NEW JERSEY BROADCASTERS ASSOCIATION

Representing the Radio and Television Industry in the Garden State

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January 21, 2010

Hon. Julius Genachowski, Chairman
Federal Communications Commission
Washington, DC

RE: Proposed HD Power Increase MB Docket No. **99-325**

Dear Mr. Chairman:

The New Jersey Broadcasters Association (NJBA), along with the many diverse local broadcasters we represent, have serious concerns about the forthcoming HD power increase being considered by the Media Bureau. The new power increase for HD radio will have a severely deleterious effect on the signal strength and quality of a great number of New Jersey commercial radio stations, and any increase is in fact in violation of the spirit and letter of the law, substantively adverse to public policy, and counterproductive to the rules promulgated by the FCC, not to mention Congressionally mandated Sections 307 (a) & (b) of the Communications Act.

At the outset, it is important to note that a decision to increase current power levels for HD Radio is largely being made at the behest of the NAB, NPR and proponents of HD Radio working with the FCC to reach a compromise agreement absent any considerations of the negative effect this power increase will have on New Jersey broadcasters. For the record, we want you to know that the NAB, NPR, and proponents of the technology including *Ibquity* (owners of HD Radio technology) that support the power increase for HD stations, are not authorized to represent or speak on behalf of the interests of the broadcasters of New Jersey in this matter. Clearly, the NAB and other named parties are at cross purposes with the NJBA given the devastating effects this proposal will have on New Jersey broadcasters and the audiences they serve.

New Jersey broadcasters
Bringing Community Service Home

We respectfully, but firmly believe that the proposed increase in power will cause harmful and frankly, unjustifiable interference to many of our Garden State full power FMs and create dangerous disruptions of meaningful local radio service to many regions within the state. Accordingly we are vehemently against this proposal and request a reasonable opportunity to present evidence supporting our claims that may not have been considered given any accord reached between the parties.

Ironically, the facts presented by NPR and others prove our claim that any power increase for HD radio will have a brutally harmful effect on the signal strength and quality of a majority of our member radio stations. The anticipated result will also have an astonishingly negative impact on localism, a major Congressional and Commission goal. For that reason, the NJBA is filing this letter as a preventive objection to any action on this matter without the Commission first publishing a Second Notice of Proposed Rule Making, offering all interested parties an opportunity to comment on any "deal" that will purportedly lead to an increase in power for HD Radio users.

Broadcasting is a public trust and a public service that transcends politics. To be sure, no other business is so public spirited. Our New Jersey broadcasters passionately meet this responsibility every day. Our obligations to the public we serve are very serious indeed and we need the ability to do so free from unnecessary interference and unreasonable restraint. In the instant matter, the public interest of those of us in New Jersey has been neglected in favor of the special interests sitting at the "joint" parties table. Please see the attached Comments submitted by Mullaney Engineering, Inc., made in connection to MB Docket No. 99-325, dated July 2009, which is attached hereto as Exhibit "A", and incorporated herein by reference.

Mr. Chairman, please keep in mind that the NJBA, as an organization, is not opposed to HD radio. Many of our member stations have installed and are using the technology. To the contrary, we have supported its careworn efforts to become an economically viable member of our broadcast family. But even many of those members are rightly concerned about what any increase might do to many of the state's stations. It is an undisputed fact that even at its -20dB or 1 percent power level IBOC radio has the potential to cause interference to both the analog & digital operations of other stations which operate one channel higher or lower on the FM dial. The amount of interference caused depends upon how close to the minimum protections these respective stations are. Interference will only get worse should the FCC agree to any power increase that does not fully evaluate this potential for interference. The current joint proposal now pending before the Commission is to resolve interference complaints after-the-fact. By that time, the damage is done. This is the same procedure currently used to resolve interference from secondary FM translator facilities to full service FM facilities and it has many pit-falls and does not expeditiously resolve interference complaints.

Thus, our state broadcaster organization has voted to strongly oppose any action by the FCC on behalf of HD Radio that will adversely impact the majority of our stations, and more importantly, the audiences our members serve in New Jersey. Many of the FMs in New Jersey are short spaced, grandfathered facilities and as such, these stations are more prone to receiving interference from HD Radio operations. That is quite different from what we fear will be a predatory leap of power by the HD Radio industry that would unreasonably overpower our member stations, many of which are underpowered Class "A"s, allowing HD radio to become an

unfair and unpredictable destroyer of markets; a vicious marauder that does not respect or reasonably accommodate its long standing sister stations on the FM dial, which will undoubtedly harm the consumer and the public at large.

