

**FHH Telecom Law**  
**April 2006**

**“White Space” Proposal**  
**Gets Boost From Capitol Hill**

*By Lee Petro*  
*petro@fhhlaw.com*  
*703-812-0453*

Reinvigorating a debate that many had given up for dead, two separate bills have been introduced in the U.S. Senate which would require the Federal Communications Commission to adopt rules to authorize the unlicensed use of television spectrum for wireless broadband services. The bills have been fast-tracked in the Senate and, thus, have raised the attention and concern of television broadcasters and other affected parties.

The bills differ in substance slightly, but the impact of either likely could be detrimental to television broadcasters and other users of the spectrum. First, both bills would require the Commission to complete the long-pending television white space proceeding within 180 days. You may remember that the Commission opened a proceeding a few years back in which it sought comments on a proposal from its Spectrum Task Force to adopt rules to permit fixed and mobile uses of the TV band for wireless services. The idea was that large stretches of the television band were actually unused over many parts of the country. In theory, if that unused portion of the band could be identified, it could be captured and put to use by unlicensed transmitters. A large majority of the comments filed in the proceeding were against the proposals, and press reports indicated that Chairman Martin did not view this as a high priority when he came into the head office.

However, the bills would require the completion of this rulemaking, and adoption of technical rules and certification processes for unlicensed devices to “facilitate the robust and efficient use” of the TV band (S.2332). One bill goes so far as to require the television broadcaster to provide field measurements in order to file a complaint with the Commission over alleged interference.

The Senate Commerce Committee held a hearing on the bills on March 14<sup>th</sup>. Many of the senators, including a certain former presidential candidate, cautioned broadcasters against raising false claims of interference in an attempt to derail the bills. It would appear that the hearing was merely a formality, and that the two bills will be reconciled and attached to a larger bill in late April. While there is not yet a companion bill in the House of Representatives, it is possible that such a bill will be introduced should the Senate bills gain traction.

Several groups have already begun to start grass-roots movements against the bill, including the wireless microphone users who also use the TV band, the consumer electronic companies who fear the unlicensed devices will interfere with the digital set-top boxes, and, not surprisingly, television broadcasters. There are several concerns that are raised by these parties. First and foremost, thus far the proponents have not developed a device that will be able to sense whether a television station is using a particular frequency. Second, to date no one has provided a solution for the problem of the unknown receiver. While a device may be developed to accurately sense whether a TV station is *transmitting* in the vicinity, and then either transmit, or select a new channel, there is no way for the device to know if there is a TV *receiver* nearby. Without knowing its proximity to a television receiver, the unlicensed device cannot determine whether it

will cause interference to the reception of a particular TV channel if the device begins to transmit. Since the device will not have the same reception abilities as a television receiver, many are concerned that an unlicensed device will transmit on a channel it has incorrectly judged to be available. Similar attempts to develop acceptable devices to operate in other bands have been unsuccessful to date. Moreover, since the devices are unlicensed, it will be impossible to track down and order the users to cease using the devices should they interfere with licensed operators on the spectrum.

Finally, many broadcasters are concerned about the impact of the unlicensed devices on the DTV transition. Since the unlicensed devices will be digital, and the transition is slightly three years from ending, many are concerned that the unlicensed use of the spectrum will detrimentally impact the digital operations of television stations as they commence full-power service on their channels. Since digital reception is an all-or-nothing proposition - *i.e.*, either (a) there is a picture on the receiver or (b) the screen is blue, the question has been raised whether the public will put up with the new DTV service if it is constantly being interfered with by mobile devices that are unable to be tracked down and turned off.

The grass-roots campaigners have urged parties to send letters to their Senators to inform them of their concerns regarding the unlicensed devices. On the other side, Intel and Microsoft are strongly lobbying the Senate to adopt the bill to permit the introduction of new wireless broadband services and devices. In the middle, per usual, will be the viewers of the television stations that may or may not continue to receive their digital programming.

We will continue to monitor the situation, and provide updated as future events occur. In the meantime, if you have any questions, please contact the attorney with whom you normally work, or Lee G. Petro.