

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

**COMMENTS OF THE ASSOCIATION FOR
MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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SUMMARY

The Association for Maximum Service Television, Inc. (“MSTV”) and the National Association of Broadcasters (“NAB”) urge the Commission to adopt a reasonable phase-out process for wireless microphones that are duly licensed to operate in the 700 MHz band. Specifically, MSTV and NAB propose that wireless microphone operation on a specific frequency and geographic area end upon the earlier of (1) sixty days prior to the date on which the 700 MHz wireless entrant intends to begin service, per a notice sent to the affected wireless microphone licensees, or (2) February 2012.

The MSTV/NAB proposal ensures that there will be no harm to the commercial wireless and public safety licensees entering the 700 MHz band. Before they begin operations, all such wireless entrants will have the power to prevent wireless microphone licensees from using the entrant’s channel within a specified geographic area.

This proposal for a gradual phase-out of wireless microphones from the 700 MHz band acknowledges a simple fact: commercial wireless and public safety licensees will build out their license areas gradually over many years, not in barely four months from today in one fell swoop. Thus, to require all wireless microphone operation in the 700 MHz band to end on February 17, 2009, as proposed by the *NPRM* in this proceeding, would needlessly harm users of such equipment. Broadcast television and radio stations, motion picture and television program producers, and cable system operators rely on licensed wireless microphones to disseminate news, sports, entertainment, religious, educational, and government programming. These users, and particularly broadcast television stations spending large sums to complete the transition to digital television, cannot afford to spend the thousands of dollars needed to re-tune or replace equipment in just four months.

Also, MSTV and NAB do not oppose a narrow expansion of the class of entities eligible to be licensed to use wireless microphones in the core broadcast spectrum under Part 74 of the Commission's rules. The following entities would be added: theaters, live music producers, government bodies, and houses of worship. Like the existing class of permitted users, these entities are likely to use wireless microphones in controlled, professional settings apart from residential areas. And as with all licensed use of wireless microphones, the coordination requirement will serve an essential role in mitigating interference to broadcast television stations and other primary licensees.

Finally, the removal of licensed wireless microphones from the 700 MHz band — even under the more reasonable timeline suggested by MSTV and NAB — will add to the number of licensed wireless microphones operating in the core broadcast spectrum. Each of these licensed wireless microphones will face a risk of interference from unlicensed devices. Accordingly, MSTV and NAB urge the Commission to protect digital television stations and other licensed services in the *TV White Spaces* proceeding, adopting the protections described by MSTV, NAB, Shure Inc., and others in ET Docket Nos. 04-186 and 02-380.

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To: The Commission

**COMMENTS OF THE ASSOCIATION FOR
MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The Association for Maximum Service Television, Inc. (“MSTV”)¹ and the National Association of Broadcasters (“NAB”)² file these comments to urge the Commission to adopt a reasonable phase-out process for wireless microphones that are duly licensed to operate in the 700 MHz band. While MSTV and NAB concur with the Commission’s tentative conclusion that low power auxiliary stations, including wireless microphones, should not remain permanently in the 700 MHz band, there is no basis for the proposal to ban their use on all 700 MHz channels throughout the country on February 17, 2009.³ Such a ban would be premature,

¹ MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

² NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

³ *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, WT Docket No. 08-166, *Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition*, WT Docket No. 08-167, Notice of Proposed Rulemaking and Order, FCC 08-188 (Aug. 15, 2008) (“*NPRM*”).

as 700 MHz licensees will not build out services *en masse* on that day. Additionally, local television stations would suffer financially just as they are deploying funds to bring the digital transition to a successful close. Accordingly, MSTV and NAB ask the Commission to adopt a reasoned plan requiring licensed wireless microphone operations in a given 700 MHz band frequency and geographic area to cease upon the earlier of (1) sixty days prior to the date on which the 700 MHz wireless entrant intends to begin service, per a notice sent to the affected wireless microphone licensees, or (2) February 2012.

