UNITED STATES OF AMERICA)
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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Petition For A)
Microbroadcasting) Docket No. RM-9208
Service)

REPLY COMMENTS OF John Robert Benjamin & Charles Coplien

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REPLY COMMENTS OF John Robert Benjamin & Charles Coplien

We one of the thousands of Americans who will apply for a microstation license when microradio is once again legal.
We hereby submit my Reply Comments in response to the numerous filings in FCC Docket No. RM-9208.

1. MICRORADIO RE-LEGALIZATION: A STEP TOWARD RE-ESTABLISHING A BALANCE OF MEDIA POWER

ALL of the microradio proposals before the Commission present a compelling case for re-legalization of microradio: the original Leggett/Schellhardt Petition (which triggered Commission action in RM-9208); the "Two Tiered System" revisions to RM-9208 that were proposed by the RM-9208 Petitioners in their recent Reply Comments; Rodger Skinner's Petition, filed after the onset of RM-9208; the Community Radio Coalition Petition, filed after the onset of RM-9242; and the later proposal of the Committee for Democratic Communications of the National Lawyers' Guild (which is closely associated with Stephen Dunifer).
Although these Petitions and proposals differ in some important respects, ALL stress that the Commission's 1978 ban on microradio has drastically reduced diversity of radio station ownership, programming and political and/or cultutal perspectives. This standing concentration of ownership and outlook, which is clearly a danger to the free flow of ideas in a free society, has now reached truly extreme dimensions through the loosening of station ownership restrictions -- AND the statutory mandate for auctioning of ALL commercial radio station licenses -- under the Presidentially endorsed and Congressionally enacted Telecommunications "Reform" Act of 1996.
After less than two years, the effects of this bi-partisan blunder are already abundantly clear.
RADIO WORLD, an organ of the National Association of Broadcasters, reports that 90% of the radio advertising expenditures of 1997 went to just FOUR companies.
This was an increase from 80% the year before. Will it reach 95% in 1998??
THIS CONCENTRATION OF MONEY MEANS A CONCENTRATION OF POWER. Inevitably and inescapably.
Further, the NAB, and its individual megacorporate members, have demonstrated by their arrogant actions and attitudes that they are more than willing to use this power to its fullest. They act and speak like "radio royalists" people who believe their power places them above accountability and beyond the need to even consider compromise with their critics.
Today, many people seem to worry about massive concentrations of power only when the power is concentrated in the hands of government. The truth, however, lies in the words of Lord Acton: "Power corrupts -- and absolute power corrupts absolutely."
This maxim is an insight into human nature -- not a comment about a particular economic system or legal system or political party. Lord Acton's fervent warning applies whether those who wield excessive power do so in the name of the State, the Corporate Community, the Academic Community or even the Church.
NO institution, of ANY kind, should be allowed to control the bulk of a free society's flow of information and speculation!!!!

Not if the free society expects to stay a free society.
Microradio re-legalization alone will not eliminate the dangerous concentration of power that now exists in radio and other media. However, microradio re-legalization will be a major step in the right direction. It will create a partial but important offset to the radio royalists who now dominate the airwaves by force of money and -- with the unfortunate assistance of Congress, President Clinton and the Commission -- by force of law as well.

2. MICRORADIO RE-LEGALIZATION: A STEP TOWARD RE-ESTABLISHING THE PRIMACY OF

THE CONSTITUTION

In both court filings (on behalf of Stephen Dunifer) and regulatory comments in Docket No. RM-9208, the Committee for Democratic Communications of the National Lawyers' Guild (CDC/NLG) has asserted that the current ban on microradio violates the First Amendment to the United States Constitution: "freedom of speech".

In addition, the RM-9208 Petitioners (Attorney Don Schellhardt, Nick Leggett and Judith Leggett) have asserted that the ban on microradio violates the FOURTEENTH Amendment to the United States Constitution: "equal protection of the laws".

The same RM-9208 Petitioners have FURTHER asserted that the 1996 Congressional mandate for license auctions ALSO violates the Fourteenth Amendment to the U.S. Constitution.

The Schellhardt/Leggett Constitutional assertions are presented in BOTH their Reply Comments and their Special Comments, Requesting A Suspension of Microbroadcasting Prosecutions With the Possibility of Retroactive Amnesty.

