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May 21, 2008

VIA ELECTRONIC FILING AND HAND DELIVERY

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

Re: ET Docket Nos. 04-186 and 02-380
Experimental License File No. 0209-EX-ST-2008

Dear Ms. Dortch:

The Association for Maximum Service Television ("MSTV") and Society of Broadcast Engineers ("SBE") have recently filed letters intimating that communications on behalf of Philips Electronics North America Corp. regarding the above-referenced experimental license violated *ex parte* disclosure obligations or were otherwise improper.[1] I write briefly to make clear that this is not the case. On the other hand, their own letters show that MSTV and SBE have violated their obligations under the Commission's *ex parte* rules.

As set forth in Philips' application for special temporary authority ("STA") and its accompanying request for expedited processing, Philips presently seeks to demonstrate its white spaces technology to senior Commission personnel. Shortly after the STA issued, with no opposition or comment filed in response to the STA application, Edmond Thomas spoke briefly with Julius Knapp, Chief of the Office of Engineering and Technology, to inquire as to potential dates for this demonstration, and to inform him that a requirement in the STA to coordinate with the Society of Broadcast Engineers could present challenges in arranging a demonstration given the short duration of the STA and the potentially short lead time once a date is set.[2]

Philips' STA application is a restricted proceeding. But since it was uncontested at the time of Mr. Thomas's conversation, the Commission's rules make clear that "the party and the Commission may freely make presentations to each other because there is no other party to be

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[1] *See* letter from David Donovan, President, Association for Maximum Service Television to Marlene Dortch, Secretary, Federal Communications Commission, ET Dkt. Nos. 04-186 and 02-380, Exp. Lic. File No. 0209-EX-ST-2008 (filed May 13, 2008) ("MSTV Letter"); letter from Christopher Imlay, General Counsel, Society of Broadcast Engineers to Julius Knapp, Chief, Office of Engineering and Technology, File No. 0209-EX-ST-2008 (filed May 14, 2008) ("SBE Letter").

[2] Mr. Knapp informed Mr. Thomas that OET would look into these questions, and the revised experimental license issued shortly thereafter.

served or with a right to have an opportunity to present."[3] With respect to the white spaces rulemaking, the STA and the associated application are not "communications directed to the merits or the outcome" of that proceeding, and thus communications directed to the STA application are not themselves *ex parte* communications with respect to the Commission's white space rulemaking. Although an *ex parte* notice will almost certainly be required in the white spaces docket if and when Philips actually demonstrates its technology to the Commission, no portion of Mr. Thomas's brief conversation with Mr. Knapp addressed the merits of issues in the white spaces docket. Thus, Mr. Knapp's observation, described in MSTV's letter, that the communication did not warrant incorporation in Docket No. 04-186 is entirely correct.

In contrast to Mr. Thomas's conversation, MSTV has violated the Commission's rules regarding *ex parte* communications in a restricted proceeding – the Philips' STA application – as evidenced by its own letter.[4] As the applicant, Philips was at all times a party to its STA application, and the Commission's rules require "a third person who wishe[s] to make a presentation to the Commission concerning the application or waiver request … to serve or notice the filer" as appropriate.[5] Philips received no advance notice of the oral presentation made by Mr. Donovan and Bruce Franca on May 9, 2008, denying Philips its right to be present at that meeting.[6] Similarly, SBE's letter states that it addressed the merits of Philips' application in a telephone call to Commission staff, without giving Philips an opportunity to participate, by asking (by its own account) "what makes Philips so special as to be able to bypass the coordination condition…?"[7]

The broadcasters have made clear that they oppose the use of personal/portable devices in the white spaces, and they are certainly entitled to press that position before the Commission. However, baseless allegations that Philips violated the Commission's *ex parte* rules are over the line. It is regrettable that, when a party seeks to demonstrate a potential innovative use of white space spectrum, MSTV and SBE are willing to go to such lengths to attempt to prevent the Commission from seeing it.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely yours,

/s/ Christopher J. Wright

Christopher J. Wright

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[3] 47 C.F.R. § 1.1208 n.1.

[4] *See* MSTV Letter at 1-2 (referencing oral presentation regarding STA coordination requirement).

[5] 47 C.F.R. § 1.1208 n.1.

[6] *See* 47 C.F.R. § 1.1202(b)(2).

[7] *See* SBE Letter at 3.

cc: Julius Knapp, Chief, Office of Engineering and Technology
Matthew Berry, General Counsel
Kent Nilsson, Inspector General
David Donovan, Association for Maximum Service Television
Christopher Imlay, Society of Broadcast Engineers