Moreover, MSTV and NAB agree that the Commission should slightly adjust the list of entities eligible to hold Part 74 licenses for wireless microphone operation in the core broadcast spectrum. This expanded list would include theaters, live music producers, houses of worship, and government bodies; each of these users would, like the current licensees, operate intermittently and in professional, controlled settings. They would also be subject to the strict coordination rules of Part 74 to avoid interference to reception of broadcast television stations.

Finally, the removal of licensed wireless microphones from the 700 MHz band — even under the more reasonable timeline suggested by MSTV and NAB — will add to the number of licensed wireless microphones operating in the core broadcast spectrum. Each of these licensed wireless microphones will face a risk of interference from unlicensed devices. Accordingly, this proceeding underscores the need for the Commission to consider the risks of interference to digital television and other licensed services in the *TV White Spaces* proceeding, as documented by MSTV, NAB, Shure Inc. (“Shure”), and others in ET Docket Nos. 04-186 and 02-380.

I. THE COMMISSION SHOULD ADOPT A REASONABLE PHASE-OUT PROCESS FOR LICENSED WIRELESS MICROPHONE OPERATIONS IN THE 700 MHZ BAND

MSTV and NAB propose a reasonable phase-out plan that will both protect fully 700 MHz entrants *and* avoid unnecessary disruption to users of licensed wireless microphones. Under this plan, all wireless microphone use in the 700 MHz band would end by February 17, 2012. Prior to that date, however, a commercial wireless or public safety entrant could cause operations to cease by notifying licensed users of the date on which the entrant intends to commence service. That notice would specify the frequencies on which the entrant will operate, an applicable geographic area, and the date on which service will begin (which date should not be sooner than 120 days of the date on which the notice was sent).⁴ Within sixty days prior to the date of commencement specified in the notice, the licensed wireless microphone user would cease all operations throughout the applicable geographic area on the frequency listed.

As discussed below, this reasonable phase-out plan will serve the public interest because it will avoid premature disruption to licensed users of wireless microphones and allow for interference-free operation by commercial wireless and public safety licensees entering the 700 MHz band.⁵ It also will be consistent with the Commission's approach to other secondary services in the 700 MHz band.

A. A Gradual Phase-Out Will Prevent Unnecessary Disruption of Service

As the Commission's *Notice of Proposed Rulemaking* (the "NPRM") in this proceeding acknowledges, 156 licensees currently hold authorizations to operate licensed

⁴ For the lower 700 MHz B and C block licensees, this area would presumably be the CMA to which they are licensed. In all other blocks, licensees should indicate a zone within their license area.

⁵ MSTV and NAB support the Commission's proposal to immediately cease all marketing and sale of low power auxiliary equipment tuned to operate in the 700 MHz band. *See NPRM* at ¶ 17. This ban is a logical outgrowth of any transition plan. *See, e.g., Requirements for Digital Television Receiving Capability*, ET Docket No. 05-24, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 11196 (June 9, 2005) (prohibiting the manufacture, import or interstate shipment of analog-only television equipment).

wireless microphones and other low power auxiliary equipment in the 700 MHz band.⁶ All of these licensees should not be expected to cease operation in just four months.

Adoption of such a short timeframe for licensed wireless microphones to transition to other bands inevitably will result in service disruptions. Re-tuning equipment to cease operation in the 700 MHz band will cost on average \$50,000 to \$75,000 per station. Stations' budgets, which already have been completed for the year, do not account for this expense; station resources have been allocated to complete the digital television transition. Even if stations could afford to purchase new equipment to operate in different bands in such a short timeframe, manufacturers may not be able to meet the unexpected demand. Of course, a significant increase in demand is also likely to add to the cost of obtaining new or re-tuned equipment.⁷

An abrupt cessation of operations in the 700 MHz band would cause needless harm to users of licensed wireless microphones and the public interest. Licensed wireless microphones, including those operating in the 700 MHz band, benefit the public in significant ways. Broadcast radio and television stations, motion picture and television program producers, and cable system operators rely on licensed wireless microphones to disseminate news, sports, entertainment, religious, educational, and government programming. Licensed wireless microphones are used to entertain the public at large, live, sporting events. They also have been used at both the Republican and Democratic National Conventions and news events to inform the public. And they are used in times of emergency to quickly disseminate important safety information and updates. Consequently, interruptions in licensed wireless microphone

⁶ *NPRM* at ¶ 7.

