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August 21, 2005

Secretary
Federal Communications Commission
Washington, D.C. 20554

**RE: ADDENDUM To August 19 Additional Written Comments, By 5 Parties,
Conveying Text Of A Petition For Rulemaking To Establish A Commercial
Low Power *AM* Radio Service (Submitted In FCC Docket 99-25)**

Dear Chairman Martin, FCC Commissioners and FCC Staff:

On August 19, 2005, acting on behalf of myself and 4 other parties, I submitted Additional Written Comments in FCC Docket 99-25 (which concerns translator reform, possible expansion of the Low Power FM Radio Service and other possible measures to restore a reasonable localism in broadcasting). The other 4 parties were THE AMHERST ALLIANCE of Michigan, THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN of Michigan, THE LPAM NETWORK of Maine and Nickolaus E. Leggett N3NL of Virginia.

These August 19 Additional Written Comments conveyed the text of an August 19 Petition For Rulemaking -- prepared and filed by the same 5 parties -- to establish a new, complementary, commercial Low Power Radio Service on the *AM* Band.

That Petition For Rulemaking is now on its way to the Commission's Office of the Secretary, via Federal Express to the FCC's Capitol Heights facility. However, when submitting an *electronic* copy of this Petition in Docket 99-25, via the Additional Written Comments, I neglected to include the Certification Page at the end of the document. This page certifies that copies of the Petition have been sent to 2 parties who are mentioned in it: Fred Baumgartner, C.P.B.E. of Colorado and Kyle Drake of Minnesota.

Enclosed is a corrected copy of the Petition, with the Certification Page included. I apologize for my oversight.

Respectfully submitted,

Don Schellhardt, Esquire

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August 19, 2005

Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, Maryland 20743

RE: Petition For Rulemaking To Establish A Low Power AM Radio Service

Dear Chairman Martin, FCC Commissioners and FCC Staff:

Enclosed, having been delivered by Federal Express, are an original and 14 copies of a Petition For Rulemaking to establish a Low Power AM Radio Service.

I am filing this Petition For Rulemaking on behalf of THE AMHERST ALLIANCE of Michigan, THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN of Michigan, THE LPAM NETWORK of Maine, Nickolaus E. Leggett N3NL of Virginia and myself.

The latter 2 parties also co-filed the July 1997 Petition For Rulemaking to establish a Low Power *FM* Radio Service. This earlier Petition led to the FCC's first deliberations on Low Power Radio, in Docket RM-9208, and ultimately opened the door to establishment of a Low Power FM (LPFM) Radio Service, in Docket 99-25, during January of 2000.

Docket 99-25 has recently been re-opened for public comment -- in order to consider possible expansion of the LPFM Radio Service, through translator reform and Priority Service Status for LPFM stations, and *other* possible steps to promote greater localism in broadcasting. Since establishment of Low Power Radio stations on the *AM* Band would clearly serve this latter objective, the Petitioners are also filing Supplemental Written Comments that will make the current Petition part of the record in Docket 99-25.

Sincerely,

Don Schellhardt, Esquire

(For himself *and* THE AMHERST ALLIANCE, THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN, THE LPAM NETWORK and Nickolaus E. Leggett N3NL)

**THE 5-PARTY PETITION FOR RULEMAKING
TO ESTABLISH A COMMERCIAL LOW POWER AM RADIO SERVICE,
SUBMITTED BY
THE AMHERST ALLIANCE,
THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN,
THE LPAM NETWORK,
DON SCHELLHARDT, ESQUIRE
AND
NICKOLAUS E. LEGGETT N3NL**

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UNITED STATES OF AMERICA
Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of:)
)
Creation of a Low Power Radio Service) RM- _____
-- On the AM Broadcast Band) Docket 05- _____
)
)
)

PETITION FOR RULEMAKING
OF THE AMHERST ALLIANCE,
THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN,
THE LPAM NETWORK,
DON SCHELLHARDT, ESQUIRE
AND
NICKOLAUS E. LEGGETT N3NL

The 5 indicated parties hereby submit this Petition For Rulemaking. The Petitioners do so in an effort to expedite and facilitate action by the Commission to establish a new Low Power Radio Service on the AM Band.

It is the Petitioners' intention that a properly designed Low Power AM Radio Service could, and should, operate as a complementary counterpart to the current Low Power FM Radio Service.

The 3 institutional Petitioners are THE AMHERST ALLIANCE and THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN (MMWC), both of which are led by Stephanie Loveless of Michigan (jamrag@glis.net), as well as THE LPAM NETWORK, led by William C. Walker of Maine (lpam@lpam.net).

