99-25

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Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

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Dear Commissioners and Commission staff,

THE AMHERST ALLIANCE hereby submits a Motion For Reconsideration of the Commission's September 17 Extension of the Reply Comments Deadline in FCC Docket No. MM 99-25. We are joined in this Motion by Alan Freed of Minnesota, William C. Doerner of Texas, Nickolaus E. Leggett of Virginia, Maryjane "Mj" Stelmach Honner of Michigan and WKJCE RADIO of Pennsylvania.

This Motion is also being filed electronically, at the ECFS, by John R. Benjamin of Pennsylvania. He is Communications Director for THE AMHERST ALLIANCE.

In light of the 7 months which have passed since the issuance of FCC Docket No. MM 99-25, and the 20 months which have passed since the issuance of FCC Docket No. RM-9208, this Deadline Extension is unnecessary.

Further, due to significant defects in the notice provided, the Deadline Extension has prejudiced the procedural rights of Low Power Radio supporters. The creation of this handicap, due to late and uneven public notice of the Deadline Extension, is contrary to the letter and spirit of the Communications Act, the Administrative Procedures Act and the 14th Amendment to the United States Constitution ("equal protection of the laws").

We hereby petition for corrective relief: specifically, a rollback of the new Reply Comments Deadline to October 1. As a second choice, we could accept the new Reply Comments Deadline IF the Commission requires that all Reply Comments filed after October 1 must be limited to the issue of In Band On Channel (IBOC) Digitalization. In either case, we also petition for a clear Commission declaration that no further Deadline Extensions will be granted.

Sincerely,

Don Schellhardt

Don Schellhardt
Co-Founder & National Coordinator, THE AMHERST ALLIANCE
For THE AMHERST ALLIANCE and Other Signatories of the Motion

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MOTION FOR RECONSIDERATION

OF THE SEPTEMBER 17, 1999 REPLY COMMENTS DEADLINE EXTENSION
BY THE AMHERST ALLIANCE,
ALAN FREED, WILLIAM C. DOERNER, NICKOLAUS E. LEGGETT,
MARYJANE "Mj" STELMACH HONNER AND WKJCE RADIO

September 22, 1999

FCC Docket No. MM 99-25

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UNITED STATES OF AMERICA

Federal Communications Commission

445 12th Street S.W.

Washington, DC 20554

(In The Matter Of:	)	Docket No. MM 99-25
(Creation Of A (Low Power Radio Service	))	Docket No. RM-9208; Docket No. RM-9242

MOTION FOR RECONSIDERATION
OF THE SEPTEMBER 17, 1999 REPLY COMMENTS DEADLINE EXTENSION
BY THE AMHERST ALLIANCE,
ALAN FREED, WILLIAM C. DOERNER, NICKOLAUS E. LEGGETT,
MARYJANE "Mj" STELMACH HONNER AND WKJCE RADIO

THE AMHERST ALLIANCE is a nationwide citizens' advocacy group, organized and mobilized primarily over The Internet. We have just celebrated our first birthday -- on September 17, 1999 -- and have made numerous filings in FCC Docket No. MM 99-25.

Amherst supports Low Power Radio in particular and mass media reform in general -- with emphasis on fostering greater diversity in news, features and entertainment ... providing greater coverage of local communities, including local artistic talent ... and offering new entrepreneurial paths to upward mobility.

We are joined in this Motion for Reconsideration by the following:

Alan Freed of Minnesota, an aspiring Low Power Radio broadcaster

William C. Doerner of Texas, another aspiring Low Power broadcaster

Nickolaus E. Leggett of Virginia, a technology analyst and inventor

Maryjane "Mj" Stelmach Honner of Michigan, a musicians' agent

WKJCE RADIO of Pennsylvania, an aspiring Low Power broadcaster

DEFECTIVE NOTICE OF THE EXTENSION

FCC Docket No. MM 99-25 is a Proposed Rule for the establishment of a Low Power Radio Service (LPRS).

Issuance of this Proposed Rule was preceded by a 5-month period of public comment in FCC Docket No. RM-9208. This former proceeding was initiated on February 5, 1998, for the purpose of gaining public input on the LPRS as a concept. The Proposed Rule itself was issued on January 28, 1999 -- roughly a year after the issuance of FCC Docket No. RM-9208 -- with Written Comments due by May 1, 1999 and Reply Comments due by June 1,1999.

