

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

September 10, 2010

BY ELECTRONIC FILING

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

Re: **Notice of Ex Parte Communications
 ET Docket Nos. 04-186 and 02-380**

Dear Ms. Dortch:

On Thursday, September 9, 2010, Messrs. David Donovan, Victor Tawil and Bruce Franca, for the Association for Maximum Service Television, Inc. (MSTV); Ms. Ann Bobeck and Messrs. Lynn Claudy and Kelly Williams for the National Association of Broadcasters (NAB); and Mr. Jonathan Blake on behalf of both organizations met with Ms. Eloise Gore and Mr. Louis Peraertz, the Acting Media Legal Advisor and the Acting Legal Advisor, Wireless, International, and Public Safety, respectively, for Commissioner Clyburn's office, to discuss white spaces issues in the above two proceedings, both of which are subject to petitions for reconsideration. Those petitions are currently scheduled for resolution by the Commission at its September 23 open meeting.

MSTV and NAB presented the follow four points:

1. The white spaces rules and the Commission's oversight and regulation of the geolocation/database functions are integrally related and they should be designed and implemented together (currently, however, they are being focused on separately and on different schedules; the former is being decided by the full Commission and the latter is being handled by the Office of Engineering and Technology (OET) without direct involvement by the full Commission). There are serious questions, in terms of good government and the law, whether the Commission should make fundamental changes in the white spaces rules when the other part of the regulatory equation, *i.e.*, the

Ms. Marlene H. Dortch

September 10, 2010

Page 2

geolocation/database arrangements, has not been decided upon and apparently will not be adopted or implemented under direct Commission oversight.

2. White spaces devices must operate on the basis of near real-time access to the database, especially when they are operated in a portable/mobile mode, and the database itself must be updated frequently in order to ensure that the database information is accurate and up-to-date. Accordingly, Mode I devices should be required to check with Mode II or fixed devices every 60 seconds. In turn, Mode II and fixed devices should be required to check the database in near real-time, but no less frequently than every 15 minutes;
3. Under the proposals the Commission is now considering at the reconsideration stage of these proceedings, licensed wireless microphones would be confined in the first instance to two reserved channels in any given geographic area; in contrast, under previous FCC rules they could operate on any of 37 channels. These two reserved channels should be off-limits not only for white space devices but also for *unlicensed* wireless microphones and other *unlicensed* devices;
4. Venue protection provisions for licensed wireless microphones, which we understand are currently being considered, should effectively permit and protect network and local news gathering activities wherever and whenever they take place. It is critical that broadcasters' newsgathering operations not be impaired, be it at regularly scheduled venues or out in the field covering emergencies.

In addition, Ms. Gore and Mr. Peraertz asked about the tests on interference and sensing conducted by OET in 2007 and 2008. Also, at our meeting, Ms. Gore asked for a copy of our August 27, 2010, *ex parte* submission (attached) and we provided it to her.

Later yesterday, the same MSTV and NAB representatives met with Mr. Charles Mathias, Legal Advisor to Commissioner Baker. The discussion covered the same four points summarized above. Mr. Mathias also asked MSTV and NAB for their views on the possibility of the Commission's periodically assessing, after the decision on reconsideration and operations have begun, the effectiveness of its rules and policies in connection with the operation of white spaces devices. The purpose of these periodic assessments would be to determine whether problems have arisen and whether, in light of that experience, rule changes or other changes are appropriate. MSTV and NAB expressed general interest in and support for such a proposal, provided that it is not adopted as a substitute for optimizing the white spaces rules and geolocation/database processes in the current petition for reconsideration stage of this proceeding.

COVINGTON & BURLING LLP

Ms. Marlene H. Dortch
September 10, 2010
Page 3

Please call the undersigned or Jonathan Blake if there are questions about the above summary or if additional information is desired.

Respectfully submitted,



Eve R. Pogoriler
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
(202) 662-6000

Counsel for MSTV and NAB

cc (by email):

Eloise Gore
Louis Peraertz
Charles Mathias
David Donovan (MSTV)
Victor Tawil (MSTV)
Bruce Franca (MSTV)
Jane Mago (NAB)
Ann Bobeck (NAB)
Lynn Claudy (NAB)
Kelly Williams (NAB)
Jonathan Blake (Counsel)

Attachment