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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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COMMUNICATIONS SECTION
SATELLITE PERMITTING

In the Matter of)
Applications of)
Satellite CD Radio, Inc.)
for Conditional Authority)
to Begin Construction of a)
Satellite System Providing)
Satellite Sound Broadcasting)
and Point-to-Multipoint)
Mobile Satellite Services)

File No. 8-DSS-MISC-91(2)

REPLY AND RESPONSE OF SATELLITE CD RADIO TO THE
FILINGS OF NAB, JOINT PARTIES, AMSC AND AFTRCC

Satellite CD Radio, Inc. ("CD Radio") hereby replies and responds to the oppositions filed in response to its Conditional Construction Permit Application, FCC File No. 8-DSS-MISC-91(2). CD Radio requested a conditional construction permit to commence with satellite construction, entirely at its own risk, so that it could keep to its original business schedule of satellite launch in 1994. CD Radio represented that approximately the first year of satellite construction could be accomplished with sufficient flexibility to adapt, without loss of time, to any of the frequency bands likely to be allocated to BSS (Sound) at the 1992 WARC. CD Radio represented that most of the first year of satellite construction consisted of the Preliminary Design Review and Critical Design Review stages. CD Radio also represented that it would not make prudent business sense to spend more capital than was reasonably justified in view

Commission's independent progress in resolving the issue of U.S. digital audio radio services. However, CD Radio also noted that an ongoing satellite construction effort would prove of considerable value in providing a point of coordination for WARC-92 and for the NAB's planned complementary terrestrial DAR system.

The primary reason cited by opponents for not granting the CD Radio request is that the subsequent satellite construction activity by CD Radio might prejudice the FCC's policy making decisions with regard to DAR. This argument is entirely without logic as shown below:

- If the FCC decides to authorize satellite DAR, it is because they find it in the public interest; alternatively, if it is not authorized, it is not in the public interest. Expenditures of capital by CD Radio cannot possibly "create" the public interest. The construction activity sought by CD Radio will permit a quicker implementation of satellite sound broadcasting service in the event the FCC determines that the service to be in the public interest.

- There is no likelihood that the FCC's ultimate decision in such an important matter as DAR would be affected by a few million dollars expended by one company on satellite construction activity as compared to the billions of dollars of investment in other telecommunications facilities throughout the nation. In the business affairs regulated by the FCC, the investment of a few million dollars is immaterial.

- In relevant precedents, such as GTE AirFone, the FCC has clearly demonstrated that it will not allow an expensive and fully operational, at-risk investment of an applicant to interfere with its determination that the public interest ultimately required a competitive public airphone regulatory structure. As with AirFone, CD Radio has clearly stated that it will proceed at its own risk -- however, CD Radio is asking only for a conditional construction permit, not the actual experimental operating authority that AirFone enjoyed.

The only case law cited by opponents, Community Broadcasting Co. v. FCC, 274 F. 2d 753 (1960), is clearly inapposite. In that case, there was an issue of operating authority, which is far removed from CD Radio's modest request to undertake the first year of a four year satellite construction effort. Opponents made no effort to relate conditional operating authority, which involves the actual public, to conditional construction permits, which solely involves the applicant and its capital. In addition, Community Broadcasting involves mutually exclusive applicants, which do not exist here. Finally, there are strong policy benefits to the development of additional hard information on satellite DAR design possibilities, such as operation at higher frequency bands (S-band), operation via multiple lightsats for multiple entry (avoidance of consortia and hearings), and operation in conjunction with a complementary satellite/terrestrial system (as NAB is seeking to license from the EBU). Such hard information can only come from satellite

manufacturers, who will not undertake the satellite construction process for CD Radio without the FCC's issuance of at least a conditional construction permit.

