Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Digital Audio Broadcasting Systems	)	MM Docket No. 99-325
And Their Impact On the Terrestrial Radio	)	
Broadcast Service	)	

OPPOSITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS TO THE PETITION FOR RECONSIDERATION OF THE AMHERST ALLIANCE AND 33 OTHERS

The National Association of Broadcasters[1] hereby files in opposition to the Petition for Reconsideration of the Commission's First Report and Order[2] with regard to digital radio broadcasting for America's terrestrial radio broadcasters filed by the Amherst Alliance and 33 Others ("Amherst" or "Amherst Alliance").[3] Simply stated, the Amherst Petition presents no basis for reconsideration of the Commission's First Report and Order and virtually no substance or support for its complaints. Rather, the Amherst Petition and its complaints amount to frivolous charges and makeweight issues, seemingly designed to delay and obstruct the long-awaited roll-out of digital radio for America's listening public and its radio broadcasters. Nothing in the Petition suggests

[1] NAB serves and represents the American broadcast industry as a nonprofit, incorporated association of radio and television stations and broadcast networks.

[2] *First Report and Order*, MM Docket 99-325 (rel. Oct. 11, 2002).

[3] Amherst Alliance and 33 others Motion for Rehearing, MM Docket 99-325, filed Oct. 26, 2002.

that petitioners present genuine issues of relevance in this proceeding, much less evinces an intention to make better the digital radio service for the listening public. The Petition should be denied forthwith.

NAB has participated from the beginning of this proceeding in the Commission's efforts to identify a path and a technology for AM and FM radio broadcasters to bring digital radio to the country's radio broadcast service, and thereby allow radio to remain competitive with other digital media. NAB has supported the Commission's endeavors to reach a digital radio solution efficiently and rapidly, so that this advance in technology can be promptly translated into reality for the public and for radio broadcasters. The Amherst Petition, on the other hand, appears intended only to throw sand in the gears of the deployment of the only realistic digital solution for terrestrial radio in this country. But this Petition presents only makeweight arguments and virtually no substance, none of which can serve to unseat the solid decision-making by the Commission in this proceeding.

The Commission, in its First Report and Order, made solid policy decisions on the basis of reasoned decision-making in favor of IBOC as the method for introducing digital radio in this country. Amherst Alliance objects to the result, but has not articulated reasons sufficient for reconsideration the Commission's results. Its claims of lack of procedural propriety and uneven treatment fail for their own lack of citation or support. The Petition identifies no reason that the Commission was obligated to take the actions it asserts as necessary, such as acting in other proceedings or on other requests, before it reached the well-based conclusions it did in this First Report and Order.

The truth of the matter is that the Commission, for good and valid reasons, rejected other approaches to digital radio and adopted the IBOC solution as the one technology that was workable and that would permit AM and FM radio broadcasters to introduce digital operations efficiently and rapidly. IBOC technology was found by the Commission to allow the simultaneous broadcast of analog and digital signals in the AM and FM bands without disruption of existing analog service and, thus, allow a seamless transition from analog to digital.[4] No amount of make-weight arguments on the part of Amherst Alliance can support reconsideration of such considered decisions.

The Commission carefully considered the out-of-band approach favored by Petitioners and found it woefully lacking. In fact, while Amherst Alliance presses a case for "comparative testing" of competing digital technologies, at 11, the Commission found that "[n]o commenter identified other viable spectrum options [and that] [i]t is clear that, unlike IBOC, an out-of-band DAB approach is no more viable a near-term option today than it was when we first sought comment in this proceeding." R&O at 8. The Commission specifically found that the selection of the Eureka 147 system, supported by Petitioners, "would require the allocation of additional spectrum" and that "[t]his is not a feasible alternative." *Id*. at 9. The Commission reasoned that, "[i]n dramatic contrast to IBOC, Eureka 147 has no active domestic proponent and no appreciable support within the broadcast industry. It is a technology that would require significant broadcast investments in new transmission facilities and impose major service area changes on incumbent broadcasters." *Id*. And, with no available identified spectrum, the Commission was left with little room to decide other than it did: "that the selection of any

[4] *First Report and Order* at 4.

