

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Thales Communications Inc., Request for
Limited Waiver of Commission Rules to
Permit Temporary Extension of Equipment
Authorization to Include 775-776
MHz/805-806 MHz and Related Relief

PS Docket No. 10-233

COMMENTS OF MOTOROLA, INC.

Motorola, Inc. (“Motorola”), hereby submits these comments in support of the Petition for Waiver filed by Thales Communications, Inc. (“Thales”), so long as grant of such waiver is extended to equipment offered by other similarly situated equipment vendors and is limited as described herein.¹ Specifically, the Commission should grant a temporary blanket waiver of Sections 2.106 and 90.531(b) of its rules to allow equipment manufacturers to sell equipment authorized to operate in the 775-776/805-806 MHz frequencies to public safety entities that have obtained interim waivers to continue narrowband operations in those bands,² pending the Commission’s resolution of a plan

¹ Public Safety and Homeland Security Bureau Seeks Comment on Petition for Waiver Filed by Thales Communications, Inc., Public Notice, DA 10-2180 (rel. Nov. 12, 2010); *see* Thales Communications, Inc., Request for Limited Waiver of Commission Rules to Permit Temporary Extension of Equipment Authorization to Include 775-776 MHz/805-806 MHz and Related Relief (filed Sep. 20, 2010) (“Thales Petition”).

² *See, e.g., Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Needs Through the Year 2010, State of Illinois, Illinois State Police Request for Waiver*, Order, 23 FCC Rcd 11064 (2008) (“*State of Illinois Waiver Order*”); *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Needs Through the Year 2010*, Order, 22 FCC Rcd 20290 (2007) (“*Virginia Order*”).

for narrowband consolidation.³ Grant of the requested waiver to all similarly situated manufacturers will serve the public interest by ensuring that the communications needs of those public safety entities authorized to operate in the 775-776/805-806 MHz frequencies continue to be met, pending complete relocation to the consolidated 700 MHz narrowband spectrum. In particular, such a waiver is necessary to promote continued interoperability among public safety entities on those systems. Moreover, because such grant will extend only until the Commission has resolved various issues regarding narrowband consolidation, the Commission's long-term goals will not be impaired.⁴

I. THE COMMISSION SHOULD GRANT A LIMITED, TEMPORARY BLANKET WAIVER OF ITS EQUIPMENT AUTHORIZATION RULES.

In July 2007, the Commission adopted an order reconfiguring the 700 MHz public safety band for the purpose of establishing a nationwide, interoperable, broadband public safety communications network.⁵ Consequently, the Commission consolidated narrowband operations in the upper half of the band (769-775/799-805 MHz) and prohibited the authorization of new narrowband operations outside the consolidated bands after August 30, 2007. Later that year, the Commission granted temporary waivers

³ 47 C.F.R. §§ 2.106 & 90.531(b).

⁴ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, Order, 24 FCC Rcd 1604 (2009) (staying implementation of a narrowband consolidation deadline pending resolution of the Service Rules for the 698-746, 747-762 and 777-792 Bands; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 14301 (2008)) (“*Stay Order*”).

⁵ See *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, Second Report and Order, 22 FCC Rcd 15289 (2007).

of this prohibition to licensees in cases “where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed.”⁶ Since then, the Commission has stayed the deadline for narrowband consolidation pending the resolution of its *Third Further Notice* in the proceeding.⁷

The individual public safety licensee waiver orders do not explicitly prohibit the continued deployment of equipment authorized to utilize the 775-776/805-806 MHz band. However, in an abundance of caution, Motorola supports the waiver request and recommends that relief be provided as a temporary blanket waiver to all similarly situated manufacturers.⁸ Specifically, Motorola recommends that the Commission adopt a temporary blanket waiver of Sections 2.106 and 90.531(b) of the Commission’s rules to allow it and other similarly situated equipment manufacturers to continue to provide additional equipment to these licensees during the pendency of their respective waivers. This temporary waiver would terminate when the last public safety licensee’s waiver to operate in the 775-776/805-806 MHz band terminates. And, apart from meeting appropriate technical parameters, equipment authorized under this waiver should also be required to be capable of field reprogramming by authorized personnel to delete operation in the 775-776/805-806 MHz frequencies and operate only on 769-775/799-805 MHz in accordance with the revised 700 MHz band plan when the waiver terminates.

⁶ *State of Illinois Waiver Order*, ¶ 5 (quoting *Virginia Order*).

⁷ *See Stay Order*.

⁸ In its Public Notice, the Commission specifically requested comment on extending the applicability of the waiver, if granted, to other manufacturers.

Motorola notes, however, that this requested relief is based on the assumption that the public safety waiver recipients are now prohibited from further deployment of narrowband equipment in the 775-776/805-806 MHz bands. In its recently submitted request for waiver, Thales indicates this as fact.⁹ Motorola does not believe that this point is so clear. The FCC’s waiver orders are drafted broadly to allow the grantee “to deploy new narrowband operations outside the consolidated bands following August 30, 2007, until the Commission resolves outstanding narrowband issues pending in the *Second Further Notice*.”¹⁰ Therefore, the FCC, in its discretion may permit the continued deployment of narrowband in the 775-776/805-806 MHz band provided that the equipment is authorized to operate on those frequencies.

