

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

RE: Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04-186 and Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket No. 02-380, *Second Report and Order and Memorandum Opinion and Order*, FCC 08-260

To paraphrase astronaut Neil Armstrong as he became the first person to step on the moon, today the FCC is making both a small step and a giant leap. It will be a giant leap for American consumers to be able to use the untapped television “white spaces.” At the same time, we enter this new frontier with a small step in the form of a prudent and cautious order that sets up safeguards to ensure that new unlicensed devices do not cause harmful interference with licensees and other users of these frequencies.

While new broadband technologies are the most likely uses of these channels, the most exciting part about our action today is that we are creating the opportunity for an explosion of entrepreneurial brilliance. Our de-regulatory order will allow the market place to produce new devices and new applications that we can’t even imagine today. Not only will the lives of millions of Americans be enriched by these new technologies, but I am confident that imaginative use of the TV white spaces could actually improve our safety as well.

We owe this historic moment to several white spaces pioneers including former FCC Chairman Michael Powell who initiated this proceeding four years ago, many Members of Congress, countless entrepreneurs and, of course, my Commission colleagues. I also acknowledge our chief engineer and technologist, Julie Knapp, and his entire OET team. Thank you for your patience, openness, fortitude and counsel.

To those who have expressed concern regarding the results of this proceeding, I would like to offer them comfort in the form of the text of today’s order. As a preliminary matter, I note that the empirical data we have studied suggests a very real potential for deployment of new personal/portable devices, and it would be premature to either wholly endorse or close the door entirely on future developments. Accordingly, it is appropriate that the steps today are limited in scope, define an outline for our future approach toward device certification and allow for any and all changes that may be required by future circumstances.

We have listened carefully to the arguments of broadcasters, cable TV operators, wireless microphone companies and entertainers, and today’s order addresses their concerns. In short, all avenues of modification and improvement remain open. And I thank my colleagues for working collectively to strengthen and clarify these protections.

In fact, as technology improves, I expect that one day we will likely look back on this order and think of it as quaint; but today it is state-of-the-art.

Our decision today also obviates the need for artificial government mandates, such as those imposed on the C Block of our 700 MHz auction. Make no mistake, I have long advocated application and device portability as well as free and open networks. Consumers want these features, and the market started working on delivering them years before unnecessary, counterproductive and after-the-fact Commission mandates. Therefore, if such mandates were not necessary then, they are even more unnecessary after our action today. Robust unlicensed use of white spaces will give nimble entrepreneurs the freedom to disrupt the market in positive and constructive ways that will force incumbents to keep pace with this new revolution. As a result, the pressure created by dynamic competition will knock down barriers created by walled gardens and pry open closed networks. This liberation will come about not through increased regulation, but through increased competition. Our ultimate shareholders, American consumers, will reap the dividends.

I also appreciate my colleagues' support for a notice of inquiry to commence an examination of possible other limited uses of white spaces, such as point-to-point backhaul in rural areas as a substitute for special access. This is an idea that was raised in our original notice, is thoroughly discussed on the record, and is already ripe for decision. I still believe that a further notice of proposed rulemaking would have presented us with a clearer path toward a closer examination. Nonetheless, I hope my colleagues in the next Commission will move forward expeditiously on what I believe to be a win-win solution.

Here is the challenge: all wireless services have to be backhauled to the PSTN and the Internet via a network of some kind. Over the years, some people in the tech industry, as well as some of my colleagues, have complained about a lack of competition in the special access market which, they allege, artificially drives up backhaul costs. Competitive local exchange carriers (CLECs) and competitive wireless carriers presented us with a possible solution to this challenge for rural areas which enjoy more unused spectrum than urban areas and suffer from the least amount of special access competition. Some form of limited white spaces point-to-point licensing may allow entrepreneurs to find more efficient paths for their backhaul needs while leaving the lion's share of white spaces spectrum on the table for unlicensed users.

I am disappointed by some in the tech industry and public interest community who seem to oppose the Commission even discussing this issue while also complaining about the condition of the special access market. All of us should remember that CLECs, wireless companies and their supplier partners are also part of the tech industry and their voices should be heard as well. Hopefully, this notice of inquiry can plant the seeds of progress to find a workable solution that inures to the benefit of all parties, but mainly, American consumers.

Our decision today is revolutionary. It does more than simply foster the development of exciting new wireless services. It also has the potential to sustain the

continuing good health of an “old” technology: television broadcasting, by protecting the interests of the millions of consumers who continue to rely on broadcasting for their news, entertainment and public safety information.

Accordingly, I strongly support today’s order.