

**DON SCHELLHARDT**  
**Government Relations & Family Law Attorney**  
45 Bracewood Road  
Waterbury, Connecticut 06706  
[pioneerpath@hotmail.com](mailto:pioneerpath@hotmail.com)  
(203) 757-1790

October 26, 2002

Federal Communications Commission  
C/o Marlene H. Dortch, Secretary  
The Portals -- 445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

**RE:      *Corrected Copy of Motion For Rehearing in FCC***  
***Docket MM 99-325 (IBOC Radio Digitalization)***

Dear Commissioners and Commission Staff,

Yesterday, October 25, 2002, acting on behalf of THE AMHERST ALLIANCE and 33 other undersigned parties, I filed a Motion For Rehearing in FCC Docket MM 99-325 (IBOC Radio Digitalization).

I have subsequently discovered some *typographical* errors. Consequently, I am now submitting this *corrected* copy of the October 25, 2002 Motion For Rehearing.

*Only* the following changes have been made:

1. *Page 1 of cover letter to the Commission:* "KBIP-LP, *Texas*" has been corrected to "KIBP-LP, *Texas*".
2. *Page i of Table of Contents:* The same correction has been made.
3. *Page 5, at top of page:* Two inadvertently omitted parties to the Motion, "AURICLE COMMUNICATIONS, *New Jersey*" and "KIBP-LP, *Texas*" have been added to the parties listed on this page.
4. *Page 10, in first full paragraph:* The phrase ", discussed in Section D of this Motion", has been deleted.
5. *Page 18, last paragraph:* "14 (??) others" has been corrected to "34 others".

I apologize for all of these typographical errors.

Sincerely,

Don Schellhardt

**DON SCHELLHARDT**  
**Government Relations & Family Law Attorney**  
45 Bracewood Road  
Waterbury, Connecticut 06706  
[pioneerpath@hotmail.com](mailto:pioneerpath@hotmail.com)  
(203) 757-1790

October 25, 2002

Federal Communications Commission  
C/o Marlene H. Dortch, Secretary  
The Portals -- 445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

**RE: Motion For Rehearing, By THE AMHERST ALLIANCE And 33 Others,  
Of The Commission's Selection Of In Band On Channel (IBOC) Technology  
For Radio Digitalization -- In FCC Docket MM 99-325**

Dear Commissioners and Commission Staff:

On behalf of THE AMHERST ALLIANCE and 33 other parties, I hereby submit this Motion For Rehearing of the Commission's October 11, 2002 Report & Order in Docket MM 99-325. In this Report & Order, the Commission has selected In Band On Channel (IBOC) technology as the only technology which may be used for Radio Digitalization.

We acknowledge the FCC's announcement of a *future* rulemaking, designed to resolve the many details of IBOC implementation. However, this Motion For Rehearing appears to be our final non-judicial opportunity to challenge the selection of IBOC itself.

The 34 parties to this Motion For Rehearing are as follows:

THE AMHERST ALLIANCE, *Connecticut*  
VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP), *Virginia*  
CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO, *Massachusetts*  
WILW, *Connecticut*  
AURICLE COMMUNICATIONS (Licensee of WFMU and WXHD), *New Jersey*  
KOL AMI HAVURAH (Licensee of WVJW-LP), *West Virginia*  
SPRYEX COMMUNICATION, *Ohio*  
JAMRAG MAGAZINE AND GREENHOUSE NEWS, *Michigan*  
BEATRADIO, *Minnesota*  
KIPB-LP, *Texas*  
CHALK HILL EDUCATIONAL MEDIA, *Texas*  
REC NETWORKS, *Arizona*  
ROGUE COMMUNICATION, *Washington State*  
JAMES JASON WENTWORTH, *Alaska*  
MATTHEW HAYES, *Oregon*

FCC Docket MM 99-325  
AMHERST ALLIANCE, VCPP Et Al.  
Transmission of Petition For Reconsideration  
October 25, 2002

JOHN DAVIDSON, *California*  
ROD SEGO, *Utah*  
KYLE DRAKE, *Minnesota*  
JOHN ANDERSON, *Wisconsin*  
WILLIAM G. HEBBERT, *Wisconsin*  
JOHNATHAN GRANT, *Indiana*  
ERICH LOEPKE, *Texas*  
ROBERT CHANEY, *Louisiana*  
STEPHEN C. BRINGHURST, *Alabama*  
NICKOLAUS E. LEGGETT, N3NL, *Virginia*  
JOHN ROBERT BENJAMIN, *Pennsylvania*  
WILLIAM H. BEYRER, *Pennsylvania*  
W. REECE NEWTON, *Pennsylvania*  
RICHARD H. SHIVERS, KB3FGJ, *Pennsylvania*  
MIKE ERICKSON, *New York*  
GERALD JOHN MEHRAB, WA2FNQ, *New York*  
KEVIN JOHNSTON, *New York*  
WESLE ANNEMARIE DYMOKE, *Rhode Island*  
JACK FLANAGAN, *Massachusetts*

This Motion For Rehearing is being filed electronically, via the Commission's Electronic Comment Filing System (ECFS) at [www.fcc.gov](http://www.fcc.gov). In addition, a signed original and 11 hard copies are being sent to the Commission's Capitol Heights facility.

