May 9, 2014

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

Re: GN Docket No. 12-268, ET Docket No. 10-24, WT Docket Nos. 08-166, 08-167, Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On May 6, 2014, Google Inc. ("Google") and Microsoft Corporation ("Microsoft"), submitted, through counsel, a written *ex parte* presentation in the above-referenced docket, which was posted on the Commission's Electronic Filing System on May 8, 2014.[1] Google and Microsoft described as "curious" the National Association of Broadcasters' ("NAB's") assertion that Google and Microsoft were seeking expansive new free spectrum opportunities in the incentive auction proceeding at the expense of critical wireless microphone newsgathering operations. To the extent the Commission shares this confusion, NAB herein clarifies its prior filing in response to Google and Microsoft.[2]

First, Google and Microsoft's claim that NAB seeks "new" spectrum for wireless microphones in the 600 MHz band is specious. In fact, as Google and Microsoft themselves acknowledge,[3] wireless microphones are currently permitted to operate on two reserved channels, amounting to 12 megahertz of exclusive spectrum. These two channels were reserved as a result of a grand compromise during the TV white spaces proceeding, as broadcasters lost exclusive access to between 10 and 20 channels in most major markets, and the Commission recognized that the TV white spaces database could not adequately protect newsgathering operations. Moreover, NAB's

[1] Letter from Paul Margie, Counsel for Google Inc. and Microsoft Corporation, to Marlene H. Dortch, GN Docket No. 12-268, ET Docket No. 10-24, WT Docket No. 08-166, 08-167 (May 6, 2014) ("Google-Microsoft Letter").

[2] The Commission's *ex parte* rules permit parties to submit permitted replies to written *ex parte* presentations posted on the day before the Sunshine period begins. 47 C.F.R. § 1.1203.

[3] *See id.* at 3 (acknowledging two white space channels currently reserved for exclusive use by wireless microphones).

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compromise proposal in this proceeding would further limit the spectrum to which wireless microphones have access to a mere 4-5 megahertz in the duplex gap. NAB's proposal provides a perfect home for wireless microphones, as exclusive use of the duplex gap could accommodate newsgathering operations without threatening interference to LTE operations, by providing adequate separation between wireless microphones and licensed wireless operations.

Second, Google and Microsoft will, through the incentive auction proceeding, stand to gain access to new unlicensed allocations in the guard band and TV Channel 37 that do not currently exist. These will be nationwide allocations of unlicensed spectrum that provides, for the first time, access to low-band unlicensed spectrum in congested markets, such as New York and Los Angeles, where white space channels may be limited. Under the current proposal – and NAB's – Google and Microsoft are *gaining* new spectrum opportunities in the 600 MHz band, not losing.

Third, while NAB wholeheartedly supports unlicensed spectrum, Google's and Microsoft's claims of the FCC not providing enough spectrum for unlicensed uses ring hollow. The Commission has taken admirable and decisive steps to make more spectrum available for unlicensed use in other bands. Within the last month alone, the Commission has proposed to make up to 150 megahertz of spectrum available for unlicensed use in the 3.5 GHz band.[4] This came just weeks after making 100 megahertz available in the 5 GHz band.[5] Indeed, the Commission has recently focused far more of its efforts on clearing spectrum for unlicensed use than any other allocation, including for commercial wireless carriers.

Fourth, the claim that reserving the duplex gap for exclusive use by wireless microphones would deny "consumers access to low-band unlicensed spectrum" is patently false.[6] Unlicensed operations already have access to significant low-band spectrum. In addition to continued use of TV white spaces in the remaining UHF spectrum after the incentive auction, unlicensed operation is permitted at 902-928 MHz, representing 26 megahertz of low-band spectrum – an amount that far exceeds any amount that will remain available for wireless microphones after the incentive auction. Unlicensed operation is also currently permitted in other bands below 1 GHz, including 88-108 MHz.[7]

Fifth, Google and Microsoft balk at the notion that they have been lobbying to get new "spectrum for free." The Commission has repeatedly noted that one of the greatest

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[4] *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Further Notice of Proposed Rulemaking, GN Docket No. 12-354, FCC 14-49 (rel. April 23, 2014).

[5] *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, First Report and Order, ET Docket No. 13-49, FCC 14-30 (rel. April 1, 2014).

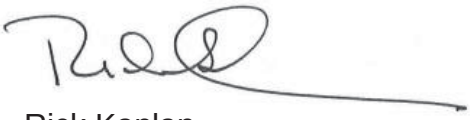
[6] Google-Microsoft Letter at 2.

[7] *See, e.g.,* 47 C.F.R. §§ 15.231, 15.235, 15.239.

values of unlicensed spectrum is the ability to foster innovation without high barriers to entry. If there are two companies who need to worry less about barriers to entry (apart from antitrust laws), NAB does not know them. NAB's previous filing simply stated that the FCC should not be bending backwards to create opportunities specifically for Google and Microsoft at the expense of newsgatherers attempting to provide critical news and information to viewers in local communities across the country. Those newsgatherers have relied on 600 MHz spectrum for decades, have committed to doing more with less and have routinely put themselves in harm's way to deliver the news.

NAB continues to support the Commission's drive to find opportunities to develop spectrum that does not require a license. We also understand its importance to successful companies such as Google and Microsoft, as it lowers costs for them when they develop consumer products and services. However, if Google and Microsoft believe they need more access to spectrum as part of their business models, NAB is aware of no financial or legal limitations that would prevent these companies from bidding in the incentive auction, raising revenues and increasing the likelihood of a successful auction.

Respectfully submitted,



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