**Before the**
**Federal Communications Commission**
**Washington, DC 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| 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 |

**REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.**

MetroPCS Communications, Inc. ("MetroPCS")[1], by its attorneys, respectfully submits these reply comments in response to the *Notice of Proposed Rulemaking*[2] ("*NPRM*"), released by the Federal Communications Commission ("FCC" or "Commission") on August 21, 2008 in the above captioned proceedings. In reply, the following is respectfully shown:

## I. THE COMMISSION SHOULD PROCEED WITH ITS PLAN TO REQUIRE LOW POWERED AUXILIARY STATIONS TO CEASE OPERATIONS IN THE 700 MHZ BAND ON FEBRUARY 17, 2009

As discussed further below, MetroPCS joins the majority of commenters that support the Commission's proposal to require low power auxiliary stations ("LPAS") to cease operations in the 700 MHz band by February 17, 2009 because: (1) 700 MHz licensees are entitled to an

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and of its FCC-licensed subsidiaries.

[2] *See Revision to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Bands, Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including*

(continued...)

unencumbered right to the spectrum they purchased, beginning on the date established by law;[3] (2) even if commercial or public safety service is not going to be provided on February 17, 2009,[4] licensees have a reasonable expectation that they can build-out and test their networks without being significantly impaired by incumbent operators; (3) the wireless microphone licensees have been on notice for years that this spectrum was being reallocated and they should already have taken steps to relocate; and (4) as many commenters have observed, many of the wireless microphone uses in this band are not authorized and are not entitled to a transition period. The Commission also should not be persuaded by the misguided attempt to establish a phased-out transition based on the Commission's Low Power Television Order.[5] Finally, in the event the Commission allows a phased-out transition of LPAS operators - - which it should not do - - the Commission must then accord 700 MHz licensees additional time to satisfy their build-out requirements.

### A. Delaying The Transition of Low Powered Auxiliary Stations off of the 700 MHz Band will Negatively Affect the Build-out of New 700 MHz Networks

The Commission should refrain from considering proposals offered by MSTV, NAB and others[6] that suggest that the Commission should allow LPAS to have a transition period to exit the spectrum in the 700 MHz band that would extend beyond February 17, 2009. Should the

---

(...continued)

*Wireless Microphones, and the Digital Television Transition*, Notice of Proposed Rulemaking and Order, FCC 08-188 (Rel. August 21, 2008), 73 Fed. Reg. 51406, (September 3, 2008).

[3] Section 3002 of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (enacted February 8, 2006).

[4] While some commenters stated that it will take years for these networks and facilities to be built out (*see, e.g.*, Comments of Audio-Technica at 9), it should be noted that some services, including public safety services, will be available on this date (*see, e.g.*, Comments of St. Clair County, Illinois Emergency Telephone Systems Board.)

[5] *In the Matter of 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 (rel. Sept. 9, 2004) *("LPTV Order").*

[6] *See, e.g.,* Comments of MSTV-NAB; Comments of Shure; Comments of Audio-Technicia.

Commission accept such a proposal, it would do so in blatant disregard of the interests of the successful bidders for the licenses in the 700 MHz auction,[7] which raised more revenue than any prior FCC auction. Participants in the 700 MHz auction - - including MetroPCS - - paid comparatively high prices for those licenses,[8] partly based on the expectation these licenses would be cleared of all incumbent users as of February 17, 2009.[9] Moreover, as noted by another commenter, the fact "that these LPAS are secondary, and thus 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*."[10] Further, despite the claims of wireless microphone manufacturers that their devices are so low powered as to not be an issue,[11] as a commenter with significant technical expertise pointed out, "LPAS devices have the potential to cause substantial harmful interference to new services in the 700 MHz" including those of public safety as well as new commercial services.[12] As Verizon Wireless also noted, the interfering signals from broadcast auxiliary devices would be strong enough to disrupt the operations of both mobile and base station receivers.[13] Therefore, the continued existence of LPAS on the 700 MHz spectrum would detrimentally affect the build-out of networks by these

[7] Indeed, it is ironic that the users being relocated paid nothing for their license and still complain about the cost when 700 MHz licensees are forced to pay millions to acquire spectrum needed by their businesses.