Why the Need for a HD Radio Power Increase?

It should be noted that less than 20% of the nation's FM stations have adopted the HD system and fewer than 2 million receivers have been sold over the past decade. Contrast that with the nearly 1.5 million iPhones sold in the last quarter of 2009 alone. This is after the HD Alliance placed what they claim to be over $100 million dollars worth of advertising on their own stations promoting HD radio. Clearly the balance of the industry does not see the need for HD radio and apparently neither does the American public.

To cut to the chase, why should over 200 million listeners lose coverage of their favorite local stations to prop up a technology few seem to care about, much less buy. There are other systems available that will accomplish everything HD was supposed to do (and then some) including full duplication of analog coverage, lower onetime cost (important to small market, minority owned, and economically challenged broadcasters) all without attendant interference to co or adjacent channels.

That having been said, there are also other ways the *Ibiquity* system could work without harming other stations such as asymmetrical operation, permitting full digital operation on existing channels, or simply staying with the immutable time tested status quo. It would appear none were seriously considered in the current NPRM. We respectfully request the Commission should consider any and/or all of these alternatives to avoid decimating New Jersey radio.

There is no compelling or even remotely convincing evidence to justify the harmful effects that any HD power increase will cause in New Jersey, as set forth in the Reply comments of Press Communications, LLC, a copy of which is attached hereto as Exhibit "B", and are incorporated herein by reference. In fact, the Commission rejected the pleas of the more "ubiquitous" analog Class "A" FMs over 20 years ago, who begged for a meager (3db) power increase to do exactly what HD Radio now prays for; that is, to increase coverage and building penetration. Absent a suspension of reality or a disingenuous application of reason, why should the IBAC stations' request now be granted at the unjustifiable expense of the remaining 80+% of analog FMs that have faithfully served their communities and proven their vitality through the immutable test of time. It is not only inequitable, it is dangerous. This disruption of service will undoubtedly diminish the already inadequate Emergency Alert System (EAS) in our state.

It is also important to recall the history of HD Radio's genesis and its stated reasonable expectations. Everyone knew (including the Commission) in adopting the *Ibquity* system, that at a 1% signal level the service area of HD was considerably less than analog. Thus it came as no surprise that the digital signal, even for one of the most powerful FMs in the market, will fade several times during most normal commutes and/or suffer from structural penetration issues. Knowing these shortcomings, *Ibquity* and its supporters used a novel argument to gain adoption that as the HD signal weakened the signal would fade to analog FM and then (hopefully) back to digital. The theory was the main channel (and at the time the only channel) would make that lack of coverage largely imperceptible to the listener. But as it turned out, the radio receiver's digital audio level and sound characteristics are noticeably different from that for analog audio. So, for

example, a car receiver can have noticeable changes in audio quality and volume depending upon whether it is receiving in digital or analog. Now with multiple channels used as a primary selling tool that problem has in a sense been resolved: Without the fade to analog, the signal simply disappears.

Needless to say, listeners showed little interest in a digital signal for FM, especially one that was prone to switching back and forth to analog FM, or simply dropped out altogether. The result? Sales of the receivers faded along with the digital signals.

The Interference Issues

HD proponents now argue that in order to save the system, the Commission needs to give them substantially more power. As a consequence, the entire radio broadcast world is expected to relinquish existing, well established service to the public and the hard fought markets it has carved out of the FM dial by decades of dedication and millions of dollars of investment. All of this so that a sadly stymied, ill-suited system can be artificially sustained for a few selfish interests, at the expense of the public at large.

While digital interference may not show up in exactly the same manner as more traditional analog interference, it is still there nonetheless, and it will negatively impact our broadcast signals as confirmed by NPR. This is particularly true for short spaced stations, especially Class A's. The NJBA is not convinced that enough independent "tests" were run by participants who do not have a vested interest in the outcome. Most troubling is the fact that there has been precious little research and/or engineering data generated by independent parties. As it currently stands, our viability and subsequent fate will have been left in the hands of entities that have either heavily invested in HD radio, the company, or in over the air equipment, or both.

In Band Adjacent Channel (IBAC), as used in HD Radio, has always carried with it an interference trade-off. Despite a sales campaign to the contrary, *Ibuity's* system was never "***IN*** Band ***ON*** Channel". Stations adopting the system are in fact given double the amount of valuable spectrum to employ it. Amazingly, and largely unknown and undisclosed to the public, the amount of spectrum used is the same as a new allocation, 200khz, equally divided on either side of an existing FM allocation! In most cases that additionally spectrum intrudes on the first adjacent channel, which in this case now becomes co-channel to the IBAC signal. This is precisely why a power increase of any size, will cause substantial interference to adjacent channels, a fact now well documented and irrefutable.