Since then, at the request of the National Association of Broadcasters (NAB) and/or specific NAB members, both of these deadlines have been extended repeatedly. While the Written Comments Deadline finally came and went on August 2, 1999, the Reply Comments Deadline is still in flux.

A previous Reply Comments Deadline of September 1, 1999 was extended until September 17, 1999. This decision was made, and announced, on the day before the Deadline Extension.

Then the September 17 deadline was extended until the LATER of: (a) November 5, 1999; or (b) 14 days after the issuance of a Proposed Rule on In Band On Channel (IBOC) Digitalization, which is tentatively scheduled to occur on October 14, 1999. This latest extension -- of a September 17 deadline -- was not issued until September 17 itself.

To make matters worse, the Deadline Extension was not announced to the public, via the Commission's Web Site, until 3:00 p.m. Eastern Time. Further, in a break with previous practices, there was no attempt to notify Low Power Radio activists informally -- through phone to calls to selected activists, who would then E-Mail the news to many others throughout the movement.

At the same time, only 1 of the 3 key opponents of Low Power Radio -- National Public Radio (NPR) -- filed Reply Comments on or before September 17. The other 2 key opponents, the NAB and the Corporation for Public Broadcasting (CPB), have yet to file Reply Comments. The same can be said of Greater Media, Inc. (one of the parties who requested a Deadline Extension).

By contrast, most of the groups and individuals who support Low Power Radio -- including Signatories of this Motion -- filed Reply Comments on or before the September 17 deadline.

Since 2 of the key opponents, and Greater Media as well, avoided the filing of Reply Comments, we can only speculate that:

(a) The NAB, the CPB and Greater Media Inc., and perhaps other opponents of Low Power Radio as well, received informal advance notification of the Deadline Extension, while supporters of Low Power Radio did not;

And/or

(b) The NAB, the CPB and Greater Media, Inc., and perhaps other opponents of Low Power Radio as well, took advantage of their Washington, DC locations in order to delay filing of Reply Comments until Close Of Business on September 17.

In either case, or both cases, the practical impact is the same. Due to the late and uneven notice of the Deadline Extension, Low Power Radio supporters have been induced to "show their hand" -- that is, present their best rebuttal arguments -- while Low Power Radio opponents need not reveal THEIR best arguments until it is too late for Low Power Radio supporters to respond.

To cite a practical example, THE AMHERST ALLIANCE had 30 days to analyze and rebut the NAB's 300-page radio interference study (submitted to the FCC in its Written Comments). Now the NAB will have at least 48 days (perhaps more, if the IBOC proposal is delayed) to review the 18-page rebuttal of the NAB study in Amherst's September 15, 1999 Reply Comments.

Putting the same point another way:

Both sides of this debate have had a chance to rebut each other's arguments. Now, however, the NAB, the CPB and Greater Media Inc., and perhaps others, will have a one-sided chance to rebut the other side's rebuttals.

In courtroom terms, this is like allowing attorneys for both sides to question a witness, and also allowing attorneys for both sides to cross-examine a witness, but allowing only one attorney to conduct a re-direct examination of the other's cross-examination.

This result is contrary to the letter and spirit of the Communications Act, the Administrative Procedures Act and the 14th Amendment to the United States Constitution ("equal protection of the laws").

With every day that passes, Low Power Radio supporters come closer to incurring irreparable damage from their opponents' "second bite at the apple".

RELIEF REQUESTED

In light of the considerations discussed above, corrective action is needed IMMEDIATELY.

We petition for the following relief:

An immediate Commission rollback of the Deadline Extension to OCTOBER 1, 1999. This is the Reply Comments Deadline that was originally requested by the NAB in its Deadline Extension Request of last spring.

Absent this corrective action, the NAB will gain at least 35 more days to comment than the MOST it said it needed last spring.

As a second choice, we can accept the following relief:

Retain the current Reply Comments Deadline of November 5, 1999. However, in the case of Reply Comments received after October 1, 1999, consider ONLY those Reply Comments (or portions thereof) which address the issue of IBOC Digitalization.

