

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Digital Audio Broadcasting Systems)
And Their Impact On The Terrestrial)
Radio Broadcast Service)

MM Docket No. 99-325

FILED/ACCEPTED

To: The Commission

JUN - 9 2010

Federal Communications Commission
Office of the Secretary

REPLY COMMENTS IN SUPPORT OF
SUBMISSIONS OF IBIQUITY DIGITAL CORPORATION,
NATIONAL PUBLIC RADIO, AND
THE NATIONAL ASSOCIATION OF BROADCASTERS

The signatories hereto (the "Joint Commenters"),¹ by their attorneys, submit these Reply Comments² supporting the Opposition of iBiquity Digital Corporation,³ the Oppositions of National Public Radio to Applications for Review⁴ and the Comments of the National Association of Broadcasters⁵ filed in the above-captioned proceeding. Those Oppositions and Comments effectively and completely overcome the objections that have been raised⁶ to the

¹ Joint Commenters consist of a diverse group of large and small market broadcasters that operate some 1200 commercial and noncommercial FM radio stations throughout the country, as well as the Broadcaster Traffic Consortium and the four largest broadcast equipment manufacturers. Most of the Joint Commenters were signatory to the June 10, 2008 request for increased FM digital power which led to the Media Bureau Order now being challenged.

² To the extent necessary or appropriate, the Joint Commenters request that these Reply Comments be treated as an *ex parte* submission.

³ Filed May 25, 2010 ("*iBiquity Opposition*").

⁴ Opposition of National Public Radio to Applications for Review filed by Prometheus Radio Project and Press Communications, LLC, filed May 25, 2010 and Opposition of National Public Radio to Application for Review filed by Jonathan E. Hardis, filed April 23, 2010 ("*NPR Opposition to Hardis Application*").

⁵ Filed May 25, 2010.

⁶ Application for Review of Jonathan E. Hardis, filed April 8, 2010 ("*Hardis Application*"); Application for Review of Prometheus Radio Project, filed May 10, 2010; Application for Review and Request for

Media Bureau's January 2010 Order authorizing voluntarily increases in FM digital broadcasting power levels.⁷ These Reply Comments do not purport to address all of the objections that have been raised in the Applications and Petitions, but are instead confined to (a) addressing those objections that are central to the Order's propriety; and (b) reiterating the importance of the Order to advancement of the Commission's digital radio broadcasting goals.

The genesis of the Order was a request filed with the Commission on June 10, 2008, that sought to allow FM broadcasters to voluntarily increase their digital power levels to enable them to provide HD Radio service more closely replicating existing analog service.⁸ In response to that request, the Media Bureau initiated an extensive, multi-stage inquiry pursuant to delegated authority that ultimately generated the well-developed record upon which the Order was predicated. The Applications and Petitions, which mainly raised procedural objections, should therefore be dismissed and the Order affirmed.

I. The Media Bureau Acted Within Its Delegated Authority in Issuing the Order

Despite the protestations set forth in some of the Applications and Petitions,⁹ the Media Bureau acted well within the scope of authority previously delegated to it by the Commission in issuing the Order. As the iBiquity Opposition explains in detail, the Commission delegated broad authority to the Media Bureau in 2007 to develop additional technical rules governing HD

Stay of Press Communications, filed May 10, 2010; Petition for Reconsideration of Alan W. Jurison, filed May 10, 2010; Petition for Reconsideration of Mullaney Engineering, Inc., filed May 10, 2010; Petition for Reconsideration of Peter and John Radio Fellowship, Inc., filed May 10, 2010 (collectively, the "Applications and Petitions").

⁷ *In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcasting Service*, Order, 25 FCC Rcd 1182 (2010) (MB) ("Order").

⁸ *Letter to Ms. Marlene Dortch from Joint Parties*, June 10, 2008 (MM Docket No. 99-32) (the "Power Increase Request").

⁹ Hardis Application, at 5.

Radio operation.¹⁰ Specifically, the Media Bureau was authorized “to issue Public Notices ... and review the range of permissible IBOC operations as circumstances warrant [and] implement[] new IBOC notification procedures to cover new IBOC configurations,”¹¹ which is precisely what the Bureau did here.

