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March 15, 1991

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Domestic Facilities Division
Satellite Radio Branch

* ADMITTED VA ONLY

VIA HAND DELIVERY

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

Re: **Application of Satellite CD Radio, Inc.
For Conditional Authority to Begin
Construction of a Satellite System,
File Nos. 49/50-DSS-P/LA-90,
58/59-DSS-AMEND-90 and 8-DSS-MISC-91(2)**

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 (4) copies of their Joint Opposition to the above referenced application of Satellite CD Radio, Inc. for conditional authority to begin construction of a satellite radio system.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,

David S. Keir

DSK:mem
Enclosures

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BEFORE THE

Federal Communications Commission MAR 15 1991

WASHINGTON, D.C. 20554

Federal Communications Commission,
Office of the Secretary

In the Matter of)	File Nos. 49/50-DSS-P/LA-90
)	58/59-DSS-AMEND-90
Application of)	8-DSS-MISC-91(2)
Satellite CD Radio, Inc.)	
For Conditional Authority)	
To Begin Construction of a)	
Satellite System)	

To: Chief, Common Carrier Bureau

JOINT OPPOSITION TO APPLICATION OF SATELLITE CD RADIO, INC.

The undersigned licensees and permittees of radio stations located in markets of varied size throughout the United States (hereinafter "Joint Parties"), by their attorneys, hereby oppose the above-referenced application filed by Satellite CD Radio, Inc. ("CD Radio") requesting conditional authority to begin construction of the satellite radio system initially proposed on May 18, 1990 (File No. 49/50-DSS-P/LA-90) and amended on July 17, 1990 (File No. 58/59-DSS-AMEND-90). This opposition is filed in response to the Commission's Public Notice [Report No. DS-1050], released February 13, 1991 ("Public Notice").

As CD Radio acknowledges in the instant application (File No. 8-DSS-MISC-91(2)), its proposal for a satellite-delivered radio service is a subject of numerous ongoing proceedings before the Commission. In addition to CD

Radio's original Petition for Rule Making (RM-7400), the Commission has initiated a general inquiry on digital audio broadcasting ("DAB") (GEN Docket No. 90-357). Public comments have also been received concerning the international regulatory aspects of satellite sound broadcasting in preparation for the country's participation in WARC-92 (GEN. Docket No. 89-554). Finally, CD Radio's original application has been placed on public notice and elicited comments from a number of interested parties. As CD Radio itself concedes, each of these proceedings has raised a host of difficult questions with respect not only to the regulatory and technical standards that might be adopted for satellite radio, but also whether such a service is warranted under any circumstances. CD Radio Application at 2.

CD Radio's current application seeks to bypass these essential proceedings, thereby avoiding for the moment the important questions raised therein. In an attempt to justify its creative "end run," CD Radio argues that the public interest will be served by grant of its request. In support of this assertion, however, it simply assumes answers to the very questions at issue in the ongoing Commission proceedings. For example, CD Radio suggests that good cause exists to grant conditional authority because it would facilitate "initiation of a needed new service." CD Radio Application at 5. This conclusory, self-serving statement presumptuously answers two of the central questions posed by the DAB Inquiry: 1) whether

satellite-delivery of digital radio is either necessary or appropriate in the United States, and 2) whether DAB should be treated as a new service or simply an enhancement of existing radio broadcasting.

Second, CD Radio gratuitously offers to "assume the risk" of making an investment in satellite service prior to initial Commission action. In reality however, it appears more interested in securing the advantage vis-a'-vis potential competitors, including existing broadcasters, should a satellite service be authorized.

Although CD Radio claims that approval of its request for conditional authority will engender no prejudice in its favor, CD Radio Application at 6, its argument that ultimate initiation of service will be facilitated by granting its proposal belies this notion. CD Radio Application at 5. For CD Radio's efforts to have such a salutary effect, it would be necessary for the Commission ultimately to adopt substantial portions of the CD Radio proposal. If CD Radio's request were granted, it would be positioned to argue that the public interest in initiating service "as early as possible" necessitates adoption of its technical standards and other aspects of its proposal. The time, money, and effort expended by CD Radio, thus, could influence Commission decisionmaking considerably.

Indeed, in the context of interim grants of authority to operate broadcast facilities, the D.C. Circuit has recognized the powerful influence of these factors:

"[O]rdinary human experience tells us that these factors have a force which cannot always be set aside. . . no matter how sincere [the] effort or intent." Community Broadcasting Co. v. FCC, 274 F.2d 753, 758 (D.C. Cir. 1960). If anything, the impact can be expected to be greater in this context, where the potential for rapid introduction of satellite radio, if authorized, could provide additional leverage.

Finally, CD Radio has cited no relevant precedent for the extraordinary step of authorizing system construction prior to any Commission consideration of the most basic questions involving the proposed service, including whether it should be authorized at all.

