

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Revisions to Rules Authorizing the Operation)	WT Docket No. 08-166
of Low Power Auxiliary Stations in the 698-)	
806 MHz Band)	
)	
Public Interest Spectrum Coalition, Petition)	
for Rulemaking Regarding Low Power)	WT Docket No. 08-167
Auxiliary Stations, Including Wireless)	
Microphones, and the Digital Television)	
Transition)	

**COMMENTS OF
THE WIRELESS COMMUNICATIONS ASSOCIATION
INTERNATIONAL, INC.**

The Wireless Communications Association International, Inc. (“WCA”), by its attorneys and pursuant to Section 1.415 of the Commission’s Rules, hereby submits its initial comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) in these proceedings.¹ For the reasons set forth below, WCA urges the Commission to adopt the *NPRM*’s proposals to ban the operation of low power devices in the 698-806 MHz band (“700 MHz Band”) as of February 17, 2009, to modify existing Commission authorizations to preclude operation of low power auxiliary stations in the 700 MHz Band after February 17, 2009,² and to prohibit the

¹ See Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, *Notice of Proposed Rulemaking and Order*, WT Docket No. 08-166, FCC 08-188 (rel. Aug. 21, 2008) [“NPRM”].

² WCA would not object to the case-by-case issuance of waivers that would allow a low power auxiliary licensee to continue existing operations for a short period of time following the February 17, 2009 deadline if the licensee can demonstrate either that due to unique or unusual factual circumstances, application of deadline would be unduly burdensome or that the applicant has no reasonable alternative to using the 700 MHz Band for that short time. In either case, the applicant for the waiver should be required to establish that none of 700 MHz Band licensees will be operating in the geographic area for which the waiver is sought during the duration of the waiver, or that they consent to the issuance of the waiver.

manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band as of the effective date of the new rules.³

As the *NPRM* recognizes, the Digital Television Transition and Public Safety Act of 2005⁴ established February 17, 2009 as the firm deadline for the end of the DTV transition. At that time, television broadcasters using TV Channels 52-69 have fully vacated the 700 MHz Band, which thereafter will be fully available for a new generation of spectrally-efficient digital public safety and commercial wireless services.⁵ As a trade association devoted to promoting the ubiquitous deployment of wireless broadband services, WCA has a vital interest in the outcome of this proceeding. The 700 MHz Band offers an invaluable opportunity to expand the reach of wireless broadband services across America for the benefit of both the public safety community and members of the general public who are increasingly demanding access to broadband services 24/7, no matter where they may be. WCA's members, which include 700 MHz Band licensees, manufacturers of 700 MHz Band equipment, and providers of a variety of services to commercial and public safety entities, are at the forefront of the effort to make the vision of wireless broadband everywhere, all the time, a reality. As such, WCA is concerned

³ See *NPRM* at ¶ 2. Consistent with its strong support for the proposals advanced in the *NPRM*, WCA applauds the Commission for also holding in abeyance pending license applications and equipment authorization requests that involve operation of low power auxiliary devices on frequencies in the 700 MHz Band after the end of the digital television (“DTV”) transition and imposing immediate freezes on the filing of new license applications that seek to operate on any 700 MHz Band frequencies after the end of the DTV transition, February 17, 2009, and on granting any request for equipment authorization of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. See *id.* at ¶ 3. As discussed below, low power auxiliary stations in the 700 MHz Band pose a very real threat of interference to commercial and public safety broadband operations in the 700 MHz Band, and these steps by the Commission are a good first step towards ameliorating that risk.

⁴ See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”). Title III of the DRA is the DTV Act.

⁵ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8066 (2007) [“700 MHz First Report and Order”].

that, unless the proposals advanced in the *NPRM*, are adopted, interference from secondary low power auxiliary users will preclude the 700 MHz Band from achieving its full potential as a platform for the provision of broadband services to public safety and the general public.⁶

The need for adoption of the proposals advanced in the *NPRM* is patent. The *NPRM* acknowledges that “[i]t is incumbent on the Commission to take all the steps necessary to make [the 700 MHz Band] effectively available to both public safety as well as commercial licensees as of the end of the DTV transition.”⁷ To accomplish that goal, it is imperative that the Commission assure public safety and commercial licensees of the band that they can provide end users with the quality of service they demand. Although the needs of public safety and commercial network operators are not always congruent, both communities are likely to utilize the 700 MHz Band for voice and other services that have a low tolerance for harmful interference from low power auxiliary operations sharing the same spectrum.

