

DON SCHELLHARDT
Government Relations & Family Law Attorney
45 Bracewood Road
Waterbury, Connecticut 06706
pioneerpath@hotmail.com
(203) 757-1790

October 25, 2002

Federal Communications Commission
C/o Marlene H. Dortch, Secretary
The Portals -- 445 12th Street S.W.
Washington, DC 20554

**RE: Motion For Rehearing, By THE AMHERST ALLIANCE And 33 Others,
Of The Commission's Selection Of In Band On Channel (IBOC) Technology
For Radio Digitalization -- In FCC Docket MM 99-325**

Dear Commissioners and Commission Staff:

On behalf of THE AMHERST ALLIANCE and 33 other parties, I hereby submit this Motion For Rehearing of the Commission's October 11, 2002 Report & Order in Docket MM 99-325. In this Report & Order, the Commission has selected In Band On Channel (IBOC) technology as the only technology which may be used for Radio Digitalization.

We acknowledge the FCC's announcement of a *future* rulemaking, designed to resolve the many details of IBOC implementation. However, this Motion For Rehearing appears to be our final non-judicial opportunity to challenge the selection of IBOC itself.

The 34 parties to this Motion For Rehearing are as follows:

THE AMHERST ALLIANCE, *Connecticut*
VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP), *Virginia*
CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO, *Massachusetts*
WILW, *Connecticut*
AURICLE COMMUNICATIONS (Licensee of WFMU and WXHD), *New Jersey*
KOL AMI HAVURAH (Licensee of WVJW-LP), *West Virginia*
SPRYEX COMMUNICATION, *Ohio*
JAMRAG MAGAZINE AND GREENHOUSE NEWS, *Michigan*
BEATRADIO, *Minnesota*
KPIB-LP, *Texas*
CHALK HILL EDUCATIONAL MEDIA, *Texas*
REC NETWORKS, *Arizona*
ROGUE COMMUNICATION, *Washington State*
JAMES JASON WENTWORTH, *Alaska*
MATTHEW HAYES, *Oregon*

FCC Docket MM 99-325
AMHERST ALLIANCE, VCPP Et Al.
Transmission of Petition For Reconsideration
October 25, 2002

JOHN DAVIDSON, *California*
ROD SEGO, *Utah*
KYLE DRAKE, *Minnesota*
JOHN ANDERSON, *Wisconsin*
WILLIAM G. HEBBERT, *Wisconsin*
JOHNATHAN GRANT, *Indiana*
ERICH LOEPKE, *Texas*
ROBERT CHANEY, *Louisiana*
STEPHEN C. BRINGHURST, *Alabama*
NICKOLAUS E. LEGGETT, N3NL, *Virginia*
JOHN ROBERT BENJAMIN, *Pennsylvania*
WILLIAM H. BEYRER, *Pennsylvania*
W. REECE NEWTON, *Pennsylvania*
RICHARD H. SHIVERS, KB3FGJ, *Pennsylvania*
MIKE ERICKSON, *New York*
GERALD JOHN MEHRAB, WA2FNQ, *New York*
KEVIN JOHNSTON, *New York*
WESLE ANNEMARIE DYMOKE, *Rhode Island*
JACK FLANAGAN, *Massachusetts*

This Motion For Rehearing is being filed electronically, via the Commission's Electronic Comment Filing System (ECFS) at www.fcc.gov. In addition, a signed original and 11 hard copies are being sent to the Commission's Capitol Heights facility.

Sincerely,

Don Schellhardt
Attorney For THE AMHERST ALLIANCE,
Acting On Behalf Of All Parties To This Motion
45 Bracewood Road
Waterbury, Connecticut 06706
pioneerpath@hotmail.com
(203) 757-1790

UNITED STATES OF AMERICA
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Digital Audio Broadcasting Systems)
And Their Impact On Terrestrial) FCC Docket MM 99-325
Radio Broadcast Service)

MOTION FOR REHEARING BY:

**THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC
PRESS, CITIZENS MEDIA CORP/ALLSTON-BRIGHTON
FREE RADIO, WILW, KOL AMI HAVURAH (Licensee of WVJW-LP),
JAMRAG MAGAZINE AND GREENHOUSE NEWS, BEATRADIO,
REC NETWORKS, AURICLE COMMUNICATIONS (Licensee of
WFMU and WXHD), ROGUE COMMUNICATION, SPRYEX
COMMUNICATION, KPIB-LP, CHALK HILL EDUCATIONAL MEDIA,
MATTHEW HAYES, JOHN ANDERSON, NICKOLAUS E. LEGGETT,
JOHN ROBERT BENJAMIN, WESLE ANNEMARIE DYMOKE,
JAMES JASON WENTWORTH, WILLIAM G. HEBBERT,
JOHN DAVIDSON, ROD SEGO, JOHNATHAN GRANT, KYLE
DRAKE, ERICH LOEPKE, STEPHEN C. BRINGHURST, ROBERT
CHANEY, WILLIAM H. BEYRER, W. REECE NEWTON, RICHARD H.
SHIVERS, MIKE ERICKSON, GERALD JOHN MEHRAB, KEVIN
JOHNSTON AND JACK FLANAGAN**

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UNITED STATES OF AMERICA
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Digital Audio Broadcasting Systems)
And Their Impact On Terrestrial) FCC Docket MM 99-325
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MOTION FOR REHEARING BY:
THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC
PRESS, CITIZENS MEDIA CORP/ALLSTON-BRIGHTON
FREE RADIO, WILW, KOL AMI HAVURAH,
***JAMRAG* MAGAZINE AND *GREENHOUSE NEWS*, BEATRADIO,**
REC NETWORKS, ROGUE COMMUNICATION, AURICLE
COMMUNICATIONS (Licensee of WFMU and WXHD), SPRYEX
COMMUNICATIONS, KIBP-LP, CHALK HILL EDUCATIONAL MEDIA,
MATTHEW HAYES, JOHN ANDERSON, NICKOLAUS E. LEGGETT,
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ROBERT CHANEY, WILLIAM H. BEYRER, W. REECE NEWTON,
RICHARD H. SHIVERS, MIKE ERICKSON, GERALD JOHN MEHRAB,
KEVIN JOHNSTON AND JACK FLANAGAN

We are a coalition of 13 organizations and 21 individuals.

We are united in urging the FCC to reconsider its decision to

select In Band On Channel (IBOC) technology for Radio

Digitalization. This decision was made in an October 11, 2002

Report & Order in FCC Docket MM 99-325.

**Identification of the Parties To
This Motion For Rehearing**

The 34 parties to this Motion For Hearing can be classified into one of 4 sub-categories. In the case of each sub-category, organizations and other institutions are listed first, followed by individuals.

1. The following 9 parties to this Motion For Rehearing are also parties to *both* the July 18, 2002 Request For Preparation of an Environmental Impact Statement (EIS) *and* the April 17, 2002 Petition For Rulemaking (currently placed in PRM02MB) on comparative evaluation of IBOC and other Digitalization technologies:

**THE AMHERST ALLIANCE, *Waterbury, Connecticut*
A Net-based, nationwide citizens' advocacy group for media
diversity**

**VIRGINIA CENTER FOR THE PUBLIC PRESS (VCPP), *Richmond,
Virginia***

**An information and advocacy center for media diversity,
whose Secretary is seeking a Low Power FM license for WRFR**

**CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO,
Boston, Massachusetts
A Part 15 radio broadcaster**

**REC NETWORKS, *Tempe, Arizona*
An information and advocacy center for media diversity
and an aspiring Low Power FM broadcaster**

**ROGUE COMMUNICATION, *Lake Forest Park, Washington*
An information and advocacy center, and consulting firm,
on mass communications and media diversity**

**JAMRAG MAGAZINE AND *GREEN HOUSE NEWS, Ferndale,
Michigan*
A magazine covering the music scene in metropolitan Detroit *and*
the official publication of the Green Party of Michigan**

**MATTHEW HAYES, *Portland, Oregon*
An aspiring Low Power FM broadcaster**

**NICKOLAUS E. LEGGETT, *N3NL, Reston, Virginia*
A concerned citizen, Amateur Radio Service operator and author
or co-author of several Petitions For Rulemaking to the FCC
(including RM-9208, which triggered the FCC deliberations that
ultimately led to the new Low Power Radio Service)**

