

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

Miller Media Group)
Petition To Allow Translators)
The Option Of Originating) Docket RM-11331
Local Programming)

WRITTEN COMMENTS OF THE AMHERST ALLIANCE

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group, founded in Amherst, Massachusetts in 1998. We support Low Power FM (LPFM), as well as other reforms designed to increase the diversity of media ownership and programming.

At this time, THE AMHERST ALLIANCE places into the record of Docket RM-11331 the text of its April 21, 2011 Petition For Rulemaking. The Petition contains a number of proposals, 3 of which are directly relevant to Docket RM-11331:

- (A) Amherst asks the Commission to allow the origination of local programming on translators;
- (B) Amherst asks the Commission to establish certain incentives which would encourage origination of at least 8 hours per day of local programming on translators;

And

- (C) Amherst asks the Commission to allow translators, pursuing these incentives, to "ramp up" to 8 hours per day of local programming over a period of 2 years.

Back in 2006, when Docket RM-11331 was opened for public comment, THE AMHERST ALLIANCE did not file any Written Comments in the Docket. Several individual members of THE AMHERST ALLIANCE -- that is, Don Schellhardt (then of Virginia), Nickolaus Leggett of Virginia, Robert Lewis Leftwich of Virginia, William Doerner of Texas, KPAH of Nevada and EAST HILL RADIO of Washington State -- filed Written Comments in support of the RM-11331 proposal. However, the Amherst organization as a whole remained neutral. Membership support for the proposal did not reach the two thirds majority that is traditionally required before Amherst may take a public policy position.

Now, 5 years later, support for the RM-11331 proposal has grown so much that the Membership vote to support this concept was unanimous. Our change of position, and its unanimity, are now being made part of the public record in Docket RM-11331.

Respectfully submitted,

Don Schellhardt, Esquire
President
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Dated: _____
May 27, 2011

THE AMHERST ALLIANCE
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April 21, 2011

Marlene H. Dortsch, Secretary
Federal Communications Commission
Office of the Secretary
1445 12th Street S.W.
Washington, DC 20554

Dear Ms. Dortsch:

Enclosed you will find an original hard copy, plus 14 additional hard copies, of a Petition For Rulemaking by THE AMHERST ALLIANCE: a Net-based, nationwide media reform advocacy group. A copy of this Petition is also being submitted electronically, as an Attachment to Supplemental Written Comments by THE AMHERST ALLIANCE, in FCC Docket 99-25.

1. The Petition proposes to allow locally originated programming on translators.
2. The Petition proposes that existing satellators, and also existing satellite-fed LPFMs, should be placed into a new, lower priority sub-category, which we call "Auxiliary" Secondary Service -- *except* when such stations have agreed to "ramp up", over 2 years, to 8 hours per day of locally originated programming.
3. The Petition asks the FCC to bar licensing of any new satellators, or new satellite-fed LPFMs, *except* when applicants agree to "ramp up", over 2 years, to 8 hours per day of locally originated programming.

Sincerely,

Don Schellhardt, Esquire
Co-Founder and President
THE AMHERST ALLIANCE

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Revision Of)
Secondary Service Status) FCC Docket No. _____
Policies)

A PETITION FOR RULEMAKING
BY THE AMHERST ALLIANCE

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Revision Of)
Secondary Service Status) FCC Docket No. _____
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A PETITION FOR RULEMAKING
BY THE AMHERST ALLIANCE

Founded in Amherst, Massachusetts, THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group for media reform. Since 1998, we have submitted 205 filings to the FCC. We have supported LPFM, LPAM, higher power ceilings for Part 15 AM stations, lower media ownership ceilings for large broadcasting entities and "Net Neutrality".

Today, we submit this Petition For Rulemaking, which seeks revisions of the Commission's current policies governing Secondary Service Status stations. The newly enacted Local Community Radio Act (LCRA) already requires some changes -- and none of the changes that we propose are inconsistent with that Act. The present Petition follows, and is designed to complement, a February 22, 2011 Petition For Rulemaking -- in which Amherst proposed targeted protection for certain radio stations, against displacement by full power stations, in certain cases where the LCRA does not preclude such protection. The two Amherst Petitions can be considered in tandem, if the Commission wishes, or considered separately.

EXECUTIVE SUMMARY

We urge the Federal Communications Commission to take the following steps:

1) Allow translators to air locally originated programming.

