Before the
FEDERAL
COMMUNICATIONS
COMMISSION
Washington, DC 20554

RE: Motion in support of
Amherst Alliance Motion
asking for decision on earlier
Motion For Reconsideration
on 99-25

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6/5/00

Dear FCC Commissioners,

We support the 6/1/00 Motions for a decision on an earlier Motion For Reconsideration of FCC Order 00-19 filed by Amherst Alliance and another on the same date by Don Shelhardt.

Additionally we would like to note that this is not a criticism of your actions, this is an alert that much of what you have done that is positive *could save the value of FM properties* through LPFM as well as provide you with a lot of support in Congress ...

… or not depending on how FCC staff interprets your rulings.

This is (we hope) a friendly alert that we on the ground are experiencing results from certain staff interpretations of your rules that may reverse all your good work!

And so we have some additional comments that we hope will aid you in the effort to regulate the airwaves of the people in their interests:

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The intent of the Low Power FM service is to create opportunities for *new* voices to introduce competition into what many consider a relatively mature or even "stagnant" market.

The reasoning: That the airwaves are public property and are made available to private entities to provide a medium for outlets to create a wide diversity of news, views and cultures and serve as the "Free Press" that is the feedback loop between those who create policy and those who suffer from policy.

In this way American participatory democracy is constantly revitalized by creating a medium that has room for everyone's story and culture and values. Our marketplace is strengthened as well because problems have a chance to be resolved before pent-up unrest could destabilize our political system.

Thus we applaud you for creating this opportunity to create competition in the full spirit of the 1996 Telecommunications Act.

Unfortunately, narrow interpretation of the rules by FCC staff may be destroying this laudable effort.

1) One of the purposes of the Low Power FM service is to ensure that *different* and *diverse* voices provide a *new* outlet for *new* values, stories and cultures than offered by the existing collections of stations.

FCC staff is narrowly interpreting the rules that has the effect of maximize the forces of status-quo over the new voices that yearn to be heard!

This threatens to destroy not just the LPFM service, but also the very existence of the FCC and possibly even contributing further to the decay of participatory democracy.

Some of the staff is contributing to these problems by :

1a) Not allowing organizations to group together and pool their points *together* as they apply for a frequency *together* means that an older organization that may or may not have proven itself a help to the ignored communities will receive an unintended (we hope) prejudice over the new entrants. Many times there are communities of culture, ethnicity and values that assumed that there was no place in "the system" for them and as a result have never tried to organize as a nonprofit before. Now you have caused them to have hope in you and the LPFM service and have invested significant effort to "play by the rules" many times for the first time in their lives! By allowing staff to interpret your rulings so narrowly, you risk pushing these hopefuls back into the "underground" of possibly pirate activity and at the least creating a lot of unnecessary ill will where *now you have their support* in Congress.

Would it not better serve the United States for more people rather than less to feel represented by their government? Would it not better serve the FCC and your term as Commissioner to have millions of people supporting you and your efforts in Congress rather than letter those who would shackle and dismantle you have their way?

1b) Not allowing organizations to apply for more than one frequency. Restricting an applicant to choosing just one frequency to apply for virtually assures that people will essentially be gambling that the one frequency they are allowed to apply for will not be contested. It seems easily possible, especially in mid-size markets like Richmond, Va., for several applicants to all accidentally apply for the same frequency. There was no ill intent ... however we were all required to choose one frequency, yet we are also not allowed to coordinate ahead of time either! We could end up with one winner, five applicants, four losers and four empty frequencies that were not applied for!

There *is* precedent for overturning this overly restrictive interpretation of your rules by FCC staff: Large merging broadcast chains regularly purchase more stations than they are allowed to have in a particular market. Rather than requiring that the broadcast chain must lose ALL their stations, they merely divest the ones that are in excess.

Why should LPFM applicants be treated any different? Under the 14th Amendment to the US Constitution, we are guaranteed equal treatment! This puts you on solid ground.

2) With the 14th Amendment in mind, it would also be relevant to point out that to treat some former radio pirates as "unfit" is not much different than saying that those who marched in civil disobedience to demonstrate support for desegregation ... such as Dr. Martin Luther King, now must be the ONLY African-Americans who must remain under Jim Crow laws! Only the quiet African Americans would

now be allowed to live and work and worship where they like, Dr. King and crowd must remain in their ghettos for daring to challenge an unjust system!

Under the 14th Amendment, many corporations that own radio stations, such as General Electric (in being fined for felonious activity) should be found "unfit" for broadcast ownership as well. Therefore this issue needs review.