Amherst is a Net-based, nationwide citizens' advocacy group, which has been fighting since 1998 for media reform in general and Low Power Radio in particular. MMWC is an affiliated organization of performing artists, political activists and concerned citizens, united in their pursuit of more open airwaves for local talent in Metro Detroit and the Great Lakes region.

THE LPAM NETWORK is a national association of aspiring Low Power AM broadcasters, some of them already Part 15 AM operators, who have joined forces to engage in networking, information exchange and advocacy.

Joining these 3 groups are 2 individuals: Don Schellhardt, Esquire of Virginia (pioneerpath@hotmail.com) and Nickolaus E. Leggett, also of Virginia (703/709-0752). It was Don Schellhardt who co-founded Amherst, along with William C. Walker.

Nickolaus Leggett and Don Schellhardt were co-filers of the 1997 Petition For Rulemaking that triggered Docket RM-9208, the FCC's first action on Low Power FM Radio, in 1998. Docket RM-9208 then led to Docket 99-25, which produced the current Low Power FM Radio Service in 2000. Both individuals have also filed other Petitions For Rulemaking with the FCC, including 2 Petitions on possible shielding of vital civilian electronic equipment against a possible Electromagnetic Pulse (EMP) attack (Docket RM-5528, 1986-1987, and RM-10330, 2001-). Nickolaus Leggett, an Amateur Radio Service operator (N3NL), also filed a solo Petition For Notice of Inquiry on whether the FCC should require improved field repairability for Amateur Radio Service equipment (RM-10402, 2001-2002).

In numerous past filings with the FCC, all 5 Petitioners have already urged the FCC to establish a new, commercial Low Power AM Radio Service. Specifically, the 5 Petitioners have urged the FCC to solicit public comments, in a Notice of Proposed Rulemaking, on:

- (1) The Petition For Rulemaking that was filed with the Secretary's Office at the FCC by Frederick M. Baumgartner, C.P.B.E. of Colorado on June 20, 2003, and placed in FCC Docket RM-10803 by Fred Baumgartner and Nick Leggett on October 22, 2003.
AS MODIFIED BY
- (2) The recommendations of the LOW POWER AM TEAM, led by Kyle Drake of Minnesota, which were presented in Written Comments filed in Docket RM-10803 on December 5, 2003.

Since the Commission has not yet acted on the Baumgartner Petition of June 2003, either with or without the modifications proposed by the LOW POWER AM TEAM in December 2003, the Petitioners decided it was time to submit another Petition.

Speculating that perhaps the Commission was simply too burdened by other matters to take the time needed for integration of the Baumgartner Petition with the LOW POWER AM TEAM's recommendations, it was our original intent to assist the FCC by undertaking the work of such integration ourselves. As we proceeded, however, it became increasingly apparent that the Baumgartner Petition was not the best possible starting point for our efforts.

During our deliberations, THE LPAM NETWORK asserted vigorously and persuasively that the Baumgartner Petition, with or without the LOW POWER AM TEAM's proposed modifications, was simply too administratively complex to appeal to an over-burdened, under-funded FCC. In particular, THE LPAM NETWORK contended, the Baumgartner Petition's proposed channel spacing requirements were too complicated.

The rest of the Petitioners were in time persuaded that an administratively simpler proposal was needed in order to make the proposed Low Power AM Radio Service "marketable" at the FCC. We remain in debt to Fred Baumgartner, C.P.B.E. of Colorado for his groundbreaking work on this subject, but in the end we drafted a Petition For Rulemaking which is more truly our own.

A. DESIGN PRINCIPLES FOR THE LOW POWER AM RADIO SERVICE

In designing a new, "post-Baumgartner" proposal for a Low Power AM Radio Service, the 5 Petitioners applied the following 4 principles:

- 1. The new Low Power AM (LPAM) Radio Service should *complement*, not *duplicate*, the currently established Low Power FM (LPFM) Radio Service. While the established LPFM Radio Service is non-commercial and oriented toward non-profit community service, the new Service should be commercial and entrepreneurial. LPAM should serve localities by “building the better mousetraps” of better community coverage ... expanded exposure for local performers ... and affordable radio advertising for small, local businesses.**
- 2. LPAM broadcasters should have opportunities to own more than one station initially, and perhaps add others over time, potentially growing large enough to fill the current gap between small stations and megacorporations. This is the vacuum where mid-sized businesses used to be, in the days before mandatory license auctions and elevation of the legal ceilings on how much of the mass media a single institution may own.**
- 3. The LPAM Radio Service should be fairly simple for the Commissioner to administer *and* fairly simple for LPAM applicants and licensees to utilize.**
- 4. The LPAM Radio Service should be unassailable from the standpoint of potential risks of interference with other radio stations.**

The Baumgartner Petition, while a good “*starting point*” for FCC deliberations and public debates, would not be an optimal “*end result*” due to its administrative complexity.