(2) Remove translators from the class of eligible new translators, *and also* remove satellite-fed LPFMs from the class of eligible new LPFMs, *except* when those applicants agree to "ramp up", over 2 years, to 8 hours per day of locally originated programming.

And

(3) Create a new, lower priority sub-category of *Auxiliary* Secondary Service stations for existing translators, and also for existing satellite-fed LPFMs, *except* when such stations have agreed to "ramp up", over 2 years, to 8 hours per day of locally originated programming.

IDENTIFICATION OF THE PETITIONER

THE AMHERST ALLIANCE was founded over dinner at a Friendly's Restaurant in Amherst, Massachusetts. The founders then wrote THE AMHERST DECLARATION and required all new Members to accept the Declaration's "basic principles".

These key principles include support for:

(1) Reducing the domination of the airwaves by media megacorporations

(2) Allowing both commercial and non-commercial stations to compete for licenses in an envisioned Low Power Radio Service (which was then pending as a proposal before the FCC)

3.

And

(3) Not encouraging "pirate radio" (that is, illegal unlicensed radio broadcasting, as opposed to legal unlicensed Part 15 broadcasting on the AM Band).

The high points of Amherst history include the following:

A. Active participation in the rulemakings that led to the establishment of a Low Power FM (LPFM) Radio Service in January of 2000. We did not achieve the goal of including some commercial-airing stations within the LPFM Radio Service, but we did succeed in persuading the Commission to adopt other public policy recommendations that we offered.

B. Active lobbying during the ensuing Congressional deliberations on whether to restrict the nascent LPFM Radio Service, including February 17, 2000 testimony during Hearings before the Subcommittee on Telecommunications of the House Energy and Commerce Committee. Amherst was unable to stop the enactment of adjacent channel spacing restrictions, adopted in December of 2000 and finally repealed by the Local Community Radio Act in January of 2011, but was instrumental in stopping the original bill that would have abolished LPFM completely.

C. Leadership of a 19-party Freedom Of Information Act Request, in 2004, that led the FCC to release the then-secret MITRE Corporation Report. The Report, by an independent party, confirmed that LPFMs do not cause interference problems for full power FM stations. The released Report went on to become the primary intellectual foundation for the eventual repeal of adjacent channel spacing restrictions.

D. Active involvement in a successful campaign to persuade the Commission not to raise the applicable ceiling on how much of the radio broadcasting industry a single entity may

legally own. In this regard, we were pleased to see that a reviewing court ultimately upheld Amherst's interpretation of Section 206 (h) of the Telecommunications Act over a competing Interpretation advocated by major broadcasting companies.

Amherst did not achieve any of its victories singlehandedly, but we were one of the key players in the various debates -- and our absence from the struggles could have made a difference for the worse on any of several occasions.

THE AMHERST ALLIANCE was basically inactive from 2008 until late 2010. With action on the Local Community Radio Act by Congress in December of 2010, and the prospect of implementation of the LCRA in 2011, Amherst has recently revived itself in order to provide input to the Commission on LCRA implementation.

THE AMHERST ALLIANCE prides itself on being unusually committed to pluralism, both in terms of our own Membership (gay rights activists to "evangelical" Christians, and Greens to Republicans) and in terms of the wide range of small, locally owned and operated stations that we support putting on the radio dial. Some media reform advocacy groups may see such stations as politicized "tools for social justice", while other media reform advocacy groups may see such stations as opportunities for Christian "evangelism", but we see such stations as ends in themselves. We want to see a diverse range of programming on the airwaves, certainly including locally focused stations with a political and/or religious agenda -- but also including stations that bring light jazz to the Shenandoah Valley or "doo wop" music to Delaware.

To "codify" its commitment to internal pluralism, in our Membership and our leadership, the Members of THE AMHERST ALLIANCE have unanimously voted to adopt the following

statement, which is binding on all Members in their interactions with each other:

“THE AMHERST ALLIANCE does not practice or tolerate discrimination on the basis of race, religion, political creed, gender or sexual orientation.”

TEXT OF SECTION 5 OF THE LOCAL COMMUNITY RADIO ACT (LCRA)

For easy reference, we have reproduced below the text of Section 5 of the recently enacted Local Community Radio Act (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 [new] 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) [new] 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.

The word “[new]” has been added for emphasis. It is our intent to remind the reader that Sections 5 (1), 5 (2) and 5 (3) all follow the preliminary directive that the Commission shall adhere to these three subsections “when licensing new FM translator stations, FM booster stations, and low-power FM stations”.