DAB system, including Eureka 147, which would require new spectrum . . . would impede the rapid development of DAB" and that "without a specific spectrum allotment and a specific technology, we simply do not have a defined out-of-band option to consider, much less to evaluate against the DAB criteria enumerated in the NPRM." *Id*. Nonetheless, Amherst Alliance faults the Commission for identifying IBOC as the efficient and rapid path to digital radio without first acting on a petition seeking comparative testing and evaluation of IBOC and competing digital radio technologies. Such frivolous arguments as these and others cannot cause reconsideration and delay the roll-out of the carefully-selected IBOC digital technology.

All other issues in the Amherst Petition are frivolous and should be dismissed as well. Its allegations that the Commission should have acted on its Environmental Impact Statement (EIS) request before reaching a decision here and that it should have solicited specific public comment on that request because it had done so in the (not analogous) DTV proceeding are almost unworthy of comment. Comment was made in this proceeding on the request for an EIS[5] and the Commission responded to the issue by finding that "in this case, the initiation of interim IBOC operations normally will require no construction or tower lighting, and thus, is categorically excluded from environmental processing under 47 C.F.R. §§ 1.1306(a) and (b)." R&O at 39, 40. The DTV situation is dissimilar in critical respects, including that, with DTV, many new towers must be constructed.

Likewise, Amherst's complaint that the Commission should have first acted on a pending Petition for Rulemaking on electromagnetic radiation ("EMR") does not require

[5] *See* Supplemental Response of iBiquity Digital Corporation, MM Docket 99-325, filed Aug. 6, 2002.

the reconsideration requested. The Commission addressed this issue and concluded that "[t]o the extent that IBOC systems raise environmental concerns regarding exposure of members of the public to radiofrequency (RF) radiation under 47 C.F.R. §1.1307(b), our existing RF standards adequately address those concerns." *Id*. at 40. It also found that, since IBOC transmissions will add approximately one percent to a stations' total RF radiation output, "interim IBOC operations by a compliant analog station rarely will jeopardize the station's overall compliance with RF standards." *Id*. The Commission's conclusions with regard to these issues is clearly sound, unlike the complaints of Amherst in these and other regards, including Amherst's complaint that the Commission should have concluded a totally separate rulemaking on "blanketing interference" before acting here.

And, likewise, Amherst's allegation of differential treatment between the LPFM proceeding and that here presents no basis for complaint. With LPFM, there were changes required to the adjacent channel interference criteria, which Congress objected to in making policy decisions about the larger and more efficient use of radio.[6] IBOC operations, in contrast, do not require changes to the spectrum mask or to adjacent channel protection criteria. Particularly telling as to the weight of Amherst's arguments is the two sentences it devotes to this issue, bettering the one sentence it devoted to its argument about unequal treatment of its EIS request.

[6] *See* Radio Broadcasting Preservation Act of 2000, Pub. L. No. 106-553, 114 Stat. 2762 (2000).

NAB thus opposes the Petition for Reconsideration of Amherst Alliance and requests that the Commission summarily deny it.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Henry L. Baumann
Jack N. Goodman
Valerie Schulte

John G. Marino
David H. Layer
NAB Science and Technology

February 19, 2003

CERTIFICATE OF SERVICE

I, Patricia Jones, Legal Secretary for the National Association of Broadcasters, hereby certify that a true and correct copy of the foregoing Opposition of the National Association of Broadcasters to the Petition for Reconsideration of the Amherst Alliance and 33 Others was sent this 19th day of February, 2003, by first-class mail, postage prepaid, to the following:

Don Schellhardt
Government Relations & Family Law Attorney
The Amherst Alliance
45 Bracewood Road
Waterbury, Connecticut 06706

s/_____
Patricia Jones