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

NOV 30 1990

Federal Communications Commission
Office of the Secretary

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Domestic Facilities Division
Satellite Radio Branch

In Re Application of)
)
SATELLITE CD RADIO, INC.) File Nos. 49/50-DSS-P/LA-
) 90; 58/59-DSS-
) AMEND-90
For Digital Audio Service))
Satellite System)

To: Chief, Common Carrier Bureau

COMMENTS OF ASSOCIATION FOR
BROADCAST ENGINEERING STANDARDS, INC.

Association For Broadcast Engineering Standards, Inc ("ABES"), by its attorneys, respectfully submits these Comments in response to the Public Notice (Report No. DS-1015) released in the above-captioned matter October 19, 1990.

Introduction

ABES is a nonprofit membership corporation whose principal corporate purpose is to assist the Commission and the Congress in the development and implementation of technical standards to the end that the people of the United States will receive optimum aural broadcast services. Since its organization, ABES has participated in numerous Commission proceedings related to those services. Attached hereto as Appendix A are lists of the Officers, Directors, and Technical Committee members of ABES.

Satellite CD Radio, Inc. ("CD Radio"), has applied for authority to provide a variety of services via communications satellite, all of which are related to the provision to the public of Digital Aural Broadcast ("DAB") service. The services that CD Radio proposes appear to include direct transmissions of DAB programming to receivers in the hands of the public, i.e., direct aural broadcast satellite service. As the Public Notice of October 19, 1990, notes, CD Radio has also petitioned for Rule Making looking toward the allocation on a primary basis of the frequency band 1470-1530 MHz for the down-linking of its proposed DAB services.

It is the position of ABES that, to the extent that CD Radio proposes in the subject application to provide a direct aural broadcast satellite service on a regularly licensed basis, the application specifies a service not provided for in the Commission's Rules and Regulations. To the extent CD Radio proposes to employ communications satellite facilities merely for the purpose of interconnecting terrestrial DAB transmitters, ABES considers the application to be untimely, since the Commission has not authorized such a terrestrial service and does not appear likely to do so for a considerable period of time.

Therefore, ABES urges the Commission to dismiss the CD Radio application.

Direct Aural Broadcast Satellite
Service Not Authorized

Direct Aural Broadcast Satellite service, transmitting audio signals, apart from and unrelated to video signals, directly to viewers in the United States is not now a service authorized by the Commission's Rules and Regulations and no spectrum allocation has yet been made to that service at either an international or domestic level.^{1/} The subject of direct broadcast satellite transmission of Digital Radio service [BSS (Sound)] is one of the major subjects of the Commission's pending Inquiry in General Docket No. 89-554, which involves United States positions and preparations for the ITU World Administrative Radio Conference to be held in Spain early in 1992 (WARC 92). Work on such preparations is well under way. No spectrum allocation to purely audio DBS service, i.e., BSS-Sound, has been made at either an international or domestic level.^{2/}

^{1/} See Notice of Proposed Policy Statement and Proposed Rule Making (Gen. Docket No. 80-603), 86 FCC 2d 719, 728-729; Report and Order (Gen. Docket No. 80-603), 90 FCC2d 676, 689-692.

^{2/} See Report and Order (Gen. Docket No. 80-603), 90 FCC2d 676 (1982). In footnote 1, Id. at 719, the Commission made it clear that its use of the term Direct Broadcast Satellite (DBS) was synonymous with the international use of the term Broadcasting Satellite Service (BSS). As is shown by the
(continued...)

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On October 1, 1990, the Commission released its Second Notice of Inquiry in that proceeding.^{3/} Paragraphs 84 through 104 of the Second Notice are devoted to a thorough discussion of BSS (Sound) and the many problems involved in finding adequate spectrum for it. The three spectrum allocation options under consideration in that Inquiry are (a) the UHF band at 728-788 MHz, (b) the microwave band from 1435-1530 MHz, or (c) 2390-2450 MHz higher in the microwave band. As the Commission makes clear, each of these possible BSS (Sound) allocation solutions presents difficult problems of conflicts with

^{2/} (...continued)

Commission's Notice of Inquiry in Gen. Docket No. 89-554 (1992 WARC), the ITU is merely considering the possibility of an allocation for an exclusively audio direct broadcast satellite service under the acronym BSS-Sound as a matter of business to be considered at Seville, Spain, early in 1992. Present international and domestic allocations for BSS/DBS do not contemplate audio-only service directly to the public.

^{3/} FCC 90-316 (Mimeo 38008).

other spectrum uses, some of which directly involve national security and public safety.

ABES wishes to make it clear that it does not oppose the CD Radio application on any grounds related to the applicant or its qualifications. Rather, these Comments are filed to point out that said application cannot be accepted for filing, since the service proposed has not yet been established at either the international or domestic regulatory level.

To the extent that CD Radio proposes to employ communications satellites to interconnect terrestrial DAB transmitters, ABES interposes no objection, since a direct aural broadcast service to the public would not be involved. Nevertheless, in light of the fact that it is likely to be several years before DAB service is authorized by the Commission in any form, ABES must question the prudence of accepting, processing, and acting upon the CD Radio application at this time. The underlying DAB service may never be authorized by the Commission or may take a form inconsistent with the proposal now advanced by CD Radio.

In view of the fact that CD Radio proposes to employ satellite communications facilities, either directly or indirectly, as part of a system of Digital Aural Broadcast service, ABES must question the prudence of the

Common Carrier Bureau proceeding to process the CD Radio satellite facilities application separate from action by the Mass Media Bureau on the fundamental issues of whether there should be a DAB service and the form any such service should take. Those issues are under study in the Inquiry proceeding in Gen. Docket No. 90-357, initial comments in which were filed November 13, 1990. The interest in and response to the Commission's Notice of Inquiry in Gen. Docket No. 90-357 have been lively. It is likely that the initial Notice of Inquiry will be followed either by a Further Notice of Inquiry or by a Notice of Proposed Rule Making or both. The Common Carrier Bureau should not go off on its own and take action on an unauthorized application that could affect the outcome of those proceedings.

Primary responsibility for the development of policy on DAB must be placed in the hands of the Mass Media Bureau, which alone among the Bureaus of the Commission possesses the expertise and responsibility to resolve the many difficult technical and policy issues that DAB presents. ABES strongly believes that the Common Carrier Bureau, in the instance of applications like that of CD Radio, and the Office of Engineering and Technology should defer any independent action that affects any aspect of DAB service until the Mass Media Bureau has had the time required to formulate a unified policy and present it to

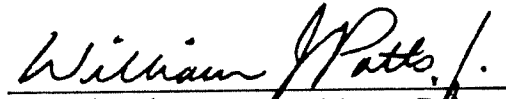
the Commission for consideration.

For the reasons set forth above, ABES believes that the CD Radio application is defective and untimely and should be dismissed.

Respectfully submitted,

ASSOCIATION FOR BROADCAST
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By Haley, Bader & Potts



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November 30, 1990

Its Attorneys

APPENDIX A

ASSOCIATION FOR BROADCAST ENGINEERING STANDARDS, INC.

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ELECTED FOR ONE YEAR ON APRIL 9, 1989

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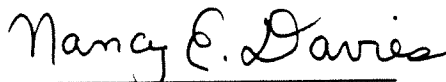
CERTIFICATE OF SERVICE

I hereby certify the copies of the foregoing
Comments of Association For Broadcast Engineering
Standards, Inc., were served this 30th day of November,
1990, by U. S. Mail, postage prepaid, upon the following:

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