

In The Matter Of

FCC Order No. 00-19

Creation Of A  
Low Power Radio Service:

Dockets MM 99-25,  
RM-9208, RM-9242

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JUN - 5 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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DON SCHELLHARDT,  
NICKOLAUS E. LEGGETT,  
WESLE ANNEMARIE DYMOKE,  
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AND ROGUE COMMUNICATION  
FOR A DECISION ON  
THE MOTION FOR RECONSIDERATION  
OF DON SCHELLHARDT

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UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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OF DON SCHELLHARDT

Don Schellhardt is a writer and an attorney, currently practicing trial law in the Shenandoah Valley college town of Harrisonburg, Virginia. A former Congressional aide, Washington lobbyist and GS-15 Policy Advisor at the U.S. Environmental Protection Agency, Don is also a concerned citizen. He is deeply troubled by the current state of representative democracy in America.

As a partial solution to the ongoing decay of democracy, Don advocates political reform in general and Low Power Radio in particular. With Nickolaus and Judith Leggett of Reston, Virginia, he authored the July 1997 Petition For Rulemaking that sparked the FCC's first deliberations on Low Power Radio in Docket RM-9208. He has since been active in all relevant FCC proceedings.

On February 24, 2000, Don Schellhardt filed with the Commission a friendly Motion For Reconsideration of the rule which established a Low Power Radio Service. So far as the undersigned parties can determine, the Commission has never acted upon his Motion For Reconsideration.

This week, the Commission opened the First Filing Window for those who seek Low Power Radio Service licenses. As the Commission receives this Motion For Decision, it is simultaneously receiving Low Power Radio license applications from parties in 11 different states. The Commission will continue to accept these applications until June 5, 2000.

Don Schellhardt, and the other undersigned parties, formally request the Commission to act on Don Schellhardt's February 24 Motion For Reconsideration -- accepting it, rejecting it or accepting it in part -- *before* Low Power Radio licenses are actually awarded to any of the First Filing Window applicants.

The referenced Motion For Reconsideration calls for expanded but conditional license eligibility, on a Probationary basis, for unlicensed broadcasters who would otherwise be ineligible. The Motion further proposes unconditional license eligibility for those who engaged in unlicensed broadcasting while challenging in court the FCC's motion for an injunction to shut them down.

Because the adoption of either or both of these policies would materially affect the nature of the license allocation process, it is prudent and equitable --

and, arguably, a legal necessity as well -- for the FCC to respond to the Motion For Reconsideration *before* any Low Power Radio licenses are awarded.

Favorable action on this Motion, if taken before any licenses are awarded, will not *necessarily* require re-doing the First Filing Window. Applications which have already been received can still be considered, while a Supplemental Filing Window can be opened to permit submission of new or amended applications.

*PARTIES JOINING IN THIS MOTION FOR A DECISION*

Don Schellhardt is joined in this Motion For A Decision by five other parties:

1. NICKOLAUS E. LEGGETT was another co-author of the July 1997 Petition For Rulemaking that led to Docket RM-9208 in 1998. A licensed "ham" radio operator for over three decades, and the holder of several patents, Nick is a technical writer and inventor. He resides in the Washington suburb of Reston, Virginia with his wife, Judith Fielder Leggett: the third of the three co-authors of the 1997 Petition For Rulemaking.

2. WESLE ANNEMARIE DYMOKE is founder of Providence Community Radio, which is applying for an LPFM license in the First Filing Window. Providence Community Radio holds the distinction of being the first non-profit organization in American history to be chartered solely for the purpose of starting and managing a Low Power Radio station.

Ms. Dymoke has also just been elected, by the rank-and-file Membership of THE AMHERST ALLIANCE, to succeed Don Schellhardt as the National Coordinator of Amherst. Her term of office begins today: June 1, 2000.

Ms. Dymoke is not personally affected by the Commission's policies on unlicensed broadcasting, nor is her aspiring radio station disqualified from seeking an LPFM license. Nevertheless, she supports Don Schellhardt's Motion For Reconsideration as a means for assuring greater diversity -- and vitality -- among LPFM licensees.

Ms. Dymoke lives near Brown University in Providence, Rhode Island.

3. MATTHEW HAYES is a professional, with a background in science and computers, who is weighing the option of starting and/or joining an LPFM station in the Bay Area of California. He resides in Berkeley, California.

