MSTV

MAXIMUM SERVICE TELEVISION

VIA ELECTRONIC FILING

January 5, 2010

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

Re: Written Ex Parte Presentation; ET Docket Nos. 02-380 and 04-186; WT Docket Nos. 08-166 and 08-167

Dear Ms. Dortch:

On Tuesday, January 5, 2010, David Donovan met with Mr. Rick Kaplan, Acting Chief of Staff and Mr. Louis Pereaetz, Interim Wireless Advisor to Commissioner Mignon Clyburn. During the meeting we discussed the attached MSTV plan for phasing out licensed wireless microphones now operating in the 700 MHz band.

I stressed the importance of wireless microphones operating in the 700 MHz band to local stations' news operations and urged that, at a minimum, *licensed* wireless microphones be allowed to continue operating in the 700 MHz band until the earlier of the following events: 1) notification to the station that wireless service will commence operations within 30 - 60 days, or 2) February 10, 2011. Stations will cease operating wireless microphones on channels devoted to public safety, channels 63, 64, 68 and 69 earlier, if required by the Commission.

Stations recognize they must cease using wireless microphones on these frequencies. However, a proposed plan to prevent stations from using their licensed microphones on these frequencies starting in June 2010 is unfair and unjust. As noted in the attached letter filed previously in the record, many stations purchased this equipment prior to notice of proposed rulemaking in this proceeding. Second, many entities that have purchased spectrum in the 700 MHz band will not be using these frequencies during this period. Indeed, Verizon plans to roll out service in 25-30% of the markets. It is spectrally inefficient to force wireless microphones to cease operation on channels that will not be used. Finally, extending the deadline until February 2011 will allow stations to include this new equipment in next year's budget cycle.

A copy of MSTV's plan previously filed in this proceeding was distributed at the meeting and is attached hereto.

Sincerely,

David Donovan
President

ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

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September 25, 2009

VIA ELECTRONIC FILING

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

Re: Written Ex Parte Presentation; ET Docket Nos. 02-380 and 04-186; WT Docket Nos. 08-166 and 08-167

Dear Ms. Dortch:

The Association for Maximum Service Television, Inc. ("MSTV")[1] writes to urge the Commission to adopt a balanced plan for transitioning wireless microphones out of the 700 MHz band.[2] Under the MSTV compromise plan, which is detailed herein and in earlier pleadings filed in the above-referenced dockets, licensed wireless microphone operations in a given 700 MHz band frequency and geographic area would cease upon the earlier of (1) sixty days prior to the date on which the 700 MHz wireless entrant begins service, per a notice sent to the affected wireless microphone licensees, or (2) February 17, 2012.

In recognition of the unique needs of the public safety community, MSTV also proposes that all licensed wireless microphone operators would vacate those portions of the band used by public safety entities by February 17, 2010. This will ensure there are no conflicts with public safety entities using these frequencies.

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[1] MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

[2] *See, e.g.*, *Notice of Ex Parte* (Aug. 25, 2009); *Notice of Ex Parte* (July 8, 2009); *Reply Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters*, WT Docket Nos. 08-166 and 08-167 (Oct. 20, 2008); *Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters*, WT Docket Nos. 08-166 and 08-167 (Oct. 3, 2008).

The MSTV plan also includes a reasonable and conservative approach for addressing wireless microphones operating in the 700 MHz band without a license. First, the class of users eligible to be licensed to use wireless microphones in the core broadcast spectrum under Part 74 would be narrowly expanded to include theaters, live music producers, government bodies, and houses of worship. Second, unlicensed wireless microphone operations would cease operations by February 17, 2010, unless a user that is within the new class of eligible users applies for a Part 74 license by that date. Such applicants will be transitioned out of the 700 MHz band under the same phase-out plan described above for existing wireless microphone licensees.

