

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Revision to the 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)	

REPLY COMMENTS
of
THE PUBLIC INTEREST SPECTRUM COALITION

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THE PUBLIC INTEREST SPECTRUM COALITION

Media Access Project, on behalf of the Public Interest Spectrum Coalition (PISC), files these reply comments in response to the comments on its *Petition for Rulemaking* and the additional proposals set forth by the Commission to address the potential for interference by wireless microphones users – both authorized and unauthorized – with public safety and commercial licensed services authorized by the Commission to commence operation on broadcast channels 52-69.

SUMMARY

In a complete reversal of its previous insistence that the white spaces cannot be shared with non-broadcasters under any circumstances, the National Association of Broadcasters (NAB) and the Association for Maximum Service Television (MSTV) (“NAB/MSTV”) favor expanding eligibility of wireless microphones – albeit only as a reward for their allies in opposing authorization of unlicensed white spaces devices. Even more remarkably, NAB/MSTV remains silent on the more than 1 million “broadcast pirates” operating Part 74 Subpart H devices without a license. Yet at the same time that NAB/MSTV shows such astonishing liberality and generosity of spirit toward users

of wireless microphones – licensed and pirate alike – they continue to vigorously oppose the legal authorization of far more intelligent, interference-avoiding devices in Docket No. 04-186.

NAB/MSTV further undermine their credibility by simply asserting, without the support of any engineering data, that the existing wireless microphone systems will not interfere with the deployment of new cellular services authorized for the 700 MHz band while simultaneously insisting that more intelligent and more strictly controlled unlicensed white spaces devices will create harmful interference for both broadcasters and authorized wireless microphone users. These assertions fly in the face of the engineering data submitted by commentors V-Comm and the Society of Broadcast Engineers in this proceeding, with engineering comments filed by white space supporters in Docket No. 04-186, and with the recent report by the Office of Engineering and Technology (OET) summarizing extensive Commission testing of proposed “smart radio” technologies in both the lab and in the field.¹

Contrary to the self-serving position taken by NAB/MSTV, and by the wireless microphone manufacturers, the engineering data submitted by both V-COMM and the Society of Broadcast Engineers shows that the widespread unauthorized use of wireless microphones on the 700 MHz band represents a real problem, which the Commission must address immediately.² Nor should the Commission pay heed to the argument of NAB/MSTV and the wireless microphone manufacturers that the Commission must bear the blame for creating this crisis by failing to act sooner or by “encouraging” wireless microphone manufacturers to market to unauthorized users by failing to

¹Unsurprisingly, NAB and MSTV have sought to discredit the FCC’s engineering analysis as well.

²SBE also repeats its previous opposition to permitting unlicensed operation in the white spaces, a position thoroughly refuted by OET’s recent exhaustive analysis.

enforce its rules. Even were these arguments cognizable, the Commission has a greater duty to the incoming 700 MHz licensees that rely upon the Commission to ensure that they will have the use of their licenses free from harmful interference in accordance with Section 309(h), and to users of authorized white spaces devices in accordance with Section 333.

With regard to whether to require a “flash cut” or allow a more gradual transition, PISC notes that only Verizon regards more than 1 million unauthorized users operating on the 700 MHz frequencies as an issue for Commission consideration. It would therefore seem logical for the Commission to handle the transition of licensed Part 74 Subpart H systems by waiver, requiring a flash cut from Verizon systems but permitting a more gradual phase out on public safety systems and on those of other licensees.

The more pressing question, however, unaddressed by the commenting parties (with the exception of Verizon), is: who should bear the cost of cleaning up the 700 MHz band? For the reasons set forth below, PISC urges the Commission to reject the arguments of the wireless manufacturers and to hold them accountable for their illegal marketing practices. The only alternatives are to impose the cost on the new 700 MHz licensees, in the form of increased interference or payments to migrate users, or to impose the costs on users who bought equipment in good faith. As a matter of equity as well as law, the Commission should reject these alternatives and impose the cost of clean up on the ones responsible – the manufacturers.

