WRITTEN COMMENTS OF
THE AMHERST ALLIANCE

IN FCC DOCKET 99-25:
"IN THE MATTER OF
CREATION OF A LOW POWER RADIO SERVICE"

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

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Creation of	)	MM Docket No. 99-25
a Low Power Radio Service	)	
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To the Commission:

Comments of the Amherst Alliance

The Amherst Alliance is a Net-based nationwide citizens' advocacy group for media reform in general and Low Power FM Radio in particular. Amherst has been an active voice in support of LPFM, and in opposition to massive media consolidation, since 1998. The Amherst Alliance proposes the

maintenance of a set of rules for the purpose of protecting LPFM stations and LPFM station applications from displacement or takeover by large organizations. Strong protective rules are needed to preserve local LPFM service in the face of intense market forces that are pushing for highly consolidated and centralized media operations. The protective rules that the Amherst Alliance recommends are presented below:

1. All LPFM stations, once approved for a Construction Permit (CP), should be protected from future displacement by new, upgraded, or relocating full power stations. This rule preserves the local program content and service provided by LPFM stations from being displaced by national content provided by full power stations. This is a key issue in areas of the nation where population growth makes

areas attractive to full power broadcasters. If this restriction is not present, full

power broadcasters will eventually displace most LPFM stations as the nation's

population grows. Amherst is aware of two fully authorized LPFM stations,

in the Carolinas, which have already been displaced in this manner.

2. All LPFM stations, once approved for a Construction Permit (CP), should be protected from future displacement by new, upgraded, or relocating translators. This restriction protects LPFM operation from displacement by translators. Otherwise, large broadcasting interests will flood many areas of the country with translators, extending their dominance of broadcasting and blocking local service by LPFM stations.
3. LPFM stations should displace satellators and other long-distance translators. With the possible exception of rural Alaska, where a higher threshold may be needed, any translator relaying program content which originates more than 50 miles away should be subject to displacement by LPFM stations. This proposal supports the high priority of truly local service by LPFM stations, while still protecting *reasonable* use of translators to supplement local programming.
4. The Commission should allow LPFM stations to have a maximum of one or

two translators. Of course, the acquisition of such LPFM translators should be

subject to the customary requirements for public notice and public comment,

with case-by-case Commission review if any objections are filed.

5. The remaining Class D educational stations in America perform a local programming function similar to that of LPFM stations. Indeed, they have been serving their communities much longer than even the earliest licensed LPFM stations. In addition, like LPFM stations, they offer an opportunity for young adults and other newcomers to gain experience with professional broadcasting. Therefore, all Class D educational stations should have the same authority to displace satellators, and other long distance translators, that Amherst advocates for LPFM stations. Further, since the ranks of Class D educational stations – like the ranks of authorized LPFM stations – have been thinned recently by relocating full power stations, all Class D educational stations should receive the same protection from displacement that Amherst advocates for LPFM stations.
6. Abuses of translator applications, including efforts to block LPFM stations and/or to establish de-facto networks of translators, should be fully investigated. The current "freeze" on translator applications should remain in effect until the backlog of LPFM applications has been processed.
7. Only one LPFM license should be granted to each licensee. Relaxing this requirement can lead to "networks" of LPFM stations.

Networking of LPFM stations can easily defeat the basic goal of providing fundamentally local program content and service. The only exception to this should be the limited ownership of LPFM translators, as proposed in Item 4 above.

8. The present limits on LPFM license transferability should remain as they are, as a way to prevent circumvention of the eligibility criteria for LPFM stations. If the Commission does decide to allow license transferability, great caution should be exercised to assure that the new organization meets *all* of the same eligibility requirements that were met by the originally licensed organization. In addition, if license transferability is permitted, the Commission's regulatory requirements
and enforcement mechanisms should be used to assure that no party profits from
the transfer.
9. The LPFM license eligibility criteria should continue to include the current local residency and local ownership requirements. The ownership and management of LPFM stations should remain in local hands so that local interests will be represented.

10. The Commission should establish 250 Watt LPFM stations for areas with relatively low population density. In previous filings with the Commission, Amherst has indicated that eligibility for LP250 status could be based on: (a) a service area with average population density of 100 persons per square mile or less; or (b) service contours which fall completely outside any of the top 100 media markets, as defined by Arbitron. Amherst now adds that it could also support, as a third alternative, REC Networks' proposal to permit LP250 status for LPFM stations with service contours which fall completely outside of any of the 235 Standard Metropolitan Statistical Areas (SMSAs), as defined by the U.S.

Census Bureau. Of these 3 possible eligibility criteria, Amherst believes that

REC Networks' criteria is the best, in terms of both administrative simplicity

and accuracy in distinguishing truly rural areas from urban and suburban areas.

Whichever of the 3 criteria is chosen, however, LP250 stations can serve places

-- such as small towns, villages, farmlands, ranchlands and Native American

Reservations -- where geographically larger service areas may be needed to assure an LPFM station's economic viability.

