

**HYPOTHETICAL DISTRIBUTION OF FM MICROSTATIONS  
IN METROPOLITAN DENVER**

(Assumes 2 FM frequencies allocated per broadcast coverage area)

This Chart speculates how the allocation of microstation FM licenses, in metropolitan Denver, might vary under three different approaches to power ceilings: the 1-watt/50 foot tower limit in the RM-9208 Petition; the respective signal range limits of 1 mile and 5 miles under the **Two Tiered System** in the RM-9208 Petitioners' 5/7/98 Reply Comments; and the 3,000 watt/328 foot tower limit in **RM-9242** (the Skinner Petition).

The classic formula for calculating the area of a circle --  $\pi$  (that is, 3.14) times the radius squared -- has been used to estimate broadcast coverage areas for each of the posited microstations. **However:** (a) the "real world" broadcast coverage areas will be reduced, in at least some cases, by signal overlap with other microstations; and (b) on the other hand, the total number of microstations may be higher if every applicant does not actually request the maximum power that is legally available. Therefore, these station numbers are **approximations**.

Also, please note that: (c) the RM-9208 Petition allows station numbers to be **multiplied** via time sharing; (d) so does their Two Tiered System; and (e) RM-9242 does **not** include time sharing but **does** allow large microstations to "bump" small ones.

Metropolitan Denver has been selected for this profile because: (f) it corresponds almost precisely with the broadcast coverage area of the highest powered station in RM-9242; and (g) Don Schellhardt likes to think about Western U.S. locations.

	<u>Large Stations</u>	<b>PLUS</b> <u>Small Stations</u>	<u>TOTAL</u>
RM-9208 Petition	0	1,250	1,250
TWO TIERED SYSTEM	9	225	234
RM-9242	2	0	2

THIS CHART PREPARED BY  
**The RM-9208 Petitioners:**

Don Schellhardt  
Nick Leggett  
Judith Fielder Leggett

**May 7, 1998**

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We anticipate that the primary "customers" for Tier One licenses will be part-timers: individuals with a "day job" (which subsidizes, wholly or partly, the costs of a part-time microstation); groups of individuals in the same position; possibly some public-spirited individuals "of independent means" and non-profit groups with modest resources and/or a fairly narrow agenda (such as a "wee hours" on-the-air helpline). Nick Leggett has coined a term for most of these Tier One broadcasters: "electronic pamphleteers", donating their time (and perhaps their money) to cover neighborhoods and/or advocate causes and/or ease the excruciating shortage of smooth jazz in Western New England. The public will benefit greatly from having these broadcasters on the airwaves, but the broadcasters themselves may not benefit -- at least not materially -- except where the training is used to boost marketability.

Tier Two is the banquet table for the beefeaters: entrepreneurs who need dozens of square miles of broadcast coverage in order to generate the advertising revenue to stay alive on -- plus non-profit groups with ambitious agendas who need similar coverage in order to gain a viable fund raising base and make the cultural impact that motivates them.

Chart II, on the preceding page, shows how the Two Tiered System could empower both groups in a metropolitan area -- while RM-9242, and the original RM-9208 Petition, would not.

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7. Members of the Community Radio Coalition have informed us that more than 3,000 translator stations -- which are, by definition, providing non-local programming -- have been licensed in the United States. If microstations are accorded "primary service" status (which can certainly be justified by public interest considerations), and if translator stations have a "secondary service" status (which can also be justified by public interest considerations), then these translator stations offer a potentially large pool of possible frequencies for new microstations.

However, as we indicated earlier, we are not seeking to displace all non-local programming. We know that non-local programming can offer an antidote to parochial attitudes and invitations to new ways of looking at life. Thus, we advise "bumping" translator stations only in areas where: (A) local stations account for less than 50% of the clear full-time signals in the applicable broadcast coverage area; and (B) other reasonable alternatives for accommodating new microstations have been fully considered and rejected for reasonable reasons.