Sincerely,

Don Schellhardt  
Attorney For THE AMHERST ALLIANCE,  
Acting On Behalf Of All Parties To This Motion  
45 Bracewood Road  
Waterbury, Connecticut 06706  
[pioneerpath@hotmail.com](mailto:pioneerpath@hotmail.com)  
(203) 757-1790

**UNITED STATES OF AMERICA**  
**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

**Digital Audio Broadcasting Systems )**  
**And Their Impact On Terrestrial ) FCC Docket MM 99-325**  
**Radio Broadcast Service )**

**MOTION FOR REHEARING BY:**

**THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC  
PRESS, CITIZENS MEDIA CORP/ALLSTON-BRIGHTON  
FREE RADIO, WILW, KOL AMI HAVURAH (Licensee of WVJW-LP),  
JAMRAG MAGAZINE AND GREENHOUSE NEWS, BEATRADIO,  
REC NETWORKS, AURICLE COMMUNICATIONS (Licensee of  
WFMU and WXHD), ROGUE COMMUNICATION, SPRYEX  
COMMUNICATION, KIPB-LP, CHALK HILL EDUCATIONAL MEDIA,  
MATTHEW HAYES, JOHN ANDERSON, NICKOLAUS E. LEGGETT,  
JOHN ROBERT BENJAMIN, WESLE ANNEMARIE DYMOKE,  
JAMES JASON WENTWORTH, WILLIAM G. HEBBERT,  
JOHN DAVIDSON, ROD SEGO, JOHNATHAN GRANT, KYLE  
DRAKE, ERICH LOEPKE, STEPHEN C. BRINGHURST, ROBERT  
CHANEY, WILLIAM H. BEYRER, W. REECE NEWTON, RICHARD H.  
SHIVERS, MIKE ERICKSON, GERALD JOHN MEHRAB, KEVIN  
JOHNSTON AND JACK FLANAGAN**

---

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b><u>Introduction</u></b>	<b>1</b>
<b><u>Identification of the Parties</u></b>	
<b><u>To This Motion For Rehearing</u></b>	<b>2</b>

**SUBSTANTIVE PORTIONS  
OF THE MOTION FOR REHEARING**

<b>A. THE COMMISSION'S OCTOBER 11, 2002 DECISION TO APPROVE IBOC RADIO DIGITALIZATION IS PROCEDURALLY PREMATURE</b>	<b>6</b>
<b>1. The Commission Has Acted While A July 18, 2002 Multi-Party Request For Preparation Of An Environmental Impact Statement (EIS) Is Still Pending</b>	<b>9</b>
<b>2. The Commission Has Acted While An April 17, 2002 Multi-Party Petition For Rulemaking, Which Seeks Comparative Testing And Evaluation Of IBOC And Competing Radio Digitalization Technologies, Is Still Pending</b>	<b>11</b>
<b>3. The Commission Has Acted While An October 25, 2001 Petition For Rulemaking On Electromagnetic Radiation (EMR) Is Still Pending</b>	<b>12</b>
<b>4. The Commission Has Acted While A Commission-Proposed Rulemaking On "Blanketing Interference" With Electronic Equipment (Docket 96-62) Is Still Pending</b>	<b>13</b>

<b><i>B. THE COMMISSION'S OCTOBER 11, 2002 DECISION IS BASED ON THE "ARBITRARY AND CAPRICIOUS" APPLICATION OF CRITERIA</i></b>	<b>14</b>
<b><i>1. The Commission Sought Public Comments On The National Audubon Society's December 19, 1998 Request For Preparation Of An EIS On TV Digitalization, While Failing To Solicit Public Comments On The July 18, 2002 Multi-Party Request For An EIS On IBOC Radio Digitalization</i></b>	<b>15</b>
<b><i>2. The Commission Has Severely Restricted Low Power Radio Licensing In Order To Minimize Alleged Interference With Larger Radio Stations, But The Commission Did Not Restrict IBOC Digitalization In Order To Minimize Fully Acknowledged Interference With Smaller Radio Stations</i></b>	<b>16</b>
<b><i>C. iBIQUITY DIGITAL CORPORATION HAS MIS-IDENTIFIED PARTIES TO THE JULY 18, 2002 REQUEST FOR PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT (EIS)</i></b>	<b>16</b>

