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October 28, 2008

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:

Earlier today, the Association for Maximum Service Television (MSTV) and the National Association of Broadcasters (NAB) met with Commissioner Michael J. Copps and his legal advisor, Rick Chessen, and separately with Commissioner Jonathan S. Adelstein and his legal advisor, Renée Crittendon, regarding the above-captioned matter. The following broadcast industry representatives attended both meetings: David Donovan (MSTV); David Rehr (NAB); Jane Mago (NAB), Victor Tawil (MSTV), 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.); David Barrett (Hearst-Argyle Television), Margaret Tobey (NBC), Susan Fox (Disney/ABC), Dianne Smith (Fox) and Jonathan Blake (Covington & Burling LLP). In addition, Paul Karpowicz (Meredith Broadcasting Group) attended the meeting with Commissioner Adelstein and Ms. Crittendon.

In the meetings, we discussed the upcoming vote in 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 afford 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, echoing the concerns of Congressman John Dingell, Chairman of the House Committee on Commerce and Science, 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 to digital television receivers and digital-to-analog converter boxes. Based on data contained in the Report, as well as 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 on an adjacent channel at 40 milliwatts will cause a significant amount of interference. At a minimum, such will interfere with television receivers in 77% of a station’s coverage area. This high, adjacent-channel power level is a political compromise that is not based on science. 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.

We also noted that the 40 milliwatts power level for adjacent-channel operation far exceeds the first adjacent channel power levels proposed and tested by Motorola. Those tests also demonstrated that, as a matter of science, the power levels on the first adjacent channel should be no more than 5 milliwatts. Because the Motorola data was omitted from the OET Report, we provided a copy of that data (attached).

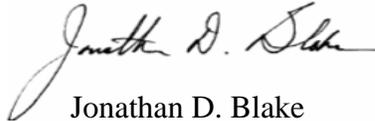
We noted that the interference that would result from operation of unlicensed devices at the proposed parameters would disenfranchise millions of TV viewers. It would completely undermine the American consumers’ shift to digital television.

To avoid such harms and uphold the Commission’s own procedures and rules, we urged the Commission to let the public speak *before* it adopts rules in the *TV White Spaces* proceeding. Specifically, the Commission should issue a public notice seeking comment concerning (i) the 400-page Report that was released less than two weeks ago, and OET’s interpretation of the data contained therein, (ii) data that was omitted from the Report, such as the field-test data on the geolocation-equipped Motorola device, and (iii) the proposed rule, including the proposed use of sensing and the proposed power limit for adjacent-channel operation.

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Finally, during the meeting with Commissioner Adelstein and Ms. Crittendon, we offered to participate in a joint technical meeting presided over by Commissioner Adelstein and also attended by a legal advisor or advisors from each Commissioner's office and Julius Knapp, Chief of OET. The purpose of the meeting would be to discuss the data resulting from the OET tests and the lack of support in the record for the proposed 40 milliwatts adjacent-channel power level.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan D. Blake". The signature is written in a cursive style with a large initial "J".

Jonathan D. Blake
Counsel for MSTV

cc: Commissioner Copps
Commissioner Adelstein
Rick Chessen
Renée Crittendon