We would deny this presumption to translators licensed, or "placed in line" for consideration of licensing, as the result of applications filed on or after February 4, 1998. On February 5, the FCC sought comments on RM-9208, raising the possibility of moves to pre-empt microradio frequencies with new translators.

8. As we indicated at the very outset of these Reply Comments, we commend the Commission heartily for considering the re-legalization of microbroadcasting before it decides upon the allocation of digital frequencies and/or other options opened by new technologies. When and if the potential of digital frequencies and/or other new technologies has been demonstrated and made available, we assert that microstations should have access to a reasonable share -- not an exclusive share, or even a majority share, but a reasonable share -- of whatever "elbow room" has been created on the spectrum.

(g) We believe that there is ample room for the proposed Two Tiered System -- including at least one FM frequency and one AM frequency for each Tier -- on a substantial majority of the nation's broadcast coverage areas. As for coverage areas in or near the nation's large metropolitan areas, we anticipate that room can usually be found for four frequencies (or more) if the Commission is willing to use its full regulatory authority, where necessary, and is able to apply that authority with "surgical precision".

Further, we believe that a minimum of four microradio frequencies can be provided for most or all of the nation without allowing any microstation to "bump" any other microstation -- regardless of whether the microstations are based in a large metropolitan area.

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Nevertheless, it is fair to ask which Tier should receive priority when and if they both cannot be accommodated in a given broadcasting coverage area.

In such cases, the Petitioners differ among themselves.

Nick Leggett and Judith Fielder Leggett believe that Tier One should receive priority if "something has to give". Don Schellhardt believes that Tier Two should receive priority.

The discussions between the Petitioners are themselves an indication of the many kinds of contributions microradio can make to our society.

Asked to name the single vision which motivates him the most in the struggle to re-legalize microbroadcasting, Nick Leggett said this: "I want to help the electronic pamphleteers. I want to put the equivalent of a printing press or a mimeograph into the hands of thousands of people. Tens of thousands, if possible. I want to keep the microstations so small and so cheap that there is a forum for every single American who wants to say something which the conventional media will not cover."

Judith Leggett's most compelling version is different. "I want to bring back neighborhoods," she says. "I want a real sense of neighborhood. I want most microstations to be so small that they don't just cover Fairfax County, Virginia or Reston, Virginia. I want to see a station for North Reston and a station for South Reston and a station for Sterling Park."

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Don Schellhardt's most motivating vision is on a third wavelength. "I want to help entrepreneurs," he says. "I want more upward mobility -- more opportunity for members of 'out' groups to pull themselves off the margins of society and carve out a place for themselves. Whether we're talking blacks, or Hispanics, or white kids off the farm, or middle-aged Americans of any race or gender, I want to see outsiders become Insiders with a capital I -- and the power to make the old Insiders sit up and take notice!"

You do not need to be a certified psychologist to realize that these personal passions spring, in part, from personal frustrations. Here are three dynamic and highly intelligent people, boasting three advanced degrees and several decades of working experience between them, who feel seriously under-challenged, under-utilized and under-acknowledged by the current culture and the current marketplace.

You might respond that this is strictly their problem -- and, to some extent, this is true. But it is a problem for the larger society as well -- because there is a Social Contract, written or not, and right now the political and corporate and cultural leaders of our society are breaking it. Leaders ask people like the Petitioners to pay our taxes, obey the laws, risk our lives in combat if necessary -- and let society's leaders keep the special allocations of wealth,

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opportunity and privilege that they have extracted from society as their fees for being leaders. The Petitioners, like tens of millions of other Americans, are doing all of these things and more -- but we do not see our leaders keeping their end of the Social Contract. We do not see them working to preserve a "representative democracy": we see them striving, for the most part, to make it less representative all the time. Nor do we see them striving to make this the "Land Of Opportunity" it claims to be: instead, we see opportunities being denied -- systematically denied -- as the result of both official government policies and unofficial corporate cultures which reward competition over who gets the corner office but punish competition over who can be the most creative.