ALLOWING LOCALLY ORIGINATED PROGRAMMING
ON TRANSLATORS

We urge the Commission to permit locally originated programming on translators, including “satellators” (meaning satellite-fed translators and other long distance translators).

The Commission has considered this possibility in the past. Now -- with an abundance of “satellators” already On Air, and many more seeking radio station licenses in Auction #83, aka “The Great Translator Invasion” -- it is time for the Commission to consider this possibility again.

Adoption of this policy would offer two major benefits for the general public:

(1.) *The possible conversion of “satellators” (by which term we include other long distance translators) to broadcasting that is partly or fully local.* Originally, translators were authorized as tools for filling geographical gaps in a *local* radio station’s coverage. They were envisioned as instruments for enhancing broadcast localism, not supplanting it.

However, with the emergence of satellite technology and “string along” transmitter siting, translators have often become the exact opposite of what was originally intended. Many of them have become outposts in regional and national broadcasting networks.

Allowing the origination of local programming on translators would provide an opportunity to “make lemonade out of lemons”. That is: It would provide a chance for translators that are not local now to “convert” to a local orientation, at least some of the time.

7.

Such a shift in orientation might involve a change in station ownership, or it might not. That would depend upon decisions by each station's management. In either case, however, it would at least become legally *possible* to "make the lemonade". That is not the case now.

We add that nothing in this proposal would *require* any existing satellator to embrace the newly available option of airing local programming. However, the next proposal in our Petition would create an *incentive* for existing translators to "ramp up", over 2 years, to a minimum of 8 hours per day of locally originated programming -- or, putting things another way, it would create a penalty for not doing this. Those satellators which decide to initiate a phased shift toward broadcast localism -- moving back toward the *original* purpose of translators -- would receive full Secondary Service Status. Those stations which remain fully or mostly non-local would slip into a newly established *Auxiliary* Secondary Service Status, allowing them to be displaced by either locally oriented translators or locally oriented LPFMs.

Speaking of LPFMs, we propose to apply to existing LPFMs *exactly* the same policies that we propose to apply to existing satellators. Just as we assert that an existing satellator which airs at least 8 hours per day of locally originated programming deserves more displacement protection than an existing satellator which falls below that localism threshold, so we assert that a satellite-fed LPFM which meets the 8 hour threshold deserves more displacement protection than a satellite-fed LPFM which does not.

Both translators and LPFMs were intended to be servants of broadcast localism. In the context of current radio broadcasting, which has become overly "consolidated" and standardized, those translators and LPFMs which still serve broadcast localism merit special protection.

(2.) *A potential revival of “Mom and Pop” commercial radio.* During the 1990’s, the onset of mandatory auctions for all commercial radio licenses was combined with high ceilings on how much of the mass media a single entity may legally own. As a result, large broadcasting chains became larger -- at the expense of small, local commercial radio stations. Local broadcasters were acquired directly and/or outbid in the auctions for newly available commercial licenses.

Small, local “Mom and Pop” commercial radio stations became virtually extinct.

Since then, the establishment of LPFM has restored a degree of broadcast localism to *non-commercial* radio. The coming “window” for new LPFM applicants, *if* the Commission prevents Auction #83 translators from pre-empting all or most of the remaining metropolitan frequencies, holds the promise of expanding the current foothold.

Members of THE AMHERST ALLIANCE are deeply grateful to the Commission, and more recently to Congress, for the progress that has been made. Nevertheless, more needs to be done. Under present policies, *only* non-commercial broadcast localism is being helped.

Reviving small commercial radio will increase the diversity of voices on the airwaves.

It will also foster economic growth in two ways. First, it will create direct entrepreneurial opportunities for those local residents who seek and obtain a commercial radio license. Second, it will boost small businesses in affected service areas -- by making radio advertising available to them at much lower rates than a regional or national broadcasting chain would charge.

At a time when low economic growth and high unemployment are nationwide concerns, and when our nation's political leaders repeatedly praise small businesses for creating jobs at a faster rate than large businesses, action to revive small, local commercial radio would reflect well on the Commission and would clearly advance the public interest.

If those of us who comprise THE AMHERST ALLIANCE could wave a magic wand, we would lower the currently applicable media ownership ceilings and we would repeal the mandatory auctions -- or, at the very least, exempt stations below a certain wattage from their reach. Of course, attaining the latter goal would require Congressional action, which is unlikely to happen any time soon. Still, *some* restoration of "Mom and Pop" broadcasting might occur if local businesspeople were able to acquire commercial translators and then "convert" them, partly or fully, to locally originated programming.

