

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones	)	MB Docket No. 15-146
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	

**OPPOSITION TO PETITIONS FOR RECONSIDERATION OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (NAB)<sup>1</sup> hereby opposes petitions submitted by Shure Incorporated (Shure) and Sennheiser Electronic Corporation (Sennheiser) seeking reconsideration of the Commission's order declining to adopt rules to preserve a vacant channel for use by white space devices and wireless microphones in every market (Order).<sup>2</sup>

The Order reflects careful consideration of the arguments in the record of the proceeding as well as recognition that central assumptions underlying the original Notice of Proposed Rulemaking (NPRM) in this proceeding are simply no longer applicable. Given that

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<sup>1</sup> The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> *Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones*, Report and Order, 35 FCC Rcd 14272 (2020) (Order).

the central objective of the NPRM, the preservation of at least one vacant channel on a nationwide basis, is no longer achievable, it was entirely appropriate for the Commission to close this proceeding in light of the burdens the NPRM's proposals would have placed on broadcasters.

Moreover, many of the policy arguments the petitioners present have already been considered and rejected by the Commission. The petitioners thus offer no basis for reconsideration – only detailed explanations of their disappointment in the Commission's unanimous decision to take the long overdue step of closing this proceeding. We urge the Commission to dismiss the petitions without further action.

## **II. THE COMMISSION CORRECTLY BALANCED POLICY CONSIDERATIONS IN TERMINATING THIS PROCEEDING**

Shure's express argument on reconsideration, and Sennheiser's implicit argument, is that the Commission erred in terminating this proceeding without determining whether it would be possible to preserve a vacant channel in some, but not all, of the United States.<sup>3</sup> But the heart of the vacant channel proceeding was the perceived need to make a vacant channel available for white spaces devices and wireless microphones *nationwide*, not to create a patchwork quilt of channel availability.

The NPRM in this proceeding explicitly states as its purpose the preservation of one television channel *in each area* of the United States for shared use by white spaces devices

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<sup>3</sup> Petition for Reconsideration of Shure Incorporated at 20, MB Docket No. 15-146 (Jan. 7, 2021) (“The Commission failed to develop a record and examine the potential to identify a vacant channel for wireless microphone use in some but not all US markets”) (Shure Petition); Petition for Reconsideration of Sennheiser Electronic Corporation at 7, n. 20, (MB Docket No. 15-146 (Jan. 7, 2021).

and wireless microphones.<sup>4</sup> Commenters supporting the NPRM overwhelmingly focused on the purportedly critical need to reserve a channel nationwide to ensure sufficient investment in white spaces technologies to make white spaces devices affordable for consumers.<sup>5</sup> Shure itself insisted that the Commission make a “commitment to the long-term preservation of vacant channels” by giving “continuing protection to the presence of vacant channels in each market.”<sup>6</sup> Sennheiser similarly urged the Commission to reserve at least one vacant channel in each area to ensure wireless microphone manufacturers “that the time and investments they make in developing new technologies will not be futile.”<sup>7</sup> The unequivocal purpose of this proceeding was to set a floor on available spectrum on a nationwide basis by reserving a channel in all areas, thereby ensuring ongoing investment and development.

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<sup>4</sup> *Amendment of Parts 15, 73 and 74 of the Commission’s Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones*, Notice of Proposed Rulemaking, 30 FCC Rcd 6711, ¶ 11 (2015) (NPRM).

<sup>5</sup> See, e.g., Letter from Paul Margie, Counsel for Microsoft Corporation, to Marlene H. Dortch, GN Docket No. 12-268, ET Docket No. 14-165, MB Docket No. 15-146 (Aug. 21, 2017); Comments of Microsoft Corporation at 3, MB Docket No. 15-146 (filed Sep. 30, 2015); Reply Comments of IEEE 802 at 4, ET Docket No. 12-268 (filed Mar. 12, 2013). See also Letter from Paul Margie, Counsel for Google Inc., to Marlene H. Dortch, Secretary, FCC, ET Docket No. 14-165 and GN Docket No. 12-268 (filed June 2, 2015); Reply Comments of Microsoft Corporation at 3, ET Docket No. 14-165 and GN Docket No. 12-268 (filed Feb. 25, 2015); Comments of Google Inc. at 51, ET Docket No. 14-165 and GN Docket No. 12-268 (filed Feb. 4, 2015); Comments of Microsoft Corporation at 2, ET Docket No. 14-165 and GN Docket No. 12-268 (filed Feb. 4, 2015); Letter from Paul Margie, Counsel for Broadcom Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Sept. 25, 2014); Letter from Paul Margie, Counsel for Google Inc. and Microsoft Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Sept. 19, 2014); Letter from S. Roberts Carter, Counsel for Broadcom Corporation, to Marlene H. Dortch, Secretary, FCC, at 1, GN Docket No. 12-268 (filed Apr. 23, 2014).

<sup>6</sup> Comments of Shure Incorporated at 9, GN Docket No. 12-268, MB Docket No. 15-146 (Sept. 30, 2015) (Shure Comments).

