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November 13, 1992

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BY HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Application of Satellite CD Radio, Inc.
for Authority to Construct, Launch and
Operate a Digital Audio Radio Service
Satellite System In the 2310-2360 MHz
Frequency Bands

Dear Ms. Searcy:

Transmitted herewith for filing with the Commission on behalf of the Joint Parties, licensees and permittees of radio stations located throughout the United States, are an original and four copies of a Petition to Deny or Defer the above-referenced application of Satellite CD Radio, Inc. to construct, launch and operate a digital satellite radio system.

In the event that there are any questions concerning this matter, please contact the undersigned.

Very truly yours,



Sally A. Buckman

SAB/kkj
Enclosures

BEFORE THE

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Federal Communications Commission NOV 13 1992

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Application of)
SATELLITE CD RADIO, INC.) File Nos. 49/50-DSS-P/LA-90
) 58/59-DSS-AMEND-90
) 44/45-DSS-AMEND-92
For Authority to Construct,)
Launch and Operate A Digital)
Audio Radio Service Satellite)
System in the 2310-2360 Mhz)
Frequency Bands)

To: Chief, Common Carrier Bureau

PETITION TO DENY OR DEFER

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November 13, 1992

Its Attorneys

Summary

The Joint Parties hereby request that the Commission deny Satellite CD Radio's ("SCDR") application to construct, launch and operate a satellite DAB system. It is premature to request comments on SCDR's application until important regulatory issues with respect to DAB are resolved and technical requirements and rules for DAB service are finalized. Moreover, the need for a satellite-delivered DAB service has not been demonstrated. The primary service advantages that could potentially be provided by satellite DAB are already, or soon will be, available via other existing and proposed technologies. Thus, satellite DAB will likely be simply a duplicative service.

At a minimum, processing of Satellite CD Radio's application should be deferred until it is established that current broadcasters will have the opportunity to implement the service enhancements offered by DAB. To act otherwise would be inconsistent with the Commission's past efforts to ensure that technological enhancements do not displace or destroy the existing broadcast system.

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Federal Communications Commission

WASHINGTON, D.C. 20554

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 For Authority to Construct,)
 Launch and Operate A Digital)
 Audio Radio Service Satellite)
 System in the 2310-2360 Mhz)
 Frequency Bands)

To: Chief, Common Carrier Bureau

PETITION TO DENY OR DEFER

The undersigned licensees and permittees of radio stations located in markets of varied size throughout the United States (hereinafter "Joint Parties"), by their attorneys and pursuant to the Commission's Public Notice, DA 92-1408, released October 13, 1992, hereby petition the Commission to deny the above-captioned application, as amended, filed by Satellite CD Radio, Inc. ("SCDR"). In the alternative, the Joint Parties request that the Commission defer final action on the application until the multiple outstanding regulatory and policy issues surrounding DAB have been resolved.

I. Numerous Outstanding Regulatory and Policy Issues Should Be Resolved Before The Commission Considers Individual System Applications

As an initial matter, the Joint Parties believe that the unresolved regulatory issues concerning the advent of any satellite digital radio service should be addressed before any

individual system application is granted. Although the Commission requested that comments concerning SCDR's application be filed today, November 13, 1992, its Notice of Proposed Rule Making and Further Notice of Inquiry in Gen. Docket No. 90-357 ("NPRM") seeking comment on the proposed allocation of spectrum for a satellite DAB service was not released until one week ago, on November 6, 1992, and the comment cycle in that proceeding will not be completed until March 1, 1993. In light of the direct connection between the SCDR application and the rulemaking proceeding, it seems premature to seek further comment on the latest version of SCDR's application until the critical issues concerning the allocation of spectrum and the parameters of and rules for DAB service are known to those filing comments on the application.

Indeed, the Commission acknowledges that a primary purpose of the NPRM is to obtain current information with respect to recent developments in the digital audio radio service ("DARS") to place the Commission "in a better position so as to gauge the intentions of those proposing to offer domestic DARS, to consider the technical requirements of satellite and terrestrial DARS proposals, and to determine the most advantageous regulatory policies for new DARS services." NPRM at ¶ 13. Potential commenters on SCDR's application require this additional information, as does the Commission, in order to make informed comments. If the Commission, based on comments received

in response to the NPRM, decides to authorize a satellite DAB service, it should permit all parties commenting in this proceeding to comment on the SCDR application and any modifications to it once regulatory policies and service rules are finalized.

