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November 21, 2011

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Written Ex Parte Communication, ET Docket No. 04-186

Dear Ms. Dortch:

The National Association of Broadcasters (“NAB”)¹ writes in response to the “Comments and Updates on Petitions for Reconsideration” filed by Spectrum Bridge, Inc. in this proceeding on September 14, 2011 (“Spectrum Bridge Comments” and “Spectrum Bridge”). Spectrum Bridge proposes changes to the rules adopted by the Commission in 2008 and modified in 2010 with respect to the operation of unlicensed TV band devices (“TVBDs”). Spectrum Bridge’s request for alterations to these rules is, in effect, an untimely petition for reconsideration. Not only do the Spectrum Bridge Comments violate the requirements applicable to petitions for reconsideration under § 1.429 of the Commission’s rules, but they seek changes that would undermine the Commission’s approach of providing for the operation of TVBDs “without disrupting the incumbent television and other authorized services that operate in the TV bands.”² Accordingly, the Commission should not adopt the rule changes sought by Spectrum Bridge.

First, the Spectrum Bridge Comments are, in effect, a very late-filed petition for reconsideration. The Comments propose fundamental changes to the rules adopted by the Commission with respect to power spectral density, out of band emissions (“OOBE”) limits, and distance separations. The Commission adopted the rules on these issues in 2008 and 2010, after

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

² *Second Report and Order and Memorandum Opinion and Order*, ET Docket Nos. 04-186 and 02-380, 23 FCC Rcd 16807, at para. 2 (2008) (“2008 Report and Order”).

Ms. Marlene H. Dortch

November 21, 2011

Page 2

an exhaustive, lengthy process that involved laboratory testing and numerous rounds of comment by the interested parties and technical experts.³ Pursuant to § 1.429 of the Commission's rules,⁴ petitions for reconsideration of the rules finalized in the *2010 Memorandum Opinion and Order* were due on January 5, 2011—more than eight months before Spectrum Bridge filed its recent request that the Commission revisit these rules. Thus, the Spectrum Bridge Comments are untimely.

In addition, amending the rules as Spectrum Bridge seeks would be improper. When a petition for reconsideration “is timely filed in proper form,” the Commission will place a public notice of its filing in the Federal Register and provide the public with an opportunity to file oppositions and replies.⁵ The process of placing (timely) petitions for reconsideration on public notice protects important interests by ensuring that all members of the public, including parties to the earlier notice and comment rulemaking, have notice of the fact that a party is seeking alterations to the rules adopted in that proceeding, and an opportunity to provide comments on the petition. Spectrum Bridge should not be permitted to evade this process with its eleventh-hour filing, when it had ample opportunity to file its Comments earlier, and when rushing forward now risks making rule changes harmful to the public interest.

Second, the rule changes that Spectrum Bridge seeks risk compromising important protections for licensed services and the consumers who rely on them. Spectrum Bridge asks that the Commission amend § 15.709(a)(5)(i) to specify a power spectral density limit of 18.2 dBm/100 kHz for fixed devices, instead of the 12.2 dBm/100 kHz presently specified in that rule; to change the OOB limits specified in § 15.709(c) and allow OOB limits to vary by TVBD; and to require the TV Bands databases to calculate variable separation distances between fixed TVBDs and protected operations on adjacent channels, based on the TVBD at issue.

The Commission properly determined that the OOB limits and related rules discussed in the Spectrum Bridge Comments are necessary to protect the primary users in the television bands and the important service to the public that they provide. Spectrum Bridge's proposals would fundamentally alter the modeling and calculations performed by the Commission (and commenters) when these rules were being crafted, thereby compromising the protection provided by these interrelated rules.⁶ Indeed, Spectrum Bridge's approach would

³ *2008 Report and Order; Second Memorandum Opinion and Order*, ET Docket Nos. 04-186 and 02-380, 25 FCC Rcd 18661 (rel. Sept. 23, 2010) (“*2010 Memorandum Opinion and Order*”).

⁴ 47 C.F.R. § 1.429.

⁵ 47 C.F.R. § 1.429(e)-(f).

⁶ Notably, Spectrum Bridge suggests use of an entirely new propagation model that has never been the subject of comment in this proceeding. It further incorrectly asserts that an “absolute (continued...) ”

Ms. Marlene H. Dortch

November 21, 2011

Page 3

also impact and reduce the current interference protections for licensed microphones and their use of adjacent channels. Moreover, the numerous TV Bands databases that already have received conditional approval from the FCC were not designed and have not been tested for an ability to provide the kind of complex, sliding-scale protection advocated by Spectrum Bridge. Given that the databases are a critical piece of the framework created by the Commission to ensure that primary users in the television bands can operate without harmful interference, it would be perilous to alter the process at this stage.⁷ Indeed, in considering and rejecting a variable separation distance approach, the Commission previously determined that “it is desirable to minimize complexity for compliance.”⁸

Third, Spectrum Bridge states that “it is hardly practical and not cost effective to achieve” the OOB limits for fixed TVBDs.⁹ In fact, as Adaptrum has demonstrated, the rule can be satisfied with existing technology.¹⁰ The current constraints on OOB are technology neutral, achievable, and do not inhibit innovation or operational flexibility; they pose no barrier to practical and cost-effective devices. And higher power fixed operations have few physical restrictions regarding size and weight, simplifying compliance with the OOB limits. Further, it would be contrary to the public interest to undermine these rules at the cost of creating harmful interference to licensed users of the television bands and to the public that relies on their services.

limit of -42.8 dbm/100 KHz has already been considered as sufficient in mitigating the effects of adjacent channel interference and permissible by virtue of the existing rules.” Spectrum Bridge Comments at 7. In fact, the Commission has determined that such a limit would *not* provide adequate interference protection, as evidenced not only by the restrictions that it adopted with respect to OOB but also by the absolute prohibition on the use of adjacent channels by high powered fixed TVBDs.

⁷ A sliding-scale approach, as opposed to the simpler, more uniform approach established by the current rules, creates numerous risks, such as that the database will calculate the required distance separation incorrectly due to an incorrect device identifier. Or, a device with strict OOB controls could be modified after FCC certification in a manner that increases its OOB emissions; manufacturers and consumers could thus create devices that are perceived by the databases as having strict OOB controls, when in fact they have higher OOB emissions.

⁸ *2008 Report and Order* at para. 181. *See also id.* at paras. 180-181 (noting that straightforward table of separation distances approach would “provide certainty” and be relatively easy to implement, and that table balanced the “goal of simplicity with the need to provide assurance that TV services will be adequately protected”).

⁹ Spectrum Bridge Comments at 7.

¹⁰ Adaptrum, Inc. *Ex Parte Notice*, ET Docket No. 04-186 (Jan. 4, 2011), pointing out that the demonstrated Adaptrum TVBD met—in fact, exceeded—the rule requirements.

Ms. Marlene H. Dortch
November 21, 2011
Page 4

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The Commission has embraced a “conservative” approach to authorizing unlicensed TVBDs, crafting “many safeguards to prevent harmful interference to incumbent communications services.”¹¹ The Spectrum Bridge Comments are contrary to that approach and the public interest.

Respectfully submitted,

/s/

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¹¹ 2010 Memorandum Opinion and Order at para. 15.