**JOHN ANDERSON, *Madison, Wisconsin*
An established journalist on “mainstream” radio *and*
an Internet broadcaster**

**2. The following 2 parties to this Motion For Rehearing
are also parties to the July 18, 2002 Request for an EIS:**

BEATRADIO, *Minneapolis, Minnesota*
Internet broadcaster and aspiring Low Power FM broadcaster

JOHN ROBERT BENJAMIN, *Marienville, Pennsylvania*
An aspiring Low Power FM broadcaster

3. The following 3 parties to this Motion For Rehearing are also parties to the April 17, 2002 Petition For Rulemaking on comparative evaluation of IBOC and other Digitalization technologies:

KOL AMI HAVURAH, *Benwood, West Virginia*
Licensee of WVJW-LP,
a Low Power FM broadcaster

WILW, *West Hartford, Connecticut*
A Part 15 radio broadcaster,
owned by an expert on Low Power AM technology

WESLE ANNEMARIE DYMOKE, *Providence, Rhode Island*
Co-founder of PROVIDENCE COMMUNITY RADIO,
an aspiring Low Power FM broadcaster,
and former National Coordinator of THE AMHERST ALLIANCE

4. 20 parties to this Motion For Rehearing are not parties to *either* the July 18, 2002 Request for an EIS *or* the April 17, 2002 Petition For Rulemaking.

Nevertheless, they are asserting their rights and interests

at this time:

**JAMES JASON WENTWORTH, *Fairbanks, Alaska*
Aspiring Part 15 broadcaster**

**JOHN DAVIDSON, *La Jolla, California*
Concerned citizen**

**ROD SEGO, *Provo, Utah*
Concerned citizen**

**KYLE DRAKE, *Plymouth, Minnesota*
Radio engineer and concerned citizen**

**WILLIAM G. HEBBERT, *Bayside, Wisconsin*
Concerned citizen**

**JOHNATHAN GRANT, *Kokomo, Indiana*
Aspiring Low Power FM broadcaster**

**ERICH LOEPKE, *Fort Worth, Texas*
Concerned citizen**

**ROBERT CHANEY, *Baton Rouge, Louisiana*
Concerned citizen**

**STEPHEN C. BRINGHURST, *Jacksonville, Alabama*
Concerned citizen**

**WILLIAM H. BEYRER, *Chambersburg, Pennsylvania*
Concerned citizen**

W. REECE NEWTON, *Cleona, Pennsylvania*
Concerned citizen

RICHARD H. SHIVERS, KB3FGJ, *Philadelphia, Pennsylvania*
Amateur Radio Service operator and concerned citizen

MIKE ERICKSON, *North Babylon, New York*
Concerned citizen

GERALD JOHN MEHRAB, WA2FNQ, *Northport, New York*
**Radio/TV engineer, Amateur Radio Service operator and
concerned citizen**

KEVIN JOHNSTON, *Johnson City, New York*
Part 15 broadcaster

JACK FLANAGAN, *Acton, Massachusetts*
Concerned citizen

***A. THE COMMISSION'S OCTOBER 11, 2002
DECISION TO APPROVE IBOC RADIO DIGITALIZATION
IS PROCEDURALLY PREMATURE***

**The Commission made its decision to approve *IBOC Radio*
Digitalization while directly relevant Commission proceedings
were still pending. By making its selection of IBOC technology
before completing its work on several ongoing and relevant
proceedings, the Commission has undercut the Administrative**

Procedure Act, as well as the “due process” clause of the Constitution, in at least two fundamental respects.

***First:* To the extent that the approval of IBOC *precludes or erodes* the Commission’s future ability to adopt policies advocated by parties to the ongoing proceedings, the Commission is functionally denying those parties their right to be heard by the Commission. That is: The practical result of approving IBOC Radio Digitalization, without *first* concluding other proceedings that are related to and/or affected by that decision, is a *functional pre-judgment* of some or all of the issues raised in those other proceedings. Whatever the Commission’s judgments in those proceedings may ultimately be, they must be *judgments, On The Record*, rather than *pre-judgments*, achieved indirectly and, from the public’s perspective, invisibly.**

Those parties who have initiated and/or engaged in these pending proceedings are legally entitled to responses from the Commission, On The Record, which are detailed enough to reflect careful consideration of the record *and also* official

enough to be appealable to a court, if one or more of the parties deem it necessary. These are *fundamental procedural rights*, which the decision on IBOC has indirectly, but tangibly, denied to participants in these pending proceedings.