Personal problems and frustrations become society's problems when they can be linked to visible and systematic failures, by society's leaders, to provide the individual freedom -- and the diverse individual opportunities -- that are ultimately our country's reason to exist. Nick Leggett's yearning to explore unconventional interests and express unconventional opinions, Judith Leggett's longing for stronger community connections and Don Schellhardt's drive "to be a star": these energies flow through millions upon millions of people, and denying them outlets of expression will not make them go away. It will simply force them into channels that may be disruptive.

**CHART III:  
THE FIFTY STATES  
(AND THE DISTRICT OF COLUMBIA)  
IN RISING ORDER OF  
(HUMAN) POPULATION DENSITY**

(Calculations based on 1990 population divided by land area)

This Chart suggests strongly that a number of microradio stations can be accommodated fairly easily in broadcast coverage areas that serve **the majority of this country's land area.**

Needless to say, a State's **overall** population density is only the roughest of indicators. The California number, for example, averages together Death Valley with Hollywood and Vine.

**LESS THAN 20 PEOPLE PER SQUARE MILE**

1.	Alaska	1		6.	North Dakota	10
2.	Wyoming	5		7.	New Mexico	12
3.	Montana	6		8.	Idaho	13
4.	TIE:					
	Nevada	9				
	South Dakota	9				

**20-49 PEOPLE PER SQUARE MILE**

	9.	Utah	21		13.	Kansas	30
10.	Nebraska	22		14.	Colorado	14	
11.	Oregon	28		15.	Maine	38	
12.	Arizona	29		16.	Arkansas	46	

**50-99 PEOPLE PER SQUARE MILE**

	17.	Oklahoma	51		24.	Missouri	75
18.	Iowa	52		25.	TIE:	75	
19.	Minnesota	54			Alabama	81	
20.	Mississippi	57			West Virginia	81	
21.	Vermont	59		27.	Wisconsin	81	
22.	Texas	64		28.	<b>Kentucky</b>	<b>89</b>	
23.	Washington	67					

(NOTE: Kentucky's population density is 1% of the District of Columbia's population density)

**100-149 PEOPLE PER SQUARE MILE**

	29.	Louisiana	102		32.	Tennessee	118
30.	TIE:			34.	North Carolina	131	
	South Car.	114		35.	Virginia	147	
	New Hamp.	114					

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**150-199 PEOPLE PER SQUARE MILE**

36.	Indiana	155	38.	Hawaii	162
37.	Michigan	162	39.	California	173

**200-299 PEOPLE PER SQUARE MILE**

40.	Illinois	210	42.	Ohio	264
41.	Florida	217	43.	Pennsylvania	266

**MORE THAN 300 PEOPLE PER SQUARE MILE**

44.	Delaware	326	48.	Massachusetts	751
45.	New York	379	49.	Rhode Island	930
46.	Maryland	456	50.	New Jersey	1,030
47.	Connecticut	659	51.	D.C.	8,986

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We do not make this statement as a threat. We make it as a prediction.

The need for individual expression, the need for a sense of community and the need for personal visibility and recognition -- the three separate motivators of the three RM-9208 Petitioners -- are fundamental aspects of the core human personality, at least for many of us. Societies which shrink the room for diversity of expression (as the oligopolies which now control radio, TV, newspapers and even fiction publishing are clearly tending to do) .... which do not seriously reflect community concerns in news coverage or even national concerns in trade negotiations and technology transfers .... which create workplaces where key players rarely share credit with their subordinates, where promotions often turn on personal connections rather than performance and dedication to the work, and where creativity and innovation are often seen as threats to the internal order of the organization instead of priceless opportunities to "beat the competition to the punch" .... such societies are eroding the very things that make them worth defending -- and providing a progressively diminishing Stake in the System for the very people that the System depends upon to pay its taxes, buy its products and fight its wars.

We do not know exactly what will happen if these basic drives remain suppressed by society's leaders. Revolution?

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Civil war? A dictatorship -- to force the majority of the people to do through fear of the powerful what they now do out of respect for the country? And/or direct or surrogate conquest by another country, such as Communist China or Japan, where the sense of a national personality is not fading -- and the nation's aspirations for power, prominence and security are not being subordinated to the "rationalist" and myopic goals of corporations without a country?

