

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

In the Matter of)	File No. EB-09-SE-064
)	
)	Acct. No. 201032100024
Motorola, Inc.)	
)	FRN No. 0013253380

ORDER

Adopted: April 13, 2010

Released: April 14, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Motorola, Inc. (“Motorola”). The Consent Decree terminates an investigation by the Bureau against Motorola for possible violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 302a(b), and Sections 2.803(a), 2.926(e), 15.37(l), and 15.407(h) of the Commission’s Rules (“Rules”), 47 C.F.R. §§ 2.803(a), 2.926(e), 15.37(l), and 15.407(h), regarding the marketing and labeling of Unlicensed National Information Infrastructure (U-NII) devices.

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

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Motorola possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) 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 above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 154(i).

² 47 C.F.R. §§ 0.111, 0.311.

7. **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 Steve Sharkey, Senior Director, Regulatory and Spectrum Policy, Motorola, Inc., 1455 Pennsylvania Ave. NW, Suite 900, Washington, DC 20004, and to counsel for Motorola, David E. Hilliard, Esq., Wiley Rein LLP, 1776 K Street, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Motorola, Inc. (“Motorola”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation of Motorola for possible violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a), 2.926(e), 15.37(l), and 15.407(h) of the Commission’s Rules (“Rules”),² regarding the marketing and labeling of Unlicensed National Information Infrastructure (U-NII) devices.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Motorola” means Motorola, Inc., and its subsidiaries and its predecessors-in-interest and successors-in-interest.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 2.926(e), 15.37(l), and 15.407(h).

- (h) “Investigation” means the investigation commenced by the Bureau’s March 17, 2009 letter of inquiry (“LOI”)³ to Motorola regarding possible violations of Section 302(b) of the Act and Sections 2.803(a), 2.926(e), 15.37(l), and 15.407(h) of the Rules.
- (i) “Parties” means Motorola and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁴ and Section 2.803(a) of the Rules,⁵ radio frequency devices may not be marketed in the United States unless such devices comply with the applicable technical and administrative provisions of the Rules. U-NII transmitting devices, which are classified as intentional radiators under the Rules,⁶ can be authorized under Certification pursuant to Section 15.201(b) of the Rules. In accordance with Section 2.926(e) U-NII devices must exhibit the FCC ID number associated with the grant of equipment authorization. Further, pursuant to Section 15.407(h) U-NII devices that operate in the 5.25 – 5.35 GHz and 5.47- 5.725 GHz bands must be equipped, *inter alia*, with dynamic frequency selection (DFS) capability to avoid transmitting when radar signals are detected. Further, pursuant to Section 15.37(l), if a U-NII device operating in the 5.25 – 5.35 MHz band was approved under a certification application filed on or after July 20, 2006, the device must have complied with the DFS requirements if imported or marketed on or after July 20, 2007.

3. On April 20, 2009, the Bureau issued an LOI to Motorola.⁷ The LOI directed Motorola to submit a sworn written response to a series of questions relating to the marketing and selling of U-NII devices. Motorola responded to the LOI on May 20, 2009.⁸

III. TERMS OF AGREEMENT

4. **Adopting Order.** 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 the Adopting Order without change, addition, modification, or deletion.

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

6. **Effective Date; Violations.** 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 Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Steve Sharkey, Motorola, Inc. (April 20, 2009) (“April 20, 2009 LOI”).

⁴ 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. § 2.803(a).

⁶ 47 C.F.R. § 15.3(o).

⁷ See April 20, 2009 LOI.

⁸ See Letter from Steve B. Sharkey, Senior Director, Regulatory and Spectrum Policy. Motorola, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission dated May 30, 2009 (“LOI Response”).

of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Motorola agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Motorola concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective 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 Motorola's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Motorola agrees to create within 60 days a Compliance Plan related to future compliance with the Act, the Commission's Rules and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Motorola will designate a senior corporate manager ("Compliance Officer") who is responsible for administering the Compliance Plan.
- (b) **Training.** Motorola will train and provide materials concerning Section 302(b) of the Act and Parts 2 and 15 of the Rules pertaining to U-NII devices and the requirements of the Consent Decree to those of its employees who are involved directly in the development and marketing of U-NII devices imported, marketed and sold by Motorola in the United States.
- (c) **Compliance Reports.** Motorola will file compliance reports with the Commission 90 days after the Effective Date, 12 months after the Effective Date, and 24 months after the Effective Date. Each report shall include a compliance certificate from the Compliance Officer stating that the Compliance Officer has personal knowledge that Motorola has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the Compliance Officer's compliance certification. All compliance reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and to Kathryn Berthot at Kathy.Berthot@fcc.gov.
- (d) **Divestment of Business Unit(s).** In the event that Motorola divests a business unit, the terms of any such divestment shall require the divested unit(s) to agree to abide by the terms of this Consent Decree including appointment of a Compliance Officer, conducting training, and filing compliance reports on the dates such reports would next be due under this Consent Decree if the divested business unit develops, imports, or markets any U-NII device.

- (e) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire 24 months after the Effective Date.

9. **Voluntary Contribution.** Motorola agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$9,000. The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Motorola will also send electronic notification on the date said payment is made to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov.

10. **Waivers.** 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 Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Motorola shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Motorola nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Motorola shall waive any statutory right to a trial *de novo*. Motorola hereby 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 addressed in this Consent Decree.

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

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Motorola does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** Motorola agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further 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 or the Commission’s Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Vice President
Motorola, Inc.

Date