Between them, CDC/NLG and the RM-9208 Petitioners make POWERFUL and IMPORTANT arguments. The Commission should consider these Constitutional arguments very, very carefully when it drafts a proposed rule on microradio.

In addition to conducting its own "in house" legal analysis on the Constitutionality of BOTH the microradio ban AND the mandated license auctions, the Commission should also act on the Reply Comments recommendations of the RM-9208 Petitioners:

(a) When issuing a Notice of Proposed Rulemaking, the Commission should explicitly ask for comments on the Constitutionality of BOTH the current ban on microradio AND the standing statutory directive for auctions of all commercial radio station licenses. Submission of actual case law should be encouraged (although not required).

(b) The Commission has the legal discretion to end the microradio ban on its own initiative. With respect to the mandatory auctions, however, the Commission must answer to Congress. IF the Commission concludes that such mandatory auctions are indeed a violation of the Constitution, it should so apprise Congress, refuse to enforce the unconstitutional mandate -- and allow the matter to be resolved by court action. (OR the Commission can avoid the whole confrontation by asking Congress NOW to amend the Telecommunications "Reform" Act of 1996 -- in order to lift the mandatory auctions for microradio and, indeed, ALL radio.)

3. OTHER BENEFITS OF MICRORADIO RE-LEGALIZATION

In addition to partly offsetting a dangerous concentration of media power AND promoting obedience to the United States Constitution, a less than exhaustive list of microradio benefits would include:

(a) Some re-vitalization of political debate in this country, due to more outlets for more viewpoints.

(b) Some re-vitalization of entertainment and the arts in this country, due to more outlets for innovative and/or experimental creative projects. However, since even artists must eat, the arts are MORE LIKELY to flourish on microradio if the FCC allows commercial-airing stations that can afford to pay the artists for their work.

(c) More upward mobility opportunities for members of "out groups" who have few resources BUTample talent, ambition and/or creativity. Microradio can be a "low barrier" path to the middle class (and perhaps beyond) for blacks in ghettoes, Hispanics in barrios, Native Americans on Reservations, whites on the farm or in "poverty pockets" of Appalachia, "laid off" middle-aged executives of ANY race or gender -- and ANYONE ELSE who has modest resources but a soaring spirit.

HOWEVER, except for the incidental value of microradio training in the larger marketplace, THE PATH TO UPWARD MOBILITY WILL BE LARGELY CLOSED IF COMMERCIAL STATIONS ARE EXCLUDED FROM THE MICRORADIO MARKET. Microstations will promote little (if any) upward mobility if the FCC, cheered on by the CDC/NLG "wing" of the microradio movement, prevents microstations from earning enough money to expand and prosper -- or EVEN enough money to turn themselves into "sustainable" operations.

AS A CLOSELY RELATED POINT, the Commission's desire to increase minority ownership of radio stations is quite clear.

Given the extremely low "natural barriers" to market entry by microstations, microradio re-legalization is virtually certain to increase minority representation on the airwaves -- REGARDLESS of whether or not profit-making is allowed.

If profit-making is NOT allowed, however, then the increased minority ownership of radio stations is not likely to translate very often into higher standards of living, and/or into financially-related boosts in personal

empowerment, for the participating members of such minority groups. To put the same point another way, microradio without commercials will almost certainly increase the minority group PRESENCE on the airwaves -- but only a commercial option is likely to simultaneously increase the ECONOMIC POWER of these minority groups.

(d) A Godsend to rural areas -- and even to some small cities of half a million people or more. Rural areas and small cities account for a large minority of this country's population, and a large MAJORITY of this country's land area, but they have been largely abandoned by the megacorporations that compete so fiercely in the top 20 or 30 metropolitan areas.

Indeed, the RM-9208 Petitioners have asked (in their Reply Comments) why the NAB is trying so hard to keep microradio out of these markets -- which the megacorporations do not seem to want. The Petitioners' speculation -- that the haughty Lords of the Media Manor object to the very PROCESS of being petitioned by the peasants -- may well be on target.

In any case, the ongoing trend of megacorporate abandonment has been greatly accelerated by the Telecommunications "Reform" Act of 1996.

This shortage of good, locally based radio in rural and small city America is the second half of a "one-two punch" that was sent in the direction of such areas by legislators and regulators in Washington.