In contrast to MSTV's compromise plan, which would transition wireless microphones in an orderly fashion based upon the date on which a commercial 700 MHz entrant intends to commence service, Verizon Wireless has submitted a proposal that would impose an inflexible and spectrally-inefficient deadline for all wireless microphone operations in the 700 MHz band to end by February 18, 2010.[3] As discussed below, that approach would needlessly undermine the public interest, afford wireless microphone licensees inadequate notice, and interfere with such licensees' investment-backed expectations.

Members of the Public Rely Upon Wireless Microphones in the 700 MHz Band

Licensed wireless microphones operating in the 700 MHz band allow broadcast radio and television stations, motion picture and television program producers, and cable system operators to disseminate news, weather, emergency, sports, educational, and other valuable programming to the public. Under the Verizon Wireless proposal, however, these critical communications services would be terminated in less than five months from today even though many of the commercial wireless entrants will not begin to offer services for many years to come. While Verizon Wireless states that it "will launch commercial service . . . in 30 cities in mid-year 2010,"[4] the company won licenses covering the entire country in the 700 MHz auction.[5] Like all commercial wireless entrants in the 700 MHz band, it need not meet any build-out benchmark until February 2013.[6] In addition, 99 bidders other than the nationwide wireless incumbents won 754 (approximately 69 percent) of the 700 MHz licenses auctioned.[7] It is far from clear when these licensees will commence service. Future service in the 700 MHz D Block spectrum also remains uncertain, since the Commission must still resolve the build-out and licensing rules for this spectrum. To require all licensed wireless microphone operations in the 700 MHz band to

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[3] *See* Verizon Wireless, *Ex Parte Presentation*, WT Docket Nos. 08-166 and 08-167; ET Docket Nos. 02-380 and 04-186 (June 8, 2009).

[4] Verizon Wireless, *Ex Parte Presentation*, WT Docket Nos. 08-166 and 08-167; ET Docket Nos. 02-380 and 04-186 (Sept. 16, 2009).

[5] *See Auction of 700 MHz Band Licenses Closes: Winning Bidders Announced for Auction 73*, DA 08-595, Public Notice, 23 FCC Rcd. 4572 (Mar. 20, 2008).

[6] *See* 47 C.F.R. § 27.14(g)–(h).

[7] *Statement by FCC Chairman Kevin J. Martin*, Public Notice, 2008 WL 754957 (Mar. 20, 2008).

end in less than five months, regardless of when the commercial wireless entrant intends to begin offering services, would needlessly cut the public off from receiving valuable services.

Unlike the Verizon Wireless plan, which would leave much of the 700 MHz spectrum fallow for years, the MSTV proposal is spectrally efficient without causing any impediment or harm to the public safety and commercial wireless licensees entering the 700 MHz band. Wireless microphone licensees would vacate the spectrum allocated for public safety use by February 17, 2010. Wireless microphone licensees would continue providing critical news, weather, and emergency programming to the public via the 700 MHz band only until 60 days before such time that the commercial wireless entrant is prepared to begin offering service, or until February 17, 2012, whichever is earlier. Under this compromise proposal, the commercial wireless entrant would be fully protected from interference because the licensed wireless microphone user would be required to cease all operations throughout the applicable geographic area on that frequency within 60 days before the date the entrant's service is to begin. Accordingly, the proposal fairly balances the interests of the wireless microphone licensees and the wireless entrants.

Until Recently, Wireless Microphone Licensees Had No Reason to Expect that They Would be Hastily Removed from the 700 MHz Band

Wireless microphone licensees were not on notice that they would be required to vacate all of the 700 MHz band throughout the Nation so shortly after the digital television transition. The "hard date" of June 12, 2009 for the DTV transition was expressly limited to full-power television stations, and the Commission has provided clear advance notice and adopted flexible rules where it intended to transition other licensed services out of the band. For example, the Commission has taken a flexible approach with respect to the transition of low power television, TV Translator, and Class A stations from the 700 MHz band, allowing operations to continue until the new entrant actually displaces the low power station's operations. Accordingly, wireless microphone licensees had no reasonable expectation that the Commission would impose an inflexible deadline for leaving the 700 MHz band on such short notice like that proposed by Verizon Wireless.

