

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

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FEDERAL COMMUNICATIONS COMMISSION
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In re Application of:)
)
SATELLITE CD RADIO, INC.)
)
For Authority to Construct and)
Operate a Digital Audio Radio)
Service Satellite System Using the)
2310 to 2360 MHz Frequency Band)

File Nos. 49/50-DSS-P/L-90
58/59-DSS-AMEND-90
44/55-DSS-AMEND-92
OFFICE OF CHIEF
ESTIC FACILITIES DIVISION
COMMON CARRIER BUREAU

REPLY

On October 13, 1992, the FCC placed on public notice the application of Satellite CD Radio, Inc. (CD Radio), to construct, launch, and operate a satellite digital audio radio system (DARS).¹ At approximately the same time, the Commission released a notice of proposed rulemaking (NPRM) aiming to allocate frequencies in the S-band for satellite DARS.² Pursuant to the public notice, on November 13, 1992, over 30 entities commented on CD Radio's application. As CD Radio noted in its

¹ See Compendium of Applications and Restatement of Petition for Rulemaking, FCC File Nos. 49/50-DSS-P/LA-90, 58/59-DSS-AMEND-90, 44/45-DSS-AMEND-92 (filed Sept. 14, 1992) ("Compendium"); FCC Public Notice Report No. DS-1244, 7 F.C.C. Rcd 6763 (1992).

² Digital Audio Radio Services, 57 Fed. Reg. 57,049 (1992).

December 1, 1992, Opposition and Response,³ the majority of comments favored granting CD Radio's requested authority.⁴

Three entities filed comments on the date of CD Radio's opposition. Some of the points made therein were already addressed in CD Radio's Opposition and Response, while others are new. This reply addresses all three pleadings.

I. REPLY TO NPR

National Public Radio, "an early proponent of digital radio service,"⁵ praises digital technology as "holding the promise of increasing public service, public access and efficient use of. . .the electromagnetic spectrum."⁶ As such, it supports the rapid development of DARS services, and the important improvement DARS can make in publicly available audio services. CD Radio fully supports these views.

NPR also endorses the concept of a set-aside for public broadcasting. As CD Radio has already noted, its plans for subscription-based services include "narrowcast" programming similar to that carried by public broadcasting; thus, grant of CD Radio's application will actually promote the goals of public interest broadcasting.⁷ This issue,

³ Opposition to Petitions to Deny and Response to Comments of Satellite CD Radio, Inc. (filed Dec. 1, 1992) ("Opposition and Response").

⁴ Id. at 3.

⁵ Reply Comments of National Public Radio at 1 (filed Dec. 1, 1992) ("NPR Reply").

⁶ Id. at 2.

⁷ See Opposition and Response at 14.

however, is more appropriately raised in the companion DARS rulemaking than in connection with a specific application.

CD Radio does oppose NPR's final suggestion to defer satellite spectrum allocations -- and, presumably, licensing -- until terrestrial digital broadcasting standards are finalized and other regulatory issues are settled. As CD Radio explained, the Electronics Industry Association is well along the process of establishing an in-band standard for terrestrial digital radio.⁸ Moreover, given the long lead times required before a satellite system can begin service -- three or more years -- terrestrial broadcasters may well offer DAR long before any satellites are launched.⁹ Standardization, and establishment of technical and regulatory requirements, will come both in the market and in the rulemaking, and CD Radio will adapt itself to both.¹⁰

II. REPLY TO SBE AND AMST

The Society of Broadcast Engineers (SBE) and the Association for Maximum Services Television (AMST) raise questions about CD Radio's proposed use of frequencies in the 7 GHz range for satellite-DARS feeder links.¹¹ Each entity claims

⁸ Id. at 9-10 & n.25.

⁹ Id. at 8.

¹⁰ NPR suggests a regulatory mold for DARS modeled on broadcasting. NPR Reply at 4-5. CD Radio notes that current broadcasting is augmented by providers of subscription services and video DBS providers operating on a subscription basis. To the extent the NPR's model fully includes all these relevant existing choices, CD Radio concurs with its suggestion.