[8] *See Statement of Chairman Martin on Close of Auction 73*, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280887A1.pdf.

[9] *See* 47 C.F.R. 27.13(b) ("Initial authorizations for the 698-764 MHz, 747-762 MHz, and 777-792 MHz bands, will extend for a term not to exceed ten years *from February 17, 2009*.") (emphasis added); *see also* Comments of APCO at 2 for the further evidence of the general consensus that the 700 MHz Spectrum will be cleared of all users ("As of February 17, 2009, the 700 MHz public safety spectrum will finally be cleared of broadcast stations, making way for immediate public safety operations anywhere in the nation.").

[10] Comments of The Wireless Communications Association International, Inc. at 3. (emphasis added)

[11] Comments of Shure at 4; Comments of Audio-Technica U.S., Inc. at 8.

[12] Comments of V-COMM, L.L.C. at 10.

[13] Comments of Verizon Wireless at 4.

new license holders. Like Verizon Wireless,[14] MetroPCS has yet to complete testing that would determine to what extent its licenses in the 700 MHz band would be impacted from the interference from operations of LPAS. However, MetroPCS and other 700 MHz licensees should not have to engage in a "test first" approach, complete with the attendant delays, when building out networks to provide crucial advanced wireless services to the American public.

Moreover, there are countless unauthorized users currently operating in this spectrum,[15] and these unauthorized operators will very likely cause significant impediments to commercial and public safety users building out these new networks. Requiring clearance of law abiding, authorized users from the spectrum will enhance the Commission's and licensees' ability to identify and clear unauthorized LPAS operators from the 700 MHz band. This will not only aid commercial wireless providers who are building new networks to support their new services, but also will be of great public service to first responders already using the spectrum.[16]

Some commenters claim that the Commission's proposal would result in too short a turnaround time for LPAS operators to clear the spectrum.[17] But, the truth is that both manufacturers and users of LPAS have been well aware for a considerable time that this transition was coming and have known that the DTV transition would require LPAS operators to clear off from this spectrum. The prior notice is evident in the fact that Congress officially set February 17, 2009 as the final date of the transition to DTV over three years ago.[18] Moreover,

---

[14] *Id.* at 5.

[15] *See* Comments of Verizon Wireless at 6; The Commission is also aware of this problem and has indicated that the Enforcement Bureau is conducting an investigation into the marketing practices of various manufacturers of wireless microphones to determine whether the manufacturers are encouraging unauthorized use of the spectrum, *See NPRM* at ¶ 22.

[16] *See* Comments of APCO at 2; Comments of St. Clair County, Illinois Emergency Telephone System Board at 1.

[17] Comments of Sennheiser at 15; Comments of Shure at. 2; Comments of MSTV & NAB at 3.

[18] Section 3002 Pub. L. 109-171 (enacted February 8, 2006).

notwithstanding MSTV and NAB's claims that their members have not had enough time to properly exit the spectrum under the Commission's proposal,[19] the fact is that NAB began broadcasting Public Service Announcements ("PSAs") regarding the DTV transition in September of 2007.[20] Also, in their own comments, manufacturers of wireless microphones and other LPAS such as Shure, Audio-Technica U.S., Inc., and Sennheiser all reference business practices that indicate prior knowledge that their devices would no longer be allowed to operate on this spectrum.[21] Since these commenters were aware of the impending DTV transition well in advance of the Commission's *NPRM*, LPAS operators should not be able to claim surprise regarding the requirement to clear off the spectrum by February 17, 2009. Further, given that wireless microphone manufacturers had advance knowledge of the transition, any failure to fully inform their customers should not be the responsibility of the innocent 700 MHz auction winners. The microphone manufacturers should have notified their customers, and the consequences of any failure should be visited upon the manufacturers.

Moreover, it should be noted that were the Commission to now decide to delay the clearing of the spectrum, such action could constitute a *de facto* modification to the licenses won in Auction 73. Under the statutory framework governing the Commission's award of licenses,

---

[19] Comments of MSTV & NAB at 4 ("All of these licensees should not be expected to cease operation in *just four months*" (emphasis added)).

