Public Knowledge

July 27, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation
ET Docket No. 04-186 (TV White Spaces)
MB Docket No. 11-169 (Basic Service Tier Encryption Compatibility)
MB Docket No. 12-68 (Revision of the Commission's Program Access Rules)
WT Docket No. 10-4 (Signal Booster Rules to Improve Wireless Coverage)
WT Docket No. 11-49 (Waiver Request by Progeny of Certain 900 MHz Rules)
WT Docket No. 12-4 (Verizon/SpectrumCo)
WT Docket No. 12-175 (Verizon/T-Mobile)
WT Docket No. 12-69 (Promoting Interoperability in 700 MHz Spectrum)
WT Docket No. 12-70 (Service Rules for AWS-4 in 2000-2020 and 2180-2200)

Dear Ms. Dortch:

On July 26, 2012, Harold Feld, Senior VP Public Knowledge (PK), met with Dave Grimaldi, Chief of Staff and Media Adviser to Commissioner Clyburn, and Louis Peraertz, Legal Advisor on Wireless, International and Public Safety, to discuss issues relating to the above captioned proceedings.

1. Basic Tier Encryption: PK pointed out that while it's good that Boxee and Comcast appear to have made progress toward establishing a way for third-party devices to continue working even after basic tier encryption, that these half-measures are even necessary points to a basic failure of the Commission's set-top box and video device policies. That being said, on the low-income issue, if the Commission goes forward with its rule change it should avoid using Medicaid as a standard for eligibility. In *National Federation of Independent Business v. Sebelius*, 567 U.S. ___ (2012), the Supreme Court has given states the ability to opt out of parts of Medicaid. This will create substantial state-by-state variation in Medicaid eligibility criteria. To avoid these problems, the Commission should use the eligibility criteria it already uses for the Lifeline/Linkup program to determine eligibility for low-cost converter boxes.

2. Boosters: PK argued that booster devices should be interoperable, and that consumers should be able to buy devices that work for any carrier as long as they meet any technical specifications set by the Commission. While registration requirements may be necessary as a means to mitigate interference, carriers should not be able to leverage this process to control what devices a consumer may use, or to charge different fees for registering different kinds of device. Finally, as a legal matter, although users that deploy boosters would be operating under their respective carriers' licenses, this does not mean that carriers are entitled to fine-

grained control over boosters or how they are uses. If this were the case, not only would the Commission arguably lack authority to require some kinds of interoperability, but users of unlocked devices might no longer fall under their carrier's license. Such an absurd result is contrary to considerable precedent.

3. AWS-4: PK urged the Commission to ensure that if any provider receives billions of dollars in spectrum to enhance competition, that competition is actually enhanced. This means both that the spectrum should be sufficient to actually deploy a competitive network, and that the recipient of this spectrum should be required to actually build it out. Particularly, any spectrum that is freed up for competitive use in this way must not simply be "flipped" (for example, to AT&T or Verizon), since such a transaction would not only create an unjust windfall, but could actually decrease competition and exacerbate a growing problem with spectrum concentration.

4. Progeny Waiver: PK reiterated its previous comments that 1) there needs to be a clear standard for testing interference and whether a waiver is appropriate; 2) the standard must actually be implemented; and 3) if unlicensed users meet the requirements of the test, they should be granted the waiver. The Commission needs to ensure that unlicensed users are not over-tested to the point that they can no longer operate in the unlicensed bands.

5. Program Access: PK is generally supportive of the comments filed by competitive MVPDs and their trade associations in this proceeding, but pointed out that online video providers do not benefit from program access or anything like it. This creates a competitive imbalance, and as a result the program access system falls far short of its potential. At the same time, it remains very important for competitive MVPDs and should remain in place. PK argued that the Commission might benefit from more time to consider its options, and that it could issue a short extension order to extend the rules' expiration deadline. PK further pointed out that the Commission should clarify that any pending complaints should be resolved under the rules as they stood at the time the complaints were made.

6. Verizon/SpectrumCo: PK continues to reiterate its comments that the proposed agreements between Verizon and the cable companies are anticompetitive because of their structure and development of standard essential patents. Furthermore, Verizon Communications, as the single majority shareholder in Verizon Wireless, is considered to exercise complete control over Verizon Wireless. Under the Commission's attribution rules, direct control will always create an attributable interest. PK urges the Commission to clearly define what behaviors are acceptable if it allows the agreements and include voluntary merger conditions of what behavior should not be entered into to avoid discrimination.

7. TV White Spaces: PK thanked Commissioner Clyburn for her recognition at the most recent Commission meeting of the Air.U and other programs adopting TVWS technology. PK suggested that, as part of any incentive auction proceeding, the FCC could also reexamine limitations imposed on TVWS that may no longer be necessary, such as exclusion from Channels 14-20 on a national basis.

In accordance with Section 1.1206(b), this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s Harold Feld
Senior Vice President
Public Knowledge
1818 N St NW, Suite 410
Washington, DC 20036

CC via email:
Dave Grimaldi
Louis Peraertz