However, the interference ramifications were minimized with the current power levels being 1% of the main station's power (set to be 20db below the co-channel station's 54, 57 or 60 dbu contours). If and when a power increase is granted, for the first time in FM history, we will be violating the -20db co-channel threshold. This brings up several interesting questions.

For example, if HD stations are posed to get a 6db increase in power, why shouldn't non-HD stations be offered the same opportunity to offset this gain? Would this move set up an argument that if one of the many heretofore closely guarded FM protection parameters can now be violated, what is the rationale for protecting any of them? We believe the Commission should always be ready to make minor exceptions to its rules to accommodate exceptional, limited,

special circumstances or situations. The difference here is: this is not a limited special exception! This, Mr. Chairman, will become the rule.

The NPR study confirms that there will be increased interference to analog listening on first adjacent (co)channels within many stations' 60 dBu contour and could obliterate coverage outside the protected contour in the direction of the offending HD station. In New Jersey, with its reliance on Class "A" stations, those increases will destroy long established listening patterns for stations that historically have been the backbone of local service.

Moreover, as the NPR studies conclude, interference is interference, regardless of source or type of generation. Interference from any source is always harmful to a station's viability, particularly small market Class "A"s. (As you know, New Jersey was inequitably allocated a disproportionately high number of mostly "A" radio station licenses, while New York City and Philadelphia received all Class "B"s, which New Jersey "A"s have to compete with. Most New York City and Philadelphia Class "B" stations, which enjoy substantially higher power levels of transmission, better interference protection, and greater coverage over New Jersey than most of our in-state New Jersey stations.) Adding interference from any source, (including translators, LPFMs, and the concurrently proposed HD radio power increases), will leave many areas within the state with no local in-state FM service at all.

The final dirty little secret about HD Radio, confirmed by NPR engineers, is that for many short-spaced stations, particularly those in New Jersey and in the northeast, a power increase is not going to come close to replicating those stations' analog signals despite the damaging interference caused to other stations.

The Section 307 (a) and (b) Argument

As you know, Section 307(b) of the Communications Act states that the Commission "shall distribute licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." The NJBA has previously submitted evidence in a long ago filed Petition for Rulemaking,[1] which scientifically examined comparative data from neighboring states to conclude that commercial FM licenses have been unfairly, inefficiently, and inequitably distributed to New Jersey. This conclusive evidence has not been refuted to this day. We submit the reason for inaction is because this and prior Commissions have failed to implement this Congressional mandate regarding New Jersey.

Our Petition traced the history of Commission policies that have brought the New Jersey FM broadcast environment to this critical juncture. As you also know, many New Jersey stations are underpowered Class "A" stations or disadvantaged Class "B" stations. In fact, more than one-half of New Jersey stations cover only two-thirds or less of the area they would have covered had they been built as maximum facilities at the center — rather than the periphery —of populated

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1. In the NJBA's Petition for Rulemaking, dated May 2004, the New Jersey Broadcasters Association proposed then, and maintains now, that amendments to Sections 73.807 and 74.1204(a) of the Commission's rules are necessary in order to remedy a severely inequitable allotment of full power commercial FM stations to the state of New Jersey. It is regrettable that this Petition has not been substantively addressed almost 6 years after it was initially filed.

areas. Eleven of these stations cover only one-third or less of what they would achieve as maximum class stations.

It is also imperative that the Commission clearly acknowledge what every broadcaster in America recognizes and fundamentally understands: that radio stations do not operate in protected contours. Rather, they operate in, and serve, markets. In fact, the "Consolidation Act" essentially did away with the contour designation in which a radio station operates and set forth the principle that stations operate in markets. In fact, diversity was based on the number of stations in a market, purposely dispensing with the concept of using overlapping contours. The legislation assumed that all stations in a market could be heard throughout that market. The NJBA is merely trying to preserve the spirit and intent of that legislation.

The primary reason for the meager coverage of most of the state's stations and particularly Class "A"s was the Commission's deliberate action to first accommodate out-of-state Class "B" allocations in Philadelphia or New York. This relegated most of the state's stations to lesser populated areas of the state to protect Class "B"s in New York or to Atlantic Ocean's edge, in order to protect Philadelphia Class "B"s. Neither meets the criteria of Section 307(b) or best serves the needs of New Jersey residents.

