

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

In the Matter of)
)
Commission Seeks)
Public Comment on) **ET Docket No. 02-135**
Spectrum Policy Task Force)
Report)

To: The Commission

COMMENTS OF MARITEL, INC.

Maritel, Inc. (“MariTEL”), by its attorneys, and pursuant to the invitation extended by the Federal Communications Commission (“FCC” or “Commission”) in its *Public Notice* (“*Notice*”)^{1/} hereby submits its comments responsive to the Commission’s *Spectrum Policy Task Force Report*.^{2/} For the reasons set forth more fully below, the Commission should adopt the Spectrum Policy Task Force’s (“*Task Force*”) recommendation that the Commission enact rules that would permit spectrum leasing and clarify that these rules extend to all commercial licensees, including Part 80 VHF Public Coast (“VPC”) licensees.

I. BACKGROUND

MariTEL is the largest provider of VHF public coast station (“VPC”) services in the United States. Its current operations consist of stations throughout most of the United States Gulf Coast, the U.S. eastern seaboard and the Great Lakes, each interconnected to MariTEL’s control switching office located in Biloxi, Mississippi. MariTEL actively participated in both of

^{1/} See “Commission Seeks Public Comment on Spectrum Policy Task Force Report,” FCC 02-322, *Public Notice* (rel. November 25, 2002); see also *In the Matter of Commission Seeks Public Comment on Spectrum Task Force Report*, ET Docket No. 02-135, *Order*, 17 FCC Rcd 24792 (2002) (extending deadline for the submission of comments).

^{2/} See *Spectrum Task Force Report*, ET Docket No. 02-135, *Report* (rel. Nov. 2002) (“*Task Force Report*”).

the FCC's auctions of VPC station licenses, and was the winning bidder of sixteen regional licenses. MariTEL has been providing ship to shore services for over twenty years.

MariTEL is pleased that the *Task Force* encourages a licensee's flexible use of its assigned spectrum.^{3/} Because spectrum leasing is one way that the Commission may allow a licensee to make more efficient use of its spectrum, MariTEL supports the *Task Force's* proposals and wishes to ensure that VPC licensees are afforded the same flexibility as are other spectrum users. Accordingly, MariTEL is pleased to have the opportunity to submit these comments.

II. DISCUSSION

A. The Commission Should Adopt Rules that Allow All Commercial Spectrum Licensees to Lease Their Spectrum.

The *Task Force* recommends that the Commission pursue secondary market policies, including spectrum leasing, which "facilitate the negotiated movement of spectrum rights from one party to another."^{4/} Specifically, the *Task Force* recommends that the Commission take action to adopt rules in the ongoing Secondary Markets proceeding,^{5/} and that "it take[] additional steps to implement secondary markets to the extent that its current statute allows."^{6/} MariTEL participated in the *Secondary Markets Proceeding* and urged that the FCC extend the

^{3/} *Task Force Report* at 16.

^{4/} *Id.* at 6, 17.

^{5/} "Principles for Promoting Efficient Use of Spectrum By Encouraging the Development of Secondary Markets," *Policy Statement*, 15 FCC Rcd 24178 ¶ 20 n.28 (2000) ("*Policy Statement*"); "Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets," WT Docket No. 00-230, *Notice of Proposed Rulemaking*, 15 FCC Rcd 24203 (2000) (collectively "*Secondary Markets Proceeding*").

^{6/} *Task Force Report* at 57.

ability to lease spectrum to VPC licensees.^{7/} Consistent with its comments in the *Secondary Markets Proceeding*, MariTEL urges the Commission to adopt the Task Force's recommendations and implement spectrum leasing rules that extend to all commercial licensees, including VPC licensees.

The VPC service is an ideal candidate for spectrum leasing arrangements. MariTEL's nine authorized VPC service areas cover vast areas of the United States and its navigable waterways. MariTEL recognizes that a principal purpose of its authorized spectrum is to meet the communications requirements of the maritime and boating public. However, not all of MariTEL's authorized spectrum may be required to meet maritime requirements, both in areas near to, and distant from, navigable waterways. While MariTEL continues to assess the provision of advanced maritime services, it has also begun to evaluate the use of its licensed spectrum for other purposes.

This evaluation arises from a variety of circumstances, including the provision of service to the maritime community by other commercial mobile radio service ("CMRS") licensees. In the past, reliable ship to shore voice communications was only available through a marine coast operator. There were few, if any, other alternatives for commercial shipping companies and especially for recreational boaters, to communicate to points in the public switched network. Today, ship to shore communications are available from a variety of communications providers, including cellular operators and licensees of personal communications services ("PCS") and specialized mobile radio ("SMR") systems. Commercial vessel operators may continue to use VHF radios to conduct port operation and vessel traffic related communications, and all mariners

^{7/} See "Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets," WT Docket No. 00-230, Comments of MariTEL (filed Feb. 9th 2001).

may employ VHF radios to communicate with the United States Coast Guard (or if they make international voyages, the appropriate foreign authority) in distress communications. However, the demand for the use of VHF spectrum to initiate and terminate calls to and from the public switched network continues to diminish.