***F. CONCLUSION***

**19**

**Signatory Pages**

**20**

**UNITED STATES OF AMERICA**  
**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

**Digital Audio Broadcasting Systems )**  
**And Their Impact On Terrestrial ) FCC Docket MM 99-325**  
**Radio Broadcast Service )**

---

**MOTION FOR REHEARING BY:**  
**THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC**  
**PRESS, CITIZENS MEDIA CORP/ALLSTON-BRIGHTON**  
**FREE RADIO, WILW, KOL AMI HAVURAH,**  
***JAMRAG* MAGAZINE AND *GREENHOUSE NEWS*, BEATRADIO,**  
**REC NETWORKS, ROGUE COMMUNICATION, AURICLE**  
**COMMUNICATIONS (Licensee of WFMU and WXHD), SPRYEX**  
**COMMUNICATIONS, KIBP-LP, CHALK HILL EDUCATIONAL MEDIA,**  
**MATTHEW HAYES, JOHN ANDERSON, NICKOLAUS E. LEGGETT,**  
**JOHN ROBERT BENJAMIN, WESLE ANNEMARIE DYMOKE,**  
**JAMES JASON WENTWORTH, WILLIAM G. HEBBERT,**  
**JOHN DAVIDSON, JOHNATHAN GRANT, ROD SEGO,**  
**KYLE DRAKE, ERICH LOEPKE, STEPHEN C. BRINGHURST,**  
**ROBERT CHANEY, WILLIAM H. BEYRER, W. REECE NEWTON,**  
**RICHARD H. SHIVERS, MIKE ERICKSON, GERALD JOHN MEHRAB,**  
**KEVIN JOHNSTON AND JACK FLANAGAN**

**We are a coalition of 13 organizations and 21 individuals.**

**We are united in urging the FCC to reconsider its decision to**

**select In Band On Channel (IBOC) technology for Radio**

**Digitalization. This decision was made in an October 11, 2002**

**Report & Order in FCC Docket MM 99-325.**

**Identification of the Parties To  
This Motion For Rehearing**

**The 34 parties to this Motion For Hearing can be classified into one of 4 sub-categories. In the case of each sub-category, organizations and other institutions are listed first, followed by individuals.**

**1. The following 9 parties to this Motion For Rehearing are also parties to *both* the July 18, 2002 Request For Preparation of an Environmental Impact Statement (EIS) *and* the April 17, 2002 Petition For Rulemaking (currently placed in PRM02MB) on comparative evaluation of IBOC and other Digitalization technologies:**

**THE AMHERST ALLIANCE, *Waterbury, Connecticut*  
A Net-based, nationwide citizens' advocacy group for media  
diversity**

**VIRGINIA CENTER FOR THE PUBLIC PRESS (VCPP), *Richmond,  
Virginia***

**An information and advocacy center for media diversity,  
whose Secretary is seeking a Low Power FM license for WRFR**

**CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO,  
*Boston, Massachusetts*  
A Part 15 radio broadcaster**

**REC NETWORKS, *Tempe, Arizona*  
An information and advocacy center for media diversity  
and an aspiring Low Power FM broadcaster**

**ROGUE COMMUNICATION, *Lake Forest Park, Washington*  
An information and advocacy center, and consulting firm,  
on mass communications and media diversity**

**JAMRAG MAGAZINE AND *GREEN HOUSE NEWS, Ferndale,  
Michigan*  
A magazine covering the music scene in metropolitan Detroit *and*  
the official publication of the Green Party of Michigan**

**MATTHEW HAYES, *Portland, Oregon*  
An aspiring Low Power FM broadcaster**

**NICKOLAUS E. LEGGETT, *N3NL, Reston, Virginia*  
A concerned citizen, Amateur Radio Service operator and author  
or co-author of several Petitions For Rulemaking to the FCC  
(including RM-9208, which triggered the FCC deliberations that  
ultimately led to the new Low Power Radio Service)**

**JOHN ANDERSON, *Madison, Wisconsin*  
An established journalist on “mainstream” radio *and*  
an Internet broadcaster**

**2. The following 2 parties to this Motion For Rehearing  
are also parties to the July 18, 2002 Request for an EIS:**

**BEATRADIO, *Minneapolis, Minnesota***  
**Internet broadcaster and aspiring Low Power FM broadcaster**

**JOHN ROBERT BENJAMIN, *Marienville, Pennsylvania***  
**An aspiring Low Power FM broadcaster**

**3. The following 3 parties to this Motion For Rehearing are also parties to the April 17, 2002 Petition For Rulemaking on comparative evaluation of IBOC and other Digitalization technologies:**

