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May 13, 2008

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, NW.
Washington, DC 20554

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Office of the Secretary

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Ex Parte Communication: OET Doc. Nos. 04-186 and 02-380
Experimental License File No: 0209-EX-ST-2008

On Friday, May 9, 2009, David Donovan and Bruce Franca of MSTV contacted the Chief of the Office of Engineering Technology regarding the above-captioned matters. During this conversation we inquired about several aspects of the experimental licenses that were given to Philips Research, NA, a Division of Philips Electronics North America Corp. (hereinafter Philips).

We observed that the initial experimental license granted to Philips for operation from May 1 to June 1 2008 contained the standard requirement that the experimental license be coordinated with the Society of Broadcast Engineers. *See Attachment A.*

We noted that coordination in this instance was extremely important because the experiment would operate on spectrum adjacent to channels currently used in the area for over-the-air television broadcasts. The experiment would operate on TV channels 28, 31, 41 and 44, and may cause interference to viewers watching WETA-DT (Ch. 27), WHUT-TV (Ch. 32), WPXW-DT (Ch. 43) and possibly WJLA-DT (Ch. 39). We observed that a number of low power licensed wireless microphones may be operating on these channels as well. As the license allows for a 2.5 km zone around NL 38-53-50; WL 77-01-40, it could cause interference in critical areas in the nation's Capitol including the FCC, the White House, and perhaps Capitol Hill.

We also discussed the fact that a second experimental license was issued for the same experiment within a matter of days. This license extends the experiment to July 1, 2008. *See Attachment B.* However, the new license expressly strips out the requirement that the licensee coordinate with the Society of Broadcast Engineers regarding possible interference. While the new license instructs the licensee to stop if there is interference, it no longer requires SBE and perhaps others to examine whether interference would occur in the first place, and if so, to coordinate a resolution. Absent the coordination requirements, we asked how the participants would know interference was being caused.

Based on our discussion, it appears that eliminating the standard SBE coordination requirement was intentional. We discussed the reason for the new experimental license. Specifically we noted that if there was no need for SBE coordination, why was the standard coordination requirement included in the first license. In addition, we questioned what intervening event or communications caused OET to reissue the experimental license. We can find no new application on file with the FCC relating to the new "superseding" grant. Moreover, as of this writing, we could find no ex parte communications in the experimental license proceeding or in OET Docket Nos. 04-186 or 02-380.

During the telephone call, we questioned why the standard coordination requirement was removed. The response was that since these tests were of such short duration they would be unlikely to cause interference. We then discussed whether it would be possible to predict this fact not only for over-the-air TV viewing, but also for licensed wireless microphones that may be used in and around Washington, including at the critical news areas discussed above (*i.e.*, the FCC, the White House, and Capitol Hill). We questioned whether such a prediction, and the removal of the SBE coordination requirement, would be warranted given that the new license will last nearly two months, is for mobile use, and includes a 2.5 km radius around downtown Washington.

Finally, we observed that the applications for the experimental licenses recently granted to both Philips and Adaptrum assert that the results of the experiments will provide information for and be relevant to OET Docket No. 04-186.¹ We then inquired as to whether communications occurred between OET and the parties involved. If so, we asked whether these communications were placed in the record of Docket No. 04-186. We were advised that since the communications related to the experimental licenses, there was no reason to incorporate these communications into the record of Docket No. 04-186. We respectfully disagreed with that position.

Sincerely,

David L. Donovan

cc: Julius P. Knapp, Chief, OET
Matthew Berry, General Counsel

¹ See Application for Special Temporary Authority, Philips NA, Appendix A: "Philips believes that its demonstration will provide information useful to the Commission as it determines the rules for unlicensed device operations in the television whitespaces, ET Docket No. 04-186." See also Application for Special Temporary Authority by Adaptrum Inc., at 1. "To conduct white space field study. This experiment will begin collecting actual field data on the ability of cognitive radios, such as those proposed in Docket 04-186, to find white space in TV spectrum and to utilize it on an interference free basis. Data on the success or failure of every attempt will be provided to the FCC."