One fundamental regulatory issue that must be resolved is how SCDR would be regulated. SCDR has consistently maintained that it should be licensed as a private carrier. Although SCDR intends initially to operate as a subscriber service, it has also proposed ultimately to use terrestrial repeaters in urban canyons where there is no line of site to the satellite. SCDR Compendium File No. 45/45-DSS-Amend-92, filed September 21, 1992 at 43 (hereinafter "SCDR Compendium"). Use of such repeaters will give SCDR the capability of becoming an advertiser-supported satellite broadcaster providing multiple channels of programming throughout the country. Other than the fact that it would provide thirty different channels, SCDR's service would be virtually indistinguishable from existing radio networks that provide programming via satellite to affiliates located throughout the country.^{1/} It is difficult to understand how such a clearly

^{1/} Whether the number of satellite-delivered radio channels that one entity controls should be restricted is another regulatory issue that must be resolved. Indeed, in recently revising the radio multiple ownership rules, the Commission, on reconsideration, decided to scale back the total number of radio stations in a market that one entity is permitted to own or control in order to "reduce any potential for undue influence or control in a local radio market." Revision of Radio Rules and Policies, MM Docket 91-140, released September 4, 1992 at ¶ 31.

broadcast service could be regulated as a private carrier. Because the scope of the service that satellite DAB could provide, as well as the basis upon which it would be regulated, is unresolved, it is premature to comment on an application to provide a satellite radio service which proposes to operate in a manner which may ultimately be inconsistent with rules adopted when the NPRM is concluded.^{2/}

II. There is No Demonstrated Need for A Satellite-Delivered DAB Service; Its Benefits Are Already Being Provided By the Marketplace

There are many compelling arguments for declining to authorize any satellite DAB system. Both the need for and the viability of such a service is clearly in doubt in view of the already highly competitive radio marketplace, the substantial number of new FM stations that have been authorized during the last decade, the increasing availability of digital cable radio via terrestrial means, and the growing promise of so-called "in-band" technical solutions to provide digital audio in the existing radio bands.

Because virtually all of the primary service advantages that could potentially be provided by satellite DAB are already

^{2/} For example, whether DARS is ultimately deemed a broadcast, common carrier or non-common carrier service would have a direct bearing on the applicability of Section 310 of the Communications Act of 1934, as amended, to entities seeking to provide this service.

available, or soon will be, via other existing and proposed technologies, satellite DAB will likely be simply a duplicative service. For example, a variety of specialized audio channels are already available to cable television subscribers at a cost approximating that projected by SCDR. Indeed, SCDR not only bases its per month subscription costs on the monthly costs of these services, it also bases its potential format offerings, verbatim, on the channel selections offered by the digital cable DMX™ system. See SCDR Compendium at 39 and 45-49.

Moreover, specialized radio programming appealing to particular target audiences is already available terrestrially. Radio is essentially a "narrowcast" medium, with many stations in both large and small markets tailoring their formats to reach discrete audience segments. These specialty stations cater to as wide a range of tastes and interests as the SCDR proposal anticipates serving. See SCDR Compendium at 45-49. For example, there are 186 stations around the country that are big band/swing stations, 368 that play jazz exclusively, 30 that are devoted to blues, and 331 oriented to Spanish listeners. See Broadcasting and Cable Market Place (R.R. Bowker 1992) at A-486. Indeed, there is a substantially broader array of different format types available via traditional broadcast outlets than SCDR proposes to offer -- 96 U.S. radio stations focus on farming and agricultural news; 19 play only Bluegrass music; six stations in Wisconsin and one in Minnesota broadcast an all-Polka format. Id. Further,

Children's Satellite Network network now provides 24 hours of programming aimed at children 12 and under. This programming is carried on several stations throughout the country and plans are underway to add affiliates in many other markets in the next few months. Radio Aahs Expanding Coast to Coast-to Coast Audience With New Affiliates, Minneapolis Star Tribune, November 6, 1992 at 3E.

III. To The Extent It Is Determined That Satellite DAB Should Be Authorized, It Should Be Implemented In A Manner That Ensures That Digital Technology Is Available To Existing Broadcasters.

At the very minimum, the Joint Parties strongly believe that implementation of a satellite digital service must not proceed without assurances that digital technology will be available to existing terrestrial broadcasters. It is critically important that, prior to any authorization for satellite DAB, the Commission establish that there is proven technology through which current broadcasters will have the opportunity to provide digital radio service, and that the costs of implementing this technology will not preclude or delay conversion by existing stations.

