



NEW AMERICA
F O U N D A T I O N

October 24, 2008

Via Electronic Mail

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04-186)
Response to NAB, et al. Ex Parte Filing of October 22, 2008

Dear Ms. Dortch:

I am writing in response to an *ex parte* filing in this docket by the National Association of Broadcasters and their member and affiliated broadcasting industry groups (NAB, et al.) on October 22, which falsely characterized my remarks about over-the-air television and more efficient spectrum utilization at a recent public policy forum.¹ The *ex parte* also claims that “certain [unnamed] white space proponents” harbor “antipathy – indeed, hostility towards the public’s television service.”² We realize the broadcast lobby, in their desperation, has already squandered what was left of their credibility in this proceeding by attacking as well the integrity and motives of the Commission’s Office of Engineering and Technology. Nevertheless, I’d like to set the record straight about our position concerning the importance of protecting over-the-air television reception from harmful interference.

After stringing together a series of out-of-context quotations from *Communications Daily*, based on presentations by myself and by Mark McHenry, CEO of Shared Spectrum Company, at a public forum at Google on October 21, the NAB et al. filing asserts that “[T]he end game for these groups is, over the next few years, to increase the power of personal, portable devices to dangerously high levels, with complete disregard for the effects on the public’s television broadcasting service (as well as on licensed wireless microphone operations and cable).”³ NAB et al. then suggest that “white space proponent[s]” (including, presumably, me) may be “motivated by the goal of destroying

¹ “Supplement to Emergency Request,” Ex Parte of NAB, MSTV, APTS and the ABC, NBC, CBS and Fox networks, ET Docket Nos. 04-186, 02-380, submitted October 22, 2008, at pp. 2-5.

² *Ibid* at 2.

³ *Id* at 3.

television or ... just indifferent to the consequences of embracing sensing technologies that have failed ...”.⁴

Nothing could be further from the truth. From the outset of this proceeding, the New America Foundation and other members of the Public Interest Spectrum Coalition (PISC) have consistently invested in and advocated solutions that would both protect remaining over-the-air TV consumers from harmful interference, while simultaneously permitting those consumers – and the far larger number of households that subscribe to cable and satellite TV – to access the vacant TV channels for more affordable broadband access (both fixed and mobile) and other wireless innovation for the future. We have consistently sought to maximize both spectrum efficiency and consumer welfare – both of which are undermined every day that the majority of TV channels lie fallow.

In fact, a number of our Public Interest Spectrum Coalition partners and fellow proponents of making good use of unused TV spectrum – particularly Consumers Union and the Leadership Conference on Civil Rights – have simultaneously been the most committed advocates of protecting the ability of the public to access free over-the-air TV during and after the DTV transition deadline. They have fought, as has New America, to increase funding for both converter boxes and public education. Indeed, New America Foundation was the first group to propose to Congress – as a solution to the DTV switchover dilemma – the idea that an auction should precede the deadline, with a share of the proceeds set aside in a trust to subsidize consumer digital-to-analog converter boxes, so that no OTA viewer would lose access to their local stations.⁵

We have also consistently throughout this proceeding advocated for objective engineering studies and tests for the purpose of promulgating technical rules that would ensure that white space devices caused no harmful interference to television viewing. Long before high-tech companies submitted prototypes for testing in this proceeding, New America’s Wireless Future Program, which I direct, invested a share of our very limited budget in an engineering study to study the feasibility of interference-free use of the unassigned TV channels. The study, entitled “Quantifying the Impact of Unlicensed Devices on Digital TV Receivers,” conducted by the University of Kansas Information & Telecommunication Technology Center, quantified the desensitization phenomenon caused by primary emissions and out-of-band emissions (OOBE) in order to recommend an emission limit for proposed TV band unlicensed devices that will give protection to TV receivers comparable to existing precedents.⁶

⁴ Id.

⁵ See, e.g., Testimony of Michael Calabrese, U.S. Senate Committee on Science, Transportation and Commerce, “Completing the Digital Television Transition: A Consumer Converter Subsidy Can Reduce the Deficit and Redeploy UHF Spectrum for Wireless Broadband,” June 9, 2004, available at http://www.newamerica.net/files/archive/Doc_File_1608_1.pdf.

⁶ See “Final Results of University of Kansas TV White Space Interference Study,” filed as an attachment to Comments of New America Foundation, ET Docket 04-186, Jan. 31, 2007. The KU Study The KU study demonstrates that unlicensed TV band devices can operate (at up to at least 100 mW) without risk of interference to the reception of very weak over-the-air on neighboring DTV channels.

It seems particularly ludicrous for NAB et al. to imply that I am hostile to a robust future for digital television. In 2005 the President of the Public Broadcasting Service appointed me to not only serve on, but direct, a blue-ribbon task force on the Digital Future of Public Broadcasting, co-chaired by Reed Hundt and Jim Barksdale. This Digital Future Initiative included representatives of the PBS, APTS and CPB boards, as well as distinguished outside members, ranging from former Commissioner Mimi Weyforth Dawson to Ken Duberstein, Tom Wheeler and Hugh Price. I authored the panel's final report, which both embraced a multi-cast future for digital public broadcasting as well as the leveraging of emerging new online distribution platforms that will increasingly dominate the habits of younger generation in a "my media on my time" world.⁷

Where I do part with the broadcast industry lobby is on the question of spectrum access and efficiency. As New America Foundation will detail in a paper to be released on October 27 ("The Lobby that Cried Wolf"), the NAB has opposed every use of TV band spectrum that threatens either to increase competition to their membership or to reduce in any way their control over the vast amounts of beachfront spectrum they wastefully warehouse. The NAB has vitriolically opposed some of the most important communications advances of the past half-century, including FM radio, cable television, satellite radio, satellite television, VCRs, DVRs, analog cell phones, and – currently – mobile broadband devices that could operate at very low-power in the vacant channels.

Consumer welfare and the public interest in communications is not measured – as NAB et al. would have us believe – strictly according to whether the FCC maintains the TV spectrum allocations, guard bands and exclusive access for broadcasters that made sense back in the 1960s or 1970s. Times change. Technologies advance. Consumers want broadcasting *and* broadband. They can have both. Indeed, I do believe that at some point in the future – as the share of households watching DTV over-the-air dwindles toward zero – the Commission should investigate options that ensure all Americans access to all of their local broadcast stations, while also freeing up more prime spectrum for other services and innovation that would benefit the entire American people. It's time for the NAB et al. to stop their hysterical disparagement of anyone who disagrees with their messaging – whether the engineers in OET, or the consumer and other public interest advocates in PISC – and seek a constructive compromise that optimizes the benefits to their viewing audience and the American public as a whole.

Should you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Michael Calabrese
Director, Wireless Future Program
New America Foundation
calabresem@newamerica.net

⁷ *Digital Future Initiative: Challenges and Opportunities for Public Service Media in the Digital Age*, A Report by the PBS Digital Future Initiative Panel, Public Broadcasting Service, December 15, 2005.

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell