

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC, 20554

In the matter of)
)
Amendment of Parts 73 and 74 of the)
Commission's Rules to Establish Rules for)
Digital Low Power Television, Television) MB Docket No. 03-185
Translator, and Television Booster Stations)
and to Amend Rules for Digital Class A)
Television Stations)

To: The Secretary, for forwarding to The Commissioners

COMMUNITY BROADCASTERS ASSOCIATION
OPPOSITION TO PETITION FOR RECONSIDERATION

1. The Community Broadcasters Association (CBA) hereby opposes the following Petition for Reconsideration (Petition) of the Federal Communications Commission's (the FCC or Commission) *Digital LPTV Order*.¹ The Petition was jointly filed with the Commission on December 29, 2004, by the New America Foundation (NAF) and by the Champaign Urbana Wireless Internet Network (CUWIN) (the Petitioners).²

2. The Petitioners argue that the Commission has failed to consider the impact of the decisions stemming from the instant docket on the Commission's so-called *White Spaces*

¹ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331 (Sept. 30, 2004) (*Digital LPTV Order*).

² Official public notice of the Petition was published on p. 7737 of the Feb. 15, 2005, *Federal Register*, which established the 15-day deadline of March 2, 2005 for any interested parties to file Oppositions to the instant Petition.

Docket.³ Thus, as they did in the *White Spaces Docket*, the Petitioners seek to unreasonably elevate unlicensed wireless entities to “co-primary status,”⁴ which would allow innumerable wireless devices to take advantage of the same protections (e.g., “first come, first served” in a market) that duly licensed Class A and Low Power television (LPTV) stations will have when the Commission allocates new digital television (DTV) channels to Class A and LPTV stations, pursuant to the Commission’s *Digital LPTV Order*.⁵ In the alternative, the Petition seeks to convince the Commission that it should force Class A and LPTV stations to accept operation of unlicensed wireless devices “similar to operation of the Part 15 underlay in the 2.4 GHz band.”⁶ Besides demolishing the historical hierarchy of protecting licensees (with primary status) over unlicensed operators (with secondary status), both of their proposals would be impossible to administer because they would create a system where licensed and unlicensed entities would compete for the same spectrum.

BACKGROUND

3. The CBA is the national trade association of the nation’s Class A and LPTV stations, representing their interests in legislative, administrative, and judicial forums. According to the Commission, there are 2,637 licensed Class A and LPTV stations, which

³ *Unlicensed Operation in the TV Broadcast Bands*, ET Docket No. 04-186, *Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Docket No 02-380, Notice of Proposed Rulemaking, FCC 04-113 (May 25, 2004) (*White Spaces Docket*).

⁴ Petition at p. ii.

⁵ *Digital LPTV Order* at paras. 127-148.

⁶ Petition at p. ii.

comprise 60 percent of the nation's television stations (not including TV translators).⁷ The Commission must not treat interference issues casually because most Class A/LPTV systems have no cable carriage rights and none have any satellite carriage rights. Rather, the nation's Class A and LPTV stations depend primarily on over-the-air reception to reach their viewers, as will many Full Power digital television ("DTV") stations while the general aspects of DTV cable and satellite carriage are dealt with in the anticipated judicial and legislative reviews of the Commission's recent DTV "must-carry" Order.⁸

4. Accordingly, CBA's Opposition is not your typical "Not In My Back Yard" pleading. Because Class A and LPTV stations depend so heavily on over-the-air reception, television signals from these stations must be adequately protected, wherever they are viewed in practice, by a regulatory scheme that can be realistically administered and enforced. It is critically important that any unlicensed services/devices remain secondary to Class A and LPTV stations and not be permitted to erode the quality or quantity of basic TV broadcast services, both analog and digital.⁹

⁷ See the inventory of television stations as of December 31, 2004, published by the Commission in a News Release from February 10, 2005, showing 1,748 licensed full power TV stations, 603 Class A stations, and 2,034 LPTV stations.

