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

Federal Communications Commission  
Office of the Secretary

In the Matter of the  
Application of  
Satellite CD Radio, Inc.

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File Nos. 49/50-DSS-P/LA-90  
58/59-DSS-AMEND-90

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Domestic Facilities Division  
Satellite Radio Branch

TO: The Commission

PETITION TO DISMISS, DENY OR RETURN

Emmis Broadcasting Corporation ("Emmis"), by counsel and pursuant to the Commission's Public Notice, Report No. DS-1015, released October 19, 1990, hereby petitions the Commission to dismiss, deny or return the application to construct, launch, and operate a digital audio radio service satellite system filed by Satellite CD Radio, Inc. ("CD Radio"). CD Radio's application is for a service which does not exist. It is a highly premature and unauthorized request to use a significant portion of the spectrum in a manner almost entirely outside Commission regulation. The Commission should not countenance CD Radio's wholly ungrantable, unprocessable and unprecedented application, which should be dismissed, denied or returned forthwith.

1. CD Radio seeks authority to provide a digital audio radio service on 1470-1530 MHz using two geostationary satellites and an unspecified and undetermined number of terrestrial repeater and terrestrial transmitter facilities throughout the United States. Digital audio radio ("DAR") is an evolving and developing technol-

ogy for which the Commission only recently commenced an inquiry seeking comments on its possible development, implementation and impact. See Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 5 FCC Rcd 5237 (1990) (hereafter NOI). The Commission received approximately 1700 pages of comments in response to the NOI by the November 13, 1990, deadline for initial comments. There currently is no authorized digital radio service, internationally or domestically.

2. Section 2.102(a) of the Commission Rules provides that the assignment of frequencies to stations, the licensing and authorizing of frequencies (including 1470-1530 MHz), and the actual use of frequencies, must comply with the Table of Frequency Allocations, Section 2.106 of the Rules. CD Radio's proposed use of the 1470-1530 MHz frequencies does not comply with the Table of Frequency Allocations, which specifies that these frequencies are assigned to the Mobile service (aeronautical telemetering). CD Radio proposes to share these frequencies, though, of course, the Commission has made no such assignment or authorization for shared use. Moreover, the Commission recently determined (at least preliminarily), that the shared use which CD Radio proposes will cause interference to the authorized operations within these frequencies thereby threatening safety of life and property.

Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing

with Frequency Allocations in Certain parts of the Spectrum, FCC 90-315, released October 1, 1990, at pages 43-44. Such shared use is plainly not in the public interest.

3. The potential threat to safety of life and property is but one of many flaws in CD Radio's application, other than, of course, its proposal to use frequencies for a purpose other than their designated allotment. CD Radio is required under Sections 308(b) and 319(a) of the Communications Act of 1934, as amended, to demonstrate that it is technically qualified. The Commission has not established technical qualifications relevant to CD Radio's application thus making it impossible to process.

4. CD Radio has stated that it, not the Commission, will determine the relevant technical specifications for its proposal. CD Radio Application, Technical Appendix at page 5. CD Radio thus seeks to totally usurp the Commission's statutorily mandated authority to prescribe the nature and technical requirements of service. See 47 U.S.C. Sections 303(b), (c). There is no information available on the propagation characteristics or interference mechanisms applicable to CD Radio's proposal. It is, therefore, impossible to determine whether CD Radio's proposal is technically viable, in the public interest, or in compliance with Section 2.102(f) of the Rules.

5. Since the Commission has had no opportunity to establish relevant financial qualifications for this unauthorized service, See Sections 308(b) and 319(a) of the Communications Act, CD Radio,

not the Commission, has determined what financial qualifications it should demonstrate. The answer is none. While CD Radio has provided what it terms a financial plan it does not demonstrate the availability of any funds to meet its total estimated capital cost requirements of \$384.5 million. CD Radio merely states that its funds will come from a mix of debt and equity capital, with no indication of 1) the specific lenders, 2) commitments to provide the funding, and 3) the ability of lenders or investors to provide the funds. In sum, CD Radio's financial qualifications are made out of whole cloth.

6. CD Radio's application is folly. There are no international or domestic frequency allocations that permit a digital audio radio service at this time. These are matters which are the subject of the upcoming 1992 World Administrative Radio Conference, and the Commission's beginning inquiry in General Docket No. 90-357. See NOI, supra. CD Radio's application is an attempt to usurp the Commission's authority to establish frequency allocations and characteristics and technical requirements for authorized services. CD Radio's application is, quite simply, contrary to the public interest, convenience and necessity. See 47 U.S.C. Section 309(a).

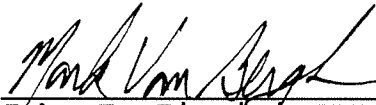
7. There are no rules or procedures for processing CD Radio's application. The Commission's willingness even to accept comment on the application is more than it deserves. The Commission has not accepted the application, and it should not. The

filing of CD Radio's application is highly premature, and a waste of valuable and limited Commission resources. The Commission will determine whether DAR is a technology which should be implemented and if so how in General Docket 90-357. In the meantime any action other than the outright dismissal or return of CD Radio's application may be prejudicial to the NOI and raise serious questions as to the Commission's ability to approach its DAR inquiry with an open mind.

Respectfully submitted,

**EMMIS BROADCASTING CORPORATION**

By:

  
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DATED: November 30, 1990

CERTIFICATE OF SERVICE

I, Virginia L. Davidson, a secretary in the law offices of Gardner, Carton & Douglas, do hereby certify that true copies of the foregoing were sent November 30, 1990, by first-class United States mail, postage prepaid, or as indicated by hand to the following:

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