[20] John Eggerton, "NAB debuts DTV-transition PSA, 30 Second Spot was delivered to Stations Last Week," *Broadcasting and Cable*, September 26, 2007, available at http://www.broadcastingcable.com/article/CA6483722.html (last accessed on October 16, 2008).

[21] Comments of Audio-Technicia at 5 ("Approximately eight years ago, in anticipation of the DTV transition, A-T ceased development of new 700 MHz products."); Comments of Shure at 4 ("Despite the lack of an FCC mandate or clarity regarding continued secondary operations in the 700 MHz band, Shure elected years ago to start the process of transitioning its wireless microphones products and customers out of the 700 MHz band. … This process was largely completed in 2007 when Shure discontinued the manufacture of the very last of its 700 MHz wireless microphones for sale in the United States."); Comments of Sennheiser at 14 ("Lacking guidance from the Commission, Sennheiser began educating its customers about the coming 700 MHz transition in early 2007.").

any licensee is entitled to a hearing before the Commission modifies its license.[22] This would, of course, require the requisite notice and comment period required for Administrative Procedure Act ("APA") compliance and would be subject to the APA's arbitrary and capricious standard of review. Modifying the licenses at this late date via a rulemaking proceeding dealing with low power auxiliary stations would not be sustainable.

Finally, any transition period that allows unlicensed microphone users to continue unauthorized operations is inappropriate. These users are not licensed, should not be licensed, and any transition would reward scofflaws and would not serve the public interest.

### B. Proponents of a Phase-Out for Low Powered Auxiliary Stations Misapply the Commission's Rules Regarding Low Powered Television's Digital Transition

The Commission should not be persuaded by certain commenters' misguided interpretation of the Commission's *Report and Order* establishing rules for the Digital Low Power Television, Television Translator, and Television Booster Stations as precedent for establishing a gradual phase-out of incumbent operators off of the 700 MHz band spectrum.[23] The reality is that there are fundamental differences between Low Power Televisions ("LPTVs"), television translators, and television booster stations and the LPAS operating in the 700 MHz band.

At issue before the Commission in the *LPTV Order* was whether LPTVs, TV translator stations and TV booster stations needed to cease their analog broadcast facilities contemporaneously with full-service television stations,[24] which the Commission eventually choose to utilize. In that case, and unlike the matter currently before the Commission, Congress

---

[22] 47 U.S.C. § 309.

[23] Comments of MSTV& NAB at 6 (citing *LPTV Order*); Comments of Audio-Technicia at 7.

[24] When the *LPTV Order* was issued the transition date for the DTV Transition was set for December 31, 2006.

had specifically granted the Commission the discretion to adjust the digital transition deadline for Class A, TV translator and LPTV stations.[25] Congress has provided no such discretion to the Commission with regard to scheduling a phased-out deployment for LPAS to exit the 700 MHz band. In addition to this specific grant of discretionary authority from Congress, the Commission also was compelled to delay the DTV transition for these types of stations because of a real concern about the lack of sufficient alternative spectrum to accommodate these uses.[26] Here, many commenters have echoed the statements of both the Commission and MetroPCS [27] that there currently exists ample alternative spectrum to accommodate LPAS.[28]

### C. If the Commission Decides to Grant a Phase-out Period, it Also Should Provide Additional Time for 700 MHz Build-Out

Even though MetroPCS strongly supports the Commission's proposal to require all LPAS operators to immediately vacate the 700 MHz band spectrum on February 17, 2009, in the event the Commission ultimately decides to support some type of a gradual phase-out period for LPAS operators to cease operations on the 700 MHz band, the Commission must in fairness also provide comparable time relief for the 700 MHz licenses whose ability to meet strict build-out requirements will be hampered by the continued interference caused by LPAS incumbent operators.[29] Such relief would be equitable given the unprecedented build-out requirements

[25] *See* 47 U.S.C. 336(f)(4).

