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September 21, 2007

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Communication
ET Docket Nos. 04-186, 02-380

Dear Ms. Dortch

On September 19, 2007 the following persons met with following members of the Commission's staff in four separate meetings at the FCC's Headquarters:

11:00 A.M. Meeting:

From the FCC's Office of Engineering and Technology: Julius P. Knapp, Chief; Alan Stillwell, Senior Associate Chief; Geraldine Matise, Chief, Policy & Rules Division; Rashmi Deshi, Chief, Laboratory Division (by video conference); and staff member High Van Tuyl.

Representing the broadcast industry: David L. Donovan, President of MSTV; Dale O. Zabriskie, President of the Utah Broadcasters Association ("UBA") and President of the National Alliance of State Broadcasters Associations ("NASBA"); Lou Kirchen, Chair of the Pennsylvania Association of Broadcasters' ("PAB") Television Board of Directors, in-coming Chair of the PAB, and President and General Manager of WNEP-TV, Scranton, PA; Adam Sandler, Vice President of the Nevada Broadcasters Association; Al Bramstedt, President and General Manager of KTUU-TV, Anchorage, Alaska; and Richard R. Zaragoza, Counsel to NASBA.

1 P.M. Meeting:

From the Office of FCC Commissioner Michael J. Copps: Rick C. Chessen, Senior Legal Advisor/Media Advisor.

Representing the broadcast industry: David Donovan, President of MSTV; Dale O. Zabriskie, President of the UBA and President of NASBA; Ann Arnold, President of the Texas Association of Broadcasters; Al Bramstedt, President and General Manager of KTUU-TV, Anchorage Alaska; and Richard R. Zaragoza, Counsel to NASBA.

1:30 P.M. Meeting

From the Office of FCC Commissioner Deborah Taylor Tate: Amy Blankenship, Legal Advisor and Wayne Leighton, Special Advisor, Wireless

Representing the broadcast industry: David L. Donovan, President of MSTV; Dale O. Zabriskie, President of the UBA and President of NASBA; Suzanne D. Goucher, President of the Maine Association of Broadcasters; Al Bramstedt, President and General Manager of KTUU-TV, Anchorage, Alaska; and Richard R. Zaragoza, Counsel to NASBA.

3:30 P.M. Meeting

From the FCC's Media Bureau: Roy Stewart, Senior Deputy Bureau Chief; Keith Larson, Chief Engineer; John Wong, Division Chief, Engineering Division; Wayne McKee, Assistant Chief, Engineering Division; and staff members Sarah Mahmood and John Gabrysch.

Representing the broadcast industry: Bruce Franca, Vice President of Policy and Technology, MSTV; Dale O. Zabriskie, President of the UBA and President of NASBA; Jim P. duBois, President of the Minnesota Broadcasters Association; Ted Teffner, Vice President, Engineering, WCAX-TV, Burlington, VT; and Richard R. Zaragoza, Counsel to NASBA.

4:00 P.M. Meeting

From the Office of FCC Chairman Kevin J. Martin: Aaron Goldberger, Legal Advisor, Wireless and International Issues.

Representing the broadcast industry: Bruce Franca, Vice President of Policy and Technology, MSTV; Dale O. Zabriskie, President of the UBA and President of NASBA; James P. duBois, President of the Minnesota Broadcasters Association; Ted Teffner, Vice President, Engineering, WCAX-TV, Burlington, VT; and Richard R. Zaragoza, Counsel to NASBA.

The following represents, collectively, the substance of those meetings:

The representatives of the broadcast industry complimented the FCC's staff for the "perfectionist" commitment which they have exhibited in their execution of the extremely important and difficult task of assuring that all residents of our Nation will have access to interference-free, reliable, excellent quality, over-the-air, free, local, digital television broadcast service as our country transitions to an exclusively digital television broadcast era, and strongly urged the Commission to maintain that "perfectionist" commitment in connection with these proceedings and any other proceedings which could jeopardize that goal.

The representatives also raised numerous concerns about the apparent "rush to judgment" in these proceedings which look toward allowing the manufacture, importation and use of potentially millions of unlicensed, portable devices operating on frequencies actually used by television stations and on frequencies located next to those frequencies.

