

BEFORE THE

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**Federal Communications Commission**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20554

In the Matter of )  
 )  
Redevelopment of Spectrum to )  
Encourage Innovation in the )  
Use of New Telecommunications )  
Technologies )

ET Docket No. 92-9

To: The Commission

**OPPOSITION TO PETITION FOR RECONSIDERATION OF  
AMSC SUBSIDIARY CORPORATION**

The Public Safety Microwave Committee ("PSMC"), by its attorneys, hereby submits the following Opposition to the Petition of AMSC Subsidiary Corporation ("AMSC") seeking reconsideration of the Commission's Third Report and Order in the above-captioned proceeding, FCC 93-351 (released August 13, 1993), 58 Fed. Reg. 46547 (September 2, 1993).<sup>1/</sup>

AMSC requests that the Commission's rules protecting the rights of incumbent 2 GHz microwave licensees apply only to radio frequencies recently allocated for Personal Communications Services ("PCS"), and not to 2 GHz frequencies that may be allocated in the future for Mobile Satellite Service ("MSS"). AMSC's Petition must be denied as it was not filed in a timely manner. Furthermore, the AMSC Petition, if granted, could disrupt vital state and

<sup>1/</sup> PSMC is a coalition of public safety organizations that has participated throughout this and related proceedings.

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local government communications systems that protect the safety of life and property.

The Commission's adoption of the basic microwave relocation rules became final following the adoption of the First Report and Order and Third Notice of Proposed Rulemaking on September 17, 1992.<sup>2/</sup> It was there that the Commission adopted and incorporated into its rules a basic structure for relocating microwave licensees from the emerging telecommunications technology band. The rules included an exemption from mandatory relocation for state and local government microwave licensees.<sup>3/</sup> The NPRM portion of the First Report and Order (i.e., the "Third Notice of Proposed Rulemaking") was limited to seeking comments regarding the time period for implementing the mandatory relocation rules. All other issues were settled, subject to timely filed petitions for reconsideration.

The rules adopted and made final in the First Report and Order applied to all emerging technology service providers seeking to use the 2 GHz bands, not just to providers of PCS. That was not one of the issues left open in the Third Notice of Proposed Rulemaking. Therefore, the

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<sup>2/</sup> First Report and Order and Third Notice of Proposed Rulemaking in ET Docket 92-9, 7 FCC Rcd 6886 (released October 16, 1992).

<sup>3/</sup> PSMC has filed a Petition for Partial Reconsideration of the Commission's subsequent narrowing of the state and local government exemption in the Third Report and Order.

time for AMSC to seek reconsideration for the purpose of obtaining separate treatment for MSS spectrum has passed. Such a petition should have been filed within thirty days of the Federal Register publication of the First Report and Order. 47 C.F.R. § 1.429. AMSC did not file a petition for reconsideration at that time and, therefore, is barred from doing so at this late date.

In any event, even if the AMSC Petition had been timely filed, it must be dismissed. AMSC is, in effect, asking the Commission to allow eventual MSS providers to displace incumbent 2 GHz microwave licensees, including public safety users, without being required to provide replacement facilities. Such a result would be directly contrary to the Commission's statutory obligation to promote the "safety of life and property" and to more specific Congressional intent that state and local government microwave users not be forced to relocate from the 2 GHz bands.<sup>4/</sup> Displacing such microwave facilities would interfere with life-saving communications operations and pose huge financial burdens on state and local governments (and ultimately on taxpayers). As PSMC and others have repeatedly explained, state and local governments use fixed microwave facilities as the "backbone" for public safety mobile radio systems critical

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<sup>4/</sup> See PSMC Petition for Partial Reconsideration (filed October 4, 1993) at 3-5.

for police, fire, emergency medical and other public safety services.

MSS providers must not be permitted to force state and local government microwave facilities to relocate. Nor should MSS providers be allowed to displace other non-exempt microwave licensees, except as permitted under the Commission's rules. PCS providers will be subject to these rules, and so must providers of MSS or any other emerging technology service provider in the 2 GHz bands.

#### CONCLUSION

For the reasons state above, PSMC urges the Commission to dismiss AMSC's Petition for Reconsideration as it was not timely filed and, in any event, is contrary to the public interest.

Respectfully submitted,

PUBLIC SAFETY MICROWAVE COMMITTEE

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November 8, 1993

CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that a copy of the foregoing "Opposition to Petition for Reconsideration" was served this 8th day of November, 1993, by first-class mail, postage prepaid, to the following individuals at the addresses listed below:

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