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

In the Matter of The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010	WT Docket No. 96-86

REPLY OF MOTOROLA ON ITS PETITION FOR RECONSIDERATION

Motorola, Inc. ("Motorola") respectfully submits this reply in response to the comments filed regarding its January 13, 2003 Petition for Reconsideration[1] of the Commission's *Fifth Report and Order*[2] in the above-captioned proceeding. Motorola's Petition seeks reconsideration of the Commission's decision to depart from the migration plan jointly submitted by the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the International Association of Chiefs of Police (IACP) (the "APCO/IACP Plan"), which appropriately tied deadlines for the migration to 6.25 kHz systems to the clearing of broadcast incumbents from the 764-776 and 794-806 MHz bands. Specifically, Motorola requests reconsideration of the decisions to prohibit the marketing, manufacture and importation of 12.5 kHz equipment after December 31, 2006 and to prohibit the submission of license applications for new systems using 12.5 kHz equipment after December 31, 2006. While challenging the

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[1] Motorola Petition for Reconsideration, WT Docket No. 96-98 (filed Jan. 13, 2003) ("Petition").

[2] The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, *Fifth Report and Order*, 17 FCC Rcd 14999 (2002) ("*Fifth Report*

appropriateness of these two interim benchmarks, Motorola has not sought reconsideration of the December 31, 2006 certification deadline or the ultimate deadline of December 31, 2016 for migration to the 6.25 kHz or equivalent efficiency technologies for 700 MHz public safety operations.[3]

I. THE RECORD SUPPORTS MOTOROLA'S REQUEST FOR RECONSIDERATION OF THE TWO INTERIM PROHIBITIONS.

The majority of the comments filed in response to the Petition support Motorola's request for reconsideration of the two interim deadlines. Motorola's Petition is supported by public safety associations and other parties working to promote the public safety, including APCO; IACP, the Major Cities Chiefs (MCC), the National Sheriffs' Association (NSA), and the Major Counties Sheriffs' Association (MCSA); King County, Washington; the City of Tulsa, Oklahoma; Pinellas County, Florida; and E.F Johnson Company.[4]

These commenters support Motorola's call for flexibility in the migration to the 6.25 kHz standard. IACP, MCC, NSA and MCSA assert that decisions about the type of equipment that public safety entities may purchase between 2007 and 2016 are best left to the individual public

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and Order"). The *Fifth Report and Order* was published in the Federal Register on December 13, 2002. *See* 67 Fed. Reg. 76697 (2002).

[3] Throughout this document, the term "6.25 kHz technology" or any similar phrase refers to equipment that provides at least one voice path per 6.25 kHz of spectrum bandwidth, such as equivalent efficiency technologies with two voice paths per 12.5 kHz of spectrum bandwidth.

[4] Comments of APCO in Support of Petition for Reconsideration (filed Apr. 1, 2003) ("Comments of APCO"); Comments of the International Association of Chiefs of Police, the Major Cities Chiefs, The National Sheriffs Association, and The Major Counties Sheriffs Association (filed Mar. 30, 2003) ("Comments of IACP et al."); Comments of King County, Washington In Support of Motorola's Petition for Reconsideration (filed Mar. 31, 2003) ("Comments of King County, WA"); E.F. Johnson Comments in Support of the Motorola Petition for Reconsideration 6.25 kHz Migration Ruling in 700 MHz (filed Mar. 28, 2003) ("Comments of E.F. Johnson"); Comments of Pinellas County, Florida In Support of Motorola's Petition for Reconsideration (filed Apr. 1, 2003) ("Comments of Pinellas County, FL"); Comments of the City of Tulsa, Oklahoma In Support of Motorola's Petition for Reconsideration (filed Apr. 1, 2003).

safety first responder.[5] They emphasize that reconsideration of the interim deadline is appropriate because "Public Safety requires absolute reliability."[6] Importantly, these public safety associations point out that "our nation's law enforcement and other public safety agencies are not uniform across the largest cities, suburbs and rural areas, and therefore cannot be met by a single technology, all on the same schedule, as the Commission's *Fifth Report and Order* appears to assume."[7] Pinellas County, Florida points out that the interim deadlines provide "no time for public safety agencies such as our County to test this yet to be developed technology."[8]

