

**WRITTEN COMMENTS OF DON SCHELLHARDT, ESQUIRE KI4PMG  
AND NICKOLAUS E. LEGGETT N3NL**

**FCC Docket 99-25**

**January 24, 2011**

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1. At the outset, with respect to how the Commission should apply the recently enacted Local Community Radio Act (LCRA) to the competition between new LPFM applications and pending Auction #83 translator applications, we firmly dispute any legal theory which would require the FCC to process the Auction #83 applications before new LPFM applications can even be considered. Indeed, processing the translator applications first would actually **violate** the intent of Section 5 of the LCRA.

2. While a case can be made for processing new LPFM applications first, we believe that **simultaneous** consideration of Auction #83 applications and new LPFM applications would be the decision most consistent with the letter and the spirit of the LCRA. As the most balanced course of action, and the one least vulnerable to a litigation challenge from any party, this would also be the most **expeditious** route to the resolution of current controversies.

3. We recognize that administrative burdens would be imposed on the Commission by holding a “super window” for simultaneous consideration of pending Auction #83 applications and new LPFM applications. However, we still contend that this would be the most expeditious course of action, in the long run, in light of: (a) its **relative** defensibility, compared to alternatives, in the face of challenging litigation; and (b) its **relative** conceptual simplicity, again when compared to alternatives.

4. To further ease the administrative burdens upon the Commission, we propose that the simultaneous consideration of applications should proceed in stages -- with action beginning

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first in the rural areas, where, in general, the incidence of mutually exclusive applications is lowest and the allocation of licenses is therefore simplest. We have been apprised by Matt Murillo, of THE OWL COMPANY in Texas, that the FCC has already employed a “rural areas first” approach, successfully, in the allocation of Low Power TV licenses. We advise the FCC

to take the administratively simple approach of utilizing U.S. Bureau of the Census data for dividing the country into large Standard Metropolitan Statistical Areas (SMSAs), such as New York City, which are also called “metropolitan areas” by the Bureau ... Micro Statistical Metropolitan Areas (Micro SMSAs), such as Staunton-Waynesboro, Virginia, which are mostly “large small towns” and are termed “micropolitan areas” by the Bureau ... and truly rural areas, such as many farming areas and Indian Reservations. The FCC should save the most complex set of decisions for the end of the process, beginning simultaneous consideration of applications in truly rural areas, then moving to micropolitan areas and concluding in metropolitan areas.

5. We remind the Commission that THE AMHERST ALLIANCE has long proposed making 250 watt licenses available for LPFM stations whose service areas are located 100% outside of any Micro SMSA or SMSA. The next round of LPFM applications is an opportunity to give **truly rural** LPFM stations the opportunity to be as large as a standard translator station. Such LPFM stations should also be free to file for LP100 status or LP10 status if they prefer.

6. We also remind the Commission that it announced, back in 2000, that it intended to make licenses available for 10 watt LPFM stations as well as 100 watt LPFM stations. The FCC has never taken action to carry out this announcement, however, in spite of periodic reminders from THE AMHERST ALLIANCE and other interested parties. Because some areas with crowded spectrum can **only** accommodate LP10 stations, it is crucially important

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for the Commission to keep its long deferred promise to consider LP10 applications in addition to LP100 applications. At an absolute minimum, such action must be taken to help LPFM applicants in SMSAs. Ideally, LPFM applicants in Micro SMSAs should have the option of filing for LP10 status as well. In fact, even in truly rural areas, we ask the FCC to make an LP10 option available. While an LP10 option for truly rural areas may not commonly be the practical necessity that it is in many SMSAs, and even in some Micro SMSAs,

some aspiring LPFM broadcasters in truly rural areas have told us that this additional flexibility could nevertheless be helpful -- and, in any event, it seems unlikely to do anyone any harm.