4. MATTHEW ABEL is an attorney, engaged in the private practice of law in Michigan. Like Don Schellhardt, Nikolaus Leggett and Judith Leggett -- the individuals whose Petition For Rulemaking triggered Docket RM-9208 -- Matthew Abel has no personal plans to seek an LPFM license. He is, however, deeply concerned about the current state of representative democracy in America -- and has been actively involved in efforts to launch and promote a third party alternative to the Republican Party and the Democratic Party.

Mr. Abel practices law in the Detroit suburb of Livonia, Michigan.

5. ROGUE COMMUNICATION is a communication consulting firm in Santa Cruz, California. ROGUE COMMUNICATION maintains several Internet-accessible databases and has been active for years in the battle to legitimize, and legalize, Low Power Radio.

ROGUE COMMUNICATION was founded by Ted and Stephanie Coopman. Mr. Coopman, who has published academic articles on the Low Power Radio movement, played the single most important role in preparing the movement-wide Joint Statement On Microradio, which was submitted to the Commission during the summer of 1999. Ms. Coopman is a professor of Mass Communication at San Jose State University.

### *THE MOTIVATIONS FOR THIS MOTION*

We are filing this Motion in the hope of persuading the Commission to expand the scope of the Low Power Radio Service -- and, in particular, the *diversity* of potential licensees -- *before* any Low Power Radio licenses have actually been awarded.

If the Commission declines to take remedial action, before the first Low Power Radio license is awarded, then we must respectfully reserve our right to challenge in court the Commission's allocation of Low Power Radio licenses.

If we litigate, we will assert that the FCC's current regulations, as drafted by the Commission *and* as interpreted by the Commission staff, fail to assure *the minimum level of diversity in access to the airwaves that is required by the United States Constitution*, under both the Fourteenth Amendment ("equal protection of the laws") and the First Amendment ("freedom of speech").

We will also assert that unlicensed broadcasters should not be penalized for civil disobedience against regulations which were themselves unlawful -- under the Fourteenth and First Amendments to the Constitution.

Further, in those *specific* instances in which unlicensed broadcasters have battled the Government's proposed injunctions in court, and then continued to broadcast while the court was still considering the matter, we will contend it is a violation of the *Sixth Amendment* to punish them for failing to obey an order which was merely *proposed*, without having been issued by any court. This policy is an unconstitutional attempt to bypass the judicial process -- by punishing those who have dared to ask the courts to decide the issue.

We would *strongly* prefer not to take the step of initiating litigation, but we are committed to *considering* litigation *if* we are left with no other avenue by which we might achieve a more diversified Low Power Radio Service.

If there is an additional administrative alternative to litigation -- besides the present Motion For A Decision on Don Schellhardt's February 24 Motion For Reconsideration -- that we should be pursuing, simultaneously or sequentially, we ask the Commission to apprise us of this option *now*.

In the meantime, we urge the Commission, when it considers whether to act favorably upon Don Schellhardt's February 24 Motion For Reconsideration, to bear in mind this possibility:

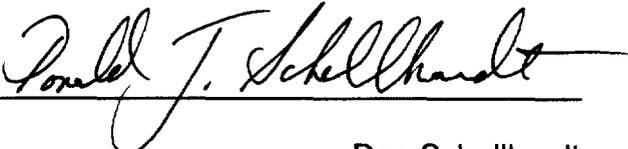
If we go to court and *win*, we will have a *Constitutionally based decision* which neither Congress nor future Commissioners can overturn or modify. Then, it will be the courts, not the Commission, who set the criteria for license eligibility.

### *CONCLUSION*

For the reasons we have set forth herein, we urge the Federal Communications Commission to issue a favorable decision regarding the February 24, 2000 Motion For Reconsideration that was filed by Don Schellhardt. In order to minimize the logistical complexities which could arise in the event of litigation, we further urge the Commission to make such a decision *before* the first Low Power Radio licenses have been awarded.

MOTION FOR A DECISION  
By DON SCHELLHARDT Et Al.  
Page Eight

Respectfully submitted,



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Don Schellhardt

Co-Petitioner,  
FCC DOCKET RM-9208

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CERTIFICATION OF SERVICE

The only party to send me a copy of a filing with the FCC, specifically submitted in response to my Motion For Reconsideration, was REC NETWORKS of Tempe, Arizona. A copy of this new Motion For A Decision has today been sent, electronically and also by First Class Mail with postage pre-paid, to Michelle Eyre, founder and executive of REC NETWORKS.

Donald J. Schellhardt

Don Schellhardt

Dated:

June 1, 2000

June 1, 2000