Second: The Commission's effective pre-judgment of other relevant proceedings *also means* that the Commission, when reaching its decision on IBOC, acted in the absence of relevant information that might have been generated by first bringing those other proceedings to completion. In effect, the Commission *deliberately deprived itself of potentially available information*, when there was no compelling reason to do so.

The very process of processing the pending proceedings in question, which are enumerated below, would have made available to the Commission important new information on the human health effects of Radio Frequency emissions; the effects on electronic equipment of "blanketing interference"; other possible environmental implications of IBOC Radio Digitalization *and also* the merits of technological alternatives to IBOC,

including (but not limited to) the globally popular Eureka-147.

Instead, the Commission has approved IBOC in reliance on an information base that the Commission itself has artificially narrowed. Contrary to fundamental concepts of “due process of law”, the Commission has blinded itself, by its own hand.

The specific pre-judged proceedings are discussed below.

1. The Commission Has Acted While A July 18, 2002 Multi-Party Request For Preparation Of An Environmental Impact Statement (EIS) Is Still Pending

On July 18, 2002, many of the parties to this Motion For Rehearing filed, in FCC Docket MM 99-325 (the IBOC Radio Digitalization Docket), a Multi-Party Request for a programmatic EIS on the overall consequences of the radio broadcasting industry’s contemplated conversion to IBOC Digitalization.

This EIS Request was filed by a coalition of 13 parties: THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP), CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO, WLYC-AM, BEATRADIO, REC NETWORKS, ROGUE COMMUNICATION, JAMRAG MAGAZINE AND GREEN HOUSE

NEWS, MATTHEW HAYES, JOHN ANDERSON, JOHN ROBERT BENJAMIN and NICKOLAUS E. LEGGETT.

The Commission did address this Multi-Party EIS Request in paragraphs 39 and 40 of the IBOC decision. For various reasons, discussed in Section D of this Motion, the Commission declined to act upon the EIS Request.

This rejection of the EIS Request was not an official *denial* of the EIS Request. That is: No public comments on the EIS Request were ever solicited, meaning that the Commission's rejection of the EIS Request was never based on a record of input from interested parties and the general public, meaning in turn that the Request rejection did not result from the kind of publicly accessible deliberative process envisioned by the the National Environmental Policy Act (NEPA), the Administrative Procedure Act and the "due process" clause of the Constitution.

The EIS Request, then, was not so much *denied* as it was *disregarded*. The EIS Request is still pending, in the sense that the parties to the EIS Request have never received a response

based on the Commission's evaluation of views and information received from interested parties and the general public.

2. The Commission Has Acted While An April 17, 2002 Multi-Party Petition For Rulemaking, Which Seeks Comparative Testing And Evaluation Of IBOC And Competing Radio Digitalization Technologies, Is Still Pending

On April 17, 2002, many of the parties to this Motion For Rehearing filed a Petition For Rulemaking that would mandate more complete testing and evaluation of the IBOC technology *and also* require comparable, comparative testing and evaluation of competing Digitalization technologies, notably including the Eureka-147 technology. The Petition For Rulemaking was filed by a coalition of 12 parties: THE AMHERST ALLIANCE, VCPP, CITIZENS MEDIA CORP/ALLSTON-BRIGHTON FREE RADIO, WILW, KOL AMI HAVURAH, REC NETWORKS, ROGUE COMMUNICATION, JAMRAG MAGAZINE AND GREEN HOUSE NEWS, MATTHEW HAYES, JOHN ANDERSON, NICKOLAUS E. LEGGETT and WESLE ANNEMARIE DYMOKE.

This Petition was placed in the PRM02MB section of the FCC's Electronic Comment Filing System (ECFS). There it remains, un-Docketed. No public comments have been sought.