The concern for interruption in emergency communications.

The likelihood of devastating interference to TV receivers (all or portions of the video picture will disappear) from portable, unlicensed devices is real and should be beyond genuine dispute. As a consequence, such interference has the potential of blocking time sensitive, critical emergency information for viewers, including importantly the hearing impaired. In short, the entire concept of allowing such devices flies in the face of everything that the FCC, the Department of Homeland Security, State and local emergency management authorities, the broadcast industry, and other stakeholders have worked so hard to preserve and enhance – namely the reliability of the broadcast service as the premier "first informer" for the public of emergency circumstances and safety measures.

The apparent "rush to judgment" and other concerns in these proceedings.

No one was able to articulate a reason for speeding this proceeding along. The Federal government is about to auction enormous amounts of spectrum that is fully compatible with the spectrum that the unlicensed, portable device developers want to use. Why would one arm of the government, namely the FCC, pursue a proceeding that would enable the unlicensed device developers to use television frequencies at the same time that the same government is hoping that these and other types of devices would drive demand for the frequencies to be auctioned?

Why also would the FCC be intent upon advancing these proceedings at a time when tested equipment has already failed and when the DTV transition is still in its early stages? The cut-over date for the DTV transition does not occur until February 17, 2009. The universality and reliability of the new digital landscape will not be known until sometime after that date, based on actual viewer experiences. It is true that the DTV

Table of Allotments is advanced. However, many television stations are operating digitally at reduced power pursuant to STAs. Many stations have elected to operate digitally on their analog channels after February 17, 2009 . Many will be flash-cutting from analog to digital on that date. And many viewers rely upon Class A television stations, LPTV stations and TV translators to receive their information. The role of these critical channels for distribution in the digital landscape is still being workout by the Commission. In short, neither broadcasters, their viewers, TV receiver manufacturers nor the Commission can know right now precisely what level of service is assured in a real world, operational context and what problems may have to be overcome in an exclusively digital world. To introduce interference causing devices at this critical stage of the DTV transition makes absolutely no sense.

Why also would the FCC want to risk the outrage of America's citizenry (and Congress which will have funded at least a portion of the cost) when people are told that they will have to buy digital converters in order to continue to receive programming over their analog sets, only later to find out that portable, unlicensed devices, whose ownership or locations are unknown, could render their converters useless from time to time?

Why also would the FCC consider allowing millions and millions of these interference causing devices, like "germs," to spread throughout America with the ability to attack the TV receivers in people's homes, apartments, hotel rooms, hospital rooms, dormitories, etc., with no way for the owner of the TV set (the "victim") to determine who was causing the "illness" to his or her TV set? Even if the developers of these devices are committed to building second, third and so-on generation devices, the first generation of "germ" devices will remain at large. Where is the accountability under this scheme?

Why also would the FCC be so careful as to prevent one digital television station from causing more than .05% interference to another digital television station (a wholly appropriate limitation), but not seem to care about the interference caused to potentially the hundreds of millions of TV receivers throughout our country? Is the Commission, in essence, being asked to "balance" the exigencies and business goals of the developers of portable unlicensed devices against the number of American residents who will likely be harmed on a daily basis by debilitating interference from such devices? Under this "balancing" test, how many Americans must be put at risk before the Commission concludes that such harm outweighs the developers' desire to sell/license their new devices, particularly given that these same developers have the option of using equivalent frequencies that will be auctioned early next year?

Attached hereto is a handout that was used to illustrate some of these points.

Respectfully submitted,

Richard R. Zaragoza

cc: via e-mail with attachment:

Julius P. Knapp (with a request that Mr. Knapp circulate this Notice to the other Office of Engineering and Technology representatives at the meeting)
Rick C. Chessen, Esq.
Amy Blankenship, Esq.
Wayne Leighton, Esq.
Roy J. Stewart (with a request that Mr. Stewart circulate this Notice to the other Media Bureau representatives at the meeting)
Aaron Goldberger, Esq.