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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: *Ex Parte Presentation*
WT Docket Nos. 08-166 and 08-167; ET Docket Nos. 02-340 and 04-186

Dear Ms. Dortch:

Four days ago President Obama emphasized the benefits of the DTV transition, stating that "the transition to digital will free up airwaves for broadband and enhanced emergency communications for our police officers, firefighters, and other first responders."¹ But one obstacle stands in the way of achieving those benefits: the continued, and unauthorized, operation of most wireless microphones in the 700 MHz band. A key goal of the DTV transition is to clear the 700 MHz band to permit public safety and other licensees to have unencumbered access to spectrum in order to better serve the public. In fact, 700 MHz will remain uncleared well past June 12.

The purpose of this letter is to discuss two alternatives for clearing these devices from the 700 MHz band quickly and providing for their lawful operation in the new TV bands, while maintaining the balance the Commission sought to achieve in the *White Spaces* proceeding. The record developed in the above-captioned proceedings shows that both alternatives are workable paths to achieve this result.

The Commission acknowledged ten months ago that "it is incumbent on the Commission to take all steps necessary to make [700 MHz] effectively available both to public safety and commercial licensees at the end of the DTV transition."² It tentatively

¹ Press Release, The White House, Office of the Press Secretary, Statement by the President on the Transition to All Digital Programming (June 4, 2009), available at http://www.whitehouse.gov/the_press_office/Statement-by-the-President-on-the-Transition-to-All-Digital-Programming-6-4-09/.

² *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, WT Docket Nos. 08-166 and 08-167, *Notice of Proposed Rulemaking and Order*, 23 FCC Rcd 13106 ¶ 1 (2008).

concluded that all wireless microphone and LPAS operations in the 700 MHz band would be prohibited after February 17, 2009, a date that has long since passed. Now, even with the extended DTV transition nearly over, the Commission may be considering whether to allow the operation of wireless microphones to continue for yet another year – despite the fact that authorized and unauthorized users have already had nearly a year of notice that the band would be cleared.

Until the Commission moves wireless microphones out of the 700 MHz band, there remain the risks of impeding the launch of public safety and commercial systems, creating consumer confusion, disrupting existing wireless microphone uses, and potentially causing life-threatening interference to first responder communications. Public safety has already deployed systems in 40 plus markets, with many more on the way.³ Commercial operators are also ready to begin the aggressive deployment that the FCC worked so hard to promote in crafting its 700 MHz rules.⁴ Verizon Wireless is already testing LTE in its licensed 700 MHz spectrum and plans to launch commercial service in 25 to 30 markets in the middle of 2010. Pre-launch testing and network optimization requires that the spectrum be cleared well in advance of that date. The record shows that wireless microphones threaten to disrupt communications of first responders as well as commercial broadband subscribers. It also shows that wireless microphone users operating 700 MHz devices will experience interference from new entrants in the band.

While most of the wireless microphone users have no lawful right to operate at 700 MHz, they also have no authority to operate in the new TV bands below 700 MHz and thus no ability to seek out alternative lawful operations that would avoid the otherwise inevitable harmful interference that will occur at 700 MHz. Unless the Commission is planning to suspend continued operation of wireless microphones by anyone other than those currently eligible to hold an LPAS license, it should provide users with the right to operate such devices in TV spectrum below 700 MHz.

The record provides a workable path forward for the Commission to mitigate these harms by ensuring that the 700 MHz band is promptly cleared for use by commercial and public safety licensees and that wireless microphone users have spectrum in which to lawfully operate. The critical elements to that path are speed and certainty.

First, it is imperative that the FCC immediately adopt an order that sets a hard date of no later than February 18, 2010 for all wireless microphone users to cease operations in the band. Verizon Wireless would have preferred that such operations cease at the end of the DTV Transition (consistent with the Commission's tentative conclusion in this proceeding), but nonetheless expressed support for the position taken by the Association of Public-Safety Communications Officials, National Emergency

³ Comments of Motorola, Inc., WT Docket Nos. 08-166 & 08-167, at 3 (filed Oct. 3, 2008).

⁴ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd 15289, ¶¶ 153-177 (2007).

