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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUL 23 1998
FCC MAIL ROOM

In The Matter of	)	
	)	
Petition for Creation of	)	
Low Power FM (LPFM) Broadcast	)	
Service and Amnesty for Pirate	)	
(illegal) Broadcasters	)	RM-9242

REPLY COMMENTS OF

AMERICAN COMMUNITY AM BROADCASTERS ASSOCIATION, Inc.
(ACAMBA)

JULY 20, 1998

Pursuant to the Commissions Rules, I Bryan Smeathers, President of the American Community AM Broadcasters Association (ACAMBA), respectfully provide these reply-comments regarding the petition for rulemaking number 9242 filed by Roger Skinner seeking the creation of the establishment of low power FM (LPFM) service and amnesty for illegal (pirate) radio broadcasters. These reply comments are timely filed as were ACAMBA's original comments to the initital response.

1. Mr. Skinner is incorrect in comparing this issue to "David -v- Goliath" and this is certainly not a "war" as Mr. Skinner has posted on his web site on the internet (http://www.concentric.net/Radiotv/) copy attached as Exhibit 1, wherein Mr. Skinner has promoted his view on the necessity of the creation of low-power FM radio. Mr. Skinner has through his web site attempted to paint a very bad picture for the entire radio broadcasting industry to sway support for his ridiculous proposition. But when the FCC takes the time to consider a rule making change as serious as RM 9242 from someone who has publicly stated this is a "war" and who has gathered the troops, if you will, among the pirate broadcasters around the nation to support RM 9242 rather than acting upon the petition for rulemaking filed August 13, 1997 by the American Community AM Broadcasters Association, Inc., which sought rule making changes for the benefit of AM standalone daytime stations, perhaps this is a sign of times of the current administration. It should be noted that the ACAMBA petition which has not yet been acted upon the FCC was filed nine months prior to the Skinner petition 9242.

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The Skinner petition was released for comment within weeks after arriving to the FCC as were at least two other similar LPFM proposals. All the while the ACAMBA petition has sat in someone's in-box in the bureaucratic quagmire all-to common with the non-elected bureacrats within the U.S. government.

2. ACAMBA Firmly Against Amnesty for Pirate Broadcasters:

The FCC should by no means consider the last minute amendment to RM 9242 filed by Mr. Skinner seeking amnesty for illegal broadcasters. As we stated previously, no special consideration should be granted to illegal broadcasters in light of the fact it would not be fair to those broadcasters who have been operating according to the laws and rules of the nation and FCC, and often times at great expense to maintain proper compliance.Illegal broadcasters should be at minimum identified and a federal registry established to maintain the appropriate data on each "pirate" station. This can be easily started by the FCC using computer technology. If the FCC is unable to enforce the law and rules on the numerous pirates around the nation then the FCC should seek the assistance of the Department of Justice in enforcement of the federal laws governing electronic broadcasts. Violations of our nation's communications law can be prosecuted by any U.S. Attorney since this comes under federal purvue.

3. LPFM will strain FCC resources:

The FCC is already slow to act on matters already allowed by the rules. Since the manpower reduction within the FCC, more work load is having to be done by fewer workers. The addition of LPFM service would only further the slow down and delays ever so common with the FCC.

4. LPFM threatens AM standalone and daytime stations:

Clearly the FCC has no concern over the plight of AM standalone or daytime stations by their failure to act upon the ACAMBA petition for rulemaking filed August 13, 1997. It's been nearly a full year since that petition was submitted and ACAMBA has attempted several times to contact the Commissioner of the FCC Bill Kennard seeral times and have received no response. LPFM stations would have a significat impact on the advertising revenue of the small AM stations already having a struggle in this day of consoldiation in radio. LPFM will not be competition for regular FM stations. LPFM would automatically have a competitive advantage over the small AM stations by having a better night signal.