7. Nothing in our proposal for simultaneous consideration of pending Auction #83 applications and new LPFM applications -- and nothing in the newly enacted LCRA -- prevents the Commission from first “thinning out” the mass of Auction #83 applications before the “super window” of simultaneous consideration begins. Such advance pruning must be reasonable, of course, but certainly those Auction #83 applications which are clearly intended for speculative use can be culled from “the thundering herd” of GTI applications. So can those applications which are clearly defective in other ways. Finally, in light of the intent of **both** Section 5 of the LCRA **and** the FCC’s original translator program, it is both proper and desirable to apply “caps” to the number of translator applications any given party can file. The best approach would be “caps” which limit each party to a ceiling on overall translator filings and a ceiling on the number of translator applications in any given geographical area.

8. As for proposals by other parties, we hereby correct the record on one point. In their September 29 letter to the Commission, describing an Ex Parte presentation to Commission staff, PROMETHEUS RADIO PROJECT (Prometheus) and EDUCATIONAL MEDIA

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FOUNDATION (EMF) jointly declared that they have been involved in “ongoing efforts to engage in dialogue on these issues with other interested parties and such parties’ representatives ... ”

This is flatly untrue. Although the two undersigned parties authored and filed the Petition For Rulemaking which triggered the first Commission proceedings on LPFM, and although we have remained active and visible in FCC proceedings since that time, neither Prometheus nor EMF has ever invited either one of us to join in -- or even notified either one of us of the existence of -- their discussions. Since the undersigned parties are also

leaders in THE AMHERST ALLIANCE, an independent LPFM advocacy group which is more politically moderate than Prometheus, we can add that THE AMHERST ALLIANCE has not been informed of these discussions, let alone invited to join them. Certainly, Prometheus and EMF have no legal duty to confer with us as individuals or with THE AMHERST ALLIANCE as an organization. However, Prometheus and EMF **do** have a legal duty not to tell the Commission that their proposal is based on a broader range of input than is actually the case.

Moving along to other points, the 21 COMMERCIAL RADIO BROADCASTERS proposal is rooted in an extremely minimalist interpretation of the LCRA. It falls far short of pursuing the robust balance of choices that Congress intended local communities to have. The REC NETWORKS and PROMETHEUS RADIO PROJECT/EDUCATIONAL MEDIA FOUNDATION proposals come somewhat closer to honoring the intent of Congress, but the simultaneous consideration of applications would still be the single best expression of the Congressional desire for each **community** to have a **choice** of stations, based on its own **individual** needs.

6.

## B. IDENTIFICATION OF THE COMMENTING PARTIES

Because one major focus of these Comments is determining the best legal interpretation of Section 5 of the recently enacted Local Community Radio Act, we stress that Don Schellhardt is a licensed attorney in both Virginia and Connecticut. In addition to having 5 years of trial law experience, he has been Legislative Counsel to Representative Matthew J. Rinaldo (R-NJ, retired), Director of Legislative and Regulatory Affairs for the American Gas Association, Policy Advisor with the U.S. Environmental Protection Agency and Co-Founder and President of THE AMHERST ALLIANCE. He holds a B.A. in Government from Wesleyan University (of

Middletown, Connecticut), a law degree from George Washington University (of Washington, D.C.) and an M.A. in Liberal Studies (Cross-Cultural Politics) from Hollins University (of Roanoke, Virginia).

Nickolaus Leggett is a political scientist and inventor, with experience at International Research & Technology (IR&T), GTE and Alcatel. He holds three patents, with the most recent being a wireless bus for digital devices and computers (Patent # 6,771,935). He also holds several radio licenses, including an Extra Class Amateur Radio Service (“ham”) license and an FCC General Radiotelephone Operator License with a Ship Radar Endorsement, plus several aviation licenses. In addition, he is a certified Electronics Technician (ISCET and iNARTE). Like Don Schellhardt, Nick holds a B.A. in Government from Wesleyan University (which is where he and Don Schellhardt first met, 43 years ago). Nick also earned an M.A. in Political Science from Johns Hopkins University (of Baltimore, Maryland).

7.

Both Don Schellhardt and Nick Leggett have actively participated in dozens of FCC proceedings during the past few decades. In addition to co-signing the Petition For Rulemaking that initiated the first Commission deliberations on Low Power Radio, they have also co-signed Petitions which led to Commission proceedings on proposed Electromagnetic Pulse (EMP) shielding, a proposed Low Power Radio Service on the AM Band and modification of Homeowners’ Association regulations which operate in practice to prohibit Amateur Radio Service activities.

