

April 9, 2007

**VIA ELECTRONIC FILING**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th St., S.W.  
Washington, DC 20554

**Re: Nuclear Energy Institute and United Telecom Council Request for Waiver; ET  
Docket No. 05-345**

Dear Ms. Dortch:

The National Association of Broadcasters (“NAB”), the Association for Maximum Service Television (“MSTV”), and the Society of Broadcast Engineers (“SBE”) (collectively, the “Broadcast Parties”), and the Nuclear Energy Institute (“NEI”) and the Utilities (formerly “United”) Telecom Council (“UTC”) (collectively, the “Parties”) hereby jointly submit this proposal to resolve the opposition to the above-referenced request for waiver of the Commission’s rules. As discussed below, the Commission’s adoption of this plan will serve the public interest by preventing an abrupt cessation of the commercial nuclear industry’s use of certain Telex wireless intercom equipment (the “Telex Equipment”) while ensuring that the temporary continuation of such use is consistent with the Commission’s carefully crafted interference and frequency coordination standards.

Many nuclear power plants (the “Plants”) use the Telex Equipment for communication among personnel during plant “outages” and in other circumstances, as expressly contemplated herein. NEI and UTC have represented that the Telex Equipment is presently the only equipment known by NEI and UTC to offer the requisite features and capabilities to allow plant workers to efficiently communicate and fulfill their obligations under the Nuclear Energy Commission’s (“NRC”) “ALARA” standard. The ALARA standard requires NRC licensees to make every reasonable effort to maintain exposures to radiation as far below the NRC-established dose limits as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear energy and licensed materials in the public interest. 10 C.F.R. § 20.1003 et seq. Although the Telex Equipment transmits on Part 74 frequencies for which the Plants are not eligible users, since early 2003 the Commission has issued a series of Special Temporary Authorizations (“STAs”) to permit the Plants’ continued use of the Telex Equipment over Part 74 frequencies in order to accommodate the nuclear industry’s efforts to limit plant worker exposure to radiation.

The Broadcast Parties do not dispute the Plants’ need for reliable telecommunications. Nevertheless, it is imperative that the Plants engage in local frequency coordination, as required under the terms of the STAs. Frequency coordination contributes to the prevention of interference *to* other services in the band and to the protection of the Plants’

wireless communications *from* interference. Also, based on the increasingly congested nature of the broadcast spectrum, it is in the public interest that this matter be carefully addressed and that there be a strategy for monitoring and swiftly developing alternative, frequency-compliant equipment.

The Parties have worked to forge a consensus plan that will enable the Plants, during the period specified herein, continued use of the Telex Equipment, on an experimental basis, while avoiding interference to licensed television services and encouraging the Plants' to migrate to frequencies for which they are eligible.

The terms of that plan are as follows:

I. Nature of FCC Licensing

- A. The Parties request that the Commission grant experimental licenses (the "Experimental Licenses") to each of the NRC-licensed Plants, thereby authorizing the Plants to utilize the Telex Equipment, solely in accordance with the terms described herein. These Experimental Licenses would be issued pursuant to Section 5.3(k) of the Commission's rules or such other provisions as the Commission may determine.
- B. The Plants' use of the Telex Equipment shall constitute a secondary service and the Plants recognize that they are secondary to all Part 73 and 74 broadcast licensees (including but not limited to full power, Class A, translator, and low power broadcast television stations).

II. Local Frequency Coordination

- A. For each outdoor use of the Telex Equipment under an Experimental License (as that term is defined in Section I(A) hereof), a Plant will engage in local frequency coordination no sooner than thirty (30) days and no later than five (5) days prior to such use. (Indoor use of the Telex Equipment under an Experimental License shall not require frequency coordination.) Notwithstanding the foregoing, a Plant may use the Telex Equipment in a situation where it has engaged in local frequency coordination with less than five (5) days notice if such outdoor use is essential to the Plant's efforts to address an unforeseen and critical emergency situation.
- B. To initiate the frequency coordination, a representative of the Plant must contact its local Broadcast Auxiliary Services ("BAS") frequency coordinator (using the list found at [http://freq.sbe.org/pdf\\_files/coordinators.pdf](http://freq.sbe.org/pdf_files/coordinators.pdf), or a substitute list provided by SBE) and provide the following information: Physical location of the plant; proposed frequencies for operation of Telex Equipment; model number and description of Telex Equipment which user intends to use; name and e-mail address of a primary contact person at the user's location, and a phone number that will be staffed whenever the Telex Equipment is in operation. Such Plant representative should use the attached SBE/Nuclear Power Plant Local Coordination Form for conveying this information to the local frequency coordinator, unless the coordinating parties mutually agree to communicate using some other means (*e.g.*, by e-mail, a web interface, other printed form). The Plants shall update the submitted information

annually and shall have a continuing obligation to promptly update the information provided to the local frequency coordinator should that information change.

- C. Plants using the Telex Equipment shall factor into their operations whatever information is provided in response to their timely coordination submission. Such information may include data on which frequencies are believed to be available for use of the Telex Equipment, and the dates and times during which such frequencies are believed to be available. The Parties acknowledge that ultimately it is the legal obligation of the Plants to avoid interference to licensed users to which they are secondary and that coordination information provided by local frequency coordinator(s) shall not constitute an approval or disapproval of a Plant's particular use of the Telex Equipment. As SBE has explained in prior comments to the FCC, local volunteer frequency coordinators serve as a “clearing house” or “facilitator” among users of the BAS spectrum and do not “assign” a specific frequency to users or act as enforcers of the law.