Or simply a slow, numbed ride into historical irrelevance? Into being just one of those countries you see on a map that minds its own business? "A nation on the sidelines" that doesn't hurt anyone, doesn't help anyone and watches as a weary spectator while others, with stronger visions, shape humanity's future?

We do not know which of these scenarios will come to pass if current trends are not reversed. However, we do know this: A nation without a sense of purpose -- a sense of purpose that its everyday citizens can "feel in their gut" and, if necessary, carry into battle with them -- is a nation without animation. At best, it will lose its status as a superpower, with a voice and a vote in the common future of the human race. At worst, it will explode into rebellion, and/or harden into a dictatorship, and/or fall prey to another nation which does have a clear sense of purpose to motivate its people.

We cite Arnold Toynbee's **A STUDY OF HISTORY**. In that book,

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this famous historian presented the fruits of decades spent studying 26 different civilizations -- dating back to the dawn of recorded human civilization. All but 3 of those civilizations, he concluded, died from within. They had, until the very end or close to the very end, the tools to save themselves: to fend off the aggressors, to solve the scarcity of resources, to re-define or re-interpret or otherwise re-vitalize the religions and/or mythologies that had once given meaning to the people. They chose, however, to stay with a status quo that had lost its viability -- and, as a result of that choice, they died.

We do not want to see that happen to America.

Re-legalization of microstations -- hopefully through a system that leaves room for both entrepreneurs and "pamphleteers", with stations sized for both neighborhoods and municipalities -- would be an important step in the right direction.

(h) We have heard claims that microbroadcasting re-legalization would be "an administrative nightmare" for the FCC. However, we have not seen such criticisms take into account: (a) the resources that would be freed up by not tracking down unlicensed microbroadcasters, giving them warnings and perhaps eventually prosecuting them; or (b) the resources that would be saved by being able to anticipate

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and resolve possible interference problems from a microstation, and/or other possible problems, during the licensing process instead of "out in the field".

We also note that the large broadcasting companies have themselves freed up the Commission's resources by herding so many radio stations into commonly owned flocks -- and driving some other radio stations off the air completely. They may have taken more stations off the air in the last two years than microradio will be able to add in the next two years.

Because microbroadcasting has accumulated 20 years of "pent up demand", and because this demand has recently expanded greatly as a response to government-authorized "industry consolidation" of the airwaves, we do expect that re-legalization of microbroadcasting will trigger a large initial surge of applications. Following that surge, however, we see no reason why oversight of microstations should be inherently more difficult than oversight of any other form of broadcasting.

It also occurs to use that even this initial surge of applications could be spread out over time through a phased implementation of re-legalization that would handle the easiest broadcast coverage areas first.

Chart III, on pages 55 through 56, shows that a large majority of this country's land area -- and, therefore, a large majority of its broadcast coverage areas -- can be

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found in areas with relatively low population and presumably uncrowded spectra. Fitting microstations onto the spectrum in metropolitan Washington is obviously going to require some real effort and ingenuity -- but metropolitan Washington is similar to only a few dozen media markets. Kentucky, even after averaging in Louisville and Lexington, has less than 1% of the population density of the District of Columbia -- and more than half of the 50 States have a lower population density than Kentucky! Only two States -- Rhode Island and New Jersey -- have a population density that exceeds 10% of the District's population density.

We are not affirmatively recommending phased implementation, but we offer it as an option if the Commission concludes that processing a single surge of license applications would be too burdensome. Here is one possible way it could be done:

July 24, 1998: Comments close on RM-9208 and RM-9242.

September 1, 1998: FCC issues a proposed rule for re-legalization of microbroadcasting.

November 3, 1998: Comments close on this NOPR.

January 4, 1999: FCC issues a final rule for re-legalization of microbroadcasting.

March 1, 1999: Effective date of the new regulations in broadcast coverage areas where clear signals fill less than 50% of the spectrum. **BY DEFINITION**, these areas have room!

