WRITTEN COMMENTS
IN FCC DOCKET MM 95-31

LICENSING COMPETITIONS BETWEEN COMMERCIAL AND NON-COMMERCIAL EDUCATIONAL STATIONS FOR UNRESERVED RADIO FREQUENCIES

BY:
THE AMHERST ALLIANCE, ***Colorado***
VIRGINIA CENTER FOR THE PUBLIC PRESS, ***Virginia***
REC NETWORKS, ***Arizona***
CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO, ***Massachusetts***
WILW RADIO, ***Connecticut***
JAMRAG MAGAZINE ***AND*** **GREEN HOUSE MAGAZINE,** ***Michigan***
WESLE ANNEMARIE DYMOKE, ***Rhode Island***
NICKOLAUS E. LEGGETT, ***Virginia***
AND
JOHN ANDERSON, ***Wisconsin***

TABLE OF CONTENTS

	Page
INTRODUCTION	1
OUR NARROWLY FOCUSED RESPONSE TO THE COMMISSION	2
OUR BROADLY FOCUSED RESPONSE TO THE COMMISSION	4
IDENTIFICATION OF THE UNDERSIGNED PARTIES	6
OUR PETITIONS FOR RULEMAKING IN CONTEXT: DEFINING "THE PUBLIC INTEREST"	8
CONCLUSIONS	10

APPENDIX A:
PETITION FOR RULEMAKING ON OMNIBUS PROPOSAL FOR SPECTRUM RE-ALLOCATION

APPENDIX B:
PETITION FOR RULEMAKING ON DIGITALIZATION TESTING AND EVALUATION

UNITED STATES OF AMERICA

Before The

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In The Matter Of:	)	
Re-Examination of the Comparative Noncommercial Educational Applicants	)	**FCC Docket No. MM 95-31**
Association of America's Public Stations' Motion for Stay of Low Power Television Auction (No. 81)	)	

WRITTEN COMMENTS OF

THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC PRESS, REC NETWORKS, CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO, WILW RADIO, JAMRAG MAGAZINE AND GREEN HOUSE MAGAZINE, WESLE ANNEMARIE DYMOKE, NICKOLAUS E. LEGGETT AND JOHN ANDERSON

THE AMHERST ALLIANCE, and the 8 other undersigned parties, hereby file these Joint Written Comments in the FCC's recently re-opened Docket MM 95-31.

OUR NARROWLY FOCUSED RESPONSE TO THE COMMISSION

The Commission has re-opened Docket MM 95-31 in response to a recent order by the D.C. Circuit Court.

While we have not agreed with some of the D.C. Circuit Court's recent decisions on telecommunications regulations, we certainly agree with this one. The D.C. Circuit Court has ruled -- wisely -- that the Commission erred in using mandatory auctions to decide licensing competitions, between commercial stations and Non-Commercial Educational (NCE) stations, for frequencies on *unreserved* portions of the radio spectrum.

The Commission has re-opened Docket MM 95-31 in order to solicit public input on how it can and should comply with the D.C. Circuit Court's order. Of necessity, this inquiry involves at least a *consideration* of spectrum re-allocation.

Our narrowly focused response, to the relatively narrow policy choices presented by the Commission, is as follows:

(1) Licenses which were unlawfully awarded, under mandatory auctions that have now been invalidated, should be re-opened for new competition between applicants.

(2) In the case of both the re-opened licensing competitions *and* future licensing competitions between commercial and NCE stations for unreserved frequencies, a "Points System" should be used for awarding the licenses. A "bonus point" should be awarded to any commercial *or* NCE applicant which is small and local, as well as *independently* managed and programmed.

(3) *All* Non-Commercial Educational stations, including all Low Power FM stations, should be exempt from mandatory auctions when they compete for unreserved

frequencies. Given the financial limitations which encumber NCE stations in general, and *especially* Low Power NCE stations, the fact that a station has been able to qualify for NCE status should be enough. The station should not be forced to bear any additional administrative burden, *especially* if it is a tiny Low Power FM station.

(4) As the Commission itself has contemplated, the portion of the radio spectrum which is reserved for NCE stations, including Low Power NCE stations, should indeed be increased. We advocate a significant, contiguous expansion -- from 88 MHz to 92 MHz to a new, broader range of 88 MHz to 94 MHz.

However:

(a) Expansion of the reserved NCE frequencies should *not* be initiated *if* the "tradeoff" for this expansion is the exclusion of NCEs from other portions of the spectrum where they are now welcome. We strongly advocate expansion of the reserved NCE frequencies *plus* use of a "Points System" in granting or denying NCE applications for unreserved frequencies. *If* forced to choose, however, we believe the latter policy is more crucial for NCEs than the former.

(b) When and if the reserved NCE frequencies are expanded, we believe the "new territory" should be reserved for those specific *types* of NCEs which are currently under-represented in the community of NCE broadcasters.

We refer to Low Power FM stations *and also* to full power NCE stations which are small and local, as well as *independently* managed and programmed (rather than mere

satellites of National Public Radio Headquarters). We advocate reserving 1 MHz each for LPFM stations *and* for small, local, *independent* NCE stations with full power status.

OUR BROADLY FOCUSED RESPONSE TO THE COMMISSION

Unfortunately, the issues we have addressed above can only *begin* to explore the need for new approaches to spectrum allocation.

In the past decade, national and international megacorporations have swallowed most of the commercial frequencies, at the expense of independent commercial broadcasters who are (or were) smaller, more local and much less standardized. Through similar tactics of displacement and/or acquisition, National Public Radio has waged a comparable campaign of conquest within the NCE community, banishing voices that were *also* non-commercial -- but were not simple echoes of NPR Headquarters.

Now, in addition to a decade and more of excessive "consolidation", among both commercial and non-commercial broadcasters, a new threat to media diversity has arisen -- in the form of a juggernaut for *mandatory* imposition of IBOC (In Band On Channel). Interference resulting from mandatory IBOC Digitalization, as currently contemplated in FCC Docket MM 99-325, could potentially drive many existing stations off the airwaves.

In light of this "Double Trouble", from current broadcasting "consolidation" and potential IBOC Digitalization, we believe the present scope of MM 95-31 is too limited.

In an effort to gain Commission consideration of a *broader* range of spectrum alocation issues, *ideally* within the framework of a *single* comprehensive rulemaking, we have taken the following steps:

(1) We have submitted to the Commission, via Federal Express to its Capitol Heights facility, a *Petition for Notice Of Proposed Rulemaking.* The proposed rule we have requested is an *omnibus* proceeding, encompassing all of the recommendations we have set forth above, *plus* several other related proposals for spectrum re-allocation.

(2) We have simultaneously submitted to the Commission, via Federal Express to its Capitol Heights facility, a separate *Petition for Notice Of Proposed Rulemaking* on testing and evaluation of the two competing Digitalization technologies. The Petition calls for establishment of a new program for the full and complete testing and evaluation of the Eureka-147 Digitalization technology. This alternative to IBOC Digitalization technology appears to be *much* less disruptive to existing broadcasters, but it has received essentially *no* serious attention from the Commission since the early 1990's.

The same Petition also calls for *additional* testing of the currently favored IBOC Digitalization technology, notably including "cluster studies" -- on the impact of *multiple* IBOC broadcasting facilities within a single geographical area -- *and* "subjective evaluations" of IBOC listening quality by individuals who are actually representative of the overall radio-listening public.