5. LPFM not a First Amendment Right:

Contrary to Mr. Skinner and the numerous people filing in support of RM 9242, as has already been established throughout the past 75 years, there is sufficient case law on the books to deafeat the argument that the creation of LPFM is a First Amendment or other Constitutional right or question. As all concerned with the broadcast industry realize and are familiar with radio spectrum is a limited resource owned by the United States of America and therefore must be regulated, otherwise the airwaves will be so gluttered as to create confussion. We are a nation of laws not men, and evidently those proposing LPFM are unable to unstand this. Many of those advocating LPFM have posted their views on web sites on the internet. Such as Micro Kind Radio attached hereto and marked as EXHIBIT B which referes people to the Roger skinner web page (EXHIBIT A). Micro Kind Radio is a pirate operator and not affraid to let all know it. Then there is Steal This Radio which has a web page on the internet, attached hereto as EXHIBIT C, also a pirate station supporting LPFM and claiming the "airwaves belong to all of us and let's use them". And how about Radio Mutiny which boast a pirate flag on it's web page claiming the FCC rules "are unconstitutional" and that it has received visits from the FCC to cease and desist and comparing that to the American Reveloution defiance of the British Stamp Act, and listing their programs such as Queer Hour, Condom Lady's tips on Safe Sex and Drugs, and Mumia Abu Jamal's commentaries from death row. Radio Mutiny's web page is attached hereto and marked as EXHIBIT D.

These are but a few of the many examples available on the inertnet of supporters of the LPFM proposal. Is this what we may expect to hear on the airwaves of LPFM stations if created? How can the FCC expect the LPFM operators to comply with the rules if established since they are so defiant of the established rules and regulations already in place? Does the FCC really believe that such entities will operte in full compliance of the law and rules?

6. Changing Rules to Create LPFM for entrance to Broadcasting Unfair to existing broadcasters.

Simply because the pirate radio operators want to be in broadcasting legally, any attempt to change the rules to accommodate them may be an issue for a federal Judge to consider. Sure it's expensive and capital intensive to enter and operate a broadcasting facility, but that is no reason to create a new class of broadcast facility which may operate under lesser requirements (Ex: EAS) than existing radio stations. As previously stated this is not a First Amendment or even a Constituitonal question. Spectrum is limited and regulation is required. All classes of radio stations should be required to operate by the exact same standards.$

If the FCC wants to promote and encourage ownership of radio stations by low income and minority citizens then the FCC should re-institute the tax credit system for existing broadcasters to have some incentive to sell their stations to disadvantaged persons. We firmly believe that minority ownership of broadcast stations is important and firmly support any incentive program which would assist those desiring to sell their stations to minorities. On the otherhand, however, we do not believe that the rules should be changed to create a new class of radio station strictly because a group of citizens claim they don't have the necessary money or credit to buy or build a radio station as so many supporting LPFM are stating in their comments. Most of the comments we have received read as if these citizens are wanting the FCC to just give them a radio station. Don't they realize they will need capital to operate their LPFM stations?

7. Does the FCC Expect Pirates to Change?

Does the FCC really believe that the pirate operators on the air today will make responsible broadcasters in the future if licensed?

8. FM Translators for AM Broadcasters-Consideration for Standalone and Daytime AM Stations Should be Priority

Prior to the creation or even the consideration of LPFM proposals the FCC should first address the problems of those AM standalone and daytime stations throughout the country which have been seeking some needed improvement such as the right to use FM translators for fill-in service as is already being done in Alaska, Florida and Nashville, TN. ACAMBA filed a petition August 13, 1997 proposing such as rule change which is not a novel idea-the FCC has permitted this for the past ten years.

Where is the logic in creating a new class of low-power radio (LPFM) when there are hundreds of AM stations threatened and disadvantaged as a result of the Telecom Act of 96, i.e. consolidation, and its growing disadvatage to FM in general?

The FCC should first act upon the ACAMBA 1997 petition which was filed well in advance of RM 9242 before consideration of LPFM which would have a dramatic effect on several hundred existing AM stations. Creation of LPFM would be creating unfair competition to existing AM stations which have a terrific history of providing quality broadcasting and community service. This would not be in violation of Section 257 of the Telecommunications Act of 1996.

9. TELECOM ACT OF 1996 is primary reason for LPFM push and Should be revised:

One of the chief reasons cited by those filing responses to this rule making petition is the fact that as an effect of the deregulation provided by the Telecom Act of 1996 major conglomerates have been consolidating the radio business at a rapid rate, especially rapid in 1996 and 1997 with some decline however in 1998 according to FCC records. The LPFM proponents claim they feel threatened and that local radio diversity has been lost. We at ACAMBA are concerned with the state of consolidation in radio but do not believe local radio has been lost at this point and this certainly isn't justification for creating LPFM which will only complicate matters for the entire industry as well as the FCC and the public to which we all serve.

