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Federal Communications Commission
1919 M Street, NW, Room #222
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FEDERAL COMMUNICATIONS COMMISSION
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Re: WT Docket No. 94-148; Reorganization and Revision
of Parts 1, 2, 21 and 94 of the Rules to Establish a
New Part 101 Governing Terrestrial Microwave Fixed
Radio Services

Dear Mr. Caton:

On behalf of Digital Microwave Corporation, we are filing an original and fourteen copies of its Comments in the above-referenced proceeding.

Please communicate with us if additional information is needed.

Very truly yours,


George Petrusas
Counsel for
Digital Microwave Corporation

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Enclosures

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BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Reorganization and Revision of)
Parts 1, 2, 21, and 94 of)
the Rules to Establish a New)
Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

WT Docket No. 94-148

TO: The Commission

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COMMENTS OF DIGITAL MICROWAVE CORPORATION

Respectfully submitted,

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February 17, 1995

SUMMARY

Digital Microwave Corporation (DMC) supports the Commission's proposal to consolidate Part 94 and most of Part 21 of its rules into proposed Part 101. The proposed structure of the new rule Part is reasonable. The structure would be improved by consolidating the frequency allocations for the common carrier point-to-point and for the private microwave services into a single list.

DMC also supports the deregulatory proposals summarized in Paragraph 11 of the NPRM. DMC believes that showing requirements, such as financial qualifications, submission of maintenance agreements, state franchise certificates, among others, have outlived their usefulness and may be eliminated without adversely affecting the Commission's ability to authorize common carrier microwave systems in the public interest. For essentially the same reasons, DMC suggests that the filing of FCC Form 430 should no longer be required.

DMC also agrees with the proposal to adopt the common carrier frequency coordination procedures for both common carrier and private point-to-point frequencies and the microwave interference standards now in Part 94. The Commission must clarify its rules, however, to state that a proposed microwave facility meeting the interference standards must be coordinated, unless the parties involved agree otherwise.

DMC disagrees with the proposal which would require that a microwave station begin regular transmission of operational traffic within the one year construction period or forfeit its license, even though it has been timely constructed.

Automatic transmitter power control (ATPC) should be authorized specifically in the rules, antenna standards should be made uniform, limits on transmitter output power should be retained, and the proposed developmental rules should be re-addressed for policy and for consistency. Finally, some of the substantive rules now in Part 94 (particularly in Section 94.15) should be brought to Subpart H, Part 101.

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BEFORE THE

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WASHINGTON, D.C. 20554

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Parts 1, 2, 21, and 94 of) WT Docket No. 94-148
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Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

TO: The Commission

COMMENTS OF DIGITAL MICROWAVE CORPORATION

The Digital Microwave Corporation ("DMC") is pleased to submit the comments below in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding, released on December 28, 1994.

I. General

DMC is one of the largest suppliers of digital microwave equipment in the global market and the fourth largest supplier in the United States. Its customers include common carriers offering a variety of digital transmission services to their customers as well as to private users and governmental agencies. Its corporate headquarters is located in San Jose, California.

As a supplier of microwave equipment, DMC is vitally interested in the Commission's regulations governing licensing and use of the microwave spectrum. With the supply of frequencies for microwave communications systems severely reduced as the result of recent Commission reallocation decisions, it is highly important that the remaining microwave frequencies are used efficiently and effectively. It is also important that the process for licensing microwave systems, both common carrier and private, be streamlined and that the current delays in processing microwave applications be reduced. The proposed consolidation of Parts 94 and most of Part 21 into

proposed Part 101 is a major effort in that direction. DMC applauds the Commission's effort and fully supports its basic proposal. DMC also supports most of the specific deregulation proposals discussed by the Commission in the Notice and recommends certain additional changes as more fully described below.

