
Radio, Television, and Other Users of Wireless Microphones Must Migrate Out of the 700 MHz Band

by Lauren Lynch Flick and Scott R. Flick

FCC establishes June 12, 2010 as a “hard date” for wireless microphones and certain broadcast low power auxiliary operations to vacate 700 MHz spectrum. Some stations will have to move much sooner.

The FCC has released an Order further clearing the 700 MHz band of incumbent users to permit the new public safety and commercial users of those frequencies to complete construction and commence operations. The Order addresses use of the band by low power auxiliary stations intended for use as wireless microphones, cue and control communications, and synchronization of TV camera signals, and requires that such stations cease operations in the band by June 12, 2010. The FCC indicates that current users will need to move sooner than that if they either receive direct notice from new users of the spectrum that public safety or commercial wireless operations in the band will be commencing, or if the FCC releases a later Public Notice to that effect. The Order includes a Further Notice of Proposed Rulemaking (“FNPRM”) in which the Commission proposes broad revisions to the rules governing low power auxiliary operations. Broadcasters that have been or contemplate operating low power auxiliary stations on an unlicensed basis may be able to secure greater interference protection by licensing their facilities instead. Comments on the FNPRM are due on February 22, 2010 and Reply Comments are due by March 15, 2010.

Background

On June 12, 2009, full power analog broadcasting ceased in the U.S., and full power television stations that were licensed on Channels 52 to 59 vacated those channels, shifting permanent operation to the new “core” TV spectrum of Channels 2 to 51. A major goal of this “repacking” of the TV spectrum was to make the 700 MHz band formerly occupied by TV Channels 52 to 59 available for use by new public safety and commercial wireless operators. While full power television use of these frequencies has now ended, additional incumbents continue to operate other types of facilities in this band.

Currently, wireless microphones and low power auxiliary stations are licensed under Part 74 of the Commission’s rules to operate on a secondary, noninterference basis, on 12 frequency bands, including a portion of the 700 MHz band. In June 2008, in anticipation of the DTV transition, the FCC issued a Notice

of Proposed Rulemaking concerning use of this spectrum by low power auxiliary licensees and imposed (a) a freeze on new license applications for such facilities in the 700 MHz band, (b) a freeze on authorization of equipment used for low power auxiliary operation in the 700 MHz band, and (c) a suspension of processing of pending license applications and equipment authorizations in the 700 MHz band.

Report and Order

Hard Date: The Commission has now established June 12, 2010 as the deadline by which all low power auxiliary operations in the 700 MHz band must cease. This “hard date” applies to both licensed and unlicensed operations in the band.

Early Band Clearing: The FCC has created expedited band clearing procedures in which new public safety and commercial wireless users of the spectrum will notify the FCC of their proposed commencement of operations in the band, and the FCC will issue a Public Notice identifying the affected markets or areas. Low power auxiliary operators in those areas will then have 60 days to terminate operations in the band. Alternatively, public safety and commercial wireless users can notify low power auxiliary operators directly of their intent to commence operations. Again, low power auxiliary operators must cease operation within 60 days of such notice. Where public safety or commercial wireless use has already begun, those licensees can give the required notice to low power auxiliary operators upon the effective date of the Order, again triggering the 60-day deadline for low power auxiliary operations. Low power auxiliary operations must cease immediately if they cause actual interference to public safety or commercial wireless use of the band.

Modification of Licenses: The FCC notes that most low power auxiliary licenses specifying operation in the 700 MHz band also permit operation in other bands. Holders of such licenses can continue operation on the other frequencies for which they are authorized without any further authority or action by the FCC and do not need to file applications to modify their licenses. However, those licensees whose licenses specify operation only in the 700 MHz band must locate new frequencies and file applications to modify their licenses to those frequencies.

Interim Operation: The FCC adopted procedures effective upon the release of its Order that permit unlicensed operation of low power auxiliary stations in the 700 MHz band and in the core TV spectrum (Channels 2-51). Specifically, any party may operate a low power auxiliary facility in the 700 MHz band until June 12, 2010, but such operation is subject to the early band clearing procedures set out above. In addition, any party may operate a low power auxiliary facility in the core TV band until the effective date of any new rules adopted pursuant to the Further Notice of Proposed Rulemaking discussed below. This interim operation must comply with four requirements: (a) the operation must comply with the technical standards for unlicensed operation identified in Part 15 of the Commission’s Rules and incorporated in the FNPRM, (b) devices used for such operations must be approved under the procedures contained in Part 74 of the Commission’s Rules, (c) the operation cannot cause any harmful interference and must accept all interference as required by Section 15.5 of the Commission’s Rules, and (d) such operations must cease pursuant to the early band clearing procedures identified above.

