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

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FEDERAL COMMUNICATIONS COMMISSION
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| In the Matter of | ) | |
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| 1998 Biennial Regulatory Review—<br>47 CFR Part 90—Private Land Mobile<br>Radio Services | )<br>)<br>) | WT Docket No. 98-182<br>RM-9222 |
| | ) | |
| Replacement of Part 90 by Part 88 to Revise<br>the Private Land Mobile Radio Services and<br>Modify the Policies Governing Them | )<br>)<br>) | PR Docket No. 92-235 |
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| and | ) | |
| | ) | |
| Examination of Exclusivity and Frequency<br>Assignment Policies of the<br>Private Land Mobile Services | )<br>)<br>) | |

## COMMENTS OF MOTOROLA, INC.

In accordance with Section 1.429(f) of the Commission's Rules, 47 C.F.R. §1.429(f), Motorola, Inc. ("Motorola") hereby submits these comments in response to the Petitions for Reconsideration filed in the above-captioned matter by William C. Easterday ("Easterday") and the Personal Radio Steering Group, Inc. ("the PRSG").[1] As discussed in detail below, these Petitions lend substantial support to the concerns identified in Motorola's Petition for Reconsideration in this matter.[2] In particular, both Easterday and the PRSG point out that in removing the licensing requirement for the five low power "color dot" frequencies and reallocating those frequencies from

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[1] William C. Easterday, Petition for Reconsideration, WT Docket No. 98-182, *et al.*, (filed Nov. 13, 2000); Personal Radio Steering Group, Inc., Petition for Reconsideration, WT Docket No. 98-182, *et al.*, (filed Nov. 13, 2000).

[2] *See* Motorola, Inc., Petition for Reconsideration, WT Docket No. 98-182, *et al.*, (filed Nov. 13, 2000).

Part 90 to Part 95, the Commission did not consider a number of critical technical issues or adopted new rules inconsistent or confusing in their application.

Motorola identified similar concerns in its Petition for Reconsideration and recommended that the Commission either adopt appropriate protections for business and industrial entities or return the subject frequencies to Part 90 and reinstate the applicable licensing requirements. Easterday recommends a similar approach, while the PRSG suggests a number of specific rule changes aimed at curing various technical defects or otherwise eliminating confusion in the rules adopted by the Commission. The petitions filed by Easterday and the PRSG provide further evidence of Motorola's overriding concern in this proceeding – namely, that in its effort to assist low power Part 90 business and industrial users by eliminating unnecessary regulatory burdens, the Commission has adopted rules that inflict unintentional harm on its intended beneficiaries. Motorola continues to believe that the best approach is to return the subject frequencies to Part 90 and explore other means for reducing regulatory barriers. Accordingly, Motorola reiterates the course of action recommended in its Petition for Reconsideration.

## I. The Petitions for Reconsideration Filed by Motorola, Easterday, and the PRSG Demonstrate that the Commission's Existing Rules Governing Operations In the Multi-Use Radio Service Are Seriously Flawed

In its Petition for Reconsideration in this matter, Motorola re-emphasized its position – first identified in the company's opening comments in the underlying rule making proceeding – that elimination of the licensing requirement for the five low power "color dot" frequencies would serve the public interest, *provided* that these frequencies remain reserved for business and industrial use only. As further indicated in Motorola's reconsideration petition, the Commission's final decision to reallocate these frequencies to the new Part 95 Multi-Use Radio Service ("MURS") does not contain such a reservation but rather, makes these frequencies available "for personal or business

activities of the general public."[3] Motorola expressed concern that permitting these frequencies to be available to the general public would harm business and industrial users as a result of increased congestion and interference. Although Motorola indicated that it would support adoption of rules designed to cure this defect, the company stated its belief that it would be difficult if not impossible to craft the appropriate protections for business and industrial users under any scenario reallocating the "color dot" frequencies to Part 95. Accordingly, Motorola ultimately recommended that the Commission reinstate the licensing requirements for these frequencies and return them to the Part 90 PLMR services.

The Petitions for Reconsideration filed by Easterday and the PRSG support Motorola's position that the MURS rules adopted by the Commission are unworkable. Easterday – an employee of a Part 90 business/industrial user that operates on two of the subject frequencies – notes that his employer's license has essentially been rendered invalid because the company's radios will not be able to meet the technical rules applicable to the new MURS.[4] According to Easterday, the Commission's rule changes essentially force Part 90 licensees to abandon or significantly modify their radios. Easterday therefore asks the Commission to reconsider its decision removing

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[3] *See* 47 C.F.R. §§95.1309, 95.401.