The first half of the punch was airline deregulation. Airline deregulation lowered prices on the busiest 20 or 30 flight routes. At the same time, however, airline deregulation devastated rural areas and small cities, leaving them with lower quality (and higher risk) "commuter airline" service -- or even, in some cases, with no airline service at all.

Now, "radio industry consolidation" has dealt ANOTHER crippling blow to those people and communities who are located outside the largest metropolitan areas.

It's time for a country that loves "country music" to give country people a break!!!!

4. SOME POINTS RAISED BY THE NAB

As for some of the arguments that the NAB has raised against microradio re-legalization, they can be addressed as follows:

(a) As a general proposition, SPECTRUM SCARCITY is a barrier to microradio re-legalization only in the nation's largest metropolitan areas. As noted above, areas with a high population density account for a majority of the nation's POPULATION but not a majority of the nation's LAND AREA. At the same time, with the common exception of "translator stations" that re-broadcast Big City Radio from dozens or hundreds of miles away, areas with LOW population density have been largely abandoned by megacorporations.

In such areas, there is usually plenty of room on the spectrum for new microradio stations.

As for the areas with high population density, scattered "holes" in the spectrum can still be found here and there in many cases. The Commission can find room for at least some microstations if it is careful and creative.

(b) This commenter is not aware of any reason why microradio is inherently incompatible with IBOC TECHNOLOGY. In fact, both the RM-9208 Petitioners and the CDC/NLG have stated that microradio should have access to a REASONABLE SHARE of any new frequencies that are made available through IBOC or other new technologies.

AS A CLOSELY RELATED POINT, the Commission should note that other countries are proceeding toward digitalization, and other "spread spectrum" technologies, with ALTERNATIVES to IBOC. IBOC is the product of megacorporate research -- NOT the response to a Commission mandate -- and the Commission is free to consider OTHER new technologies if they might serve the public interest more effectively.

(c) Contrary to claims of the NAB, microradio re-legalization will not burden the Commission with ADMINISTRATIVE COMPLEXITY.

The NAB fails to take into account the resources that can be shifted from shutting down unlicensed microstations to REGULATING licensed microstations. FURTHER, the NAB also fails to consider that "radio industry consolidation" has taken off the air thousands of licensed radio stations that the Commission no longer has to regulate -- thereby freeing up resources for microradio regulation. (This is one "silver lining" on a VERY dark cloud.)

Of course, the Commission can expect a huge pulse of microstation license applications if all of the FM and AM spectrums are opened to microradio on the same date. However, as the RM-9208 Petitioners have noted in their Reply Comments, this single giant pulse could be broken into several smaller, more

manageable pulses by setting up a SERIES of re-legalization dates. For example, they say, the first date could legalize microstation licensing in areas where CLEAR signals account for less than two-thirds of the available spectrum; the second date, a few months later, could do the same thing in areas where clear signals account for less than 80% of the available spectrum; and so on.
This approach would also have the advantage of targeting the first rounds of "diversity relief" toward those under-served areas where, BY DEFINITION, diversity relief is needed most.