In addition, the Commission should not impose the cost of creating a General Wireless Microphone Service (GWMS) on unlicensed users of the white spaces properly authorized in proceeding of more than five years. The Commission has *never* granted seniority based on illegal use. To the contrary, the Commission has effectively granted seniority to users unlicensed spectrum over

new licensees. *See Amendment of Part 90 to Adopt Regulations for Automatic Vehicle Systems*, 10 FCCRcd 4695, 4714-17 (1995) (“*LMS R & O*”). Granting illegal operators superior rights to authorized users, as requested by the wireless microphone manufacturers, would constitute a radical departure from Commission precedent and undermine the respect for licensing requirements needed to maintain the Commission’s existing licensing regime.

Finally, PISC urges the Commission to reject the arguments of both NAB/MSTV and the White Spaces Coalition (WSC) to limit eligibility for the GWMS to certainly “narrow” classes of users. Not only is this attempt at *realpolitik* to include only powerful lobbying interests but not the general public almost humorous in its transparent brazenness, but it is ludicrous as a matter of practical effect. As the current marketing of wireless microphones for home use, karaoke bars, and other uses by the general public despite far more restrictive rules clearly shows, it is impossible for all practical purposes to limit the sale of wireless microphones without dedicating far more resources to enforcement than the anyone realistically expects. The time has come to end this charade, which only encourages widespread disregard for the Commission’s licensing regime and creates a body of mobile unauthorized users polluting the spectrum. Instead of playing this game of “fig leaf” for parties intent on pretending they are limiting access to the spectrum, the Commission should authorize all members of the public to purchase and use GWMS devices.

ARGUMENT

The Commission finds itself confronted with the spectrum equivalent of a toxic oil spill on the “beach front” 700 MHz spectrum. As the V-Comm engineering analysis shows, the use of wireless microphones is simply incompatible with the services that 700 MHz licensees expect to provide. The Society for Broadcast Engineers, which currently acts as coordinator for licensed Part 74 Subpart H

services, stated that it “could not comfortably coordinate Part 74 licensed BAS operations of LPAux devices in the 700 MHz band once Public Safety operation begins in earnest,” *SBE Comments* at 3, and noted that the “rampant marketing, sale, and leasing of [wireless mics] to ineligible or unlicensed persons” had reached “epidemic levels” creating interference with licensed Part 74 Subpart H systems. *SBE Comments* at 7.

The question therefore presented to the Commission is not “should the Commission act,” but “how quickly does the Commission need to act.” Even more importantly, *who will pay to clean up this mess*. As a practical matter, the Commission has three choices. It can impose the cost on the new 700 MHz licensees, *i.e.*, public safety operators and licensees that have collectively already paid over \$20 billion³ for use of the 700 MHz band. It can impose the cost on members of the general public, who trusted that manufacturers would not sell them equipment the law did not allow them to use. Or it can impose the costs where they belong, on the manufacturers whose marketing practices created this situation in the first place.

I. THE COMMISSION SHOULD REQUIRE A “FLASH CUT,” BUT GRANT LIMITED WAIVERS WHERE APPROPRIATE.

PISC generally supports the Commission’s proposal to require licensed systems to cease operation on the 700 MHz band as part of the conversion to digital television. With regard to the 156 systems licensed to use this band, however, PISC recognizes that this may impose financial hardship on licensed users that have complied with all rules and operated in good faith. Given that the majority of incoming 700 MHz licensees – including the public safety licensees – do not seem unduly concerned at the prospect of 1 million unauthorized users operating in an uncontrolled fashion on

³This includes the auction revenue from Auctions 33, 38, 44, 49, 60, and 73.

these frequencies, it is perhaps not inappropriate to allow licensed systems to enjoy a gradual transition.

