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, Alex Curtis of Public Knowledge, Michael Calabrese and Sascha Meinrath of the New America Foundation (collectively "PISC"), and Mark Lloyd of the Leadership Council on Civil Rights, met with Commissioner Jonathan Adelstein, his Wireless Advisor Renee Crittendon, and his Media Advisor Rudy Brioche, with regard to the above captioned proceeding.

Need for unlicensed access. Mark Lloyd stated that LCCR had decided to support the unlicensed access to the white spaces because of its importance in bridging the digital divide. Many minority communities remain unserved or underserved by traditional providers, or residents cannot afford broadband access when available. Low-power white spaces devices offer ways for these communities, particularly urban communities, to have affordable broadband access. LCCR would not support the proposed Order if it posed a risk of harmful interference to television, but broadcasters and other opponents have not shown any credible evidence that allowing access under these proposed rules will create interference.

Balancing higher power for rural backhaul with the need for regulatory certainty. PISC reiterated 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.

PISC 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

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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, PISC noted that the Commission has addressed increased power issues for rural WISPs in the Section 257 Trienniel Review. The Commission could also consider the issue as part of its special access docket, or in an entirely separate proceeding.

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 karoke 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 karoke 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.

Sensing "ready for prime time," NAB Scare Tactics Have No Basis In Fact. Michael Calabrese provided a copy of New America's "The Lobby That Cried Wolf," a copy of which is submitted with this filing. PISC noted that the U.S. military is relying on sensing technology for sharing in the 5.3 Ghz band and increasingly for troops deployed in the field. If the Army can rely on sensing to protect the lives of American soldiers, surely the FCC can rely on it to protect reception of *American Idol*.

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 Adelstein
Rudy Brioche
Renee Crittendon