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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re)
SATELLITE CD RADIO, INC.)
Requests for Section 319(d) Waiver)
)
)

File Nos. 8-DSS-MISC-91(2)
47-DSS-MISC-93

Received

OCT 17 1995

To: The Commission

Satellite Policy Branch
International Bureau

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Cracker Barrel Old Country Store, Inc. ("Cracker Barrel"), by its attorneys and pursuant to Section 1.115 of the Rules of the Federal Communications Commission (the "Commission"), hereby submits this Reply to the Opposition to Application for Review ("Opposition") filed by Satellite CD Radio ("CD Radio") on October 2, 1995. Cracker Barrel's September 15, 1995 Application for Review ("Application") seeks review of the September 5, 1995 Order ("Order") issued by the Commission's International Bureau (the "Bureau") in which the Bureau waives Section 319(d) of the Communications Act, 47 U.S.C. § 319(d). The waiver allows CD Radio to begin construction of \$10 million in satellite apparatus

before the resolution of the Commission's Notice of Proposed Rulemaking ("NPRM") on satellite-delivered Digital Audio Radio Service ("Policy Proceeding"). 1/

In its Opposition, CD Radio mischaracterizes Cracker Barrel's Application for Review as "part of a campaign that seeks reversal of settled policies." 2/ In the Application for Review, Cracker Barrel simply asked the Commission to examine the appropriateness of permitting early satellite construction during the pendency of a rulemaking in which the Commission is considering whether to create the service at issue in CD Radio's application and every parameter of the service, including the number of licensees that might be authorized. While Cracker Barrel acknowledged in its Application for Review that the Section 319(d) waiver was issued to CD Radio "solely at its own risk," Cracker Barrel questions whether early construction under these circumstances might still have a prejudicial effect. 3/ This is of particular concern when the waiver was

1/ Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, FCC 95-229, IB Docket No. 95-91, GEN Docket No. 90-357, RM No. 8610, PP-24, PP-86, PP-87 (released June 15, 1995).

2/ CD Radio's Opposition to Application for Review at 1. Other than the frequency allocation, there are no "settled policies" in DARS.

3/ In its Opposition, CD Radio claims that there is precedent for the Bureau's waiver, contrary to its characterization of Cracker Barrel's position. While CD Radio misquotes Cracker Barrel, and takes the misquoted statement out of context, Cracker Barrel suggested that such waivers have not been granted at a stage when there is this degree of uncertainty surrounding a potential new service.

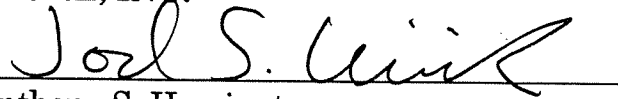
issued just prior to the Commission's consideration of comments in the Policy Proceeding after it had been pending for nearly five years.

Cracker Barrel respectfully urges the Commission to reverse the Bureau's September 5, 1995 Order and set aside CD Radio's waiver request for consideration after the Commission issues its DARS policy.

Respectfully submitted,

**CRACKER BARREL OLD COUNTRY
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CERTIFICATE OF SERVICE

I, Kathy Bates, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 13th day of October, 1995, a copy of the foregoing Reply to Opposition of Cracker Barrel Old Country Store, Inc. was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.



Kathy Bates

Dated: October 13, 1995