

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554-0001**

In the Matter of )  
 )  
Digital Audio Broadcasting Systems )  
And Their Impact on the Terrestrial ) MM Docket No. 99-325  
Radio Broadcast Service )

To: The Commission and Media Bureau

**MOTION FOR EXTENSION OF TIME**

1. My name is Jonathan E. Hardis, and I am thankful for the opportunity to provide comments, and potentially reply comments, regarding elevated and asymmetrical digital sidebands in response to Public Notice DA 11-1832, “Comment Sought on Request for FM Asymmetric Sideband Operation and Associated Technical Studies,” of November 1, 2011.<sup>1</sup> Earlier today, I filed comments in the matter.

2. I write pursuant to [§ 1.46](#) of the Commission’s rules to request extensions of time for both the comment and reply comment periods. I acknowledge that the Commission does not routinely grant extensions of time, however the circumstances here indicate that extensions would be both in the public interest and in keeping with the Administrative Procedure Act. For the reasons explained below, I write to request that the comment period be extended to an additional 14 days following publication in the Federal Register, and that the reply comment period be extended to 21 days following the revised close of the comment period.

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<sup>1</sup> See [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-11-1832A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1832A1.pdf).  
See also [76 FR 72885-72888](#), November 28, 2011.

3. Today marked the end of the comment period as announced in Federal Register, and earlier today, at the 11<sup>th</sup> hour, iBiquity posted to the ECFS a dense, 33 page technical report to provide support for asymmetric sideband operation. As explained in my comments earlier today, the Administrative Procedure Act requires that agencies provide a reasonable and meaningful opportunity for comments to be received from the public on technical studies and data that underlie a proposed rule. There is no reason why this study could not have been made available before the start of the comment period, and certainly the comment period should now be extended to permit comments to be received.<sup>2</sup>

4. Public comment in a rulemaking proceeding serves three purposes. First, it continues into the administrative realm the basic principles of representative democracy.

“Parties affected by administrative rules have a distinct personal interest in how they are made. An adequate opportunity to present relevant information to appropriate officials is one of the most important tools with which individuals can defend themselves against an exercise of rulemaking power that may be detrimental to their interests.”<sup>3</sup>

The second is that it benefits the agency.

“The most obvious reason why such public participation is desirable is that it helps to elicit ‘the information, facts, and probabilities which are necessary to fair and intelligent action’ by those responsible for promulgating administrative rules. Since an agency’s own accumulated knowledge and experience are rarely sufficient to provide all the needed data upon which rulemaking decisions should be based, agency communication with interested parties on the subject of proposed regulations is essential. Such parties are usually in the best position to provide much of the specific information necessary for wise rule formulation. An opportunity for interested persons to inform appropriate

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<sup>2</sup> I note that this would also be an opportunity for the AICCS report to be officially noticed, and comments received.

<sup>3</sup> Arthur E. Bonfield, “Public Participation in Federal Rulemaking Relating to Public Property, Loans, Grants, Benefits, or Contracts,” 118 U. Pa. L. Rev. 540–541 (1970), citing the *Final Report of the Attorney General’s Committee on Administrative Procedure* 102 (1941).

administrators of facts, views, or arguments that they consider relevant to any proposed rule is, therefore, necessary for the sound operation of government.”<sup>4</sup>

And finally, it benefits the courts by ensuring a better record at their disposal if they are called upon to review agency action.

“By requiring the ‘most critical factual material’ used by the agency be subjected to informed comment, the APA provides a procedural device to ensure that agency regulations are tested through exposure to public comment, to afford affected parties an opportunity to present comment and evidence to support their positions, and thereby to enhance the quality of judicial review.”<sup>5</sup>

“...by giving affected parties an opportunity to develop evidence in the record to support their objections to a rule, notice enhances the quality of judicial review. See *Marathon Oil Co. v. EPA*, 564 F.2d 1253, 1271 n. 54 (9th Cir. 1977) (‘Such comment is often an invaluable source of information to a reviewing court attempting to evaluate complex statistical and technological decisions.’).”<sup>6</sup>

5. In service of these purposes, the Commission relies, in large part, on the voluntary participation by the radio engineering community to provide informed comments and critical reasoning on its proposed actions. It is in the public interest to gather as much relevant information as might be available and offered. And therefore, for this reason, the Commission often extends comment periods in rulemaking actions—to provide an adequate opportunity for informed professionals within the public to meaningfully contribute.

6. At present, there is scheduled a mere two-week reply comment period that includes the holidays of Christmas, New Year’s Day, their intervening days, and the days

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<sup>4</sup> Arthur E. Bonfield, *Id.*, at 541

<sup>5</sup> *Chamber of Commerce of the United States v. Securities and Exchange Commission* (“*Chamber II*”), 443 F.3d 890, 900 (D.C. Cir. 2006); electronically at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200604/05-1240a.pdf>

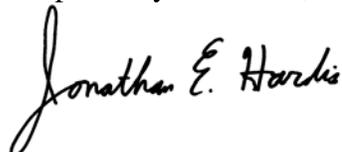
<sup>6</sup> *Small Refiner Lead Phase-Down Task Force v. U.S. Environmental Protection Agency*, 705 F.2d 506, 547 (D.C. Cir. 1983); electronically at <http://openjurist.org/705/f2d/506>.

immediately before Christmas. This time period does not provide a reasonable and meaningful opportunity for comment on iBiquity's new study, as much of the public is off from work and preoccupied with family matters, often away from home. The public interest would be best served by extending the comment period, rather than merely the reply comment period, as having both comments and reply comments enhances the quality of information available for both Commission decision and potential judicial review.

7. I note that, earlier in this proceeding, the Commission allowed over 35 days for both comments and reply comments in reply to "*Comment Sought on Joint Parties Request for FM Digital Power Increase and Associated Technical Studies.*"<sup>7</sup> By comparison, my request is quite modest.

8. Thank you very much for your consideration of my request.

Respectfully submitted,



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Dated: December 19, 2011

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<sup>7</sup> Public Notice, DA 08-2340, MM Docket No. 99-325, (MB rel. Oct. 23, 2008), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-08-2340A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-2340A1.pdf)