In addition, the Baumgartner Petition would not allow ownership of multiple stations in different localities. It would, therefore, bar LPAM companies from any chance to grow into mid-sized competitors of the current megacorporations. In fact, the Baumgartner Petition would actually splinter some LPAM stations through the automatic imposition of time-sharing among all mutually exclusive LPAM applicants.

The Petitioners propose allowing ownership of at least 12 stations *nationwide*, with a review of this limit after 3 years. However, we would insure LPAM diversity at any particular location by permitting only one station per owner in any given Metropolitan Statistical Area (MSA), any Metropolitan District thereof or any Micropolitan Area.

B. THE LOW POWER AM RADIO SERVICE PROPOSAL

The 5 Petitioners are in agreement that the new Low Power AM Radio Service should have the characteristics which are set forth below.

- 1. NUMBER OF STATIONS PER OWNER:** As noted above, LPAM broadcasters should be limited to one station per owner in any given Metropolitan Statistical Area (MSA), any Metropolitan District of any MSA and/or any Micropolitan Area. (The definitions of these terms, and a list of qualifying geographical areas, can be found on the Web Site of the Bureau of the Census of the U.S. Department of Commerce.) Despite the limit of one station per owner in each of the indicated areas, LPAM broadcasters should be permitted to acquire at least 12 LPAM stations *nationwide*.
- 2. POLICY OF BARRING ESTABLISHED BROADCASTERS FROM OWNING, FINANCING AND/OR INVESTING IN LPAM RADIO STATIONS:** Carrying over this policy from the LPFM Radio Service makes sense. If the primary rationale for initiating LPAM (or LPFM) is creating *meaningful alternatives on the dial* to large, established broadcasters (whether privately or publicly owned), then allowing established broadcasters to control or influence Low Power Radio stations would be a contradiction in terms.
- 3. RESIDENCY REQUIREMENTS:** Since the LPAM Radio Service is designed to promote small businesses, including small, local advertisers -- rather than the non-profit community service organizations that totally monopolize the current LPFM Radio Service -- the residency requirements should be eased to attract more entrepreneurs to the Service. LPAM licensees should be required to live within 25 miles of *one* of the stations they own, as opposed to the LPFM requirement for residency within 10 miles of *the* single station that is permitted for each licensed group. Further, to maximize the geographical mobility of those radio entrepreneurs who are seeking opportunities, there should be *no* requirement for a minimum length of time spent in the community of residence.
- 4. OTHER LICENSEE ELIGIBILITY REQUIREMENTS:** In contrast to the limitation of LPFM licenses to non-profit community groups, LPAM licenses should be available to individuals and small businesses.
- 5. “BONUS POINTS”:** In contrast to the policy for LPFM, there should be *no* “bonus points” awarded for being an “established” institution. This barrier to market entry should be slashed to *zero*. Instead, a “bonus point” should be awarded for proposing to air worthwhile programming of a nature that is *not* found on the dial in the area being served.

For example, a proposed light jazz radio station in Roanoke, Virginia or Waterbury, Connecticut should automatically have a higher status than a proposal to add another “evangelical Christian” station -- even if the light jazz applicant just arrived from Boston 2 weeks ago and the evangelical applicant is a church with a record of 150 years of service to the community. In the Low Power *AM* Radio Service, *marketable innovations in local programming* should clearly trump “more of the same”, even if “more of the same” is being offered by a group or individual with deep community roots.

6. 3-YEAR REVIEW OF NUMERICAL LIMITS ON STATION OWNERSHIP, POWER CEILINGS AND CHANNEL SPACING REQUIREMENTS: All of these limitations should be reviewed by the Commission, which could then raise them *or* reduce them as appropriate, at a date 3 years after the effective date of the final rule that establishes the LPAM Radio Service. The Commission should consider the actual behavior of LPAM applicants and licensees, *as well as* their actual or potential competitors, under that final rule. At that time, the Commission should also consider the impact of new spectrum-using technologies, notably including the In Band On Channel (IBOC) version of Digital Radio.

The power ceilings and channel spacing requirements for LPAM are the subject of special discussions in Sections C and D of this Petition *and* in the Alternative Proposals Appendix.

