

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
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
)	

To: The Commission

**PETITION FOR RECONSIDERATION OF
TRIBAL DIGITAL VILLAGE**

Tribal Digital Village (TDV)[a division of Southern California Tribal Chairmen’s Association(SCTCA)], a consortium of 19 federally recognized American Indian tribes, located in San Diego County, submits this *Petition for Reconsideration* in the above captioned proceeding. TDV seeks reconsideration of one specific issue: the determination that no white space devices may be used within the VHF and UHF exclusion zones on the border with Mexico pending negotiations with the Mexican government. This exclusion will deprive TDV of the use of this valuable spectrum and the technology that will come with it, which we have fought long and hard to support being released for community networking. This exclusion will be detrimental to the deployment of broadband Internet services to the homes located on our reservations. This technology is the answer to supporting connectivity to our tribal homes, as they are spread throughout geographically diverse locations. The Commission did not offer any reasoned support for this decision, and did not consider the burden this would place on TDV and other similarly situated users of TV broadband devices (TVBDs), and did not consider possible mitigations of interference concerns that would alleviate the need to postpone use in the border regions pending

conclusion of what may prove lengthy negotiations with the government of Mexico. Rather than impose an absolute ban on devices in the border region, the Commission should allow Mexican licensees to enter their information in the proposed database. This will ensure that coordination for purposes of avoiding interference, the object of the agreement with Mexico.

ARGUMENT

Tribal Digital Village is a federation of 19 federally recognized American Indian Tribes, seven of which are located in the Southern most part of San Diego County. TDV is an Entity that has a great standing with the FCC. We've co-hosted regional ITI conferences for the Southwest with the Commission, we were invited by the commission to speak in DC as a model for wireless outreach. We have won awards for serving underserved businesses. Former Chairmen, and Commissioners, as well as, current Commissioners have been on site, and seen our infrastructure and successes first hand. They have toured backbone tower sites and education facilities supported by our connections, and visited with children that use our network in their afterschool programs. TDV represents many of the Tribe's sole connections to the Internet in an otherwise underserved community and in many instances un-served if not for our service. The connections to the tribes are critical to their day to day services. We are beginning to connect the 2700 tribal homes, and in almost every case will be the sole provider for broadband services to these rural areas. TDV has been serving the sovereign tribal government communities and their social programs they use with currently available unlicensed spectrum with communication towers powered by renewable energy sources. TDV maintains a network of over 260 miles of point-to-point/multi-point links, which is expanding on a daily basis, supporting 86 Tribal municipal building and programs; e.g., Libraries, Schools, Tribal Administration Buildings, Museums, Head Start Programs, Even Start Programs, Fire Stations, EPA Departments, and Tribal Police

Stations. This network has been in place since 2001 and continues to expand to support the Tribes and their programs on these reservations. TDV believes very strongly that the opening of “White Spaces” for TVDB distribution of Broadband Internet connectivity will be the sole solution to serve most of the geographically diverse areas that our reservation communities reside in. “Therefore, as an independent agency of the federal government, the Commission recognizes its own general trust relationship with, and responsibility to, federally-recognized Indian Tribes. The Commission also recognizes the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.” (see FCC 00-207 at page 4) TDV is proceeding with its next effort in developing solutions to serve the 2700 homes that are on the reservations, housing 8900 people from the community. TVDBs are going to be providing everyone the opportunity for connectivity. Elements of the TDV network lie within the exclusion zone along the Mexican border adopted by the Order (¶¶263-66).

This exclusion occurred without consultation which is envisioned in the policy statement of the commission, “FCC 00-207” which states, “The Commission, in accordance with the federal government’s trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.” (see FCC 00-207 at page 4) We would like to have this opportunity of reconsideration in regards to the exclusion of the tribal reservations that reside within these areas adjacent to the U.S.Border.

I. THE COMMISSION OFFERS NO REASON FOR REJECTING THE ARGUMENTS AGAINST PROHIBITTING USE.

The Commission received comments from several parties, including TDV (participating with New America Foundation (‘NAF’)), explaining why the existing Agreement does not

prohibit use of TVBDs in the Border Region. The Commission gives no explanation for rejecting these arguments. The Order simply states that “fixed TV band devices should not be permitted to operate within the border areas specified in our Canadian and Mexican agreements until we have an opportunity to negotiate any necessary changes to those agreements with Canada and Mexico.”