¹¹ Informal Objection of the Society of Broadcast Engineers, Inc. (filed Dec. 1, 1992) ("SBE Objection"); Reply of Association for Maximum Service Television, Inc. (filed Dec. 1, 1992).

that, although there may be many regions where such links would not be a problem, the Washington, D.C., proposed location of CD Radio's control station could interfere with existing broadcast auxiliary operations in the band.

Initially, it should be noted that the spectrum preliminarily selected by CD Radio is allocated by the Commission and the ITU for satellite transmissions in the earth-to-space direction.¹² Moreover, broadcast auxiliary users have long been on notice of the potential for sharing with satellite services: Section 74.643 of the rules contemplates sharing and subjects the terrestrial systems to pointing restrictions.¹³ The fact that there are no current rules for this allocation in Part 25¹⁴ is irrelevant -- the companion rulemaking will consider technical policies for the new DARS service, which will likely include an FCC determination of the appropriate home for feeder links.

In fact, however, it is important to note that CD Radio has not to date filed applications covering its earth station control facilities. When such applications are filed, CD Radio intends to coordinate with existing facilities to minimize the potential for harmful interference between all users of the spectrum. If for some reason, coordination is difficult or impossible, CD Radio will move its planned control site or shift frequencies to a more appropriate band. Similarly, if the FCC in the rulemaking

¹² See 47 C.F.R. § 2.106 (1991).

¹³ 47 C.F.R. § 74.643 (1991).

¹⁴ Cf. SBE Objection at 2 (claiming the request is "premature").

requires satellite-DARS applicants to use a different feeder link band, CD Radio will, of course, comply. Until then, the comments of SBE and AMST present no reason to delay consideration of CD Radio's pending space station application.

III. CONCLUSION

For the foregoing reasons, and the reasons discussed in the Opposition and Response, the Commission should grant CD Radio's request to construct, launch and operate a satellite-DARS system.

Respectfully submitted,

SATELLITE CD RADIO, INC.

by: 

Richard E. Wiley

Michael Yourshaw

Carl R. Frank

of

Wiley, Rein & Fielding

1776 K Street, NW

Washington, D.C. 20006

(202) 429-7000

Its Attorneys

December 15, 1992

CERTIFICATE OF SERVICE

I, Nancy Better, hereby certify that on this 15th day of December, 1992, I caused copies of the foregoing "Reply" to be mailed via first class, postage prepaid to the following:

Michael A. Menius
Director, Government Relations,
Common Carrier Programs
Motorola Government Relations Office
1350 I Street, N.W., Suite 400
Washington, D.C. 20005

John E. Fiorini, III
Mark Van Bergh
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
Counsel for Emmis Broadcasting Corp.

William J. Potts, Jr.
Haley, Bader & Potts
2000 M Street, N.W.
Washington, D.C. 20036
Counsel for Association for Broadcast
Engineering Standards, Inc.

Neal T. Kilminster
World Systems Division
Communications Satellite Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

Len Schuchman
Senior Vice President
Stanford Telecommunications, Inc.
2421 Mission College Boulevard
Santa Clara, CA 95054

Steven A. Lerman
Sally A. Buckman
David S. Keir
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
Counsel for Joint Parties

William K. Keane
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
Counsel for Aerospace & Flight
Test Radio Coordinating Council

Howard F. Jaeckel
John W. Zucker
CBS, Inc.
51 West 52nd Street
New York, NY 10019

David E. Leibowitz
Jennifer L. Bendall
Recording Industry Association
of America, Inc.
1020 19th Street, N.W.
Washington, D.C. 20036

Howard M. Liberman
Gerald Stevens-Kittner
Arter & Hadden
1801 K Street, N.W.
Suite 400 K
Washington, D.C. 20006
Counsel for Primosphere Limited
Partnership