⁸ *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Second Report and Order and First Order on Reconsideration, FCC 05-27 (Feb. 23, 2005).

⁹ For a more in-depth discussion regarding these important policies, see CBA's Comments (filed Nov. 30, 2004) and Reply Comments (filed Jan. 28, 2005) in the Commission's *White Spaces Docket*.

I. THE NAF-CUWIN PETITION LACKS MERIT AND IT MUST BE SUMMARILY DENIED OR DISMISSED BY THE COMMISSION

5. The prospect of unlicensed operation in the TV band is exceedingly distressing to Class A and LPTV stations that do not have the legal right to be carried by cable or satellite systems, particularly as such stations are usually locally owned and operated and provide programming to local communities and specialized audiences that would otherwise be unserved by nationwide mass-marketed channels. Even if it were realistically possible to control the proliferation of unlicensed devices, proponents of unlicensed operation have made it clear that they are willing to try to protect over-the-air television services only to the extent of strong predicted signals, ignoring very large areas where these signals are received and viewed in actual practice – in homes that use sensitive outdoor antennas to pick up relatively weak signals.

6. The Petitioners cite to a 1989 FCC Order¹⁰ for their fundamental justification that “the operation of Part 15 devices [is] completely compatible with television reception.”¹¹ However, the Commission, in the cited Order, was very concerned with interference from Part 15 transmitters when the digital transition, in time, became a reality:

We are satisfied that our proposed general emission limits are adequate to prevent harmful interference to TV receivers from Part 15 transmitters operating in the television broadcast bands. Of great concern, however, is the more intensive use of these bands that may occur with the introduction of various forms of High Definition Television (HDTV).¹²

¹⁰ *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, Gen. Docket No. 87-389; RM-5193; RM-5250; RM-5575, First Report and Order, FCC 89-103, 4 FCC Rcd 3493, Erratum, DA 89-728 (Rel. April 18, 1989, Corr. July 7, 1989).

¹¹ Petition at p. 1.

¹² See 4 FCC Rcd 3493 at 3501.

Thus, the Commission should reject the Petitioners' fundamental justification because the emission limits from wireless Internet connections have very short duty cycles and the cited FCC language excepts DTV channels. This general concern about harmful interference is not theoretical; it has already happened in real world situations. In a very troubling instance of unacceptable interference, high-speed wireless Internet connections recently interfered with United States Air Force radar systems at Eglin Air Force Base, which created "false targets" during weapons testing in Florida.¹³ The bottom line is that unlicensed wireless devices can cause harmful interference to entities officially licensed to use the spectrum.

7. Since the Petitioners' positions lack merit, they must resort to desperate measures and scare tactics. They grumble, "As a result of these two decisions [refusing to permit underlays in the *Digital LPTV Order* and excluding the use of channels 37 and 52-69 in the *White Spaces Docket*], the Commission will reduce available spectrum for unlicensed use to a practical nullity."¹⁴ They also complain that waiting for Full Power stations to complete DTV channel elections before opening a filing window for Class A or LPTV digital channels "...will render it effectively impossible for equipment manufacturers to develop devices that can use the broadcast bands."¹⁵ These unfounded statements ignore the reality of the overall marketplace for wireless broadband services, especially where Part 15 devices operate (or will soon be permitted to operate) in other spectrum bands or via electric power lines.¹⁶

¹³ See *High Speed, Wi-Fi Internet Interfering with Eglin Radar*, <http://www.ledger-enquirer.com/mld/ledgerenquirer/news/local/10759098.htm> (visited on March 1, 2005).

¹⁴ See Petition at p. 2.