Notably, licensed wireless microphone equipment typically lasts for three to five years. Licensees purchased much of their equipment before the Commission publicly released its Notice of Proposed Rulemaking on transitioning wireless microphones out of the 700 MHz band on August 21, 2008. Consequently, an inflexible deadline requiring all wireless microphones to cease operation in the 700 MHz band on February 18, 2010 would interfere with wireless microphone licensees' investment-backed expectations in their existing equipment. In contrast, Verizon and other commercial wireless entrants acquired their licenses knowing that wireless microphone licensees, like low power television stations, were operating in the band.

Verizon Wireless's Alternatives Are Impractical

The Verizon Wireless proposal fails to address realistically the problem of wireless microphones that are currently operating without a license. Both of Verizon Wireless's proposals — authorizing these wireless microphones "by rule" or treating them as unlicensed devices under the FCC's Part 15 rules — would deem the users of currently unauthorized

wireless microphones as having a co-equal status with the unlicensed white spaces devices that will soon operate in the television band channels 2-51. Such "co-equal" status will render many of these wireless microphones inoperable due to the harmful interference that they will receive from TV white space devices. Simply put, the Verizon Wireless approach ignores the millions of Americans who rely upon unlicensed wireless microphones to hear their pastors preach, teachers and professors instruct, and local governments conduct public meetings. While it is troubling that many wireless microphones have operated without a license, it would defeat the public interest to simply disregard their importance to millions of Americans.

The Verizon plan is also impractical because equipment shortages would result from a requirement that all wireless microphone users, both licensed and unlicensed, vacate the band at the same time. Verizon alleges that there are millions of wireless microphones operating in the 700 MHz band. Nothing in the record, however, indicates that there is a sufficient supply of wireless microphones operating on other frequencies to meet an unexpected increase in demand. As a result, licensees that use wireless microphones for local news and sports programming may be unable to secure new microphones in the few months remaining before the proposed termination date. Moreover, if there is a shortage, many unlicensed wireless microphones presumably will continue to be used, thereby defeating the purpose of the proposed deadline.

In contrast, the compromise plan envisioned by MSTV avoids these problems by eliminating the need for all wireless microphone users to obtain new equipment all at once. Licensed wireless microphone users — which will not interfere with any 700 MHz entrant — would be able to acquire new equipment as the 700 MHz users gradually deploy new services, leaving a sufficient supply for unlicensed wireless microphones to be replaced as well. Accordingly, MSTV's compromise plan will help facilitate compliance with the FCC's ultimate objective of clearing the 700 MHz band.

MSTV's proposal also provides an incentive for currently unauthorized wireless microphone users to apply for a license and thereby come into compliance with FCC rules. The plan mitigates any risk of interference: like the existing eligible wireless microphone licensees, the narrowly expanded class of eligible licensees use wireless microphones in controlled, professional settings apart from residential areas, and, in conjunction with the applicable coordination requirements, are unlikely to interfere with television stations and other primary licensees.

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MSTV respectfully requests that the Commission adopt MSTV's compromise plan for transitioning wireless microphones out of the 700 MHz band, which is based on the actual date upon which a commercial wireless entrant will commence service. This measured approach ensures that there will be no harm to the public safety and commercial wireless licensees entering the 700 MHz band and respects the needs of wireless microphone users as well.

Sincerely,

David Donovan
President

cc: Hon. Julius Genachowski
Hon. Michael J. Copps
Hon. Robert M. McDowell
Hon. Mignon Clyburn
Hon. Meredith Attwell Baker
Bruce Liang Gottlieb
John Giusti
Angela Giancarlo
Renée Roland Crittendon
Erin A. McGrath
Ruth Milkman
Jim Schlichting
John Leibovitz
Chris Moore
Julius Knapp