3. The Commission Has Acted While An October 25, 2001 Petition For Rulemaking On Electromagnetic Radiation (EMR) Is Still Pending

On October 25, 2001, a Petition For Rulemaking on EMR was filed by THE EMR NETWORK. THE EMR NETWORK is a nationwide citizens' advocacy group, whose goal is more stringent safety standards to limit maximum exposure to EMR emissions, including Radio Frequency (RF) emissions.

THE EMR NETWORK'S October 25, 2001 Petition for more stringent standards was denied by the Commission's Engineering and Technology Office on December 11, 2001. THE EMR NETWORK then filed a Petition For Reconsideration (which, for some reason, is not recorded in the PRM01ET section of the FCC's ECFS), seeking review of the staff's decision by the full Commission. Since then, no apparent action has been taken by the full Commission on this matter.

However, in paragraph 40 of its IBOC decision, while discussing its decision to disregard the EIS Request made by many of the parties to this Motion For Rehearing, the Commission declared flatly that “existing RF safeguards are adequate”.

This declaration constitutes a *functional pre-judgment* of THE EMR NETWORK’S Petition For Reconsideration of the FCC staff’s denial of the Petition For Rulemaking.

4. The Commission Has Acted While A Commission-Proposed Rulemaking On “Blanketing Interference” With Electronic Equipment (Docket 96-92) Is Still Pending

The Commission has already acknowledged that IBOC will create significant radio interference, and precedents with other EMR emissions indicate that some of this interference may also affect appliances, computers and other electronic equipment in areas near the station. Therefore, it is puzzling that the Commission has authorized immediate commencement of “interim” IBOC broadcasts without *first* concluding its *own* pending deliberations on such “blanketing interference”.

In 1996, the Commission was concerned enough about “blanketing interference” to initiate a rulemaking, *on its own motion*, in Docket 96-92. That was 6 years ago, the final comment deadline has long since come and gone, a substantial body of input from interested parties is now On The Record in this Docket, but no action has ever been taken to either abandon the proposed rule or proceed with a final rule.

Surely, the Commission should first review the collected evidence on “blanketing interference” before it authorizes immediate use of a technology which may create more of it.

***B. THE COMMISSION’S OCTOBER 11, 2002
DECISION IS BASED ON THE
“ARBITRARY AND CAPRICIOUS”
APPLICATION OF CRITERIA***

Just as the right of parties to be heard, and not pre-judged, lies at the foundation of the law, so does the principle that the law should be impartial. While there are endless

exceptions to the law's general rules, and while even a uniform rule may sometimes be tailored to particular circumstances, those who shape the law are accountable for explaining *why* different parties are treated differently.

Further, if different treatment and/or impact appears to be attributable to race or gender, or even --- as in this case --- to differences in *wealth* and/or *class*, the differing treatment and/or impact becomes "suspect" under the "equal protection" clause of the Constitution's Fourteenth Amendment.

1. The FCC Sought Public Comments On The National Audubon Society's December 11, 1998 Request Request For An EIS On TV Digitalization, While Failing To Solicit Public Comments On The July 18, 2002 Multi-Party Request For An EIS On IBOC Radio Digitalization

The Report & Order does not explain, or even acknowledge, the different treatment.

2. In Its January 28, 2000 Final Rule On Establishment Of A Low Power Radio Service, The Commission Withdrew The Proposed Rule's Full Liberalization Of Adjacent Channel Spacing, Citing Concerns About Alleged Radio Interference By 100-Watt Low Power FM Broadcasters --- But Now The Commission Is Permitting Virtually Unrestricted IBOC Transmissions, By 50,000-Watt and 100,000-Watt Full Power Broadcasters, Even In The Face Of Fully Acknowledged Radio Interference That This Will Cause

The Report & Order does not explain, or even acknowledge, this different treatment. Why must extreme caution be exercised when a 100-watt station *might* interfere with a 100,000-watt station --- but not when it is *fully acknowledged* that a 100,000-watt station *will* interfere with a 100-watt station?

C. iBIQUITY DIGITAL CORPORATION HAS MIS-IDENTIFIED PARTIES TO THE JULY 18, 2002 REQUEST FOR PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT (EIS)

We take this opportunity to correct, On The Record, a minor factual error with major legal implications.