II. The Structure of Proposed Part 101

The proposal to bring under one set of regulations the Private Operational-Fixed Microwave Service and the common carrier Point-to-Point Microwave Radio, the Digital Electronic Message and the Local Television Transmission Services is reasonable and proper in view of recent developments. These developments include the consolidation and restructuring of most of the private and common carrier microwave frequency bands in ET Docket No. 92-9, the transfer of processing of microwave applications to the Commission's Gettysburg, Pennsylvania, office, and, of course, the consolidation of the administration of the "wireless" services, including microwave, into the new Wireless Telecommunications Bureau.

The structure itself of proposed Part 101 is reasonable. It would keep together rules which by and large apply to all four service categories, such as application requirements and processing procedures, frequency coordination, and the technical and interference standards. It would place in separate subparts the rules, frequency allocations, and other rules which apply specifically, again to a large extent, to each of the four specific service categories involved. DMC recommends an additional improvement; that is, that a new subpart be added which would include the frequency table now in proposed Section 101.703 and the footnotes to that table, and the frequency tables and rules governing the microwave bands shared by the Private Operational-Fixed Microwave and the common carrier Point-to-Point Microwave Radio Service (i.e., the 4, 5, 6, 10, 11, 18, 21, 23, 38, and

40 GHz bands). Since the frequencies in those bands are shared under identical rules, a single listing will eliminate duplication, reduce the size of the Part, and could prevent inconsistent application of the same rules.

If the Commission decides not to consolidate the frequency tables in a separate subpart as suggested above, the Commission must bring into proposed Subpart H the table of frequency bands and the footnotes to that table which is now in Section 94.61 of the Commission's Rules.

III. Applications and Licenses

In response to the Commission's request, DMC offers the following comments on the proposals outlined in Paragraphs 11-12 of the Commission's Notice.

A. General application requirements. In Paragraph 11 of the Notice, the Commission requests specific comments on its proposals to eliminate financial qualifications showings by common carrier applicants, public interest showings, submission of state franchise certificates, copies of maintenance and service agreements, and antenna structure vertical profiles, among others. Briefly, DMC believes that these requirements have outlived their usefulness and agrees that they may be eliminated without adversely affecting the Commission's regulation of the common carrier microwave services.

As the Commission notes, financial ability to implement authorized microwave systems has not been a problem in the common carrier services. Financial ability has not been a problem in the private microwave service either. Experience has shown that the build-out requirement is a more effective tool for assuring that assigned frequencies are put to use than a finding by the Commission ahead of time that the applicant has the financial ability to construct the facility for which it has applied.

With respect to public interest showings, it seems to DMC that the grant of an application which is in compliance with the Commission's Rules would be in the public interest. Additional public interest showings are unnecessary and should not be required. For essentially the same reasons, the public interest showing requirement in Section 21.706(a) should also be deleted.

As to local franchises, DMC agrees with the Commission's tentative conclusion that the approach the Commission has taken in Part 22 of its rules -- where licensees are simply required by rule to comply with relevant local franchising requirements -- is appropriate and proper and should be followed in Part 101 as well. With respect to station servicing and maintenance agreements, DMC suggests that the Commission assume that licensees will meet their responsibilities as licensees and should not be required to show to the Commission how they plan to service and maintain their own microwave facilities. In today's competitive environment in the communications industry, detailed supervision of business of licensees is unnecessary and inappropriate. Similarly, site availability certification showing is also unnecessary. Such a showing has not been required in the private microwave service and DMC is not aware of any significant problems resulting from lack of such certifications. Again, the submission of antenna structure vertical profile sketches has not been required in the private microwave services without resulting problems, and, as the Commission recognizes, it is not necessary for processing applications in the common carrier services.

B. Electronic application filing. DMC enthusiastically supports the proposal to establish procedures for electronic filing of applications. Such filings would undoubtedly expedite the processing of applications and, therefore, the public interest would be served.

C. Posting of licenses. While DMC would agree with the proposal to do away with the

posting of the station license, DMC would recommend posting information at the transmitter site with at least the call sign of the station involved. This would make it possible for Commission personnel and other interested parties to identify the licensee of the station when this becomes important for resolving interference problems.