The application of Satellite CD Radio has received substantial support at the FCC from satellite manufacturers. See, e.g., Comments of Hughes Aircraft Company and Comments of Loral/Ford Aerospace in Support of the Application of Satellite CD Radio. The market interest in Satellite CD Radio is demonstrated in the Comments of automotive powerhouses such as General Motors ("we believe that Satellite CD Radio was right to seek a 70 MHz allocation"; "For the sake of the American driving public, GM believes that [we need]. . . a high quality, highly reliable, multi-channel DAR service that includes terrestrial transmitters delivering local service, satellite delivery, and terrestrial repeaters to supplement the satellite coverage.") Finally, dozens of commenting public interest organizations throughout the country -- from the Texas Association of Counties to the Los Angeles Philharmonic -- all urged "the sooner the better" for complementary satellite/terrestrial DAR. Hence, the modest action requested of the Commission by CD Radio is founded in clear value. If the FCC finds that the service is in the public interest, then the public will be rewarded with an expeditious implementation of satellite DAR service.

Finally, some intimation was made in the filings of opponents that CD Radio was interested to precluding competition. This is not true. CD Radio has never requested a monopoly license. From its

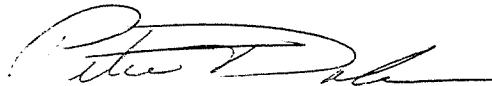
first filings. CD Radio offered to share a license with all qualified parties. subject to some Pioneer's Preference in recognition of CD Radio's role in pioneering the frequency allocation for satellite digital audio radio, with complementary terrestrial service. Now that the Court of Appeals has apparently rejected the consortium approach to licensing, thereby vacating the AMSC license which CD Radio used as a model, it is appropriate for CD Radio to state on the record that it is willing to accept a traditional, FSS-type multiple entry approach to regulatory structure and licensing.

A multiple entry FSS-like approach to licensing DAR systems in the 1493-1525 and 1626-1644 MHz bands would be to establish an application cut-off notice, in which it was said that the bandwidth ultimately allocated would be assigned to the qualified applicants on the basis of dividing the total bandwidth by the sum of qualified applicants, plus one. Hence, if the bandwidth ultimately allocated is 50 MHz, as per above, and if n applicants including CD Radio respond to the cut-off notice, then each applicant (assuming all are qualified) would receive an assignment (license) for $50/(n+1)$ MHz. CD Radio should receive, as a Pioneer's Preference, an additional assignment of $50/(n+1)$ MHz. This allows licensing of DAR satellite applicants without the problems of mutual exclusivity, thereby again eliminating any possible objection to granting Satellite CD Radio a conditional construction permit. Each licensee would then either launch a lightsat-based DAR system, or merge with other licensees to launch a larger DAR satellite system. A qualified applicant must pay both construction and

launch/operations fees for a primary and back-up satellite, as has Satellite CD Radio.

In summary, it is unnecessary and needlessly frustrating to prevent CD Radio from investing its own money, at its own risk, pursuant to a conditional construction permit. No logical reason has been offered by the opponents to prevent such a permit. All relevant authority is consistent with a conditional construction permit. CD Radio has demonstrated that no one -- not the opponents, not future applicants, and certainly not the FCC -- will be prejudiced or even adversely affected by permitting, under strict conditions, the first year of satellite construction to commence.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Peter J. Dolan". The signature is fluid and cursive, with a large initial "P" and "D".

Peter J. Dolan
President & Chief Operating Officer
SATELLITE CD RADIO, INC.

April 1, 1991

I, Bertha Miles, Secretary at Satellite CD Radio, do certify that delivery was accomplished this 1st day of April 1991.

Delivery By Hand:

Gerry Vaughn
Cecily Holiday
Rosalee Chiara
Tom Stanley
Bruce Franca

Delivery By Mail:

Steven A. Lerman
Counsel for Joint Parties
2000 K Street, NW
Suite 600
Washington, DC 20006

Henry L. Baumann
EVP & GC
National Association of Broadcasters
1771 N Street, N.W.
Washington, DC 20036

Ken Keane
Counsel for AFTRCC
Winston, Strawn
1400 L Street, NW
Washington , DC 20005

Lon Levin
Counsel for AMSC
Gurman, Kurtis, Black & Freedman, Chartered
1400 16th Street, N.W.
Suite 500
Washington, DC 20036

Bertha Miles