5. OTHER ISSUES
(a) COMMERCIAL MICRORADIO should be allowed into the microradio movement. At the same time, the Commission should ALSO allow non-profit stations that air commercials for the sole purpose of covering some or all of their costs.
Microstations which are both non-profit AND non-commercial should be allowed as well. HOWEVER, the Commission should reject the recommendation, by CDC/NLG and others, that ONLY non-profit, non-commercial stations should be licensed in this market.
There MAY be room for a modest "set aside" for stations which are non-profit AND non-commercial. (The RM-9208 Petitioners, in their Reply Comments, have suggested 20%.)
A modest "set aside" is one thing, however: TOTAL domination of the microradio market by one type of microstation is something else. If the Commission requires a TOTALLY non-profit and non-commercial market for microradio, it may as well toss out the window ANY thought of microradio as a major path to upward mobility -- for minority groups or anywhere else! -- AND toss out the window as well ANY technological or programming innovations that require profit rather than altruism as a motivation. The desire for profit, properly directed and restrained, can be an ENORMOUS creative force -- which a ban on commercials would shut down completely.
In general, the key motivator in a TOTALLY non-commercial microradio movement would be IDEOLOGY -- which is not usually correlated with giving the public what it wants!!!!
We expect that such a microradio market would be dominated by Left of Liberal "anti-profit, all-volunteer radio collectives" plus Christian Right radio stations.
While both types of stations merit NICHES in the microradio market, their TOTAL domination of the microradio market would be an intensely inflammatory disservice to the listening public. It would ALSO be a stinging slap on the face to the many, many, MANY microbroadcasters who are Right of Stephen Dunifer and Left of Jerry Falwell.
The Commission's adoption of the CDC/NLG proposal for TOTAL domination of the microradio market would be BITTERLY opposed by the entrepeneurial "wing" of the microradio movement.
Such a policy would be EXTREMELY UNSTABLE politically. The entrepreneurial "wing" of the microradio movement would INSTANTLY make VOCIFEROUS complaints to Congress -- and Congress, particularly THIS Congress, is not known for its sympathy to self-proclaimed Marxists like Stephen Dunifer.
The two "wings" of the microradio movement are of roughly equal size, which strongly suggests that some kind of compromise is inevitable if solid progress is to be made. So far, however, the "radical" wing of the microradio has rebuffed ALL proposals for compromise from the entrepreneurial wing -- displaying in the process a kind of IDEOLOGICAL greed that matches or exceeds the monetary greed of the megacorporations.
In such a situation, we advise the Commission to do one of two things in its forthcoming proposed rule:
1. Fashion its own idea of a fair compromise on the commercialization issue (such as the referenced 20% "set aside"); OR
2. Propose NO protected "set aside" for non-profit, non-commercial microstations -- in order to convince microradio radicals that they MUST be willing to "come to the bargaining table", and show some flexibility, IF they want to be taken seriously.
(b) MANDATORY AUCTIONS should be avoided if at all possible. As noted in the discussion of Constitutional issues, set forth above, the Constitutionality of such mandatory auctions is in serious doubt. ALSO, on a practical level, the application of auctions to the microradio market would drastically reduce the ability of everyday Americans -- let alone "out" groups, such as black teenagers! -- to obtain access to licenses.
(c) If commercial radio is allowed into the microradio movement (as it should be!), TIGHT RESTRICTIONS ON MARKET ENTRY are needed in order to keep the market from becoming just another satellite domain for the megacorporations.
The Community Radio Coalition (CRC) has proposed local ownership restrictions. So has Rodger Skinner --

in RM-9242. Americans for Radio Diversity (ARD) has proposed local ownership restrictions PLUS restrictions on size (that is, income) and ownership (or other functional control). The RM-9208 Petitioners originally proposed only broadly phrased size/income restrictions -- but in their Reply Comments they quantified the size/income limitations, added and quantified ownership/control restrictions AND added and quantified local ownership restrictions as well.

ALL of these commenting parties are on the right track. The Commission should adopt size/income restrictions AND ownership/control restrictions AND local ownership restrictions -- drawing in each case from among the TOUGHEST of the restrictions that have been proposed.

(d) ALL MICROSTATIONS should be regarded as A "PRIMARY SERVICE": that is, "unbumpable" by any other microstation OR anyone else. RM-9242, Rodger Skinner's Petition, should be roundly rejected where it recommends that higher wattage microstations should be able to displace lower wattage stations (IF they cannot afford to upgrade).

(e) POWER CEILINGS began as a contentious issue, but opinion within the microbroadcasting community has now jelled into something approaching a consensus.

The CRC calls for maximum station power of 250 watts. The ARD calls for 100 watts. The CDC calls for 50 watts urban and 100 watts rural -- but is reportedly on the verge of shifting to 100 watts across-the-board.

Does the Commission see a pattern here?

In addition, the RM-9208 Petitioners (Nick Leggett, Judith Leggett and Attorney Don Schellhardt) originally proposed 1 watt. However, they have since shifted to proposing a "Two Tiered System".

Under this Two Tiered System, "Neighborhood Stations" in Tier One would be allowed a transmission radius of up to 1 mile (higher in areas with very low population density). "Community Stations" in Tier Two would be allowed a transmission radius of up to 5 miles.

The RM-9208 Petitioners note that these transmission radius standards could be converted to WATTAGE standards if the Commission prefers. They add that they envision "single digit wattage" (that is, under 10 watts) for most Tier One stations -- plus "double digit wattage" (that is, under 100 watts) for RURAL Tier One stations and ALL Tier Two stations.

