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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

8-DSS-MISC-91(2)

PN: 2/13/91

In the Matter of	)	
the Application of	)	
	)	
SATELLITE CD RADIO, INC.	)	File Nos. 49/50-DSS-P/LA-90
	)	58/59-DSS-AMEND-90
For Authority to Construct,	)	
Launch and Operate a Space	)	
Station in the Satellite	)	
Sound Broadcasting Service	)	

## REQUEST FOR CONDITIONAL AUTHORITY TO BEGIN CONSTRUCTION OF SATELLITE SYSTEM

Satellite CD Radio, Inc. ("CD Radio") hereby requests issuance of conditional authority to begin construction of the satellite system proposed in the above-captioned application. The authorization requested herein would be conditional upon CD Radio's assumption of the entire risk that permanent authorization either may not be granted or be granted with technical or regulatory parameters different from those proposed in its application. In support whereof, the following is shown.

### I. THERE IS AN AMPLE RECORD ON WHICH TO BASE A GRANT OF CD RADIO'S APPLICATION

Since CD Radio filed its application and petition for rule making on May 18, 1990, a considerable record has been compiled on all issues raised by the application. This record has been established through four separate proceedings -- two domestic rule making proceedings, one international spectrum allocation

proceeding and one adjudicatory proceeding. Significantly, the pleading cycles established in each of these proceedings have now been completed. First, comments and reply comments were filed in response to CD Radio's petition for rule making (RM-7400). Second, comments and reply comments have been filed in response to the Commission's Notice of Inquiry in General Docket No. 90-357 dealing with the establishment and regulation of new digital audio radio services. Third, two rounds of comments and reply comments have been filed in response to the Commission First and Second Notice of Inquiry in General Docket No. 90-357 dealing with preparations for WARC-92. Finally, comments and reply comments have been filed in response to CD Radio's application.

Through these various information-gathering vehicles, the key issues raised by CD Radio's application (i.e., whether there should be a digital radio service, whether it should be provided by satellite systems, terrestrial systems or both, the amount of spectrum needed for digital radio service and where in the spectrum an allocation should be made) have been fully debated and are ripe for decision. An examination of the record reveals that clear answers to the most critical issues has already emerged.

CD Radio believes that the record shows that not only is there a need for digital-quality radio services in this country, but that there is a need for satellite-delivered digital radio

service in particular because many of the public benefits underlying the need for digital radio service can be provided only by a satellite system (i.e., improved coverage, narrowcasting, and the ability to serve remote and sparsely populated areas of the country).

It is also clear, in CD Radio's view, that spectrum for CD Radio's proposed system should be allocated in the 1435-1530 MHz portion of the spectrum because there is already significant international consensus that this is the most technically suitable band for a satellite sound broadcasting system and because this is the only band in which a satellite digital radio service can be successfully implemented. CD Radio has conclusively demonstrated that a CD-quality consumer service would realize catastrophic interference with 300 MHz of the 2450 MHz ISM band.

In CD Radio's opinion, the record also shows that CD Radio has made a prima facie case that aeronautical telemetry can reduce its L-band allocation to 48 MHz (1435-1483 MHz) by reducing its "platform frequency separation" from a current wasteful 6-10 MHz to the 1 MHz or less required by the FCC's Rules. Thus, a frequency assignment of 60 MHz to CD Radio would require aeronautical telemetry to shift only 13 MHz of its operations (about 14%) to S-band, where it already has access to ample spectrum and can get even more. Finally, the record shows that the mobile satellite service ("MSS") does not require

access to the 1435-1530 MHz band for its near or long term growth because the use of efficient MSS technology coupled with existing and proposed generic MSS bands can accommodate MSS' own estimates of demand through the year 2010.

Although these views represent CD Radio's opinion, the important point for purposes of the instant request is that granting CD Radio conditional authority does not require that the Commission make any decisions on these questions at this time. CD Radio is seeking conditional authority to begin construction based on its willingness to assume the risk that these issues will be decided in its favor, or that CD Radio will be able to adjust its business plan to the ultimate resolution of all the various DAR regulatory issues.

## II. SUBSTANTIAL WORK CAN BE COMPLETED WITHOUT RISKING A LARGE INVESTMENT

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There is a great deal of satellite work which CD Radio could undertake if it were to be issued a conditional construction permit, which would not require a large investment on CD Radio's part, but which would save a year or more over the alternative, which is to wait until the Commission makes final decisions in all the domestic and international proceedings discussed above. It takes approximately three to four years to build a new, large satellite. The first stages, culminating in the preliminary design review (PDR) and critical design review (CDR), take about a year. The investment in these early stages

is relatively small compared to the total cost of constructing and launching a satellite. With a conditional construction permit, CD Radio could begin the satellite construction process without risking a large investment for about one year. Assuming that CD Radio ultimately receives an unconditional authorization to construct, it will have saved at least one year by laying the groundwork for final construction phases of the satellite.

III. GOOD CAUSE EXISTS FOR ISSUING A CONDITIONAL CONSTRUCTION PERMIT

CD Radio submits that, for the following reasons, good cause exists for issuing a conditional construction permit. First, the public interest would be served by facilitating the initiation of a needed new service as early as possible. As noted above, satellites require a long lead time to construct and as long as CD Radio is delayed in commencing construction, the public's ability to benefit from this new service will be delayed. Furthermore, the delay in implementing digital radio service in this country that would necessarily follow from denying CD Radio conditional authority will hurt the U.S. from a competitive standpoint by slowing U.S. momentum in this area (to the advantage of European and Japanese interests) and discouraging further entrepreneurial initiative.

Second, CD Radio will assume the risk of an unfavorable outcome on any issues pending before the Commission. Because CD Radio recognizes the risk that all of the issues surrounding its

application may not be resolved in its favor, for obvious business reasons, either it will not invest more than it can afford to lose in preliminary phases, or it will modify/compromise its business plan to bring it in line with Commission requirements. Thus, grant of the conditional authority requested herein will not create any prejudice in favor of CD Radio.

There is precedent for granting CD Radio's request for conditional authority. Applicants in the Direct Broadcast Satellite ("DBS") service were given conditional authority commence construction of the first phase of their systems prior to the adoption of an international allocation. Specifically, the Commission granted construction permits

conditioned upon the outcome of the scheduled 1983 Region 2 Administrative Radio Conference (RARC-83), and subject to modification, as the Commission deems necessary, in order to comport with any other policies and rules which the Commission may hereafter conclude are necessary or appropriate in the public interest. Thus, this grant does not include launch and operational authority, or assignment of frequencies and orbital locations.<sup>1/</sup>

CD Radio seeks the same kind of conditional authority here.

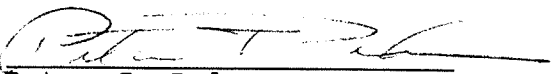
Fundamentally, since the various DAR regulatory issues are likely to be resolved in less time than it takes to build a satellite, and since the satellite can be adjusted to the

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<sup>1/</sup> Memorandum Opinion and Order, In re Application of Satellite Television Corporation for Authority to Construct an Experimental Direct Broadcast Satellite System, File No. DBS-81-01, 91 F.C.C.2d 953, 954 n.4 (1982).

regulatory outcome, it only seems fair to permit conditional satellite construction subject to the FCC's final rules and regulations.

Respectfully submitted,  
SATELLITE CD RADIO, INC.

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