

October 1, 2010

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

Re: WT Docket No. 09-176; ET Docket No. 05-345; WT Docket No. 08-167;  
ET Docket No. 10-24; ET Docket 04-186; and ET Docket 02-380  
Notice of Ex Parte Communication

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commissions Rules, 47 C.F.R. § 1.1206, the undersigned, along with Ellen Ginsberg, Vice President and General Counsel of the Nuclear Energy Institute (“NEI”), Brett Kilbourne, Deputy General Counsel of the Utilities Telecom Counsel (“UTC”), Jonathan L. Wiener, Counsel to American Electric Power and Progress Energy Company, Donald L. Herman, Jr., Counsel to Arizona Public Service Company (Palo Verde Nuclear facility), and Ralph Anderson, Chief Health Physicist of NEI, met yesterday with Ms. Jennifer Flynn, Legal Advisor, Office of Chairman Julius Genachowski; Mr. John Giusti, Chief of Staff, Office of Commissioner Michael J. Copps; Louis Peraert, Legal Advisor, Office of Commissioner Mignon Clyburn; and Charles Mathias, Legal Advisor, Office of Commissioner Meredith Attwell Baker.

During our discussions at these four meetings, the undersigned presented the attached power point (Exhibit A hereto) and the parties discussed the urgent need for the nuclear power plants to be relieved of the co-channel separation requirements and the power limitations established under Blanket Waiver in the Wireless Microphone Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 08-166, January 15, 2010 (the “Order”). The parties also discussed the longer term need for the nuclear plants to have a more permanent “spectrum home” so that they can continue to use the Telex headsets that are uniquely suited to operate in the plants’ challenging environment and that materially reduce plant workers exposure to radiation, as they perform their mission critical tasks. NEI and UTC also noted that, in the Order, the FCC proposed to “extend the license eligibility under Subpart H of Part 74 of the rules, to permit the use of low power auxiliary stations inside nuclear power plants.” See, Order, at paragraph 139.

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During the meetings, representatives of NEI and UTC also referred to their (i) September 23, 2010 letter to Mr. Ira Keltz, Deputy Director, Office of Engineering and Technology (“OET”) in which they sought relief from the Order’s co-channel separation requirements and power limitations and (ii) 2009 Petition for Waiver in which they sought licensing rights for the plants’ use of the Telex equipment. Copies of both of those documents are attached hereto, as Exhibits B and C, respectively.

As discussed at several of the meetings, NEI and UTC also confirm that **19 plants will commence outages** (during which the plant is shut-down; spent fuel is removed; new fuel is added; and other repair and maintenance functions are undertaken) during October, 2010, **the earliest on Monday, October 3.** As Mr. Anderson explained in the meetings, the Telex equipment is a critical element of the outage operations and has contributed significantly to the major reductions in plant workers exposure to radiation, as reflected in the graph titled “Average Measurable Dose Per Worker,” attached hereto as Exhibit D. Without immediate regulatory relief, upwards of 50% of the plants’ Telex equipment will not be available, because of the co-channel separation and/or the power level limitations established under the Order’s Blanket Waiver. As Mr. Anderson noted, a reduction in available Telex units could lead to more exposure to more plant workers.

**NEI and UTC urgently request immediate relief from the co-channel separation requirements and the power level cap, both of which are more stringent than the Experimental Licenses, under which the plants had operated until just last month.** NEI and UTC contend that – as evidenced by the 7 years of non-interference - such *indoor* use would not give rise to any risk of interference to broadcast licensees. Neither the nature of the use nor the practical risk of interference to broadcast operations (there being none) from such in plant use has changed. These facts, together with the potential for more exposure to hundreds of plant workers, as soon as next week, compels immediate FCC action.

Equally critical is the near-term resolution of licensing eligibility for the plants, so that they are permitted to use Telex equipment *as secondary licensees*, with protection rights only from unlicensed devices - just as the NFL is licensed to operate Telex (and similar equipment) at professional football games – on a longer-term basis. As noted in the meetings, it is extremely inefficient and a waste of FCC resources to require NEI and UTC to continue annual pilgrimages to the FCC, simply to be able to use the Telex equipment which, for 7 years, has operated without a single assertion of interference. The Petition sets-out, in great detail, the technical and operational necessity for the Telex equipment. Finding a long-term solution that will support the plants’ continued use of the Telex equipment is critically necessary and ought to be achievable.

NEI, on behalf of the non-FCC parties listed above, is electronically filing this Notice using the Commission’s Electronic Filing System for inclusion in the dockets listed above.

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Very truly yours,

Thompson Coburn LLP



By  
J. Jeffrey Craven

JJC /jj

cc: Ellen C. Ginsberg  
Brett Kilbourne  
Jonathan L. Wiener  
Donald L. Herman, Jr.  
Ralph Anderson  
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