In its August 6, 2002 Supplemental Response to the July 18, 2002 Multi-Party EIS Request, iBiquity Digital Corporation incorrectly identifies the parties to the EIS Request. These parties are mis-identified as “Don Schellhardt Et Al.”, rather than correctly described as “THE AMHERST ALLIANCE Et Al.”

We presume that this error was unintentional, but it is nevertheless more than merely a semantic point. Potentially, the error in identification poses serious legal implications. It implies, in effect, that Don Schellhardt and THE AMHERST ALLIANCE are one and the same.

However, Don Schellhardt only *represents* THE AMHERST ALLIANCE, as its *current* attorney. Although he was one of 2 co-founders of THE AMHERST ALLIANCE, at a 1998 meeting in Amherst, Massachusetts, and although he also served as Amherst’s first National Coordinator from 1998 into 2000, he is still only *one Member of a nationwide* organization.

With or without Don Schellhardt, Amherst is *a collective and independent entity*, governed through Internet consultations

among its active Members across the United States.

Whether or not Don Schellhardt continues to serve as the attorney for THE AMHERST ALLIANCE, Amherst *as an institution* retains the right to prepare and submit future regulatory filings on IBOC Radio Digitalization, on other Radio Digitalization technologies and, indeed, on any matters which could expand or contract the number of independent voices in America's mass media. Amherst, *as an institution*, also retains the right to seek injunctive relief in court, when and if such action is timely and appropriate, regardless of who its counsel might be at the time.

By the same token, *each and every one of the 14 (??) other parties to this Motion For Rehearing reserves, expressly, its own independent rights to prepare and submit future regulatory filings, and/or to seek timely and appropriate injunctive relief in court*, either individually or in concert with others, regardless of whether or not THE AMHERST ALLIANCE chooses to join in one or more of these activities.

F. CONCLUSION

For the reasons we have set forth herein, THE AMHERST ALLIANCE, and the 33 other undersigned parties, strongly urge the Federal Communications Commission to reconsider its October 11, 2002 Report & Order in FCC Docket MM 99-325, selecting IBOC technology as the technology for Radio Digitalization.

We reserve the right to file supplemental documents with respect to this Motion For Rehearing.

Respectfully submitted,

Don Schellhardt
Attorney for THE AMHERST ALLIANCE
45 Bracewood Road
Waterbury, Connecticut 06706
pioneerpath@hotmail.com
(203) 757-1790

Christopher Maxwell
Secretary
VIRGINIA CENTER FOR
THE PUBLIC PRESS
1621 Broad Street
Richmond, Virginia 23220
WRFR@aol.com
(804) 649-9737

Stephen Provizer
For CITIZENS MEDIA CORP/
ALLSTON-BRIGHTON
FREE RADIO
451 Cambridge Road
Boston, Massachusetts 02134
improv@speakeasy.net

Michelle Eyre
For REC NETWORKS
P.O. Box 2408
Tempe, Arizona 85280-2408
michelleeyre@qwest.net

Ted M. Coopman
For ROGUE COMMUNICATION
19551 38th Avenue
Lake Forest Park, Washington 98155
rogue@roguecom.com
(206/361-0501)

William C. Walker III
For WILW
225 Brighthurst Lane
West Hartford, Connecticut
wilw@wilw.com

Rabbi Bryan K. French
For KOL AMI HAVURAH,
Licensee of WJWV-LP
489 Benwood Hill Drive
Benwood, West Virginia 26031
bryan27@yahoo.com

Alan Freed
For BEATRADIO
P.O. Box 3333
Minneapolis, Minnesota 55403
beatradio@beatworld.com

Tom and Susan Ness
Co-Publishers,
JAMRAG MAGAZINE
Co-Administrators,
GREEN HOUSE NEWS
P.O. Box 70006
Ferndale, Michigan 48220
jamrag@glis.net

Ken Freedman
For AURICLE COMMUNICATIONS,
Licensee of WFMU and WXHD
P.O. Box 2011
Jersey City, New Jersey 07303-2011
Freedman.Ken@wfmu.org