Accordingly, although the Commission should require that all marketing and sale of wireless microphones operating on the 700 MHz band should cease immediately,⁴ and that use of Channels 52-69 by Part 74 Subpart H devices must cease after February 17, 2009, the Commission should announce an intent to grant limited waivers for good cause shown – especially where the 700 MHz licensee has not raised any objection. Even then, however, operation of these systems should continue for no more than the two years proposed by NAB/MSTV – preferably less. Furthermore, any waiver must include a clear designation of these systems as secondary to the incoming 700 MHz licensees, and a requirement to cease operation if the 700 MHz licensee has deployed a functioning system.

Needless to say, this waiver policy should apply exclusively to *licensed* systems. Systems operating without a license have no entitlement to protection. To the contrary, operation of Part 74, Subpart H systems without a license – even by entities eligible for a license and for purposes permissible under the rules – have no legal standing to demand protection. Given the ease with which eligible users can register their systems and receive licenses, any failure to have complied with the licensing requirement of Part 74, Subpart H is inexcusable. To allow eligible entities to protect unauthorized systems – as requested by NAB/MSTV – flies in the face of Commission precedent and previous insistence by broadcasters that only rigorous observance of licensing requirements can prevent intolerable interference to broadcast services. To paraphrase Anatole France, the law, in its

⁴PISC takes no position on whether to prohibit manufacture of wireless microphones operating on the 700 MHz band for export.

majestic equality, prohibits broadcasters and non-broadcasters alike from using wireless microphones without a proper Commission license. Those eligible for licenses that failed to properly register their systems must suffer the consequences of their actions.

In addition to the problem of rewarding scofflaws that should know better, granting a gradual phase in for all systems regardless of their legal status creates serious interference concerns. Consider the following scenario. A massive fire draws public safety responders from a number of jurisdictions and services. They use their 700 MHZ interoperable equipment to coordinate. Then mobile news crews arrive, using unregistered wireless microphone equipment. Suddenly, First Responders find their communication equipment failing, subject to the interference effect of a swarm of unlicensed wireless microphone systems from a host of broadcast and cable news crews operating on the same frequencies. The results from the operation of these unlicensed systems – even by eligible users for purposes authorized under the rules – could prove fatal to First Responders caught in the interference cloud.

To minimize the risk of harmful interference, therefore, the Commission should not adopt the 2-year phase in suggested by NAB/MSTV even for authorized users. Rather, the Commission should limit any relief to systems with valid licenses, and should provide a waiver from the shut off date only for good cause. This approach properly balances the need for certainty by 700 MHZ licensees with the potential hardship to properly licensed systems.

II. THE COMMISSION SHOULD REJECT THE ARGUMENTS OF MANUFACTURERS TO SHIFT THE COST OF CLEAN UP TO OTHERS.

The wireless manufacturers offer an extensive, and at times contradictory, array of excuses as to why the Commission should not hold them accountable for the extensive marketing and sale of

their products to the general public. For example, while nearly every manufacturer filing claimed that it never marketed or sold its Part 74, Subpart H products to the general public, they also pointed to this widespread use as evidence in support of expanding eligibility for the proposed GWMS. Clearly the manufacturers are aware that *someone* is buying their products in numbers far exceeding eligible licensees. However, even if one excuses the illegal conduct of manufacturers, the Commission has sufficient authority to order providers of equipment for GWMS users to exchange equipment that operates on Channels 52-69 for equipment that does not.

A. The Commission Should Reject the Defenses and Excuses Offered by Wireless Microphone Manufacturers For Violation of The Commission’s Rules.

The investigations commenced by the Enforcement Bureau will resolve the fact questions of what manufacturers knew and to whom they intended to market their product. PISC therefore limits itself in these reply comments to rebutting some of the more outlandish arguments raised by the wireless manufacturers with regard to the Commission’s authority to investigate and punish violations of its rules.