D. Licensee qualifications. In Paragraph 12 of the Notice, the Commission requests comments on what ownership and character information the Commission should continue to require of common carrier applicants. Briefly, DMC believes that, except for information necessary to determine if the applicant meets the citizenship and foreign ownership requirements, the Commission should not require of common carrier applicants any more information on ownership and character than it now requires of applicants for private microwave stations. Therefore, DMC suggests that the submission of FCC Form 430 should no longer be required. The information concerning foreign ownership and possible disqualification under the Anti-Drug Abuse Act of 1988, can and should be obtained through the application form itself, or through simple certification of compliance.

IV. Commencement of Operation

In Paragraphs 13 and 14, the Commission advises that it proposes to incorporate into Part 101 the policy the Commission's private microwave staff has been following concerning compliance with the requirement that a microwave station is to be placed in operation within twelve months of authorization, and asks whether that policy should also be made applicable to common carrier licensees. DMC disagrees with the staff's interpretation of the Commission rules on the subject and recommends against codifying that policy in the Rules in Part 101. DMC believes that once a licensee has undergone the effort and expense of constructing the authorized microwave facility in

accordance with the authorization, its license should not become subject to forfeiture simply because the station does not transmit operational traffic. In the common carrier services, in particular, the transmission of traffic depends on factors not necessarily under the control of the licensee, such as having a customer ready to transmit traffic, so that cancellation of the license simply because there may not be traffic to transmit would be unreasonable. Therefore, proposed Section 101.63(c), which incorporates the policy in question, should be deleted or amended appropriately.

V. Technical Matters

A. Coordination procedures and interference standards. DMC supports the proposal to incorporate into new Part 101 the frequency coordination procedures now found in Part 21 and the microwave interference standards now found in Part 94. DMC also supports the proposal to modify the current coordination procedures and interference protection standards to become consistent with industry (TIA) standards. Sections 101.103 and 101.105, which incorporate the coordination rules and the interference standards respectively, should be adopted. In addition, Section 101.45(a) should be amended to change the definition of "harmful interference" now in that rule to say in effect that "harmful interference" is interference exceeding that which is permitted by the interference standards set out in Section 101.105. Such a change would eliminate the apparent inconsistency between Sections 101.45 and 101.105. Further, Section 101.45 should be clarified to indicate that "mutual exclusive" applications would be rare in the four service categories governed by Part 101 because of the prior coordination requirement, and that mutually exclusive applications would be found primarily in situations where the Commission designates "windows" during which certain types of applications may be filed.

B. Power limitations. DMC agrees with the proposal to merge the Part 94 and Part 21

transmitter output power tables into one and with the proposal to increase the maximum permissible EIRP to +55 dBW for all point-to-point microwave bands from 4 to 40 GHz. However, DMC does not believe it is desirable to eliminate the transmitter output power column from the table. The output power values relate to the transmitter rather than to the system and should be part of the equipment authorization. DMC recommends retention of the transmitter output power table in proposed Section 101.113.

C. Automatic transmitter power control (ATPC). DMC recommends that the Commission incorporate into its rules TIA's guidelines in TSB 10-F for ATPC. For licensing purposes, stations proposing to employ ATPC should be authorized for the coordinated transmitter power and should be allowed by rule automatic increases of power for short periods of time up to the maximum rated transmitter power. For record purposes, the information concerning ATPC should be included with the path data which become part of the coordinator's records.

D. Antenna standards. DMC agrees with the Commission's proposal to consolidate and update the directional antenna standards into a single rule, Section 101.115. DMC also agrees that this is not the appropriate proceeding for addressing the issue of how to define "congested areas" where high performance antenna are required to be used. DMC, however, suggests that a minor inconsistency between subsections (b) and (c) of Section 101.115 should be addressed. Subsection (b) states that stations on frequencies below 2500 MHz are to comply with the antenna standards prescribed in that Subsection. Subsection (c) states that stations operating on frequencies at 2,500 MHz or higher are to comply with the antenna standards specified in the table in that Subsection. However, the table itself in Subsection (c) prescribes antenna standards for the frequencies bands 932.5-935 MHz, 941.5-944, 952-960 and 1,850-1990 MHz. This apparent inconsistency should be

corrected.