This approach enables the Commission to receive the input it wants on IBOC Digitalization -- WITHOUT allowing Low Power Radio opponents an extra 35 days to "rebut the rebuttals" of Low Power Radio supporters.

Also:

If this second choice approach is adopted, the Commission should disentangle the MM 99-25 Reply Comments Deadline from the Proposed Rule on IBOC Digitalization. Otherwise, a delay in action on the latter will automatically cause a Deadline Extension in the former.

In other words, the Commission should set a November 5 deadline that is really a November 5 deadline.

Further:

Regardless of whether the Commission adopts the first or second option for corrective action, the Commission should state clearly and prominently that no further extensions of the Reply Comments period will be granted.

The Commission may have already done this -- in its formal written Notice (posted on its Web Site on September 20) that the September 17 deadline would be extended. In that Notice, the Commission states that there will be no further extensions of the "14-day comment period" (following the expected issuance of the October 14 IBOC Proposed Rule). However, since this statement is buried in the middle of a paragraph in a footnote, we do not know how seriously we should take it. A clear and prominent declaration is needed.

ADDITIONAL ARGUMENTS FOR THE REQUESTED RELIEF

1. There have been ample opportunities for Low Power Radio opponents to address the issues.

As noted earlier, even without the latest Deadline Extension, the NAB and other opponents have had 7 months since the issuance of FCC Docket No. MM 99-25. They have had 20 months since the issuance of FCC Docket No. RM-9208.

For that matter, they have had more than 20 years since the FCC's 1978 ban on licenses below 100 watts led to unlicensed broadcasting.

How much time is enough? Surely we are pressing the limits.

2. An extended Reply Comments Deadline is not necessary for the acquisition of more information on IBOC Digitalization.

IF the Commission believes it needs to know more about IBOC Digitalization before it proceeds with Low Power Radio, this result can be accomplished by simply delaying a FINAL RULE in MM 99-25 until enough information on IBOC Digitalization has been collected and assessed. There is no need to keep the MM 99-25 Reply Comments period open indefinitely.

We believe that IBOC Digitalization and Low Power Radio can be made compatible with each other. We add, however, that Low Power Radio should be given priority when and if collisions of interest occur. After all, the demand for Low Power Radio is broadly based, intense and rooted in the listening public -- while IBOC Digitalization is demanded only by a handful of megacorporations.

3. The latest Deadline Extension is part of a pattern of inadequate notice.

Although a Deadline Extension at 3:00 p.m. on the day of the deadline is certainly a climax, the previous Deadline Extension was issued late on the day BEFORE the deadline. This is not adequate notice, either.

In addition, a SERIES of Deadline Extension Requests have been issued in response to "informal requests" which were never officially noticed for public comment. THE AMHERST ALLIANCE, and other Low Power Radio supporters, learned of these Deadline Extensions and filed in opposition to them -- but ONLY due to trade press reports and/or unofficial networking. The Commission has systematically neglected to provide the formal notice which would ASSURE opportunities to comment on Deadline Extension Requests.

4. The latest Deadline Extension may not have been the product of reasoned decision-making.

Alan Freed, one of the Signatories of this Motion, has been informed by a member of the Commission staff that the latest Deadline Extension was essentially "automatic".

According to this unwritten explanation, the Deadline Extension was initiated pursuant to a statute which mandates automatic approval of any Deadline Extension Requests which have not been explicitly rejected by the Commission within a specified time period.

We speculate that the Commission may have intended to act upon the Deadline Extension Request on the day before the deadline -- but was distracted by the arrival of Hurricane Floyd.

Assuming this explanation is correct, the Deadline Extension was not the product of reasoned decision-making, but the result of a Category 4 distraction. Thus, the FCC has no emotional or intellectual "ownership" of the Deadline Extension -- and should, therefore, feel no reluctance to alter that decision.

CONCLUSION

For the reasons set forth herein, the Signatories of this Motion For Reconsideration urge the Commission to grant the relief requested -- and to do so expeditiously, before irreparable damage is incurred.

Respectfully submitted,

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Dated: September 22, 1999

September 22, 1999