(3) In each Petition, we have asked that the Petition be consolidated with the ongoing deliberations in FCC Docket MM 95-31. In the specific Petition on testing and evaluation of the competing Digitalization technologies, we have also asked for consolidation of FCC Docket MM 99-325 with FCC Docket MM 95-31.

(4) Our hope is to convert FCC Docket MM 95-31 into a new, *consolidated* Docket which is broad enough in scope to permit *comprehensive consideration* of the interconnected issues of broadcasting "consolidation", proposed Digitalization and compliance with the D.C. Circuit Court's order on mandatory auctions.

In order to insure robust public input on the new, *consolidated* Docket MM 95-31, each of our Petitions requests the Commission to extend by 120 days the otherwise applicable Written Comments and Reply Comments deadlines in Docket MM 95-31.

Because the Commission requires that Petitions For Rulemaking must be filed as hard copies, with physical signatures, we have not submitted either Petition electronically.

However, for the convenience of the Commission, and of others who may read these Joint Written Comments, we have included a copy of the omnibus rulemaking Petition as ***Appendix A*** of these Comments. A copy of the Digitalization Petition has been included as ***Appendix B*** of these Comments.

IDENTIFICATION OF THE UNDERSIGNED PARTIES

THE AMHERST ALLIANCE of Denver, VIRGINIA CENTER FOR THE PUBLIC PRESS of Richmond and REC NETWORKS of metropolitan Phoenix are nationally active organizations which promote Low Power Radio in particular, and a more open mass media in general, through advocacy and the dissemination of information.

CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO and WILW RADIO are Part 15 broadcasters, based respectively in metropolitan Boston and Hartford, which aspire to acquire Low Power Radio licenses.

JAMRAG MAGAZINE covers the music scene in metropolitan Detroit, while GREEN HOUSE MAGAZINE is the official publication of the Green Party of Michigan.

JOHN ANDERSON is a journalist in Madison, Wisconsin, with ties to both Internet and radio broadcasting. He is widely known in the Low Power Radio community for managing an about.com Web Site on "free radio".

NICKOLAUS E. LEGGETT of Northern Virginia is a concerned citizen. He was a Co-Petitioner in FCC Dockets RM-9208 and RM-10330. In addition, his recent Petition For Rulemaking, on mandating field repairability for certain equipment, has just been "noticed" for public comment as Docket RM-10412.

WESLE ANNEMARIE DYMOKE of Providence is a former National Coordinator of THE AMHERST ALLIANCE, as well as a former Board Member of PROVIDENCE COMMUNITY RADIO. The latter group was the first non-profit organization in American history to incorporate itself exclusively for the purpose of applying to gain a Low Power FM license.

OUR PETITIONS FOR RULEMAKING IN CONTEXT:
DEFINING "THE PUBLIC INTEREST"

We have taken the somewhat unprecedented step of filing two Petititions For Rulemaking simultaneously, in concert with this third document of Joint Written Comments. The reason is that each of the 3 documents has an interlocking relationship. As a group, they are meant to address -- and, ideally, to bring within the framework of one proceeding -- a number of issues which are, in themselves, interlocking.

The *context* for our decision-making on these matters should be understood.

Judicial and regulatory actions taken by the FCC and the courts have historically been predicated, to some degree, on "the public interest, convenience and necessity". The difficult, contentious nature of this process has been apparent in sporadic policy shifts, concerning such elements as The Fairness Doctrine and "media ownership caps".

We understand that such changes reflect the shifting primacy of various contradictory points of view, as they are brought to bear in regulatory deliberations.

However, it is our view that the last 10 years or so have seen the increasing dominance of certain voices over others -- so that the ongoing regulatory deliberations have begun to occur within *progressively more circumscribed boundaries*.

Specifically, the undersigned parties believe that fiscal considerations, standing more or less alone, have come to dominate more and more of the various regulatory deliberations -- *and* that these fiscal considerations have in turn become more and more focused *solely* on the *short term* economic health of *large* corporations.

In an historically recent, and unusually narrow, concept of what constitutes "competition", the fiscal health of *large* media corporations, and the *short term* price of broadcasting stocks, have generally come to constitute the entire "fiscal litmus test" for assessing various regulatory alternatives. In contrast, little or no attention has been paid to more *traditional* concerns of government about the business climate -- such as the viability of smaller businesses, including their access to affordable radio advertising, and/or the level of employment and advancement opportunities within the economy, including the broadcasting industries.

At the same time, with the ongoing regulatory debates focused more and more narrowly, certain *other* fundamental concerns have also been relegated to a low profile -- if not to outright invisibility.

Here are some examples of questions which clearly relate to "the public interest", *but* which are rarely asked during modern regulatory debates:

To what extent is there a connection between media ownership, media content and the level of citizen participation in civic life? Or even the quality of life itself?

Should at least some of the airwaves be *consciously utilized* to promote more active citizen participation in civic life? Or even in life itself?

Is there an intrinsic benefit to having at least *some* local ownership of media outlets? Studies by the Rocky Mountain Media Watch have shown that local ownership correlates strongly with local programming: Is that a good thing?

Should the drive toward technological innovation supersede all other regulatory considerations? What about the drive to maximize profits? And what about the drive to maximize short term profits at the risk of possible *losses* for stockholders -- and/or customers, and/or pensioners, and/or taxpayers -- in the future?

We do not contend, for an instant, that we have compiled an exhaustive list of important questions that, increasingly, remain unasked. What we contend is that these *representative* questions concern which *values* should govern, or at least influence, regulatory decisions on management of "the public square". Whatever the Commission believes those values should be, surely they cannot be reduced to nothing more than the stock prices of selected Fortune 500 companies for one fiscal quarter into the future.

We have filed our Petitions, in part, to get these *values* discussed again at Federal Communications Commission meetings.

CONCLUSIONS

For the reasons set forth herein, we urge the Commission to proceed in accordance with our recommendations in these Joint Written Comments.

We also urge the Commission to consolidate our two Petitions For Rulemaking, as embodied in Appendix A and Appendix B, with the ongoing deliberations in FCC Docket MM 95-31. We further urge the Commission to extend by 120 days the otherwise applicable Written Comments and Reply Comments deadlines in Docket MM 95-31, in order to insure robust public input on the new, *consolidated* Docket.