In past instances where new technological advances or new types of service have been under consideration, the Commission has typically exercised special care to avoid disrupting either its existing regulatory scheme or, more importantly, the ability of existing stations to serve the public. See, e.g., Notice of Proposed Rulemaking and Notice of

Inquiry in Docket No. 18397, 15 F.C.C.2d 417, 439 (1968) (concern that cable television should not undercut FCC basic allocations policies and structure); Advanced Television Systems (MM Docket No 87-268), 2 F.C.C. Rcd 5125, 5130 (1987). In the HDTV proceeding, the Commission has sought to avoid any adverse impact on existing broadcast stations, emphasizing its preference to implement advanced television as "a service fully integrated with the existing television broadcast service. . . so that the benefits of improved off-air reception may be enjoyed by the Nation's viewers generally." Advanced Television Systems (MM Docket No. 87-268), 2 F.C.C. Rcd. 5125, 5130 (1987); see also Advanced Television Systems First Report and Order, MM Docket No. 87-268 [FCC 90-295], released September 21, 1990 ("Our selection of an HDTV [simulcast] standard will enable broadcasters to . . . compete with the technical quality of service offered by other media and to avoid investment in equipment for an interim system."). Like HDTV, DAB is no more than a means of enhancing the quality of service provided by the existing broadcast system.

As in these past proceedings, in considering DAB, the Commission should proceed prudently and ensure that if satellite DAB is authorized, it is implemented in a manner that preserves and augments, rather than debilitates or displaces, the existing local radio broadcasting system. The Commission "should act in a conservative, pragmatic fashion . . . maintaining the present system and adding to it in a significant way, taking a sound and

realistic first step and then evaluating [its] experience." Cable Television Report and Order, 36 F.C.C. 2d 143, 169 (1972).

In the NPRM, the Commission acknowledges that terrestrial broadcasters are pursuing implementation of in-band terrestrial DAB systems, and expressly states that it is "committed to continuing to work with the broadcast industry to ensure that broadcasters are able to promptly implement terrestrial DARS." NPRM at ¶ 11 and 12. At the same time, however, the Commission acknowledges that questions concerning the feasibility of in-band DAB and the extent that it would accommodate existing broadcasters remain. Id. at ¶ 13. Further, the Commission leaves open the possibility of a complementary terrestrial component to be adjunct to satellite DAB systems. Id. at ¶ 7.

Rushing to authorize a national satellite-delivered digital radio service before it is known what actions must be taken to ensure that existing broadcasters are given an opportunity to implement the service enhancements offered by DAB would undermine the Commission's ongoing initiatives to improve the quality of service provided by local AM and FM stations. Such an authorization also would be wholly inconsistent with the Commission's past efforts to ensure that new service and technological enhancements do not displace or destroy the existing broadcast system.

For example, over the past half decade, the Commission has consistently pursued policies designed to improve the quality of service provided by local AM and FM stations. In Docket 80-90, for example, the Commission attempted to expand FM service to the public by increasing the number of station classes, thereby providing opportunities for constructing new stations and for upgrading existing facilities. FM Broadcast Stations, 94 F.C.C.2d 152 (1983), recon. granted in part and denied in part, 97 F.C.C.2d 279 (1984). More recently, the Commission provided an opportunity for low powered FM stations to expand their coverage areas by creating another class of FM station -- C3 -- and by increasing the maximum effective radiated power for Class A stations to 6000 watts. FM Broadcast Stations (Establishment of Station Class C3), 4 FCC Rcd 2792 (1989). With respect to the AM band, the Commission adopted new rules only a year ago intended to create a revitalized service of superior technical quality, including the expansion of the AM band. See Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd 6273 (1991).

Broadcasters have relied on the FCC's historic commitment to preserving and enhancing the existing broadcast system and, based upon that reliance, have continued to invest in technical improvements in existing facilities, as well as the construction of new ones. It would be manifestly unfair for the FCC suddenly to authorize a competing system with better sound

quality without ensuring that existing providers have the opportunity to implement comparable service improvements. Many broadcasters could be forced out of business, with the accompanying loss of local community service, if existing AM and FM stations were abruptly relegated to second-class status. The end result would likely be sharply reduced options for the listening public without the augmentation, or even the replacement, of programming that is widely available today.