That low power auxiliary devices are secondary, and thus are required to protect primary users of the 700 MHz Band from interference pursuant to Section 2.105(c)(2) of the Commission’s Rules, does not warrant retention of the *status quo*. As the Commission has recognized, “[e]stablishing a secondary allocation . . . does not itself adequately protect primary licensees from interference.”⁸ Rather, the Commission must make certain that the nature of the

⁶ WCA is hardly alone in its concern. *See, e.g.*, Letter from Ralph Haller, Chair, National Public Safety Telecommunications Council, to Hon. Kevin J. Martin, Chair, FCC, at 2-3 (June 30, 2008) (“Given the nature of the market for wireless microphones and similar audio devices, NPSTC believes Commission action is necessary to ensure such devices do not interfere with public safety 700 MHz operations going forward.”).

⁷ *700 MHz First Report and Order*, 22 FCC Rcd at 8066. *See also NPRM* at ¶ 9.

⁸ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962, 1997 (2003).

primary and secondary uses are such that potential interference from the secondary source can be effectively avoided.

Historically, secondary low power auxiliary stations have been able to peaceably coexist with primary broadcast use in the 700 MHz Band because: (1) the “UHF taboos” that have guided the allotment of analog broadcast stations in the 700 MHz Band left the majority of the 700 MHz Band vacant and available for use by low power auxiliary licensees without risk of interference to primary broadcast use; and (2) television receivers generally are not used by the public in close proximity to low power auxiliary operations. Following the DTV transition, however, things will be quite different.

The 700 MHz Band soon will be completely licensed for use by spectrally-efficient digital services, and low power auxiliary licensees will no longer be able to find vacant swaths of unlicensed UHF channels in which to operate. Moreover, geographic separation between secondary low power auxiliary transmitters and primary receivers will no longer be the norm, as public safety and commercial broadband users will likely be using their primary services at many of the same locations where secondary low power auxiliary stations operate. Like the Commission, WCA is “concerned about the potential for harmful interference from low power auxiliary devices to 700 MHz Band public safety and commercial wireless operations.”⁹ To cite just one example that illustrates the risks associated with retaining the secondary allocation for low power auxiliary devices, in a breaking news situation where broadcasters typically use wireless microphones, public safety use of the 700 MHz Band for mission-critical communications cannot suffer harmful interference without jeopardizing the health and safety of first responders. Sharing of the 700 MHz Band in such a situation is simply not a viable option.

⁹ *NPRM* at ¶ 14.

Although, as the *NPRM* acknowledges, the Commission has never specifically addressed the continued availability of the 700 MHz Band for the secondary uses that are presently authorized following February 17, 2009, both “[t]he Commission and various affected parties have contemplated that low power broadcast auxiliary devices would lose their secondary status, and would need to vacate the band, upon completion of the DTV transition.”¹⁰ Moreover, as the *NPRM* details, secondary low power auxiliary licensees have ready access to almost 300 MHz of other spectrum in which to operate low power auxiliary stations.¹¹ Thus, those who currently operate on a secondary basis in the 700 MHz Band cannot be heard to complain about adoption of the proposals advanced in the *NPRM* (particularly if short-term waivers are made available by WCA).

Because of the risk of interference from low power auxiliary facilities operating in the 700 MHz Band to public safety and commercial operations using the same spectrum, WCA supports the Commission’s proposal to prohibit the manufacture, import, sale, offer for sale, or shipment of low power auxiliary station devices that operate in the 700 MHz Band, as of the effective date of the revised rules.¹² Unfortunately so long as low power auxiliary equipment is available that can be tuned to the 700 MHz Band, it is inevitable that, even if the Commission bars low power auxiliary use of that spectrum, some will disregard the Commission’s rules and continue to operate in the 700 MHz Band. This is illustrated by the fact that broadband service in the 2.5 GHz band recently has suffered harmful interference as a result of broadcasters and/or cable networks illegally tuning Broadcast Auxiliary Service equipment to operate on spectrum above 2500 MHz for which they are not licensed (even on a secondary basis). To reduce the risk

¹⁰ *Id.* at ¶ 11.

¹¹ *See id.* at ¶¶ 4, 16, 18.

¹² *See id.* at ¶ 17.

that 700 MHz Band public safety and commercial licensees will suffer interference from low power auxiliary operations in the 700 MHz Band, the Commission should preclude the future manufacture and distribution of low power auxiliary equipment tunable to the 700 MHz Band. While the Commission will have to remain vigilant that existing equipment is not illegally used in the 700 MHz Band after February 17, 2009, over time such legacy equipment will be taken out of service and the potential for illegal 700 MHz Band operations substantially reduced by adoption of the ban proposed in the *NPRM*.

WHEREFORE, for the foregoing reasons, WCA urges the Commission to adopt the proposals advanced in the *NPRM* to ban the operation of low power devices in the 700 MHz Band as of February 17, 2009, to modify existing Commission authorizations to preclude operation of low power auxiliary stations in the 700 MHz Band after February 17, 2009 (both subject to case-by-case waivers under the circumstances described above), and to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band as of the effective date of the new rules.

Respectfully submitted,

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