Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request to Amend Sections 47 C.F.R 15.711(b)	)	RM-11745
and 15.717 Regarding Changes to Certain Rules	)	
for Unlicensed Operations in the Television Bands,	)	
Repurposed 600 MHz Band, 600 MHz Guard	)	
Bands and Duplex Gap and Channel 37	)	

To: The Commission

OPPOSITION OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION TO
EMERGENCY MOTION FOR SUSPENSION OF OPERATIONS
AND PETITION FOR RULEMAKING

The Wireless Internet Service Providers Association ("WISPA"),[1] pursuant to Section 1.405(a) of the Commission's Rules, hereby strongly opposes the Emergency Motion for Suspension of Operations and Petition for Rulemaking ("Petition") filed March 19, 2015 by the National Association of Broadcasters ("NAB").[2] Significantly, the Petition identifies no instances of harmful interference to TV operations, but instead relies on innuendo and speculation in asking the Commission to suspend the database, to adopt unnecessary and burdensome rule changes and to defer Commission action on proposed rules that, when implemented, would actually provide a means for addressing any real problems with the database. In contrast to NAB's claims, the database is serving its primary mission of ensuring that broadcasters and other incumbents do not suffer harmful interference from unlicensed white space devices. Any actual discrepancies in database registrations can be resolved through

[1] WISPA is a non-profit trade association that represents the interests of the fixed wireless Internet service industry. WISPA has been an active participant in the proceedings leading to adoption of the TV white space rules and the incentive auction rules.
[2] *See Public Notice*, Report No. 3016 (rel. April 1, 2015) (providing notice of the filing of the Petition and establishing filing deadlines).

application of the existing rules and the cooperative efforts of industry, and do not require the "emergency" and extraordinary relief NAB seeks. Further, "professional installation" should remain a deployment option. Finally, in contravention to NAB's request, the Commission should proceed without delay in considering new Part 15 rules that would enhance commercial use of unlicensed TV band spectrum.[3]

NAB's year-long investigation failed to find any instances of interference, and NAB apparently did not report its findings to database administrators, equipment manufacturers or users or avail itself of existing rules. To the contrary, NAB filed its ill-conceived Petition and initiated a deceptive publicity campaign in a transparent attempt to discredit the white space industry. Given the empty nature of its claims, NAB appears to be trying to inject uncertainty into the TV white space industry specifically and the spectrum database business generally. But there is no smoke and there is no fire, just NAB hoisted by its own petard. The Commission must not allow the Petition to linger, but should immediately dismiss or deny it.

Discussion

In its Petition, NAB seeks suspension of the TV white space database, amendment of the TV white space rules and deferral of adopting new rules proposed in the pending *Part 15 NPRM*. In light of the flimsy non-factual basis upon which NAB bases its case, there is no sound reason for the Commission to grant any of these three forms of relief.

[3] *See Amendment of Pat 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37*, Notice of Proposed Rulemaking, 29 FCC Rcd 12248 (2014) ("*Part 15 NPRM*").

I. THE COMMISSION SHOULD NOT SUSPEND THE TV WHITE SPACE DATABASE.

After conducting a year-long review of the TV white space database, NAB filed its Petition alleging apparent deficiencies in the TV white space database. There is no evidence that NAB ever approached any of the database administrators, equipment manufacturers or users to verify the accuracy of its claims or to seek correction of any such deficiencies. To the contrary, NAB sat on the data until it found a strategic time to present its findings to the Commission – it even had the opportunity to present its "evidence" in the *Part 15 NPRM* proceeding just a few months ago, but instead simply made generic assertions in Reply Comments.[4] This conduct leads to the inescapable conclusion that *NAB discovered no instance of potential interference to incumbent TV stations*, the primary reason for the database. Otherwise, as the representative of the TV industry, NAB no doubt would have raised its objections at the first sign of actual interference.

Based on discussions with database administrators, WISPA believes NAB's allegations grossly misinterpret the information registered in the database. As one example, the registration of a large number of devices at a single location may well indicate a manufacturing facility or a testing site where devices are tested to determine their ability to register with the database before they are shipped and placed in operation.[5] In some cases, the address of the registered device and the contact information may be different because the manufacturer, such as Meld

[4] *See* Reply Comments of NAB, ET Docket No. 14-165 and GN Docket No. 14-28 (filed Feb. 25, 2015) ("NAB Part 15 Reply Comments").
[5] *See* Petition at 10.

Technologies,[6] may test the devices before the eventual commercial user is known. These test registration techniques demonstrate *compliance* with the database registration rules, not a lack thereof.