In this regard, most of the commenters agree that it is premature for the Commission to require the use of 6.25 kHz or equivalent technology to the exclusion of products that have been proven during years of operational experience.[9] APCO urges the Commission to take into consideration the operational needs of public safety agencies and the limitations of available technology. APCO asserts,

> Public safety users should not be forced to acquire equipment meeting arbitrary efficiency benchmarks unless and until such equipment is proven in the field under the demanding conditions of public safety operations. Efficiency requirements must also take into consideration the purchasing cycles of public safety agencies, variation in public safety systems, the need for competitive choices, and interoperability requirements.[10]

Similarly, E.F. Johnson asserts that forcing public safety providers into using "technologies that may be less than fully proven will cause problems, and in general, will not serve the needs of

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5 Comments of IACP et al. at 8.

6 *Id.* at 6.

7 *Id.* at 8.

8 Comments of Pinellas County, FL at 1.

9 Comments of IACP et al. at 5.

10 Comments of APCO at 2.

public safety."[11] Pinellas County, FL agrees that "it is premature for the Commission to mandate [6.25 kHz or equivalent technology] use in our mission critical communications after 2006."[12]

Several commenters also noted that the interim deadlines would undermine many of the benefits of the Commission's broader migration plan. Because equipment in the 700 MHz band must begin to include 6.25 kHz or equivalent efficiency as a condition for FCC certification as of December 31, 2006, an extension in the interim compliance deadline will allow users time to prove the new technology before it becomes their only option in the 700 MHz General Use or State channels.[13] King County, Washington believes that "[t]he requirement to force 6.25 kHz only solutions for those applicants who file for licenses after 2006 will eliminate the possibility of using the 700 MHz band to solve small capacity and non-infrastructure-dependent communications needs."[14] Moreover, APCO notes that the interim deadlines will undermine the ability of existing 800 MHz systems to use the 700 MHz band channels to relieve congestion and promote interoperability.[15]

Public safety commenters support Motorola's Petition and request that the Commission reconsider the interim prohibitions. Public safety organizations agree that the interim prohibitions may impose a substantial financial burden on them by limiting their flexibility without providing an offsetting benefit that justifies their imposition. Like Motorola, public safety commenters support the ultimate migration to the 6.25 kHz efficiency standard by

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[11] Comments of E.F. Johnson at 3.

[12] Comments of Pinellas County, FL at 1.

[13] Comments of IACP et al. at 6.

[14] Comments of King County, WA at 2.

[15] Comments of APCO at 2.

December 31, 2016 but believe that they should be allowed the flexibility to make purchase decisions that best fit their needs and minimize their migration costs in the interim.

II. M/A-COM'S OPPOSITION IS SPECULATIVE AND LACKS REASON.

The opposition of M/A-COM, Inc. ("MA-COM")[16] is ineffective because it does not address Motorola's position that the FCC's stated reasons for imposing the interim benchmarks lack support in the record and fail to justify imposing such potential financial and operational hardships on the public safety community. M/A-COM fails to counter the Petition with any substantive rationale provided by the Commission for adoption of the interim benchmarks. Instead, M/A-COM offers several procedural objection that have no basis in administrative law, infers legally absurd arguments that are not present in the Petition, and exaggerates Motorola's position.[17] Thus, the FCC should give no consideration to M/A-COM's Opposition.

The Opposition makes several fundamentally flawed procedural arguments. For example, the Petition is not "premature."[18] As M/A-COM notes, Motorola filed a petition for reconsideration of a final action by the Commission within 30 days from the date of public notice, in accordance with Section 1.429 of the Commission's rules. The fact that the Commission has reserved its right to alter the 6.25 kHz implementation schedule in the future, as needed, does not preclude a party from filing a petition for reconsideration. In fact, Motorola's position that the Commission's adoption of the interim deadlines is premature is supported by the fact that the FCC has already indicated that it may alter the implementation schedule if

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16 Opposition by M/A-COM, Inc. to the Petition for Reconsideration of the Fifth Report and Order filed by Motorola, Inc., WT Docket No. 96-86, (filed Apr. 1 2003 ("M/A-COM Opposition").

17 *See, e.g., id.* at iii-iv.

