

**UNITED STATES OF AMERICA**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, DC 20554**

**In The Matter Of:** )  
 )  
**Digital Audio Broadcasting Systems** ) **MM Docket 99-325**  
**And Their Impact On** )  
**Terrestrial Broadcasting** )

**REPLY COMMENTS TO THE JANUARY 13**  
**MOTION TO DISMISS**  
**BY JOHN PAVLICA, JR. OF OHIO**

**BY:**

**THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC**  
**PRESS (VCP), CITIZENS MEDIA CORP/ALLSTON-BRIGHTON**  
**FREE RADIO, WILW, AURICLE COMMUNICATIONS**  
**(Licensee of WFMU and KXHD), KOL AMI HAVURAH**  
**(Licensee of WVJW-LP), SPRYEX COMMUNICATIONS,**  
***JAMRAG* MAGAZINE AND *GREENHOUSE NEWS,***  
**BEATRADIO, KBKH-FM, REC NETWORKS, THE KIWANIS CLUB**  
**OF WEST VISALIA, ROGUE COMMUNICATION,**  
**JAMES JASON WENTWORTH, MATTHEW HAYES,**  
**JOHN DAVIDSON, ROD SEGO, KYLE DRAKE,**  
**JOHN ANDERSON, WILLIAM G. HEBBERT, JONATHAN E. GRANT,**  
**ERICH LOEPKE, ROBERT CHANEY, STEPHEN C. BRINGHURST,**  
**NICKOLAUS E. LEGGETT (N3NL), JOHN ROBERT BENJAMIN,**  
**WILLIAM H. BEYRER, W. REECE NEWTON, RICHARD A. SHIVERS**  
**(KB3FGJ), MIKE ERICKSON, GERALD JOHN MENHRAB (WA2FNQ),**  
**KEVIN JOHNSTON, WESLE ANNEMARIE DYMOKE AND**  
**JACK FLANAGAN**

These Reply Comments are submitted on behalf of THE AMHERST ALLIANCE and 35 other signatories of an October 25, 2002 Petition For Reconsideration in FCC Docket MM 99-325. These 36 parties are composed of 15 organizations and 21 individuals. Our coalition includes small radio stations (including some Part 15 broadcasters), aspiring owners of small radio stations, citizens' advocacy groups and old-fashioned "concerned citizens".

Our Petition For Reconsideration, to which the FCC has not yet responded in any manner, calls upon the FCC to overturn or suspend an October 11, 2002 Order -- in which the FCC approved essentially unregulated "interim" Digital Radio broadcasts, using the controversial In Band On Channel (IBOC) Radio Digitalization technology.

In addition, on December 20, 2002 we filed Reply Comments to the Petition For Reconsideration filed by GLEN CLARK & ASSOCIATES on December 10, 2002. In those Reply Comments, we urged the FCC to deny the GC&A Petition, which asks the FCC to relax its current prohibition of IBOC AM broadcasts at night.

**JOHN PAVLICA'S Motion To Dismiss -- And Our Petition For Reconsideration**

It is easily apparent that the Motion To Dismiss, filed in this Docket by John Pavlica, Jr. on January 13, 2003, is not inconsistent with our own Petition For Reconsideration, filed earlier on October 25, 2002. Indeed, far from being inconsistent, the two Motions largely overlap.

Each Motion takes a somewhat different route to the same “bottom line”: that is, suspension of the October 11, 2002 IBOC Order, for a significant period of time, while Digitalization alternatives to IBOC are seriously investigated and evaluated by the FCC. Indeed, REC NETWORKS of Arizona, a party to our Petition For Reconsideration, has also filed recent Reply Comments in support of the new Motion To Dismiss.

Nevertheless, there *are* differences between our Petition For Reconsideration and John Pavlica’s Motion To Dismiss.

The primary difference is in the arguments presented: John Pavlica’s arguments are primarily substantive (addressing the practical impact of IBOC broadcasting). Our arguments are primarily procedural (addressing the Commission’s failure to resolve other pending and directly relevant proceedings before rendering a decision on IBOC, *and also* noting the “arbitrary and capricious” inconsistency between the Commission’s stringent anti-interference restrictions on Low Power FM broadcasts and its resistance to setting major anti-interference restrictions on much more highly powered IBOC broadcasts).

Because of these differences, we ask that the two Motions *not* be consolidated into a single proceeding, with a single decision on both Motions. However, because of the similarities, we also ask that the two Motions be considered *at the same time*, although with separate Commission decisions on each one.

In order to further facilitate separate but simultaneous decision-making on each Motion, we also take the following steps:

1. We hereby incorporate by reference, into the Commission's record for deliberations on the Motion To Dismiss, *all* of the arguments contained in our own Petition For Reconsideration. We want the Commission to be able to consider our own arguments for suspension of the IBOC Order when it considers John Pavlica's arguments for doing the same thing.

2. We hereby incorporate by reference, into the Commission's record for deliberations on the Motion To Dismiss, *all* of the arguments contained in John Pavlica's Motion To Dismiss. We want the Commission to be able to consider John Pavlica's arguments for suspension of the IBOC Order when it considers our own arguments.

With these incorporations of arguments by reference, the only major basis for preferring one Motion over the other will be:

(A) The *specific nature* of the relief requested ( that is: an *indefinite* suspension of the IBOC Order, pending the completion of action on other directly relevant proceedings, and also pending the completion of Commission deliberations on whether potential interference from IBOC stations should be treated much more leniently than potential interference from much smaller Low Power FM stations, *as compared to* a 1-year suspension of the IBOC Order, pending completion of the analytical processes proposed by John Pavlica); AND/OR

(B) The difference in the procedural vehicles employed (that is: our Petition For Reconsideration, *as compared to* John Pavlica's Motion To Dismiss).

**JOHN PAVLICA'S Motion To Dismiss --  
And the GLEN CLARK & ASSOCIATES Petition For Reconsideration**

In our December 20, 2002 Reply Comments to the Glen Clark & Associates Petition For Reconsideration, we urged the Commission to consider, and decide, our Petition For Reconsideration *before* it considers the GLEN CLARK & ASSOCIATES Petition For Reconsideration. Among other arguments, we asserted that considering our Petition first would be the most efficient use of the Commission's resources, since acceptance of our Petition -- and, with it, action to suspend the standing IBOC Order -- would render "moot" the GC&A Petition to expand that Order.

By the same reasoning, it would *also* be more efficient for the Commission to consider John Pavlica's Motion To Dismiss *before* it considers the GC&A Petition For Reconsideration.

Ideally, as we have stated above, our Petition For Reconsideration and the Motion To Dismiss should be considered *at the same time*, but with separate decisions on each Motion. The GC&A Petition should be the *last* Motion considered.

**Conclusion**

For the reasons set forth herein, we urge the FCC to proceed in the manner we have recommended. We also note again our two incorporations by reference.

Respectfully submitted,

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Dated: \_\_\_\_\_  
January 17, 2003

Representing The Following 36 Parties:

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CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO  
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Jersey City, New Jersey

SPRYEX COMMUNICATION  
Hamilton, Ohio

*JAMRAG* MAGAZINE AND *GREENHOUSE NEWS*  
Ferndale, Michigan

BEATRADIO  
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I hereby certify that Service Copies of these Reply Comments have been sent via the U.S. Postal Service, First Class Postage Pre-Paid, to the following parties:

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January 17, 2003