**KOL AMI HAVURAH, *Benwood, West Virginia***  
**Licensee of WVJW-LP,**  
**a Low Power FM broadcaster**

**WILW, *West Hartford, Connecticut***  
**A Part 15 radio broadcaster,**  
**owned by an expert on Low Power AM technology**

**WESLE ANNEMARIE DYMOKE, *Providence, Rhode Island***  
**Co-founder of PROVIDENCE COMMUNITY RADIO,**  
**an aspiring Low Power FM broadcaster,**  
**and former National Coordinator of THE AMHERST ALLIANCE**

**4. 20 parties to this Motion For Rehearing are not parties to *either* the July 18, 2002 Request for an EIS *or* the April 17, 2002 Petition For Rulemaking.**

**AURICLE COMMUNICATIONS, *New Jersey***  
**Licensee of WFMU and WXHD**

**KIPB-LP, *Texas***  
**A Low Power FM broadcaster**

**JAMES JASON WENTWORTH, *Fairbanks, Alaska***  
**Aspiring Part 15 broadcaster**

**JOHN DAVIDSON, *La Jolla, California***  
**Concerned citizen**

**ROD SEGO, *Provo, Utah***  
**Concerned citizen**

**KYLE DRAKE, *Plymouth, Minnesota***  
**Radio engineer and concerned citizen**

**WILLIAM G. HEBBERT, *Bayside, Wisconsin***  
**Concerned citizen**

**JOHNATHAN GRANT, *Kokomo, Indiana***  
**Aspiring Low Power FM broadcaster**

**ERICH LOEPKE, *Fort Worth, Texas***  
**Concerned citizen**

**ROBERT CHANEY, *Baton Rouge, Louisiana***  
**Concerned citizen**

**STEPHEN C. BRINGHURST, *Jacksonville, Alabama***  
**Concerned citizen**

**WILLIAM H. BEYRER, *Chambersburg, Pennsylvania***  
**Concerned citizen**

**W. REECE NEWTON, *Cleona, Pennsylvania***  
**Concerned citizen**

**RICHARD H. SHIVERS, KB3FGJ, *Philadelphia, Pennsylvania***  
**Amateur Radio Service operator and concerned citizen**

**MIKE ERICKSON, *North Babylon, New York***  
**Concerned citizen**

**GERALD JOHN MEHRAB, WA2FNQ, *Northport, New York***  
**Radio/TV engineer, Amateur Radio Service operator and  
concerned citizen**

**KEVIN JOHNSTON, *Johnson City, New York***  
**Part 15 broadcaster**

**JACK FLANAGAN, *Acton, Massachusetts***  
**Concerned citizen**

***A. THE COMMISSION'S OCTOBER 11, 2002  
DECISION TO APPROVE IBOC RADIO DIGITALIZATION  
IS PROCEDURALLY PREMATURE***

**The Commission made its decision to approve *IBOC Radio*  
Digitalization while directly relevant Commission proceedings  
were still pending. By making its selection of IBOC technology  
*before* completing its work on several ongoing and relevant  
proceedings, the Commission has undercut the Administrative**

**Procedure Act, as well as the “due process” clause of the Constitution, in at least two fundamental respects.**

***First:* To the extent that the approval of IBOC *precludes or erodes* the Commission’s future ability to adopt policies advocated by parties to the ongoing proceedings, the Commission is functionally denying those parties their right to be heard by the Commission. That is: The practical result of approving IBOC Radio Digitalization, without *first* concluding other proceedings that are related to and/or affected by that decision, is a *functional pre-judgment* of some or all of the issues raised in those other proceedings. Whatever the Commission’s judgments in those proceedings may ultimately be, they must be *judgments, On The Record*, rather than *pre-judgments*, achieved indirectly and, from the public’s perspective, invisibly.**

**Those parties who have initiated and/or engaged in these pending proceedings are legally entitled to responses from the Commission, On The Record, which are detailed enough to reflect careful consideration of the record *and also* official**

enough to be appealable to a court, if one or more of the parties deem it necessary. These are *fundamental procedural rights*, which the decision on IBOC has indirectly, but tangibly, denied to participants in these pending proceedings.

***Second:*** The Commission's effective pre-judgment of other relevant proceedings *also means* that the Commission, when reaching its decision on IBOC, acted in the absence of relevant information that might have been generated by first bringing those other proceedings to completion. In effect, the Commission *deliberately deprived itself of potentially available information*, when there was no compelling reason to do so.

