

FHH Telecom Law

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Two Bills Would Jump-Start White Space Operation

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After the Commission released its Notice of Proposed Rulemaking and developed a timeline for the development of rules authorizing the use of unused television spectrum for unlicensed wireless use (*see* our coverage in the March, 2006, and September, 2006 *Memo to Clients*), it was assumed that Congress would wait until the Commission completed its comprehensive review of the issue. However, in January, new legislation was introduced to expedite the unlicensed use of the spectrum.

Specifically, Senator John Kerry (D-Mass) and Senator John Sununu (R-N.H.) have introduced separate pieces of legislation which would require the FCC to permit unlicensed use without regard to the Commission's previously-adopted timeline. Both would require the FCC to complete its rulemaking proceeding and issue a final order no later than October 1, 2007, and permit unlicensed usage of the television spectrum no later than February 18, 2009 (the date of the end of the DTV Transition). Both bills would require the Commission to establish technical requirements that would protect incumbent primary television licensees, and require the Commission to initially accept applications for the certification of unlicensed devices no later than December 1, 2007.

The bills would permit the Commission to conduct field testing in a "limited number of markets", the testing to be completed before the initiation of the equipment certification process, *i.e.*, before December 1, 2007. Senator Kerry's proposal would permit the Commission to solicit public comment on the field testing results, but only if the comment period could be completed within 180 days of enactment, or October 1, 2007. Senator Sununu's version also leaves open the possibility that a portion of the spectrum could be licensed, and, if so, would require that spectrum to be distributed via auction.

At this point, neither bill has been voted out of the Senate Commerce Committee, and no hearings have been scheduled. However, the reintroduction of the legislation on a subject that the FCC thought resolved must be sending shivers down the spines of the FCC scientists, and leaves them with questions such as: (1) how can we do field tests in 180 days on equipment that has yet to be produced; (2) how can we determine which spectrum should be licensed, and which should be unlicensed; and (3) how can we start certifying products that have yet to be produced, especially if the technical parameters have yet to be developed?

The first round of comments were filed in the FCC's rulemaking on January 31, 2007. Once the reply comments are filed, we will give a summary of the

proceedings.