Although there is a diminished demand to use this spectrum for traditional ship to shore communications, the demand to use this spectrum for other purposes in maritime areas continues to increase.^{8/} The continued decline in available spectrum, combined with the growth in demand for spectrum-based services, has created an opportunity for MariTEL to allow others to employ its spectrum for purposes other than ship to shore communications, where there is little or no demand for that service. In fact, since MariTEL obtained its VPC spectrum, other entities, including a public safety entity, have offered to lease MariTEL's VPC spectrum for other purposes.^{9/} The public interest would be better served, therefore, if VPC licensees had greater flexibility to lease the VPC spectrum for which they are licensed to those who can employ the spectrum in the most intense fashion.

Similarly, while MariTEL may have more capacity than it requires to provide maritime services in areas near navigable waterways, there is much of MariTEL's authorized spectrum that is far from navigable waterways and would not logically be used for maritime purposes at

^{8/} Even the Task Force notes that the "overall demand for spectrum-based services and devices, accompanies by a particular demand for mobile and portable spectrum-based services." This demand continues to increase. *See id.* at 12, 14.

^{9/} MariTEL and the State of South Dakota recently submitted an application seeking FCC consent to partition and disaggregate one of MariTEL's authorization so that the State of South Dakota may become the licensee of MariTEL's spectrum (*see* FCC File No. 0001132016). Adoption of leasing regulations would permit MariTEL to engage in leasing, and not just partitioning and disaggregation arrangements.

all.^{10/} As a result, a great deal of MariTEL's spectrum may remain unused, even if MariTEL meets its applicable coverage requirements. Therefore, permitting MariTEL to lease its spectrum would not only increase the amount of spectrum available for use but it would also ensure that unused spectrum, would be put to more efficient uses.

Further, there is no difference or unique consideration that should separate MariTEL from other CMRS licensees for the purposes of spectrum leasing. The Commission is obligated by statute to regulate similar CMRS services in a similar manner.^{11/} VPC licensees are licensed by geographic area, for exclusive blocks of spectrum, and operate under flexible channelization and usage schemes. MariTEL certainly faces the burdens of CMRS regulations, and must perform the same common carrier tasks, and contribute to the same subsidies intended for PCS and cellular providers. MariTEL should be entitled, therefore, to receive the benefits of CMRS regulation as well. For all of these reasons, MariTEL agrees with the *Task Force's* determination that the Commission should permit spectrum leasing and urges the Commission to clarify that any new spectrum rules or policies that the Commission adopts applies to all commercial spectrum licensees, including VPC licensees.

B. The Commission Should Clarify that those Spectrum Lessees are Not Required to Comply with the Licensee's Regulatory Scheme.

MariTEL agrees with the Spectrum Task Force's recommendation that to facilitate the use of the secondary markets model, the Commission must establish a flexible and efficient

^{10/} While the Commission permits VPC licensees to provide service to units on land, VPC licensees must ensure that land stations remain within radio range of associated public coast stations. See 47 C.F.R. § 80.123. This requirement makes the provision of service to land units particularly difficult in land areas that are not close to either a public coast station or a navigable waterway.

^{11/} See *Implementation of Sections 3(n) and 322 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988 (1994).

regulatory regime. Although the Commission has already provided VPC licensees with some flexibility in the event that they do not wish to use all of their channel capacity to provide traditional ship to shore communications that initiate from or terminate in the public switched network, the Commission's rules are still structured in a manner that reflects that VPC channels were primarily allocated for ship to shore communications. However, regulation of VPC spectrum under Part 80 is not appropriate in all circumstances.^{12/} MariTEL is aware that many Part 80 regulatory obligations only apply, by their terms, to entities providing maritime communications. For example, Section 80.303(a) of the FCC's rules require that VPC licensees "serving rivers, bays and inland lakes" must maintain a safety watch.^{13/} However, other Part 80 regulations appear to apply to the spectrum holder generally, and would not logically apply to all spectrum lessees.^{14/} These obligations should not apply to entities that lease VPC spectrum to provide services that will not serve vessels. The Commission, therefore, must clarify that lessees of VPC spectrum are not required to observe the requirements set forth in Part 80 and, in the alternative, allow lessees of VPC spectrum to elect status as a lessee under Part 90, Part 80, or Part 22.^{15/}

^{12/} In other contexts, the Commission has stated that lessees will have the same rights as the licensee from which they obtain the spectrum. *Policy Statement* ¶ 20 n.28.

^{13/} See 47 C.F.R. § 80.303(a).

^{14/} See, e.g., 47 C.F.R. § 80.105, which establishes acknowledgement obligations for coast station licensees. These obligations would not apply, for example, to entities that leased spectrum to meet internal communications requirements.

^{15/} See, e.g., *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service*, 11 FCC Rcd 8965 ¶ 53 (1996) ("The regulatory structure for providers of the primary service to which the spectrum is allocated does not necessarily dictate the type of regulation to which every service provider in that same band will be subject regardless of the particular attributes of that service.").

III. CONCLUSION

Based on the foregoing, MariTEL urges the Commission to permit the leasing of commercial radio spectrum by all licensees, especially by VPC licensees.

Respectfully submitted,

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