Respectfully submitted,

Don Schellhardt
Attorney for THE AMHERST ALLIANCE
National Coordinator Emeritus, THE AMHERST ALLIANCE
Co-Petitioner, FCC Dockets RM-9208 and RM-10330
7050 Montview Boulevard
#175
Denver, Colorado 80220
dschellhardt@student.law.du.edu
(303) 871-6758

Christopher Maxwell
Secretary
For VIRGINIA CENTER FOR THE PUBLIC PRESS
1621 West Broad Street
Richmond, Virginia 23220
WRFR@aol.com
(804) 649-9737

Michelle Eyre
For REC NETWORKS
P.O. Box 2408
Tempe, Arizona 85280
michelleeyre@qwest.net

Steven Provizer
For CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO
451 Cambridge Street
Allston, Massachusetts 02134
improv@speakeasy.net

William C. Walker
Proprietor and General Manager
For WILW RADIO
124 Tunxis Road
West Hartford, Connecticut 06107
kwaq@peoplepc.com

Tom Ness, Editor and Publisher, and Susan Ness
For JAMRAG MAGAZINE and GREEN HOUSE MAGAZINE
22757 Woodward Avenue
Box 20076
Ferndale, Michigan 48220
jamrag@glis.net

Wesle AnneMarie Dymoke
National Coordinator, THE AMHERST ALLIANCE
Founding Board Member, PROVIDENCE COMMUNITY RADIO
P.O. Box 2346, East Side
Providence, Rhode Island 02906
ao780@osfn.org

Nickolaus E. Leggett
N3NL
Co-Petitioner, FCC Dockets RM-9208 and RM-10330
1432 Northgate Square
#2A
Reston, Virginia 20190
nleggett@earthlink.net
(703) 709-0752

John Anderson
Radio and Internet Journalist
5227 Spaanem Avenue
Madison, Wisconsin 53716-2076
phlegm@tds.net

Dated: _____

April 15, 2002

APPENDIX
A

PETITION FOR NOTICE OF PROPOSED RULEMAKING

OMNIBUS PROPOSAL FOR SPECTRUM RE-ALLOCATION TO CORRECT THE CURRENT OVER-REPRESENTATION OF CERTAIN INSTITUTIONS ON THE FM BAND

BY:
THE AMHERST ALLIANCE, *Colorado*
VIRGINIA CENTER FOR THE PUBLIC PRESS, *Virginia*
REC NETWORKS, *Arizona*
CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO, *Massachusetts*
WILW RADIO, *Connecticut*
JAMRAG MAGAZINE *AND* GREEN HOUSE MAGAZINE, *Michigan*
WESLE ANNEMARIE DYMOKE, *Rhode Island*
NICKOLAUS E. LEGGETT, *Virginia*
JOHN ANDERSON, *Wisconsin*
AND
MATTHEW HAYES, *Oregon*

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PROCEDURAL REQUESTS	3
IDENTIFICATION OF THE UNDERSIGNED PARTIES	4
THE OMNIBUS PROPOSAL	
PHASED-IN REFORM -- THROUGH ATTRITION	6
AUTOMATIC PERFORMANCE EVALUATION AFTER 10 YEARS	6
DEFINING "SMALL COMMERCIAL RADIO" AND "SMALL NON-COMMERCIAL RADIO"	7
DEFINING "LONG DISTANCE TRANSLATORS"	8
ESTABLISHING A "POINTS SYSTEM" TO DECIDE CERTAIN LICENSING COMPETITIONS FOR UNRESERVED FREQUENCIES	9
EXPANSION OF THAT PORTION OF THE RADIO SPECTRUM WHICH IS RESERVED FOR NON-COMMERCIAL BROADCASTING	11
RESERVATION OF 2 MHz FOR *SMALL* COMMERCIAL RADIO	12
PROPOSED PROCEDURAL CHANGES FOR AWARDING LOW POWER FM LICENSES	13
PROPOSALS FOR "ACCELERATED ATTRITION"	19
CHART: PROPOSED SCHEMATIC FOR A RE-STRUCTURED FM BAND	*20*
CONCLUSIONS	21

UNITED STATES OF AMERICA

Before The

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

Omnibus Proposal For	**)**	
Spectrum Re-Allocation	**)**	
To Correct The Current	**)**	**FCC Docket No. _____**
Over-Representation Of	**)**	
Certain Institutions On	**)**	
The FM Band	**)**	

PETITION FOR NOTICE OF PROPOSED RULEMAKING

BY THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC PRESS, REC NETWORKS, CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO, WILW RADIO, JAMRAG MAGAZINE AND GREEN HOUSE MAGAZINE, WESLE ANNEMARIE DYMOKE, NICKOLAUS E. LEGGETT, JOHN ANDERSON AND MATTHEW HAYES

THE AMHERST ALLIANCE, and the 9 other undersigned parties, hereby file this Petition for Notice Of Proposed Rulemaking (NOPR).

The Petition proposes comprehensive spectrum re-allocation, in order to correct the current over-representation of certain institutions on the FM Band.

The *over*-represented institutions, whose share of the spectrum should be reduced, are: (1) national and international megacorporations; *and* (2) non-commercial stations that are affiliated with, managed by and/or programmed by National Public Radio (NPR). Since 1994, both groups have gained enormous market share, at the expense of others.

The under-represented institutions, which have *lost* enormous market share since 1994, are: (1) small, local, independently owned and operated commercial radio stations; *and* (2) small, local non-commercial stations that are either unaffiliated with NPR *or* have an NPR affiliation but are free to make independent decisions on station management and programming.

Also under-represented are newcomers to the FM Band: Low Power Radio stations, which are still struggling to *establish* a market share in the first place.

In addition, with growing interest in Part 15 broadcasting and "freenetworking", *individuals* are beginning to stake a greater claim on use of the radio spectrum, sometimes colliding with institutional agendas in the process.

It is the intent of our omnibus proposal -- over a 10-year, phased-in period, with primary reliance on attrition through license renewals -- to expand the presence on the airwaves of small and independent commercial stations, small and independent non-commercial stations *and* Low Power FM stations.

In addition, we hope to lay some groundwork for *future* proceedings to establish Low Power *AM* stations and increase broadcasting opportunities for individual citizens.

To this end, this Petition includes the following proposals:

- Use of a "points system" where non-commercial stations compete with commercial stations for unreserved portions of the spectrum -- coupled with a bonus point for those commercial *or* non-commercial applicants which are small, local and independent

- Expansion of the reserved non-commercial spectrum by 2 MHz, with the additional 2 MHz of reserved frequencies to be split evenly between Low Power FM stations and other small non-commercial stations

- Creation of 2 new MHz of reserved frequencies, *outside of* the non-commercial portion of the FM Band, for *commercial* stations which are small, local and independent

- Establishment of a new *Tertiary* Status for "satellators", as well as other long distance translators that transmit signals more than 60 miles from the studio

PROCEDURAL REQUESTS

As required by a recent order of the D.C. Circuit Court, the Commission is presently considering questions of spectrum availability and re-allocation in Docket MM 95-31.

It is our hope that this Petition, along with a companion Petition For Rulemaking to establish a testing and evaluation program for Eureka-147 Digitalization technology, will be consolidated with Docket MM 95-31.

The result would be a *comprehensive* public discussion of important issues: that is, the spectrum re-allocation measures required for compliance with the D.C. Circuit Court's order, plus *other* spectrum re-allocation measures that would protect or advance the public interest, plus the impact on spectrum availability of the two competing Digitalization technologies. It makes sense to address these various issues in a *single* rulemaking -- since the issues are, in truth, functionally and philosophically related.

Also, given the widespread discontent with the radio *status quo,* both among the listening public and within the radio broadcasting industry itself, it is likely that the

Commission will be compelled to deal with all of these interconnected issues sooner or later. If the Commission does so *sooner,* rather than later, in a *single* proceeding, administrative resources will be conserved.

In addition, the Commission's decisions themselves may be more knowledgeable if they are not made on a "piecemeal" basis.

Consequently, the undersigned parties hereby submit the following procedural motions to the Commission:

(1) We ask the Commission to consolidate this Petition for Notice Of Proposed Rulemaking with the ongoing deliberations in Docket MM 95-31;

And

(2) We ask the Commission to insure robust public input on the new, *consolidated* Docket 95-31 by extending for 120 days the otherwise applicable Written Comments and Reply Comments deadlines in Docket MM 95-31.