As a result of the Commission’s broad delegation of authority, the Media Bureau was clearly authorized to initiate and conduct the instant proceeding in response to the Power Increase Request. The Media Bureau was similarly authorized to issue the Order allowing FM HD Radio broadcasters the opportunity to implement carefully circumscribed digital power increases subject to well defined procedures should unacceptable interference occur.

II. The Order Was Based On A Thorough Record Developed Through Appropriate Notice and Comment Proceedings.

The Applications and Petitions also assert that the Media Bureau did not comply with necessary notice and comment procedures, specifically focusing on the Advanced IBOC Coverage and Compatibility Study (“AICCS”) conducted by NPR Labs.¹²

As noted by several parties in this proceeding, including the Hardis Application, the Commission delegated to the Media Bureau authority to act on matters in this proceeding “[a]fter appropriate notice and comment.”¹³ The adequacy of the notice and comment procedures followed by the Media Bureau in this proceeding have been well documented by NPR, which provided a comprehensive timeline of the numerous studies, public notices, comment and reply comment deadlines, and ex parte submissions that comprise the extensive record upon which the

¹⁰ iBiquity Opposition, at 2.

¹¹ *Id.*

¹² Hardis Application, at 18 (claiming that the AICCS Report should have been the subject of yet another notice and comment cycle in this proceeding).

¹³ *Id.*, at 17 (citing Second Report and Order, at 10383); *see also* NPR Opposition to Hardis Application, at 7.

Order was based.¹⁴ As NPR correctly notes, more than 80 individuals and entities provided comments in response to the Media Bureau's initial Public Notice and more than 70 commented in response to the Media Bureau's second Public Notice.¹⁵ Moreover, although the Media Bureau did not issue a separate Public Notice regarding the AICCS Report (because no such Public Notice was required) that Report was made publicly available in the proceeding's docket on November 4, 2009, more than two and a half months before the Order was issued. As a result of its availability, that Report was the subject of several *ex parte* comments filed in this proceeding.¹⁶

Thus, a review of the docket in this proceeding conclusively demonstrates the compilation of an extensive and transparent record during a two year period through multiple notice and comment opportunities. That record evidences that the Media Bureau fully complied with the requirement that it deploy appropriate notice and comment procedures pursuant to which it validly and properly exercised its delegated authority to issue the Order.

III. The Media Bureau's Order Advances The Commission's Goals For Digital Audio Broadcasting.

The Commission has long recognized the numerous and important public interest benefits that HD Radio can provide to listeners, and thus has taken "significant steps to facilitate the digital radio conversion by adopting rules and policies that encourage radio stations to invest in digital equipment and programming."¹⁷ Moreover, when initially establishing the power levels

¹⁴ NPR Opposition to Hardis Application, at 7.

¹⁵ *Id.*

¹⁶ *See Ex Parte Notice*, Media Access Project, on behalf of Prometheus Radio Project, filed Jan. 4, 2010; *Ex Parte Comments*, Alan W. Jurison, filed Jan. 6, 2010.

¹⁷ Second Report and Order, at 10351.

at which digital audio broadcasting were permitted, it was expected that the digital coverage “would be at least comparable to analog coverage.”¹⁸

However, years of actual HD Radio operational experience demonstrated that the very conservative digital power levels that were initially established precluded provision of HD Radio service to many listeners who were receiving analog service. As a result, the Power Increase Request was filed with the Commission to improve the digital service that broadcasters could provide to their listeners so as to more closely replicate existing analog service.¹⁹ This request was based on extensive real-world testing in multiple challenging environments, demonstrating that the power increase would improve FM digital radio performance with minimal risk of harmful interference to existing analog service.²⁰

As reflected by the extensive information filed in this docket, the Power Increase Request led to an active and wide ranging debate on the appropriate power levels at which FM digital broadcasters should be permitted to operate. That discussion produced a compromise proposal supported by a vast majority of the broadcasters and industry leaders participating in this proceeding, the components of which were largely adopted in the Media Bureau’s Order.

Although not every party participating in this proceeding was satisfied by the voluntary digital power increase permitted by the Order, there can be no doubt that there was ample opportunity for all interested parties to participate, that the Media Bureau had sufficient authority to adopt the Order and that it followed the requisite administrative procedures in doing so.

¹⁸ *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, First Report and Order, 17 FCC Rcd 19990, 20001 (2002).

¹⁹ Power Increase Request, at 5.

²⁰ *Id.*, at 2.