⁷ Because numerous broadcasters will need to re-license their 700 MHz wireless microphones in other bands, a gradual transition will also be more administratively practicable, as it would avoid delay from many applications being filed at the FCC at the same time.

operations frustrate the public interest and risk harm to lives and property. A more gradual transition will help prevent such harmful service disruptions.

B. A Gradual Phase-Out Will Fully Protect the Interests of 700 MHz Entrants

Adoption of a gradual phase-out plan will fully protect 700 MHz entrants from interference. Under the plan proposed by MSTV and NAB, any commercial wireless or public safety licensee will be able to ensure that its frequency is cleared of wireless microphone use prior to beginning service — even if that date of first service is February 17, 2009. However, many areas will remain unserved during the three-year phase-out period proposed by MSTV and NAB. The Commission’s performance requirements do not require commercial wireless licensees to meet any build-out benchmark until February 2013, and at that time the licensees must serve only 35 percent of their geographic area (for CMA and EA licenses) or 40 percent of the population in each EA comprising their geographic license area (for REAG licenses).⁸ Moreover, the Commission is still in the process of resolving the build-out and licensing rules for the upper 700 MHz public/private partnership, which will occupy 22 MHz of that band.⁹

As CTIA - The Wireless Association has explained, “The notion that every hertz of licensed spectrum must be put into use throughout each licensed area does not make sound economic sense.”¹⁰ Commercial wireless and public safety licensees will build out their license areas gradually over many years, not in the barely four months from today.

⁸ See 47 C.F.R. § 27.14(g)–(h).

⁹ See, e.g., *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, Third Further Notice of Proposed Rulemaking, FCC 08-230 (Sept. 25, 2008).

¹⁰ CTIA Comments, WT Docket No. 06-150, at 6 (May 23, 2007).

C. A Gradual Phase-Out Is Consistent with Commission Precedent and Provides Even More Protection to 700 MHz Licensees Than Prior Decisions

The Commission has already adopted a similar phase-out approach in the 700 MHz band, which serves as a model. Specifically, in its 2004 decision concerning the digital transition of low power television, TV Translator, and Class A stations (collectively, “LPTV stations”), the Commission allowed LPTV stations to build *new* digital companion stations in the lower 700 MHz band, and it imposed no deadline by which they must unilaterally cease operation.¹¹ The Commission also ensured that by sending notice of its intention to initiate service, a wireless entrant can cause an LPTV station to cease operation within 120 days, unless the LPTV station obtains consent of the wireless entrant to continue operations or a stay from the Commission. In deciding not to prohibit LPTV station operations altogether at the end of the transition, the Commission explained that it “seek[s] a balance for the resolution of the potential for interference conflicts that will neither unduly delay the rendering of 700 MHz wireless service, nor result in the premature disruption or cessation of digital LPTV or TV translator service.”¹²

The phase-out plan offered by MSTV and NAB is more conservative than that adopted just four years ago for LPTV stations in the 700 MHz band. Whereas the Commission set no hard deadline for the cessation of digital LPTV stations operating outside of the core broadcast spectrum, MSTV and NAB have proposed that by February 17, 2012, all licensed

¹¹ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd. 19331, 19355–56 (Sept. 9, 2004).

¹² *Id.* at 19356. While the Commission did not provide the same relief for LPTV Stations in the upper 700 MHz band, it did so solely because of since-repealed statutory language that left the Commission “no latitude” in clearing LPTV stations from the upper 700 MHz band at the end of the transition. *Compare* 47 U.S.C. § 337(e)(1) (“Any person who holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency after the date on which the digital television service transition period terminates, as determined by the Commission.”), *with* Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 3002, 120 Stat. 4, 21–22 (2006) (amending § 337(e)(1) to state “Any full-power television station licensee that holds a television broadcast license to operate between 698 and 806 megahertz may not operate at that frequency after February 17, 2009”).

wireless microphone operation in the 700 MHz band would cease, even if the 700 MHz licensee is not yet ready to use that spectrum. MSTV and NAB have taken this measured approach notwithstanding the fact that wireless microphones operate at power levels of 5 to 250 mW, well below that of most LPTV stations. Simply put, MSTV and NAB's plan is a conservative and reasonable approach to phasing licensed wireless microphones out of the 700 MHz band and would cause no harm to anyone.

