

David K. Rehr
President and CEO



October 27, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: *In the Matter of Unlicensed Operation in the TV Broadcast Bands,*
ET Docket Nos. 04-186, 02-380

Dear Chairman Martin:

On October 15 you announced that you would ask your colleagues to establish rules authorizing millions of unlicensed devices to operate in the spectrum surrounding the channels currently used by over-the-air TV broadcasters for providing emergency information, news and entertainment to the American public.

Because such rules would have a profound impact on the public's access to television broadcasts, I am writing to amplify our request that you delay consideration of these rules to give the Commission time to follow the most basic principles of good government: transparency and due process.

Any rules the Commission adopts will purportedly be based on the studies conducted by your Office of Engineering and Technology (OET). The most recent report, a 400-page document, was only just released to the public, on the same day that you announced that the Commission would move forward with final rules on November 4. There has been no opportunity for meaningful comment on that report. Nor has the Commission publicly released any peer review of this report. Under the Office of Management and Budget Guidelines for implementing the Data Quality Act, public participation in peer review is integral to ensuring the transparency of influential government information and obtaining high quality decision-making through a credible process. 70 Fed. Reg. 2664, 2670 (Jan. 14, 2005).

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Similarly, good government policies require that you permit full due process with regard to this important data. As pointed out in the broadcasters' October 17 *Emergency Request*, the Commission's established practice has been to permit comment from the public on any study that forms the basis for final rules. There is no reason to deviate now from this well-established procedure.

Your decisions will directly impact the public's ability to view television signals, both over the air and on cable, at a critical point in the digital television transition. Given the potential harm to the television viewing public, the Commission should proceed with extreme caution and closely examine the underlying data from the OET report. Although the report concludes that there has been "proof of concept" with regard to spectrum sensing technology, even a cursory review of the data shows that sensing is neither reliable nor accurate in detecting channels occupied by television signals. If a reasonable comment period for reviewing the data is established, the veracity of these conclusions can be properly vetted.

Two specific examples illustrate this point. First, it is erroneous for the report to show that the Philips prototype correctly identified occupied channels 100% of the time (page 115, table 5-67). In virtually all cases, it indicated that every TV channel was occupied -- whether it was or not. Thus, the sensing function of this device was effectively useless for detecting television signals, as it could not distinguish between occupied and available channels.¹

Second, the report substantially understates the extent to which the prototypes failed to detect wireless microphones. Neither device could detect microphones reliably under real world conditions. Once again the Philips device indicated that all channels were occupied, whether they were or not, and the I2R device was generally unable to detect microphone signals reliably. The tests actually reveal sensing is an unreliable method for protecting wireless microphones from interference from white space devices.²

¹ See Evaluation of the Performance of Prototype TV-Band White Spaces Devices: Phase II, FCC/OET 08-TR-1005 (rel. Oct. 15, 2008) p.49, table 5-7; p.56 table 5-13; p.63, table 5-19; p.70, table 5-25; p.78, table 5-32; p.86, table 5-39; p.93, table 5-45; p.101, table 5-52; and p.109, table 5-59.

² See *id.* at pp.132-141, tables 6-29 through 6-48.

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I urge you to be consistent with the principles of good government by issuing a public notice to seek comment on the OET report and to make public any peer review of the report before developing final service rules for unlicensed devices.

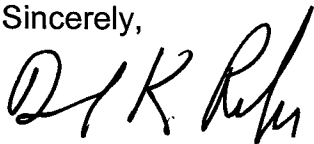
The American public deserves transparency and due process, especially here, where the consequences of adopting rules without full consideration could mean that millions of unlicensed devices with the potential to disrupt television reception could be sold to unsuspecting citizens. When these disruptions occur and people complain to the stations, the Commission and their elected officials, it will be almost impossible to identify the source of the interference and rectify the problem.

The Commission should not let this genie out of the bottle without full evaluation of the potential harm.

Thank you for your consideration.

Best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "D K Rehr". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

David K. Rehr

cc: The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
The Honorable Deborah Taylor Tate
The Honorable Robert M. McDowell