For the above-stated reasons, the Joint Commenters respectfully request that the Applications and Petitions be dismissed and the Order affirmed in all respects.

Respectfully submitted,

Backyard Broadcasting, LLC
Beasley Broadcast Group, Inc.
Black Crow Media Group, L.L.C.
Bonneville International Corp.
Broadcast Electronics, Inc.
Broadcaster Traffic Consortium LLC
CBS Radio Inc.
Clear Channel Communications, Inc.
Commonwealth Broadcasting Corporation
Continental Electronics Corp.
Cox Radio, Inc.

Emmis Communications Corporation
Entercom Communications Corp.
Greater Media, Inc.
Harris Corporation
Journal Broadcast Corporation
Lincoln Financial Media Company
Nassau Broadcasting Partners, L.P.
Nautel Maine Inc.
NRG Media, LLC
Sacred Heart University, Inc.

By: 
Steven A. Lerman
John W. Bagwell

Lerman Senter PLLC
Suite 600
2000 K Street, NW
Washington, DC 20006-1809
(202) 429-8970

June 9, 2010

Their Attorneys

CERTIFICATE OF SERVICE

I, Genevieve Edmonds, hereby certify that a copy of the foregoing Reply Comments in Support of Submissions of iBiquity Digital Corporation, National Public Radio, and the National Association of Broadcasters was sent this 9th day of June 2010 by first class mail, postage prepaid to the following:

Jonathan E. Hardis
356 Chestertown Street
Gaithersburg, MD 20878-5724

Alan W. Jurison
545 Grant Boulevard
Syracuse, NY 13203

James P. Riley
Daniel A. Kirkpatrick
Peter & John Radio Fellowship, Inc.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209

Parul P. Desai
Media Access Project
1625 K Street, N.W.
Suite 1000
Washington, DC 20006

*Prometheus Radio Project
National Federation of Community
Broadcasters
New America Foundation*

Robert A. Mazer
Vinson & Elkins LLP
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004-1008

Counsel for iBiquity Corporation

Jeff Littlejohn
Clear Channel Communications, Inc
8044 Montgomery Road
Suite 650
Cincinnati, OH 45236

Jane E. Mago
Valerie Schulte
Jerianne Timmerman
National Association of Broadcasters
1771 N Street, N.W.
Washington, DC 20036

Joyce Slocum
Gregory A. Lewis
National Public Radio
635 Massachusetts Avenue, N.W.
Washington, DC 20001

Albert Shuldiner
iBiquity Digital
6711 Columbia Gateway Drive
Suite 500
Columbia, MD 21046

The Livingston Radio Co. (WHMI)
P.O. Box 935
Howell, MI 48844-0935

Aaron Read
20 Leeward Lane
Canandaigua, NY 14424-2482

Educational Information Corporation
c/o Deborah S. Proctor
P.O. Box 828
Wake Forest, NC 27588-0828

Donald G. Everist
Cohen, Dippell and Everist, P.C.
1300 L Street, N.W.
Suite 1100
Washington, DC 20005-4183

Marshfield Broadcasting Company, Inc.
130 Enterprise Drive
Marshfield, MA 02050

Michael Couzens
Michael Couzens Law Office
P.O. Box 3642
Oakland, CA 94609

*Counsel for Nevada City Community
Broadcast Group, Inc.*

Jeffrey D. Southmayd
Southmayd & Miller
4 Ocean Ridge Boulevard South
Palm Coast, FL 32137

*Counsel for Augusta Radio Fellowship
Institute, Inc.*

Jeffrey D. Southmayd
Southmayd & Miller
4 Ocean Ridge Boulevard South
Palm Coast, FL 32137

*Counsel for Houston Christian
Broadcasters, Inc.*

Paul Dean Ford, P.E.
18889 North 2350th Street
Dennison, IL 62426-2523

John Wells King
Garvey Schubert Barer
1000 Potomac Street, N.W.
Fifth Floor
Washington, DC 20007

Counsel for Rhode Island Public Radio

David Noble
International Association of Audio
Information Services
2323 W. 14th Street
Tempe, AZ 85281

Communications Center of Minnesota
State
Services for the Blind
2200 University Avenue West
Suite 240
St. Paul, MN 55114

John Joseph McVeigh
J.J. McVeigh, Attorney at Law
16230 Fall Road
P.O. Box 128
Butler, MD 21023-0128

