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April 22, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Rule 0.459 Letter
RM-11663
WT Docket No. 11-69
ET Docket No. 09-234**

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Dear Ms. Dortch:

It has come to our attention that on April 8, 2013, Motorola Solutions, Inc. ("MSI") filed a document in the above-referenced rulemaking which is undescribed other than by the word, in red font, "Confidential." According to ECFS, the document was posted April 17.

Commission Rule 0.459 (a)(3) states: "Comments and other materials may not be submitted by means of the Commission's Electronic Comment Filing System (ECFS) with a request for confidential treatment under this section."

The Commission has explained that:

The Commission generally has not afforded confidential treatment to material submitted in rulemakings, although on rare occasions protective agreements have been used in the context of rulemakings.

Material submitted in rulemakings will continue to be routinely available for public inspection because, as the commenters who addressed rulemakings acknowledge, rulemakings have a broad impact on the public, and wide public participation, with a full opportunity to comment, is contemplated by the APA. An agency's decision to withhold information in the context of a rulemaking can have a significant impact on whether commenters have had meaningful notice and

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opportunity to comment on the bases of an agency's decision. One purpose of the requirement that agencies disclose the documents it deems relevant to a proceeding, therefore, is to ensure that interested parties have a full opportunity to participate in the proceeding by providing a different perspective on materials that may be relied upon by the agency. A party filing comments in a rulemaking proceeding who thinks it has information that will significantly affect the decision on a proposed rule is free to submit it, of course. Nevertheless, other interested parties may not be deprived of the opportunity to challenge it.

Comsat Corp., 13 FCC Rcd 24816, 24843-44 (paras. 43-44) (1998)(footnotes omitted).

Docket 11-69 is a contested proceeding, as evidenced by the number of filings submitted by MSI, PowerTrunk and others. Moreover, the accuracy of factual claims made by MSI has been brought into issue, most recently in an Ex Parte which has been submitted for the record by PowerTrunk concurrently with this letter.

Given the circumstances, PowerTrunk submits that the MSI filing should immediately be made available in unredacted form for inspection by PowerTrunk and other interested parties. In the event MSI should argue that material in the filing is "confidential," it should nonetheless be made available for inspection pursuant, possibly, to a protective order so that other parties are not prejudiced by an inability to respond to arguments or data that might be contained therein.¹

In all events, no consideration whatsoever should be afforded the MSI filing unless and until other parties have had an opportunity to inspect and comment on same.

Respectfully submitted,



Patrick D. McPherson

Counsel for PowerTrunk

cc: Michael Wilhelm
Scott Stone

PDM/sd

¹ *Id.* at para. 45 ("...although we expect to act favorably upon them only in extremely rare instances, we will consider requests for confidential treatment that propose to limit the availability of confidential information in rulemaking proceedings to those who have executed a protective order.").

Duane Morris

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 22, 2013 a true and correct copy of the attached Rule 0.459 Letter dated April 22, 2013, was sent by First Class Mail to the following person:

Mr. Chuck Powers
Director, Engineering and Technology Policy
Motorola Solutions, Inc.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Sharon A. Morris