

October 30, 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 29, 2008, Harold Feld of Media Access Project spoke with Wayne Leighton, Wireless Advisor to Commissioner Tate, with regard to the above captioned proceeding. On the same day, Feld met separately with Charles Matthias, Advisor to Chairman Martin, and made substantially the same representations.

Feld reiterated PISC opposition to Part 101-type licensing in the band. Unlicensed access to the band at the proposed 4-watt limit for fixed would help to provide needed backhaul for rural networks, while maintaining flexibility for mesh and Wimax-type deployments. Further assistance could be given to rural by approval of variable power proposals advanced by Google, PISC and others. PISC would support looking at how to provide increased power for rural backhaul, but only in a manner consistent with approval of devices in 04-186.

Feld noted that recent proposals by some rural providers, notably to clear up to six third-adjacent channels in rural areas for backhaul subject to a "licensing lite" regime, have merit and appear worthy of consideration. Critically, however, the Commission should not examine any proposal for increased rural power for backhaul that would create any regulatory uncertainty with regard to the nature of the rules or the availability of sufficient unlicensed spectrum to make investment reasonable. Investment in development of 3.65 Ghz band equipment, for example, was delayed two years because of uncertainty over the rules because of pending Petitions for Reconsideration. Nor should the Commission limit itself to examining the possibilities for increased power for rural backhaul to a licensed, or even licensed-lite regime. Assumptions regarding the availability of capital and the QoS of unlicensed spectrum that were once true may change now that large companies such as Microsoft and Google have shown interest in financing smart unlicensed technologies for broadband deployment.

In addition to a possible FNPRM, Feld noted that Commission has addressed increased power issues for rural WISPs in the Section 257 Triennial Review. The Commission could also consider the

issue as part of its special access docket, or in an entirely separate proceeding.

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: Wayne Leighton