### C. INTERPRETING SECTION 5 OF THE LOCAL COMMUNITY RADIO ACT

#### 1. The Text Of Section 5 Of the Local Community Radio Act

Here is the applicable language of the recently enacted LCRA (Public Law 111-371):

SEC. 5. ENSURING AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS.

The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that--

- (1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations;
- (2) such decisions are made based on the needs of the local community; and
- (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.

8.

2. The Absence Of A Statutory Mandate  
To Process Auction #83 Applicants First

With respect to the competition between new LPFM applications and pending Auction #83 translator applications, we firmly dispute any legal theory which would require the FCC to process the Auction #83 applications before new LPFM applications can even be considered.

We know it can be argued that prior processing of pending Auction #83 translator applications is required by the new statutory directive to “ensure that -- ... FM translator stations, FM booster stations, and low-power FM stations remain equal in status”. It can be asserted that a decision not to process the Auction #83 applications first, thereby disregarding the FCC’s customary (though not legally mandated) deference to pending applications over new applications, would effectively accord a preference to LPFM applicants and thus deny “equal status” to the Auction #83 applications.

However, there are many deleted words between the dots in the sentence above. When **all** provisions of Section 5 are considered, and the Section is read as a whole, undue magnification of a single phrase in the statute, to the exclusion of all else, can be seen to be legally unsustainable. Indeed, processing the pending translator applications before new LPFM applications would actually **violate** the intent of Section 5 of the LCRA.

(a) The word “new”. Right after its title, Section 5 begins as follows:

“The Federal Communications Commission, when licensing new FM translator stations, new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that -- ”

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The word “**new**” premises all of the statutory directives that follow.

The Commission “shall ensure that” licenses are available to **new** FM translator stations, **new** FM booster stations and **new** LPFM stations (Section 5 (1)).

The Commission “shall ensure that” licensing decisions for **new** FM translator stations, **new** FM booster stations and **new** LPFM stations “are made based on the needs of the local community” (Section 5 (2)).

The Commission “shall ensure that” **new** FM translator stations, **new** FM booster stations and **new** LPFM stations “remain equal in status” (Section 5 (3)).

The Commission “shall ensure that” **new** FM translator stations, **new** FM booster stations and **new** LPFM stations are “secondary to existing and modified full-power FM stations” (Section 5 (3)).

Because Congress directed the Commission to “ensure that” licenses are available for **new** FM translators, **new** FM booster stations and **new** LPFM stations, the Commission can infer that Congress did not want it to grant in advance a wave of **pending** translator applications that would -- in many areas -- pre-empt all or almost of the spectrum needed for such **new** stations to get On Air.

Because Congress directed the Commission to “ensure that” licensing decisions for such **new** stations “are made based on the needs of the local community”, the Commission can infer that Congress did not want the FCC to deprive local communities of input by pre-empting all of most of their spectrum for the sake of **pending** translator applications.

Because Congress directed the Commission “to ensure that” **new** translator stations shall “remain equal in status” with **new** LPFM stations, the Commission can infer that Congress was

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not directing the Commission “to ensure that” **pending** translator stations shall “remain equal in status” with new LPFM stations.

(b) The phrase “secondary to existing and modified full-power FM stations”. This phrase directly follows “remain equal in status” (Section 5 (3)). As such, the phrase sheds clear light on what Congress was addressing in its language. Congress was referring to the longstanding FCC terminology of Secondary Service Status and Primary Service Status: the status which allows one class of station (Primary) to displace another class of station (Secondary) in the event of mutually exclusive claims on a given frequency.

Thus, Section 5 (3) -- with its intertwined mandates for equality of status **within** one group of stations and general Secondary Service Status for **all** such stations in comparison to “existing and modified full-power FM stations” -- was addressing Secondary Service Status compared to Primary Service Status. Congress was not addressing new application status compared to pending application status.