1. Failure to enforce does not create a waiver of the rules.

As an initial matter, the Commission should reject the argument that the Commission’s failure to enforce its own rules somehow created blanket permission for widespread violation. Even if the accusation by Nady Systems that Commission officials dissuaded Nady from seeking to file its own *Petition for Rulemaking* and assured Nady that the Commission would continue to turn a blind eye to the marketing and sale of wireless microphone systems to ineligible users is true, Nady and other manufacturers have an obligation to abide by the existing rules or seek changes through the Commission’s rulemaking process. Accepting the “tacit allowance” defense proffered by Nady and

others would amount to a policy that encouraged lawlessness and rewarded violation of the Commission's rules. Indeed, under this "tacit allowance" doctrine, the greater and more widespread the violation, the better.

2. The Commission has statutory authority to regulate the marketing and sale of properly certified devices, and may punish those who market or sell properly certified devices to ineligible users for prohibited purposes.

On the other extreme, the Commission should reject Shure's creative reading of both the plain language of Section 302 and the Commission's regulations. As an initial matter, PISC note that Shure provides no reasoned explanation why its use of the certification language from Rule 15.19(a)(3) governing unlicensed devices, when licensed devices use the certification process governed by Rule 15.19(a)(1), and why this does not amount to a deceptive use of Commission certification. *See PISC Informal Complaint* at 11. But this specific violation, like the other specific violations, lies within the investigation controlled by the Enforcement Bureau.

Of greater importance, Shure's cramped and illogically constrained reading of Section 302⁵ and the Commission's rules violate the plain language of the statute and the Commission's regulations. Further, if accepted, Shure's interpretation would effectively deprive the Commission

⁵Shure's insistence that PISC's references to Section 302 of the Communication Act are a typographical errors referring instead to Section 302a, Shure Comments at 16 n.30, apparently lies in confusion by Shure over standard citation styles. Although the Harvard "Bluebook" generally prefers citation to the United States Code (U.S.C.), long-standing Commission practice encourages citation to the section of the Communications Act of 1934, as Amended, as published by the Government Printing Office. While the relevant Section of the Communications Act is Section 302, it is codified at 47 U.S.C. §302a. Such variation between the Communications Act and the United States Code, while uncommon in Title III, is hardly uncommon in the Communications Act as a whole. For example, Section 1 of the Communications Act is codified at 47 U.S.C. §151. PISC, following common Commission practice, cites to the section of the Communications Act of 1934, as amended, and will therefore continue to reference Section 302 of the Communications Act.

of any enforcement authority and the Commission's rules of meaning.

Shure's reading that the regulation of the marketing and/or sale of properly certified devices for uses expressly prohibited by the Commission's rules lies beyond the scope of Section 302 flies in the face of the statute's plain language. Section 302(a), states that regulation of devices "shall be applicable to the manufacture, *sale, offer for sale*, or shipment of such devices." See 47 U.S.C. §302a(a) (emphasis added). Section 302(b) makes it illegal to "sell, offer for sale, or ship devices" in violation of the rules established under the authority of Section 302(a), see 47 U.S.C. 302a(b), authority which includes regulation of the "sale, offer for sale, or shipment" of certified devices.

It is impossible to read this prohibition as limiting the FCC's authority solely to setting certification rules and prohibiting the shipment of devices that lack suitable certification, but granting no authority to police the marketing and sale of properly certified devices to ensure that the use of these devices complies with the Commission's rules. Such a reading of Section 302(a) would either render Section 302(b) redundant or deprive the clause conferring authority over "sale, offer for sale, or shipment of such devices" in Section 302(a) of meaning. Rather, the more logical reading, and the reading more consistent with the legislative history, understands the highlighted language of Section 302(a) to confer authority to create rules governing the marketing and sale of devices, and that Section 302(b) makes it illegal to market or sell devices in violation of these rules.