Since the Commission has already used 10 watts as the standard for the currently illegal educational stations (which should be re-legalized!!) -- AND since the Commission currently uses 100 watts as the standard for separating microradio from the rest of radio -- it would be administratively convenient for the Commission to translate the Two Tiered System into 10 watts for urban, suburban and small town Tier One stations; 100 watts for RURAL Tier One stations; and 100 watts for ALL Tier Two stations.

In short, ARD, CDC/NLG and now the RM-9208 Petitoners are converging at or near 100 watts (EXCEPT for RM-9208's smaller Neighborhood Stations, set at or near 10 watts, in urban, suburban and small town areas). The CRC, with a proposed power ceiling of 250 watts, is not wildly higher than this apparent zone of consensus.

As it drafts its proposed rule, the Commission should be looking at THESE power ceiling numbers: 100 watts, or POSSIBLY 250 watts, for typical microstations -- and perhaps 10 watts for re-legalized educational stations and other microstations with a very localized focus.

The Commission should NOT consider Rodger Skinner's proposal, in RM-9242, for power ceilings set at 3,000 watts (with a 328-watt tower). While Rodger Skinner could do some good with such a station, and this commenter hopes he is able to have such a station, his station would not be a microstation by most of the microbroadcasting community.

The 15-mile transmission radius of such a station is large enough to cover most metropolitan areas. This would almost certainly make Rodger Skinner's station more sensitive to mass market economics and areawide concerns than to "niche market" economics and the concerns of individual communities.

Rodger Skinner's potential contribution to the nation, within the context of CONVENTIONAL radio, is another strong reason why Congress should re-visit and revise the Telecommunications "Reform" Act of 1996. This is where his dreams of a station belong -- in the halls of Congress and the community of CONVENTIONAL radio broadcasters -- rather than among the ranks of microbroadcasters.

By going with the RM-9208 amended it give Low power stations a great chance to do a public service like Amateur radio.

We have enclosed a copy of RM-9208 amended so you will now what we are talking about,

We like the fact about tier two it requires an amteur radio license . . .

TIER TWO -- Power ceiling is a transmission radius of 5 miles. 50 watts would fit in comfortably here, according to an FCC Conversion Table. (It

would be a 3-4 mile transmission radius, depending on antenna height, the FCC Table says. In practice, the signal would probably go farther, but that's the "official" number.) Heavier regulatory oversight here: Normal track licensing. Engineering study required. No type approval required, BUT people operating station equipment would have to have a General Radio Telephone License OR an Amateur Radio license. Technician Class.

We call Tier Two stations "Community Stations"
We think this is a good way for those who dont have their amateur radio license to get one and get some knowlege on transmitters

6. CONCLUSION
For the reasons set forth herein, we ask the Commission to consider the points and recommendations we have made -- AND to incorporate these points and recommendations in the preparation of a proposed rule for re-legalization of microradio.
Respectfully submitted,

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Comments or questions regarding these Reply Comments should be sent to:
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Dated: July 23, 1998
enclosed : RM-9208 amended

-- The AMENDED version of RM-9208 --

Our original version set a power ceiling of 1 watt, which we subsequently learned was ' way too low.

The AMENDED version of RM-9208 sets up two Tiers, with power ceilings based on transmission ranges

TIER ONE -- Power ceiling is a transmission radius set at the HIGHER of: (a) 1 mile; OR (b) the number of miles to the farthest boundary of the nearest community of 500 people or more. "Fast track" licensing. No type approval required. No engineering study required

We call Tier One stations "Neighborhood Stations"

TIER TWO -- Power ceiling is a transmission radius of 5 miles. 50 watts would fit in comfortably here, according to an FCC Conversion Table. (It would be a 3-4 mile transmission radius, depending on antenna height, the FCC Table says. In practice, the signal would probably go farther, but that's the "official" number.) Heavier regulatory oversight here: Normal track licensing. Engineering study required. No type approval required, BUT people operating station equipment would have to have a General Radio Telephone License OR an Amateur Radio license, Technician Class.

We call Tier Two stations "Community Stations"

You COULD get licensed in Tier One and file later for an upgrade to Tier Two, BUT you would have to "take your chances" in terms of competition with others who want to be licensed for Tier Two.

-Don Schellhardt