7. ABILITY TO AIR COMMERCIALS: All LPAM stations should be able to sell air time to commercial advertisers if they wish.

8. FREEDOM FROM MANDATORY LICENSE AUCTIONS: In order to assure that LPAM stations are not reserved for the most affluent applicants, LPAM stations should be exempted from the 1996 Telecommunications Act mandate for auctioning of *all* commercial radio station licenses (that is, awarding *all* commercial radio licenses to the highest bidder, without any consideration of “the public interest”). Given that the auctions mandate was enacted *before* the Commission began to even *consider* the licensing of Low Power Radio stations, an argument can be made that commercial LPAM stations do not fall within the scope of the original Congressional intent. We urge the Commission to direct its General Counsel’s Office to investigate thoroughly whether this legal argument, and/or another legal argument, would justify action by the Commission to exempt LPAM stations on its own authority (that is, without the need for Congressional action to amend the 1996 Telecommunications Act). *If* the Commission determines that action by Congress is indeed legally necessary, *then* the Petitioners urge the Commission to proceed as follows: (a) issue a final rule to establish a meaningful, viable commercial LPAM Radio Service; (b) set *the effective date* as that date on which Congress enacts legislation to exempt LPAM stations from mandatory license auctions; and (c) urge Congress to adopt such legislation, with a fully developed final rule for Congress to review as it weighs the value of an LPAM exemption from mandatory license auctions.

9. **“CAPACITANCE HATS”:** These should be permitted. They are a technological necessity for efficient LPAM broadcasting.
10. **HORIZONTAL ANTENNAS:** These should be prohibited. They are technologically inefficient.
11. **FENCING REQUIREMENTS:** A fence, with a perimeter of at least 3 feet, should be required to surround each LPAM transmitter. Also: A warning sign should be posted.
12. **TIME SHARING:** This should be optional. It should *never* be made mandatory *unless* a licensee operates substantially less than 24 hours per day.
13. **RESOLUTION OF MUTUALLY EXCLUSIVE LPAM APPLICATIONS, FILED BY LPAM APPLICANTS WITH EQUAL “POINTS”:** These cases should be resolved by the Commission, based upon application of a “public interest” standard. The current, *multi-year deadlock* in Metro Providence, over the single LP100 frequency that is open on the FM Band, shows what can happen when the Commission is unwilling to intervene in a longstanding standoff. (Of course, the standoff in this particular case *may* be resolvable if the FCC ever issues its long-promised “filing window” for LP10 stations on the FM Band.)
14. **STATION HOURS OF OPERATION:** 24/7 broadcasting should be permitted if the LPAM licensee desires. Constant power levels throughout the 24-hour cycle should also be allowed at the LPAM licensee’s option.
15. **PROGRESSION OF LPAM “FILING WINDOWS”:** The first choice of the 5 Petitioners is a simultaneous, nationwide “filing window” for all LPAM applications. However, since the Low Power Radio movement’s experience to date suggests strongly that such simultaneous LPAM filings would not be authorized by the Commission, the second choice of the Petitioners would be sequential Low Power AM “filing windows” that *start* with those geographical areas that currently have the lowest availability of Low Power *FM* stations. That is: The first LPAM stations to be licensed should be located in those areas “where the need is greatest”. The best indicator of that “greatest need” is the degree to which Low Power Radio stations are currently absent from the FM Band.

The Petitioners propose that the Commission should begin LPAM licensing by announcing a 90-day period during which interested parties may file documentation which proves that their MSA, Metropolitan District of an MSA or Micropolitan Area is what THE AMHERST ALLIANCE calls an “Urban Frontier Area” (UFA). This designation means that the area currently has 3 or fewer LP100 frequencies in use by, *or* available for use by, LPFM licensees. After the FCC issues a public list of “nominated” areas whose UFA status has been verified, the first LPAM “filing window” should be opened. Other LPAM “filing windows” should follow in whatever *expeditious* sequence the FCC finds reasonable.

C. POWER CEILINGS AND CHANNEL SPACING REQUIREMENTS

It took the 5 Petitioners only 2 weeks to reach agreement on all of the 15 matters discussed above. On power ceilings and channel spacing requirements, however, an additional 5 weeks of discussion has failed to resolve disagreements.

As a result, the Petitioners have chosen to bring their differences before the Commission. A Chart which depicts the two competing approaches -- one advocated by THE LPAM NETWORK, and the other one advocated by the other 4 Petitioners -- is contained in the Appendix to this Petition For Rulemaking. The Appendix is entitled "Alternative Proposals for Low Power AM Power Ceilings and Channel Spacing Requirements".

The Petitioners stress that the Commission has more channel spacing options on the *AM* Band than it has on the FM Band. The statutory restrictions on channel spacing for Low Power Radio stations, imposed by a "lame duck" Session of Congress in December of 2000, only address Low Power *FM* radio stations. The statute is silent on possible Low Power *AM* radio stations.