II. WIRELESS MICROPHONE LICENSEES HAD NO REASON TO BELIEVE THAT THEIR USES OF THE 700 MHz BAND WOULD ALL CEASE IN FEBRUARY 2009

Despite assertions to the contrary, television broadcast stations and other licensed users of wireless microphones had no reason to believe that the Commission would require total cessation of such equipment in the 700 MHz band on February 17, 2009. Sudden imposition of such a deadline — just four months from today — would be inequitable and is unnecessary.

First, prior rulings concerning the DTV transition made no mention that wireless microphones would be forced out of the 700 MHz band in every part of the country on the date that the full-power DTV transition ends, regardless of whether new entrants are ready to use the spectrum. During the past two decades, the Commission has issued dozens of orders on the transition, including the six major Reports and Orders during the 1990s, multiple reconsideration orders, subsequent DTV periodic reviews, and related orders concerning new uses of the out-of-core spectrum. Not one of these orders suggested a hard deadline for ending wireless microphone use in the 700 MHz band.

For example, in the *Lower 700 MHz Report and Order*, which is cited extensively by the *NPRM*, the Commission explained why *new* licensed wireless microphone operations would be minimal during the transition, noting that the “extensive broadcast use throughout the

DTV transition” would crowd out secondary, licensed wireless microphone operations.¹³ This statement does not support the conclusion that all licensed wireless microphone operations would need to immediately cease *after* the transition is complete. It merely explains why, because of use of channels 2-69 by full-power broadcasters for both digital and analog channels, there were unlikely to be new uses of wireless microphones during the DTV transition.

Other Commission decisions similarly gave broadcasters no notice that all use of the 700 MHz band for wireless microphones would cease as of next February. For example, the *NPRM* cites a 2002 Order authorizing, for the first time, secondary use of Wireless Assist Video Devices in the broadcast spectrum. There, however, the Commission chose only not to extend that new authorization to the 700 MHz band. The same is true with the Commission’s 2006 decision not to authorize new, unlicensed devices in the 700 MHz band.¹⁴ These decisions do not suggest that *existing*, secondary uses of the band would cease automatically at the end of the digital transition, rather than pursuant to a gradual transition as new entrants announce initiation of service. The *NPRM* also cites a statement by a wireless microphone manufacturer on its website, but that alone cannot credibly serve as sufficient support for an administrative agency’s conclusions in a rulemaking proceeding.¹⁵

Second, as noted above, the Commission has taken a gradual, as needed, approach in relocating LPTV stations from the 700 MHz band, even though those stations operate at

¹³ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd. 1022, 1037–38 (Dec. 12, 2001).

¹⁴ *Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04-186, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Docket No. 02-380, First Report and Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd. 12266, 12267 (Oct. 12, 2006).

¹⁵ See *NPRM* at ¶ 11 (citing websites of Shure Inc. and Lectrosanics). In determining whether the Commission had provided adequate notice of a final rule, the DC Circuit concluded that locating a proposal in a sole footnote placed in the background section of a *NPRM* provided inadequate notice to affected parties. See *MCI Telecomm. Corp. v Fed. Comm’n Comm’n*, 57 F.3d 1136, 1140–43 (D.C. Cir. 1995). It is even more unreasonable to expect that affected parties review third-party websites to determine how an agency will proceed on a matter.

considerably higher power than wireless microphones. Given the power disparities between wireless microphones and LPTV stations, the broadcast television community reasonably concluded that the Commission would allow wireless microphone operations to continue on a secondary basis until the wireless entrant commenced service in a particular geographic area.