April 1, 1999: Effective date of the new regulations in broadcast coverage areas where clear signals fill less than 65% of the spectrum.

May 1, 1999: Effective date of the new regulations in broadcast coverage areas where clear signals fill less than 80% of the spectrum.

July 1, 1999: Effective date in other areas.

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(i) In our various filings, we have consistently stressed that microbroadcasting -- once it is re-legalized -- must be protected from post-licensing acquisitions by larger institutions and from pre-licensing competition with license applications by larger institutions and/or institutions under their control. "Phony legalization", where microstations are licensed but controlled by megacorporations and/or other large institutions, would bring "pirates" with a vengeance and leave the Federal Government's credibility at an even lower point than it is right now.

In our March 4, 1998, Written Comments, we said specifically that the micromarket should be reserved -- by law -- for "individuals, groups of individuals, non-profits and the very smallest of small businesses".

1. We should have said "the very smallest of non-profits" alongside "the very smallest of small businesses". Since March 4, 1998, it has been pointed out to us several times that non-profits are often dependent on grants from government agencies and/or corporations -- and/or often report to a Board of Directors that has strong corporate and/or government agency representation. It has also been noted that large non-profits, with or without independent sources of funding, are sometimes closer in culture to corporations than they are to small non-profits. Based on our own observations, we agree.

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For these reasons, we believe that any size, control and/or local ownership restrictions should be identical for both businesses and non-profits. Large is large and small is small, whether the institution involved lives on fund raising and grants or advertising and profits.

2. We think it may be useful to offer some concrete paramaters for restricting micromarket entry on the basis of size. We suggest limiting institutional entry to organizations, whether profit-making or not, which have:

\$200,000 or less in gross annual revenues  
**AND**  
\$100,000 or less in net assets

We recommend measuring gross income, rather than net income, in order to circumvent -- or at least discourage -- possible games with "creative accounting" and/or the Tex Code.

Also, where the net assets of one or more individuals are relevant, we would exclude equity in a single owner-occupied residence. (We do not want to force anyone to have to choose between a business and a home!) However, the Commission should be able to include residential equity if it has evidence the purchase price was disguised, or the loan was forgiven, or other games were played to avoid the size restriction on microstations.

(j) Knowing there are ways to mask one kind of institution as something else, we also propose control restrictions.

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Otherwise eligible microstations should be barred if they are subject to excessive influence or control by those too large to apply for microstation licenses themselves. Licenses should not be granted to, and purchases of licensed microstations should not be allowed by, institutions meeting these criteria:

More than 10% of the stock, or other instrument of control, is held by an ineligible source

OR

More than 20% of gross revenue is received in any form (grants, government funding, sales, whatever) from an ineligible source

OR

More than 20% of financing is received from an ineligible source (adjustable to 40% in the case of a bank with **absolutely no direct or indirect financial interest, of any kind, in any form of broadcasting**)

OR

Any combination of the above

In determining what constitutes an "ineligible source", we ask the Commission to trace the ownership and/or primary influence to "the ultimate point of control" -- even if this means following a trail of stock through 8 dummy corporations or looking beyond who owns the stock to who controls the stock.

If the Commission discovers a knowing failure to disclose relevant, complete and accurate information (and/or heed a reasonable request to supplement it), we ask the Commission to make this action grounds for immediate dismissal, "with prejudice", of a license application -- and also grounds for immediate revocation of a license, if one has been granted.

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(k) In our original RM-9208 Petition, we recommended allowing a single person or organization to own up to 5 microstations. We recommend applying this policy to Tier One stations -- but limiting Tier Two stations to one per owner(s).

A Tier Two station, with double digit wattage, should have a large enough advertising and/or fund raising base to cover its costs -- or more -- under most circumstances.

(l) We note that the Community Radio Coalition, Americans for Radio Diversity and Rodger Skinner (among others) have all proposed local ownership restrictions for microstations.