*Counsel for Talley Broadcasting
Corporation*

Association of Public Radio
Engineers, Inc.
c/o Dan Mansergh
KQED Public Radio
2601 Mariposa Street
San Francisco, CA 94110

George R. Borsari, Jr.
Borsari & Paxson
4000 Albemarle Street, N.W.
Suite 100
Washington, DC 20016

*Counsel for National Translator
Association*

Peter Tannenwald
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Arlington, VA 22209-3801

*Counsel for Brown Broadcasting
Service, Inc.*

Mark D. Humphrey
P.O. Box 307
Exton, PA 19341

The Livingston Radio, Co.
(WHMI-FM)
P.O. Box 935
Howell, MI 48844-0935

David D. Oxenford
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006-3402

*Counsel for Educational Media
Foundation*

John J. Mullaney
Mullaney Engineering, Inc.
9049 Shady Grove Court
Gaithersburg, MD 20877

Charles Keiler
6711 NW 26 Way
Fort Lauderdale, FL 33309

Mitzi T. Gramling
Minnesota Public Radio
480 Cedar Street
Saint Paul, MN 55101

Jeffrey D. Southmayd
Southmayd & Miller
4 Ocean Ridge Boulevard South
Palm Coast, FL 32137

*Counsel for the Moody Bible Institute
Of Chicago*

Jamie Hedlund
Consumer Electronics Association
1919 South Eads Street
Arlington, VA 22202

Stephen Shultis
WNYC Radio
160 Varick Street
New York, NY 10013

BMW of North America
P.O. Box 1227
Westwood, NJ 07675-1227

Robert B. Jacobi
Cohn and Marks, LLP
1920 N Street, N.W.
Suite 300
Washington, DC 20036

*Counsel for Mt. Wilson FM
Broadcasters, Inc.*

Ford Motor Company
20300 Rotunda Drive
Building 5, Room 2G055
Dearborn, MI 48124-3900

Paul S. Lotsof
Box 18899
Tucson, AZ 85731

Executive Director
WDIY-FM Radio
Lehigh Valley Community Broadcasters
Association (WDIY-FM)
301 Broadway
Bethlehem, PA 18015

Julian H. Booker
Delmarva Broadcasting Company
P.O. Box 7492
Wilmington, DE 19803

Edgar C. Reihl, P.E.
1715 Illinois Road
Northbrook, IL 60062

Leigh Robartes
124 S. Polk Street
Moscow, ID 83843

Gammon & Grange, PC
8280 Greensboro Drive
7th Floor
McLean, VA 22102-3807

Counsel for Radio Training Network, Inc.

Hampton Roads Educational
Telecommunication Association, Inc.
5200 Hampton Boulevard
Norfolk, VA 23508

Brian Kirby
2222 Wellington Ct
Lisle, IL 60532

Robert M Fiocchi
303 W. Prospect Street
Rhineclander, WI 54501

Jeff Johnson
301 Landrum
Northern Kentucky University
Highland Heights, KY 41099

Bernard Wise
1306 River Street
Valatie, NY 12184

Ralph J. Carlson
Carlson Communications, International
P.O. Box 57760
Salt Lake City UT 84157

Brian J. Henry
1414 Hill Avenue
Napa, CA 94559-1528

WOLF Radio, Inc.
401 W. Kirkpatrick Street
Syracuse, NY 13204

Douglas L. Vernier
V-Soft Communications, LLC
721 W. First Street
Suite A
Cedar Falls, IA 50613

John W. Haralson
420 S. Marion Parkway, No. 1401
Denver, CO 80209-2549

William Cordell
866 N. Wilcrest
Houston, TX 77079

Cary S. Tepper, PC
Booth, Freret Implay & Tepper, PC
7900 Wisconsin Avenue
Suite 304
Bethesda, MD 20814-3628

*Counsel for Seton Hall University
(WSOU-FM)*

Clayton Roberts
Mars Hill Broadcasting Co., Inc.
4044 Makyes Road
Syracuse, NY 13215