Which raises a poignant question: Why is New Jersey perennially discriminated against by the FCC? Are not our citizens, under the law, worthy of, and entitled to service contours at least equal to that of adjacent states and nearby cities? Should not our stations largely cover the imbedded markets they are licensed to serve? Why are residents of nearby out of state communities and cities entitled to a larger level of service? Are those of us in New Jersey, in the eyes of the Commission, second class citizens?

The answers to these questions have Constitutional ramifications and Constitutional consequences. Since the Commission created the obvious inequities, it should now, at a minimum, be willing to protect its wards.

Probably more than any other factor, this inequitable distribution and allotment requires that New Jersey radio be forever protected from unreasonable interference to at least the 50 dBu contour. Because of the demonstrably second-rate treatment of the Garden State by the Commission over the years, New Jersey should, and by right ought to be, perpetually sheltered from all sources of interference including HD radio. Stations that have chosen not to implement HD Radio should not have to sacrifice their coverage and audiences to those higher power, mostly out-of-state facilities, that would now like to compete against our native in-state New Jersey stations with second or third channels.

The unique facts of New Jersey's urgent and inimitable plea commands exceptional consideration. Our unique geography alone would compel special consideration for any legislative or regulatory rulemaking, especially given our coastal stations' bifurcation of useable signal disbursement. There is simply no justification, in law or in public policy, which would warrant the absence of this necessary protection, especially given the need for our fragile Emergency Alert System in New Jersey. This is precisely the type of discussion that should be had in a supplemental Notice of Proposed Rule Making.

In spite of these natural and synthetic handicaps, New Jersey radio has carved out and maintained many diverse New Jersey audiences, which is essential to the vitality of the Garden State and the many communities served exclusively by New Jersey radio. However, as earlier stated, interference is interference, and much more work is needed to protect New Jersey broadcasters to insure that they will always be there to provide the communities they faithfully serve with vital EAS Messages, important local news, weather and community information, that is free from harmful communications interference from any source, including the detrimental raising of the allowable power levels for an inconsequentially small number of HD Radio listeners.

Furthermore, in accessing the need to protect New Jersey from additional interference, it is imperative to take into account that the FM listening audience no longer consists of static listeners, sitting at home, receiving signals from a fixed antenna. A mobile audience will not tolerate fluctuating signals as they drive into squalls of interference. Increased interference will result in the abandonment of FM by its audience, in favor of clear reception from other sources.

Market classification/determination was also written into the Commission's rules on ownership (See 47 CFR 73.3555). And while the larger Class "B" stations in New York and Philadelphia determine their markets with their signals, we in New Jersey live in a world where the market is determined for us. We are all part of the broader New York or Philly markets by default. To produce the revenue we need to exist, we need to be heard throughout the embedded markets within the larger NYC and Philly markets created by the OMB and Arbitron. This is compounded by the fact that the primary motivation for the power increase is to create second or third channels of programming, programming that will produce additional competition for local New Jersey broadcasters in their markets with no way to compete with out of state broadcasters in their markets, which is hardly fair and equitable.

By way of example, to offer New York City and Philadelphia 50kw stations the opportunity to get a 6db increase in co-channel power which will hurt small New Jersey Class "A" signals, makes no sense whatsoever. Yet, now that NPR, the NAB, and HD Radio have allegedly reached a "Deal" in which they all have a vested and monetary interest in the failing HD roll out across the country without thought to the consequences such an irresponsible move would have on the citizens of New Jersey. For example, at a 10 db increase a Class "B" HD station would be entitled to power levels of 5,000 watts @ 150 meters vs. the 3000 watts or less @ 100 meters most NJ stations employ. How is that fair and equitable?

As you can deduce, the proposed FCC action increasing HD power is working at cross purposes to achieving the goals both Congress and the Commission have long expressed: localism, diversity of voices, equal opportunity opportunities, and intelligent local content.

The obvious truth is that this HD power increase is being pushed through the Commission without reasonable opportunity for parties adversely and irreparably impacted by this pronouncement from even being heard as to what type of "deal" is being considered. In view of the paucity of full facility FM stations in New Jersey, this added interference will strip FM stations from the dials of the New Jersey audience, without much in the way of local substituted coverage.

