

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN,
APPROVING IN PART AND DISSENTING IN PART**

Re: Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, Notice of Inquiry, ET Docket No. 02-380

I strongly support making more spectrum available for unlicensed devices. Unlicensed devices have been a huge success story, from cordless phones to wireless broadband connections, such as 802.11b and Bluetooth. I am hopeful that unlicensed operations will, as some have suggested, eventually provide a last-mile application to connect people's homes to the Internet, offering a real alternative to telephone wires, cable, and satellite connections. I thus believe the Commission should consider a range of additional allocations for unlicensed devices.

I have reservations, however, with this item's inquiry into permitting additional unlicensed devices to operate in the TV broadcast bands at this time. While I support making more spectrum available for unlicensed use, I am concerned that opening this inquiry into the TV broadcast bands at this time may create additional uncertainty and potentially delay the digital transition.

Under Chairman Powell's leadership, we have taken several steps in the last year to facilitate the digital transition. While still trying to build momentum to move broadcast stations from analog into digital, I am hesitant to inject the additional complications caused by significant unlicensed use in the broadcast bands at this time.

First, I fear that these unlicensed devices will create additional interference problems when digital television gets underway. Interference already threatens to impede the introduction of digital television. Although digital television stations have begun operating only in the last twelve months, we have received several reports of interference problems. For example, we are currently adjudicating a claim that a digital station in Norfolk, Virginia (WHRO-DT) is causing interference to an analog station in Salisbury, Maryland (WBOC-TV). This claim has been pending since June 11, 2002, and is an example of how interference can create significant problems that need to be resolved. At the same time, difficulties have surfaced for the existing unlicensed devices operating in the broadcast bands. Wireless microphone users, for example, are finding it increasingly difficult to find available spectrum.

In this environment, I am reluctant to open an inquiry into allowing more unlicensed devices in the broadcast bands. Such an inquiry risks causing significant uncertainty, as licensees must consider the potential for additional interference as well as a new class of users with expectations for spectrum in these already crowded bands. In my view, we ought to concentrate on providing more – not less – certainty, so that licensees can develop rational business plans and move forward expeditiously with the digital transition.

At the same time, I am somewhat skeptical of the benefits of opening this inquiry. As part of the digital transition, we have dramatically increased the number of broadcast licenses in the broadcast bands. Particularly in urban areas, such as along the east and west coasts, there is much less broadcast spectrum available within which unlicensed devices could operate effectively.

There is much more broadcast spectrum available in rural areas. But I am concerned about the impact of unlicensed devices on TV viewers in rural areas. It is viewers in rural areas that are most likely to be without access to cable and to receive their TV from over-the-air broadcast signals. Moreover, many rural viewers receive their TV signals from great distances, beyond the so-called “grade B” contour, outside of which TV signals would typically not be guaranteed protection against interference. I fear that such unlicensed devices could interfere with the broadcast stations many rural viewers watch and that rural viewers would lose the few broadcast signals upon which they rely. Such an outcome seems particularly unfair in light of last year’s decision not to grant pending applications for new TV stations for many rural communities in the lower 700 MHz band. *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, GN Docket No. 01-74, Separate Statement of Commissioner Kevin J. Martin (rel. Jan. 18, 2002). That decision denied numerous rural communities – such as Franklin, North Carolina, Blanco, Texas, and Fairmont, West Virginia – the opportunity to receive locally originated broadcast stations for the first time. Having refused to allow these communities new local stations – because we were concerned that there was not enough room left in the broadcast bands and because of the potential impact on the digital transition – it seems particularly inequitable to place distant rural signals at risk.

Finally, I question the timing of this item. This item is based around several recommendations of the Commission’s Spectrum Policy Task Force Report. We only recently put that Report out for comment, with comments not even due until January 9, 2003, and reply comments not due until February 10, 2003. It seems odd to me to initiate this proceeding before we even receive any comments on the Task Force’s recommendations. If the Task Force Report was unnecessary for this item, the Commission could have released this item months ago, instead of delaying action for the Task Force to write its Report. If, on the other hand, the Task Force’s work was instrumental to this item, it would make more sense to wait for comment on the Report before proceeding. Either way, after we have waited for the Task Force to finish its Report, it seems odd not to wait an additional month for the initial comments on the Report.

On balance, the speculative benefits of opening the broadcast band up, the risk to the digital transition, the potential harm to rural areas, and the pending proceeding on the Spectrum Task Force Report weigh against conducting this inquiry at this time. Accordingly, for all of the reasons above, I respectfully dissent in part.