The FCC should reinstitute some ownership caps however to prevent the erroding of the nation's radio stations into the portfolios of fewer and fewer entities (corporations and individuals). The intent of the Telecom Act of 1996 was supposed to create a more competitive environment however,it is producing the opposite if the trend is allowed to continue. This problem should be addressed before creating low power FM service.

10. In Summary:

Creation of LPFM is not in the public's interest or is it necessary. Any form of Amnesty for illegal pirates would be unjust and unfair to all the properly licensed radio operators throughout the country who have exerted time, effort and personal funds to comply with all existing rules and laws as well as paying the annualy regulatory fee for use of the spectrum. the illegal operators have done nothing in this regard and it is doubtful based on their record of operating illegally in the face of the entire country, that they would change anything if licensed. Most of the proponents for LPFM appear to think they are owed a radio station by the government rather than work hard and build or buy their own radio station. Mr. Skinner in RM 9242 claims displaced LPTV station should automatically be granted a LPFM when there is a procedure in place at the FCC for displaced LPTV stations to apply for other frequencies. RM 9242 also proposes several classes of ownership and power. There is some question as to constitutionality of the proposed ownership restrictions contained in RM 9242.

LPFM proponents claim there is no community radio, which again is not correct. There are still thousands of local radio stations, for the time being that is. Within a year there will be DARS radio available to homes as well as automobiles to compete with telestrial radio, the internet is rapidly becoming competition for radio and as improvements on band width and portability of internet reception devices are made this competition will strengthen and actually will be a threat to all radio AM and FM. Then there is proposal before the FCC for use of FM translators for AM stations; all which should be addressed before any consideration of any new service. Why create a new service when improvements with available technology may be made with existing radio stations?

LPFM will threaten existing AM standalone and daytime stations financially as the LPFM with their limited range will be competing for the same advertising dollars.

It is pure nonsense when the petition in RM 9242 claims there is a need to lower the barrier for entry in broadcasting when in America anything is possible if one works hard enough.

The FCC enforcement branch can't keep up now with the current number of stations. How are they to manage with a few thousand LPFM stations added to the mix?

The FCC should and must issue a RM number for the ACAMBA petition filed with the FCC August 13, 1997 proposing use of FM translators for fill-in service by AM standalone and daytime only stations.

Any proposal for creation of LPFM stations or amnesty for illegal pirate broadcasters should be denied.

On Behalf of the American Community AM Broadcasters Association, Inc.

Bryan Smeathers, President
July 20, 1998
PO Box 973
Central City, KY 42330-0973
502-754-1380
email: wmta1380@broadcast.net

"EXHIBIT A"

Low Power FM Broadcasting

Latest News on the LPFM Petition for Rulemaking

FCC RM-9242

Please Click On Your Browser Type Before Proceeding

Netscape | Other Browser

Deadline for Filing Reply-Comments on RM-9242 at FCC has been extended from May 26th to

July 24, 1998.

You did not have to file original comments in order to be allowed to file reply-comments by July 24th. If you filed reply-comments already, you can file additional reply-comments by July 24th. The FCC has said they want to hear from as many interested parties as possible to aid in their decision on whether to create a LPFM service. See below on how to file and where to send them. We need your supportive comments to show the FCC that a lot of folks want a Low Power FM service to be created. We did not get quite as many comments as we wanted the first time around, so let's use this extra time to make up for that with a flood of supportive reply-comments.

NEW!

What Must Be Done to Get LPFM Created

OK, folks...it's becoming clear that we have to do some serious lobbying of the two top movers and shakers if you want to see LPFM created. Here's what must be done.

[illegible] Congressman and four US Senators. We need to educate these fellows on the [illegible] and why it should be allowed to be created by the FCC. These folks oversee the actions of the FCC and we need their support! When calling ask to speak to the legislative assistant (L.A.) who advises the Senator/Congressman on telecom issues. If you can't get through to the Senator/Congressman directly, this is the person you must persuade of our goal of LPFM creation. Email, call, write letters and follow up with faxes. Always be polite and courteous even if you disagree strongly with their positions when speaking or writing these folks.