The NJBA is an association representing many small local broadcasters, as well as our constituent members. We must rely upon the insightful empathy, wisdom and advocacy of our representatives in Washington, and our regulators at the Commission, to share the same values: namely to protect the citizens we mutually serve. By taking action in advocacy of New Jersey, you can bring a modicum of badly needed fairness to our decades old struggle and the concomitant debate by protecting hundreds of thousands, if not millions of listeners who prefer New Jersey radio over public media, but who will be denied their freedom of choice if this HD radio power increase is adopted without protections necessary for New Jersey residents.

LOCALISM

Which brings us to the last, but certainly not the least, unjust, and perhaps unintended consequence of this proposed move to increase HD power. This proposed power increase undermines the very foundation of a key Commission goal: LOCALISM. To be sure, Localism costs money and stealing coverage from the small broadcasters to support a poor business decision on behalf of largely big market broadcasters is a Faustian trade-off. New Jersey broadcasters cling to the plain language of our Congressional mandate under Section 307 (a). We serve the public's need and interest. Congress understood that in promulgating Section 307 (b) of the Communications Act. It says the Commission "shall .... provide for a fair, efficient and equitable distribution of frequencies and power (and hours of operation) among the several communities and states....that will "serve the public interest, need and convenience".

It would appear former and contemplated IBOC accommodations violate this command. We respectfully suggest that, by law, the Commission should have looked to solve the inequities in distributing new frequencies (remember IBOC is actually IBAC--with each station adopting the system receiving the equivalent bandwidth of an extra channel) before automatically awarding them on the basis of an inequitable, former allocation scheme. Indeed, the Commission should have given first preference to those New Jersey stations that were not granted "fair and equitable distribution" the first time around. It also raises the issue that if this were indeed "new spectrum", then should it not have been auctioned?

Perhaps it is time for the Commission, and indeed the broadcast industry, to own up to the fact that "IBAC" is, and may always has been, a flawed technology. We are told that this is "cutting edge", yet it fails to comport to any reasonable criteria to meet the needs of most, if not all, FM broadcasters. And if coverage weren't the only issue, consider audio quality; *Ibquity* advertises audio quality to be "better than FM". The truth is, it doesn't even come close to typical MP3 quality (in multi mode operation typically 48 kps vs 192 kps for MP3) much less analog FM (which can easily pass 1500 plus kps).

The NJBA respectfully submits that the time has come for the industry and the Commission to look at launching the broadcast industry into the 21st century by transitioning FM to an all digital service by using vacated channels 5 and 6, (and possibly 4, where 5 or 6 are in use for DTV service), while at the same time, correcting 60 plus years of underpowered, short-spaced or misplaced allocations. It has been said that the FM radio industry is at a crossroads. A power increase for HD radio is clearly going down the wrong path.

For the reasons contained herein, the New Jersey Broadcaster Association respectfully submits that any power increase for HD radio will work to substantially harm New Jersey's lopsidedly allocated full power FM stations and that added interference, from any source, will reduce the already meager coverage of many New Jersey stations, and in particular, Class "A" stations, in contravention to law and public policy. This interference will further compromise New Jersey's already severely prejudiced allocation of full power FM radio stations and EAS.

Accordingly, the NJBA respectfully requests the Commission to issue a Second Notice of Proposed Rule Making, with a reasonable time period to accept public comment, so as to give New Jersey, and any other broadcast entities, ample opportunity to prepare and present evidence to the Commission prior to it implementing this vast power increase and incurring irreparable harm to the public and to our stations from unjustifiable interference, and the subsequent loss of audience. The Commission can finally end the trend of years of inattention and neglect to the needs of New Jersey broadcasters by withholding judgment on the current HD power increase that could result in the eventual demise of local New Jersey FM stations.

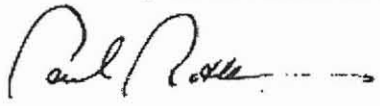
The NJBA urgently requests a stay of execution and an immediate freeze on the further advancement of any increase in HD power pending a fair opportunity to be heard in concert with fundamental fairness and due process. In that regard, the NJBA will continue to work in a cooperative and constructive manner with the Commission and our legislature to address the vital broadcast issues impacting our state in the demanding times we face together.

To that end, please do not hesitate to contact me at 201-914-0495 should you have any questions or require any additional information. Moreover, our HD Radio Committee is eager to meet with you, Sir, to further address this serious situation in greater detail.

As always, thank you, Mr. Chairman, for your kind attention to the concerns raised herein, and for your continuing courtesies. I look forward to seeing you again soon.

Most respectfully,

New Jersey Broadcasters Association



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Attachments