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

In re Application of	
SATELLITE CD RADIO, INC.	File Nos. 49/50-DSS-P/LA-90
For Authority to Construct, Launch and Operate a Space Station at 103° and 121°	58/59-DSS-AMEND-90

COMMENTS OF RADIO SATELLITE CORPORATION

Radio Satellite Corporation ("RadioSat"),[1/] by its attorneys, hereby submits its Comments on the above-referenced application of Satellite CD Radio, Inc. ("SCR"), pursuant to the Commission's Public Notice released October 19, 1990.

SCR's application seeks Commission authority to construct, launch and operate two satellites to be employed in the operation of a digital audio radio ("DAR") system which would provide "CD quality" radio service through a combination of satellite and terrestrial facilities. The SCR system would require the launch

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1/ RadioSat has filed an application for authority to construct and operate a 3.5 meter Ku-band transmit-receive earth station designed to serve as a "network center" through which RadioSat intends to provide a broad array of integrated mobile satellite services ("MSS"), including digital audio radio ("DAR"), via access to the MSS space segment of the American Mobile Satellite Corporation. See Application of Radio Satellite Corporation for Authority to Construct and Operate a 3.5 Meter Ku-Band Transmit-Receive Earth Station (filed May 22, 1990). Accordingly, RadioSat has a substantial interest in the Commission's consideration of DAR proposals, such as the system for which Satellite CD Radio, Inc. seeks authorization in the above-captioned application.

of two geostationary satellites for U.S. coverage; urban area terrestrial repeaters; an earth station for feeder links and telemetry, telecommand and control; terrestrial links for delivery of CD radio programming to the feeder link earth station; and satellite CD radio receivers.[2/] SCR maintains that successful implementation of its proposal depends upon an allocation by the Commission of the 1470-1530 MHz band to facilitate downlinking the DAR programming from the proposed satellites and has filed a petition for rulemaking for an allocation of that band for digital satellite radio service.

RadioSat submits that SCR's instant application for a license to construct and operate space stations for the provision of satellite CD quality radio service raises significant regulatory classification concerns. In particular, SCR "proposes to render service on a private carrier basis by selling transponders to both terrestrial broadcasters and to non-broadcasters providing subscription or pay-per-listen services."[3/] RadioSat believes that SCR's application does not

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[2/] SCR Application at 1-2. According to the service description in SCR's application, up to 66 radio stations would send their CD quality radio programming into the SCR system's feeder link earth station via land lines. At the earth station, the radio programming would be routed into a satellite uplink channel. The satellites would receive the CD-quality radio signals at 30 GHz and, in turn, beam them to individual receivers via the 1470-1530 MHz band. The feeder link station would also send programming to terrestrial repeaters which would transmit the same channels of CD-quality programming simultaneous with the satellite transmissions. See SCR Application at 2-3.

[3/] SCR Application at 3.

provide sufficient justification for private carrier regulation. As detailed below, RadioSat submits that SCR's proposal mandates that SCR be regulated as a common carrier pursuant to Title II of the Communications Act.

As the Commission stated in the mobile satellite service ("MSS") proceeding, while "[i]n recent years the Commission has taken the approach of minimum regulation for new and still-developing services" in order to promote "market-responsive and competitive services," the commission does not necessarily follow a totally deregulatory approach where only one monopolistic service provider is granted a license.[4/] Thus, in the case of MSS, where for technical and economic reasons only one license was to be granted initially to a consortium, the Commission imposed common carrier regulation on the licensee to safeguard against anticompetitive activities.[5/] Specifically, the Commission concluded that "because only one MSS license is to be granted, the MSS space segment operator should be under an obligation to serve the public on a non-discriminatory basis. Thus, we will regulate the consortium as a common carrier."[6/]

Radiosat believes that given the similarity of the characteristics of SCR's proposal to MSS, SCR's system should be

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4/ Notice of Proposed Rulemaking, Gen. Docket No. 84-1234, 50 Fed. Reg. 8149, 8156 (Feb. 28, 1985).

5/ Second Report and Order, Gen. Docket No. 84-1234, 2 F.C.C. Rcd. 485, 490 (1987).

6/ Id.

regulated as a common carrier should the Commission grant its application. For regulatory purposes, SCR provides no sound basis upon which to distinguish its proposed DAR system and licensing arrangement from the MSS consortium. SCR concedes that for technical and economic reasons, its proposed system contemplates only one licensee, and suggests that the commission accommodate this situation by utilizing the consortium approach used for MSS to allow maximum participation by qualified applicants.[7/] Thus, similar to MSS, implementaiton of SCR's proposal would clearly vest a single licensee with monopoly control of access to the spectrum allocated for satellite DAR service. Accordingly, the DAR space segment operator likewise "should be under no obligation to serve the public on a non-discriminatory basis."[8/]

SCR contends that licensing of SCR as a private carrier would be consistent with the Commission's decision to allow the sale of domestic fixed satellite ("domsat") transponders on a private carrier basis.[9/] The rationale upon which the Commission based that domsat determination is inapplicable to the circumstnaces of SCR's proposal. Clearly, the MSS decision discussed above which mandated common carrier regulation of the

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7/ SCR Petition at 36-37.

8/ 2 F.C.C. Rcd. at 490.

9/ SCR Application at 8, citing Domestic Fixed Satellite Transponder Sales, 90 F.C.C.2d 1238 (1982).

licensee consortium, rather than the domsat precedent cited by SCR, is most analogous to SCR's proposal. In authorizing sales of discrete transponders on a non-common carrier basis in Domestic Fixed-Satellite Transponder Sales, the Commission noted that users at the time could select "from four different satellite systems to satisfy their communications needs,"[10/] that the existing systems would be "expanded considerably over the next few years,"[11/] and that construction of new satellites authorized by the Commission would "meet or exceed the revised expectations of transponder demand."[12/] Thus, the Commission concluded that domsat licensees did not "possess the significant market power required to impair the reasonable availability of transponder supply."[13/] Moreover, the Commission expected that "the large majority of transponders should remain available on a common carrier basis."[14/]

As discussed above, in marked contrast, SCR's proposal contemplates a single DAR licensee whose monopolistic attributes require the imposition of some degree of common carrier regulation. Accordingly, contrary to SCR's contention in its application, the characteristics of its proposal mandate common

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10/ 90 F.C.C.2d at 1249.

11/ Id.

12/ Id. at 1250.

13/ 90 F.C.C.2d at 1254.

14/ 90 F.C.C.2d at 1254.

carrier regulation pursuant to Title II of the Communications Act. This regulatory approach would significantly advance the public interest in the development of a competitive DAR industry by facilitating the use of DAR space segment by multiple independent entities utilizing various technological innovations.

Respectfully submitted,

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