to the following:[2]

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[Filed Electronically. Signature on File.]

Warren Havens

[2] The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.