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Federal Communications Commission
Bureau / Office

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re: Application and Request of)
ALOHA PARTNERS, L.P.)
For Authority to Operate on Channel 59,)
In Excess of the Limits)
of Section 27.50(c))

File Nos. 0002830922, 0002830928
0002830929, and 0002830931

To: Chief, Wireless Telecommunications Bureau

**PETITION TO DENY AND/OR INFORMAL OBJECTION OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

The Association for Maximum Service Television, Inc. ("MSTV") hereby files this petition to deny, or, if a petition to deny is not applicable, informal objection, to the above-referenced applications of Aloha Partners, L.P. ("Aloha").¹ Aloha's request to operate a broadband signal at 50 kW *per MHz* over the 6 MHz-wide bandwidth of its license, as opposed to 50 kW over that entire bandwidth (as provided in the rules), places the public's over-the-air television service in jeopardy. Accordingly, MSTV respectfully requests that the Bureau dismiss Aloha's applications, without prejudice to refiling at the conclusion of the DTV transition.

Grant of Aloha's waiver requests would allow it to circumvent the protections adopted by the Commission to ensure that 700 MHz entrants do not deprive the public of access to out-of-core DTV and analog television channels during the digital transition. Specifically, in a comprehensive rulemaking, the Commission determined the D/U ratios necessary to protect the

¹ Aloha's wavier requests seek authorization to increase the power of its base stations in Tucson (File No. 0002830929), Las Vegas (File No. are 0002830928), Little Rock (File No. 0002830922) and Phoenix (File No. 0002830931).

public's reception of co-channel and adjacent channel television signals from operations of 700 MHz entrants.² It based those D/U ratios on the assumption that 700 MHz entrants would operate their base stations in accordance with Section 27.50(c), which sets a power limit of 50 kW effective radiated power ("ERP") over the *entire* 6 MHz-wide channel.³ Aloha, in contrast, asks for the right to operate at 50 kW *per MHz*, in effect achieving up to a *sixfold* increase in power.⁴ Had the Commission intended to allow such operation, it would have adjusted the D/U ratios accordingly.

Moreover, Aloha's waiver request seeks to end-run the pending rulemaking in which the Commission is considering, among other questions, whether to *lower* the base station power limits of Section 27.50(c).⁵ Even Motorola, which has advocated for maintenance of the 50 kW ERP limit for existing 700 MHz licensees such as Aloha, has urged that such licensees not be allowed to operate beyond "a maximum of 50 kW/6 MHz ERP limit."⁶ The Bureau

² See 47 C.F.R. § 27.60(c).

³ 47 C.F.R. § 27.50(c). See also *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, 1047 ¶ 55 (2002) (assuming wideband operation of the 700 MHz entrant in determining the appropriate protection of co-channel and adjacent-channel DTV stations).

⁴ Even assuming a wideband signal of 5 MHz, Aloha's proposal would still represent a fivefold increase in power.

⁵ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands/Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, et al.*, Notice of Proposed Rulemaking, WT Docket No. 06-150, 21 FCC Rcd. 9345, 9389 ¶ 96 (2006) ("We also ask whether we should reduce the current power limit to, e.g., 20 kW, 10 kW, 5 kW ERP, or even to 1 kW ERP because of possible concerns that the Lower 700 MHz Band PFD limit does not adequately limit adjacent channel interference from 50 kW ERP transmissions or believe that the potential exists for co-channel interference from transmissions at that power level").

⁶ See Comments of Motorola, Inc., WT Docket No. 06-150, at 12 (filed Sept. 29, 2006).

should not allow Aloha to prejudge the outcome of that comprehensive rulemaking via its multiple waiver requests.⁷

CONCLUSION

If allowed to significantly increase the power of its base stations during the DTV transition, Aloha will impermissibly interfere with the public's free, over-the-air television service, contrary to the Commission's rules and intent. Moreover, in a pending rulemaking the Commission is already considering the appropriate power level for 700 MHz entrants such as Aloha. Accordingly, MSTV respectfully requests that the Commission dismiss Aloha's applications, without prejudice to refiling after the conclusion of the DTV transition.

Respectfully submitted,

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February 21, 2007

⁷ While MSTV does not take a position on the *post-transition* power limit in the lower 700 MHz band, except to the extent necessary to protect adjacent broadcast operations on channel 51, it rejects Aloha's efforts to prejudge that question prior to the conclusion of the transition. See Comments of MSTV, WT Docket No. 06-150, at 5 (filed Oct. 20, 2006) (advocating a lower power limit for 700 MHz operations on the current channel 52 spectrum).

CERTIFICATE OF SERVICE

I, Karen A. Schwartzman, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 21st day of February, 2007, I caused a copy of the foregoing "Petition to Deny and/or Informal Objection" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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