In any event, all 5 Petitioners agree that:

The Baumgartner Petition's proposed *channel spacing requirements* are too complex and so extremely cautious that they would limit unreasonably the potential number of frequencies for LPAM stations

And

The undue complexity of the Baumgartner approach can be reduced by simply applying the same channel spacing requirements that normally apply to radio stations

And

Concerns about possible radio interference can be addressed by simply applying, for the purpose of channel spacing calculations, *assumed* wattage levels which are *much* higher than the *actual* maximum wattage (for example, assuming 1000 watts for a Low Power AM station that is actually limited to 100 watts)

The key *differences* among the Petitioners are as follows:

1. THE LPAM NETWORK favors a highly *standardized* approach, reducing the Commission’s administrative burdens to an absolute minimum by bringing the LPAM Radio Service as close as possible to a “turnkey” operation. The group believes any deviation from total standardization could be viewed by the Commission as a “kiss of death”, making the proposal too burdensome to be acceptable. To this end, THE LPAM NETWORK proposes that *all* LPAM stations must have *assumed* maximum wattage of 1000 watts (for channel spacing purposes) and *actual* maximum wattage of 100 watts.

On The Other Hand: THE AMHERST ALLIANCE, THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN, Don Schellhardt, Esquire and Nickolaus E. Leggett believe that case-by-case waivers are absolutely necessary in certain geographic areas. They are concerned that assumed power levels of 1000 watts will make LPAM stations logistically impossible in those (largely urban) areas with congested spectrum, while actual power levels of 100 watts may make LPAM stations financially unsustainable in extremely rural areas with a low rate of advertisers and consumers per mile. Therefore, these other 4 Petitioners favor case-by-case waivers that allow assumed power ceilings of 5 to 50 watts, and actual power ceilings of 1 to 10 watts, in Urban Frontier Areas (as defined earlier). The 4 Petitioners also favor case-by-case waivers to allow assumed power ceilings of 500 to 1250 watts, and actual power ceilings of 101 to 250 watts, in Rural Frontier Areas (defined as locations, covering roughly 12% of the total U.S. population, where station transmitters are outside of any MSA, any Metropolitan District of an MSA or any Micropolitan Area).

2. THE LPAM NETWORK uses a “safety margin” of 10-to-1 between assumed power ceilings and actual power ceilings. The other 4 Petitioners believe that a 5-to-1 “safety margin” is conservative enough.

The Alternative Proposals essentially ask the FCC to decide these key questions:

(a) Does establishment of a “safety margin” against potential interference, based on a high ratio of *assumed* power levels to *actual* power levels, require a ratio of 10-to-1 -- or is a ratio of 5-to-1 sufficient to eliminate possible interference as a concern?

(b) Does administrative simplicity require absolute standardization of power levels and channel spacing requirements -- or can the needs of radio listeners at the urban and rural extremes be addressed through the use of reasonable case-by-case waivers?

A third *possible* question should also be noted:

(c) If the Commission decides that total standardization is needed, in the interest of administrative simplicity, should that standardization be set at a relatively *high* wattage (such as assumed power levels of 1000 watts and actual power levels of 100 watts) -- or should the assumed and actual power levels be set at relatively *low* wattage (such as assumed power levels of 50 watts and actual power levels of 10 watts)?

This third question is moot, at least at the moment, because the Commission is being asked to choose between a standardized approach and an approach which permits case-by-case waivers in certain well-defined geographical areas. It is not being asked to choose between *two* standardized approaches.

However, *if* the FCC decides that its approach *must* be standardized, then those Petitioners who favor case-by-case waivers reserve the right to propose instead a standardized policy at levels other than assumed power ceilings of 1000 watts and actual power ceilings of 100 watts.

D. THE BAUMGARTNER PETITION'S CHANNEL SPACING REQUIREMENTS

The 5 Petitioners certainly hope that our Alternative Proposals, rather than the Baumgartner Petition's proposals, will be the "point of departure" for the FCC's deliberations on power ceilings and channel spacing requirements for LPAM stations. Compared to the Baumgartner Petition, *neither* of the Petitioners' Alternative Proposals is administratively complex.

Nevertheless, prudence compels the 5 Petitioners to address the (hopefully remote) possibility that the Baumgartner Petition's provisions, despite their complexity, might still be chosen as the Commission's "starting point".

As a "hedge" against this possibility, the Petitioners stress that the Baumgartner Petition's approach has *another* serious flaw *in addition to* the difficulty of administering and/or utilizing the proposed standards. That is: The Baumgartner Petition's channel spacing formulae are so *extremely* cautious that they lead to *unduly* restrictive minimum mileage separations.