We did not include such restrictions in our Petition, nor endorse them in our filings to date, because we regard them as less important than size and control restrictions. If forced to choose, we would rather see a hypothetical Washington microstation owned by an entrepreneur from Wisconsin than see it owned by a conglomerate based on K Street.

For one thing, the entrepreneur would have to be responsive to his or her audience in order to survive. The K Street conglomerate could shift its investment dollars to Pakistan at the drop of a hat.

Nevertheless, as a supplement to size and control restrictions rather than a substitute for size and control restrictions, local ownership restrictions could add an extra dimension of sensitivity to the listening public.

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Therefore, we endorse the concept of adding reasonable local ownership restrictions to strong, vigorously enforced restrictions on size and institutional control.

Our own suggestion for such standards is a modified version of Rodger Skinner's proposed standards in RM-9242. He advocates requiring that 100% of station owners must reside within 50 miles of the station location.

We would loosen the first half of those standards to allow more room for financial resources from outside the area. Specifically, we would drop from 100% to 65%.

As for the second half of those standards, we agree with Americans for Radio Diversity that 25 miles makes more sense than 50 miles. Frankly, it is only in America's three largest metropolitan areas that someone living 50 miles from downtown might possibly be considered an Angelino, Chicagoan or New Yorker. On the other hand, a suburb located 25 miles from downtown will usually have cultural and economic ties to the "hub city" at the core of the metropolitan area.

For these reasons, we recommend -- as supplemental local ownership restrictions -- that at least 65% of a microstation's stock, or other instrument of control, must be held by individuals and/or institutions based within 25 miles station location. For individuals, this should be a primary residence. For organizations, this should be the headquarters.

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We propose the latter requirement as a barrier to games of "paper residence". This loophole should be closed.

If the Commission enforces it wisely and well, small plus local is a good formula for more attention to listeners.

(m) We reiterate our opposition to "set asides" based on race or gender. If the Commission feels a special need to encourage participation in the micromarket by "out" groups, we again recommend use of an income-based "set aside" that helps those who need help the most.

Given present demographic patterns in the United States, minorities (with the probable exception of many Asian-American groups) would benefit disproportionately from an income-based "set aside". However, they would benefit without use of a politically and emotionally charged mechanism that helps a black accountant in Bethesda while turning its back on an impoverished white coal miner in West Virginia.

We do not specifically call for such an income-based "set aside" because we are not certain that it is needed, given the relatively low costs of micromarket entry plus the proposed size, control and local ownership restrictions which provide a buffer against all but the smallest competitors.

If the FCC decides that extra help is needed, we recommend setting aside 20% of microstation licenses for individuals with household incomes at or below 300% of the official poverty level.

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We would make the income ceiling adjustable -- up to a maximum of 400% of the official poverty level -- in areas, such as Los Angeles or Washington, where it can be demonstrated that living costs substantially exceed the national average.

Where individuals confederate, we recommend that at least 65% must have household income at or below the income threshold. Where an institution is involved, we recommend that at least 65% of the stock, or other instrument of control, must be held by individuals with household income at or below the threshold.

(n) On pages 11 through 14 of these Reply Comments, we have discussed the divisive, and emotionally intense, issue of whether microstation licenses should be reserved solely for microstations which are non-profit and non-commercial. We ourselves have strong feelings, as you may have noticed.

As a practical matter, if the Commission adopts our Tier One proposal, we expect that most profit-oriented individuals and institutions will view the very small broadcast coverage areas as too risky to constitute a good investment opportunity. Therefore, we anticipate that a solid majority of Tier One stations will be non-profit -- but not necessarily non-commercial. They might want to sell air time just to "break even" -- or at least reduce the flow of red ink.

In Tier Two, we anticipate intense competition for licenses between non-profit, non-commercial applicants and others.

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If the Commission concludes that it is legally necessary to mandate allocation of microstation licenses by auction, profit-oriented individuals and institutions -- even with the size and control restrictions we propose -- would probably attract better financing and therefore might have a competitive advantage in acquiring Tier Two licenses.

