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Federal Communications Commission
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Dear Chairman Martin, Commissioner Adelstein, Commissioner Copps, Commissioner McDowell, and Commissioner Tate:

On November 4, 2008, the Federal Communications Commission (FCC) is tentatively scheduled to consider a "Second Report and Order and Memorandum Opinion and Order addressing licensed operation in the television broadcast bands." According to news reports, the Commission is contemplating a final order authorizing new, unlicensed devices in the so-called "white spaces" spectrum. I believe utilization of the spectrum in these television channels by new, low power devices may be a promising avenue towards proliferating broadband technology and services into underserved communities. However, given recent news reports on the proposal before the Commission, I retain some reservations about the Commission's recent announcement.

As a senior member of the Committee on Energy and Commerce and the Subcommittee on Telecommunications and the Internet, I have long advocated for universal access to high-speed data and other advanced telecommunications services. Underserved communities in both urban and rural settings have been consistently short-changed in the telecommunications market, and this Digital Divide has disproportionate, concrete, and negative economic consequences. In this regard, I fully support FCC efforts to promote access to broadband services in underserved communities.

Nonetheless, I have some concerns over a hasty approach to the thorny white spaces issue. Furthermore, if the Commission insists on acting expeditiously, I am concerned that the final order will lack adequate safeguards to protect incumbent users of the white spaces spectrum.

On October 15, 2008, the Office of Engineering Technology (OET) released the findings from Phase II of its "Evaluation of the Performance of TV-Band White Space Devices." It is the Commission's job to make technical determinations on the feasibility of introducing new devices into the white spaces spectrum without interfering with existing devices. As such, I will not second guess OET's conclusions in the report, notwithstanding an alleged disconnect between the report's findings and the proposal on which the Commission is deliberating. Nonetheless, the question arises whether it is wise

to rush to a final decision on this complicated, contentious matter with a final vote on November 4. Affected stakeholders have vastly differing views on the Commission's proposal (and on the OET report itself), and it would seem in the public's best interest for more of a consensus to be formed around the technical and policy matters. At the very least, OET's report should be open for public comment in order to allow all affected stakeholders to weigh-in on these complex, technical matters.

If, however, the Commission insists on its accelerated timetable, I believe that the final order should include safeguards to ensure that incumbent devices are not adversely affected by the introduction of new devices. While I appreciate Chairman Martin's proposal to reserve channels for wireless microphones and to use geo-location technology for large public events, I remain concerned that these safeguards are not aggressive enough.

As the author of H.R. 1320, the Interference Protection of Existing Television Band Devices Act, I am particularly concerned about the continued viability of wireless microphones in public events and gatherings. In order to ensure their utility, H.R. 1320 establishes a reasonable timeline for the approval of new devices in the white spaces spectrum, subject to testing requirements, and prioritizes the deployment of broadband services in rural areas. The utility of incumbent devices in the white spaces spectrum cannot be understated, and wireless microphones are essential elements in mega-events such as the Super Bowl, as well as smaller events such as religious gatherings. Consequently, in order to preserve this important technology used everyday across America, I hope the Commission will consider expanded eligibility for geo-location technology and increasing the proposed channel reservation allotment to ensure adequate spectrum for a wide-range of professionally coordinated events.

It is my belief that the general parameters of a solution to the white spaces debate can be in place with relatively minor revisions to the current proposal under consideration. All stakeholders acknowledge that this unique spectrum can be productively used in innovative ways to promote advanced telecommunications services in underserved communities, while concomitantly preserving incumbent users of the spectrum. It is my hope that the FCC will proceed cautiously and build off this general consensus whenever the Commission eventually issues its final order.

Should you wish to discuss this matter further, please feel free to contact me, or have someone on your staffs contact Christian Tamotsu Fjeld on my staff at (202) 225-4372.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby L. Rush". The signature is fluid and cursive, with a large initial "B" and "R".

Bobby L. Rush
Member of Congress