

ASSOCIATION FOR **MAXIMUM SERVICE TELEVISION, INC.**



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August 25, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

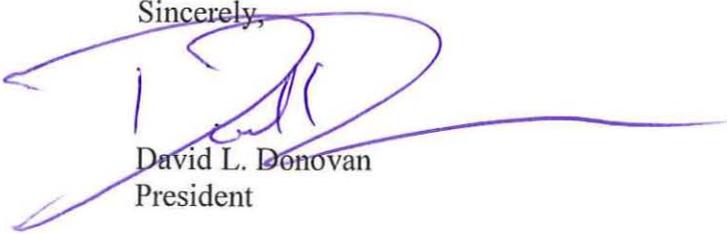
RE: Ex Parte Communication
ET Docket Nos. 02-380, 04-186
WT Docket Nos. 08-166, 08-167

Dear Ms. Dortch:

On August 21, 2009, David Donovan and Bruce Franca (MSTV), David Pawlik (Skadden Arps Slate Meagher & Flom), Jerianne Timmerman (NAB), Paul Jackson (News Corp.) and Margaret Tobey (NBC Universal) met with Wireless Telecommunication Bureau Chief Ruth Milkman, Aaron Goldberger, Charles Mathias and Brenda Boykin regarding the above-referenced dockets.

We discussed the attached MSTV plan for phasing out licensed wireless microphones from the 700 MHz band. The attached plan was submitted previously into the record.

Sincerely,



David L. Donovan
President



A Balanced Plan for Transitioning Wireless Microphones Out of the 700 MHz Band

To protect commercial wireless and public safety licensees in a spectrally-efficient and fair manner, MSTV proposes the following plan for transitioning microphones out of the 700 MHz band:

- Licensed wireless microphones in a given 700 MHz frequency and geographic area must vacate the band sixty days before commencement of operations by a 700 MHz entrant, or February 17, 2012, whichever comes first.
- To address the problem of currently-unlicensed wireless microphones (both in the core broadcast and 700 MHz bands), eligibility under Part 74 would be expanded narrowly to include theaters, live music producers, government bodies, and houses of worship.
- If a currently-unlicensed wireless microphone applies for a Part 74 license by February 17, 2010, it would be subject to the same procedures described above for vacating the 700 MHz band. Otherwise, it must cease all operation.

The Commission should reject proposals, like those of Verizon Wireless, that would hastily ban wireless microphones without regard to the timing of entry into the 700 MHz band by new licensees.

- The Verizon Wireless plan would require every wireless microphone in the 700 MHz band to cease operation in just about six months from today, even in areas and on frequencies where new licensees will take years to commence service.
- Simply put, this is not spectrally efficient. The FCC's performance requirements do not require commercial 700 MHz licensees to meet any build-out benchmark until February 2013.
- MSTV's plan reasonably ties the date of a wireless microphone's exit from the 700 MHz band to the date that the 700 MHz entrant intends to begin service— as determined in the sole discretion of a 700 MHz entrant like Verizon Wireless.
- The MSTV plan also respects the reasonable expectations of licensed wireless microphone users.

- Wireless microphone licensees had no reason to believe that the Commission might hastily require cessation of all operations in the 700 MHz band.
- Typically, in a spectrum relocation the Commission allows incumbent licensees to remain in the band on a secondary basis until they are relocated. Indeed, the Commission has made clear that the June 2009 DTV transition applied only to full-power television operations. No deadline has been set, for example, with respect to LPTV stations.
- Wireless microphones are purchased with the expectation that they will work for three to five years, but the Commission's *NPRM* proposing to remove wireless microphones from the 700 MHz band was not issued until August 2008. This was after many existing licensees had purchased new wireless microphones.
- Commercial entities like Verizon Wireless acquired their 700 MHz licenses with full knowledge that there were licensed wireless microphones in the 700 MHz band.

Importantly, the MSTV proposal also offers a practical mechanism for addressing the problem of wireless microphones that currently operate without a license.

- The new categories of entities that would be eligible for a license — theaters, live music producers, government bodies, and houses of worship — are consistent with existing Part 74 uses. Each of these uses occurs in a controlled environment that is not typically in close proximity to television reception equipment.
- While it is frustrating that so many wireless microphones have operated without a license, it would defeat the public interest to simply disregard the importance of these wireless microphones to millions of Americans.
 - Americans rely every day on these wireless microphones to hear their pastors preach, musicians and actors perform, teachers and professors instruct, and local governments conduct public meetings.
 - These wireless microphones need protection from the new TV Band Devices that may flood the broadcast spectrum in the coming years. Providing them with only “co-equal” status to TV Band Devices would be the end of the road for many wireless microphones.
 - Part 15 status for wireless microphones, or “licensing by rule”, also risks interference to the primary use of the core broadcast spectrum — free, over-the-air television. By licensing these wireless microphones, the Commission will subject them to the coordination requirements of Part 74 and thereby greatly reduce the risk of interference to television reception.