[26] LPTV Order at 19337.

[27] *NPRM* at ¶ 16; Comments of MetroPCS at 3.

[28] Comments of White Spaces Coalition at 3; Comments of the Wireless Communications Association International, Inc. at 5.

[29] No matter what the Commission does for lawful LPAS services, all unlicensed operators must leave and the manufacturers must be required to undertake efforts to notify all users of their effective termination date.

imposed on 700 MHz licensees.[30] For example, if the Commission decided to provide wireless microphone and other LPAS users with one year to transition out of this spectrum, the Commission should then postpone for one year the start date for the initial four year service construction benchmark for 700 MHz licensees, and also should extend the term the 700 MHz license by an additional year.[31] Such a policy would be equitable given the fact, as explained above, that any delay in the transition of LPAS off this spectrum risks causing comparable delays to the licensees in their efforts to build-out these networks.

## II. THE COMMISSION SHOULD REFRAIN FROM SETTING ASIDE THE 2020-2025 MHz BLOCK

MetroPCS was pleased to see the near universal opposition of commenters to the Public Interest Spectrum Coalition ("PISC") proposal to decouple a 5 MHz block of spectrum in the 2020-2025 MHz band for the purpose of establishing a General Wireless Microphone Service ("GWMS").[32] The strong opposition filed by Shure, Audio-Technicia, and Sennheiser Electronic Corporation - - all manufacturers of wireless microphones, and companies that would likely benefit from a GWMS - - were particularly noteworthy. These opposing comments convincingly demonstrated that this particular 5 MHz of spectrum will not be suitable for wireless microphone users,[33] does not contain enough capacity for these operators,[34] and that better alternatives exist

[30] *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et, al,* Second Report and Order, 72 Fed. Reg. 48833-34 (August 24, 2007). (*e.g.,* imposing geographic coverage requirements in lieu of traditional population coverage on lower band 700 MHz licensees, with a strict "use it or lose it" enforcement mechanism).

[31] The Commission in other circumstances, such as AWS, gave licensees an extended license term because of the need and time required to clear incumbents. Applying that same theory here requires the Commission to extend the 700 MHz licenses for a similar period.

[32] *See* Comments of Audio-Technicia; Comments of Shure at 12 ("PISC's suggestion that all wireless microphones seeking interference protection 'move' to the 2020-2025 MHz band is well outside the bounds of realistic or helpful solution and should be disregarded."); *see also* Comments of Sennheiser.

[33] Comments of Shure at 12 ("First and foremost, the inferior propagation characteristics in the 2020-2025 MHz band will not support contemporary wireless microphone operations.")

for such a service.[35] Consequently, it is clear that it would not be in the public interest to reallocate the 2020-2025 MHz band for the proposed GWMS service. Instead, the public interest would be best served if the Commission refrains from decoupling this 5 MHz from the paired J block in the upcoming AWS auction as long-advocated by MetroPCS.[36]

Respectfully submitted,

Carl W. Northrop
Jason M. Rosenstock
Paul, Hastings, Janofsky and Walker, LLP
875 15th Streets, NW
Washington, DC 20005
Telephone: 202-551-1700
Facsimile: 202-551-1705

Mark A. Stachiw
Executive Vice President,
General Counsel & Secretary
2250 Lakeside Boulevard
Richardson, TX 75082
Telephone: 214-570-5800
Facsimile: 866-685-9618

LEGAL_US_E # 81257572.4

(...continued)

[34] Comments of Audio-Technicia at 12 (”… while PISC’s proposal is constructive, it represents only a partial solution, as the band consists of only 5 MHz of spectrum which is less than one-third of the amount of spectrum minimally necessary to allow interference free wireless microphone operations in most markets.”); Comments of Shure at 12 (“Second, the amount of spectrum that the PISC proposal would make available (5 MHz) for interference –free operations is woefully inadequate…”); Comments of Sennheiser at 3.

[35] Comments of Sennheiser at 16 (“But the 2020-2025 MHz band is no substitute for 698-806 MHz.”).

[36] *See* Comments of MetroPCS at 4-7.