SENATOR JOHN McCAIN (R-AZ): Chairman of the Senate Committee on Commerce, Science and Transportation As Chairman of this powerful Committee he has direct oversight of all FCC matters. It has been said that he will not support anything that the NAB opposes. We need to educate him on why Low Power FM needs to be created and what benefits it can bring to America. You need to write, fax, email and call his office and tell them you support creation of a Low Power FM service.

Here is a website with McCain's addresses and phone numbers:
http://www.capweb.net/classic/State/AZ/Member.morph?memberCode=S105AZS1

Senator John McCain
Washington Contact Information
241 Senate Russell Office Building
Washington, DC 20510-0303
Phone: (202) 224-2235
Fax: (202) 228-2862
Email: senator_mccain@mccain.senate.gov

Here is McCain's website where you can read his speeches and get a feel for what he is about.
http://www.senate.gov/~mccain/

In the US House of Representatives-
CONGRESSMAN W.J. BILLY TAUZIN (R-LA): Congressman Tauzin serves as Chairman of the influential House Telecommunications Subcommittee in Congress, which has oversight of all FCC matters as well. His support is also necessary for LPFM to be created. You need to write, fax, email and call his office and tell them you support creation of a Low Power FM service.

Here is Tauzin's website with his contact information and some background info.
http://www.house.gov/tauzin/ Please address your concerns to Billy at one of the addresses below.

Here is a good website with more info on Billy Tauzin. Check it out before contacting his office.
http://www.capweb.net/classic/State/LA/Member.morph?memberCode=H105LA03

Representative W. J. (Billy) Tauzin
Washington Contact Information
2183 Rayburn House Office Building
Washington, DC 20515-1803
Phone: (202) 225-4031
Fax: (202) 225-0563
Email: http://www.house.gov/writerep
URL: http://www.house.gov/tauzin/

If you don't take the time to contact these people then you cannot consider yourself a serious supporter of the LPFM movement. No excuses! Just do it and get as many others to do it as you can. That's what you can do to help create a LPFM service for yourself and others. Tell them that you want to see a LPFM service created as outlined in RM-9242 or with whatever changes you'd like to see. If you don't do this, you have let down the LPFM movement and yourself. If we can muster enough support, we can have LPFM...it's that simple!

Let's tell them what we want them to do before the July 24th deadline for reply-comments at the FCC.

Chairman Kennard is an ally but he cannot do this alone...he needs YOUR help! Do your part to help change America for the better....do it today, PLEASE!

On February 20, 1998, Rodger Skinner of TRA Communications Consultants, Inc. filed a **Petition for Rulemaking** at the FCC requesting the creation of a **Low Power FM** (LPFM) radio broadcast service nationwide. The FCC assigned this petition rulemaking number RM-9242, and accepted comments from interested parties until April 27, 1998 and is now accepting reply-comments until July 24, 1998.

Here are some comments filed by parties opposing creation of a LPFM broadcast service, as proposed in RM-9242. They are posted here so you can rebut their arguments against LPFM in your reply-comments. You can read these comments, which are in PDF format, by first downloading and installing the FREE Adobe Acrobat Reader (Ver. 3.0), available below. Comments below are from National Association of Broadcasters (NAB), USA Digital Radio, L.P., a joint statement from several State Broadcasting Associations and the American Community AM Broadcasters, Inc. (ACAMBA). You need to file "reply-comments" making your opposition to these comments known to the FCC by the deadline of July 24, 1998. I should not have to remind you that this is a WAR! These people do not want your LPFM to ever see the light of day. It's time to fight back with all the resources at your disposal, including your elected officials (see below). We can win this battle to create LPFM but we will need your help!

Click here to download Adobe Acrobat Reader Ver. 3.0

You can view the comments online in the Acrobat Reader and also save them to your hard-disk by selecting "save as" under the file menu of your browser, once the PDF file is opened on screen. You can then print them out at your leisure. You should file a copy of your "reply-comments" on all of the commenters addresses below, with a Certificate of Service as shown below.

