

July 16, 2009

***Via Electronic Filing***

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

Re: *Ex Parte Presentation*  
WT Docket Nos. 08-166 and 08-167; ET Docket Nos. 02-380 and 04-186

Dear Ms. Dortch:

President Obama recently emphasized the benefits of the DTV transition, stating that “the transition to digital will free up airwaves for broadband and enhanced emergency communications for our police officers, firefighters, and other first responders.”<sup>1</sup> But, as Verizon Wireless has observed, one obstacle stands in the way of achieving those benefits: the continued, and mostly unauthorized, operation of wireless microphones in the 700 MHz band.<sup>2</sup> A key goal of the DTV transition was to clear the 700 MHz band to permit public safety and other licensees to have unencumbered access to spectrum in order to better serve the public. Yet even after the June 12, 2009 analog TV cut-off, the 700 MHz band remains uncleared, with no path charted to achieve the President’s goals.

Almost a year ago, the Commission initiated the *700 MHz Wireless Microphone* proceeding and acknowledged, “it is incumbent on the Commission to take all steps necessary to make [700 MHz] effectively available both to public safety and commercial licensees at the end of the DTV transition.”<sup>3</sup> It tentatively concluded that wireless microphone operations in the

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<sup>1</sup> Press Release, The White House, Office of the Press Secretary, Statement by the President on the Transition to All Digital Programming (June 4, 2009), *available at* [http://www.whitehouse.gov/the\\_press\\_office/Statement-by-the-President-on-the-Transition-to-All-Digital-Programming-6-4-09/](http://www.whitehouse.gov/the_press_office/Statement-by-the-President-on-the-Transition-to-All-Digital-Programming-6-4-09/).

<sup>2</sup> See Letter from Verizon Wireless to the FCC, WT Docket Nos. 08-166 & 08-167 and ET Docket Nos. 04-186 & 02-380, at 3-5 (June 8, 2009) (“*Verizon Wireless Ex Parte*”).

<sup>3</sup> *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, WT Docket Nos. 08-166 and 08-167, Notice of Proposed Rulemaking and Order, 23 FCC Rcd 13106 ¶ 1 (2008).

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band would have to cease operation by February 17, 2009. Yet that date and the extended transition date have now come and gone and the Commission's work remains unfinished – even as new licensees in the band move forward with investment and deployment. Public safety has already deployed systems in 40 plus markets, with many more on the way.<sup>4</sup> Commercial operators are also ready to begin the aggressive deployment that the FCC worked so hard to promote in crafting its 700 MHz rules.<sup>5</sup> Verizon Wireless is testing LTE in its licensed 700 MHz spectrum and plans to launch commercial service in 25 to 30 markets in the middle of 2010. Pre-launch testing and network optimization requires that the spectrum be cleared well in advance of that date.

The record in the proceeding establishes that absent swift and definitive action, interference will occur in the 700 MHz band – to new broadband subscribers, to first responders, and to authorized and unauthorized users of wireless microphones.<sup>6</sup> Verizon Wireless, like other new licensees in the 700 MHz band, urges the Commission to act now to clear the band, consistent with the goals of the DTV transition. The Commission should set a hard date no later than February 18, 2010 for wireless microphone and other LPAS device operations to cease in the 700 MHz band – a date that would be a full year after the Commission's original target date.

Verizon Wireless recognizes that, as part of clearing the band, the Commission has an interest in a broader solution involving a path forward for wireless microphone operations. To that end, Verizon Wireless proposed that the Commission establish a new, legal “home” for currently unauthorized wireless microphone operations in the TV Bands below the 700 MHz band (“TV Band”), and initiate a proceeding to consider whether operations not currently licensed by the FCC should be afforded interference protection rights.<sup>7</sup>

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<sup>4</sup> See Comments of Motorola, Inc., WT Docket Nos. 08-166 & 08-167, at 3 (Oct. 3, 2008).

<sup>5</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd 15289, ¶¶ 153-177 (2007).

<sup>6</sup> See, e.g., Letter from V-COMM LLC to FCC, WT Docket Nos. 08-166 & 08-167 (Apr. 17, 2009) (providing analysis demonstrating “that public safety licensees, commercial licensees, and wireless microphone users will all be substantially harmed by continued operation of LPAS devices at 700 MHz.”); Comments of V-COMM at 1, 5-10 (filed Oct. 1, 2008) (providing technical analysis and examples of actual interference); Comments of the Society of Broadcast Engineers, Inc. at 2-3 (filed Sept. 26, 2008) (describing LPAS devices as “unpredictable, mobile and itinerant,” and very difficult to coordinate with); Comments of the Association of Public-Safety Communications Officers at 2 (filed Oct. 3, 2008) (describing a “very real danger of interference from the low auxiliary devices to public safety land mobile radio systems”).

