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 NEW AMERICA FOUNDATION, PROMETHEUS RADIO PROJECT, BENTON FOUNDATION, COMMON CAUSE, CENTER FOR DIGITAL DEMOCRACY, CENTER FOR GOVERNMENTAL STUDIES, AND FREE PRESS

The National Association of Broadcasters (NAB)[1] hereby files in opposition to the Petition for Reconsideration of the Commission's *Second Report and Order*[2] on digital audio broadcasting for America's terrestrial radio broadcast service, filed by New America Foundation, Prometheus Radio Project, Benton Foundation, Common Cause, Center For Digital Democracy, Center For Governmental Studies, and Free Press (NAF).[3]

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[1] The National Association of Broadcasters is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.
[2] *Second Report and Order* in MM Docket No. 99-325, FCC 07-33 (rel. May 31, 2007) (*Second Report and Order; Second R&O)*.
[3] Petition For Reconsideration Of New America Foundation, Prometheus Radio Project, Benton Foundation, Common Cause, Center For Digital Democracy, Center For Governmental Studies, and Free Press, MM Docket No. 99-325, filed September 14, 2007 (Petition; Petitioners; NAF).

I. Introduction

In the *First Report and Order* in this proceeding,[4] the FCC selected in-band, on-channel (IBOC) as the technology for AM and FM digital operations and iBiquity Digital Corporation's "HD Radio" IBOC AM and FM systems as the *de facto* transmission standards for AM and FM digital radio. In doing so, the Commission pointed to IBOC's dramatic improvement in digital audio quality, more robust transmission systems, and the advent of new auxiliary services, as well as the spectrum efficiency of IBOC systems that can accommodate digital operations for all existing AM and FM radio stations on their existing channels, with no additional allocation of spectrum.[5] The Commission also pointed to the benefits of the "hybrid" nature of IBOC, whereby both the analog and digital signals are transmitted within the spectral mask of a single AM or FM channel, and the "backward and forward" compatibility allowing new IBOC radios to receive analog broadcasts from stations that have yet to convert and digital broadcasts from those that have converted, all the while preserving the ability of current radios to receive the analog portions of the "hybrid" broadcast.[6]

In the *Second Report and Order*, the Commission took another important step in defining for radio broadcasters certain service and operational rules for interim "hybrid" digital audio broadcasting, as radio stations across the country continue the rollout of digital audio broadcasting (DAB) within their existing

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[4] *First Report and Order*, MM Docket No. 99-325, 17 FCC Rcd 19990 (2002) (*First R&O*).
[5] *Id*. at ¶¶ 3, 32, *passim*.
[6] *Further Notice of Proposed Rulemaking and Notice of Inquiry*, MM Docket No. 99-325 (*rel*. Apr. 20, 2004) ("*Further Notice*") at ¶¶ 2, 3.

spectrum and in conjunction with their analog broadcast service. The continued implementation of IBOC digital technology, as predicted by the Commission, will allow radio broadcasters to compete in a digital world, to upgrade dramatically the quality of their FM and AM audio offerings, to present exciting new additional services for their audiences and to re-vitalize the AM broadcasting service – all to the great benefit of the listening public.

Despite these tremendous public benefits conveyed by this break-through technology and the IBOC roll-out, Petitioners demand reconsideration of the *Second Report and Order* to continue their quest for a re-writing of the broadcast public interest regulatory framework. They do this despite the fact that their request here for greatly expanded public interest requirements was made the subject of a separate facet of this proceeding with a dedicated *Second Further Notice of Proposed Rulemaking*.[7] They attempt to achieve reconsideration and their goals for new, additional requirements via the unavailing argument that the auction statute should apply when a broadcaster chooses to use IBOC digital technology. The Commission should dismiss their reconsideration petition, however, (1) because their arguments for expanded requirements have been considered and dealt with, (2) because no new evidence is presented to justify their assertions about "additional spectrum" and (3) because the primary argument in the petition is bottomed on a faulty premise.