NEW Here is another site where you can read additional comments in HTML that have been filed by commenters in the Low Power FM proceeding. Our thanks to Harold Hallikainen for taking the time to post these. Additional Comments

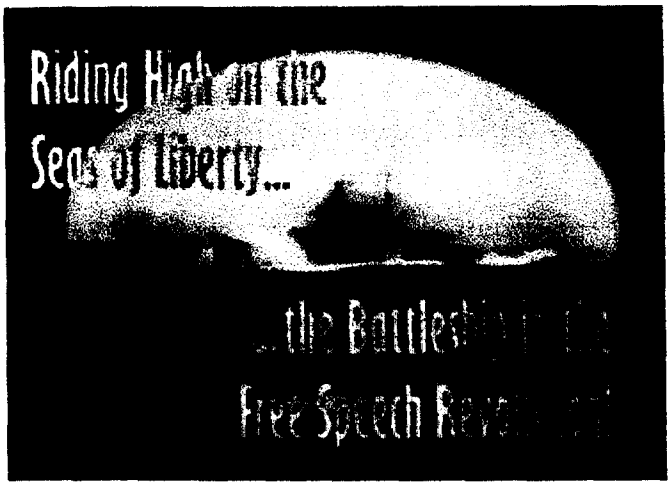
Click here to view the complete comments of the NAB [File size: 3386KB] (PDF Format requires Acrobat Reader Ver. 3.0)

The NAB comments consist of 39-pages plus an appendix. Their objections inlcude old arguments saying LPFM would be "inefficient use of spectrum" since higher-power station covers larger area. We need to point out that "efficient use" means **greatest diversity of voices**, and in this area LPFM wins hands down! (Note-that portion of NAB comments dealing with In-Band-On-Channel (IBOC) digital are available separately below)

"EXHIBIT B"

BACK

Micro Kind Radio



Listen to the Live Netcast

Airplay Schedule

Programmers

Court Victory!

Feedback

Show Policy

[redacted]

01/26/98

May 10th

Be sure to read the the comments of those parties expressing opposition to the creation of an LPFM broadcast service, and be sure to reply to these comments before May 26th. See what the NAB and several State Broadcasting Associations think about microbroadcasters at www.concentric.net/~Radiotv/.

To hear Micro Kind Radio, all you need (in addition to a 28.8 kbps modem, sound card and speakers) is a RealAudio Player(version 5). If you don't already have this popular plug-in for your internet browser, you can download a copy for free from www.real.com. The netcast is running on RealAudio encoder and server software. We believe it's the best, most widely supported method of streaming live audio currently available.

Listeners are invited to call the station at 512.754.0274 and discuss issues, request music, or whatever. If you are listening through our RealAudio server and call in on another

phone line expecting to hear yourself through your computer, you need to be aware that there is about a five to ten second delay. The delay is neccesary for the encoder to buffer and send along each slice of audio. If you try to talk and at the same time listen for your voice over your speakers, you'll confuse yourself and the programmer, who may not realize you're listening over the net. Turn your volume down so you don't distract yourself, and rest assured you are communicating live (almost) over the World Wide Web.

Micro Kind Radio is broadcast as a monophonic signal. Therefore, the RealAudio stream will also be mono. During peak daytime internet traffic, the server may encounter "net congestion" (the traffic jams of the web), which may cause the sound to break up periodically. It seems to run very smooth at night, so if you don't get a good streaming signal during the day you should give it a another try later in the evening.

If for some reason you can't hear the live netcast, and you're sure your computer is not at fault, it may be because our server is down. This hasn't happened yet after several months of streaming, but if it does, try again a little later and we should be back online. If you want, send an e-mail and let me know when and where you encountered a problem.

For anyone who needs to know, Micro Kind Radio 105.9 FM is not breaking any municipal, state or federal laws because of its operation. It is non-commercial in nature, accepts no advertising, and is not a business.