VI. Other Matters

A. Assignment and transfer of microwave authorization. DMC believes that the Commission is overly concerned about and imposes unnecessary restriction on the assignment or transfer of microwave authorizations. While DMC agrees that "trafficking" in microwave licenses is not in the public interest, it does not appear that "trafficking" has been (or can be) a serious problem in the services involved here. DMC therefore, suggests that transfers of even of unconstructed licenses or permits should be allowed routinely if such transfers are to be made in the ordinary course of business, such as where the transfer is incidental to the sale of the licensee's entity or its assets. In those situations, the requirements concerning transfers detailed in proposed Section 101.55 should not apply, certainly not with respect to the transfer of private microwave licenses.

B. Developmental operations. DMC generally agrees with the changes described in Paragraph 20 of the Notice concerning developmental operations. However, DMC believes that the outright flat prohibition against providing service for hire or against conducting commercial operation under developmental authorizations is not warranted. It is noted that, upon proper showing, experimental licensees under Part 5 of the Commission's Rules may be authorized to provide commercial services for such purposes as the conduct of market surveys. See, Section 5.202(j). Developmental licensees under the Part 101 rules should also be permitted to conduct regular operations for similar purposes, including carrying traffic for demonstration purposes.

In any event, the proposed developmental rules, Sections 101.401-101.407 in particular, seem to be somewhat inconsistent. For example, proposed Section 101.403 provides that developmental authorizations may be issued for only two limited purposes: field strength surveys,

and testing existing or authorized antennas, waive guides, or transmission paths. However, proposed Sections 101.405 and 101.407 refer to "program of research and development", and the development of "new services" or uses of frequencies not in accordance with the established rules. The apparent inconsistency would be corrected by adding a new subsection in Section 101.403 which would provide, in effect, that developmental authorizations may also be issued for research or development of new services or uses of the microwave frequencies available under the rules in Part 101.

C. Additional rules for Subpart H. A number of important rules now in Part 94 concerning the assignment of frequencies for private microwave systems apparently have not been brought to Part 101. They include: a requirement that applicants select the frequency bandwidth most consistent with their communication requirements; limitation to one frequency pair per path; and a limitation on the assignment of multiple frequencies at one location to four (4) pairs. Since these policies are significant for frequency conservation and efficiency purposes, DMC suggests that the Commission consider incorporating them into the new rules.

Part 94 contains special provision for low power, point-to-multipoint systems in the 17,700-19700 MHz and for low power point-to-point systems in the 12, 21 and 23 GHz bands. They seem to have been left out from Part 101. The Commission may want to bring those to Part 101 as well. Finally, the frequency bands 13,200-13,250 MHz, 21,200-23,600 MHz and the 28 GHz band should be added to the frequency lists in Subpart H. The availability of the 28 GHz band in this service would be subject to the outcome of the proceedings in CC Docket 92-297.

VII. Editorial Changes

Section 1.972(c) - Delete "Private Radio Bureau" and replace with "Wireless Telecommunications Bureau". Part 21. The Table of Contents should be changed to account for the transfer of three

service categories out of Part 21. Section 21.3. Subsection (b) should be deleted. Refers to DEMS. In Section 101.601 (a)(1), change phrase "eligible under this Part" in the first and second lines to "eligible under this Subpart". In Sections 101.601(m) and 101.703(i), 17700-19700 MHz band, add the separations between transmit and received frequencies for the various groupings.

VIII. Conclusion

The consolidation of the rules undertaken by the Commission in this proceeding will result in improvements in the regulations for the import and microwave services involved and should be adopted. DMC believes that the changes it has suggested will further improve these regulations and urges the Commission to take them into account in fashioning a final version of Part 101.

Respectfully submitted,

DIGITAL MICROWAVE CORPORATION

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Date: February 17, 1995*

*By Order adopted by the Chief, Wireless Telecommunications Bureau on January 31, 1995, the comment and reply dates were changed to February 17, 1995 and to March 17, 1995, respectively.