Basically, then, Congress has mandated that **new** FM translators, **new** FM boosters and **new** LPFM stations must all have Secondary Service Status relative to each other, which bars any one of these new stations from displacing any other one of these new stations. Further, all of these **new** stations must be secondary in status to -- and therefore be unable to displace, but potentially displaceable by -- “existing or modified” full-power FM stations.

None of these mandates are remotely decipherable as a directive that the FCC must process Auction #83 translator applications before new LPFM applications can even be considered.

Parenthetically, we note that Congress made some interesting omissions in its crafting of Section 5 (3).

11.

First, only **new** translators, boosters and LPFM stations must have Secondary Service Status relative to full-power stations. This omission implies that Congress wants the FCC to have the discretion, should it choose to act, to “grandfather” some or all **existing** translators, boosters and LPFM stations -- “existing” in the sense of being licensed on the date of enactment of the LCRA -- against future displacement by full-power stations.

Secondary, the Commission is only directed to make new translators, boosters and LPFM stations subject to displacement by “**existing or modified** full-power FM stations”. Congress is silent about totally **new** full-power FM stations, licensed after the date of enactment of the LCRA. This omission implies that Congress wants the FCC to have the discretion, should it choose to act, to decline to extend to **new** full-power FM stations the automatic prerogative to displace translators, boosters or LPFM stations upon demand.

(c) The context of Congressional decision-making on Section 5. Congressional legislators -- or, more realistically, those specific Congressional legislators and staff members who were actually involved in drafting of the Local Community Radio Act -- did not craft Section 5 in a vacuum. The huge mass of translator applications in Auction #83, some of them highly questionable, had been a source of controversy for years. So had specific related issues, such as the Commission’s legal authority to impose retroactive “caps” on the number of translator applications that any given party can submit.

Enactment of the LCRA was a clear opportunity for Congress to resolve these long-simmering controversies through explicit statutory directives. Had Congress wished to

direct the Commission to process pending Auction #83 applications before even considering new LPFM applications, Congress could have said so -- and, frankly, should have said so.

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Had Congress wished to deny the Commission the authority to impose retroactive translator “caps”, and/or other measures to trim the enormous number of pending translator applications, Congress could have said that plainly as well.

However, instead of issuing carefully targeted directives to process an untrimmed mass of pending Auction #83 applications ahead of new LPFM applications, Congress gave the FCC a more **general** set of directives. Taken as a whole, these general mandates give the Commission a definite sense of direction, but a fair amount of discretion concerning how to get to the destination.

### 3. The Actual Mandates Of Section 5

Consider, once again, the basic mandates of Section 5.

We will mention the third and fourth mandates first (Section 5 (3)). These are the mandate for equality of **Service** Status between **new** LPFM stations, translators and boosters -- and the mandate for keeping such **new** stations subject to possible future displacement by “**existing or modified** full-power FM stations”.

These Section 5 (3) mandates have been discussed in detail in the immediately preceding Section C2 of our Written Comments: “The Absence Of A Statutory Mandate To Process Auction #83 Applications First”.

The first mandate directs the Commission to give **new** LPFM applicants a chance to compete for spectrum (Section 5 (1)). The Commission must give new translator applications and new booster applications a chance to compete as well, but increasing the number of LPFM

stations is evidently a matter of greater interest to Congress.

13.

After all, the title of Section 5 is “ENSURING THE AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS” (meaning **new** LPFM stations). The Title of Section 5 is not “ENSURING THE AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS, FM TRANSLATOR STATIONS AND FM BOOSTER STATIONS”.

Clearly, Congress does not wish to see LPFM stations pushing FM translators and FM boosters out of existence. Hence, we have the Section 5 (3) mandate that new LPFM stations cannot displace translators or boosters (or vice versa). However, if Congress wants a **balanced mix** of LPFM stations, translators and boosters, where is the most lost logical place to begin the process of pursuing this goal? **The place to begin is the point where the mix is most out of balance.** And today -- right now -- where is that point of greatest imbalance? LPFM. After all, who outnumbers who? How many translators and boosters are On Air now, compared to how many LPFM stations? And how many translators and boosters will be On Air in the near future, compared to how many LPFM stations, if pending Auction #83 applications are processed before new LPFM stations are even considered?