IDENTIFICATION OF THE UNDERSIGNED PARTIES

THE AMHERST ALLIANCE of Denver, VIRGINIA CENTER FOR THE PUBLIC PRESS of Richmond and REC NETWORKS of metropolitan Phoenix are nationally active organizations which promote Low Power Radio in particular, and a more open mass media in general, through advocacy and the dissemination of information.

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MATTHEW HAYES of Portland, Oregon is a computer expert who may found a Low Power Radio station in the foreseeable future.

THE OMNIBUS PROPOSAL

PHASED-IN REFORM -- THROUGH ATTRITION

The purpose of the Omnibus Rulemaking we are proposing is this:

To correct the current over-representation of certain institutions -- that is, megacorporations *and* National Public Radio -- *on the FM Radio Band*

Where the shifting of station frequencies is required by the proposed new rules, it is our *general recommendation* that station relocation or displacement should occur through attrition -- as licenses expire and come up for renewal -- over a period of 10 years.

We do have some special recommendations for *Accelerated Attrition,* which are discussed later in this Petition, but we believe the general rule should be phased-in reform through attrition. This should make the correction of over-representation less disruptive than it might otherwise be.

AUTOMATIC PERFORMANCE EVALUATION AFTER 10 YEARS

In addition to the regular evaluation of these and other regulations during the FCC's Biennial Regulatory Review process, we also recommend a Special Review, 10 years after the effective date of the new rules, to determine how well the new rules have achieved these *performance goals:*

(A) Small Commercial Broadcasters (as defined below) have, at a minimum, regained the share of the radio market they held in 1994

(B) Small Non-Commercial Broadcasters (as defined below) have, at a minimum, regained the share of the radio market they held in 1994

(C) Commercial and non-commercial radio stations which are *independently* owned and operated, by members of racial minorities and other historically excluded groups, have, at a minimum, attained 150% of the share of the radio market they held in 1994

(D) Low Power FM stations now utilize, at a minimum, 10% of the total frequencies which are available on the FM Band

(E) Radio stations which do not fall within 1 or more of these 4 categories have experienced corresponding reductions in market share, *if indeed* many, most or all of them have not migrated to a Digitalized L Band

DEFINING "SMALL COMMERCIAL RADIO"
AND "SMALL NON-COMMERCIAL RADIO"

In order to help small, local and independent full power stations, it is first necessary to define them.

In this regard, two new classes of radio stations should be created by the FCC.

(A) *Small Commercial Broadcasters* are commercial broadcasters:

(I) All of whose facilities are independently owned and operated, with no ties to loans and/or investments from parties who are involved in any other media activities;

And

(II) All of whose mass media holdings are limited to radio and/or Internet broadcasting;

And

(III) All of whose radio holdings, combined: (a) include no more than 3 radio stations, none of which are larger than Class B1

[25,000 watts/150 meters HAAT]; *and* (b) include no more than 5 translators, none of which are long distance translators (as defined below)

(B) *Small Non-Commercial Broadcasters* are non-commercial broadcasters:

(I) All of whose facilities are either: (a) unaffiliated with National Public Radio; *and/or* (b) affiliated with National Public Radio, but independently managed and programmed *And*

(II) All of whose radio holdings, combined: (a) include no more than 3 radio stations, none of which are larger than Class B1 [25,000 watts/150 meters HAAT]; *and* (b) include no more than 5 translators, none of which are long distance translators (as defined below)

DEFINING "LONG DISTANCE TRANSLATORS"

All translators are not created equal. Some are essentially local, encouraging the preservation of local news coverage, the development of diverse programming and the multiplication of small broadcasters that are independently owned and operated. Other translators facilitate economic consolidation -- and, with it, cultural consolidation.

If the preservation of local news, diverse programming and decentralized corporate power still mean *anything* to the Commission, then the two types of translators should *not* have equal protection against possible displacement -- *especially when,* as will often be the case, the alternative to a long distance translator is a *local* broadcaster who lacks Primary Status.

We propose, therefore, that the category of "translator" should be sub-divided into 2 separate and distinct classes, with differing levels of protection against displacement by other broadcasting facilities.

(A) A *long distance translator* is a translator which:
- (I) relies primarily or exclusively on satellite transmissions for the programming it relays;
  and/or
- (II) relays signals, by any other means, more than 60 miles from the studio in which the programming originates

(B) A *translator* is any translator which is not a long distance translator (as defined above)

Long distance translators should be assigned a new *Tertiary Status,* rendering them "universally bumpable" -- by any *local* broadcaster. They should be protected only against displacement by *another* long distance translator.

Other, *local* translators should remain protected against displacement by broadcasters with Secondary Status, even if they are also local.

ESTABLISHING A "POINTS SYSTEM" TO DECIDE CERTAIN LICENSING COMPETITIONS FOR UNRESERVED FREQUENCIES

Thanks to the previously referenced court decision, competing applications for *unreserved* frequencies, between commercial broadcasters and Non-Commercial Educational (NCE) broadcasters, may no longer be resolved by mandatory auctions.

Thank God!!

The undersigned parties believe that *any* use of mandatory auctions, even if limited (as the D.C. Circuit Court has now ordered) to licensing competitions *between* rival commercial stations, are unlawful under both the Fourteenth Amendment to the Constitution ("equal protection of the laws") and the First Amendment to the Constitution ("freedom of speech"). Nevertheless, we welcome the D.C. Circuit Court's recent decision as a major step in the right direction.

In the meantime, of course, the Commission is left with the question of how competing license applications for unreserved frequencies, between commercial stations and NCEs, should be decided, now that mandatory auctions may no longer be used.

This is why the Commission has re-opened Docket MM 95-31.

We urge the Commission to take the following steps:

(1) Establish that such competing license applications should be resolved by recourse to a (relatively streamlined) "Points System". The Commission itself suggested this as a possibility, when Docket MM 95-31 was re-opened.

(2) Under such a "Points System", there should be two different approaches.

(a) When mutually exclusive license applications have been filed for facilities which both have *Primary* Status, a Bonus Point should be awarded to:

(I) NCE applicants which are Small Non-Commercial Broadcasters (as defined above);
and
(II) commercial applicants which are Small Commercial Broadcasters (as defined above)

(b) When mutually exclusive license applications have been filed for facilities which both have *Secondary* Status, a Bonus Point should be awarded to license applicants which are Low Power FM (LP-100 or LP-10) broadcasters

EXPANSION OF THAT PORTION OF THE RADIO SPECTRUM WHICH IS RESERVED FOR NON-COMMERCIAL BROADCASTING

As the FCC itself has contemplated, in Docket MM 95-31, we favor expanding -- by 2 MHz -- the range of frequencies which are now *reserved* for NCEs. Our minds are open as to *which* new MHz should be added, but we tentatively favor shifting the present range of 88 to 92 MHz to a broader, but still contiguous, range of 88 MHz to 94 MHz.

However:

(1) The expansion of the reserved NCE frequencies should *not* proceed if the price is exclusion from competition by NCEs for *un*reserved frequencies. In the long run, such a "tradeoff" would probably result in *fewer* total frequencies being available for NCEs -- including those NCEs which are *also* Low Power FM stations.

