

May 6, 2009

Ex Parte

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

*Re: Revision to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, WT Docket Nos. 08-166 & 08-167
Unlicensed Operation in the TV Broadcast Bands
ET Docket Nos. 04-186 and 02-380*

Dear Ms. Dortch:

FCC rules restrict wireless microphone operation in the TV bands to entities that are responsible for the broadcast of television programs and/or the filming of motion pictures, and only for uses relating to these programs.¹ Manufacturers and users of unlawful microphones are now arguing for an enormous expansion of Part 74 that would legalize all, or virtually all, currently unlawful wireless microphone uses in the TV bands and relocate thousands of new users into the white spaces. Dell Inc. and Microsoft Corp. caution the Commission that this massive expansion of Part 74 would deny consumers in major portions of the country use of the white spaces technologies that the Commission has worked so hard to enable over the past five years.²

The *White Spaces Order* already substantially overprotects licensed wireless microphones. Wireless microphone licensees are permitted to register locations and channels of operation in a database, and white space devices must then refrain from operating on those channels within one kilometer from the registered location in all directions – a huge area.³ In this way, venues such as sports stadiums will be able to completely protect wireless microphone operations used in connection with television broadcasts. And database protection is just the beginning. The FCC also reserved two channels for wireless microphone operation in 13 large cities across the country. Despite these multiple layers of protections, the Commission also required every white space device to include the most protective sense-and-avoid technology ever mandated, all to protect wireless microphones.⁴

¹ See 47 C.F.R. §§ 74.831-832. By the Commission's count, there are 943 active Part 74 licenses for wireless microphones and other low power broadcast auxiliary services. *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition*, Notice of Proposed Rulemaking and Order, 23 FCC Rcd 13106, 13109, ¶ 7 (2008).

² See generally *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Second Report and Order and Memorandum Opinion and Order, 23 FCC Rcd. 16807 (2008) ("White Spaces Order").

³ See 47 C.F.R. § 15.712(f).

⁴ As industry representatives, public interest organizations, and standards groups have explained in ET Docket No. 04-186, the sensing requirement for wireless microphones is overprotective and should and should be

But the wireless microphone interests want more. They seek to expand Part 74 to include currently unauthorized non-broadcast uses and non-broadcast users and to relocate thousands of unlawful users from the 700 MHz band into the white spaces. This will dramatically increase the number of white space database “keep out” zones. It could mean that every karaoke club, corporate boardroom, theater, or meeting hall in the United States could receive the same protection as Yankee Stadium.⁵ As a result, the use of white space devices would be restricted in large areas of the country, and there would be many portions of densely populated areas where no white space devices could function at all.

One needs look no further than New York City’s theatre district to illustrate this point. By the Broadway League’s own admission, its constituent theatres make extensive unlawful use of wireless microphones.⁶ And the Microphone Interests Coalition has explained that “as many as 400 wireless microphone systems operat[e] simultaneously” in the Broadway theatre district.⁷ Given the high likelihood that there will be only three unoccupied television channels in Manhattan at the close of the DTV transition, Broadway theatres will certainly reserve all of these channels in the white spaces database if given the opportunity, denying the benefits of the white spaces to a large portion of mid-town Manhattan.

Unfortunately, this problem would only be the tip of the iceberg. Manhattan has over 1,000 listings for houses of worship and theaters alone. If the FCC allows these currently unlawful operators to reserve one or more channels in the white spaces database and even a small percentage do so, consumers will find that they are blocked from broadband access using their white spaces devices in all of Manhattan. Virtually every major metropolitan area in the United States would face similar white space restrictions.

Legalizing currently unlawful wireless microphones therefore cannot be accomplished without substantial negative consumer impact. And the Commission’s White Spaces Order already provides more than adequate protection for legal microphones. But if the Commission

relaxed or eliminated. *See, e.g.*, Petition for Reconsideration of Dell Inc. and Microsoft Corp. at 2-5 (filed Mar. 19, 2009); IEEE 802 Petition for Reconsideration at 5-6 (filed Mar. 17, 2009); Wi-Fi Alliance Petition for Reconsideration at 4-5 (filed Mar. 17, 2009); Petition for Reconsideration of the Public Interest Spectrum Coalition at 5-9 (filed Mar. 19, 2009).

⁵ Although the White Spaces Coalition initially proposed a limited expansion of Part 74 to accommodate certain “socially beneficial” wireless microphone uses, it did so under the assumption that these microphone uses would be protected using only spectrum sensing technology. Thus, expanding Part 74 would have amounted to permission for these currently unlawful uses to remain in the band. In contrast, given the stringent wireless microphone protection rules adopted by the FCC in its White Spaces proceeding and the significant number of illegal wireless microphone uses in the TV bands (both below the 700 MHz band and potentially relocating from the 700 MHz band), the Commission’s rules as established provide the ability for licensed Part 74 microphones to severely restrict white space operations. Because of this unexpected development, any expansion of Part 74 now represents a critical problem for the availability of white spaces devices.

⁶ *See, e.g.*, Ex parte letter of Charlotte St. Martin, Executive Director, The Broadway League to Marlene H. Dortch, WT Docket Nos. 08-166, 08-167 (filed Feb. 13, 2009).

⁷ Comments of the Microphone Interests Coalition, ET Docket No. 04-186, at 5 n. 19 (filed Aug. 15, 2007).

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determines that it must take additional action to facilitate clearing of unlawful microphones from the 700 MHz band, it is critical that it recognize that many actions advocated by wireless microphone interests in WT Docket No. 08-166 could have a devastating impact on matters at the core of ET Docket No. 04-186.

Accordingly, the Commission should refer any matter that concerns frequencies outside the 700 MHz band, and any matter related to wireless microphones that will affect white spaces technologies, to ET Docket No. 04-186, where these matters can be considered in the context of the ongoing consideration of Petitions for Reconsideration, and other important matters such as the deliberations on the white spaces database. At minimum, the Commission should wait until open issues in Docket No. 04-186 are resolved before taking any action that would impact the white spaces.⁸

Pursuant to the Commission's rules, a copy of this notice is being filed electronically in the above-referenced dockets. If you require any additional information please contact the undersigned.

Sincerely yours,

/s/ Kerry Murray

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⁸ Because the Administrative Procedure Act and the Commission's rules require the Commission to provide "either the terms or substance of the proposed rule or a description of the subjects and issues involved," most or all of these matters must be subject to a separate public notice in any event. *See* 5 U.S.C. § 553(b)(3), 47 C.F.R. § 1.413(c).