[4] Easterday notes that his employer's existing radios operate under an emission designator of 20K0F3E and employ +/- 5 KHz deviation. This would apparently conflict with new Section 95.632 which limits the authorized bandwidths on MURS frequencies to either 11.25 kHz or 12.5 kHz depending on the specific channel. Motorola notes, however, that the provisions of Section 95.632 appear to be in conflict with new Section 95.633(f), which states that the authorized bandwidth for a MURS transmitter is specified in Section 90.209 of the Commission's Rules. Section 90.209 continues to provide for 25 kHz analog technology (represented by the emission designator 20K0F3E) consistent with the Commission's "refarming" transition now codified at Section 90.203(j). It is not at all clear that the provisions of Section 90.203 would apply to the "color dot" frequencies now allocated in the Part 95 MURS service.

these channels from Part 90, and proposes "grandfathering" the operations of Part 90 licensees either indefinitely or for a period of at least five years.

Easterday's Petition for Reconsideration lends considerable support to Motorola's position that the existing MURS rules seriously complicate the operations of affected business and industrial users. To this end, Easterday raises a critical point: the reallocation of the "color dot" frequencies to Part 95 not only fails to preserve these frequencies for business and industrial use, it may also render existing operations authorized under Part 90 invalid. To Motorola's knowledge, this was not what the Commission intended. In any event, the agency never identified such a goal or result in either its Notice of Proposed Rule Making in this matter[5] or the subsequent Report and Order.[6] In short, for the reasons identified in its own Petition for Reconsideration as well as those discussed by Easterday, Motorola agrees with Easterday's suggestion that the Commission reconsider its action reallocating the "color dot" frequencies to the Part 95 MURS and supports retention of these frequencies within Part 90.

As mentioned above, the PRSG recommends that the Commission correct or clarify several aspects of the technical rules adopted for the MURS[7] either to make the rules easier to understand or

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[5] *See 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services,* 13 FCC Rcd 21133, 21143 (1998).

[6] *1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services*, FCC 00-235, at ¶31 (rel. July 12, 2000).

[7] For example, the PRSG requests that the Commission (1) amend the MURS rules to replace the reference to maximum ERP in Section 95.639(h) with a reference to maximum transmitter output power; (2) rewrite the MURS rules to discourage proliferation of point-to-point and purely recreational (*i.e.*, "base station-to-base station") communications by (i) amending the rules governing the operations of a MURS station to limit the height of the transmitting antenna in the same way that the operation of stations in the Citizens Band Radio Service are limited; (ii) amend the MURS rules to prohibit a MURS station from automatically retransmitting the signal of any other signal; and (iii) rename the service the "Mobile Use Radio Service"; (3) simplify the

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more logical, or to ensure that they are used for mobile-oriented communications. Absent further FCC action, particularly with respect to fixed operations, the PRSG notes that the MURS rules have the potential to "dramatically reduce the utility of this service for mobile-oriented communications, and would substantially frustrate and disenfranchise both the existing users of these frequencies, and future users seeking viable mobile-oriented communications."[8]

The PRSG's suggested rule changes are not necessarily intended nor sufficient to correct the damage to business and industrial users. As pointed out in Motorola's Petition for Reconsideration, it is critical that the Commission reserve the "color dot" frequencies solely for business and industrial operations. The expanded use of these frequencies under their current allocation in the MURS will result in increased congestion and interference incompatible with effective business communications. Motorola further submits that the addition of potentially millions of consumer users on the MURS frequencies will render it so difficult to maintain disciplined and orderly use of these channels that business users will abandon their operations on these frequencies altogether.

Simply put, by failing to adopt any appropriate restrictions, the Commission will fundamentally alter the use of the subject channels to the detriment of the business and industrial users the agency originally endeavored sought to assist. In view of the potential harm as a result of reallocating the "color dot" frequencies to Part 95 absent adoption of accompanying eligibility limitations reserving these channels for business and industrial users, Motorola reiterates its view

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permissible transmitter power to permit MURS stations operating on the three 151 MHz frequencies with a bandwidth of 12.5 kHz as opposed to 11.25 kHz; and (4) prohibit MURS stations from interconnecting with the public switched telephone network ("PSTN").

[8] Personal Radio Steering Group, Inc., Petition for Reconsideration, WT Docket No. 98-182, *et al.*, at ¶ 18 (filed Nov. 13, 2000).

that the better approach is to reinstate the licensing requirements for these frequencies and return them to the Part 90 PLMR services. Once this reallocation has occurred, the Commission can simplify the licensing requirements through other means.

## II. Conclusion

For the reasons set forth above, Motorola supports the Petition for Reconsideration filed by William C. Easterday asking the Commission to return the "color dot" frequencies to Part 90. In its Petition for Reconsideration, Motorola suggested that a similar approach is necessary to ensure that the subject frequencies remain available for effective communications by business and industrial users. In view of the concerns identified by Easterday and the PRSG, Motorola remains steadfast in its view that retention of these frequencies in Part 90 is the most appropriate course of action.

Respectfully submitted,

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Dated: January 3, 2001

**CERTIFICATE OF SERVICE**

I, Robin Walker, hereby certify that on this 3rd day of January, 2001, I caused a true copy of the foregoing "Reply Comments of Motorola, Inc." to be delivered to the following persons via first class, postage prepaid mail:

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