11. The Commission should proceed with its long-delayed "filing window" for LP10 stations. While there are rural areas where LPFM stations may not be financially viable without an LP250 option, there are also urban areas where LPFM stations are not logistically viable without an LP10 option. In places where the radio spectrum is extremely congested, economic viability is less of a challenge than in rural areas, but LPFM stations need the ability to shrink to a wattage level that fits

the spectrum openings which are really available. Some communities may never

be able to host an LPFM station if LP100 is the only option. If necessary for

administrative convenience, the LP10 "window" can be divided into 2 or more

parts, with the first part limited to areas with 3 LP100 frequencies or less.

12. Looking to the future, *beyond* the completion of this particular rulemaking, we

again urge the FCC to solicit public comments on a proposed Low Power AM

Radio Service that will complement the existing Low Power FM Radio Service.

A procedural vehicle is already readily available: the Petition For Rulemaking

that was submitted to the Secretary's Office at the Commission by Fred

Baumgartner, C.P.B.E. of Elizabeth, Colorado, in June of 2003. The same

Petition For Rulemaking was later placed into FCC Docket RM-10803 by

Mr. Baumgartner, joined by Nickolaus E. Leggett of Reston, Virginia (who

was acting on behalf of The Amherst Alliance), on October 22, 2003. Then,

recommendations for improving the Baumgartner Petition were submitted

in RM-10803 by THE LOW POWER AM TEAM on December 5, 2003.

THE LOW POWER AM TEAM was an *ad hoc* group of aspiring LPAM

broadcasters and their supporters, led by Kyle Drake of Plymouth, Minnesota.

Its Written Comments reflected a consensus of the LPAM community. Now,

it is time for the FCC to convert the Baumgartner Petition, as modified by the

recommendations of THE LOW POWER AM TEAM, into a proposed rule

that will be a procedural springboard to LPAM. Unless the AM Band, like

the FM Band, is opened to locally based, locally oriented Low Power Radio

stations, areas with extremely congested FM spectrum -- notably including

Metro Detroit and Metro Boston -- will find it difficult, if not impossible, to

host even a nominal body of Low Power Radio broadcasters. Some of the

country's largest metropolitan areas will have few, if any, frequencies available

for Low Power Radio stations *unless* the FCC completes the long-promised

"filing window" for LP10 stations on the FM Band *and also* authorizes new

Low Power Radio stations on the AM Band.

13. Because major expansions of the LPFM Radio Service will be made possible

by reform of statutory restrictions on FM Band adjacent channel spacing, we

strongly commend the Commission for urging Congressional action to repeal

these unjustified legislative restrictions. Although the Commission has clearly

taken a stand, it is still advisable for the FCC to *remind* Congress of the need

for timely action, such as enactment of S. 312: the reform bill sponsored by

U.S. Senators John McCain (R-AZ), Maria Cantwell (D-WA) and Patrick

Leahy(D-VT). In addition, the Commission should call for the introduction of comparable legislation in the U.S. House of Representatives. *In The Meantime:* Since the adjacent channel spacing restrictions that Congress enacted in 2000 were directed only toward Low Power Radio stations on the *FM* Band, the Commission can partly bypass this obstacle by authorizing Low Power Radio stations on the AM Band.

14. The Commission should also urge Congress to exempt *small* commercial stations from the current statutory mandate for allocation of all commercial licenses by auction. Perhaps this important reform could be made a part of the ongoing Congressional deliberations on review and re-authorization of the 1996 Telecommunications Act. While The Amherst Alliance favors

repeal of *all* mandatory station license auctions -- and, indeed, views such

auctions as an impermissible violation of the "equal protection of the laws"

clause of the Fourteenth Amendment to the U.S. Constitution -- we do not,

at present, have a few million dollars available for litigating the point.

In The Meantime: Amherst contends that mandatory license auctions, if not

totally repealed (or otherwise invalidated), should at least leave *some* room

for a "protected enclave" of *small,* locally oriented commercial stations.

Thus, the Commission should urge Congress to exempt from auctions all

Class A and B radio stations, or at the very least all Class A licensees, as

well as any Low Power Radio stations that are licensed on the *AM* Band.

The statutory auctions exemption for LPAM stations, coupled with the lack of such an exemption for LPFM stations, will keep in place the non-commercial nature of the current Low Power FM Radio Service -- while simultaneously empowering the FCC to establish a new, *complementary* Low Power AM Radio Service. In the *complementary* LPAM Radio Service, locally based, locally oriented and locally owned broadcasters will be able to sell *affordable air time* for commercials by small, local businesses that compete against large, national chains.

The Amherst Alliance thanks the Commission for its past and present support of the Low Power FM Radio Service. In addition, Amherst requests the FCC to adopt the proposed rules for the LPFM Radio Service, listed above. Amherst further requests the FCC to

issue a proposed rule for a Low Power AM Radio Service, continue to support S. 312 and urge Congress to exempt the smallest commercial stations from mandatory auctions.

Respectfully submitted,

Stephanie Loveless
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Dated: June 14, 2005