Even if the Commission were to accept Shure's constrained reading of Commission authority under Section 302, Shure does nothing to address the additional statutory provisions cited by PISC in its *Petition* and informal complaint. See *Pisc Complaint* at 2 (citing Sections 4(i), 301, and 303(n)). If these were not enough to resolve the question as to whether the Commission has authority to proscribe the marketing and or sale of authorized devices to ineligible users for prohibited

purposes, the Commission's general rulemaking authority under Section 303(r) certainly conveys sufficient authority. As the current unfortunate situation makes clear, regulating the marketing and sale of authorized devices to ineligible users for prohibited purposes bears directly on the Commission's responsibility under Section 301 to ensure that "[n]o person shall use or operate any apparatus or communication or signal by radio" except in accordance with the terms of the Act and the licensing rules of the Commission. 47 U.S.C. §301.

3. The Commission's regulations establish clear eligibility requirements.

Shure's attempt to read out the explicit eligibility requirements of Part 74, Subpart H are similarly unavailing. Whatever the Commission may have said with regard to the possibility of authorizing new classes of users when it set rules for use in the VHF bands in 1977, the language of §§ 74.831-32 provides clear and unambiguous eligibility and use restrictions on Part 74, Subpart H devices. The notion that these rules do not mean what they say, or that wireless microphone manufacturers could market to the general public because the Commission *might*, possibly, take the opportunity to expand the class of eligible licensees, defies common sense.⁶

Again, PISC note that it lies with the Enforcement Bureau to determine whether Shure or other named manufacturers acted in accordance with a good faith interpretation of the Commission's rules, or whether the evidence supports a finding of violation. But Shure's argument that 47 C.F.R. §§ 74.831-32 do not establish clear eligibility requirements or use limitations cannot stand.

4. The law does not allow parties to insulate themselves from knowing violation of the Commission's rules by mechanically interposing an intermediary.

⁶Shure's further contention that the FCC lacks authority to enforce its own rules because the Federal Trade Commission has exclusive authority over deceptive business practices is sufficiently absurd as to require no substantive rebuttal.

Finally, the Commission should reject the argument made by Shure and others that wireless microphone manufacturers could insulate themselves through the simple expedient of imposing an intermediary between themselves and the sale to ineligible users for unauthorized purposes. Such an interpretation would allow sale of cell phone jammers, radar detectors and other illegal devices via the internet by the simple expedient of referring all would-be purchasers to companies located outside the United States. But just as a business in the United States cannot market European cell phone jammers by directing U.S. based buyers to a separate European company, neither can Shure or any other manufacturer market its materials to the general public and insulate itself by making the sale only to retailers such as Amazon.com or Radio Shack. Whether or not the Commission finds that such action constitutes a prohibited “sale,” it certainly constitutes prohibited marketing and deceptive use of FCC certification.

B. The Commission Has More Than Adequate Authority To Require Manufacturers to Exchange Equipment That Operates on Channels 52-69.

Only Sennheiser makes any substantive effort to refute PISC’s argument that the Commission may require manufacturers to recall illegally marketed equipment and replace it. Sennheiser protests that the Commission may not use its authority to require manufacturers to exchange equipment illegally sold to ineligible users for unlawful purposes because only the “incoming user” of spectrum may be required to pay to migrate existing users to new services. Sennheiser Comments at 19. Even if one accepts this limitation (and Sennheiser cites no authority for hinging Commission authority on this distinction), Sennheiser’s argument fails because it cannot establish incumbency based on illegal marketing to ineligible users for purposes that expressly violate the Commission’s rules.

