

October 27, 2008

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VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Authorized Ex Parte Communications: Unlicensed Operation in the TV
Broadcast Bands (ET Dockets No. 04-186 and 02-380)

Dear Ms. Dortch:

On Friday, October 24, the Association for Maximum Service Television (MSTV) and the National Association of Broadcasters (NAB) met with Commissioner Deborah Taylor Tate and her legal advisor Wayne Leighton regarding the above captioned matter. The following broadcast industry representatives attended the meeting: David Donovan (MSTV); David Lougee (President, Gannett Broadcasting); Bruce Franca (MSTV); Martin Franks (Executive Vice President, Planning & Government Relations, CBS Corporation); Robert Hubbard (President & CEO, Hubbard Television Group/Vice President, Hubbard Broadcasting, Inc.); Bill Bailey (Disney/ABC); Margaret Tobey (NBC/Universal); Maureen O'Connell (Fox) and Jonathan Blake (Covington & Burling).

We discussed the upcoming vote on the TV White Spaces proceeding. Referencing our most recent Emergency Request, we noted the glaring inconsistencies between the data in the OET Report and the first paragraph of the Report. We also observed that the FCC decision to release the 400-page Report on the same day it announced its proposed White Space plan is inconsistent with an open administrative process. The Commission's approach has constrained review of the Report to just nine business days, thereby failing to give members of the public a meaningful opportunity to comment on the Report. Given the data contained in the Report, we noted that it is arbitrary and capricious for the Report to find that sensing devices "proved the concept." To the contrary, the data in the Report showed conclusively that sensing does not work. We observed that basic administrative law, as well as FCC precedent, requires that complex technical studies on which the FCC will rely must be placed in the record and the Commission must then solicit public comment concerning such studies; of course, the Commission must also take such public comment into account in reaching a decision.

Moreover, we questioned why a "peer review" report was not published consistent with the Data Quality Act, 44 USC Sec. 3516, and subsequent OMB regulations, 67 Fed. Reg.

8452, 8454 (February 22, 2002). Previous OET studies in this docket contained published "peer review" analysis.

We also observed that the proposal to allow unlicensed devices to operate on the first adjacent channel at 40 milliwatts would lead to widespread interference. Based on data contained in the Report, as well as the OET's previous analysis on adjacent channel interference contained in the DTV Receiver Report, March 30, 2007, it is clear that operation of an unlicensed device at 40 milliwatts on an adjacent channel will cause a significant amount of interference to the public's reception of digital television programming and services. At a minimum, such operation will interfere with television reception in 77% of a station's coverage area. This high, adjacent-channel power level is a political compromise that is not based on science. We noted that the 40 milliwatts power level was far in excess of the first adjacent channel power levels proposed and tested by Motorola. Those tests demonstrated that, as a matter of science, the power levels on the first adjacent channel should be no more than 5 milliwatts. Moreover, there is no scientific basis to conclude that factors such as walls and antenna discrimination will prevent interference from first adjacent channel operations. Such assertions are merely guesswork.

In an answer to a question, we noted that allowing unlicensed devices may have international implications. We observed this issue needs to be examined.

We noted that the proponents of unlicensed devices appear to have no interest in trying to protect American consumers from interference. Their recent statements in *Communications Daily, October 22, 2008 at 3-4* highlight this disregard for the American public's access to local television programming and services.

"Take TV off the air" in a few years, said Michael Calabrese, director of the foundation's wireless future program, since 2002 an advocate of opening the TV white spaces. To open all TV spectrum to wireless broadband, over-the-air broadcasts should be replaced entirely by cable, satellite and internet viewing, he said. All channels should be available by broadband, with the government possibly subsidizing cable and satellite providers to deliver free lifeline service, Calabrese said." ...

"The FCC proposes to limit devices to 40 milliwatts of power in white-space channels adjacent to TV stations, but "we're going to push that up over time," Calabrese said. Mark McHenry, CEO of Shared Spectrum Co., said "the FCC is going to start conservatively, but we're going to wear them down. In a few years, we're going to be at 10 w all over the place."

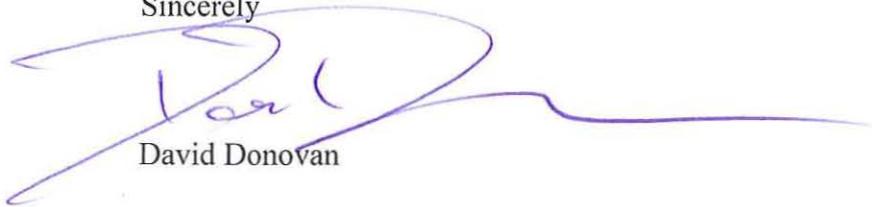
We noted that the interference that would result from operation of unlicensed devices at the proposed parameters would disenfranchise millions of TV viewers. It would completely undermine the American consumers' shift to digital television.

Accordingly, we urged that the Commission follow its own procedures and rules and allow the public to comment on the 400-page Report *before* reaching a decision as to the

appropriate rules for unlicensed device operation in the TV band. By following proper procedure, the Commission will also have the opportunity to consider compromise proposals that have been put forth to both protect viewers of over-the-air television *and* allow for unlicensed use of the spectrum.

The following materials were distributed at the meeting.

Sincerely

A handwritten signature in blue ink, appearing to read 'David', with a long horizontal flourish extending to the right.

David Donovan

CC: Chairman Martin
Commissioner Copps
Commissioner Adelstein
Commissioner Tate
Commissioner McDowell
Julius Knapp
Alan Stillwell