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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

PRIMOSPHERE LIMITED PARTNERSHIP

Application for Authority to Construct,
Launch and Operate Satellites in the
Satellite Digital Audio Radio Service

File Nos. 29/30-DSS-LA-93
16/17-DSS-P-93

Received

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Satellite Policy Branch
International Bureau

OPPOSITION TO APPLICATION FOR REVIEW

Pursuant to Section 1.115(d) of the Commission's Rules, 47 C.F.R. § 1.115(d), Sirius Satellite Radio Inc. and its subsidiary Satellite CD Radio, Inc. (collectively "Sirius") hereby oppose the Application for Review¹ filed December 27, 2001 by Primosphere Limited Partnership ("Primosphere") in the above-captioned matter. Primosphere seeks Commission review of the International Bureau's denial of reconsideration of its 1997 dismissal of Primosphere's above-captioned application to launch and operate satellite systems in the Satellite Digital Audio Radio Service ("satellite DARS").

BACKGROUND

On March 3, 1997, the Commission adopted final rules and policies governing satellite DARS and setting forth the terms for auctioning two 12.5 MHz satellite DARS authorizations.² Following Sirius's successful bid for one of two satellite DARS authorizations, the International

¹ Application for Review, File Nos. 29/30-DSS-LA-93, 16/17-DSS-P-93 (filed Dec. 27, 2001) ("*Application for Review*").

² *Digital Audio Radio Satellite Service*, 12 FCC Rcd 5754, 5827-29 (1997) (Order) ("*Satellite DARS Order*").

Bureau granted Sirius a satellite DARS license.³ On October 28, 1997, the Bureau dismissed Primosphere's application. Primosphere filed an Application for Review on November 10, 1997, challenging the International Bureau's grant of authority to Sirius to launch and operate a satellite DARS system and the Bureau's denial of Primosphere's petition to deny Sirius's application.⁴ Primosphere also filed a Petition for Reconsideration on November 26, 1997, seeking reconsideration of the International Bureau's dismissal of Primosphere's application.⁵

On November 30, 2001, the Commission denied Primosphere's 1997 Application for Review and reaffirmed the October 1997 Bureau order granting Sirius's application.⁶ Concurrently, the International Bureau denied Primosphere's Petition for Reconsideration, finding that Primosphere's application was moot in light of the Commission's denial of the 1997 Application for Review.⁷ Primosphere filed a Petition for Review in respect to the Commission's denial of Primosphere's 1997 Application for Review in the Court of Appeals on December 27, 2001, followed by a Notice of Appeal on December 28, 2001. Concurrently, Primosphere filed this Application for Review of the International Bureau's order denying the Petition for Reconsideration.

³ Satellite CD Radio, Inc. Application for Authority to Construct, Launch, and Operate Two Satellites in the Satellite Digital Audio Radio Service, DA 97-2210 (Oct. 10, 1997) ("*Sirius License Order*").

⁴ Application for Review of Primosphere, File No. 71-SAT-AMEND-97 (filed Nov. 10, 1997) ("*1997 Application for Review*").

⁵ Petition for Reconsideration, File Nos. 29/30-DSS-LA-93, 16/17-DSS-P-93 (filed Nov. 26, 1997) ("*Petition for Reconsideration*").

⁶ Satellite CD Radio, Inc., Application for Authority to Construct, Launch, and Operate Two Satellites in the Satellite Digital Audio Radio Service, FCC 01-335 (Nov. 30, 2001) (Memorandum Opinion and Order).

⁷ Primosphere Limited Partnership, Application for Authority to Construct, Launch and Operate Satellites in the Satellite Digital Audio Radio Service, DA-01-2779 (Int'l. Bur. Nov. 30, 2001) (Order).

DISCUSSION

In its Application for Review, Primosphere maintains that the dismissal of its application was premature, given the pending appeal in the Court of Appeals. However, the Bureau's dismissal of satellite DARS applications filed by entities that lost the auction was wholly appropriate. As the Bureau stated, Primosphere's application was moot given that the Commission denied its 1997 Application for Review and reaffirmed the October 1997 Bureau Orders granting Sirius and American Mobile Satellite Radio Corporation ("AMRC") applications for the two available SDARS licenses. There being no other licenses available, the Bureau recognized that Primosphere's application cannot be granted.

Nothing in Primosphere's Application for Review casts doubt on the merits of the Bureau's dismissal. First, Primosphere's central claim has now been twice rejected (by both the International Bureau and the full Commission), is meritless and will in all likelihood be denied. Second, in the unlikely event that the FCC changes its long-standing policies on licensee and service qualifications, Sirius would be afforded an opportunity to cure, by amendment of its application. Even in the still more unlikely event that any current satellite DARS authorizations were rescinded, Primosphere and all other interested parties would be able to submit new applications for the newly available satellite DARS licenses.⁸ At this time, however, there are no available satellite DARS licenses and Primosphere's Petition for Reconsideration was appropriately denied.

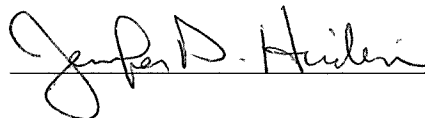
⁸ 47 C.F.R. § 1.2109(c) (requiring the Commission to conduct another auction if the winning bidder is disqualified).

CONCLUSION

For the reasons set forth above, Sirius respectfully requests that the Commission deny Primoshere's Application for Review.

Respectfully submitted,

SIRIUS SATELLITE RADIO INC.
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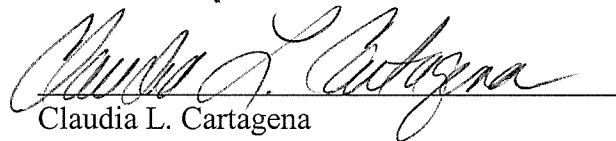
ITS ATTORNEYS

January 11, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2002, I caused a copy of the foregoing Opposition to Application for Review to be served via hand-delivery to the following:

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