Obviously, Congress does not have in mind fixed numerical quotas for LPFM stations, translators and boosters. However, Congress wants a better numerical **balance** -- which means, at the moment, a higher overall **proportion** of LPFM stations in the overall mix.

Then there is the second mandate (Section 5 (2)). The Commission is directed to “ensure that” licensing decisions are “made based on the needs of the local community”. While nothing in Section 5 suggests that the FCC should not make these decisions, it is implied that the actual communities should have **input** to the FCC in a context of **choosing** between competing alternatives. Without community input, how can the FCC fully assess community needs?

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We can envision no mechanism for attaining this result that can match the **simultaneous** consideration of pending Auction #83 translator applications and new LPFM applications.

Given the apparent Congressional desire to increase the **proportion** of LPFM stations in the LPFM/translator/booster mix, a case can be made for processing new LPFM applications before pending Auction #83 applications are considered. Nevertheless, when the **totality** of specific mandates in Section 5 is assessed, simultaneous consideration of applications comes closer to the overall Congressional intent than any of the alternative approaches. In particular, simultaneous consideration seems to be the best way, if not the **only** way, to “ensure that” actual communities have a maximum range of **choices** for advising the Commission on what specific licensee(s) will best meet “the needs of the local community”.

NATIONAL PUBLIC RADIO has been no friend of LPFM, but we acknowledge the accuracy of this statement in its August 10, 2010 Ex Parte Letter in Docket 99-25:

“Although we recognize that LPFM stations can benefit local communities, the Commission has found the same to be true of FM translator stations ... The premise that low power origination services are generally better than retransmission services may or may not be valid in individual cases ... ”

Individual cases **do** differ. For example, a community might easily prefer a new, locally based LPFM station over its third Calvary Chapel satellator. On The Other Hand, the same community might not prefer a new local LPFM station over its first NPR satellator.

We urge the Commission to let pending translator applicants and new LPFM applicants compete for the support of localities. Head on. Case-by-case. Community-by-community.

Mano a mano.

## OF AUCTION #83 TRANSLATOR APPLICATIONS AND NEW LPFM APPLICATIONS

### 1. Easing the Commission's Administrative Burdens

We recognize that administrative burdens would be imposed on the Commission by holding a “super window” for simultaneous consideration of both pending Auction #83 applications and new LPFM applications. However, we still contend that this would be the most **expeditious** course of action, in the long run, in light of: (a) its **relative** defensibility, compared to alternatives, in the face of challenging litigation; and (b) its **relative** conceptual simplicity, again when compared to alternatives.

We emphasize the point that simultaneous consideration of applications would be the easiest decision for the Commission to defend in court -- and, therefore, the least likely process to be disrupted by court decisions in the future.

We say this because simultaneous consideration comes closest to what Congress appears to have intended as the overall goal of Section 5 of the LCRA.

We also say this because, as a practical matter, simultaneous consideration of applications would make it more difficult for a reviewing court to find a truly aggrieved party. Pending applicants, other than those “pre-screened” out of contention on reasonable grounds, would not have lost the chance to challenge LPFM stations for spectrum. New LPFM applicants would not have lost the chance to challenge pending applicants for spectrum. The Commission would not have picked out any group of stations as clearcut winners. The Commission would not have

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picked out any group of stations as clearcut losers. The Commission would have only decided to Let The Best Proposals Win.

To further ease the administrative burdens upon the Commission, we propose that the

simultaneous consideration of applications should proceed in stages -- with action beginning first in the rural areas, where, in general, the incidence of mutually exclusive applications is lowest and the allocation of licenses is therefore simplest. We have been apprised by Matt Murillo, of THE OWL COMPANY in Texas, that the FCC has already employed a “rural areas first” approach, successfully, in the allocation of Low Power TV licenses. We advise the FCC to take the administratively simple approach of utilizing U.S. Bureau of the Census data for dividing the country into large Standard Metropolitan Statistical Areas (SMSAs), such as New York City, which are also called “metropolitan areas” by the Bureau ... Micro Statistical Metropolitan Areas (Micro SMSAs), such as Staunton-Waynesboro, Virginia, which are mostly “large small towns” and are termed “micropolitan areas” by the Bureau ... and truly rural areas, such as many farming areas and Indian Reservations. The FCC should save the most complex set of decisions for the end of the process, beginning simultaneous consideration of applications in truly rural areas, then moving to micropolitan areas and concluding in metropolitan areas.