[7]*Second Further Notice of Proposed Rulemaking* in MM Docket No. 99-325 (rel. May 31, 2007 (*Second Further Notice*).

II. Petitioners' Arguments Have Been Considered.

Petitioners NAF *et al*. here re-argue their case for greatly expanded public interest requirements for IBOC broadcasts, despite the fact that the Commission has considered those arguments, but demurred from adopting new requirements for IBOC at this point and has solicited additional comments in this regard by means of a separate, dedicated further notice.[8]

Petitioners, as they recite,[9] filed comments in response to the *Further Notice* arguing for a radical alteration of the broadcast public interest regulatory framework. *Id*. at 6. The Commission considered their arguments, but decided to not adopt new public interest requirements in the *Second R&O* (at 67), stating that "given the substance and scope of the proposed requirements, we conclude that it is best to defer consideration of any new public interest obligations (of the type envisioned by PIC [NAF *et al.*], for example) so that we can, instead, promptly establish basic operation requirements in this [IBOC] proceeding." *Id*.

Rather than awaiting Commission decisions in the separate, focused phase of this proceeding (where petitioners filed extensive comments and reply comments), petitioners filed the instant Petition re-arguing for the same expansive public interest regime, albeit under a different tack. For this reason alone, the Petition should be denied, as it is presents no new evidence to justify its requests and "it is well established that the Commission does not grant

[8] *Second R&O* at 61-67.
[9] Petition at 5, 6.

reconsideration for the purpose of debating matters on which it has already deliberated."[10]

II. Petitioners Request for Reconsideration Is Based on the Faulty Premise That Additional Spectrum is Being Used For IBOC.

Petitioners have constructed their arguments in the Petition (for invoking the auction provisions under Section 309(j) of the Communications Act) based on the mistaken premise that the *Second R&O*, in authorizing interim IBOC broadcasts, has improperly granted to broadcast licensees "additional spectrum."[11] Their elaborately constructed (but not new) arguments that this grant of additional spectrum amounts to a grant of "new licenses" under the auction statute (which justifies new entrants to occupy this spectrum and/or cash payments and/or greatly increased public interest obligations) fail, however, because of the error of their premise.[12]

Petitioners are simply wrong that the authorization of IBOC in the *Second R&O* allows "incumbent radio licensees to expand into neighboring spectrum" and that additional spectrum is being granted to broadcasters.[13] The crux of petitioners' mistaken assertions is that, by allowing hybrid and extended hybrid IBOC broadcasts to use the side bands of broadcast analog signals, the FCC is

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[10] *First Order on Reconsideration* in MM Docket No. 99-325 (rel. May 31, 2007) at 110.
[11] Petition at 7 *et seq.*
[12] Petitioner's arguments in this regard also fail because the Commission has considered them and there has been no new evidence presented in the Petition justifying reconsideration on this basis.
[13] Petition at 8 *et seq*.

extending broadcaster licenses into adjacent spectrum and thus doubling its spectrum in an “unpaid for” windfall.[14]

Petitioners cite 47 CFR § 73.310 “FM technical definitions” to make their case that broadcasters are allowed to transmit only in channels 200 kHz wide.[15] Petitioners are mistaken, however, as they miss entirely the rules that actually govern broadcast transmissions, contained in § 73.317 “FM transmission system requirements” -- rules that were established long before the authorization of IBOC digital broadcasts. That section requires FM stations to “maintain the bandwidth occupied by their emissions in accordance with the specification” detailed in § 73.317(b) and (c), which allow for gradually attenuated emissions out to the edge of the “FM mask” -- a swath of spectrum 400 kHz wide. These emissions, at lower and lower power levels, are allowed to overlap adjacent channels. In fact the way in which FM stations are allocated, either by distance separation or contour overlap methodology, takes this mask and the potential for signal overlap into account.[16]

It is § 73.317 that defines the emissions broadcasters are allowed to transmit and the spectrum they are allowed to occupy. FM IBOC digital signals are placed within this “mask,” adjacent to either side of the analog carrier (which is on the center frequency of the channel, but may “emit” and place energy out to

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[14] *Id*. at 10-12.
[15] *Id*. at 8.
[16] *See,* e.g., §73.207 establishing minimum distance separation between stations, and §73.215 which defines contour protection for short-spaced assignments.

the edge of the mask). The specifications in section 73.317, which govern actual transmissions, do not even mention “200 kHz” wide channels.