Indeed, given the risk associated with implementation of a satellite DAB service, the Commission would be well advised to follow the same approach to digital radio as it has in implementing high definition television ("HDTV"). Like HDTV, DAB is not primarily a new service but a means of enhancing an existing service. Thus, the Commission should not view its advent as a reason to restructure radically the current, locally-based model for delivery of radio service. Instead, the Commission should adopt a set of DAB standards that are compatible with existing service, and ensure that all current licensees are given the opportunity to continue providing this service. See Advanced Television Systems (MM Docket No. 87-268), 2 FCC Rcd 5125, 5126 (1987).

IV. Conclusion

For the reasons set forth above, the Joint Parties respectfully request that the Commission deny Satellite CD Radio's application for authority to operate a satellite DAB

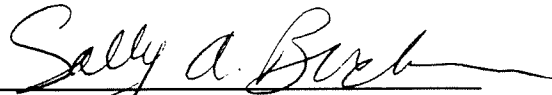
service or, at a minimum, defer final action until the rules for DAB service are finalized and until it is certain that digital technology will be available to terrestrial broadcasters.

Respectfully submitted,

SHAMROCK BROADCASTING, INC.
KABL(AM), Oakland, California
KABL-FM, San Francisco,
California
KUDL(FM), Kansas City, Kansas
WHB(AM), Kansas City, Missouri
KXRX(FM), Seattle, Washington
WWWW(AM and FM), Detroit,
Michigan
WFOX(FM), Gainesville (Atlanta),
Georgia
WWSW(AM and FM), Pittsburgh,
Pennsylvania
KZFX(FM), Lake Jackson (Houston),
Texas
KXKL(AM and FM), Denver, Colorado
KMLE(FM), Chandler (Phoenix),
Arizona
FRANKLIN COMMUNICATIONS
PARTNERS, L.P.
WGFX(FM), Gallatin (Nashville),
Tennessee
WCAW(AM), Charleston,
West Virginia
WVAF(FM), Charleston,
West Virginia
WRKA(FM), St. Matthews,
(Louisville), Kentucky
WKSJ-FM, Mobile, Alabama
WKSJ(AM), Prichard (Mobile),
Alabama
CLASSICAL ACQUISITION LIMITED
PARTNERSHIP
WTEM(AM), Bethesda, Maryland
WGMS-FM, Washington, D.C.
CLARKE BROADCASTING CORPORATION
WGAU(AM), Athens, Georgia
WNGC(FM), Athens, Georgia
KVML(AM), Sonora, California
KZSQ(FM), Sonora, California

GARAMELLA BROADCASTING COMPANY
and INTREPID, BROADCASTING INC.
KJJG(FM), Spencer, Iowa
WLWL(FM), Cambridge, Minnesota
KMAP, INC.
KWAC(AM), Bakersfield, California
KIWI(FM), Bakersfield, California
KRZI, INC.
KRZI(AM), Waco, Texas
KEYR(FM), Marlin, Texas
L.M. COMMUNICATIONS, INC.
(and affiliates)
WLXG(AM), Lexington, Kentucky
WGKS(FM), Paris (Lexington),
Kentucky
WYBB(FM), Folly Beach
(Charleston), South Carolina
LOS CEREZOS TELEVISION COMPANY
WMDO(AM), Wheaton, Maryland
MOOSEY COMMUNICATIONS, INC.
KTIE(FM), Bakersfield, California
ORANGE COUNTY BROADCASTING CORP.
KPLS(AM), Orange, California
RADIO TRIANGLE EAST COMPANY
WSAY-FM, Rocky Mount,
North Carolina
RUSTON TRIANGLE EAST COMPANY
KRUS(AM), Ruston, Louisiana
KXKZ(FM), Ruston, Louisiana
SOUTH FORK BROADCASTING CORP.
WWHB(FM), Hampton Bays, New York
VANTAGE COMMUNICATIONS, INC.
KKCD-FM, Omaha, Nebraska
WKRG-TV, INC.
WKRG(AM and FM), Mobile, Alabama

WRMT, INC.
WRMT (AM), Rocky Mount
North Carolina

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November 13, 1992

Its Attorneys

CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, hereby certify that a true copy of the foregoing "Petition To Deny Or Defer" was mailed, postage prepaid this 13th day of November, 1992 to:

Robert D. Briskman
President
Satellite CD Radio, Inc.
1001 22nd Street, N.W.
Washington, D.C. 20037

Kaigh K. Johnson
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