The Commission has not explained whether it regards the proposed reading of the existing treaties with Canada and Mexico as legally insufficient, whether it believes that the interference mitigation proposals are inadequate, or provided any other reason for reaching this conclusion. It simply asserts that it will prohibit the use of TVBDs in the Border Regions. The Commission then makes a second assertion without foundation: that the stationary devices “will be somewhat similar in operation to low power TV stations,” and uses this comparison to set the exclusion zone for operation in the border region. Other than operation on the same frequencies, however, it is wholly unclear to TDV how TVBDs will “be somewhat similar in operation.” Low-Power TV Transmitters are more powerful, continuously broadcast during operation, and lack any of the interference mitigation mechanisms mandated by the Commission. Without further explanation, it is impossible to determine how the use of TVBDs is “somewhat similar in operation” to LPTV, let alone why these similarities are relevant to set the proper exclusion zone for the border region.

II. THE COMMISSION DID NOT CONSIDER RELEVANT FACTORS IN PROHIBITING USE OF TVBDS IN THE BORDER REGIONS.

The *Order* does not appear to have considered numerous relevant factors when prohibiting use of TVBDs in the Border Regions. Critically, the Commission provides no explanation of why the proposed interference mitigation measures do not resolve any concerns about cross-border interference. Nor has the Commission considered the cost to users in the

Border Regions. To reiterate, the exclusion will deprive TDV of the use of this valuable technology. The Commission is at risk of disproportionately affecting communities that are in dire need of communication services and that the impact may punish at risk communities. The network operated by TDV provides significant communications infrastructure and economic opportunity for a traditionally underserved community, one in which the majority of residents continue to live in persistent poverty. Denying TDV and other similarly situated users in the Border Regions makes it more expensive and more difficult to serve this community.

Prohibiting use in the Border Regions also cuts off significant markets for TDV. The City of San Diego, for example, sits on the border with Mexico. In weighing whether the public interest is best served by prohibiting use of TVBDs in the Border Regions, the Commission should consider the cost to manufacturers, to providers of services in these regions, and other costs the flow from denying people the use of a valuable new technology available for use only a few miles away.

III. THE COMMISSION SHOULD RECONSIDER WHETHER IT CAN ADDRESS ITS CONCERNS THROUGH THE DATABASE OR VIA VARIABLE POWER.

On Reconsideration, if the Commission determines that the existing treaties require coordination with the governments of Canada and Mexico, the Commission should consider whether opening the database to registration by Canadian and Mexican licensees provides sufficient coordination to satisfy the Commission's legal obligations. Because the Commission will use the database to record and protect all broadcast licensees, registration by Mexican and Canadian licensees should fulfill any formal coordination requirements.

The Commission should also reconsider the question of the size of the exclusion zone in the border regions, and whether use of variable power could address any interference concerns.

The Commission's statement that it will use the existing LPTV exclusion because the 4-watt EIRP will be "somewhat like" LPTV operation requires a fuller explanation to clarify in this matter. If the Commission determines that the existing treaties absolutely require prohibiting use within the exclusion zone, the Commission should make a serious effort to determine the needed size of the exclusion zone so as to minimize the cost to the public denied use of TVBDs. In particular, the Commission should consider whether allowing devices to use lower power, rather than an outright ban, would permit the Commission to establish a smaller exclusion zone.

CONCLUSION

The Commission appears to have made the decision to exclude TVBDs from the Border Regions as a matter of previous concerns with Television broadcast scenarios rather than as a matter of legal and engineering analysis with the new devices that will be using TVBDs. It would seem that the new application of TVBDs and the technology that will be used in this spectrum requires a fresher analysis to determine interference issues in Border Regions. Because this decision potentially impacts millions of potential users along the Mexican and Canadian borders, and would be specifically disastrous to TDV's provision of services to the 19 Sovereign Tribal governments and their communities, the Commission should reconsider whether, and to what extent, it must exclude the use of TVBDs in the Border Region.

Respectfully submitted,

Matthew R. Rantanen, Director of Technology

Southern California Tribal Chairmen's Association

Tribal Digital Village Network

mrantanen@sctdv.net p: +1760 5355907

03/17/2009