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

JUN - 2 1993

In the Matter of)
)
SATELLITE CD RADIO, INC.)
)
Request for Waiver of)
Section 319(d) to Commence)
Construction of Digital)
Audio Radio Satellites)

File Nos. 49/50-DSS-P/LA-90
58/59-DSS-AMEND-90
44/45-DSS-AMEND-92

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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To: The Commission

JUN 4 1993

QUALIFIED STATEMENT IN SUPPORT OF REQUEST FOR WAIVER

OFFICE OF CHIEF
ESTIMATING FACILITIES DIVISION
COMMON CARRIER BUREAU

Primosphere Limited Partnership ("Primosphere"), an applicant to construct, launch and operate two satellites to provide Digital Audio Radio Service ("DARS"), by its attorneys, hereby submits this statement in support of the "Request for Waiver of Section 319(d)" submitted by Satellite CD Radio, Inc. ("SCDR") by letter dated May 17, 1993. Primosphere supports SCDR's request, but with the proviso that any waiver, if granted, be extended to Primosphere as well as other competing satellite DARS applicants who may wish to take advantage of the requested opportunity.

SCDR's May 17th waiver request contains a well-reasoned showing that the public interest would benefit from allowing SCDR to spend up to \$10 million over a period of 10 months from the date of grant of the request to begin construction on its proposed DARS satellites. Pursuant to the Public Notice, DA 92-1408, released October 13, 1992, which established a cut-off date of December 15, 1992 for the filing of satellite DARS applications in the downlink

frequency band of 2310-2360 MHz to be considered concurrently with SCDR's application, Primosphere filed an application to construct, launch and operate two satellites to be used to provide satellite DAR services (File Nos. 29/30-DSS-LA-93; 16/17-DSS-P-93). As of this date, Primosphere, SCDR and two other parties have pending satellite DARS applications.¹

Primosphere submits that the same considerations which support a waiver of Section 319(d) with respect to SCDR's application support authorizing Primosphere, and any other satellite DARS applicant who wishes to avail itself of the opportunity, to expend the same amount of money to begin construction of its satellite DARS system. Primosphere too could realize significant cost-savings and shorten overall construction time by early procurement of components requiring long leadtimes. The same public interest benefits of bringing Primosphere's satellite DAR service to the American public sooner will accrue. Moreover, to the extent Primosphere, which alone proposes an advertiser-supported service, can reap the benefits of cost savings, it will be able to devote more of its resources to programming services.

¹ The other two parties with pending applications are American Mobile Radio Corp. (File Nos. 26/27-DSS-LA-93; 10/11-DSS-P-93) and Digital Satellite Broadcasting Corp. (File Nos. 28-DSS-LA-93; 12/13-DSS-P-93). Loral Aerospace Holdings, Inc. and Sky-Highway Radio Corp., the other two applicants, have voluntarily requested the dismissal of their respective applications.

Primosphere acknowledges and accepts the risks involved in proceeding to construct its system prior to the resolution of certain matters. As is the case with respect to SCDR's application, Primosphere's application is the subject of several petitions to deny. Primosphere is confident enough in its position relative to those petitions that it would be willing to proceed with construction prior to the FCC's resolution of the petitions. Primosphere is also willing to proceed while the Commission goes about the process of establishing a regulatory framework for satellite DARS.

It would be fundamentally unfair and contrary to precedent for the Commission to authorize SCDR to begin construction without affording the other applicants the same opportunity. For purposes of a waiver of Section 319(d) of the Communications Act, 47 U.S.C. § 319(d)(1988), Primosphere and the other applicants are identically situated to SCDR. It is well-established that the Commission has an obligation to treat similarly situated applicants similarly. See Melody Music, Inc v. FCC, 345 F.2d 730 (D.C.Cir. 1965).

WHEREFORE, for the foregoing reasons, Primosphere urges the Commission to grant the requested waiver of Section 319(d) of the Communications Act for all pending satellite DARS applicants who wish to take advantage of the opportunity to commence construction of their respective systems at their own risk.²

Respectfully submitted,

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June 2, 1993

² To the extent the Commission deems necessary, Primosphere will, at the appropriate time, submit a formal request for waiver along with the requisite filing fee.

CERTIFICATE OF SERVICE

I, Howard M. Liberman, do hereby certify that on June 2, 1993 a copy of the foregoing "Qualified Statement in Support of Request for Waiver" was sent by United States First Class Mail, postage prepaid, to the following:

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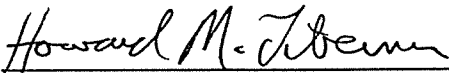
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