¹⁵ *Id.*

¹⁶ The WiMax technology standard (IEEE 802.16) will allow wireless broadband Internet access over many coverage miles and may become a viable challenger to cable modem and DSL

8. CBA understands that the main purpose of the Petition is to support the Petitioners' overall policy stance – that the public needs more access to the radiomagnetic spectrum in order to receive more wireless broadband services. Hence, CBA does not oppose the goal of the widespread deployment of broadband services. The problem, however, is that the Petitioners make no compelling arguments that prove that utilizing the specific TV spectrum used by exposed Class A and LPTV stations to accomplish the Petitioners' policy goal is the “highest and best use”¹⁷ of this spectrum. This failure compels an obvious question: Why is it so urgent for the Commission to exploit TV spectrum employed by vulnerable Class A and LPTV stations to achieve the Petitioners' objective? The correct answer is that there is no urgency – other spectrum bands/channels currently exist where both wireless and wired Part 15 devices are permitted to operate.

9. After all, there are numerous other methods for consumers to receive Internet services at broadband speeds and capacities. The fact is that cable modem and digital subscriber line (DSL) connections are growing in popularity – in December 2004, the Commission released a study, which concluded that the number of high-speed Internet connections increased by 38 percent for the full twelve-month period ending June 30, 2004, and this number increased by 15

services. Also, see *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, ET Docket No. 98-153, Second Report and Order and Second Memorandum Opinion and Order, FCC 04-285 (Dec. 16, 2004) and see *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems*, ET Docket No. 04-37, *Carrier Current Systems, Including Broadband Over Power Line Systems*, ET Docket No. 03-104, Report and Order, FCC 04-245 (Oct. 28, 2004).

¹⁷ See *Federal Communications Commission Strategic Plan, FY 2003-FY 2008*, Report at p. 5 (Oct. 1, 2002), “Spectrum: Encourage the highest and best use of spectrum domestically and internationally in order to encourage the growth and rapid deployment of innovative and efficient communications technologies and services.”

percent in the first half of 2004.¹⁸ Last month, the Commission proposed additional flexibility in the 900 MHz band, which could increase broadband services.¹⁹ The Commission recently published a decision that restructures the historical MMDS and ITFS services in order to “make significant progress towards the goal of providing all Americans with access to ubiquitous wireless broadband connections, regardless of their location.”²⁰ In December 2004, FCC Chairman Michael K. Powell notified the National Telecommunications and Information Administration (NTIA) that the Commission would authorize 90 MHz of wireless spectrum for advanced wireless services (3G) in June 2006.²¹ Further, the NTIA recently went on record at the Commission and said that cognitive radio (CR) technologies (which some argue could be used to identify any protected signal) should be limited at first to a few frequency bands primarily used by unlicensed devices:

Therefore, NTIA agrees with the Commission’s tentative conclusion that unlicensed devices employing CR techniques should be prohibited from operating in the restricted frequency bands listed in Section 15.205 of the Commission’s Rules.²²

¹⁸ *High-Speed Services for Internet Access: Status as of June 30, 2004*, Industry Analysis and Technology Division, Wireline Competition Bureau, Report at p. 1 (Dec.22, 2004). Also, see the accompanying News Release at p. 1.

¹⁹ *Amendment of Part 90 of the Commission’s Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, Oppositions and Petitions for Reconsideration of 900 MHz Band Freeze Notice*, WT Docket No. 05-62, Notice of Proposed Rulemaking and Memorandum Opinion and Order, DA 04-3013 (Feb. 16, 2005).

²⁰ *Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66; RM-10586, Report and Order, FCC 04-135 at para. 1 (July 29, 2004).

²¹ *FCC to Commence Spectrum Auction that Will Provide American Consumers New Wireless Broadband Services*, News Release at p. 1 (Dec. 29, 2004).

²² See *Re: Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies*, ET Docket No. 03- 108, *Authorizing and Use of*

When all of these data points are considered, the Petitioners' claims of urgency fall flat. Thus, it does not make any sense to grant the NAF-CUWIN's Petition when there are ample viable alternatives available to Part 15 devices – alternatives that will not eviscerate the broadcast licenses of properly licensed Class A and LPTV station owners.