## 2. Wattage Levels For New LPFM Applicants

(a) Wattage Levels in Truly Rural Areas. We remind the Commission that THE AMHERST ALLIANCE has long proposed making 250 watt licenses available for LPFM stations whose service areas are located 100% outside of any Micro SMSA or SMSA. The next round of LPFM applications is an opportunity to give truly rural LPFM stations the opportunity

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to be as large as a standard translator station.

Such LPFM stations should also be free to file for LP100 status or LP10 status if they prefer.

(b) Wattage Levels in Other Geographical Areas. We also remind the Commission that it

announced, back in 2000, that it intended to make licenses available for 10 watt LPFM stations as well as 100 watt LPFM stations. The FCC has never taken action to carry out this announcement, however, in spite of periodic reminders from THE AMHERST ALLIANCE and other interested parties. Because some areas with crowded spectrum can only accommodate LP10 stations, it is crucially important for the Commission to keep its long deferred promise to consider LP10 applications in addition to LP100 applications. At an absolute minimum, such action is needed in order to help LPFM applicants in SMSAs. Ideally, LPFM applicants in Micro SMSAs should have the option of filing for LP10 status as well. In fact, even in truly rural areas, we ask the FCC to make an LP10 option available. While an LP10 option for truly rural areas may not commonly be the practical necessity that it is in many SMSAs, and even in some Micro SMSAs, some aspiring LPFM broadcasters in truly rural areas have told us that this additional flexibility could nevertheless be helpful -- and, in any event, it seems unlikely to do anyone any harm.

#### 4. “Pre-Screening” Of Auction #83 Translator Applications

Nothing in our proposal for simultaneous consideration of pending Auction #83 applications and new LPFM applications prevents the Commission from first “thinning out” the mass of Auction #83 applications before the “super window” of simultaneous consideration

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begins. Nor can we find any provision of the LCRA which precludes such action by the Commission. This advance pruning must be reasonable, of course, but certainly those Auction #83 applications which are clearly identifiable as speculative can be culled from “the thundering herd” of Auction #83 applications. So can those translator applications which are clearly defective in other ways. Finally, in light of the intent of **both** Section 5 of the LCRA **and** the

FCC's original translator program, it is both proper and desirable to apply "caps" to the number of translator applications any given party can file. The best approach would be "caps" which limit each party to a ceiling on overall translator filings and a ceiling on the number of translator applications in any given geographical area.

#### E. THE 21 COMMERCIAL RADIO BROADCASTERS' PROPOSAL

The 21 COMMERCIAL RADIO BROADCASTERS' PROPOSAL advises the Commission to proceed with processing pending Auction #83 translator applications before new LPFM applications can even be considered. The only concession to "ensuring" spectrum availability for new LPFM stations would be a requirement that each translator applicant must first show that **one** frequency in its service area would remain available for **one** new LPFM station.

If this proposal were adopted, the title of Section 5 might as well be changed from "ENSURING THE AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS" to "ENSURING THE AVAILABILITY OF SPECTRUM FOR **ONE** LOW-POWER FM STATION".

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This proposal envisions only an anemic level of opportunity for new LPFM applicants.

Please read Section C of our Written Comments: "INTERPRETING SECTION 5 OF THE LOCAL COMMUNITY RADIO ACT". If Congress indeed wishes to increase the **proportion** of LPFM stations in the **overall mix** of LPFM stations, translators and boosters, this proposal would be a step in the wrong direction. After implementation of this proposal, there would be a modest increase in the absolute number of LPFM stations -- but a relative decrease in the **proportion** of LPFM

stations in the LPFM/translator/booster mix. The already gigantic **proportion** of translator stations in the mix would be allowed to grow even more tremendous.

In short, the 21 COMMERCIAL RADIO BROADCASTERS proposal is rooted in an extremely minimalist interpretation of the LCRA. It falls far short of pursuing the robust balance of choices that Congress intended local communities to have.

