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October 9, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation; ET Docket Nos. 04-186 and 02-380

Dear Ms. Dortch:

At the request of Commissioner Deborah Taylor Tate and her wireless advisor, Wayne Leighton, David Donovan, President of MSTV and Bruce Franca, Vice President, Policy and Technology of MSTV, as well as undersigned counsel to MSTV, met with Charles Townsend, President of Aloha Partners, Inc., and Aloha's counsel, Thomas Gutierrez, and with Commissioner Tate and Mr. Leighton. Commissioner Tate convened the meeting to determine whether it might be possible to resolve the white spaces issues in a manner that would accommodate the various interests.

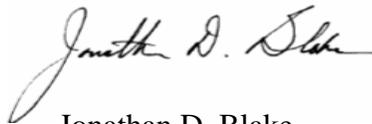
MSTV explained that its paramount concern is preserving the local, free and ubiquitous television service on which all Americans rely from harmful interference. Consistent with that concern, cable and licensed wireless microphone service must also be protected from white space interference. Allowing other uses on these frequencies by which digital television service is provided to the America public risks disenfranchisement of American viewers. In response to a question from Commissioner Tate, MSTV explained that it has been on record for over a year that rural broadband fixed services, if properly engineered, can be safely inaugurated in the TV white spaces. MSTV also stated that unlicensed services could be used on these frequencies if (1) they rely on geolocation, (2) the geolocation database is dynamic, accurate and updated, (3) rigorous certification is required and (4) to protect against interference to the viewing public, cable subscribers and licensed wireless microphones, (i) co-channel operations are confined to locations outside a station's contour, (ii) first adjacent channel power limits do not exceed 5 milliwatts, (iii) power limits on other channels are no higher than 10 milliwatts, and (iv) adequate safe harbor channels are set aside for wireless microphone operations. Licensed operations would have to be similarly protective of the public's service from broadcasters, cable and wireless microphones, and there has been no assurance that this would be the case.

Messrs. Townsend and Gutierrez described a proposal outlined in a slide that Aloha will be submitting in its ex parte report of this meeting. This proposal contemplates use of Channels 38-51 for licensed services of the kind Aloha seeks to provide, but accompanied by a provision that “*OET-69 Waiver requests for adjacent channel operations are permitted in licensed blocks*”. It was made clear that, through the waiver process, Aloha contemplates operating on the first adjacent channel at power levels that would cause interference. Aloha explained that these waivers would permit up to 2% interference from each transmitter within a station’s service area. Since there would be multiple towers in a TV station’s service area, the effects on the public’s television service could be devastating. Moreover, the 2% interference standard was applicable only for the period up to February 17, 2009, and only for TV-station-to-TV-station interference. We noted that the interference standard for DTV-to-DTV interference in the post transition environment is 0.5%, not 2%. Aloha explained that without these waivers for first adjacent channel operation, its proposed business use of the white spaces was not viable.

MSTV also explained that estimates of auction revenues that would be generated by licensed uses of the white spaces depend on the effectiveness of interference protection for the American public — the higher the auction revenue estimates the more lax that protection would have to be. The Communications Act precludes allocations decisions based on revenue-raising considerations. They must be based on public interest considerations. *See* 47 U.S.C. § 309(j)(7).

While these discussions did not yield a resolution, they were clarifying: Aloha’s proposed licensed use of the white spaces, especially proposed operations on the first adjacent channel, cannot be accommodated without unacceptable loss of digital television service to the American public. MSTV appreciates Commissioner Tate’s efforts to bring the parties together to clarify the points of disagreement and to determine whether any compromise resolution is achievable consistent with the public interest.

Respectfully submitted,



Jonathan D. Blake

cc: Hon. Deborah Taylor Tate
Wayne Leighton
Charles Townsend
Thomas Gutierrez
David Donovan
Bruce Franca