(2) The expansion of reserved NCE frequencies should be designed to help those *types* of NCEs which are under-represented on the FM Band today: that is, Small Non-Commercial Broadcasters (as defined above) and Low Power FM stations. The extra spectrum should *not* be made available for NPR-managed stations -- since these stations have *already* thrown NCE representation on the FM Band out-of-balance, by replacing too many *independently operated and programmed* NCE stations with mere satellites of NPR Headquarters. Once-independent college stations have been particularly hard hit.

Subject to the conditions set forth above, the currently reserved NCE frequencies should be increased by 2 MHz:

(A) 1 MHz should be reserved for Low Power FM Broadcasters;

And

(B) 1 MHz should be reserved for Small Non-Commercial Broadcasters (as defined above).

We tentatively recommend reserving 92 MHz for Small Non-Commercial Broadcasters and 93 MHz for Low Power FM Broadcasters. However, as we noted above, we are open to persuasion regarding which *specific* MHz should be reserved for which *specific* group of small, local and independent NCEs.

RESERVATION OF 2 MHz FOR *SMALL* COMMERCIAL RADIO

Small Non-Commercial Radio stations and Low Power FM stations each require and deserve a "home base" of reserved frequencies -- in addition to a "fighting chance" for more of the unreserved frequencies -- because both groups are truly "endangered species" in today's broadcasting marketplace. They need some degree of special protection if they are to survive, let alone "be fruitful and multiply".

For the same reason, Small *Commercial* Radio stations also require and deserve a "home base" of reserved frequencies, in addition to a "fighting chance" elsewhere.

We advocate the same amount of "wildlife preserve" that we have advocated, cumulatively, for Small Non-Commercial Radio stations and Low Power FM stations.

That is: 2 MHz of the FM Band should be reserved exclusively for Small Commercial Radio Broadcasters (as defined above).

Tentatively, we recommend assigning 95 and 96 MHz for this purpose.

We add this *IMPORTANT NOTE:*

In competing for any of these *reserved* frequencies, Small Commercial Broadcasters would *still* be subject to the *Congressional* requirement for the use of mandatory auctions in deciding who should be awarded commercial licenses.

However, when remaining within their *reserved* frequencies, Small Commercial Broadcasters would *only* have to bid against *each other* -- not against the likes of Clear Channel Communications. When applying for *un*reserved frequencies, they would still have to "bid against the field", except when competing against *non*-commercial rivals under the proposed "Points System".

PROPOSED PROCEDURAL CHANGES FOR AWARDING LOW POWER FM RADIO LICENSES

All of the undersigned parties have been involved in pursuing the broad goal of a more open mass media. At the same time, all of us have *also* been involved with pursuing the narrower goal of a viable, meaningful Low Power Radio Service.

We commend the Commission, heartily, for taking action to establish a Low Power Radio Service in January of 2000, through the issuance of final regulations in Docket MM 99-25. We further commend the Commission for its subsequent actions to implement the final rule, with the result that some LP-100 Low Power FM licenses have been awarded and more are in process.

We are aware, of course, that Congress has since added certain unfortunate restrictions on the Commission's ability to implement a Low Power Radio Service on the FM Band. All of the undersigned parties strongly opposed enactment of this new statute, by a "lame duck Congress", in December of 2000 -- and succeeded, in concert with others, in amending the original, harsher version of this legislation in the House of Representatives. We also note with some satisfaction that the primary Senate sponsor of this legislation, *former* Senator Rod Grams of Minnesota, was defeated for re-election in November of 2000 -- by a narrow margin, in an election where the Senator's opposition to Low Power FM became one of the publicly visible issues.

We hope and believe that Congress will reconsider these statutory restrictions once the additional testing of potential interference from Low Power FM stations, which was also mandated by the new statute, has been completed. We are confident that these tests, if they are *fair and objective,* will justify relaxing the current channel spacing requirements to accommodate additional Low Power FM stations.

In the meantime:

Certain changes in the Commission's present procedures would enhance the prospects for Low Power FM. All of the procedures in question can be changed *without* violating any of the current Congressional restrictions on LPFM licensing.

We urge the Commission to direct its staff to make these procedural changes *before* "filing windows" are opened for the LP-10 cycle of LPFM applications.

Specifically, the following procedural changes should be made:

(1) The "maturity" criterion, for awarding "points" to competing LPFM applicants, should be changed to a criterion of "clear community service potential". This would eliminate the competitive advantage that is currently conferred upon established non-profit organizations, at the expense of promising newcomers.

One key purpose of Low Power FM is to bring former "outsiders" into the regulated broadcasting community. *Another* key purpose of Low Power FM is to increase the range of choices which are available for radio listeners.

In light of either or both of these fundamental policy objectives, the procedural change that we advocate is eminently sensible.

(2) The current "guess-a-frequency" procedure, which was initiated by the Commission's staff rather than the full Commission, should be replaced by a procedure which allows *all* of the LPFM stations in a given service area to compete for *all* of the locally available frequencies.

A shift to "at large" LPFM applications would allow the Commission to select *the best LPFM applicants* in an entire geographical area, rather than limiting the pool of choices to applicants for each specific frequency.

Under the current procedures, the single best LPFM applicant in an entire area may never gain a license because the applicant "guessed wrong" about which frequency would in fact become available for an LPFM station. At the same time, a much weaker applicant might gain a license because that applicant managed to "guess right" about which frequency would become available for an LPFM station.

Logically, the current procedure makes no sense. The full Commission chose a "points system", not a lottery or a "first filed, first licensed" system, for awarding LPFM licenses. This decision, which all of the undersigned parties endorse and support, implies that the full Commission wants the awarding of LPFM licenses to be *merit-based.*

Why, then, should the Commission continue to allow its staff to inject random elements -- capable of converting the licensing process into a game of roulette?

(3) The Commission should license up to *10 experimental urban Low Power FM stations,* and up to *10 experimental urban LPAM stations,* for a period of at least 1 year (preferably 2 years) .

Otherwise applicable regulatory barriers should be waived, temporarily, in order to test and evaluate potential interference "in the real world" from the current Low Power FM Service, as well as a possible Low Power AM Service.

Nothing in the recently enacted statute on LPFM prevents the Commission from licensing *experimental* Low Power FM stations for *temporary* periods. Indeed, such *experimental* LPFM stations might actually advance the intent of Congress -- by supplementing information from the LPFM interference testing that Congress has *required* in its new statute.

Clearly, Congress wants to know more about whether or not LPFM stations will actually cause interference problems if current channel spacing requirements are relaxed. *Experimental* LPFM stations, placed in urban areas where spectrum is scarce, would provide tangible, measurable, "real world" evidence about this question.

Further, since these experimental stations would test the potential for interference from LPFM under "worst case" conditions, in crowded areas such as metropolitan Boston, neutral or favorable results would constitute a clear "bill of health" for LPFM stations in *less* crowded areas.

As for the experimental Low Power *AM* stations, we note that nothing in the referenced new statute address LPAM. The statute refers *only* to the proceedings in FCC Docket MM 99-25, which were limited *exclusively* to Low Power *FM* stations.

From a legal standpoint, therefore, the Commission has a totally free hand on present or future policymaking regarding Low Power *AM*.

In further support of these proposed procedural changes, we incorporate by reference the Motion For Reconsideration, in Docket MM 99-25, which was filed by THE AMHERST ALLIANCE on February 25, 2000.

We also incorporate by reference the Motion For A Decision On The Motion For Reconsideration in Docket 99-25. This Motion was filed on June 5, 2000, by THE AMHERST ALLIANCE and several other parties.