<sup>7</sup> Reply Comments of Sennheiser Electronic Corporation at 4, MB Docket No. 15-146, GN Docket No. 12-268 (Oct. 30, 2015) (Sennheiser Reply Comments).

Ultimately, it simply proved impossible to reserve a channel in every area. The Commission confirmed that its analyses “reveal that there are numerous major metropolitan areas in the United States that have no vacant 6 MHz channels.”<sup>8</sup> Channel availability in major metropolitan areas was a key component of the Commission’s initiative to preserve a nationwide vacant channel in order to stimulate investment. Given that this goal was unachievable, the Commission correctly concluded that the NPRM’s proposals would place an undue burden on broadcasters and that wireless microphones and white spaces devices were sufficiently well-served by the Commission’s actions in other proceedings.<sup>9</sup> The petitioners challenge this conclusion in essentially two respects.

First, they assert that the Commission’s proposals to reserve a vacant channel in every market would not actually create a burden on broadcasters.<sup>10</sup> That assertion is plainly contradicted by the record of this proceeding. The NPRM proposed to require that broadcasters seeking new or modified facilities submit a study demonstrating that their application would not eliminate the last vacant channel in their particular area. As NAB noted in this proceeding years ago, this requirement could have the effect of freezing broadcasters in place and limiting their ability to improve service to viewers in their markets.<sup>11</sup> Further, NAB stated in the record that compliance with this requirement would force broadcasters to submit

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<sup>8</sup> Order at ¶ 14.

<sup>9</sup> *Id.* at ¶¶ 13-14.

<sup>10</sup> Shure Petition at 16-17; Sennheiser Petition at 16.

<sup>11</sup> Comments of the National Association of Broadcasters at 2, 18-19, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, MB Docket No. 15-146 (Sept. 30, 2015); Reply Comments of the National Association of Broadcasters at 17-18, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, MB Docket No. 15-146 (Sept. 30, 2015).

costly, time-consuming and novel engineering studies.<sup>12</sup> Shure and Sennheiser were free to attempt to contradict these statements in the record on a timely basis – their decision not to do so does not constitute a basis for reconsideration.

Second, the petitions assert the Order fails to recognize the particular importance of UHF spectrum for wireless microphones.<sup>13</sup> Along the same lines, the petitions dispute the Order’s conclusions that other proceedings sufficiently address the needs of wireless microphones, asserting that the alternative bands the Commission has identified for wireless microphones are subject to limitations that constrain their utility as a substitute for UHF spectrum.

However, both Shure and Sennheiser repeatedly emphasized in the record the particular importance of UHF spectrum for wireless microphones.<sup>14</sup> The Commission duly considered but ultimately rejected those arguments, concluding on balance that the inability to reserve a nationwide channel shifted the policy balance towards avoiding an undue burden on broadcasters and that other wireless microphone proceedings were sufficient to meet the needs of the wireless microphone industry.<sup>15</sup> Pursuant to Section 1.429(l)(3) of the Commission’s rules, reconsideration is not warranted where petitions “rely on arguments that have been fully considered and rejected by the Commission within the same proceeding.”<sup>16</sup>

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<sup>12</sup> Letter from Patrick McFadden to Marlene H. Dortch at 1-2, MB Docket No. 15-146 (Oct. 29, 2020).

<sup>13</sup> Shure Petition at 3-4; Sennheiser Petition at 2-4.

<sup>14</sup> See, e.g., Comments of Sennheiser Electronic Corporation at 2, MB Docket No. 15-146, GN Docket No. 12-268 (Sept. 30, 2015); Sennheiser Reply Comments at 1; Shure Comments at 3-5; Letter from Mitchell Lazarus to Marlene H. Dortch, Attachment at 8-9, GN Docket No. 12-268, MB Docket No. 15-146 (March 28, 2018).

<sup>15</sup> Order at ¶¶ 20-23.

<sup>16</sup> 47 C.F.R. § 1.429(l)(3).

Shure and Sennheiser may disagree with the Commission's conclusions in this proceeding, but their disagreement alone is not a basis for reconsideration.

Finally, Shure argues that the Commission should not have terminated the vacant channel proceeding during the presidential transition, because the proceeding was "contentious" or "controversial."<sup>17</sup> This claim is unavailing. The Commission's order to terminate this proceeding was unanimous. However contentious Shure may have found the proceeding, no Commissioner agreed with Shure. The timing of the decision was thus irrelevant to the outcome.

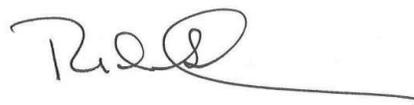
### III. CONCLUSION

Shure and Sennheiser had several years during this proceeding to make their case. The Commission unanimously found petitioners' arguments unpersuasive and that the balance of interests favored closing the proceeding without further action. Shure and Sennheiser offer no basis for reconsideration, and we urge the Commission to promptly dismiss the petitions for reconsideration.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

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<sup>17</sup> Shure Petition at 5, n. 11.

April 9, 2021