<sup>7</sup> Verizon Wireless proposed that the Commission allow currently unauthorized wireless microphone users to operate lawfully in the TV Band, under the technical rules of Part 74 LPAS devices, pursuant to either Section 307(e) authorization by rule or Part 15, with co-equal status to the TV Band Devices. As soon as the Order is released, this would allow all wireless microphone users to have certainty about their new spectrum home and the type of equipment that is needed to ensure compliance. Subsequently, the Commission could then engage in a follow-on proceeding to assess whether some subset (or all) of the currently unauthorized wireless microphone users should be entitled to interference protections from TV

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Verizon Wireless's proposal was intended to offer constructive solutions to address the future of unauthorized wireless microphone operations and allow them to continue to deliver value to the public. Verizon Wireless is not a TV Band device proponent and has not taken a position in the Commission's *White Spaces* proceeding. Of course, there may be other solutions available as well. The Commission can resolve issues relating to devices operating in the TV Band well before any TV Band devices are introduced into the marketplace.

Unfortunately, recent filings by Shure Incorporated ("Shure") and Sennheiser Electronic Corporation ("Sennheiser") mischaracterize Verizon Wireless's recent proposal – and flagrantly disregard the law with respect to wireless microphone use.<sup>8</sup> Their filings should not distract the Commission from finishing the work it started nearly a year ago to clear the 700 MHz band, an action that has become critical.

Worse, Shure and Sennheiser ignore the fact that most wireless microphones are operated unlawfully – a remarkable omission given that these manufacturers have marketed and sold wireless microphones while knowing that the intended users had no lawful right to operate the devices. They have, in short, actively promoted and profited from marketing unauthorized devices for years.<sup>9</sup> Yet they now claim that the illegal operations that they promoted should be considered as "incumbent" services and afforded the same interference protection rights as are enjoyed by authorized users of the spectrum. Acceptance of such a frivolous argument would undermine the very framework on which the Commission's spectrum policies are built.

Shure asserts that Verizon Wireless's proposal "would effectively scrap interference protection for many wireless microphones."<sup>10</sup> This claim is not true. First, the proposal would not alter the rights of wireless microphone users that operate legally today in the TV Band under a Part 74 license. These users would continue to enjoy the right to protection against harmful interference caused by TV Band devices. Second, wireless microphones operated without a license are operated illegally, and as a result such operations do not have any rights to interference protection. Sennheiser fancifully claims that such operations in the TV Band are "incumbents" and thus are afforded the same interference rights enjoyed by legal, authorized Part

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Band and other devices through Part 74 LPAS licensing or some other means. See *Verizon Wireless Ex Parte* at 3-5.

<sup>8</sup> *Ex Parte* Comments of Shure Incorporated, WT Docket Nos. 08-166 & 08-167 and ET Docket Nos. 04-186 (June 29, 2009) ("*Shure Ex Parte*"); Letter from Sennheiser Electronic Corporation to the FCC, WT Docket Nos. 08-166 & 08-167 and ET Docket Nos. 04-186 (July 7, 2009) ("*Sennheiser Ex Parte*").

<sup>9</sup> See, e.g., *A Shure Educational Publication: Wireless Microphone Systems and Personal Monitor Systems for Houses of Worship*, available at [http://www.shure.com/groups/public/@gms\\_gmi\\_web\\_ug/documents/web\\_resource/us\\_pro\\_intropsm\\_how.pdf](http://www.shure.com/groups/public/@gms_gmi_web_ug/documents/web_resource/us_pro_intropsm_how.pdf); *Sennheiser Installation Stories in Houses of Worship*, available at <http://www.sennheiserusa.com/houses-of-worship-audio-sound-systems>.

<sup>10</sup> *Shure Ex Parte* at 1.

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74 licensees.<sup>11</sup> It strains credibility to think that interference protection rights would have been afforded to devices that are not lawfully operated in the first place. Verizon Wireless's proposal would, for the first time, establish lawful rights to operate wireless microphones for purposes that are currently unauthorized in the TV Band. It would also enable the Commission to determine through a follow-on proceeding whether such operations should be afforded interference protection in the TV Band – interference protection rights that they do not currently have. The Commission could promptly engage in that proceeding and reach a decision before TV Band devices are introduced into this spectrum.

Shure and Sennheiser cite to no precedent that the Commission lacks the authority to act pursuant to Section 307(e), or that the Commission lacks authority to assign Part 15 status to non-LPAS wireless microphone operations in the TV Band. Verizon Wireless does not take a position on which course the Commission should take; it has merely identified lawful options that would address the unauthorized, illegal status today of the many devices that Shure and Sennheiser have sold.

In sum, immediate action in this proceeding is needed to complete the DTV transition by clearing the 700 MHz band to enable critical broadband offerings and public safety services to be launched. The Commission can act now to provide the certainty of a legal home for currently unauthorized wireless microphone users in the TV Band, and pursue a follow-on proceeding to address interference protection issues in the TV Band.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced dockets.

Respectfully Submitted,

/s/

Adam D. Krinsky

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<sup>11</sup> *Sennheiser Ex Parte* at 2.