We note that all three of the procedural changes proposed in this Petition are based upon proposals contained in the referenced Motions in Docket 99-25.

In addition to the procedural changes we are proposing in this Petition For Notice of Proposed Rulemaking, the undersigned parties reserve the right to propose *further* procedural and/or substantive changes, regarding the Low Power FM Service, in the future. Such additional changes may be proposed by any or all of the undersigned parties, acting separately or collectively.

These additional proposed changes may include upgrading Low Power FM stations to Primary Status and/or altering the present status of Channel 6.

PROPOSALS FOR
"ACCELERATED ATTRITION"

Notwithstanding our call for a general policy of shifting assigned radio frequencies through attrition, over a 10-year phase-in period, some radio frequencies should be made available earlier, through measures for *Accelerated Attrition.*

(1) As we stressed above, translators should be subdivided into *long distance translators* (notably including "satellators") and other, local translators. The long distance translators should be assigned a new *Tertiary* Status, allowing them to be "bumped" by local translators and other broadcasters with a Secondary Status (notably including Low Power FM stations).

(2) Re-opening, under the proposed new "Points System", of licenses which were previously awarded through the use of mandatory auctions, during a competition between a commercial station and an NCE station for an *unreserved* frequency.

(3) Re-opening of "inventoried" frequencies which have been licensed, but unused, for more than 2 years.

The Commission should establish a *rebuttable* presumption, which can be waived in light of appropriate evidence, that a frequency will be re-opened for licensing *if:*

(a) A Construction Permit for a broadcasting facility was issued on or before April 12, 2000;
And
(b) No construction had been initiated as of April 12, 2002.

CHART:
PROPOSED SCHEMATIC FOR
A RE-STRUCTURED FM BAND

	BEFORE	***AFTER***
108 MHz	***UNRESERVED:***	***UNRESERVED:***
107 Mhz	**Large Commercials ****	**Large Commercials ****
106 MHz	**NPR-Controlled ****	**NPR-Controlled ****
105 MHz	**Small Commercials * ***	**Small Commercials ****
104 MHz	*NO "Bonus Point"*	*GET "Bonus Point"*
103 MHz	**Small NCEs ****	**Small NCEs ****
102 MHz	*NO "Bonus Point"*	*GET "Bonus Point"*
101 MHz	**LPFMs**	**LPFMs ***
100 MHz		
99 MHz	**Mandatory Auctions:**	**Mandatory Auctions:**
98 MHz	***Apply To ALL***	***Apply ONLY To Commercial***
97 MHz	***Mutually Exclusive***	***Vs. Commercial Competition***
96 MHz	***License Applications***	***RESERVED:***
95 MHz		**Small Commercials ****
94 MHz		***RESERVED:*** **LPFMs ****
93 MHz		***RESERVED:*** **Small NCEs ****
92 MHz		
91 MHz	***RESERVED:***	***RESERVED:***
90 MHz	**NPR-Controlled ****	**NPR-Controlled ****
89 MHz	**Small NCEs ****	**Small NCEs ****
88 MHz	**LPFMs**	**LPFMs ***

**** Allowed to "bump" *any* kind of translator.**

* Allowed to "bump" satellators and other long distance translators. Gains "Bonus Point" over shorter distance translators when competing against them for *un*reserved frequencies.

CONCLUSIONS

For the reasons which are set forth herein, we urge the Commission to take the following actions:

(1) Initiate a rulemaking for adoption of all of the proposals which are embodied in this Petition for Notice Of Proposed Rulemaking;

And

(2) Consolidate this Petition For Rulemaking with the ongoing deliberations on spectrum re-allocation in FCC Docket MM 95-31;

And

(3) Extend the otherwise applicable Written Comments and Reply Comments deadlines in FCC Docket MM 95-31 by an additional 120 days, in order to insure robust public input on the new, *consolidated* Docket.

Respectfully submitted,

Don Schellhardt
Attorney for THE AMHERST ALLIANCE
National Coordinator Emeritus, THE AMHERST ALLIANCE
Co-Petitioner, FCC Dockets RM-9208 and RM-10330
7050 Montview Boulevard
#175
Denver, Colorado 80220
dschellhardt@student.law.du.edu
(303) 871-6758

Christopher Maxwell
Secretary
For VIRGINIA CENTER FOR THE PUBLIC PRESS
1621 West Broad Street
Richmond, Virginia 23220
WRFR@aol.com
(804) 649-9737

Michelle Eyre
For REC NETWORKS
P.O. Box 2408
Tempe, Arizona 85280
michelleeyre@qwest.net

Steven Provizer
For CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO
451 Cambridge Street
Allston, Massachusetts 02134
improv@speakeasy.net

William C. Walker
Proprietor and General Manager
For WILW RADIO
124 Tunxis Road
West Hartford, Connecticut 06107
kwaq@peoplepc.com

Tom Ness, Editor and Publisher, and Susan Ness
For JAMRAG MAGAZINE and GREEN HOUSE MAGAZINE
22757 Woodward Avenue
Box 20076
Ferndale, Michigan 48220
jamrag@glis.net

Wesle AnneMarie Dymoke
National Coordinator Emeritus, THE AMHERST ALLIANCE
Founding Board Member, PROVIDENCE COMMUNITY RADIO
P.O. Box 2346, East Side
Providence, Rhode Island 02906
ao780@osfn.org

Nickolaus E. Leggett
N3NL
Co-Petitioner, FCC Dockets RM-9208 and RM-10330
Petitioner, RM-10412
1432 Northgate Square
#2A
Reston, Virginia 20190
nleggett@earthlink.net
(703) 709-0752

John Anderson
Radio and Internet Journalist
5227 Spaanem Avenue
Madison, Wisconsin 53716-2074
phlegm@tds.net

Matthew Hayes
7756 Southeast 17th Avenue
Portland, Oregon 02906
matthewhades@hotmail.com

Dated: _____

April 12, 2002

APPENDIX B

PETITION FOR NOTICE OF PROPOSED RULEMAKING

TO ESTABLISH A TESTING AND EVALUATION PROGRAM FOR EUREKA-147 DIGITALIZATION TECHNOLOGY, *AND* TO REQUIRE ADDITIONAL TESTING AND EVALUATION FOR IBOC DIGITALIZATION TECHNOLOGY

BY:
THE AMHERST ALLIANCE, *Colorado*
VIRGINIA CENTER FOR THE PUBLIC PRESS, *Virginia*
REC NETWORKS, *Arizona*
CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO, *Massachusetts*
WILW RADIO, *Connecticut*
JAMRAG MAGAZINE *AND* GREEN HOUSE MAGAZINE, *Michigan*
WESLE ANNEMARIE DYMOKE, *Rhode Island*
NICKOLAUS E. LEGGETT, *Virginia*
JOHN ANDERSON, *Wisconsin*
AND
MATTHEW HAYES, *Oregon*

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PROCEDURAL REQUESTS	2
IDENTIFICATION OF THE UNDERSIGNED PARTIES	3
CURRENT CONCERNS ABOUT IBOC DIGITALIZATION TECHNOLOGY	4
RESOLVED CONCERNS ABOUT EUREKA-147 DIGITALIZATION TECHNOLOGY	8
LITIGATION CONSIDERATIONS	10
CONCLUSIONS	10

UNITED STATES OF AMERICA

Before The

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

Establishment Of A Program	**)**	
For Full And Complete Testing	**)**	
And Evaluation Of Eureka-147	**)**	
Digitalization Technology,	**)**	**FCC Docket No. _____**
In Concert With Additional	**)**	
Testing And Evaluation Of	**)**	
IBOC Digitalization Technology	**)**	

PETITION FOR NOTICE OF PROPOSED RULEMAKING

BY THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC PRESS, REC NETWORKS, CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO, WILW RADIO, JAMRAG MAGAZINE AND GREEN HOUSE MAGAZINE, WESLE ANNEMARIE DYMOKE, NICKOLAUS E. LEGGETT, JOHN ANDERSON AND MATTHEW HAYES

THE AMHERST ALLIANCE, and the 9 other undersigned parties, hereby file this Petition for A Notice Of Proposed Rulemaking (NOPR).