YOU ARE BEING ASKED TO HELP REVIVE THE FM DIAL:

Both LPFM advocates (and radio pirates and media advocates as well) and the established Radio Industry have told you that Radio is in trouble. The NAB/NPR coalition and LPFM supporters see the solution from different angles, **but most agree on three points:**

- **Time Spent Listening is down 12% over the last ten years and continues to slide.** Duncan American Radio cited too many ads and "lack of programming innovation" as the source. This is due to a lack of local competition that *was* the *stated* goal of the 1996 Telecom Act. *LPFM local programming source competition finally brings this intent of the 1996 Telecom Act to fruition.*

- **Current broadcasters are failing to serve a growing number of Americans.** Technology Investor Magazine cites the fiscal viability of Satellite Direct Broadcast services such as XM and Sirius Corporation, stating, "*30% of CD sales are in genres of music that rarely are heard on the radio*." This does note even address news viewpoint, interviewee and talk variety that is missing.

- **Internet audio has taken off like no technology before it ... not because it sounds good or even works reliably but *because it has the content that people want*.** Sony themselves stated that *content* was the reason for the attraction of Satellite music and Internet in their comments on Digital Audio Broadcasting. *Merely* converting to digital will *not* reverse FM radio's increasing irrelevancy. LPFM on the other hand, will reverse FM's loss of listenership.

As wonderful as these alternatives to the FM dial are for diversity of content, they fail miserably in one vitally important area: Locality.

Satellite and Internet are by their very definitions NOT a geographically oriented medium. FM radio is also far more affordable per listener and per area then either of those technologies and is simple, stable and nearly universally available. Imagine finding underwriters for Radio Free Richmond, with programming directed at Richmond … but with a worldwide audience? The local small business that might have underwritten Radio Free Richmond will now say, "how many of your listeners *as a proportion* live near my business?" Additionally, we will lose audience since people in Bangladesh are unlikely to care about our City Council issues. Yet we must pay for an international infrastructure. This makes *local* programming on *international* infrastructure fiscally unviable.

And the final and ironic point in favor of LPFM ... LPFM PROGRAMMING INNOVATION WILL LITERALLY SAVE THE VALUE OF CURRENT FM PROPERTIES.

As the current FM stations fail to serve a larger and larger proportion of Americans ... people are spending hundreds of dollars and subscriptions (such as Music Choice) to escape the desert that the FM dial is becoming for an increasing number of Americans.

LPFM stations can provide a lot of the "programming innovation" that Duncan American Radio consultants pointed out was lacking and the reason for the loss of listenership!!

LPFM stations will provide a counter-acting trend, an increase in the content diversity people want *on their existing radios* thus slowing the loss of listenership to alternatives to the FM dial.

And most importantly to us, we will be able to affordably provide LOCALIZED service that the alternatives to the FM dial cannot cost-effectively provide and the larger chain stations are more and more reluctant to provide!

This localization of service can be the key to returning American's trust to their government. Americans will vote if they think it makes a difference. LPFM can provide a forum for their voices to make a difference. LPFM can revive people's trust that their needs are heard in the halls of power and thus increase the likelihood that America will have the collective will to pull together at the next National Crisis.

In the absence of the diverse programming innovation provided by LPFM, the most wealthy will simply leave the FM dial, all those who put their trust in you will move to pirate radio, Internet and Satellite ... and perhaps leave you to the wolves of Congress! All the people who have invested millions in FM and their careers will see this as the pivotal turning point where FM became irrelevant.

LPFM will *only* save the FM dial from irrelevancy if a maximum of *new* voices are created on the airwaves, not a rehashing of the same old status quo.

IN CONCLUSION:

We hope that you will consider the 6/5/00 motions of the Amherst Alliance, Providence Community Radio and others for a decision to their *earlier* Motion For Reconsideration as well as Don Schellhardts Motion regarding many of the above mentioned issues.

Specifically, we also hope that you will consider giving the staff guidance to not narrow the number of applicants in possible violation of the 14th Amendment of the Constitution:

1) A possible violation of the 14th Amendment guaranteeing equal treatment to disallow groups to coordinate before their application in order to group their points and thus ensure new voices get a chance. **Staff should allow agreements previous to application for pooling of points.**

2) A possible violation of the 14th Amendment guaranteeing equal treatment to disallow multiple applications for different frequencies. This is no different than large broadcast chains buying more stations than they are allowed, then divesting those that are in excess. LPFM applicants should be allowed to follow the same precedent and be allowed to apply for more than one frequency, then dropping the contested frequencies and selecting only one of whatever choices may remain among uncontested frequencies. The result for the LPFM service will be no different, each applicant will have *one* frequency, but now there is less of a gamble that several groups will *inadvertently* choose the same frequency and thus create an unnecessary win-lose situation where it could have been win-win! **Staff should allow LPFM applicants to follow precedent set by large broadcasters and allow LPFM applicants to apply for multiple frequencies then drop the excess frequencies, thus choosing the uncontested frequency and ensuring maximum chance of successful application.**

And finally, it seems relevant to restate that the more people you invite in with equal treatment, the stronger your case is against the enemies of the FCC in Congress and in industry.