

WRITTEN TESTIMONY OF
VIRGINIA CENTER FOR THE PUBLIC PRESS
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
DURING
RICHMOND FIELD HEARINGS
ON FOUR MEDIA OWNERSHIP DOCKETS



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

In the Matter of:

MB Docket 02-277	2002 Biennial Regulatory Review Of The Commission's Broadcast Ownership Rules And Other Rules Pursuant To Section 202 Of The Telecommunications Act Of 1996
MM Docket 01-325	Cross-Ownership Of Broadcast Stations And Newspapers
MM Docket 01-317	Rules And Policies Concerning Multiple Ownership Of Radio Broadcast Stations In Local Markets
MM Docket 01-244	Definition Of Radio Markets

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The VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP) hereby submits its Written Testimony for the Richmond Field Hearings of the Federal Communications Commission (FCC). These special Hearings are concerned with the package of pending Dockets on whether to retain, remove or expand current media ownership restrictions.

About VIRGINIA CENTER FOR THE PUBLIC PRESS

VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP) is a non-profit organization, located right here in the City of Richmond. We are constantly engaged in public media education *and* advocacy to promote greater opportunities for everyday Americans to participate in radio and TV broadcasting -- and all other forms of mass media.

Although it no longer stands alone on this issue, Virginia Center For The Public Press was the first organization in our country to publicly challenge the planned adoption of In Band On Channel (IBOC) technology for Digital Radio. Since then, we have been joined in that challenge to IBOC by dozens of others, notably including THE AMHERST ALLIANCE, REC NETWORKS, JAMRAG MAGAZINE, GREENHOUSE NEWS, KOL AMI HAVURAH, CITIZENS MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO and -- most recently -- Leonard Kahn, Professional Engineer.

VCP is represented at today's Hearings by Christopher Maxwell of Richmond. Chris is Vice President of VCP, as well as an active Member of The Amherst Alliance. He operates WRFR, an Internet broadcaster and Part 15 AM radio station, which has also applied for a Low Power FM to serve parts of metropolitan Richmond.

In addition, Chris hosts, manages and produces or arranges for the volunteer production of several periodic taped news and live call-in discussion programs such as "HomeSpun C-Span" (taped versions of local lectures and City Council or School Board hearings in a C-Span style.) on AT&T Cable Channel 6. His show reaches a potential audience of over 52,000 Cable TV subscribers in metropolitan Richmond.

Thank You, FCC

VIRGINIA CENTER FOR THE PUBLIC PRESS commends and congratulates the Federal Communications Commission for its decision to provide this forum for public input from grassroots citizens living "Outside The Beltway". We hope that these Field Hearings will be the start of a new, and growing, tradition in FCC history.

We *especially* commend and congratulate FCC Commissioner Michael Copps, who has labored long and hard to bring these Field Hearings to fruition. This is truly a landmark achievement, in which Commissioner Copps, and his hard-working staff, can take pride.

A Crucial Flaw In FCC-Commissioned Studies

In its February 1 Written Comments in the media ownership Dockets, The Amherst Alliance responded in great detail to FCC Chairman Michael Powell's call for comprehensive public input on various FCC-Commissioned studies on media ownership.

VCP heartily endorses Amherst's comprehensive Written Comments -- including the Legal Analysis by Don Schellhardt, Esquire -- and incorporates by reference, in this Written Testimony, the full text of those Amherst documents.

Nevertheless, Amherst's analysis and criticism of the FCC's media ownership studies did not mention one crucial, and indeed central, flaw: that is, the failure of *any* of these FCC studies to consider the impact of In Band On Channel (IBOC) technology for Digital Radio on the remaining levels of competition in the radio broadcasting industry. Acting in FCC Docket 99-325, the Commission approved the onset of "interim", essentially self-certified, and largely unregulated IBOC broadcasts on October 11, 2002.

As we have already noted, VCP was, to the best of our knowledge, the very first organization in the United States to publicly challenge adoption of the IBOC version of Digital Radio. We continue to oppose it, strongly, as one of the 39 separate parties to the October 25, 2002 Petition For Reconsideration in FCC Docket 99-325.

Whether you love IBOC, tolerate IBOC or hate IBOC, you cannot deny that its adoption will compel -- is, indeed, already compelling -- a major change in the landscape of radio broadcasting in America. By its nature, IBOC technology will increase by over 50% the bandwidth of those stations which adopt it. Given the persistence of spectrum scarcity, this means that someone else's share of the radio spectrum will inevitably be reduced. Thus, whatever you may think of the alleged "benefits" of the IBOC version of Digital Radio, it is beyond question that IBOC will reduce the total range of available radio frequencies -- thereby serving as a catalyst for *additional* media consolidation, even beyond the shocking levels we have already seen in the wake of the 1996 Telecommunications Act.

The Commission itself, during its public discussion of the October 2002 IBOC Approval Order, has publicly acknowledged that IBOC will *inevitably* cause interference with some existing radio stations "outside of their protected contours" for broadcasts by

those existing stations. Now that IBOC broadcasts have actually begun, VCPP, The Amherst Alliance and others are already hearing documented reports of such interference.