III. MSTV AND NAB SUPPORT ALLOWING A NARROW CATEGORY OF NEW ENTITIES TO BE LICENSED UNDER PART 74 TO USE WIRELESS MICROPHONES

Like others in this proceeding, MSTV and NAB do not oppose a narrow expansion of the class of users eligible to be licensed to use wireless microphones under Part 74 of the Commission's rules. The class of expanded users would be limited to those likely to use wireless microphones in controlled, professional settings apart from residential areas. As with all licensed use of wireless microphones, the coordination requirement will serve an essential role in mitigating interference to primary licensees.

Currently, eligibility for a low power auxiliary station license is limited to the following categories of entities: licensees of AM, FM, TV, International broadcast, or LPTV stations; broadcast network entities; operators of a cable television system that produces program material for origination or access cablecasting; motion picture and television program producers; and certain entities with specified interests in broadband radio service or educational broadband service licenses.¹⁶ MSTV and NAB would add four categories to that list as part of this rulemaking proceeding: theaters, live music producers, government bodies, and houses of worship.

This limited expansion is consistent with the types of users already authorized. In particular, theaters and music producers serve functions similar to the categories of users listed

¹⁶ See 47 C.F.R. § 74.832(a).

above, which likewise entertain the public and distribute performances of social and artistic import. Also, many religious entities are already licensees of AM, FM, TV, or LPTV stations. Government bodies will use wireless microphones at local government meetings, state and federal town hall meetings, and similar events; these uses are not dissimilar to those of the existing classes of licensees.

These new users, like all low power auxiliary station licensees, will by nature operate in a manner that avoids interference to full-power television stations. First, the venues in which they operate (*e.g.*, Broadway theaters, sports stadiums, movie studios, and town halls) are non-residential. Television receiving equipment is unlikely to be found in such venues. Second, all licensed microphone use is coordinated pursuant to the requirements of Part 74. The Commission has recognized the benefits of frequency coordination and has encouraged its use. For example, in considering how to revise its Part 74 broadcast auxiliary service rules, the Commission stated that frequency coordination “rules are necessary to promote spectrum efficiency and to minimize the potential for any system to cause harmful interference to other systems in the same frequency band.”¹⁷ The Commission also has concluded that frequency coordination is a more efficient process for reducing interference risks than other alternatives.¹⁸ Additionally, coordination facilitates the expeditious processing of applications by allowing parties to directly address any interference concerns.¹⁹

¹⁷ *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78, and 101 of the Commission’s Rules*, ET Docket No. 01-75, Notice of Proposed Rulemaking, 16 FCC Rcd. 10556, 10570 (Mar. 20, 2001).

¹⁸ *See Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands*, IB Docket No. 02-10, Report and Order, 20 FCC Rcd. 674, 701-702 (Dec. 15, 2004) (explaining that frequency coordination eliminates interference risks and rejecting other proposals to minimize interference risks because the benefits of coordination outweigh any associated burdens).

¹⁹ *See Review of Quiet Zones Application Procedures*, WT Docket No. 01-319, Report and Order, 19 FCC Rcd. 16258, 3271-3272 (Feb. 12, 2004) (encouraging applicants and Quiet Zone applicants to utilize advance notification and coordination).

The Commission has recent experience with the carefully managed introduction of a new class of user of secondary, licensed wireless microphones. In 2007, MSTV and NAB, along with the Society of Broadcast Engineers, developed a consensus plan with representatives of operators of commercial nuclear power plants to allow occasional use of wireless headsets and intercom devices at plant sites, which are by design remote from residential areas.²⁰ While a limited exemption was provided for coordination when microphones are operated inside the heavy, concrete nuclear power plants, coordination of outdoor use in the plant area has successfully avoided interference. In addition, like all secondary users, these nuclear power plants were reminded of their obligations as secondary users to prevent interference to primary uses (*i.e.*, full-power television stations), and of the risk that they must accept that such primary uses will interrupt or otherwise prevent their use of the spectrum at any time. The Commission can take similar steps as it narrowly expands the class of users eligible for a Part 74 license.