Accordingly, although Sennheiser may well argue that it is a senior user with regard to the

marketing and sale of its equipment for individually licensed users, the same cannot be said of the illegal use by ineligible users that would become legal and authorized on creation of a General Wireless Microphone Service. To the contrary, if the Commission authorizes a GWMS, Sennheiser and the other wireless microphone manufacturers will stand as new entrants in precisely the same fashion as the manufacturers of unlicensed PCS service. *Use of New Telecommunications Technologies*, 8 FCCRcd 6589 (1993). Sennheiser's efforts to distinguish this binding precedent and that of *Teledesic LLC v. FCC*, 275 F.3d 75 (D.C. Cir. 2001) must therefore fail. To argue to the contrary (again, assuming that the Commission only has authority to order "new entrants" to pay such fees), would reward illegal uses with the benefits of seniority as against lawful but less "senior" users. Such an absurd result would be contrary to maintaining a properly managed system of licensing. Under the authority of Sections 4(I), 301, 302, 303(r) and 303(n), the Commission can certainly order that manufacturers that engaged in illegal marketing and sale of equipment "migrate" a newly authorized class of users from the illegally marketed equipment to its legal replacement.

III. THE COMMISSION CANNOT ALLOW ILLEGAL USE TO ESTABLISH SENIORITY.

While pleading ignorance and innocence of any effort to promote unauthorized use by ineligible users, wireless manufacturers insist that they should have senior rights to legally authorized white spaces devices. Such a result flies in the face of Commission precedent and would undermine the Commission's licensing regime.

In its *Petition*, PISC proposed the Commission should treat GWMS devices and unlicensed white spaces devices as co-equal. As the Commission has recognized previously, Part 15 unlicensed certification is, in essence, a form of licensing. *See Revision of Part 15 of the Commission's Rules*

Regarding Ultra-Wideband Transmission Systems, Second Report & Order, 19 FCCRcd 24558, 24593 (2004). Nothing prevents the Commission from designating “unlicensed” devices certified under Part 15 as co-equal with devices licensed by rule under Section 307(e). *See generally*, Harold Feld, “From Third Class Citizen to First Among Equals: Rethinking the Place of Unlicensed Spectrum In the FCC Hierarchy,” 15 *CommLaw Conspectus* 53 (2006).

Wireless microphone manufacturers uniformly oppose this approach as unprecedented. However, the insistence that any GWMS have seniority to properly authorized unlicensed white space devices is equally unprecedented. The Commission has *never* permitted illegal and unauthorized use to establish seniority. At best, the Commission has promised amnesty to unlicensed radio operators that agreed to cease illegal operations and abide by Commission rules. *See Ruggiero v. FCC*, 317 F.3d 239, 241-42 (D.C. Cir. 2003) (*en banc*). Unauthorized operators who accepted such amnesty received no right to continue broadcasting on the same frequencies or even a preference for selection for the newly authorized low-power FM service.⁷

Indeed, if the Commission follows its past precedent, it must find that GWMS users – as the junior service – have *no rights* as against properly authorized Part 15 devices. The Commission adopted this approach when it created the individually licensed LMS service in 900 MHz spectrum shared with Part 15 unlicensed users and amateur radio operators. *LMS R&O*, 10 FCCRcd at 4714-17. Here, the Commission stated by fiat that any Part 15 device user adhering to the “safe harbor” conditions established in the *R&O* did not cause “harmful interference” to the fully licensed LMS

⁷Ultimately, the NAB and other broadcasters prevailed upon Congress to repeal this amnesty and prohibit any unauthorized radio operator from holding a license. *Ruggiero*, 317 F.3d at 242-3. This stands in marked contrast to the NAB’s support of extending GWMS licenses to existing unauthorized users.

service. *See also LMS Order On Reconsideration*, 11 FCCRcd 16905, 16914-15 (1996) (clarifying that Part 15 devices adhering to safe harbor rules do not cause harmful interference to individually licensed LMS systems, that this ruling applied to both newly licensed systems and grandfathered systems, and that LMS licensees must resolve interference by modifying their own systems or negotiating with Part 15 users).