The FCC’s reference to “200 kHz wide” “channels” is for the purpose of constructing the channel plan, where stations’ center frequencies are 200 kHz apart (although their transmitted emissions may occupy a total of 400 kHz, albeit at gradually lower power levels). Thus, contrary to Petitioners’ assumption, the definition of “FM broadcast channel” in § 73.310 (and the numerical designations of FM broadcast channels in § 73.201) is not a technical description of what the broadcast signal is allowed to transmit. That is found in § 73.317.

Petitioners, seeking reconsideration to clarify whether the Commission intended to authorize broadcasters to use additional spectrum “beyond their existing channels” (Petition at 11, 12), need only refer to the new definitions adopted by the *Second R&O*. Section 73.402(b) defines “In Band On Channel DAB System” as “[a] technical system in which a station’s digital signal is broadcast *in the same spectrum and on the same channel* as its analog signal” (emphasis added). Similarly, § 73.402(c) defines “Hybrid DAB System” as “[a] system which transmits both the digital and analog signals *within the spectral emission mask of a single AM or FM channel*” (emphasis added). Thus, IBOC signals of broadcast licensees are still within the existing spectrum occupancy rules, even though more energy is in the side bands than before.

NAF *et al.* are also wrong regarding “permanent” occupancy of the sidebands occurring by virtue of the digital IBOC signals being placed there. In point of fact, a licensee’s analog signal, permitted as it is to emit energy in the

sidebands, already is entitled to permanently occupy that spectrum, as defined in § 73. 317.

Similarly, NAF overstates its case about permanent occupancy of the sidebands occurring with all-digital broadcasting. The Commission has given no consideration to eliminating analog broadcasting and requiring all-digital operation.[17] While there are several statements about an all-digital future in Commission notices and orders over the years, this has not been considered, or proposed. NAB notes that, given the marketplace transition to hybrid IBOC operation, authorization of all-digital broadcasting would not be considered, if at all, for many years, if not decades.[18]

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[17] While the Commission sought comment on "the pace of the analog to digital radio conversion and the possibility of an all-digital terrestrial radio system in the future," *Further Notice* at 15, it explicitly rejected mandatory conversion stating that "stations may decide if, and when, they will provide digital service to the public," *Second R&O* at 15, and rejected consideration of policies and rules for an all-digital mode of operation, noting that "there are many unresolved technical issues . . . and radio stations do not plan to offer all-digital service in the near future," *id*. at 22. NAB's reply comments, at 3, to the *Further Notice* on this point cited iBiquity's initial comments, at 5, that its IBOC system was "designed to allow indefinitely, analog and digital broadcasts to co-exist."

[18] While NAF in the Petition complains of "permanent occupancy" and the lack of FCC requirements for stations to convert to digital, its earlier reply comments in response to the *Further Notice* in fact endorse such marketplace flexibility, "allowing broadcasters to explore this new technology (and invest in the new equipment) at their own pace." Reply Comments of Public Interest Coalition in MM Docket No. 99-325, filed August 2, 2004, at iii, 16.

Conclusion

For the foregoing reasons, NAB respectfully requests that the Commission deny the Petition of New America Foundation *et al*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael J. Geissinger, Director of Operations for the National Association of Broadcasters Legal Department, hereby certify that a true and correct copy of the foregoing Opposition of the National Association of Broadcasters to the Petition for Reconsideration of New America Foundation, *et al.* was sent this 11th day of February, 2008 by first-class mail, postage prepaid, to the following:

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