The very process of processing the pending proceedings in question, which are enumerated below, would have made available to the Commission important new information on the human health effects of Radio Frequency emissions; the effects on electronic equipment of "blanketing interference"; other possible environmental implications of IBOC Radio Digitalization *and also* the merits of technological alternatives to IBOC,

**including (but not limited to) the globally popular Eureka-147.**

**Instead, the Commission has approved IBOC in reliance on an information base that the Commission itself has artificially narrowed. Contrary to fundamental concepts of “due process of law”, the Commission has blinded itself, by its own hand.**

**The specific pre-judged proceedings are discussed below.**

***1. The Commission Has Acted While A July 18, 2002 Multi-Party Request For Preparation Of An Environmental Impact Statement (EIS) Is Still Pending***

**On July 18, 2002, many of the parties to this Motion For Rehearing filed, in FCC Docket MM 99-325 (the IBOC Radio Digitalization Docket), a Multi-Party Request for a programmatic EIS on the overall consequences of the radio broadcasting industry’s contemplated conversion to IBOC Digitalization.**

**This EIS Request was filed by a coalition of 13 parties: THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP), CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO, WLYC-AM, BEATRADIO, REC NETWORKS, ROGUE COMMUNICATION, JAMRAG MAGAZINE AND GREEN HOUSE**

**NEWS, MATTHEW HAYES, JOHN ANDERSON, JOHN ROBERT BENJAMIN and NICKOLAUS E. LEGGETT.**

**The Commission did address this Multi-Party EIS Request in paragraphs 39 and 40 of the IBOC decision. For various reasons, the Commission declined to act upon the EIS Request.**

**This rejection of the EIS Request was not an official *denial* of the EIS Request. That is: No public comments on the EIS Request were ever solicited, meaning that the Commission's rejection of the EIS Request was never based on a record of input from interested parties and the general public, meaning in turn that the Request rejection did not result from the kind of publicly accessible deliberative process envisioned by the the National Environmental Policy Act (NEPA), the Administrative Procedure Act and the "due process" clause of the Constitution.**

**The EIS Request, then, was not so much *denied* as it was *disregarded*. The EIS Request is still pending, in the sense that the parties to the EIS Request have never received a response**

**based on the Commission's evaluation of views and information received from interested parties and the general public.**

***2. The Commission Has Acted While An April 17, 2002 Multi-Party Petition For Rulemaking, Which Seeks Comparative Testing And Evaluation Of IBOC And Competing Radio Digitalization Technologies, Is Still Pending***

**On April 17, 2002, many of the parties to this Motion For Rehearing filed a Petition For Rulemaking that would mandate more complete testing and evaluation of the IBOC technology *and also* require comparable, comparative testing and evaluation of competing Digitalization technologies, notably including the Eureka-147 technology. The Petition For Rulemaking was filed by a coalition of 12 parties: THE AMHERST ALLIANCE, VCPP, CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO, WILW, KOL AMI HAVURAH, REC NETWORKS, ROGUE COMMUNICATION, JAMRAG MAGAZINE AND GREEN HOUSE NEWS, MATTHEW HAYES, JOHN ANDERSON, NICKOLAUS E. LEGGETT and WESLE ANNEMARIE DYMOKE.**

**This Petition was placed in the PRM02MB section of the FCC's Electronic Comment Filing System (ECFS). There it remains, un-Docketed. No public comments have been sought.**

***3. The Commission Has Acted While An October 25, 2001 Petition For Rulemaking On Electromagnetic Radiation (EMR) Is Still Pending***

**On October 25, 2001, a Petition For Rulemaking on EMR was filed by THE EMR NETWORK. THE EMR NETWORK is a nationwide citizens' advocacy group, whose goal is more stringent safety standards to limit maximum exposure to EMR emissions, including Radio Frequency (RF) emissions.**

**THE EMR NETWORK'S October 25, 2001 Petition for more stringent standards was denied by the Commission's Engineering and Technology Office on December 11, 2001. THE EMR NETWORK then filed a Petition For Reconsideration (which, for some reason, is not recorded in the PRM01ET section of the FCC's ECFS), seeking review of the staff's decision by the full Commission. Since then, no apparent action has been taken by the full Commission on this matter.**

However, in paragraph 40 of its IBOC decision, while discussing its decision to disregard the EIS Request made by many of the parties to this Motion For Rehearing, the Commission declared flatly that “existing RF safeguards are adequate”.

This declaration constitutes a *functional pre-judgment* of THE EMR NETWORK’S Petition For Reconsideration of the FCC staff’s denial of the Petition For Rulemaking.