Far be it from PISC to suggest co-equal status when the wireless manufacturers themselves insist on rigid adherence to Commission precedent. Accordingly, rather than adopt the approach initially suggested by PISC in its petition of requiring users of white space devices authorized under Part 15 to negotiate with any future GWMS users as co-equal users of the band, the Commission should find that any properly certified white space device satisfies the “safe harbor” rule as against any GWMS device licensed by rule, and that white spaces devices that comply with such safe harbor restrictions do not, by definition, ever cause harmful interference to GWMS users.

IV. THE COMMISSION SHOULD AUTHORIZE THE GWMS FOR THE GENERAL PUBLIC.

Both the WSC and the NAB/MSTV comments urge the Commission to limit the class of users eligible for a GWMS. These commenters, while diametrically opposed in most respects, are united in their short-term and cynical efforts to elide over the real problem of rationalizing wireless microphone use and harmonizing it with the operation of other services. Each offers eligibility for GWMS only to what each perceives as a political significant constituency. PISC did not propose creation of the GWMS as a bribe for permitting white space devices nor as a way for NAB to reward its allies in obstructing unlicensed use of the white spaces. Rather, PISC proposed the GWMS as the only rational approach to the very real issue of widespread wireless microphone proliferation in the

hands of users who bought expensive equipment in good faith. The Commission should reject the invitation of WSC and NAB/MSTV to simultaneously demean itself through such an obvious political ploy, while perpetuating a dangerous situation in which mobile ineligible users continue to deploy an unknowable number of transmitters for unauthorized use.

The time has come for the Commission to recognize the reality that wireless microphone use has become prevalent. The transparently cynical scheme of WSC and NAB/MSTV to pretend to open the use of white spaces for a “limited class” of wireless microphone users cannot possibly work. Neither WSC or NAB/MSTV even begins to address how the Commission should force the existing 1 million unauthorized users to turn in their existing devices. How on Earth do WSC or NAB/MSTV believe that the Commission could “narrowly” extend the class of eligible users when it cannot control the distribution of wireless microphones under the existing, far more restrictive rules? Rather than have the Commission address the reality and establish rules that make sense, WSC and NAB/MSTV would rather preserve a modest fiction of “restricting” access to the white spaces while seeking to bribe enemies or reward allies.

Adopting such a proposal would only further undermine the credibility of the Commission’s licensing regime and exacerbate the damage caused by years of ignoring the reality that unauthorized wireless microphone use had proliferated to unmanageable proportions. The Commission should reject the proposal that it perpetuate a fiction convenient only to the narrow self-interest of those that propose it. Instead, as a necessary first step in restoring respect for and compliance with the Commission’s rules on wireless microphones, the Commission should acknowledge the reality and open the GWMS to everyone.

CONCLUSION

For years, the Commission refused to acknowledge the problems caused by strictly regulating the use of wireless microphones, while in practice turning a blind eye to widespread violations of its rules. As a result, the Commission has allowed wireless microphone manufacturers to create a spectrum pollution problem of toxic proportions, while breeding such contempt for its rules that even broadcasters and other eligible users have not troubled to register their Part 74 Subpart H devices. Now the Commission finds itself forced to make unpleasant choices on how to manage the introduction of new services into the polluted 700 MHZ band.

While the Commission's past failure to address the issues does not relieve wireless microphone manufacturers of their responsibilities, or give them permission to engage in widespread violation of Commission rules, the Commission must begin to live up to its own responsibilities as well. The Commission should therefore manage a quick but orderly transition of wireless microphones out of the 700 MHZ band, and should hold the wireless microphone manufacturers accountable for their illegal activities. The Commission should open the GWMS to the general public, essentially acknowledging the reality of the current state of affairs. In doing so, however, the Commission must not establish a dangerous precedent that illegal use can establish seniority over properly authorized services. Accordingly, the Commission should abide by the precedent it

established in the LMS rulemaking, and declare that properly certified unlicensed white spaces devices will enjoy a “safe harbor” against interference claims from GWMS users licensed by rule.

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