### III. Terms of the Use of the Telex Equipment.

- A. Use Inside the Plant. The commercial nuclear industry may use the Telex Equipment inside all plant buildings at maximum power levels of 125 mW, both for transmitter power output (TPO) and also for effective radiated power (ERP).
- B. Use Outdoors but Within the Owner Controlled Area. The commercial nuclear industry may use the Telex Equipment outdoors, within the “owner controlled area” (defined as the area inside the outer perimeter fence or, for Plants that do not have a fence at their outer property line, the area inside the outer perimeter of the Plants’ contiguous property line), at maximum power levels of 125 mW for (i) outage-related operations, defined to mean communications in potentially hazardous circumstances or conditions during a Plant’s “outage” process; (ii) fuel handling and movement; and (iii) radiological material handling.
- C. Use Outdoors, not Within the Owner Controlled Area. Any Plant’s use of the Telex Equipment outdoors (but not within the “owner controlled area”) other than that specified in Section III(B) herein, including for purposes of training, is not authorized by this consensus plan and shall be discontinued as soon as reasonably possible but in no event later than sixty (60) days after the grant by the Commission of the Experimental License for the Plants currently using the Telex Equipment in this manner. Further, the Plants that are not currently using the Telex Equipment in the manner contemplated by this Section C shall not be permitted to initiate such use following the execution of this consensus plan.
- D. Reiteration of Non-Interference Obligation. For the avoidance of doubt, the Parties acknowledge that, while certain interference mitigation techniques such as the distance separation requirements of Section 74.802(b) will not apply to an Experimental License, the Plants shall have an absolute obligation to not interfere with existing Part 73 and 74 licensees in the broadcast television spectrum, as described in Section I(B), above. This non-interference standard shall ultimately be

determinative of the Plants' use of the Telex Equipment regardless of their distance from co-channel television broadcast operations.

#### IV. Licensing and Reporting Requirements

- A. As noted in Section I(A), the Parties request that, because each Plant will be responsible for conducting its own frequency coordination and FCC reporting, as specified in Section IV(C) hereof, each Plant should receive its own Experimental License, pursuant to the terms set forth herein.
- B. Each Experimental License shall specify a term that commences upon the FCC grant and expires on February 17, 2009.
- C. Each Experimental License shall expressly bind the Plant to the terms and conditions described in this letter.
- D. Within six months of the grant of each Experimental License, and every twelve months thereafter during the term of its Experimental License (each, a "Reporting Date"), each Plant shall submit a report consistent with Section 5.73 of the Commission's rules summarizing its use of the Telex Equipment to confirm that the Plants have operated in compliance with the terms and conditions set forth herein. The Plants will also provide any additional information required by the Commission as a condition of the Experimental License.
- E. NEI and UTC shall engage in an ongoing educational campaign to remind, at reasonable intervals, the Plants of their legal obligations under this Agreement.
- F. On each Reporting Date, NEI and UTC shall submit a report regarding their efforts to identify or develop equipment that operates in Part 90, or other frequencies for which the Plants are eligible, and which is capable of satisfying the Plants' communication and safety needs, with the goal of the Plants ceasing their use of the Telex Equipment on Part 73 and 74 spectrum.
- G. The Plant will notify the Commission promptly upon location of such Part 90, or other equipment for which the Plant would be eligible to receive an FCC license.
- H. The Plants recognize that, as secondary service users, they are accepting the risk of interference to their use of the Telex Equipment as contemplated herein. The Plants also acknowledge that this risk of interference could increase further as a result of the Commission's plan to repack the spectrum currently used by broadcast television, in connection with the end of the DTV transition. NEI and UTC acknowledge, and by applying for the Experimental License the Plants acknowledge and accept the risk, that Plants using Telex Equipment may receive harmful interference from incumbent operations and that such interference may disrupt communications among Plant personnel.

- I. The Broadcast Parties reserve the right to petition the FCC for cancellation of a Plant's Experimental License in the event that such Plant materially violates the terms of its Experimental License.

A guiding principle of the plan proposed by the Parties is the minimization of interference within the congested broadcast spectrum. Consistent with that principle, the Parties reiterate their objection to the attempt of the New America Foundation ("NAF") to use this proceeding to promote the proliferation of an unlimited number of unlicensed devices into the broadcast spectrum at unacceptably high emission levels. NAF and its allies would have the Commission authorize such devices without any reliable mechanism for preventing or policing interference to licensed users in the band. That proposal, as the Broadcast Parties have explained elsewhere, would ultimately render the spectrum unusable for everyone, include users of the Telex Equipment.

*[Signature Page Follows]*

Accordingly, NAB, MSTV, SBE, NEI and UTC respectfully request that the FCC temporarily authorize the Plants' use of the Telex Equipment solely in accordance with the terms described above.

Respectfully submitted,

NUCLEAR ENERGY INSTITUTE

By: Ellen P. Ginsberg

Its: Vice President, General Counsel

Date: April 12, 2007

NATIONAL ASSOCIATION OF  
BROADCASTERS

By: /s/ Marsha MacBride

Its: Executive Vice President,  
Legal & Regulatory Affairs

Date: April 9, 2007

SOCIETY OF BROADCAST ENGINEERS

By: Chris Schen

Its: President

Date: April 9, 2007

UTILITIES TELECOM COUNCIL

By: [Signature]

Its: Vice President & General Counsel

Date: April 12, 2007

ASSOCIATION FOR MAXIMUM SERVICE  
TELEVISION, INC.

By: [Signature]

Its: President

Date: April 9, 2007