

# Engineers for the Integrity of Broadcast Auxiliary Services Spectrum

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December 22, 2009

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Ex Parte* comments to WT Dockets 08-166/08-167

Dear Ms. Dortch:

Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) hereby files its *ex parte* comments to pending WT Dockets 08-166/08-167 regarding Part 74, Subpart H, Low Power Auxiliary (LPA) stations, also known as wireless microphones.

Although the Notice of Proposed Rulemaking (NPRM) to these joint rulemakings was issued on August 21, 2008, with comments due on September 26, 2008, and reply comments due on October 20, 2008, it is now over a year later and no Report & Order (R&O) has been issued. Of course, on June 12, 2009, the DTV transition period ended, and TV Channels 52–69 were reassigned to other services, yet the LPA rules still have not been modified to clear wireless microphones from those former TV channels. EIBASS is perplexed by this delay in what appears to EIBASS to be such an obvious decision.

Since the closing of the reply comment period, EIBASS notes that many *ex parte* filings by others have been made. Of particular concern to EIBASS are the proposals to expand eligibility for LPA wireless microphones to non-broadcast entities such as churches, live music producers, local governments and theaters. Contrary to the characterization made by some parties, this is clearly not a "limited expansion" of the eligibility for LPA licensees. To the contrary, it would be an unwarranted broadening of eligibility, at a time when the available spectrum for wireless microphones and other Subpart H devices<sup>1</sup> operating in the UHF TV band will presumably be reduced by 108 MHz (*i.e.*, the loss of former TV Channels 52–69).

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<sup>1</sup> For example, wireless microphones used for talk-balk to talent are commonly referred to as Instructional Fold-Back, or IFB. Like high-quality wireless microphones, IFB systems consist of low-power (but greater than Part 15 power) transmitters and body-worn receivers.

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Since a R&O has not yet been issued, EIBASS suggests that a more appropriate "narrow expansion" of the eligibility for Part 74 LPA licenses would be to add to the universe of LPA eligible entities the category of radio production entity (RPE). Thus, EIBASS proposes a total of six eligibility classes, one of which would be new, as follows:

Existing LPA eligibility classes

B = broadcast station licensee<sup>2</sup>

BNE = broadcast network entity

CTSO = cable television system operator

MPP = motion picture producer

TPP = television program producer

Proposed Additional LPA eligibility class

RPE = radio production entity

Many contract broadcast engineers have clients that require live radio remote broadcasts that originate from all over the country. Such clients expect to enjoy the obvious benefits of high-quality wireless microphones. This means the use of higher-power Part 74 wireless microphones, and not the short range and often low quality Part 15 devices. Yet there is no eligibility for such cases, meaning that the option is to do without, or operate without valid FCC authority. EIBASS cannot condone the latter, even though there appears to be virtually no FCC enforcement against the unlicensed operation of wireless microphones. EIBASS believes that the creation of an RPE eligibility would eliminate the inequity between a TPP having LPA access but no similar eligibility for a person producing programming intended for broadcast over one or more licensed, Part 73, radio stations.

EIBASS notes the actual text of the current rules as written, taken in the context of the state of technology at the time it was written, shows a clear intent that these were professional devices to be used only to serve large audiences of people. No town hall or business meeting or church service will serve the potential number of listeners/viewers as a broadcast audience unless it is in fact broadcast (with the exception of LPFM and LPTV stations, which have smaller service areas). The network eligibility definition was specifically written to exclude miniature and ad-hoc networks.

Thus, rather than opening Part 74 wireless microphone eligibility to non-broadcast related users such as churches, theaters and local government entities, the Commission should limit the eligibility expansion to RPEs. EIBASS would, however, go as far to suggest that RPE

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<sup>2</sup> EIBASS notes that two classes of broadcast stations appear to be inadvertently missing from the current wording of Section 74.832(a)(1) of the FCC Rules: Subpart G Low Power FM (LPFM) Broadcast Stations and Subpart J Class A Television Broadcast Stations. EIBASS suggests that when the WT Dockets 08-166/08-167 R&O is issued, these two additional classes of broadcast stations be added. Further, removal of eligibility for TV translator licensees would be appropriate, as they are not supposed to originate programming except for brief financial support solicitations.

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eligibility would include live music producers at theaters and open-air venues, but only if intended for broadcast.

EIBASS suggests that the definition of an RPE be as follows:

Radio Production Entity: A person, company, or organization that produces audio programs intended for live or delayed broadcast by one or more Part 73 licensed radio stations.

This definition intentionally does not include the requirement for broadcast by a minimum number of radio stations, or simultaneous broadcast if more than one radio station uses the generated audio. The benchmark is that the RPE use the wireless microphone or other LPA device in the production of high-quality audio for a program intended for broadcast by an AM or FM station.

EIBASS believes that its proposal of an expanded eligibility for LPA licenses would be a far more appropriate one than allowing churches, theaters and local governments *carte blanche* access to the limited number of Part 74 wireless microphone channels. EIBASS also encourages the FCC to start enforcing the requirement for an FCC license against the plethora of illegal, unlicensed users. This is unfortunately the result of marketing practices that, in EIBASS' opinion, border on unethical (but not illegal) since the manufacturers of the wireless microphones selling to unlicensed and ineligible users have obtained the required FCC equipment certification for their products. Thus, the manufacturers and their vendors can legally look the other way, and say it's not their responsibility to ensure that the end user is properly licensed, or even capable of becoming licensed.

The issues are really two-fold: The first, and simpler issue, is interference to direct reception of over-the-air television. By its nature, the interference for each instance is limited to the immediate area of the device. The second, however, is interference to licensed, legal, wireless microphones engaged in feeding audio of major broadcast events, many with millions of listeners/viewers and even worldwide audiences. After all, despite heroic coordination efforts, there have been "close calls" at events such as the Academy Awards, which have significant worldwide audiences. Just one failure at such an event attributable to improper, let alone unlawful, operations is an embarrassment the U.S. simply does not need.

The EIBASS rationale is that broadcasters can't protect the big audiences from whatever may come over an interfering link unless there is some way to keep away small users who don't have to care what comes over the link. Radio and TV stations have service areas and ratings which vastly exceed any one church or town hall; these users of wireless microphones don't belong in the same spectrum as BAS wireless microphones, where the few can wipe out many.

Thus, EIBASS is not blind to the plight of churches, theaters, local governments and even touring musical groups now operating wireless microphones wherever they can without any license status. EIBASS suggests that the Commission must carve out separate spectrum for such uses that will allow these entities the freedom and protection to operate high-quality

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wireless devices legally. However, EIBASS also recognizes that effort will need to be the subject of a separate rulemaking.

Respectfully,

***/s/ Dane E. Ericksen***

***/s/ Richard A. Rudman***

Dane E. Ericksen

Richard A. Rudman