***4. The Commission Has Acted While A Commission-Proposed Rulemaking On “Blanketing Interference” With Electronic Equipment (Docket 96-92) Is Still Pending***

The Commission has already acknowledged that IBOC will create significant radio interference, and precedents with other EMR emissions indicate that some of this interference may also affect appliances, computers and other electronic equipment in areas near the station. Therefore, it is puzzling that the Commission has authorized immediate commencement of “interim” IBOC broadcasts without *first* concluding its *own* pending deliberations on such “blanketing interference”.

**In 1996, the Commission was concerned enough about “blanketing interference” to initiate a rulemaking, *on its own motion*, in Docket 96-92. That was 6 years ago, the final comment deadline has long since come and gone, a substantial body of input from interested parties is now On The Record in this Docket, but no action has ever been taken to either abandon the proposed rule or proceed with a final rule.**

**Surely, the Commission should first review the collected evidence on “blanketing interference” before it authorizes immediate use of a technology which may create more of it.**

***B. THE COMMISSION’S OCTOBER 11, 2002  
DECISION IS BASED ON THE  
“ARBITRARY AND CAPRICIOUS”  
APPLICATION OF CRITERIA***

**Just as the right of parties to be heard, and not pre-judged, lies at the foundation of the law, so does the principle that the law should be impartial. While there are endless**

**exceptions to the law's general rules, and while even a uniform rule may sometimes be tailored to particular circumstances, those who shape the law are accountable for explaining *why* different parties are treated differently.**

**Further, if different treatment and/or impact appears to be attributable to race or gender, or even --- as in this case --- to differences in *wealth* and/or *class*, the differing treatment and/or impact becomes "suspect" under the "equal protection" clause of the Constitution's Fourteenth Amendment.**

***1. The FCC Sought Public Comments On The National Audubon Society's December 11, 1998 Request Request For An EIS On TV Digitalization, While Failing To Solicit Public Comments On The July 18, 2002 Multi-Party Request For An EIS On IBOC Radio Digitalization***

**The Report & Order does not explain, or even acknowledge, the different treatment.**

**2. In Its January 28, 2000 Final Rule On Establishment Of A Low Power Radio Service, The Commission Withdrew The Proposed Rule's Full Liberalization Of Adjacent Channel Spacing, Citing Concerns About Alleged Radio Interference By 100-Watt Low Power FM Broadcasters --- But Now The Commission Is Permitting Virtually Unrestricted IBOC Transmissions, By 50,000-Watt and 100,000-Watt Full Power Broadcasters, Even In The Face Of Fully Acknowledged Radio Interference That This Will Cause**

**The Report & Order does not explain, or even acknowledge, this different treatment. Why must extreme caution be exercised when a 100-watt station *might* interfere with a 100,000-watt station --- but not when it is *fully acknowledged* that a 100,000-watt station *will* interfere with a 100-watt station?**

**C. *iBIQUITY DIGITAL CORPORATION HAS MIS-IDENTIFIED PARTIES TO THE JULY 18, 2002 REQUEST FOR PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT (EIS)***

**We take this opportunity to correct, On The Record, a minor factual error with major legal implications.**

**In its August 6, 2002 Supplemental Response to the July 18, 2002 Multi-Party EIS Request, iBiquity Digital Corporation incorrectly identifies the parties to the EIS Request. These parties are mis-identified as “Don Schellhardt Et Al.”, rather than correctly described as “THE AMHERST ALLIANCE Et Al.”**

**We presume that this error was unintentional, but it is nevertheless more than merely a semantic point. Potentially, the error in identification poses serious legal implications. It implies, in effect, that Don Schellhardt and THE AMHERST ALLIANCE are one and the same.**

**However, Don Schellhardt only *represents* THE AMHERST ALLIANCE, as its *current* attorney. Although he was one of 2 co-founders of THE AMHERST ALLIANCE, at a 1998 meeting in Amherst, Massachusetts, and although he also served as Amherst’s first National Coordinator from 1998 into 2000, he is still only *one Member of a nationwide* organization.**

**With or without Don Schellhardt, Amherst is *a collective and independent entity*, governed through Internet consultations**

**among its active Members across the United States.**

**Whether or not Don Schellhardt continues to serve as the attorney for THE AMHERST ALLIANCE, Amherst *as an institution* retains the right to prepare and submit future regulatory filings on IBOC Radio Digitalization, on other Radio Digitalization technologies and, indeed, on any matters which could expand or contract the number of independent voices in America's mass media. Amherst, *as an institution*, also retains the right to seek injunctive relief in court, when and if such action is timely and appropriate, regardless of who its counsel might be at the time.**

**By the same token, *each and every one of the 34 other parties to this Motion For Rehearing reserves, expressly, its own independent rights to prepare and submit future regulatory filings, and/or to seek timely and appropriate injunctive relief in court*, either individually or in concert with others, regardless of whether or not THE AMHERST ALLIANCE chooses to join in one or more of these activities.**