Number Association, National Public Safety Telecommunications Council, and CTIA, calling for a limited extension until no later than February 18, 2010.⁵

Second, in order to effectuate clearing the band, the Commission must give certainty to wireless microphone users by enabling them to legally operate compliant equipment in the new TV Bands as soon as the order in this proceeding is released. Wireless microphone users need to know what they can do to secure legal status and a date by which they must stop operating in the 700 MHz band.

The record in these proceedings has largely coalesced around providing for co-equal status of LPAS-ineligible wireless microphone users and TV Band devices in the new TV Bands.⁶ This approach would achieve the goals of speed and clarity, while preserving the Commission's flexibility to consider additional changes to the interference protection rules that apply in the TV Bands. We identify two options below that would each successfully implement this approach.

Authorized by Rule: The Public Interest Spectrum Coalition (PISC) and others have urged the Commission, pursuant to Section 307(e) of the Communications Act, to adopt a proposal whereby currently unauthorized wireless microphone users would be "authorized by rule" in the new TV Bands, with co-equal status to approved TV Band devices.⁷

Congress adopted Section 307(e) in 1982 to create a tool for the Commission to address widespread public use of Citizens Band (CB) radios originally designed to be authorized only through individual licenses. Congress understood that consumers were unaware of their need to obtain individual licenses for their radios primarily because CB radios were widely advertised and mass-marketed to the public. Congress then adopted Section 307(e) as a means to remedy the problem by eliminating the need for individual licensing. An analogous problem has developed with wireless microphones. Their use has proliferated over the years, with many users unaware that the devices are not lawful. Consistent with the steps taken to remedy the CB radio problem, an "authorized by rule" regulatory regime for currently unauthorized wireless microphones would be an effective

⁵ See Letter from Verizon Wireless to the FCC, WT Docket Nos. 08-166 & 08-167 and ET Docket Nos. 02-340 & 04-186 (May 28, 2009) citing Letter from Association of Public-Safety Communications Officials, International (APCO), CTIA—The Wireless Association®, National Emergency Number Association (NENA), and National Public Safety Telecommunications Council (NPSTC) to the FCC, WT Docket Nos. 08-166 & 08-167 (Apr. 7, 2009).

⁶ See, e.g., Letter from Public Interest Spectrum Coalition to FCC, WT Docket Nos. 08-166 & 08-167 and ET Docket No. 04-186 (Apr. 22, 2009); Reply of Google Inc., ET Docket Nos. 02-340 & 04-186, at 6 (May 18, 2009); Reply of Dell and Microsoft in Support of Petitions for Reconsideration, ET Docket Nos. 02-340 & 04-186, at 5 (May 18, 2009).

⁷ See Letter from Public Interest Spectrum Coalition to FCC, WT Docket Nos. 08-166, 08-167, ET Docket No. 04-186, at 1 (Apr. 22, 2009); Letter from CTIA – The Wireless Association®, FCC, WT Docket Nos. 08-166, 08-167, ET Docket No. 04-186, at 3 (May 15, 2009).

solution to the current dilemma, particularly given the Commission's interest in providing these users legal status in a new frequency band.

Consistent with this path forward for wireless microphones, the FCC has determined that Section 307(e) is a useful regulatory regime for a number of services in addition to CB radios. The Commission has employed its authorized by rule authority on several occasions, including: Low Power Radio Service (LPRS)⁸; Family Radio Service (FRS)⁹; Medical Implant Communications Service (MICS)¹⁰; Multi-Use Radio Service (MURS)¹¹; Wireless Medical Telemetry Service (WMTS)¹²; and the Medical Device Radiocommunication Service.¹³

As can be seen from these decisions, a range of factors – a pressing need for action, a need to get new devices deployed rapidly, an unknowing public, no head-to-head competition between operators, the desire to avoid significant and largely unproductive regulatory burdens – contributed to the Commission's conclusion that an authorized by rule framework was the appropriate regulatory model for these services. All of these factors are present with wireless microphones.

Part 15: Alternatively, some parties have suggested that the FCC may provide certainty to the unauthorized wireless microphone user community by treating them as lawful operations in the TV Bands under a Part 15 regime, with co-equal status to approved TV Band devices.¹⁴

⁸ *Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band*, Report and Order, 11 FCC Rcd 18517 (1996).

⁹ *Amendment of Part 95 of the Commission's Rules to Establish A Very Short Distance Two-way Voice Radio Service*, Report and Order, 11 FCC Rcd 12977 (May 15, 1996).

