October 5, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in ET Docket Nos. 04-186

Dear Ms. Dortch:

On October 5, 2006, Harold Feld of the Media Access spoke by phone with Bruce Gottlieb, Wireless Advisor to Commissioner Copps, with regard to the above captioned matter on behalf of New America Foundation ("NAF").

NAF urged that the Commission should not, in the first *Order*, prohibit use of any particular interference avoidance technology or prohibit use of any specific channel (other than channels actually used by public safety and Channel 37). NAF stated that it would soon release the results of technical studies demonstrating the ability of "sensing" technology to avoid interference with occupied channels and demonstrating that use of the first adjacent channel will not create a danger of "desensitizing" DTV receivers.

Accordingly, NAF urged the Commission resist arguments to prohibit – at this stage at least – unlicensed operation on first adjacent channels. The current DTV transition plan allows full power digital stations to operate immediately adjacent to one another. In addition, the current digital standard for radio, DAB, permits operation of competing full power stations in adjacent channels. It is irrational to suggest that high-power omnidirectional broadcasting transmitters can operate in complete safety next to one another, but that low power operation using interference avoidance technology cannot operate on an adjacent channel without causing interference.

Similarly, NAF urged that it was premature to prohibit – at this stage at least – Channels 2-4 or Channels 14-20. Testing conducted pursuant to the second NPRM will determine if low-power unlicensed use of these channels is compatible with existing consumer devices and existing public safety users. These channels represent a large swath of potentially useful spectrum.

Because Channels 2-4 are the least desirable for full power digital broadcasters, they are likely to become the largest contiguous block of unassigned frequency after the

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digital transition. Further, as NAF argued in their initial comments, consumer devices usually connect to each other view shielded cables, reducing the risk of possible interference. With regard to channels 14-20, these are only used by public safety entities in 13 markets. To exclude so many channels in the entire country for the sake of a handful of users in known locations is contrary to the public interest. At the least, the Commission should wait until after testing indicates whether there is any risk to public safety users.

Importantly, if one tallies up the number of channels the Commission proposes prohibiting, it would significantly reduce the available spectrum for productive use, particularly in crowded urban markets. Even if the Commission envisions primary use in rural areas, the economics of equipment manufacture and deployment will alter radically if the Commission does not leave adequate spectrum for at lest some use in more developed areas. Unless equipment manufacturers can hope to achieve economies of scale, equipment for use in the band would remain expensive, limiting the ability of WISPs in rural areas to exploit the spectrum the Commission would make available.

The Commission should also remain cognizant of the amount of spectrum "soaked up" in other proceedings, such as the DTS proceeding. If the Commission unnecessarily limits the spectrum available for productive unlicensed use in the name of prudence, it may drop the usable spectrum to a point where productive use is no longer feasible.

NAF also argued against any effort to license the white spaces or allow broadcasters to control or charge for access, such as the "beacon" proposal in the *NPRM*. Any such proposal would impose needless costs and barriers to the efficient use of the white space. To raise licensing at this late date would create serious questions in the minds of companies interested in developing unlicensed equipment for this space whether the Commission has any genuine interest in moving forward with an unlicensed proposal.

There is a desperate need for unlicensed spectrum below 3 GHz, including in the most economical range for broadband below 1 GHz. A representative of Microsoft estimated at a recent NAF event that it would be four times cheaper to build broadband mesh networks using unlicensed spectrum below 1 GHz than to build the same networks in the 2.4 GHz or 5 GHz bands.

By contrast, the Commission has already opened numerous bands below 1 GHz to licensing, including the existing guardband licenses in the 700 MHz bands and the L-LMS licenses in the 900 MHz band. The fact that the Commission continues to require new proceedings to try to make these bands productive illustrates the difficulties in trying to allocate such "Swiss cheese" bands by licensing. By contrast,

Part 15 devices operating in the 900 MHz unlicensed band have demonstrated the enormous value and productive an unlicensed regime can bring to this kind of spectrum.

In short, any effort to raise the questioning of whether to license the white spaces rather than proceed directly to service rules for unlicensed service can only lead to needless delay and chill productive interest in the band.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

cc:
Bruce Gottlieb