IV. THE COMMISSION'S ACKNOWLEDGMENT OF INTERFERENCE RISKS IN THE 700 MHZ BAND CONFLICTS WITH ITS APPROACH IN THE TV WHITE SPACES PROCEEDING

A. Prohibiting Licensed Wireless Microphone Operations in the 700 MHz Band Makes It Critical That the Commission Appropriately Address Interference Risks in the TV White Spaces Proceeding

The removal of licensed wireless microphones from the 700 MHz band — even under the more reasonable timeline suggested by MSTV and NAB — will add to the number of licensed wireless microphones operating in the core broadcast spectrum. Each of these licensed wireless microphones will face a risk of interference from unlicensed devices.

In many markets, spectrum demands for licensed wireless microphone operations already exceed the supply of channels. For example, twenty-four television channels were used

²⁰ *Request of Nuclear Energy Institute and Utilities Telecom Council for Waivers to Permit Use of Certain Wireless Headsets and Intercom Devices at Nuclear Facilities*, ET Docket No. 05-345, Supplement to Petition for Waiver (May 15, 2007).

for wireless microphones in Denver during the Democratic National Convention, and congestion due to licensed wireless microphone use is apparent every day in highly urban environments like New York City. Given that more wireless microphones will operate in the core broadcast spectrum as a result of this proceeding, MSTV and NAB urge the Commission to adopt rules in the *TV White Spaces* proceeding that will safeguard licensed wireless microphones from interference — including a geolocation-based framework and safe harbor for wireless microphones, as suggested by Shure.²¹

B. The Commission’s Acknowledgement of Interference Risks to 700 MHz Licensees Warrants a Similar Acknowledgement in the *TV White Spaces* Proceeding

In the *NPRM*, the Commission expresses concern “about the potential for harmful interference from low power auxiliary devices to 700 MHz Band public safety and commercial wireless operations,” and accordingly concludes that wireless microphones and 700 MHz wireless services cannot co-exist under any circumstances.²² The Commission reaches this tentative conclusion even though wireless microphones operate at very low power levels, are subject to strict coordination requirements, are used in controlled, professional environments, and are licensed to users who can be located easily in the event of an interference complaint. In the separate *TV White Spaces* proceeding, however, the Commission contemplates authorization in the core broadcast spectrum of fixed, unlicensed devices at 4 Watts (or 4,000 mW) and personal/portable devices at 100 mW. The personal/portable devices would operate in homes and apartment buildings within feet or even inches of DTV receivers and analog-to-digital converter boxes.

²¹ See *Ex Parte* Letter from Catherine Wang, Counsel to Shure to Marlene H. Dortch, Secretary, FCC, ET Docket Nos. 04-186 and 02-380 (Oct. 2, 2008).

²² *NPRM* at ¶ 14.

Were one to apply the reasoning of the *NPRM* to the *TV White Spaces* proceeding, unlicensed devices would not be allowed to operate in TV channels 2-51. At a minimum, MSTV and NAB urge the Commission to adopt rules that prevent interference to the reception of DTV signals and other licensed services in this core broadcast spectrum. As MSTV has documented in the *TV White Spaces* proceeding, a geolocation-based framework provides the only hope for possibly allowing unlicensed devices to lawfully operate in the broadcast spectrum.²³ Without such a geolocation-based framework and other protections, unlicensed devices will harm the public's interest in interference-free operations. Because of the relationship of the Commission's conclusions in this proceeding to the *TV White Spaces* proceeding, MSTV and NAB are filing concurrently a copy of these comments in dockets ET 04-186 and 02-380.

²³ See *Ex Parte* Letter from Bruce Franca, VP, Policy and Technology of MSTV to Marlene H. Dortch, Secretary, FCC, ET Docket Nos. 04-186 and 02-380, Oct. 1, 2008. As MSTV has explained, the Commission's own laboratory and field tests show that approaches suggested by proponents of personal/portable devices would not protect licensed uses in the broadcast spectrum. *Id.*

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For the reasons set forth above, MSTV and NAB respectfully request that the Commission adopt a reasoned phase-out plan for transitioning licensed wireless microphones outside of the band.

Respectfully submitted,

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