

May 6, 2014

Ex Parte

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

Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, ET Docket No. 10-24, WT Docket Nos. 08-166, 08-167

Dear Ms. Dortch:

When the FCC designates frequencies for unlicensed technologies, it opens spectrum for use by any consumer or business. The defining characteristic of an unlicensed designation is that no entity receives a grant of exclusive authority to use the band or to exclude others from using the band: if a user adheres to the Commission's technical rules, it can use the frequencies. The FCC has recognized that this framework enables unlicensed designations to provide "widespread access to spectrum," resulting in wireless networks with "low barriers to entry and faster time to market, that have reduced costs of entry, spurred innovation and enabled very efficient spectrum usage."¹

Accordingly, the recent claim by the National Association of Broadcasters ("NAB") that designating spectrum for unlicensed broadband "grants Google and Microsoft free spectrum" is curious to say the least.² If NAB means that such a decision would grant Google and Microsoft special rights of any kind, then it is wrong. An unlicensed designation would not grant these companies any special rights. Rather, it would allow any company or individual—including NAB's members—to use the frequencies on an equal footing.

What's more, in the very same filing where NAB calls a *non-exclusive* unlicensed designation in the duplex gap "free spectrum," it asks the Commission to grant wireless microphone users *exclusive* rights to the duplex gap, without either an auction or submitting to the FCC's unlicensed sharing rules. NAB maintains that the Commission "would be derelict in its duty to regulate in the public interest" if it does not grant wireless microphones a new,

¹ Federal Communications Commission, *Connecting America: The National Broadband Plan*, at § 5.11 (2010).

² Letter from the Nat'l Ass'n of Broadcasters to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, at 5 (filed Apr. 28, 2014) ("NAB Ex Parte").

exclusive license to use the entire 600 MHz duplex gap instead of making that spectrum available to all consumers, including wireless microphones users, on an unlicensed basis as contemplated by the Spectrum Act.³ In other words, NAB argues that the FCC should treat wireless microphone licensees as a specially privileged class of users.

Denying consumers access to low-bandwidth unlicensed spectrum in order to provide wireless microphones with a new, exclusive license would not serve the public interest. Broadband providers have consistently invested and evolved to enable more intensive spectrum use because the FCC's use of auctions and non-exclusive unlicensed rules create strong incentives to be efficient. Legacy TV band wireless microphones, on the other hand, have not faced the pressures of either paying for spectrum rights or sharing with all comers, and therefore have remained inefficient and unable to share. They rely on analog technology that has stayed essentially unchanged for decades.⁴ Indeed, in no fewer than four separate proceedings, including this one, the Commission has expressed concern that TV band wireless microphones operate inefficiently.⁵ Granting wireless microphones a new, exclusive license in the portions of the duplex gap that are usable by unlicensed technologies would forgo substantial benefits to the economy and inhibit the innovation and competition created by unlicensed broadband spectrum in order to promote an inefficient, narrowband technology that will only use the frequencies episodically. Indeed, if NAB's plan were adopted, the duplex gap spectrum would lie fallow most of the time in most areas of the country.⁶ Such a decision would undermine the public interest and this proceeding's goal of freeing spectrum for its most efficient and intensive use.

³ *Id.* at Appendix, Non-exhaustive List of Broadcaster Concerns Regarding the Draft Incentive Auction Order, at 7.

⁴ *See, e.g.*, Comments of Microsoft Corporation at 2-4, WT Docket Nos. 08-166 & 08-167, ET Docket No. 10-24 (filed Jan. 25, 2013) ("Microsoft Wireless Microphone Comments").

⁵ *See Wireless Telecommunications Bureau and the Office of Engineering and Technology Seek to Update and Refresh Record in the Wireless Microphones Proceeding*, Public Notice, DA 12-1570, 27 FCC Rcd. 12,067, 12,071 (WTB 2012); *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 10-16, 25 FCC Rcd. 643, 703 ¶ 147 (2010); *Unlicensed Operation in the TV Broadcast Bands, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Second Memorandum Opinion and Order, FCC 10-174, 25 FCC Rcd. 18,661, 18,674 ¶ 29 (2010); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, FCC 12-118, 27 FCC Rcd. 12,357, 12,436 ¶ 225 (2012).

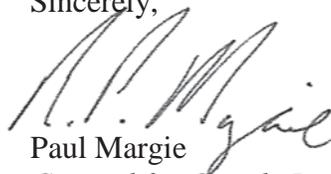
⁶ NAB insists that the Commission must declare this valuable spectrum off limits to all other consumers in order to accommodate "breaking news" situations. NAB Ex Parte at 4. But broadcasters can accommodate such events by operating where white spaces devices are not present—including on channels that white spaces devices are not eligible to use—and by operating co-channel with broadcast operations, which microphones have done successfully for years. *See Reply Comments of Google Inc.* at 13, GN Docket No. 12-268 (filed Mar. 13, 2013). Looking forward, broadcasters should move toward technologies that enable more efficient and intensive spectrum use, just as virtually every modern wireless service has done.

While NAB fails to make a case for perpetuating counterproductive exclusive microphone allocations, Google and Microsoft agree that, today, 600 MHz analog wireless microphones still provide an important service. Consequently, the companies have suggested that the Commission protect the two white spaces channels currently reserved for wireless microphone use in each market as it repacks the broadcast band, and allow unlicensed use of these channels when and where there are no Part 74 wireless microphones actively operating, using the TV White Spaces database. This would provide for the legitimate needs of wireless microphone users while also “promoting efficient and innovative use of spectrum resources” at a time where every megahertz counts.⁷ But the Commission should not allow wireless microphone users to exclude other users from the usable portions of the duplex gap and guard bands through either a rule prohibiting unlicensed operations altogether, or a rule allowing microphones to make database reservations.

Finally, the Commission should defer any decision to grant new non-broadcast wireless microphone users Part 74 “broadcast auxiliary” licenses unless and until it establishes that this could be done in a manner consistent with the goal of promoting efficient and intensive spectrum use within a new 600 MHz band plan. Expanding Part 74 eligibility would enable microphone users that currently operate on an unlicensed basis to register in a database and thereby exclude other spectrum uses, without meeting even modest spectrum efficiency requirements.⁸ Without strict limits on Part 74 eligibility that avoid expansion of reservation rights to large new classes of wireless microphone users,⁹ Part 74 expansion is likely to make unlicensed operations infeasible in many urban areas, foreclosing innovative broadband uses.

Pursuant to the Commission’s rules, a copy of this notice is being filed electronically in the above-referenced dockets. If you require any additional information, please contact the undersigned.

Sincerely,



Paul Margie
*Counsel for Google Inc.
and Microsoft Corporation*

⁷ See *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Further Notice of Proposed Rulemaking, FCC 14-49, 24 ¶ 78 (2014).

⁸ Compare 47 C.F.R. § 15.713(h)(9) (requiring certification that Part 15 wireless microphone registrants are “making use of all TV channels not available to TV bands devices and on which wireless microphones can practicably be used” and noting that registration requests that do not specify that at least 6 to 8 wireless microphones will be used in each channel will not be approved).

⁹ See Microsoft Wireless Microphone Comments at 7-9.