Leslie A. Taylor
Leslie Taylor Associates
6800 Carlynn Court
Bethesda, MD 20817-4302
Counsel for Primosphere Limited
Partnership

Bernard Korman
American Society of Composers
Authors & Publishers
ASCAP Building
One Lincoln Plaza
New York, NY 10023

Janice L. Stott
General Manager
KVST Radio
1212 S. Frazier
Conroe, TX 77301

Gary K. Noreen
Chairman & CEO
Radio Satellite Corporation
1167 North Holliston Avenue
Pasadena, CA 91109

Dr. Jack W. Mitchell
Director, Wisconsin Public Radio
821 University Avenue
Madison, WI 53706

Douglas A. Heydon
President
Arianespace, Inc.
700 13th Street, N.W.
Suite 230
Washington, D.C. 20005

Tim McDermott
General Manager
KSBJ
P.O. Box 187
Humble, TX 77347

Craig C. Todd
Senior Member of the
Technical Staff
Dolby Laboratories
100 Potrero Avenue
San Francisco, CA 94103

Bryan Kim
New World Sky Media
553 South Street
Suite 312
Glendale, CA 91202

Robert L. Johnstone
Director Strategic Marketing
J Boats, Inc.
30 Walnut Street
Newport, RI 02840

Peter J. Schaffer
Vice President
General Counsel
All Pro Sports and Entertainment
1999 Broadway
Denver, CO 80202

Ralph H. McBride
President
Voice Broadcasting, Inc.
P.O. Box 820
Bridge City, TX 77611

Joseph N. Pelton
Director
University of Colorado at Boulder
Interdisciplinary Telecommunications
Program
Engineering Center, OT 2-41
Campus Box 530
Boulder, CO 80309-0530

Henry L. Baumann
Valerie Schulte
National Association of
Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

James B. Bailey
Senior Design Engineer
Techsonic Industries, Inc.
1 Humminbird Lane
Lake Eufaula, AL 36027

Dr. Frank R. Arams
Vice President
LNR Communications
180 Marcus Boulevard
Hauppauge, NY 11788

Rolfe Larson
Director
Minnesota Public Radio
45 East Seventh Street
Saint Paul, MN 55101

John E. Fiorini, III
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 2005
Counsel for Radio Operators
Caucus

John M. Seavey
President
Seavey Engineering
Associates, Inc.
135 King Street
Cohasset, MA 02025

Bruce D. Jacobs
Glenn S. Richards
Gregory L. Masters
Fisher, Wayland, Cooper &
Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C.
Counsel for AMSC Subsidiary
Corporation

Lon C. Levin
AMSC Subsidiary Corporation
1150 Connecticut Ave., N.W.
4th Floor
Washington, D.C. 20036

David J. Del Beccaro
Digital Cable Radio
2200 Byberry Road
Hatboro, PA 19040

Charles Reutter
ComStream Corporation
104 East Bay View Drive
Annapolis, MD 21403

Henry C. Rock, II
The Right-Roc Group
331 West 57th Street
New York, NY 10019

Rollins Hudig Hall
13873 Park Center Road
Suite 201
Herndon, VA 22071

H.J. Masoni
Manager, Advanced Programs
Hughes Aircraft Company
Space and Communications
P.O. Box 92919
Los Angeles, CA 90009

Richard Farquhar
Dane E. Ericksen
Christopher D. Imlay
Booth, Freret & Imlay
1233 20th Street, N.W., #204
Washington, D.C. 20036

Julian L. Shepard
Victor Tawil
Association for Maximum Service
Television, Inc.
1400 16th Street, N.W.
Suite 610
Washington, D.C. 20036

Jonathan D. Blake
Gregory M. Schmidt
Charles W. Logan
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044
Counsel for Association for Maximum
Service Television, Inc.

Theodore A. Miles
Karen Christensen
National Public Radio
2025 M Street, N.W.
Washington, D.C. 20036

Nancy Betters
Nancy Betters