¹⁰ *Amendment of Parts 2 and 95 of the Commission's Rules to Establish a Medical Implant Communications Service in the 402-405 MHz Band*, Report and Order, 14 FCC Rcd 21040 (1999).

¹¹ *1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 16673, 16688 ¶ 31 (2000).

¹² *Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service*, Report and Order, 15 FCC Rcd 11206 (2000).

¹³ *Amendment of Parts 2 and 95 of the Commission's Rules to Provide Additional Spectrum for the Medical Device Radiocommunication Service in the 413-457 Band*, Notice of Proposed Rulemaking, FCC 09-20 (rel. Mar. 20, 2009).

¹⁴ *See Reply of Dell and Microsoft in Support of Petitions for Reconsideration*, ET Docket Nos. 02-340 & 04-186, at 5 (May 18, 2009), referenced in Letter from Dell and Microsoft to FCC, WT Docket Nos. 08-166 & 08-167 and ET Docket Nos. 02-340 & 04-186 (May 22, 2009); Reply of Google Inc., ET Docket Nos. 02-340 & 04-186, at 6 (May 18, 2009).

A Part 15 approach fits squarely within administrative law precedent. Here, there can be no doubt that a Part 15 regime, with wireless microphone operations subject to the technical rules of Part 74 LPAS devices in the TV Bands, is a “logical outgrowth” of the *NPRM*.¹⁵ The *NPRM* sought comment on PISC’s Petition and, in particular, on that Petition’s proposal to allow wireless microphones to operate below channel 52 on a secondary basis pursuant to a Section 307(e) authorized by rule regime.¹⁶ PISC’s principal objective with this proposal was to “create a new home for unauthorized users, one that allows them to enjoy the benefits of wireless microphones and other wireless equipment in the broadcast white spaces without interfering with licensed services of any kind.”¹⁷ Whether the Commission pursues a Section 307(e) authorized by rule or a Part 15 regime, both approaches would afford wireless microphone users the *same* non-interference status vis-à-vis licensed services in the band. Satisfaction of the APA standard cannot turn on whether the FCC uttered the term Part 15, when the core of the underlying legal regime is virtually identical to the one noticed in the *NPRM*.

Speed, Clarity and Flexibility: As set out above, the Commission will greatly advance the public interest by moving swiftly to adopt a “hard date” of no later than February 18, 2010 for all wireless microphone users to vacate the 700 MHz band and move to a new legal home in the new TV Bands with co-equal status with TV Band devices. Rapid clarification of the regulatory status of these devices would not limit the Commission’s flexibility to modify aspects of this regime going forward.

Some unauthorized microphone users have urged the Commission to afford them greater protections than the TV Band devices are currently afforded.¹⁸ Verizon Wireless takes no position on these requests, but notes them to point out that the Commission’s future evaluation of such requests is not in any way limited by either of the paths set out above. Whether the Commission chooses to employ an “authorized by rule” or a “Part 15” approach, it would retain the authority in a follow-on proceeding to assess whether some subset of wireless microphone users should be entitled to additional interference protections from TV Band and other devices through Part 74 LPAS licensing or some other means. However, the Commission needs to act now to set a hard date and provide a path for wireless microphone users (regardless of the outcome of a further proceeding) to change their operations to spectrum outside the 700 MHz band.

¹⁵ *Covad Communications v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006).

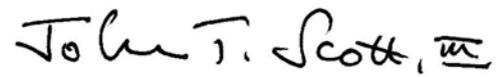
¹⁶ *Id.* at ¶¶ 21-22.

¹⁷ *Complaint of Public Interest Spectrum Coalition (PISC)*, Informal Complaint and Petition for Rulemaking, 29 (filed July 16, 2008) (“PISC Petition”).

¹⁸ See Letter from Coalition of Wireless Microphone Users to FCC, WT Dockets Nos. 08-166 & 08-167, ET Dockets Nos. 04-186 & 02-380 (May 12, 2009).

Pursuant to Section 1.1206 of the Commission's Rules, an electronic copy of this letter is being filed with the Secretary.

Sincerely,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a distinct "III" at the end.

John T. Scott, III

cc: Acting Chairman Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Robert M. McDowell
Rick Chessen
Paul Murray
Renee Crittendon
Angela Giancarlo
Jim Schlichting
Chris Moore
Julie Knapp
Alan Stillwell
Ira Keltz