The Baumgartner Petition's formulae are flawed in 2 major respects:

1. The Baumgartner Petition's channel spacing formulae assume a ground conductivity level of 30. This is the best possible case from the standpoint of advertising rates for commercials on LPAM stations, but the worst possible case from the standpoint of possible LPAM interference with other stations. In reality, national average ground conductivity appears to be roughly 8: only a small fraction of U.S.A. territory has ground conductivity at or near 30. Plugging the highest possible ground conductivity into the channel spacing formulae seriously overstates the typical risk of interference, and thereby *also* seriously overstates the minimum mileage separation that is needed.

And

2. The Baumgartner Petition then proposes to *double* the resulting minimum mileage separations, as a "safety margin", even though these minimum mileage separations are *already* inflated (due to the assumption of the highest possible ground conductivity) *before* the doubling begins.

While the 5 Petitioners recognize the need to build in *some* kind of "safety margin", the Baumgartner Petition's "safety margin" is unjustifiably large. As we have stressed earlier, the wisest choice for the Commission would be disregarding the Baumgartner Petition completely on the matter of power ceilings and channel spacing requirements. If the Commission decides not to heed this advice, then it should select a "starting point" that reduces the Baumgartner Petition's inflated mileage separations by *at least* 25%. A bigger reduction would be better.

E. THE CASE FOR A COMMERCIAL LOW POWER AM RADIO SERVICE

The 5 Petitioners can identify 4 compelling reasons for the Commission to establish a Low Power AM Radio Service -- *and also* to allow the licensed LPAM stations to air commercials.

(1) America's cities need LPAM to share in Low Power Radio. Large urban areas with highly congested FM spectrum now have few, if any, LPFM stations. Some of these areas -- most notably, Metro Detroit and Metro Boston -- are not likely to have room for any LP100 stations *even if* Congress repeals the adjacent channel spacing restrictions that a "lame duck Session" imposed on LPFM stations in December of 2000. The *only* hope for such metropolitan areas to gain a substantial Low Power Radio presence is the *combination* of Low Power Radio stations on the AM Band with a "filing window" for smaller LP10 stations on the FM Band.

In this regard, the 5 Petitioners incorporate by reference the December 22, 2003 Written Comments and *Additional* Written Comments of THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN in Docket RM-10803. The Written Comments, which were filed first, contain the Comments themselves *plus* the names and addresses of more than 200 organizations and individuals who co-signed those Comments. The *Additional* Written Comments convey a technical study by REC NETWORKS of Arizona, which was commissioned by MMWC.

The REC NETWORKS study focused on the potential availability of frequencies for Low Power Radio stations in Metro Detroit. At present, the area has *no* frequencies for LPFM stations.

The study found that LPAM would provide Metro Detroit with frequencies for a total of 4 Low Power Radio stations (assuming none of those frequencies are claimed by other broadcasters first). REC NETWORKS further found that FCC action on the long-promised "filing window" for LP10 stations *might* yield 1 Low Power Radio station on the FM Band. In contrast, adjacent channel spacing reform for LPFM, in and of itself, would do nothing to help Metro Detroit.

The comparable status of Metro Boston is reflected in the January 20, 2004 joint filing, also in Docket RM-10803, by the COMMONWEALTH BROADBAND COLLABORATIVE of Brookline and CITIZENS MEDIA CORPS of Allston.

We incorporate those Joint Written Comments by reference. Other large urban areas are similarly affected, although in some cases to a lesser extent.

(2) Most LPAM stations will need commercials to survive. When, in January of 2000, the FCC wisely decided to establish a Low Power Radio Service on the FM Band, it also chose to make the new LPFM Service 100% non-commercial. The first decision reflected the recommendations of THE AMHERST ALLIANCE, but the second decision did not. Amherst and others had advocated a mix of commercial and non-commercial LPFM licensees.

Fortunately, most LPFM stations, including LP10 stations with suitable service areas, can be financially self-sustaining without the authorization to air commercials (although there is still a need for LP250 stations in some areas).

Unfortunately, this will not be true for most LPAM stations. The modern AM Band is not as popular, or even as well-known, as the FM Band. Low Power Radio stations on the *AM* Band will find it more of a challenge to attract listeners -- or even to gain call sign recognition in the public mind. They will need the additional revenues that commercials can generate. The experience of Part 15 AM stations, operating for years with *extremely* low wattage and range, suggests that the comparatively larger LPAM stations can indeed survive financially. The same experience also indicates, however, that most or all of them will need to air commercials to do so.

(3) Airtime should be affordable for small, local businesses. As the Commission is well aware, disturbingly high concentrations of ownership have developed in the radio industry, and in other mass media industries, during recent years.