II. IT IS IN THE PUBLIC INTEREST FOR THE COMMISSION TO DENY THE NAF-CUWIN PETITION IN ORDER TO PROTECT CLASS A AND LPTV STATIONS

10. Class A and LPTV stations, known as “community broadcasters,” currently serve the public interest in many ways. In fact, they are leading examples of what “localism” actually means in American television broadcasting. Class A stations are the only broadcasters required by statute to provide locally-produced programming – each station must provide an average of three hours per week.²³ LPTV stations also routinely offer local programming without any specific regulatory requirements, because their limited geographic service areas are conducive to locally-focused services. Members of historically underrepresented groups in the broadcast industry own many of these stations and they often serve minority communities, providing both local and national programming. As well, many Class A and LPTV stations offer free or low-cost training to those who are just getting into the news, sales, or technical side of the television business – thereby providing important entry-level job opportunities that are difficult to find at Full Power television stations.

11. Accordingly, it is in the public interest to deny the Petition because it would foster the erosion of essential interference protection that is the hallmark of the Commission's policy

Software Defined Radios, ET Docket No. 09-57 (Terminated), Comments of the National Telecommunications and Information Administration at pp. v-vi, (Feb. 15, 2005).

²³ See 47 U.S.C. § 336(f)(2).

toward the broadcasting industry, especially a policy that must protect at risk Class A and LPTV stations from business-destroying interference. Otherwise, these stations would lose the only delivery channel that they have to reach viewers who rely on them for important local programming.

12. The Commission has historically relied on prophylactic rules protecting licensed facilities from interference, especially for Class A and LPTV stations/translators.²⁴ For very practical reasons, this is the preferred and long-standing method to combat interference. There is significant potential for abuse where spectrum is being shared between services that are very different in their nature, and where technical equipment is distributed in large quantities for use by unsophisticated private individuals. Any allowed use of the TV spectrum by unlicensed wireless telecommunications and/or data services must be carefully controlled in a way that does not ultimately escape policing by virtue of proliferation. Therefore, it is in the public interest for both licensed and unlicensed entities to prevent unnecessary interference before it arises, rather than for the Commission to use its limited enforcement resources to chase down rogue unlicensed operators all over the country that may operate 24 hours-a-day. In sum, the Commission should reject the Petition because it would unreasonably undermine the stated goal of the *Digital LPTV Order*: “[t]o hasten the transition of LPTV and TV translator stations to digital operations while minimizing disruptions of existing service to consumers served by analog LPTV, TV translator and Class A stations.”²⁵

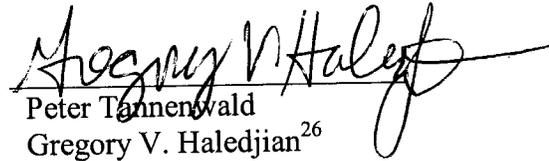
²⁴ See 47 C.F.R. § 73.6012. “An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect other authorized Class A TV, low power TV and TV translator stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in § 74.707 of this chapter.”

²⁵ See *Digital LPTV Order* at p. 2.

CONCLUSION

13. For the foregoing reasons, the Commission should either summarily dismiss or deny the NAF-CUWIN Petition.

Respectfully submitted,



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Association*

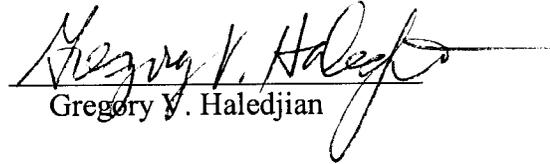
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²⁶ Admitted in Maryland; Not admitted in D.C.

CERTIFICATE OF SERVICE

I, Gregory V. Haledjian, do hereby certify that a copy of the foregoing "Opposition to Petition for Reconsideration" was served this 2nd day of March 2005, via first class mail, postage prepaid, on the following:


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