William C. Doerner
For KIBP-LP, *Padre Island*
P.O. Box 18400
Corpus Christi, Texas
wdoerner@stx.rr.com

Charles Conrad
For CHALK HILL EDUCATIONAL
MEDIA
P.O. Box 1008
Kilgore, Texas 75663
(903) 643-7711

William Spry
For SPRYEX COMMUNICATIONS,
Applicant for Class A
Non-Commercial Educational
Station License
Hamilton, Ohio
raduga@raduga.net

Matthew Hayes
7756 Southeast 17th Avenue
Portland, Oregon 02906
matthewhades@hotmail.com

John Anderson
Radio and Internet Journalist
5227 Spaanem Avenue
Madison, Wisconsin 53716-2076
phlegm@tds.net

John Robert Benjamin
P.O. Box 47
Marienville, Pennsylvania 16239
Garfield25@gay.com

Nickolaus E. Leggett
N3NL
1432 Northgate Square
#2A
Reston, Virginia 20190
nleggett@earthlink.net
(703) 709-0752

Wesle AnneMarie Dymoke
P.O. Box 2346
East Side
Providence, Rhode Island 02906
procomrad@as220.org

James Jason Wentworth
213 2nd Avenue
Fairbanks, Alaska 99701-4810
gida@chugach.net
(907) 457-6682

John Davidson
1425 Deer Hill Court
La Jolla, California 92037
(858) 459-4200

Rod Sego
P.O. Box 2074
Provo, Utah 84603

Kyle Drake
12810 37th Avenue North
Plymouth, Minnesota 55441
vmalloc@usinternet.com

William G. Hebbert
8965 North Fielding Road
Bayside, Wisconsin 53217
(414) 352-5236

Johnathan Grant
1407 Schuler Drive
Kokomo, Indiana 46901
me@johnathangrant.com

Erich Loepke
1833 Canyon Ridge Street
Fort Worth, Texas
(817) 306-7610
[**radioTV72@aol.com**](mailto:radioTV72@aol.com)

Robert Chaney
6888 Menlo Drive
Baton Rouge, Louisiana 70808
[**farverger@cox.net**](mailto:farverger@cox.net)
(225) 767-3014

Stephen C. Bringhurst
205 Clark Road N.E.
Jacksonville, Alabama 36265-6177
[**sbc@hiwaay.net**](mailto:sbc@hiwaay.net)

William H. Beyrer
P.O. Box 382
Chambersburg, Pennsylvania 17201
[**bbeyrer@comcast.net**](mailto:bbeyrer@comcast.net)
(717) 264-7161

W. Reece Newton
408 Wilshire Drive
Cleona, Pennsylvania 17042
wrnewton@joust.net
(717) 272-8071

Richard H. Shivers, KB3FGJ
9029 Eastview Road
Philadelphia, Pennsylvania 19152
KB3FGJ@aol.com

Mike Erickson
653 Windmill Avenue
North Babylon, New York 11703
wirelessmedia@simpsons.com

Gerald John Mehrab, WA2FNQ
6 Ambrose Lane
Northport, New York 11768-3205
WA2FNG@optonline.com

Kevin Johnston
15 Endicott Avenue
Johnson City, New York 13790
(607) 644-1046

Jack Flanagan
32 Duggan Road
Acton, Massachusetts 01720
[**docflan@attbi.com**](mailto:docflan@attbi.com)

I hereby certify that copies of this document have been sent, via First Class USPS Mail, postage pre-paid, on this 25th day of October, to the following parties:

Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Eric J. Menge
Assistant Chief Counsel for
Telecommunications
U.S. Small Business Administration
409 3rd Street S.W.
Suite 7800
Washington, DC 20416

Robert A. Mazer and R. Edward Price
Counsel for iBiquity Digital Corporation
Vinson & Elkins, L.L.P.
1455 Pennsylvania Avenue N.W.
Washington, DC 20004

Albert Shuldiner
Vice President & General Counsel for
iBiquity Digital Corporation
8865 Stanford Boulevard
Suite 202
Columbia, Maryland 21045

Dated: _____

Don Schellhardt
Attorney For THE AMHERST ALLIANCE,
Acting On Behalf Of All Parties To
This Motion For Rehearing

October 25, 2002