II. THE REQUESTED WAIVER SATISFIES THE COMMISSION'S WAIVER STANDARD AND IS CLEARLY WARRANTED.

Section 1.925 of the Commission’s rules provides that the Commission may waive specific requirements of its rules on its own motion or on request.¹¹ Further, the Commission may grant a request for waiver if it is shown that “[i]n view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest. . . .”¹² This standard for granting a waiver is plainly satisfied in this case.

First, grant of the requested temporary blanket waiver will ensure that equipment is available to meet the critical communications needs of certain public safety entities on

⁹ See Thales Petition.

¹⁰ See *State of Illinois Waiver Order*, ¶ 7.

¹¹ 47 C.F.R. § 1.925(a).

¹² 47 C.F.R. § 1.925(b)(3)(ii).

the spectrum they are authorized to use. As the Commission has already recognized in granting interim waivers of the prohibition on narrowband operations outside the consolidated bands, existing narrowband operations are crucial to current public safety communications and the ability of these licensees to “respond to a public safety emergency”¹³ and “protect the safety of life and property.”¹⁴ By similarly clarifying through grant of the requested waiver that equipment vendors like Motorola are authorized to continue to provide radio equipment compatible with these operations to these licensees, the Commission will ensure that public safety entities have the proper tools to meet their needs. *Second*, grant of the requested waiver will promote interoperable communications among public safety entities. As public safety licensees have deployed statewide and large regional systems, these systems have grown as more agencies have opted to migrate to the system, thus increasing interoperability among multiple agencies.¹⁵ By allowing additional equipment to be provided to the licensees with such waivers to operate in the 775-776/805-806 MHz band, the Commission will ensure that adequate equipment is available to continue to promote interoperable communications among the multiplicity of state, county, and municipal governments across all public safety disciplines. Indeed, limiting manufacturers’ equipment authorizations creates interoperability problems.

¹³ *State of Illinois Waiver Order*, ¶ 7.

¹⁴ *See Virginia Order*, ¶ 7 (“it was not our intent in establishing the prohibition on new narrowband operations to create hardship or delay systems needed to protect the safety of life and property. It is in the public interest, therefore, to provide interim waiver relief for continued deployment....”).

¹⁵ *See State of Illinois Waiver Order*, ¶ 6. (anticipating that “the system will continue to grow as more agencies in the State opt to migrate to the system for years into the future.”).

For example, Motorola's radios operate on a trunked system, which means that a system controller instructs the radios as to which channels are allowable. Two regulatory factors impact such an operation. The first is the system's license and any associated waivers that define the channels on which the system may operate. As discussed above, the systems at issue already have waiver authority to continue operation on the 775-776/805-806 MHz band, pending further Commission action in the broadband proceeding.

The second regulatory factor is the equipment certification, which determines a manufacturer's ability to market equipment. As a result, limiting a manufacturer's equipment certification not to include the 775-776/805-806 MHz band spectrum on which a licensee is authorized to operate creates an interoperability problem. Under those conditions, radios added to the system would not be allowed to operate on the 775-776/805-806 MHz band, which is used by the rest of the system and by previously deployed radios. By granting the requested interim waiver, the Commission can solve this problem and promote interoperability in public safety communications.

Third, due to the temporary nature of the waiver requested, the Commission's long-term goals for the Upper 700 MHz band will not be impaired. Motorola seeks an industry-wide waiver only to the extent that the Commission has granted waivers to certain Upper 700 MHz public safety licensees. By clarifying that equipment manufacturers may provide additional equipment to these licensees, the Commission will ensure that these licensees can continue to protect the public safety and efficiently utilize spectrum resources while the Commission considers the various pending issues in the above-captioned proceedings.

Lastly, the Commission can allow public safety waiver recipients to deploy additional transmitters outside of the consolidated narrowband channels without impacting broadband operations after public safety users' waivers to operate in the pre-consolidated bandplan expire. All of Motorola's devices are designed to be technically capable of operating throughout the former and current 700 MHz narrowband spectrum allocations, if programmed to do so. Mobile and portable devices added today on a 700 MHz trunked system are programmed only for the control channel(s). These devices' frequencies of operation for traffic channels are selected by base station controllers, which will be programmed to frequencies in the consolidated band in accordance with the system license when the terms of the interim waivers expire. Radios on trunked systems can be reprogrammed if the trunking control channel(s) change when these licensees fully migrate their systems to conform to the consolidated bandplan. Similarly, Motorola's radios for conventional systems can also be reprogrammed to meet revised traffic channels as needed.

III. CONCLUSION

For the foregoing reasons, Motorola respectfully requests that the Commission expeditiously grant a limited, temporary blanket waiver of Sections 2.106 and 90.531(b) of its rules.

Respectfully submitted,

By: /s/ Barry Lambergman
Barry Lambergman
Director, Government Affairs
Motorola, Inc
1455 Pennsylvania Avenue, NW
Washington, DC 20004
TEL: 202.371.6900

Dated: December 13, 2010