In the case of radio, the primary causes have been 2 changes in government policy. Most notably -- thanks to Congressional action, with support from then-President Clinton -- all commercial radio station licenses are now allocated by auction (with licenses going to the highest bidders), rather than through the former Commission practice of considering which applicant can best serve “the public interest”. As another important factor, Congress, the White House and the FCC have all worked together, across political party lines, to raise the previous limits on how much of the mass media a single institution may own. Among other negative consequences of the resulting media ownership concentrations, advertising rates have risen and so have the number of advertisements on the public airwaves. Under “free market” theory, of course, this shouldn’t happen: advertising rates should drop, not rise, as the number of advertisements increases. (Remember “supply and demand”?) This development suggests “thumbs on the scale”, which we believe to be the result of too much market power in the hands of too few corporations. As a senior executive with Clear Channel Communications once put it:

We used to worry that, if our customers were unhappy, they would go to the other guy. Now, we are the other guy.

Sometimes, however, a rising tide doesn’t raise all boats -- and an ebbing tide doesn’t ground all boats, either. In this case, while the higher number of advertisements on the airwaves has meant less visibility per advertisement for all advertisers, the higher advertising rates have had a disproportionately negative impact on small, local, independent businesses.

Back when many radio stations were locally and independently owned, or even family businesses, both Pizza Hut and Mom & Pop Pizza at Main and Third could afford to buy air time. Now the “local” radio stations are mostly (if not totally) Outposts #311 and #403 and ## 555 of Clear Channel Communications, and Outposts #102 and #185 of Cumulus, and so on. Yes, Pizza Hut is paying more for its air time, but it no longer has to worry about competing ads from Mom & Pop Pizza.

Ditto WalMart, CVS, Exxon and so on in their airwaves competition with silenced local businesses. Wall Street has beaten Main Street, leaving it bound and gagged.

Thus, an excessive concentration of market power in the radio industry, and in other mass media industries, has helped to produce excessive concentrations of market power in national retail markets. Locally based LPAM stations with low operating costs, and a high need for locally generated revenues, would have both the ability and the motivation to offer affordable advertising rates -- plus greater visibility per ad -- to small, local, independent businesses, thus helping to restore the earlier balance of power.

(4) The overly concentrated ownership of commercial radio should be challenged -- by allowing challengers to rise. As we noted above, the Congressionally mandated, Presidentially endorsed, basically bi-partisan shift toward allocating all commercial radio licenses to the highest bidders -- coupled with the contemporaneous lifting of media ownership ceilings -- has led to large concentrations of ownership in the radio industry and other mass media industries. One consequence, discussed above, has been higher rates for airwaves advertising and also an increase in the number of advertisements (which means less visibility per ad).

Nevertheless, this is not the only negative consequence. The “one-two punch” of auctions plus acquisitions has also created 2 other great marketplace vacuums.

First, in addition to its harsh impact on small, local businesses, the widespread displacement of small, locally owned radio stations has caused a vacuum of *local broadcast coverage* -- including radical reductions in local news coverage, local features coverage and local On Air discussion forums, but also in access to local entertainment venues by local performing artists. This latter effect was the primary reason why MMWC was formed.

Second, the widespread displacement of small, locally owned radio stations has also prevented some of these stations from growing into larger radio stations and networks.

Thus, a vacuum of competition has been created within the commercial radio industry. License auctions have made it financially impossible for most small, established stations to add more stations -- and similarly impossible for most newcomers to buy their first radio station -- while virtually unchecked corporate acquisitions have converted formerly small, local and independent radio stations into small, centrally programmed outposts of nationwide megacorporate empires. Thus, we see in the commercial radio industry a handful of very large, very prosperous megacorporations, plus a greatly reduced number of small, local, independent and struggling stations.

There is, essentially, nothing in between. There are no new, upwardly mobile contenders for megacorporate status looming on the horizon, either.

The Low Power FM Radio Service, as presently constituted, addresses only the first problem -- or, more precisely, only the first half of the first problem. No LPFM stations are allowed to air commercials, and the FCC's LPFM license eligibility criteria strongly favor LPFM ownership exclusively by long-established organizations with a total focus on "community service". The FCC does not, at present, welcome newcomers and/or entrepreneurs to the LPFM Radio Service.

Thus, the current version of LPFM -- while a major, and vital, step forward from the previous status quo -- still does nothing to reduce air time advertising rates, and almost nothing to provide added, and potentially crucial, local exposure for new performing artists. Nor is the current version of LPFM designed to, or even able to, allow currently small, local and independent radio stations to grow to a size at which they can directly challenge entrenched megacorporate giants.

In short: The FCC's establishment of, and protection of, the current version of LPFM addresses, in part, a "community coverage gap" that runaway media consolidation has created. The 5 Petitioners strongly commend the Commission for taking this important step.