The regrettably unavoidable mandate for auctioning of commercial translators may reduce the potential localism benefits of this policy option, but the relatively low wattage of commercial translators could still make licenses for them affordable for local entrepreneurs in some cases. With bids being made on stations that transmit at only 250 watts, small, local *commercial* radio could have a "fighting chance" to gain, in the world of translators, the same kind of foothold that small, local *non-commercial* radio has gained through LPFM.

ASSIGNING "AUXILIARY" SECONDARY SERVICE STATUS
TO EXISTING SATELLATORS AND EXISTING SATELLITE-FED LPFMs

Section 5 (3) of the LCRA mandates that new LPFMs, translators and boosters (presumably, licensed after LCRA enactment on January 5, 2011) must be "equal in status" with each other and, therefore, unable to displace each other. However, this statutory mandate does not extend to existing LPFMs, translators and boosters (presumably, licensed on or before the date of LCRA enactment). Nor does the statutory mandate extend to any of the nation's remaining Class D educational stations.

Therefore, the Commission retains the legal authority to create a new subset of existing Secondary Service stations, with a lower priority than other existing Secondary Service stations. We urge the Commission to use this discretionary authority to establish such a new class of stations, which we call *Auxiliary* Secondary Service stations.

We urge the Commission to place within this category any existing Secondary Service station, *including* any existing LPFM, which:

(A) Is fed, exclusively or primarily, by satellite;

And/or

(B) Relays, exclusively or primarily, programming that originates in a studio more than 120 miles away from the transmitter.

We further propose, however, that any Secondary Service station which would otherwise be classified as Auxiliary may avoid this classification if it meets the following criteria:

(A) On or after a date certain, it consistently broadcasts at least 2 hours per day of locally originated programming;

(B) By the end of the first year thereafter, it consistently broadcasts at least 4 hours per day of locally originated programming;

(C) By the end of the second year thereafter, it consistently broadcasts at least 6 hours per day of locally originated programming;

And

(D) After the end of the second year thereafter, it consistently broadcasts at least 8 hours per day of locally originated programming.

EXCLUDING SATELLATORS FROM NEW TRANSLATOR APPLICANTS

AND SATELLITE-FED LPFMs FROM NEW LPFM APPLICANTS

As was noted earlier, Section 5 (3) of the LCRA directs the Commission to treat new (presumably, post-enactment) LPFMs, translators and boosters as "equal in status" to each other. However, the language of LCRA Section 5 does not prohibit the Commission from *re-defining* what constitutes an LPFM or a translator (and/or a booster, for that matter).

We urge the Commission to use this discretionary authority to re-define new LPFMs and new translators in a way which excludes from licensing eligibility any new translator *or* any new LPFM which:

(A) Is fed, exclusively or primarily, by satellite;

And/or

(B) Relays, exclusively or primarily, programming which originates in a studio more than 120 miles away from the transmitter.

We further propose, however, that any otherwise excluded LPFM or translator may avoid such exclusion if it meets the following criteria:

(A) Beginning on the first day of licensed operation, it consistently broadcasts at least 2 hours per day of locally originated programming;

(B) By the end of the first year thereafter, it consistently broadcasts at least 4 hours per day of locally originated programming;

(C) By the end of the second year thereafter, it consistently broadcasts at least 6 hours per day of locally originated programming;

And

(D) After the end of the second year thereafter, it consistently broadcasts at least 8 hours per day of locally originated programming.

For purposes of compliance with Section 5 (3) of the LCRA, please note that this proposal treats new LPFMs and new translators *identically*.

CONCLUSION

For the reasons set forth herein, we urge the Federal Communications Commission, acting under its remaining discretionary authority, to revise its policies for Secondary Service Status stations to incorporate our public policy recommendations. These public policy recommendations are fully consistent with implementation of the Local Community Radio Act.

Respectfully submitted,

Don Schellhardt, Esquire

Co-Founder and President

THE AMHERST ALLIANCE

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Dated: _____

April 21, 2011

CERTIFICATION

I hereby certify that I have utilized U.S. Postal Service Express Mail to send a signed original copy of this Petition For Rulemaking, joined by 14 hard copies, to the following address: Marlene H. Dortsch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington, DC 20554.

Don Schellhardt, Esquire

Dated: April 21, 2011