The Petition seeks a rulemaking to accomplish two closely related objectives:

(1) Establishment of a new FCC program for the full and complete testing and evaluation of Eureka-147 Digitalization technology, which is used by most of the world;

And

(2) Additional testing of the competing IBOC (In Band On Channel) Digitalization technology, including "cluster" studies and selection of subjective evaluators who are more representative of the radio-listening public.

PROCEDURAL REQUESTS

As required by a recent order of the D.C. Circuit Court, the Commission is presently considering questions of spectrum availability and re-allocation in Docket MM 95-31.

Since the prospect of Digitalization technology in general, and of IBOC Digitalization technology in particular, inescapably raises new questions of spectrum availability and re-allocation, and since Docket MM 95-31 is already dealing with questions of spectrum availability and re-allocation, it makes sense for the Commission to consider both matters at the same time in the same proceeding. Such a consolidated approach would conserve the administrative resources of the Commission, while simultaneously permitting more comprehensive public discussion of issues which are, in truth, functionally and philosophically related.

Consequently, the undersigned parties hereby submit the following procedural motions to the Commission:

(1) We ask the Commission to consolidate this Petition for Notice Of Proposed Rulemaking with the ongoing deliberations in Docket MM 95-31;

And

(2) We also ask the Commission to consolidate the ongoing deliberations in Docket MM 99-325, regarding the possible *mandatory* implementation of IBOC Digitalization technology in the immediate future, without testing and evaluation of the Eureka-147 Digitalization alternative, with Docket MM 95-31;

And

(3) We ask the Commission to insure robust public input on the new, *consolidated* Docket MM 95-31 by extending for 120 days the otherwise applicable Written Comments and Reply Comments deadlines in Docket MM 95-31.

IDENTIFICATION OF THE UNDERSIGNED PARTIES

THE AMHERST ALLIANCE of Denver, VIRGINIA CENTER FOR THE PUBLIC PRESS of Richmond and REC NETWORKS of metropolitan Phoenix are nationally active organizations which promote Low Power Radio in particular, and a more open mass media in general, through advocacy and the dissemination of information.

CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO and WILW RADIO are Part 15 broadcasters, based respectively in metropolitan Boston and Hartford, which aspire to acquire Low Power Radio licenses.

JAMRAG MAGAZINE covers the music scene in metropolitan Detroit, while GREEN HOUSE MAGAZINE is the official publication of the Green Party of Michigan.

JOHN ANDERSON is a journalist in Madison, Wisconsin, with ties to both Internet and radio broadcasting.

NICKOLAUS E. LEGGETT of Northern Virginia is a concerned citizen. He was a Co-Petitioner in FCC Dockets RM-9208 and RM-10330, and his recent Petition For Rulemaking, on equipment field repairability, has just become FCC Docket RM-10412.

WESLE ANNEMARIE DYMOKE of Providence is a former National Coordinator of THE AMHERST ALLIANCE, as well as a former Board Member of PROVIDENCE COMMUNITY RADIO. The latter group was the first non-profit organization in American history to incorporate itself exclusively for the purpose of applying to gain a Low Power FM license.

MATTHEW HAYES of Portland, Oregon is a computer expert who may attempt to found a Low Power Radio station in the foreseeable future.

CURRENT CONCERNS ABOUT IBOC DIGITALIZATION TECHNOLOGY

Certain large corporations, with a strong financial interest in the implementation of IBOC Digitalization technology, have pressed the Commission vigorously for a "rush to judgment" on mandatory IBOC Digitalization, as contemplated in Docket MM 99-325.

However, rapid movement toward mandatory IBOC Digitalization, or even toward voluntary IBOC Digitalization, would be wildly premature.

At present, the case for IBOC Digitalization implementation is clouded by several serious question marks -- *none* of which can be resolved until and unless more information is brought before the Commission.

(1) There is massive evidence that IBOC Digitalization will cause massive interference with, and/or displacement of, many existing broadcasters -- including, but certainly not limited to, the emerging Low Power FM stations.

So far, the testing and evaluation of IBOC Digitalization technology has not been sufficiently complete to lay these widespread concerns about interference to rest. In particular, there have been no "cluster studies" of IBOC broadcasting -- that is, no testing and evaluation of the impact of *multiple* IBOC broadcasters in a given area, but only testing of lone IBOC broadcasters -- even though the "real world" implementation of IBOC Digitalization would surely include many, many IBOC facilities in a single area. Also, strong doubts have been expressed On The Record regarding whether the sampling of subjective evaluations was even remotely representative of the radio-listening public.

We hereby incorporate by reference the criticisms of IBOC testing and evaluation which were made by Patrick Ward, Engineer and Christopher Maxwell in their 2002 Written Comments and Reply Comments in Docket MM 99-325. These Written Comments and Reply Comments were filed on behalf of VIRGINIA CENTER FOR THE PUBLIC PRESS, which is a party to this Petition For Rulemaking.

(2) Those who call for rapid and mandatory implementation of IBOC Digitalization have presented *no* credible and meaningful evidence that members of the radio-listening public are demanding IBOC Digitalization, or even know what it is.

In fact, to the extent there is evidence On The Record either way in Docket MM 99-325, this evidence indicates that rank-and-file radio listeners are *opposed* to IBOC Digitalization. A review of Written Comments and Reply Comments by radio listeners reveals that the vast majority are concerned about displacement of favorite stations.

(3) Some parties have argued, in Docket MM 99-325 and other forums, that the relative merits of IBOC Digitalization, in comparison to the Eureka-147 alternative, are less important than the fact that so much time, energy and money has already been invested, by so many different corporations, in the development, testing and evaluation of IBOC Digitalization. In this regard, we incorporate by reference the MM 99-325 Reply Comments of the National Federation of Community Broadcasters, which acknowledge that the IBOC Digitalization technology is technologically inferior but add nevertheless that IBOC Digitalization technology should be implemented because of the investments which have been made in developing it.

The undersigned parties find it ironic that large broadcasters who loudly advocate "laissez faire" and still more deregulation are now coming to the Commission for a "bailout". Indeed, they are seeking a "bailout" which involves *mandatory* override of market forces, in order to *compel* adoption of IBOC Digitalization, and with it the spectre of *government-imposed* reductions in the number of competitors on the airwaves.