Nevertheless, this step, while necessary, is not sufficient. There remains, in radio and in other mass media industries, a separate, but similarly dangerous, “small business gap”. This currently unaddressed “small business gap” harms the nation by hindering economic growth and also by limiting the free flow of information and ideas.

This latter danger was demonstrated vividly, during the start of the war in Iraq, when a single media megacorporation proved willing and able to yank the music of “The Dixie Chicks” off hundreds of radio stations, nationwide, simultaneously and almost instantaneously. Because the move was made before radio listeners could demonstrate with their music purchases their reactions (if any) to the group’s anti-war remarks, we know that the censorship of “The Dixie Chicks” was made for political reasons -- not business reasons. The First Amendment implications are chilling -- for all of us.

Of course, if there had been a few dozen large corporations left in the radio broadcasting industry, instead of a small fraction of that number, one or more of them might still have tried to censor “The Dixie Chicks”. However, there would have been an important difference of scale. When a justly renowned music group can be threatened with loss of radio play on several dozen stations, as a penalty for expressing the “wrong” political opinion, it is much less intimidating than the threat of lost radio play on several hundred stations -- or, in the possible case of Clear Channel Communications, more than 1,200.

F. CONCLUSION

For the reasons set forth herein, the 5 Petitioners urge the Commission to act favorably, *and* expeditiously, on this Petition For Rulemaking to establish a commercial Low Power AM Radio Service.

Respectfully submitted,

Stephanie Loveless

President

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And

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Dated: August 19, 2005

**APPENDIX
TO THE 5-PARTY PETITION FOR RULEMAKING
TO ESTABLISH A COMMERCIAL LOW POWER AM RADIO SERVICE:**

**ALTERNATIVE PROPOSALS FOR
LOW POWER AM POWER CEILINGS
AND CHANNEL SPACING REQUIREMENTS**

August 19, 2005

**LPAM NETWORK
PROPOSAL**

**AMHERST ALLIANCE/MICHIGAN MUSIC/
SCHELLHARDT/LEGGETT PROPOSAL**

LPAM Stations With Transmitters In:

	URBAN Frontier Areas (UFAs) *	AVERAGE U.S.A. Geographical Areas	RURAL Frontier Areas (RFAs) **
<u>All</u> LPAM Stations, Everywhere In U.S.A.			

**Actual
Maximum
Wattage**

	100 Watts (100W) ***	1-10W	100W	101-250W
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**Assumed
Maximum
Wattage
(For
Channel
Spacing
Purposes)**

	X 10 = 1000 Watts (1000W) ***	X 5 = 10-50W	X 5 = 500W	X 5 = 500-1250W
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FOOTNOTES

- * **An Urban Frontier Area (UFA) is defined by THE AMHERST ALLIANCE as:**
- (a) Any Metropolitan Statistical Area (MSA), any Metropolitan District of an MSA or any Micropolitan Area**
in which
 - (b) 3 or fewer LP100 frequencies are currently in use by, or available for use by, Low Power FM (LPFM) licensees.**
- [For lists and other data regarding MSAs, MSA Metropolitan Districts and/or the newly designated Micropolitan Areas, contact the U.S. Bureau of the Census of the U.S. Department of Commerce.]**
- ** **A Rural Frontier Area (RFA) is defined by THE AMHERST ALLIANCE as any geographical area which does not fall within an MSA, a Metropolitan District of an MSA or a Micropolitan Area. From U.S. Census Bureau data, it appears that roughly 1 American in 8 resides in an RFA.**
- *** **The Alternative Proposal of THE LPAM NETWORK allows for a limited case-by-case waiver in those instances in which an LPAM applicant:**
- (a) Demonstrates that the broadcast spectrum in the relevant area of station operation cannot accommodate a station with an assumed power level of 1000 watts;**
 - (b) Demonstrates that the broadcast spectrum in the relevant area of station operation can accommodate a station with an assumed power level of 500 watts;**
And
 - (c) Agrees, in return for use of an assumed power level of 500 watts, that the station will observe an actual power ceiling of 50 watts.**

CERTIFICATION

I hereby certify, on behalf of the 5 indicated Petitioners, that copies of this Petition have been sent to the following 2 parties, each of whom has been referenced in the Petition:

- 1. Fred C. Baumgartner, C.P.B.E., 29555 County Road 9, Elizabeth, Colorado 80107**

And

- 2. Kyle Drake, Chairman Emeritus, THE LOW POWER AM TEAM, 12810 37th Avenue, Plymouth, Minnesota 55441**

Donald J. Schellhardt, Esquire

August 19, 2005