Moreover, the discrepancies among the databases in the total number of devices registered likely indicates that database administrators are purging their records at different points in time following the mandatory three-month period of inactivity.[7] In other words, the databases are properly sharing information among them, but one company may delete records on one given day following the three-month period of inactivity while other administrators may select a different and equally permissible day. But they all include *active* devices that properly remain in the database to protect TV stations from interference.

WISPA believes that any actual deficiencies are minor and can and should be resolved through the continuing experience and refinement of "best practices" by the database administrators, and not by shutting down a registration system that – it bears repeating – has protected TV stations from receiving any interference. For instance, the databases could use a common designation for equipment testing and can purge records for inactive devices on the same schedule. These practices can be adopted quickly, and any remaining "bugs" can also be easily identified and fixed. But shutting down a registration system that successfully enables deployment of non-interfering fixed devices to rural areas of the country is unnecessary overkill, like using three firehoses to put out a match.

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[6] NAB notes that more than 80 devices listed "Meld test" as the contact name. *See id.* This designation likely shows that the manufacturer, Meld Technologies, is testing devices at a single facility.

[7] *See Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Second Report and Order and Memorandum Opinion and Order, 23 FCC Rcd 16807, 16880 (2008) ("*Second MO&O*") ("If a fixed device does not check the database for three months, its registration will be removed from the database").

The Commission also must consider the policy implications of NAB's request. The Commission has consistently acknowledged the benefits that unlicensed TV band devices can bring to the country, especially rural America where access to broadband is lacking. Recently, the Commission proposed to amend its rules to relax certain "conservative" technical requirements and afford unlicensed TV band users additional technical and operational flexibility.[8] Just a few weeks ago, the Commission adopted rules for the 3.5 GHz band that improves upon the capabilities of the TV white space database by employing a Spectrum Access System that determines tiers of use, assigns spectrum dynamically and monitors the interference environment in real time.[9] It would contravene public policy if the Commission were to give any credence to NAB's innuendo and speculation and to take any action undermining the current spectrum sharing system that demonstrably offers significant benefits to consumers, stimulates innovation and promotes spectrum efficiency, while fully protecting incumbent operations.

II. THE COMMISSION SHOULD NOT ADOPT NAB'S PROPOSAL TO AMEND THE RULES.

NAB asks the Commission to amend its rules to eliminate the "professional installation" option for fixed devices to thereby require all devices to incorporate GPS capability[10] and to create additional legal liability for database administrators.[11] NAB utterly fails to meet its

[8] *See Part 15 NPRM* at 12274.
[9] *See Amendment of the Commission's rules with Regard to Commercial Operations in the 3550-3650 MHz Band,* Report and Order and Second Further Notice of Proposed Rulemaking, GN Docket No. 12-354, FCC 15-47 (rel. Apr. 21, 2015).
[10] *See* Petition at 13-14.
[11] *See id.* at 14-15.

burden that its proposed rule changes are warranted,[12] and the Commission should therefore reject both of these requests.[13]

First, NAB's allegations do not show a failure of the professional installation requirement, but rather show that professional installers are well aware of their obligations to register devices. Not only are devices being registered when they are installed for commercial operations, but they are also being registered at manufacturing facilities and in the field for testing purposes. These installers are not amateurs or novices, but are paid employees whose jobs depend on accurate and sound installations; installing a device and then populating the database with inaccurate information simply makes no sense for the installer or its employer. Further, despite a year of secret investigation and research, NAB has submitted no evidence showing the presence of *unregistered* devices. Surely, a request to amend Commission rules must rest on solid footing, not on unsupported theories defying common sense and good business practices.

NAB also is wrong about the incorporation of GPS capability into fixed devices. It asserts that adding "GPS or other geolocation capability should cost no more than a few dollars."[14] Given its year-long investigation, one would have expected NAB to offer some support for this claim, but there is none – it presents no actual cost information and apparently did not even contact any manufacturers or other experts to obtain reasonable cost estimates. And its statement that "every major model of smartphone includes geolocation capability"[15] misses the point. Does NAB know how much time and money was expended to incorporate GPS

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[12] *See* 47 C.F.R. § 1.401(c) (stating that the petition for rulemaking must support the requested rule change);
[13] *See* 47 C.F.R. § 1.407 (petition for rulemaking denied where petitioner does not disclose "sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding").
[14] Petition at 14.
[15] *Id.*

technology into mobile devices? Does it know whether and to what extent that technology can be incorporated into white space devices? Short of answering these questions, NAB does not even bother to raise them.

In addition, NAB ignores the fact that GPS will not work for many deployments of fixed devices. For example, some devices are designed to work indoors where existing GPS signals typically will not penetrate. In other environments, it may be difficult for GPS technology to be incorporated into the device or provide reliable communications. For these devices, professional installation is "appropriate"[16] – indeed, it is the only viable registration solution. In the end, eliminating the professional installation option in favor of a mandatory GPS requirement would increase the cost of devices and, more importantly, decrease the reliability of the TV bands database and prevent some devices from registering with the database. One would think that NAB does not intend this result, and neither does WISPA.