***F. CONCLUSION***

**For the reasons we have set forth herein, THE AMHERST ALLIANCE, and the 33 other undersigned parties, strongly urge the Federal Communications Commission to reconsider its October 11, 2002 Report & Order in FCC Docket MM 99-325, selecting IBOC technology as the technology for Radio Digitalization.**

**We reserve the right to file supplemental documents with respect to this Motion For Rehearing.**

**Respectfully submitted,**

---

**Don Schellhardt**  
**Attorney for THE AMHERST ALLIANCE**  
**45 Bracewood Road**  
**Waterbury, Connecticut 06706**  
[pioneerpath@hotmail.com](mailto:pioneerpath@hotmail.com)  
**(203) 757-1790**

---

**Christopher Maxwell**  
**Secretary**  
**VIRGINIA CENTER FOR**  
**THE PUBLIC PRESS**  
**1621 Broad Street**  
**Richmond, Virginia 23220**  
[WRFR@aol.com](mailto:WRFR@aol.com)  
**(804) 649-9737**

---

**Stephen Provizer**  
**For CITIZENS MEDIA CORP/**  
**ALLSTON-BRIGHTON**  
**FREE RADIO**  
**451 Cambridge Road**  
**Boston, Massachusetts 02134**  
[improv@speakeasy.net](mailto:improv@speakeasy.net)

---

**Michelle Eyre**  
**For REC NETWORKS**  
**P.O. Box 2408**  
**Tempe, Arizona 85280-2408**  
[michelleeyre@qwest.net](mailto:michelleeyre@qwest.net)

---

**Ted M. Coopman**  
**For ROGUE COMMUNICATION**  
**19551 38<sup>th</sup> Avenue**  
**Lake Forest Park, Washington 98155**  
[rogue@roguecom.com](mailto:rogue@roguecom.com)  
**(206/361-0501)**

---

**William C. Walker III**  
**For WILW**  
**225 Brighthurst Lane**  
**West Hartford, Connecticut**  
[wilw@wilw.com](mailto:wilw@wilw.com)

---

**Rabbi Bryan K. French**  
**For KOL AMI HAVURAH,**  
**Licensee of WJWV-LP**  
**489 Benwood Hill Drive**  
**Benwood, West Virginia 26031**  
[bryan27@yahoo.com](mailto:bryan27@yahoo.com)

---

**Alan Freed**  
**For BEATRADIO**  
**P.O. Box 3333**  
**Minneapolis, Minnesota 55403**  
[beatradio@beatworld.com](mailto:beatradio@beatworld.com)

---

**Tom and Susan Ness**  
**Co-Publishers,**  
***JAMRAG MAGAZINE***  
**Co-Administrators,**  
***GREEN HOUSE NEWS***  
**P.O. Box 70006**  
**Ferndale, Michigan 48220**  
[jamrag@glis.net](mailto:jamrag@glis.net)

---

**Ken Freedman**  
**For AURICLE COMMUNICATIONS,**  
**Licensee of WFMU and WXHD**  
**P.O. Box 2011**  
**Jersey City, New Jersey 07303-2011**  
[Freedman.Ken@wfmu.org](mailto:Freedman.Ken@wfmu.org)

---

**William C. Doerner**  
**For KIBP-LP, *Padre Island***  
**P.O. Box 18400**  
**Corpus Christi, Texas**  
[wdoerner@stx.rr.com](mailto:wdoerner@stx.rr.com)

---

**Charles Conrad**  
**For CHALK HILL EDUCATIONAL**  
**MEDIA**  
**P.O. Box 1008**  
**Kilgore, Texas 75663**  
**(903) 643-7711**

---

**William Spry**  
**For SPRYEX COMMUNICATIONS,**  
**Applicant for Class A**  
**Non-Commercial Educational**  
**Station License**  
**Hamilton, Ohio**  
[raduga@raduga.net](mailto:raduga@raduga.net)

---

**Matthew Hayes**  
**7756 Southeast 17<sup>th</sup> Avenue**  
**Portland, Oregon 02906**  
[matthewhades@hotmail.com](mailto:matthewhades@hotmail.com)

---

**John Anderson**  
***Radio and Internet Journalist***  
**5227 Spaanem Avenue**  
**Madison, Wisconsin 53716-2076**  
[phlegm@tds.net](mailto:phlegm@tds.net)

---

**John Robert Benjamin**  
**P.O. Box 47**  
**Marienville, Pennsylvania 16239**  
[Garfield25@gay.com](mailto:Garfield25@gay.com)

---

**Nickolaus E. Leggett**  
**N3NL**  
**1432 Northgate Square**  
**#2A**  
**Reston, Virginia 20190**  
**[nleggett@earthlink.net](mailto:nleggett@earthlink.net)**  
**(703) 709-0752**

