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September 17, 2010

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

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

Dear Ms. Dortch:

On Thursday, September 16, 2010, prior to the release of a public notice placing this proceeding on the Sunshine Agenda for the Commission's meeting on September 23, Mr. David Donovan, for the Association for Maximum Service Television, Inc. (MSTV); Ms. Jane Mago, for the National Association of Broadcasters (NAB); and Mr. Jonathan Blake on behalf of both organizations, spoke with Mr. John Giusti, Chief of Staff and Legal Advisor for the Honorable Michael J. Copps.

They made three points:

1. The bifurcation of the white spaces rules from the requirements for geolocation/database operations, particularly in light of the possible deletion of the sensing requirement, raises serious legal and policy concerns (see MSTV and NAB's

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notification of *ex parte* communication filed on September 14). These concerns should be ameliorated by:

- (a) Public disclosure of the geolocation/database operations requirements once OET has settled on what they should be, with opportunity for public comment that could be expedited to avoid delay and the Commission approval of those requirements after it has reviewed these comments; and
 - (b) Specification in the upcoming order that the white spaces rules that the Commission adopts on September 23 not go into effect until the steps summarized in paragraph (a) have been completed. (This will not delay the inauguration of white spaces services because they cannot be launched, in any event, until a geolocation/database regime is up and running).
2. The requirements for white spaces devices should be strengthened to require Mode I devices to check with Mode II devices or fixed devices at least as frequently as every 60 seconds; Mode II or fixed devices should check with the database no less frequently than every 15 minutes and preferably more often.
 3. The proposal for setting aside two channels for wireless microphone service should be adopted only if access to these two channels is limited to *licensed* wireless microphones. In addition, the proposal for venue protection (the details of which are not known at this time) should be fine-tuned in various specific respects to accommodate, not impede, news-gathering activities via licensed wireless microphones.

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Moreover, we also discussed a claim being made by advocates of white spaces devices, particularly at the twelfth hour, that there is no evidence in the record that *unlicensed* white spaces devices will cause interference to *licensed* wireless microphones used for newsgathering purposes. Mr. Donovan referred to a 2007 OET study (which is in the record) that concluded that interference could result. This study is described in more detail and attached (in part) to the notice of *ex parte* communication with Ms. Eloise Gore, which meeting occurred on September 16, 2010 and which notice is being submitted contemporaneously herewith.

Respectfully submitted,



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