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

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In the Matter of	)	
	)	
Microstation Radio Broadcast Service	)	RM No. 9208
Petition for Rule Making	)	RM No. 9242
	)	RM No. 9246

Petition for Reconsideration

1. Pursuant to section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, The Committee on Democratic Communications of the National Lawyers Guild ("National Lawyers Guild") moved for a 60-day extension of the May 26, 1998 date for filing reply comments in the above-captioned proceeding. The order ("extension notice") announcing the extension, DA 98-978, did not list the date on which the motion for extension arrived at the Commission. However, conversations with staff indicate that the motion for extension arrived at the Commission a few weeks before it was granted on May 22, 1998 by the Chief / Mass Media Bureau. The extension order was adopted May 22, 1998 and released May 22, 1998, which was a Friday, just before the beginning of the long Memorial-Day weekend. The Commission was closed Monday, May 25, 1998 on that holiday. Notice of the extension appeared in the Daily Digest of May 22, 1998, as displayed on the Commission's website.

2. As the petitioner in RM-9242 ("the petition"), I have a deep concern about the timing of the release of the notice of extension of the filing deadline for reply-comments, extended from

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Tuesday May 26, 1998 until July 24, 1998. For the reasons stated below, I feel this last minute release of the extension notice by the Chief / Mass Media Bureau has prejudiced my petition RM-9242 and has caused irreparable harm to myself, my petition and many other supporters of RM-9242. Had the extension notice been released a week or two before, there would have been no harm caused as stated above.

3. The harm comes from the fact that the majority of opponents of the above captioned low power radio petitions were able to withhold their reply-comments from being filed since they are based in Washington or use Washington area based counsel, who file their reply-comments in person at the FCC on the last day of the filing period. This is done to prevent anyone from seeing their reply-comments and having time then to rebut them in their reply-comments. The Commission's rules and procedures allow for a comment period followed by a reply-comment period, in which persons may comment on the comments filed previously in a proceeding. This method is fair and results in a full record on which the Commission can base any decisions. Under this system, the reply-comments are the last word from both proponents and opponents in a proceeding.

4. This fair and just system was severely compromised by the last minute release of the extension notice for reply-comments on the last business day before the filing deadline. Since the Commission was closed Saturday May 23rd, Sunday May 24th and Monday May 25th (Memorial

Day), those who do not have the luxury of having their reply-comments filed in person by Washington area based counsel, had to mail or overnight (FedEx) their reply-comments days in advance to reach the FCC on the deadline of Tuesday, May 26th. There was no FedEx delivery Sunday May 24th or Monday May 25th. As required by the Commission's rules, I attached a certificate of service and sent a copy of my reply-comments via First Class U.S. mail to the commenters who had opposed RM-9242 in earlier comments. The timing of these events is critical and demonstrates how it was to the advantage of the opponents of the petitions, like the National Association of Broadcasters and others using Washington area based counsel.

5. By waiting until the last work day before the deadline to release the notice of extension, the opponents of the petitions, with Washington area based counsel, were able to withhold their reply comments from being filed in person on Tuesday May 26th. The vast majority of proponents of the petitions were unable to withhold their comments from being filed since they were either mailed or sent via overnight service to the Commission days in advance. The FCC Daily Digest of May 22nd listed the extension notice, however this Digest is released late in the day, so there was effectively less than one full days notice of the extension! I normally receive the FCC's Daily Digest via email daily from digest@info.fcc.gov and it arrives every weekday. On Friday May 22nd, the day of the deadline, I did not receive the Daily Digest via email and in fact have not received that day's Digest via email even of this date.

6. I accidently learned of the extension from a post on an unrelated bulletin board on the Internet late Saturday night, after my reply-comments had been sent via FedEx to the Commission for delivery Tuesday May 26th, the day of the deadline. My reply-comments were sent at the last possible moment to prevent anyone from having public access to them and being able to rebut them in their reply-comments. The last minute notice of extension prevented this however and now the NAB and other opponents of the petitions will have the distinct advantage of seeing the reply-comments of myself and other proponents of low power radio and will have ample time to rebut any and all timely points made in those reply-comments. The inequity comes in the fact that the proponents of the low power radio petitions will not have that same advantage, being falsely denied that advantage by the extremely unfair timing of the release of the extension notice on the last business day before the filing deadline for reply-comments.

7. Upon learning of this unfair action late Saturday night, I immediately sent an email to Chairman Kennard requesting that the extension order be rescinded. Upon the Commission reopening for business on Tuesday May 26th (the original deadline), I contact several staff members requesting that the extension order be rescinded. This contact took place by telephone and facsimile messages to them. Late in the afternoon on Tuesday May 26th, I was informed by Susan Fox of Chairman Kennard's office that they were not going to rescind the extension order. Staff had earlier offered to withdraw my comments from the FCC Secretary's office but this offer proved useless since copies had already been mailed to opposition commenters of the petitions.

8. Some of my reply-comments were of a time-sensitive nature and they were neutralized by the last minute extension notice issued by the Chief / Mass Media Bureau. The Commission staff had seen that the majority of comments favoring the low power radio petitions had come from individuals outside the beltway and were not filed by Washington area based counsel. The Commission staff were aware that issuing the extension notice at this late date would allow the majority of those opposing the petitions to see the reply-comments of those in favor of the petitions, giving them time to rebut any arguments made in those reply-comments, which were to be the last word. As an example, I made a point that if the LPFM stations would interfere with in-band on-channel (IBOC) digital radio implementation as stated in comments by the NAB and USA Digital Radio, then why had the other two major IBOC developers remained silent on the issue and did not file comments? The NAB now has two months to get the other digital IBOC developers, Digital Radio Express and Lucent Digital Radio, to file comments against the low power radio petitions thus neutralizing my argument. This could not have been done had the Commission not prejudiced my petition by the last minute notice of the deadline extension.

9. Some might argue that the advantage is to get a larger response in reply-comments upon which the Commission can base its decision. I contend that the Commission had adequate comments and reply-comments from many and varied parties, in fact many more that I have seen filed in several other proceedings. I wish to make it clear that I am not opposing the extension per se but the extremely unfair timing of its notice, at the last possible moment. Had it not been

announced that Friday afternoon, it could not have been announced until Tuesday May 26th, after the Memorial-Day holiday on Monday, which was the last day of the original deadline.

10. By contacting the Commission on Tuesday May 26th, they would have had time to rectify the situation by rescinding the extension and I advised that they could extend the deadline one or two days without harm since the reply-comments being delivered via First Class mail would not have arrived yet and those arriving at the Secretary's office could be withheld from public scrutiny until the revised deadline was over. The staff rejected this idea and now the opposition of the petitions have the proponents reply-comments and we do not have theirs.

11. This is a serious breach of procedure and the resultant abuse of confidentiality is intolerable. The actions of the Chief / Mass Media Bureau has given one side a tremendous advantage over the other in this proceeding, which would not have occurred without the direct actions stated above. The Commission should attempt to bring some level of fair play back into this proceeding realizing the irreparable harm done by its previous actions.

12. Although the staff has refused to take any action to remedy this situation, I have filed this petition for reconsideration in the hope that something may still be done to equalize this unfair treatment. I want this petition for reconsideration to become an official part of the record in the low power radio proceeding, in case it might be needed in future legal appeals of Commission

actions in this proceeding.

May 29, 1998

Respectfully submitted,

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