---

**Wesle AnneMarie Dymoke**  
**P.O. Box 2346**  
**East Side**  
**Providence, Rhode Island 02906**  
**[procomrad@as220.org](mailto:procomrad@as220.org)**

---

**James Jason Wentworth**  
**213 2<sup>nd</sup> Avenue**  
**Fairbanks, Alaska 99701-4810**  
**[gida@chugach.net](mailto:gida@chugach.net)**  
**(907) 457-6682**

---

**John Davidson**  
**1425 Deer Hill Court**  
**La Jolla, California 92037**  
**(858) 459-4200**

---

**Rod Sego**  
**P.O. Box 2074**  
**Provo, Utah 84603**

---

**Kyle Drake**  
**12810 37<sup>th</sup> Avenue North**  
**Plymouth, Minnesota 55441**  
[vmalloc@usinternet.com](mailto:vmalloc@usinternet.com)

---

**William G. Hebbert**  
**8965 North Fielding Road**  
**Bayside, Wisconsin 53217**  
**(414) 352-5236**

---

**Johnathan Grant**  
**1407 Schuler Drive**  
**Kokomo, Indiana 46901**  
[me@johnathangrant.com](mailto:me@johnathangrant.com)

---

**Erich Loepke**  
**1833 Canyon Ridge Street**  
**Fort Worth, Texas**  
**(817) 306-7610**  
[\*\*radioTV72@aol.com\*\*](mailto:radioTV72@aol.com)

---

**Robert Chaney**  
**6888 Menlo Drive**  
**Baton Rouge, Louisiana 70808**  
[\*\*farverger@cox.net\*\*](mailto:farverger@cox.net)  
**(225) 767-3014**

---

**Stephen C. Bringhurst**  
**205 Clark Road N.E.**  
**Jacksonville, Alabama 36265-6177**  
[\*\*sbc@hiwaay.net\*\*](mailto:sbc@hiwaay.net)

---

**William H. Beyrer**  
**P.O. Box 382**  
**Chambersburg, Pennsylvania 17201**  
[\*\*bbeyrer@comcast.net\*\*](mailto:bbeyrer@comcast.net)  
**(717) 264-7161**

---

**W. Reece Newton**  
**408 Wilshire Drive**  
**Cleona, Pennsylvania 17042**  
[wrnewton@joust.net](mailto:wrnewton@joust.net)  
**(717) 272-8071**

---

**Richard H. Shivers, KB3FGJ**  
**9029 Eastview Road**  
**Philadelphia, Pennsylvania 19152**  
[KB3FGJ@aol.com](mailto:KB3FGJ@aol.com)

---

**Mike Erickson**  
**653 Windmill Avenue**  
**North Babylon, New York 11703**  
[wirelessmedia@simpsons.com](mailto:wirelessmedia@simpsons.com)

---

**Gerald John Mehrab, WA2FNQ**  
**6 Ambrose Lane**  
**Northport, New York 11768-3205**  
[WA2FNG@optonline.com](mailto:WA2FNG@optonline.com)

---

---

**Kevin Johnston**  
**15 Endicott Avenue**  
**Johnson City, New York 13790**  
**(607) 644-1046**

---

**Jack Flanagan**  
**32 Duggan Road**  
**Acton, Massachusetts 01720**  
[\*\*docflan@attbi.com\*\*](mailto:docflan@attbi.com)

**I hereby certify that copies of this document have been sent, via First Class USPS Mail, postage pre-paid, on this 25<sup>th</sup> day of October, to the following parties:**

**Christine Todd Whitman**  
**Administrator**  
**U.S. Environmental Protection Agency**  
**1200 Pennsylvania Avenue N.W.**  
**Washington, DC 20460**

**Eric J. Menge**  
**Assistant Chief Counsel for**  
**Telecommunications**  
**U.S. Small Business Administration**  
**409 3<sup>rd</sup> Street S.W.**  
**Suite 7800**  
**Washington, DC 20416**

**Robert A. Mazer and R. Edward Price**  
***Counsel for iBiquity Digital Corporation***  
**Vinson & Elkins, L.L.P.**  
**1455 Pennsylvania Avenue N.W.**  
**Washington, DC 20004**

**Albert Shuldiner**  
***Vice President & General Counsel for***  
***iBiquity Digital Corporation***  
**8865 Stanford Boulevard**  
**Suite 202**  
**Columbia, Maryland 21045**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**Don Schellhardt**  
**Attorney For THE AMHERST ALLIANCE,**  
**Acting On Behalf Of All Parties To**  
**This Motion For Rehearing**

**October 25, 2002**