CD Radio attempts to analogize the current situation with respect to DAB to the status of Direct Broadcast Satellite service ("DBS") in 1982, when the Commission authorized the first experimental DBS system. CD Radio Application at 6. It should be recalled, however, that the Commission's grant of authority in that instance followed a full examination of the domestic issues posed by DBS. After first issuing a Notice of Inquiry, 45 F.R. 72719 (November 3, 1980), and a Preliminary Policy Statement, 86 F.C.C.2d 719 (1981), the Commission established interim rules, policies and procedures for the licensing and operation of DBS systems. Report and Order in

Gen. Docket No. 80-603, 90 F.C.C.2d 676 (1982). Then, three months later, it granted the first experimental authorization under these rules to Satellite Television Corporation ("STC"). Satellite Television Corp., 91 F.C.C.2d 953 (1982). The authority granted was conditioned only upon decisions to be made by international bodies that were outside the immediate control of the Commission. Moreover, the Commission had delayed action upon STC's application for experimental authority for more than twenty-one months, pending the outcome of its DBS inquiry.

Accordingly, the Joint Parties respectfully request that CD Radio's application for conditional authority be deferred pending the outcome of the DAB Inquiry and any subsequent rulemaking proceedings.

Respectfully submitted,

SHAMROCK BROADCASTING, INC.
(and subsidiaries)
KABL(AM), Oakland, California
KABL-FM, San Francisco,
California
KUDL(FM), Kansas City, Kansas
WHB(AM), Kansas City, Missouri
KXRX(FM), Seattle, Washington
WCXI(AM), Detroit, Michigan
WWWW(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
BAHIA RADIO, INC.
KLOK(AM), San Jose, California

CAPITOL BROADCASTING CORPORATION
(and subsidiaries)
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

CLARKE BROADCASTING CORPORATION
WGAU(AM), Athens, Georgia
WNGC(FM), Athens, Georgia
KVML(AM), Sonora, California
KZSQ(FM), Sonora, California

COMMUNITY MEDIA, INC.
KWYO(AM), Sheridan, Wyoming
KLWD(FM), Sheridan, Wyoming

GARAMELLA BROADCASTING COMPANY
and MONDAY MEDIA, INC.
KSCR(AM and FM), Benson,
Minnesota
KJJG(FM), Spencer, Iowa
KXLV(FM), Cambridge, Minnesota
WXCE(AM), Amery, Wisconsin

KIRKWOOD BROADCASTING, INC.
KTWB(FM), Sioux Falls,
South Dakota

KMAP, INC.
KWAC(AM), Bakersfield, California
KIWI(FM), Bakersfield, California

KRZI, INC.
KRZI(AM), Waco, Texas
KEYR(FM), Marlin, Texas

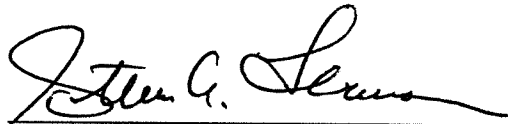
LAKELAND BROADCASTING, INC.
WMYM(AM), Minocqua, Wisconsin
WWMH(FM), Minocqua, Wisconsin

L.M. COMMUNICATIONS, INC.
(and affiliates)
WLXG(AM), Lexington, Kentucky
WCOZ(FM), Paris (Lexington),
Kentucky
WYBB(FM), Folly Beach
(Charleston), South Carolina

LOS CEREZOS TELEVISION COMPANY
WMDO(AM), Wheaton, Maryland

MOSEY COMMUNICATIONS, INC.
KTIE(FM), Bakersfield, California

OVATION BROADCASTING CO.
KNTS(AM), Abilene, Texas
KFQX-FM, Merkel (Abilene), Texas
RADIO AMERICA, INC.
KBRG(FM), Fremont, California
RADIO STATION WDXN(AM),
Clarksville, Tennessee
RADIO TRIANGLE EAST COMPANY
WSAY-FM, Rocky Mount,
North Carolina
RUSTON BROADCASTING CO., INC.
KRUS(AM), Ruston, Louisiana
KXKZ(FM), Ruston, Louisiana
SOUTH FORK BROADCASTING CORP.
WWHB(FM), Hampton Bays, New York
VANTAGE COMMUNICATIONS, INC.
KKVU-FM, Omaha, Nebraska
WKRK-TV, INC.
WKRK(AM and FM), Mobile, Alabama
WRMT, INC.
WRMT(AM), Rocky Mount,
North Carolina

By: 
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March 15, 1991

Their Attorneys

CERTIFICATE OF SERVICE

I, Marion E. McDougal, do hereby certify that a copy of the foregoing Joint Opposition to Application of Satellite CD Radio, Inc. was mailed, first-class, United States postage prepaid, this 15th day of March, 1991, to the following:

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Marion E. McDougal

* Hand Delivery