18 *Id.* at 13.

circumstances warrant. Furthermore, contrary to M/A-COM's creative interpretation,[19] Motorola does not believe that the Commission is somehow procedurally bound to adopt the APCO/IACP Plan in its entirety. Rather, Motorola seeks reconsideration of the two interim deadlines based on the public interest, as described in the Petition and as reiterated above and in the comments of public safety users who will bear the brunt of the Commission's decisions.

M/A-COM's substantive arguments are similarly flawed in that they are based on speculation. M/A-COM argues that requiring the use of dual mode equipment will not adversely affect public safety because there will be no cost difference between dual mode and 12.5 kHz equipment, and manufacturers have plenty of time to develop equipment.[20] In reality, until 6.25 kHz equivalent standards are complete and equipment is available and tested in the public safety market, it is not possible to guarantee that the ban on 12.5 kHz technology will not adversely impact public safety.[21] Thus, as detailed in the comments filed in support of the Petition and cited above, public safety providers need the flexibility to continue to implement 12.5 kHz equipment between 2006 and 2016. Public safety licensees have the ability to judge the most cost-effective and technically efficient route to achieve the ultimate goal of 6.25 kHz equivalent efficiency by 2016.

M/A-COM also objects to the Petition because it does not relate the 700 MHz transition to the existing transition previously adopted in the FCC's *Refarming* proceeding for private wireless operations in the 150 MHz and 450 MHz bands.[22] M/A-COM argues that

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[19] *Id.* at 8-10.

[20] *Id.* at 17.

[21] The TIA is in the process of addressing a 6.25 kHz equivalent TDMA standard offering 2 voice paths in a 12.5 kHz channel and is working to resolve several issues related to the specifics of the standard.

[22] M/A-COM Opposition at 11.

manufacturers have known since 1996 that they "are required to provide" 6.25 kHz or equivalent technology beginning in 2005, thus implying that it should not be difficult for manufacturers to meet the demand two years later for similarly efficient public safety equipment in the 700 MHz band.[23] Given the statements made in the Petition, M/A-COM wonders how Motorola will be able to "comply" with the *Refarming* 2005 requirements to provide 6.25 kHz or equivalent technologies.[24]

M/A-COM incorrectly interprets the FCC's *Refarming* rules. Manufacturers are not "required" to provide 6.25kHz or equivalent technologies beginning in 2005. Rather, under the provision of Section 90.203(j) of the Commission's rules, manufacturers will be able to continue marketing previously certified 12.5 kHz equipment for the foreseeable future. While applications for new equipment certifications filed after December 31, 2004 will need to demonstrate 6.25 kHz or equivalent capability, there is no mandate for manufacturers to stop marketing, or for users to stop using, 12.5 kHz equipment. Motorola is committed to developing equipment based on the 6.25 kHz equivalent standard as quickly as possible, but it will roll out such equipment as the standard is completed and compatible technology and products are developed to meet the public safety user requirements. Thus, as Motorola noted in the Petition, there are no assurances that 6.25 kHz equipment will be sufficiently proven for the full range of public safety needs by the 2007 deadline.[25]

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[23] *Id.* at 11, 12.

[24] *Id.*

[25] *See* Petition at 11. Motorola notes that the FCC is currently seeking comment on whether a 6.25 kHz mandate is needed in the VHF and UHF land mobile bands and on any compliance dates for other provisions facilitating migration to 6.25 kHz technology, which would include consideration of the January 1, 2005 deadline. *See* Implementation of Section 309(j) and 337 of the Communications Act of 1934 as Amended, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, FCC 03-34, ¶ 27 (rel. Feb. 25, 2003).

The Commission should not give consideration to M/A-COM's Opposition because it fails to provide credible arguments or substantive support for its position. The Commission should instead give serious consideration to the comments of the public safety entities that are ultimately responsible for providing public safety services using the 6.25 kHz standard.

III. CONCLUSION

For the foregoing reasons and those set forth in its Petition, Motorola respectfully requests that the Commission reconsider the ban on marketing, manufacture and importation of 12.5 kHz equipment after December 31, 2006 and the prohibition on filing applications for new systems to use 12.5 kHz equipment after December 31, 2006. In so doing, the Commission should reject the Opposition presented by M/A-Com noting specifically that grant of the Motorola Petition will not prevent M/A-COM or any other manufacturer from marketing 6.25 kHz equivalent technology should such technology be developed to respond to public safety needs in the future.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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