Second, given the absence of unregistered devices and the lack of any problems with professional installation, there is no reason to adopt NAB's proposal to amend its rules to increase liability on database administrators.[17] NAB fails to acknowledge that Section 15.715(i) already requires database administrators to "[r]espond in a timely manner to verify, correct and/or remove, as appropriate, data in the event the Commission or a party brings claims of inaccuracies in the database to its attention."[18] So, if NAB had reported its allegations to a database administrator, the administrator would have been duty-bound to make any required

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[16] *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Second Memorandum Opinion and Order, 25 FCC Rcd 18661, 18723 (2010).
[17] *See* Petition at 15.
[18] 47 C.F.R. § 15.715(i). *See also Second MO&O*, 23 FCC Rcd at 16885 (administrators are already "expected to respond quickly to verify and/or correct data in the event that a party brings a claim of inaccuracies in the database to its attention. . . ," and "the Commission reserves the right to request the removal of voluntarily submitted information from a TV bands database in the event that such information is determined to be inaccurate or not in compliance with the rules").

corrections in a timely manner. Not only did NAB apparently not take this step, it also failed to show why the existing rule is not sufficient to remedy the alleged defects.[19] Because the rules already require what NAB seeks, NAB cannot support its proposed rule change as required by Section 1.401(c) and there thus is no reason for the Commission to grant NAB's request to amend the rules.[20]

Finally, WISPA notes that NAB made similar, albeit generic, allegations in the *Part 15 NPRM* proceeding in support of its request to eliminate the professional installation option and to impose strict liability on database administrators.[21] In its Petition, NAB fails to offer any reason why its claims and arguments, baseless as they are, should be considered in *both* the ongoing *Part 15 NPRM* proceeding *and* separately in this proceeding, especially because NAB apparently had most of its investigation completed by the time it filed its *Part 15 NPRM* Reply Comments. Its separate request for a rulemaking here is repetitious and unnecessary, and presents an independent basis for dismissal of the Petition.

III. THE COMMISSION SHOULD NOT DELAY ADOPTION OF RULES PURSUANT TO THE *PART 15 NPRM*.

NAB argues that the Commission should suspend rulemaking action on the *Part 15 NPRM* until NAB's alleged database flaws are corrected.[22] The Commission should reject this request as well, and should continue to consider the factual record in fashioning the additional flexibility that its well-conceived proposals will promote.

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[19] Oddly, NAB cites the requirement in Section 15.713(f)(2) for the proposition that registrants are responsible for maintaining the accuracy of the registration, but it never mentions Section 15.715(i). *See* Petition at 14, n.27.
[20] 47 C.F.R. § 1.401(c).
[21] *See* Reply Comments of NAB, ET Docket No. 14-165 and GN Docket No. 14-28 (filed Feb. 25, 2015), at 1-2 ("Experience with unlicensed operation in the TV band thus far, however, has demonstrated that the system is not on sound footing. It is imperative that the Commission address the fundamental flaws in its treatment of TVWS devices before expanding their operation to potentially millions of new users").
[22] *Id.* at 16.

NAB's request and conduct makes clear its motive – to stop unlicensed use of vacant TV band spectrum. Otherwise, NAB would actually propose that the Commission implement the pending rule changes with the knowledge that the database would need to be certified to handle additional inputs such as intermediate power and directional antennas. It would have not spent a year researching apparent flaws and instead would have approached administrators and manufacturers with its apparent findings, consistent with Section 15.715(i). Having taken none of these steps, it is clear that NAB would rather inject additional uncertainty into the FCC regulatory process in an effort to hasten the demise of the TV white space industry.

The Commission must not be deceived by NAB's tactics, but should acknowledge that the database is working as it should, that there are no cases of actual interference to TV stations and that the remedies NAB seeks are entirely without merit. The Commission should proceed full-throttle with its consideration of the record in the *Part 15 NPRM* proceeding so that the benefits of unlicensed TV band operations can continue and flourish under a more flexible and robust regulatory regime, for the benefit of unserved and underserved consumers that desire access to broadband services.

Conclusion

NAB's Petition presents no basis for suspension of TV band databases, no basis for amendment of the rules to eliminate the professional installation option and to add liability to administrators, and no basis to defer action on the *Part 15 NPRM*. The Commission should dismiss or deny the Petition and proceed with the expeditious adoption of new rules consistent with the record in the *Part 15 NPRM*.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

May 1, 2015

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