For these reasons, we reluctantly propose adding yet another "set aside" to a legalized micromarket that is already a "set aside" in its own right.

We propose setting aside 20% of the licenses, in both Tiers, for applicants who plan to operate stations which are non-profit and non-commercial.

As we have said, we adamantly oppose turning over the entire micromarket to non-profit, non-commercial stations -- or even to non-profits that may choose to air commercials. Nevertheless, we do believe that non-profit, non-commercial stations provide a rare and important perspective -- and we know that, whether they are politically radical or theologically "evangelical", they often offer hard information that can be found nowhere else.

Further, as the founders of microradio, who have taken great risks and made great sacrifices, they have earned a guaranteed place on the spectrum. We hope a "private preserve" will protect their voices without shutting out other voices.

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(o) We reiterate our support for special efforts to alert educational institutions to microbroadcasting re-legalization and encourage them to file for licenses. The 10-watt stations that once dotted the American landscape -- carrying the voices of high school students, trade school students and college students -- brought variety to the airwaves, provided a close focus on community concerns and inspired many to pursue radio (or other forms of broadcasting) as a career and/or a hobby and/or the object of lifelong interest. At Wesleyan University in Connecticut, where Don Schellhardt and Nick Leggett earned B.A. degrees in Government and became fraternity brothers in the Kappa Alpha Society, WESU covered all of Middletown with just 10 watts -- and became a vibrant part of community life.

(p) We reiterate our strong opposition to the use of auctions for allocation of microstation licenses. As a practical matter, auctions exclude all but the highest bidders from broadcasting and divorce the licensing process from the vital question of who can best use the public airwaves to serve the public interest. As a legal matter, auctions may be mandated by the Telecommunications "Reform" Act of 1996, but they are contrary to the Fourteenth Amendment of the U.S. Constitution.

As we said earlier, we urge the FCC to solicit, as part of its proposed rule on microbroadcasting, comments and cases on the Constitutionality of auctions and the microradio ban.

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If the Commission concludes that the weight of the evidence indicates that the 1996 mandate for auctions is unconstitutional, we ask the Commission not to enforce the auctions mandate when allocating microstation licenses.

This would, of course, invite an immediate court challenge by U.S. Senators and U.S. Representatives, and perhaps others -- but a lawsuit pitting Congressional legislators against the Federal Communications Commission would probably move through the appellate courts much faster than a lawsuit filed by others. Since auctions are a central issue in the structuring of a re-legalized microbroadcasting industry, "clearing the air" on the Constitutional questions -- as quickly as possible -- might be in the long term interest of all parties, including the NAB.

If the Commission decides that it must use auctions, then the establishment of size and control restrictions -- perhaps supplemented by local ownership restrictions -- becomes even more critical. It becomes the first AND ONLY line of defense.

(q) We oppose the program content restrictions that are advocated by the Community Radio Coalition. For that matter, we oppose any kind of program content restrictions.

We do not wish to prevent microstations from using syndicated material -- which may be the only way for some stations to serve a "niche market", such as smooth jazz lovers.

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Nor do we wish to prevent microstations from syndicating their material to other microstations: this could become a major source of revenue for the seller and a major source of varied programming for the buyer.

Also, as we noted in our Petition, competition from microstations might cause a short term drop in revenues for established broadcasters. However, this could be more than offset, in the medium to long term, by the chance to "import" new, marketable microradio material that might seem too risky for Time-Warner to develop but not seem too risky for a microstation to develop. For years, in the TV industry, a chain of successful shows -- beginning with **ALL IN THE FAMILY** -- has been brought to Hollywood from British public stations that are, apparently, less risk-averse than megacorporations.

This "pre-testing" of high risk, high potential ideas for larger markets might well require -- or at least might be strongly encouraged by -- links of syndication within the microbroadcasting community. Program content restrictions, at least of the stringency suggested by some, would prevent these links from ever being formed -- and would, in any event, be functionally and philosophically out of place in a market where Creativity Is King.

(r) As our final word on a specific issue, we wish to explain why we question type acceptance of microradio equipment.