

October 29, 2008



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

Re: ET Docket No. 04-186  
Notice of Oral Ex Parte Presentation

Dear Ms. Dortch:

On October 28, 2008, Harold Feld and Nate Braun of Media Access Project, Alex Curtis of Public Knowledge, and Ben Lennett and Victor Pickard of New America Foundation (collectively, "PISC"), met with Commissioner Deborah Tate and her Wireless Advisor Wayne Leighton, with regard to the above captioned proceeding. PISC made the following points:

***No bottleneck for database access.*** It is imperative that all parties have access to the geolocation database on equal terms. No single provider should be permitted to have control over the database, as this would allow the provider to exact unfair fees, dictate anticompetitive terms, and otherwise put non-commercial providers at a severe disadvantage. Many community wireless networks in rural and urban environments rely on donated equipment and volunteer labor. Any additional costs, even those that might seem reasonable costs of doing business to large companies such as Motorola, or even small commercial operators, could prove beyond the reach of non-commercial providers, denying them access to this much needed spectrum.

***Power limits appropriate.*** The OET properly identified the potential for interference with poorly shielded cable equipment and took appropriate measures to set reasonable power limits. Several important factors support the OET decision over and above the technical analysis. First, commercial and public safety operations on Channels 52-69 will present the same problems of possible pick up interference. Because these services are licensed and have priority, cable operators will need to upgrade their shielding and make adjustments to their head ends ***regardless*** of whether the Commission approves devices in 04-186. Because deployment of 04-186 devices will likely take place at roughly the same pace as new (and more powerful) services in the licensed 700 MHz band, the Commission may properly assume that the ***approval of 04-186 devices will make no practical difference*** to the potential for interference and the need for cable operators to upgrade their shielding.

Second, the Commission has long recognized in the context of consumer electronic devices

certified under its Section 302a authority have the potential to create interference in the home. As a general rule, however, the Commission has considered the benefit of allowing the new technology to go forward and the fact that the homeowner controls the environment and can remediate the situation when determining whether the potential interference is “harmful” within the meaning of the Act. Here, where the technology offers enormous benefits, the homeowner controls the environment, and the risks are small, OET struck the appropriate balance. To the extent the Commission requires any additional mitigation, it must consider whether it would impose an undue burden on small businesses, non-commercial providers, or innovation.

Third, as documented in OET Docket Nos. 08-166, *et al.*, there are over 1 million unauthorized wireless microphones operating at power levels up to **five times higher** than those proposed for portable white spaces devices. These devices are extensively marketed for home use, for purposes such as karaoke parties. Because of their mobility, they appear in all environments. They lack any of the interference mitigation technologies proposed for white space devices. Indeed, they have the ability to operate not merely on channels adjacent to broadcast channels, but on active broadcast channels. The fact that several wireless microphone manufacturers advise users that interference with wireless microphone signals may be from setting a wireless microphone to operate on an active television channel is proof that use of wireless microphones on actually active channels by consumers is routine.

Despite this, as repeatedly stressed by the wireless microphone manufacturers, ***the Commission has not received a single complaint*** of television or cable pick up interference. Indeed, in the same proceeding, the NAB and MSTV acknowledged that their previous insistence that expanding the class of eligible users for Part 74, Subpart H wireless microphones had been mistaken, and they now supported expanding the class of eligible users – albeit only to their current political allies.

The Commission may properly consider that if co-channel operation of “my neighbor’s home karaoke system” at five times the power and with none of the interference mitigation technology has not triggered a single complaint, that operation of 40 mW on adjacent channels will not create harmful interference.

***A Thorough, Complete, And Open Process.*** The efforts by white spaces opponents to claim various procedural errors are without merit. The Commission has spent five years examining this technology in a process fully open to comment by all participants. The OET report fully considered all the data, and the claim that the report recommendations is at odds with the findings is merely the continued effort to confuse prototype testing for the purpose of developing rules with device certification. The Commission should reject these continued efforts at needless delay and vote the item November 4.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 CFR §1.1206, this letter is being filed with your office.

Respectfully submitted,

/s/

Harold Feld  
Senior Vice President

cc: Commissioner Tate  
Wayne Leighton