We incorporate by reference the initial MM 99-325 Written Comments of THE AMHERST ALLIANCE, a party to this Petition, as filed in December of 1999. At that time, Amherst conceded there might be a case for allowing recovery of some or all of the "sunk costs" involved in developing IBOC Digitalization technology. Amherst quickly added, however, that the mechanism for any such cost recovery should be "targeted and direct" (for example, authorizing a reasonable surcharge on certain services). Recovery

of reasonable investment costs should *not* be arranged by mandating adoption of a dangerously flawed technology that could, in the end, cause the broadcasting industry in general to lose far more than a handful of its larger members have gained.

On this point, all of the undersigned parties stand behind the 1999 Written Comments of THE AMHERST ALLIANCE.

In addition to the other compelling reasons to avoid a "rush to judgment" in favor of rapid and mandatory IBOC implementation, we submit that the Commission should first solicit public input on two important questions:

(a) Whether, as a matter of law and/or philosophy, the Commission should assure that broadcasters who have invested in IBOC technology will be able to recover some or all of the funds they have *voluntarily* invested, without ever having received any advance guarantee from the Commission that IBOC Digitalization would ever be implemented;

And

(b) If so, which alternative mechanisms for cost recovery, other than approving implementation of IBOC Digitalization, are feasible, equitable and otherwise desirable.

(4) Finally, the undersigned parties note that the issue of *IBOC royalties* has surfaced only recently -- in March 19, 2002 Reply Comments, in Docket MM 99-325, by Kings Bay Radio of Georgia.

We incorporate those Reply Comments by reference. In those Reply Comments, we note, Kings Bay Radio withdraws its previous endorsement of IBOC Digitalization

and faults the developers of IBOC technology for attempting to bury their large proposed royalties in the fine print.

The Commission would be ill-advised to proceed with IBOC Digitalization at a time when *any* of the concerns we have noted, let alone all four, are still unresolved.

RESOLVED CONCERNS ABOUT EUREKA-147 DIGITALIZATION TECHNOLOGY

At a time when so many grave questions hang over IBOC Digitalization technology, we remind the Commission that it seriously considered the alternative of Eureka-147 Digitalization technology as recently as the early 1990's.

The Commission chose IBOC technology, over the far less disruptive Eureka-147 technology, by a margin of only 1 vote. Indeed, IBOC was put on the table only *after* the surfacing of concerns about Eureka-147 which have since been resolved.

(1) The Pentagon originally triggered the Commission's consideration of IBOC technology by expressing strong concern about Eureka-147's use of the L Band, which is also used by the military for missile and aircraft telemetry and guidance.

Since then, however, concerns about the military's needs for the L Band have been resolved by the Commission itself, in FCC Docket MM 00-221. In its MM 00-221 decision, reached in December of 2001, the FCC decided to allow partial use of the L Band by commercial wireless interests. National security was not seen as an obstacle.

As evidence for the proposition that national security concerns no longer preclude the adoption of Eureka-147 Digitalization technology, we hereby incorporate by reference FCC Docket MM 00-221 and all of the documents contained therein, including the Commission's Report and Order.

(2) A lesser reservation about the adoption of Eureka-147 technology, back in the early 1990's, was the assertion of certain technical limitations in the technology. Whatever the ultimate merits of this assertion, the point is now moot. Previous concerns about possible technical limitations of Eureka-147 have been resolved by the advent of software defined radio, as examined by the Commission in FCC Docket MM 00-47.

As evidence for the proposition that software defined radio has resolved the earlier technical concerns about Eureka-147 Digitalization, we hereby incorporate by reference FCC Docket MM 00-47 and all of the documents contained therein.

We stress, as a final point, that every Digitalized nation on Earth has selected Eureka-147 technology. While we know that sometimes the United States can be right while the rest of the world is wrong, it is still worthwhile to confirm or deny the rest of the world's reasoning by giving Eureka-147 a full and complete testing and evaluation.

LITIGATION CONSIDERATIONS

We note the strong possibility that IBOC Digitalization will lead to the filing of lawsuits by adversely affected radio stations, and/or by their listeners, and perhaps by adversely affected license applicants as well. This state of affairs is particularly likely to develop, and the plaintiffs are likely to have a better chance to prevail, if the Commission has made the misstep of ordering mandatory IBOC implementation, or even voluntary implementation, on the basis of inadequate information about IBOC and essentially *no* information about Eureka-147.

CONCLUSIONS

For the reasons we have set forth herein, we urge the Commission to take the following actions:

(1) Initiate a rulemaking to establish a program for the full and complete testing of Eureka-147 Digitalization technology, with any decision on the possible implementation of IBOC Digitalization technology to be held in abeyance until the final results of this program have been reported to the Commission;

And

(2) Simultaneously initiate additional testing and evaluation of the IBOC Digitalization technology, including the use of "cluster studies" that examine the impact of multiple IBOC facilities in one or more given geographical areas, and also including

the extensive use of representative members of the listening public for subjective evaluations of the IBOC Digitalization technology, with any decision on the possible implementation of IBOC Digitalization technology to be held in abeyance until the final results of such additional testing and evaluation have been reported to the Commission;

And

(3) Consolidate this Petition For Rulemaking, and also FCC Docket MM 99-325, with the ongoing proceedings on spectrum re-allocation in FCC Docket MM 95-31;

And

(4) Extend the otherwise applicable Written Comments and Reply Comments deadlines in FCC Docket MM 95-31 by an additional 120 days, in order to insure robust public input on the new, *consolidated* Docket.

Respectfully submitted,

Don Schellhardt
Attorney for THE AMHERST ALLIANCE
National Coordinator Emeritus, THE AMHERST ALLIANCE
Co-Petitioner, FCC Dockets RM-9208 and RM-10330
7050 Montview Boulevard
#175
Denver, Colorado 80220
dschellhardt@student.law.du.edu
(303) 871-6758

Christopher Maxwell
Secretary
For VIRGINIA CENTER FOR THE PUBLIC PRESS
1621 West Broad Street
Richmond, Virginia 23220
WRFR@aol.com
(804) 649-9737

Michelle Eyre
For REC NETWORKS
P.O. Box 2408
Tempe, Arizona 85280
michelleeyre@qwest.net

Steven Provizer
For CITIZENS' MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO
451 Cambridge Street
Allston, Massachusetts 02134
improv@speakeasy.net

William C. Walker
Proprietor and General Manager
WILW RADIO
124 Tunxis Road
West Hartford, Connecticut 06107
kwaq@peoplepc.com

Tom Ness, Editor and Publisher, and Susan Ness
For JAMRAG MAGAZINE and GREEN HOUSE MAGAZINE
22757 Woodward Avenue
Box 20076
Ferndale, Michigan 48220
jamrag@glis.net

Wesle AnneMarie Dymoke
National Coordinator Emeritus, THE AMHERST ALLIANCE
Founding Board Member, PROVIDENCE COMMUNITY RADIO
P.O. Box 2346, East Side
Providence, Rhode Island 02906
ao780@osfn.org

Nickolaus E. Leggett
N3NL
Co-Petitioner, FCC Dockets RM-9208 and RM-10330
Petitioner, RM-10412
1432 Northgate Square
#2A
Reston, Virginia 20190
nleggett@earthlink.net
(703) 709-0752

John Anderson
Radio and Internet Journalist
5227 Spaanem Avenue
Madison, Wisconsin 53716-2074
phlegm@tds.net

Matthew Hayes
7756 Southeast 17th Avenue
Portland, Oregon 02906
matthewhades@hotmail.com

Dated: _____

April 12, 2002