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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*

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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 designed radio, as examined by the Commission in FCC Docket MM 00-47.

As evidence for the proposition that software designed 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,

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