Even the Clear Channel Communications Inc. (very remarkably, a key investor in iBiquity Inc., the developer of IBOC-DAB) engineering is now publicly acknowledging interference from WTOP and WLW.

Please note that now-Chairman Michael Powell stated that he voted against LPFM in part because he was concerned that LPFM would take vital listeners from barely-solvent minority independent radio stations. Also note that the National Association of Broadcasters (NAB) cited damage to their members fringe listenership as a key problem for LPFM and Mr. Powell seemed to be receptive to these arguments. Then a mere year later, the NAB argued that those same fringe listeners could be traded away for the alleged 'benefits' of IBOC-DAB. Also please note that National Public Radio (NPR) has *repeatedly* stated that even though FM was very *obviously* superior to AM in sound quality, it did not take off as a popular medium until new content was forced on to the FM dial. IBOC-DAB has unfortunately not heard these repeated pleas for multiple audio channel capability and has *hard wired* what *could* have been a Software Defined Radio standard with flexibility to keep up with consumer tastes and technological improvements ... instead iBiquity has hard wired IBOC-DAB for obsolescence and hard wired it to favor data over multiple audio streams in direct opposition to NPR's requests for flexibility. Thus IBOC-DAB is a direct assault on the improvements that NPR asked for and LPFM would provide FM and AM broadcasters in terms of increased content diversity and localism not just because of its design but also because IBOC-DAB now damages the very same fringe listenership that NPR and the NAB alleged were vital concerns to oppose LPFM. What will be Mr. Powell's legacy to minority broadcasters driven from the air by loss of audience who can no longer hear them under a sea of IBOC-DAB hash from an adjacent station? To make up for this loss, will there finally be a "Citizens Broadcast Band" perhaps as a Software Defined Radio and Spread Spectrum defined technology and standard using the "L-Band"? Will new content start off using the de-facto world standard of Eureka 147 and morphing with the technology and consumers tastes to new codecs with higher and higher bandwidth efficiencies? Perhaps this band could be limited to those destroyed by IBOC and new entrants with single commercial or noncommercial ownership thus ensuring a place for new content and editorial values as well as provide a proving ground for new technology. Please note that the US Military has released their use of the "L-Band" due to Canada's choice to join the rest of the world in use of the World Standard of Eureka 147 on the band from 1452-1492MHz. Why not let local-only broadcasters experiment with this sudden windfall of available bandwidth that is largely unavailable for any other use due to world uses of that band ... at low power levels of say, 100 Watts?

Even "blow torch" stations, such as the Midwest's landmark station WOWO of Fort Wayne, are reportedly being affected. Since only a relative handful of radio stations are now using IBOC technology, we expect that these reports of massive interference are only the first "straws in the wind" -- not the last. VCPP, Amherst and others of IBOC are now investigating these reports of massive interference, including the question of whether any of this interference has occurred *within* the "protected contours" of the affected existing stations. Evidence of such "intra-contour interference" would, of course, cast immediate doubt upon the intellectual foundation for the FCC's IBOC approval Order.

Nevertheless, even if the reported interference from IBOC is limited to locations outside of protected contours, the interference is certainly disrupting the established radio listening patterns of millions of consumers. *Their* interests should *also* be considered, *along with* the legal protections which the Commission has promised to hundreds or thousands of existing stations. Further, even "extra-contour interference" can mean large -- even gigantic -- shifts in market share, up or down, for the stations involved in transmitting and/or receiving IBOC signals.

The media ownership Dockets may not be the place to decide whether the IBOC approval Order was a mistake. That judgment will be made elsewhere, as the FCC rules on Petitions For Reconsideration in Docket 99-325, and/or on Leonard Kahn's Petition For Rulemaking, which requests a stay of IBOC implementation, in PRM03MB.

However, the media ownership Dockets *are* the forum for deciding whether to retain, repeal or expand the existing media ownership restrictions. *This* vital question turns, at least in part, on an assessment of whether existing levels of media competition are sufficient -- or, more precisely, *would be* sufficient, in the absence of current ownership restrictions -- to protect the public interest, and indeed the *national* interest, through competition alone.

As guides to the determination of this question, the FCC-commissioned studies are already seriously flawed, even assuming an unchanged continuation of the post-1996 status quo. When you consider as an additional factor that the post-1996 status quo will *not* remain unchanged, unless the Commission stays or removes its IBOC approval Order, it becomes crystal clear that the Commission should go "back to the drawing board" with its studies before it considers *any* further relaxation of existing media ownership restrictions.

Conclusion

For the reasons we have stated, VIRGINIA CENTER FOR THE PUBLIC PRESS urges the Federal Communications Commission to *retain*, or even *expand*, its existing media ownership restrictions. Full or partial removal of these restrictions should not even be considered until and unless the Commission has commissioned and/or conducted media consolidation studies which include the foreseeable impact of radio interference from the In Band On Channel (IBOC) version of Digital Radio.