

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Motorola, Inc.)	File No. EB-02-TS-644
)	
)	NAL/Acct. No. 200332100001
)	
)	FRN 0007-3504-40

ORDER

Adopted: February 20, 2003

Released: February 21, 2003

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Motorola, Inc. ("Motorola"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau into Motorola's compliance with the 911 call processing procedures set forth in Section 22.921 of the Commission's Rules ("Rules").

2. The Enforcement Bureau and Motorola have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist as to whether Motorola possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the terms of the Consent Decree, we believe that the public interest will be served by adopting the Consent Decree and terminating the investigation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,¹ and Sections 0.111 and 0.311 of the Commission's Rules,² the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the Enforcement Bureau's investigation of Motorola **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that Motorola, Inc. shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332100001 and FRN 0007-3504-40.

¹ 47 U.S.C. §§ 4(i), 4(j), 503(b).

² 47 C.F.R. §§ 0.111, 0.311.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mary E. Brooner, Esq., Director, Telecommunications Strategy and Regulation, Global Government Relations Office, Motorola, Inc., 1350 I Street, N.W., Suite 400, Washington, D.C. 20005, and to Robert Pettit, Esq., Wiley Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Motorola, Inc. ("Motorola") hereby enter into a Consent Decree resolving possible violations by Motorola of the 911 call processing method rules as set forth in Section 22.921 of the Commission's Rules.³

Statement of Facts

1. Under Section 22.921 of the Commission's Rules, mobile phones manufactured after February 13, 2000 and capable of operating in an analog mode are required to use one or more of the 911 call system selection processes endorsed or approved by the Commission. On September 22, 2002, Motorola filed a request for a waiver of Section 22.921 to permit continued shipment to a specific customer of two models of multi-mode mobile phones, models 120E and T720, which incorporate a call processing method not endorsed or approved by the Commission.⁴ Motorola stated that it began shipping these handsets on about September 5, 2002. In addition, Motorola filed a petition with the Commission seeking approval of its alternative call processing method under Section 22.921 of the Commission's Rules.⁵ On October 3, 2002, the Wireless Telecommunications Bureau granted Motorola a limited, interim waiver of Section 22.921 to permit continued shipment of the handsets incorporating the modified call completion method, subject to further review of the modified method.⁶ The Enforcement Bureau subsequently began an investigation into whether Motorola was in compliance with the requirements of Section 22.921 with respect to these two handset models.⁷

Terms of Settlement

2. For purposes of this Consent Decree the following definitions shall apply:

- (a) "Commission" or "FCC" means the Federal Communications Commission;
- (b) "Bureau" means the FCC's Enforcement Bureau;
- (c) "Parties" means Motorola, Inc. and the Commission;
- (d) "Motorola" means Motorola, Inc., its subsidiaries, affiliates and any successors or assigns;
- (e) "Adopting Order" means an order of the FCC adopting this Consent Decree;
- (f) "Effective Date" means the date on which the FCC releases the Adopting Order;
- (g) "Final Order" means the status of the Adopting Order after the period for administrative and judicial review has lapsed;
- (h) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations;
- (i) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*

³ 47 C.F.R. § 22.921.

⁴ Letter from Mary E. Brooner, Director, Telecommunications Strategy and Regulation, Global Government Relations Office, Motorola, Inc. to Mr. Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (filed Sept. 20, 2002).

⁵ Request of Motorola, Inc. For Approval of a Modified 911 Call Processing Mode (filed Sept. 20, 2002).

⁶ *911 Call Processing Modes, Motorola Request for Expedited Relief for Phase-II Enabled Handsets*, WT Docket No. 99-328, 17 FCC Rcd 19267 (Wireless Telecom. Bur. 2002).

⁷ Letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, to Mary E. Brooner, Director, Telecommunications Strategy and Regulation, Global Government Relations Office, Motorola, Inc. (October 24, 2002).

3. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order.

4. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other orders of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order.

5. Motorola agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Motorola and the Bureau regarding possible violations of the 911 call processing method rules for manufacture and distribution of wireless handset models 120E and T720 prior to September 20, 2002. In consideration for termination by the Bureau of its investigation into whether Motorola has violated the 911 call processing rules for its 120E and T720 model handsets and in accordance with the terms of this Consent Decree, Motorola agrees to the terms set forth herein.

7. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate its investigation without any finding of liability on the part of Motorola.

8. Motorola agrees that for phones capable of operating in analog mode that it sells in the United States it will comply with 911 call processing method rule as follows:

- (a) First, Motorola agrees that it will manufacture handsets using one or more of the 911 call system selection processes endorsed or approved by the Commission, or handsets that have otherwise received FCC approval to incorporate a modified 911 call completion method.
- (b) Second, Motorola agrees to retrain certain critical organizations in the Company, including its software developments groups for each cellular and PCS system technology in the U.S. market, on issues related to the Commission's rules and regulations related to emergency call processing including assuring alignment of customer specifications and regulatory requirements at early stages of new product development. Motorola would also retrain its technical compliance organization to ensure that regulatory compliance requirements are met at each stage of compliance review for new product development. This training will be completed within six months of the effective date of this Consent Decree and, in addition, further reminder training will be conducted within eighteen (18) months of the effective date of this Consent Decree.

9. Motorola agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Motorola fails to satisfy any condition or Commission rule, in the absence of Commission alteration of the condition or rule, it will be deemed noncompliant and may be subject to possible enforcement action, including but not limited to revocation of the relief, a requirement to deploy an alternative call processing technology, letters of admonishment or forfeitures.

10. Motorola agrees to make a voluntary contribution to the United States Treasury in the amount of Twenty Five Thousand Dollars (\$25,000) per handset model referenced above for a total of Fifty Thousand Dollars (\$50,000) within thirty (30) days after the effective date of the Adopting Order. Motorola will make this contribution without further protest or recourse by mailing a check or similar

instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332100001 and FCC Registration Number 0007-3504-40.

11. The Bureau agrees that it will not institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Motorola for any alleged violation of the 911 call processing method rules in connection with its 120E and T720 model handsets which occurred prior to the effective date of this Consent Decree except as consistent with the provisions of this Consent Decree. The Bureau also agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this proceeding through the date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Motorola with respect to its basic qualifications, including the character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting new investigations or enforcement proceedings against Motorola in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the 911 call processing rules as consistent with the provisions of this Consent Decree.

12. Motorola waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

13. If either Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, neither Motorola nor the FCC shall contest the continuing validity of the Consent Decree or Adopting Order. Motorola retains the right to challenge the Bureau interpretation of the Consent Decree or any terms contained therein.

14. Motorola agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

15. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

16. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act and the Rules, including Section 22.921 of the Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Motorola does not admit or deny any liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree.

17. The Parties agree that the terms and conditions of this Consent Decree shall remain in effect for twenty-four (24) months from the effective date of this Consent Decree. The Parties further agree that any provision of the Consent Decree that would require Motorola to act in violation of a future rule or order adopted by the Commission will be superseded by such Commission rule or order.

18. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau

For Motorola, Inc.

David H. Solomon
Chief, Enforcement Bureau

Michael S. Tatelman
Vice President of Sales for PCS, North America

Date

Date