Keep an eye on these pages, I do my best to keep them updated, so please check back again soon. Thanks! Chris

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"EXHIBIT C"

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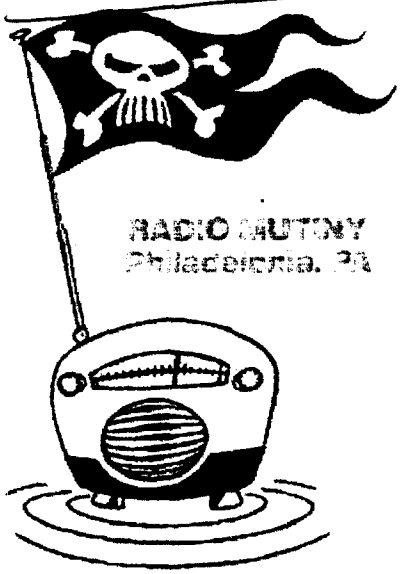
Steal This Radio is a micro-broadcasting community radio station dedicated to serving the needs of the Lower East Side. Starting in the winter of 1995 with mobile Friday night broadcast parties, the station is now broadcasting 7 nights a week. STR is a non-commercial, anti-profit, all volunteer collective offering an ever-expanding menu of diverse programming.STR will continue to be an accessible voice for all, in an age ofstrict corporate control of our media, and to be a strong force in the battle to preserve our beautiful and vibrant neighborhood against real estate and government dominance.

THE AIRWAVES BELONG TO ALL OF US, LETS USE THEM!

To submit announcements, music, programming propsals, or donations write or drop by **Blackout Books**, 50 Ave B. New York, NY, 10009.
Or call the hot-line (212) 358-5774 or visit the web site:
http://www.panix.com/~blackout/str.html

| HOME | Mission | Listserve | Calendar | Participants | Links | Resources |
web comments to Michael Eisenmenger

"EXHIBIT D"



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About Radio Mutiny

WPPR 91.3 fm

West Philadelphia Pirate Radio (WPPR), or Radio Mutiny, began broadcasting in October of 1996 as a resource for the people in our signal area, traditionally home to families with low incomes, students, and activists. Our anti-profit, anti-commercial, all-volunteer station broadcasts at 20 watts without interfering with other signals.

Our programming is as diverse as our 45 dj's and hosts. We broadcast Sunday through Friday from 5 or 6 pm to 11 pm or 12 with a mix of talk and music that you won't find anywhere else on the dial.

Talk shows include Malinga's pan-African political and cultural perspectives; a Queer Hour; The Blanket Man's Incarceration Nation; Jah Son's news Of indigenous peoples of the Western Hemisphere; CommuniKate's stories and interviews; Condom Lady's tips on safer sex and drug use; and Morgan LeFaye's Poetry Sauce featuring Philadelphia poets. Music ranges from hip-hop lo ska lo big band. We also play nationally syndicated programs that aren't heard elsewhere in Philadelphia. Radio Mutiny was the only station in Pennsylvania to play journalist Mumia Abu Jamal's commentaries from Death Row in April of 1997.

Radio Mutiny avoided contact with the FCC for more than a year, but in November of 1997, we received a visit from warrantless FCC representatives, followed by a "cease and desist" letter ordering us to stop broadcasting. A demonstration at the site of Benjamin Franklin's printing press, used at the onset Of the American Revolution to defy the British Stamp Act requiring licensing of printed materials, gained us many sympathetic reports in other media.

Radio Mutiny continues to broadcast al 91.3 FM lo bring freedom, diversity and democracy to the airwaves in spite of the current unconstitutional FCC regulations

Your dial was made for revolution!

Radio Mutiny
Box 238

Philadelphia, PA 19104
(215) 382-4992
wppr@svaha.com

CERTIFICATE OF SERVICE

I, Bryan Smeathers, President of American Community AM Broadcasters Association, do hereby certify that I have on this 21st day of July 1998, sent by First Class US Mail, postage prepaid, copies of the foregoing REPLY COMMENTS OF AMERICAN COMMUNITY AM BROADCASTERS ASSOCIATION ON RM 9242 to the following:

Henry L. Baumann
NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street NW
Washington, DC 20036

Harold K. McCombs
Duncan Weinberg Miller & Pembroke, PC
1615 M Street, NW Suite 800
Washington DC 20036

Robert A Mazer, counsel for USA Digital Radio
Vinson & Elkins LLP
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Washington, DC 20004-1008

Neal A Jackson/National Public Radio
635 Massachusetts Ave., NW
Washington, DC 20001

Richard R. Zaragoza/ Counsel for State Broadcasting Associations
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Washington, DC 20006

Kevin Reed/ Counsel for Cox Radio
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Bryan Smeathers