

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
FEB 27 2009
CLERK

THE ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC. and the
NATIONAL ASSOCIATION OF BROADCASTERS
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

Case No. _____

09-1080

PETITION FOR REVIEW

The Association for Maximum Service Television, Inc. ("MSTV")
and the National Association of Broadcasters ("NAB"), pursuant to Section 402(a)
of the Communications Act of 1934, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342-44,
and Rule 15(a) of the Federal Rules of Appellate Procedure, hereby petition this
Court for review of an order of the Federal Communications Commission, *In the
Matter of Unlicensed Operation in the TV Broadcast Bands and Additional
Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET
Docket Nos. 04-186 & 02-380, *Second Report and Order and Memorandum
Opinion and Order*, released November 14, 2008, 74 Fed. Reg. 7314 (Feb. 17,
2009) ("Second Report and Order"). A copy of the Second Report and Order is

2011 JAN 21 P 2 37

attached to this Petition as Exhibit 1. Venue lies in this Court pursuant to 28 U.S.C. § 2343.

In the Second Report and Order, the Federal Communications Commission (“Commission”) decided to allow fixed and personal/portable devices to operate without a license in the unused locations, known as the “white spaces,” of the television spectrum. *See* 74 Fed. Reg. at 7317. This is the first time the Commission has permitted widespread use of consumer grade unlicensed radio transmitters in the broadcast television spectrum.

MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a nonprofit trade association that serves and represents local radio and television stations and broadcast networks. The Commission’s decision to allow unlicensed access to the television spectrum will have a direct adverse impact on MSTV’s and NAB’s members because it will allow harmful interference with reception of their broadcast signals. For this reason, MSTV and NAB participated in the Commission’s proceeding below and gave particular attention to the interference with television reception that could be caused by the operation of unlicensed devices.

MSTV and NAB seek relief from the Commission’s decision to permit unlicensed devices to operate in the broadcast television spectrum on the

grounds that it is arbitrary, capricious, and otherwise not in accordance with law. Accordingly, MSTV and NAB request that this Court hold unlawful, vacate, and set aside the Second Report and Order and grant such other relief as may be necessary and proper under the circumstances.

Respectfully submitted,



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Counsel of Record

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Association of Broadcasters*

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February 27, 2009

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FOR THE DISTRICT OF COLUMBIA CIRCUIT**


THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. and the NATIONAL ASSOCIATION OF BROADCASTERS Petitioner,)	
)	
v.)	Case No. _____
)	
FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,)	
)	
Respondents.)	

CERTIFICATE OF SERVICE

I, Robert A. Long, Jr., hereby certify that copies of the foregoing
Petition for Review have been served via first-class mail, postage prepaid this 27th
day of February, 2009, upon the following parties:

Michele Ellison
Acting General Counsel
Federal Communications Commission
445 12th Street, SW, Room 8-A741
Washington, DC 20554
(also served by hand-delivery)

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001



Robert A. Long, Jr.

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JAN 27 P 2:37

CORPORATE DISCLOSURE STATEMENTS


Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Cir. Rule 26.1, the Association for Maximum Service Television, Inc. and the National Association of Broadcasters state as follows:

The Association for Maximum Service Television, Inc. ("MSTV") is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. MSTV represents the interests of its members in a variety of contexts with respect to proceedings and issues before the Federal Communications Commission and Congress. MSTV has no parent corporation, and no publicly held corporation owns 10% or more of its stock. As a continuing association of numerous

organizations operated for the purpose of promoting the interests of its membership, the Coalition is a trade association for purposes of Circuit Rule 26.1.

The National Association of Broadcasters (“NAB”) is a nonprofit, incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry before Congress, the Federal Communications Commission and other federal agencies, and the courts. NAB has not issued any shares or debt securities to the public, and NAB has no parent companies, subsidiaries, or affiliates that have issued any shares or debt securities to the public. Because NAB is a trade association as defined in Circuit Rule 26.1(b), it is not required to disclose the names of its members.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Robert A. Long, Jr., hereby certify that copies of the foregoing Corporate Disclosure Statement have been served via first-class mail, postage prepaid this 27th day of February, 2009, upon the following parties:

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Acting General Counsel
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