Barry D. McLarnon
2696 Regina Street
Ottawa, ON, Canada K2B 6Y1
Ottawa, DC 00000

H. Donald Messer
6425 31 Place, NW
Washington, DC 20015

Aaron Read
300 Pulteney Street
Geneva, NY 14424-2482

Tim Houser
10908 N. Thornydale Road
Tucson, AZ 85742

Robert D. Young, Jr.
33 S. Main Street, Apt. 2B
Millbury, MA 01527-3170

Ann Lynch
5624 Wood Street
Port Orange, FL 32127

Chris Kantack
1353 Sudden Valley
Bellingham, WA 98229

Brian Gregory
10035 Kendale Road
Potomac, MD 20854

Brian Gregory
7448 Cinnabar Terrace
Gaithersburg, MD 20879

Sid Shumate
Givens & Bell, Inc.
1897 Ridge Road
Haymarket, VA 20169

Robert R. Hawkins
6623 W. State Road 252
Edinburgh, IN 46124

Steven Glenn Daniel
551 Rugby Road
Brooklyn, NY 11230

David Burnett
Good Shepherd Radio Incorporated
825 Washington Street
Columbus, TN 47201

Michael Gehring
1974 Sherman Drive
Columbus, OH 47203

James S. Bumpous
Yellow Dog Radio
Big Bend Broadcasting
306 West Broadway
Silver City, NM 88061

WFCR, Amherst
131 County Circle
University of Massachusetts
Amherst, MA 01003-9257

Robert E. McAllan
Press Communications, LLC
1329 Campus Parkway
Neptune, NJ 07753

Edward Czelada
3302 N. Van Dyke Road
Imlay City, MI 48444

James Davis
4325 62nd Court
Vero Beach, FL 32967

Leroy C. Granlund
7455 Ridgeview Lane
Penryn, CA 95663-9537

James M. Wilhelm
10 Matthew Drive
Fairmont, WV 26554

V-Soft Communications, LLC
401 Main Street
Suite 213
Cedar Falls, IA 50613

Peter Tannenwald
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street
11th Floor
Arlington, VA 22209-3801

*Counsel for American University
(WAMU)*

John Joseph McVeigh
J.J. McVeigh, Attorney at Law
16230 Falls Road
P.O. Box 128
Butler, MD 21023-0128

*Counsel for Klein Broadcast
Engineering, LLC*

Jeffrey Freeland Nelson
American Public Media Group
480 Cedar Street
Saint Paul, MN 55101

Cavell, Mertz & Associates, Inc.
7839 Ashton Avenue
Manassas, VA 20109

Tom Godell
WUKY Public Radio
340 McVey Hall
University of Kentucky
Lexington, KY 40506-0045

Barry A. Friedman
Thompson Hine LLP
1920 M Street, NW
Suite 800
Washington, DC 20036

Counsel for Entravision Holdings, LLC

University Station Alliance (Craig Beeby)
1017 W. Brooke Hollow Ct
Stillwater, OK 74075

James W. Anderson
253 North 500 West
Provo, UT 84601-2689

Public Radio Regional Organizations
c/o KPLU, Pacific Lutheran University
Takoma, WA 98447

Kevin Redding
530 Asher Loop
Adamsville, TN 38310

Gregory Smith
7448 Cinnabar Terrace
Gaithersburg, MD 20853

Wisconsin Public Radio
821 University Avenue
Madison, WI 53706
Attn: Steve Johnston

Henry Ruhwiedel
5317 W 133rd Avenue
Crown Point, IN 46307

Delmarva Broadcasting Company
P.O. Box 7492
Wilmington, DE 19803

Cary S. Tepper
Booth Freret Imlay & Tepper, PC
7900 Wisconsin Avenue
Suite 304
Bethesda, MD 20814-3628

Counsel for Positive Alternative Radio

Cary S. Tepper
Booth Freret Imlay & Tepper, PC
7900 Wisconsin Avenue
Suite 304
Bethesda, MD 20814-3628

*Counsel for Creative Educational
Media Corp., Inc.*

Daniel Houg
Chief Engineer
KAXE-FM
260 NE 2nd Street
Grand Rapids, MN 55744

Roy H. Fisk
P.O. Box 545
Twain Harte, CA 95383-0545

John A. Buffaloe
118 Clark Place
Memphis, TN 38104

Cary S. Tepper
Booth Freret Imlay & Tepper, PC
7900 Wisconsin Avenue
Suite 304
Bethesda, MD 20814-3628

*Counsel for Calvary Chapel of Twin
Falls, Inc.*

G. Craig Hanson
Simmons Media Group, LLC
515 S. 700 E. #1C
Salt Lake City, UT 84102



Genevieve Edmonds