Marketing and Labeling of Low Power Auxiliary Devices: Several parties to the proceeding submitted comments stating that low power auxiliary devices have been illegally marketed to entities not eligible under the Part 74 eligibility requirements for a low power auxiliary license, including to members of the public directly, who have been deceived as to the requirements for their use. Because many users may be purchasing new equipment to operate in the core TV band as a result of the FCC’s actions in this

Order, the Commission established a disclosure that must be made in writing, in a clear and conspicuous manner, at the point of sale of the equipment:

Consumer Alert

Most users do not need a license to operate this wireless microphone system. Nevertheless, operating this microphone system without a license is subject to certain restrictions: the system may not cause harmful interference; it must operate at a low power level (not in excess of 50 milliwatts); and it has no protection from interference received from any other device. Purchasers should also be aware that the FCC is currently evaluating use of wireless microphone systems, and these rules are subject to change. For more information, call the FCC at 1-888-CALL-FCC (TTY: 1-888-TELL-FCC) or visit the FCC's wireless microphone website at <http://www.fcc.gov/cgb/wirelessmicrophones>.

Further Notice of Proposed Rulemaking

As mentioned above, wireless microphones and low power auxiliary stations are required to be licensed pursuant to Part 74 of the Commission's Rules. Those rules limit eligibility for such licenses to essentially broadcasters, cable operators, and television and motion picture programming producers. The FCC has received complaints that many entities that do not meet these eligibility requirements are operating low power auxiliary facilities without any FCC authority and potentially not in compliance with interference and power limit requirements. In the FNPRM, the Commission proposes a number of ways to meet the apparent need for these facilities that has led to their unauthorized use.

First, the Commission proposes to permit unlicensed operation of low power auxiliary facilities under Part 15 of the Commission's Rules. These facilities would then be called "Wireless Audio Devices," and their use would be limited to audio, not video, transmissions, and they would be prohibited from operating as wireless headsets for cell phones, cordless phones, or similar devices. The FCC proposes to permit the operation of these Wireless Audio Devices by any party, without regard for the eligibility requirements contained in Part 74 of the Commission's Rules. The Commission proposes to base its technical rules for the devices on those currently in place under Part 74 of its Rules. The Commission also proposes to require that equipment that has already been "certificated" under Part 74 obtain a new certification for Part 15 operation.

In addition to permitting unlicensed operation under Part 15, the FCC asks whether it should expand the class of entities eligible to receive an actual license under Part 74 of the Commission's Rules. While any party would be allowed to operate a Wireless Audio Device under Part 15 of the rules as described above, a Part 74 licensee would have to meet the eligibility requirements for the service and would then receive interference protection from Part 15 unlicensed operations. The FCC asks whether the wireless microphone needs of certain entities not currently eligible to hold Part 74 licenses are so similar to those of the current eligible parties that they should also be allowed to secure licenses and receive interference protection. These other parties would include trade shows and conventions, cultural events, government and educational institutions, and producers of live professional arts, entertainment, sporting or religious events. The FCC asks whether eligibility should depend on the size of the venue involved (due to the need for multiple wireless microphones in larger venues) and on whether the use is intermittent. It also asks for comment on the impact on incumbent TV licensees of an expansion of Part 74 eligibility.

Finally, the FCC asks for comment on a number of additional issues, such as the length of license terms, and marketing and labeling issues. Specifically, the Commission asks whether marketing and labeling restrictions would help ensure that entities that are not eligible for Part 74 licenses do not purchase

devices intended to be operated under Part 74. The Commission acknowledges that its adoption of many of the Part 74 technical criteria for devices that can be operated on an unlicensed basis under Part 15 may mean that some devices can operate under either standard. The Commission therefore seeks comment as to whether manufacturers of devices certificated under Part 74 should be required to only direct their marketing to parties eligible for Part 74 operation, whether labeling regarding eligibility should be mandated, and whether manufacturers, retailers and distributors should have to notify customers of the licensing requirements.

Conclusion

Broadcasters whose low power auxiliary facilities operate in the 700 MHz band should make preparations to discontinue that use by June 12, 2010, and be alert to any notices from the new 700 MHz users regarding their intent to commence operations sooner. To facilitate the necessary migration, equipment manufacturer Shure has announced that it will reinstate its rebate program on the purchase of new equipment until the end of June 2010. Given the Commission's proposal to allow unlicensed use of Wireless Audio Devices, as well as other unlicensed uses pursuant to its decision in the *White Spaces* proceeding, broadcasters who are eligible to license their low power broadcast auxiliary operations pursuant to Part 74 may wish to do so to secure interference protection from the numerous unlicensed operations in the TV band. Please contact us if you are interested in assessing your options and minimizing the disruption to your operations inherent in this spectrum migration.

If you have any questions about the content of this alert please contact the Pillsbury attorney with whom you regularly work, or the authors below:

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