



area, the Commission has wisely chosen first to engage in information gathering. Toward that end, the Commission initiated an inquiry in August of 1990,<sup>2/</sup> and only last week it released a Further Notice of Inquiry in order to obtain updated information.<sup>3/</sup> Thus the Commission recognizes that it requires additional input before it can even begin considering the creation of a regulatory framework governing DARS. Acceptance of the above-captioned application is manifestly inconsistent with this careful and deliberate approach.

The issues which must be resolved prior to any establishment of DARS are many and difficult. Fundamental is the question whether DARS should be established at all and, if so, whether it should be a satellite service, a terrestrial service, or a "hybrid" of both. The selection made among these options will in turn give rise to such questions as whether service should be on a subscription or advertiser-supported basis and whether terrestrial service can or should be provided in the existing AM

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<sup>2/</sup> In the Matter of Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 5 FCC Rcd. 5237 (1990).

<sup>3/</sup> Notice of Proposed Rule Making and Further Notice of Inquiry (NPRM/FNOI), GEN Docket No. 90-357 (released November 6, 1992). The sole DARS rule making proceeding initiated by the Commission thusfar was released only a week ago, together with the Further Notice of Inquiry, and relates only to the allocation of spectrum space for a possible satellite service, described by Commissioner Duggan as a "limited step" designed to implement the allocation made at the 1992 WARC. The Commission expressly indicated that it was not soliciting comments on "regulatory policies, service rules, technical standards and consideration of pioneer's preference requests," which would "be the subject of future action." (NPRM/FNOI at ¶ 14).

and FM bands. Inextricably intertwined with these issues is the potential impact of DARS on the existing radio industry and the "localism" which is its hallmark. Assuming that the decision is made to establish DARS, the Commission will then have to decide on a regulatory regime, set technical and legal standards, and address the usual array of issues presented in the creation of a new communications service.

With the foregoing and other critical issues yet to be resolved, processing of the subject application would represent a grossly inefficient use of the Commission's resources at a time when those resources are already strained. Whatever efforts are expended in the processing of the application may well have to be discarded as a result of the rules and policies ultimately adopted governing DARS. Indeed, the above-referenced public notice of acceptance for filing explicitly recognizes this likelihood, stating in part: "Applicants filing by the cut-off date will be afforded an opportunity to amend their applications, if necessary, to conform with any requirements and policies that may be adopted for digital audio radio service satellite systems." In addition to draining the Commission's resources, processing at this time will also require substantial efforts by competing applicants and other interested parties which may ultimately prove to be of little or no benefit.

Processing of the application would also create a significant risk of skewing the Commission's deliberations on DARS. The process of determining whether to establish the new

service, and if so when and in what form, could well be influenced by the fact that applicants are already expending resources on satellite proposals at the Commission's express invitation. Given the potential of DARS for disruption of the existing radio industry, it ill behooves the Commission to take a precipitous action which could color its future deliberations.

Finally, there is simply no compelling need for immediate processing of the application. Prior to the 1992 WARC, the applicant's principal argument for processing of the application was that grant of an authorization would facilitate deliberations at that conference.<sup>4/</sup> With those deliberations completed, that argument (whatever its force may have been) has become moot, and no circumstances exist which justify contamination of the Commission's otherwise-judicious approach to DARS by premature action on the subject application.

In light of the foregoing, ROC respectfully submits that the subject application should be returned, and the "cut-off notice" rescinded. If that is not to be done, action on the application and any competing applications should be deferred, pending adoption of rules and policies (if any) governing DARS. Upon

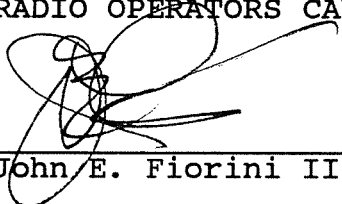
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<sup>4/</sup> See, e.g., letter of November 1, 1991, to the Secretary of the Commission from Martin Rothblatt, Chairman and CEO of the applicant.

adoption of any such rules and policies, interested parties should be given a further opportunity to comment on the applications.

Respectfully submitted,

RADIO OPERATORS CAUCUS



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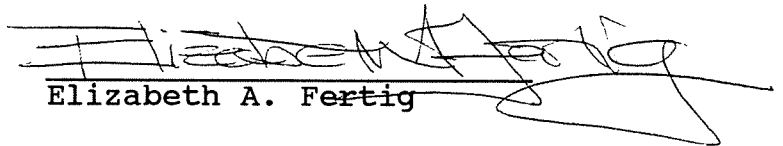
Its Attorney

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CERTIFICATE OF SERVICE

I, Elizabeth A. Fertig, a secretary in the law offices of Gardner, Carton & Douglas, do hereby certify on November 13, 1992, a true copy of the foregoing "Comments of the Radio Operators Caucus" was sent by United States First Class mail, postage prepaid to the following:

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