#### F. THE PROMETHEUS/EMF AGREEMENT AND THE REC NETWORKS PROPOSAL

(a) A Correction of the Docket 99-25 Record. We hereby correct the record on one point.

In their September 29 letter to the Commission, describing an Ex Parte presentation to Commission staff, Prometheus and EMF jointly declared that they have been involved in “ongoing efforts to engage in dialogue on these issues with other interested parties and such parties’ representatives ... ”

This is flatly untrue. Although the two undersigned parties authored and filed the Petition For Rulemaking which triggered the first Commission proceedings on LPFM, and

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although we have remained active and visible in FCC proceedings since that time, neither Prometheus nor EMF has ever invited either one of us to join in -- or even notified either one of us of the existence of -- their discussions. Since the undersigned parties are also leaders in THE AMHERST ALLIANCE, an independent LPFM advocacy group which is more politically moderate than Prometheus, we can add that THE AMHERST ALLIANCE has not been informed of these discussions, let alone invited to join them.

Certainly, Prometheus and EMF have no legal duty to confer with us as individuals or with THE AMHERST ALLIANCE as an organization. However, Prometheus and EMF do have a legal duty not to tell the Commission that their proposal is based on a broader range of input than

is actually the case.

Meanwhile, we commend REC NETWORKS for expressly declaring to the FCC that it does not represent all of the voices in the broadly based LPFM community.

(b) Substantive Merits of the REC NETWORKS and Prometheus/EMF Proposals. Each of these proposals comes somewhat closer to honoring the intent of Congress than the 21 COMMERCIAL RADIO BROADCASTERS proposal. Still, the **simultaneous**, case-by-case consideration of pending Auction #83 applications and new LPFM applications would be the single best way to carry out the Congressional desire for **each** community to have a **choice** of stations, based on its own **individual** needs.

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## G. CONCLUSION

For the reasons set forth herein, the undersigned parties respectfully urge the Commission to proceed in accordance with their recommendations.

Respectfully submitted,

Don Schellhardt, Esquire KI4PMG  
3250 East Main Street  
#48

Waterbury, CT 06705

[djlaw@gmail.com](mailto:djlaw@gmail.com)

(203) 982-5584

Nickolaus E. Leggett N3NL

1432 Northgate Square

#2

Reston, VA 20190-3748

[leggett3@gmail.com](mailto:leggett3@gmail.com)

(703) 709-0752

Dated: \_\_\_\_\_

January 24, 2011

\_\_\_\_\_  
Don Schellhardt, Esquire

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I hereby certify that copies of these Written Comments are being sent to the following parties:

David Oxenford, Esquire

For EDUCATIONAL MEDIA FOUNDATION

Davis Wright Tremaine LLP

Suite 800

1919 Pennsylvania Avenue N.W.

Washington, DC 20006-3401

(202) 973-4256

John F. Garziglia, Esquire

For 21 COMMERCIAL RADIO BROADCASTERS

Wombyle Carlyle Sandridge & Rice PLLC

1401 Eye Street

Seventh Floor

Washington, DC 20005

Larry Walke  
NATIONAL ASSOCIATION OF BROADCASTERS  
1771 N Street N.W.  
Washington, DC 20036-2800  
(202) 232-4300

Michelle Eyre  
REC NETWORKS  
P.O. Box 40816  
Mesa, AZ 85274-0816

23.

Matt Murillo  
THE OWL COMPANY  
3336 FM 1520  
Pittsburg, TX 75686  
[mattmurillo@hotmail.com](mailto:mattmurillo@hotmail.com)  
(903) 767-5649

Gregory A. Lewis, Esquire  
Associate General Counsel  
NATIONAL PUBLIC RADIO  
625 Massachusetts Avenue N.W.  
Washington, DC 20001-3753  
(202) 513-2000

Matt Wood, Esquire  
For PROMETHEUS RADIO PROJECT  
MEDIA ACCESS PROJECT  
1625 K Street N.W.  
Suite 1000

Washington, DC 20006  
(202) 232-3400

---

Don Schellhardt, Esquire

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