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PRACTICE LIMITED TO MATTERS BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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August 21, 1995

ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments in Rulemaking Proceeding
Docket No. 95-91
Rules for Digital Audio Radio Satellite Service

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith, on behalf of Kirkwood Broadcasting, Inc., licensee of Radio Station KTWB, Sioux Falls, South Dakota, are "Comments" in Docket No. 95-91 solicited by the Federal Communications Commission in conjunction with its Notice of Proposed Rulemaking regarding rules for digital audio radio satellite services.

Should any questions arise regarding this matter, please communicate with the undersigned directly.

Respectfully submitted,

By 
Richard J. Hayes, Jr.
Counsel to Kirkwood Broadcasting, Inc.

RJH:slr
Enclosure

(Our File: WCLTRULE.018)

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554**

100-4-310
AUG 30 1995

In the Matter of:)
)
NOTICE OF PROPOSED RULEMAKING) Docket No.: 95-91
REGARDING RULES FOR DIGITAL)
AUDIO RADIO SATELLITE SERVICE)

To: Chief, Audio Services Division

DOCKET FILE COPY ORIGINAL

**COMMENTS OF KIRKWOOD BROADCASTING, INC.
RULES FOR DIGITAL AUDIO RADIO SATELLITE SERVICE**

1. Comes now Lee O. Axdahl, (Axdahl), President of Kirkwood Broadcasting, Incorporated, (Kirkwood), through counsel, licensee of radio station KTWB(FM), (KTWB), Sioux Falls, South Dakota, with comments on the Notice of Proposed Rulemaking, in Docket Number 95-91, (NPRM), on Digital Audio Satellite Radio, (DARS).

2. Comments on the DARS NPRM are sought with regard to the following issues and topics:
- A. How many nationwide licenses should be awarded.
 - B. How much spectrum each licensee should be assigned.
 - C. How licensees should be awarded if mutually exclusive applications are filed.
 - D. How the service should be regulated.
 - E. Whether licensees should be permitted to use some of their spectrum for non-DARS services.

3. Axdahl, on behalf of Kirkwood, intends to address each of these issues and topics from the perspective of a radio station owner and operator.

4. Kirkwood, a South Dakota corporation, was formed by Axdahl and his partners in 1985 to pursue a construction permit for Channel 270C2, which was subsequently awarded and licensed to

Comments of Kirkwood Broadcasting, Inc. - Page Two

Kirkwood as KTWB(FM). The station has been on the air and serving the public interest since May 5, 1990.

5. As part of the process involved in applying for the allocation, Kirkwood and Axdahl had to prove, assert and attest to the Federal Communications Commission a wide range of issues including how its application would best make use of a limited resource. The resource in question, of course, is broadcast frequencies. There were, initially, six competing applications for the allocation. The number of mutually exclusive applications was eventually narrowed to four. Kirkwood and Axdahl prevailed in the process by settling with the remaining three applicants.

6. Settlement of the allocation notwithstanding, the applicants, indeed, all broadcast applicants nationwide, are wisely and carefully chosen by the Federal Communications Commission to serve their respective communities of license. This process has generally proven itself to be worthwhile, albeit involved and time consuming, for the general public, the consumers of our product.

7. Broadcasters, such as Kirkwood and Axdahl, are now facing an interesting crossroads with the apparently inevitable introduction of DARS to those consumers who we have collectively served in the best way possible for decades.

8. It is my assumption, of the thousands and thousands of broadcast operators, that the Federal Communications Commission will hear from only a fraction of broadcast licensees. It is also my educated assumption that the reason for a fractional response is based on the fact that most of our operations have limited cash flow, limited legal resources, and limited time to make such comments. In other words, most of us are far too busy making ends meet, under the rules laid before us, to recognize that this NPRM should be one of our very greatest concerns of the decade, possibly one of the greatest concerns to ever face terrestrial broadcasters.

9. The issue, quite frankly, is one of supply and demand. Docket 80-90 should serve as a historical footnote on this front. When the supply of product exceeds the demand of its consumers there will be, and has been, two losers. The first loser is the broadcaster, who must now face the reality of

meeting his or her responsibilities with a dwindling base of resources. The second loser is the public we are charged to serve. If we are to meet the expectations of the public and the Federal Communications Commission, which are generally the minimal expectations we have of ourselves, then we must be given the tools with which to accomplish this mission.

A. HOW MANY LICENSES?

10. Ideally, from a terrestrial broadcast perspective, there would be no licenses granted for this type of “satellite service” to the listening public. This comment is based on Federal Communications Commission policy and history. How would this proposal, which in all honesty would provide a giant selection of “all-you-can-eat” programming, better serve the public than what is currently in existence? How would this proposal better accomplish Federal Communications Commission rules and regulations with regard to public service? How would this proposal offer the listening public with an aural “super-highway” of timely information pertaining to local emergencies? At a point in time when terrestrial broadcasters are facing new architecture of its Emergency Broadcast structure, how would a nationwide service accomplish the needs facing local listeners?

The summary of “how many licenses” should be prefaced with “how many do we need to better serve existing listeners?” If one set of licenses would not serve the public any better than ten sets of licenses, then why should even one service be allowed?

B. HOW MUCH SPECTRUM?

11. The amount of spectrum allocated for these proposed services should not be so great as to interfere with the expansion or implementation of proposals which would truly serve the interests and public needs of society. In lay terms, “just because there is money in the bank, don’t spend it all in one place.”

C. WHAT ABOUT MUTUALLY EXCLUSIVE APPLICATIONS?

12. Having been through a terrestrial broadcast process involving mutually exclusive applications, Axdahl and Kirkwood would suggest that proposed providers of these channels be put to the same tests as local broadcasters.

The problems with these tests, however, would seem to be somewhat contradictory.

How, for instance, would the Federal Communications Commission test for the best applicant from a "local residence" standpoint? The issue, apparently, would not be one that would test well in these instances.

Further, would the Federal Communications Commission simply throw out other existing factors for consideration? Factors such as duopoly, EEP, multiple ownership, and a demonstrated need from the public for such a service? How about simple issues to which terrestrial broadcasters are held closely? Where, for example, would one find the public file for the operation?

Some of these questions, obviously, are rhetorical in nature, but it seems as though we are being asked to allow dozens and dozens of additional aural channels into Anytown, USA, and further, "we don't know how to implement it!" Axdahl and Kirkwood would strongly assert that the one thing we do know is that the addition of the service, in any form, would create havoc in a terrestrial broadcast community which, recently, has marginally started its recovery from Docket 80-90. Further, this NPRM makes 80-90 look like child's play!

D. HOW SHOULD THE SERVICE BE REGULATED?

13. Axdahl and Kirkwood believe that the rules and regulations should be in place prior to accepting applications from potential licensees. What should or shouldn't be included in the regulatory arena seems to be an issue far larger than this comment period. It has all the appearances of building the house only to later determine the zoning laws.

E. SPECTRUM FOR NON-DARS SERVICES?

14. The question has been raised concerning the ability of any licensee(s) of DARS to have the ability to use a portion of their spectrum for non-DARS services, which could potentially include any number of documented and proven digital services.

Axdahl and Kirkwood have no strong position on this other than the obvious reality that any such non-DARS services could be ones which terrestrial broadcasters are already delivering. This augmentation would serve to further erode the sources of revenue which benefit terrestrial operators in times of tight cash flow.

F. COMMENTS SUMMARY

15. It is very apparent from the nature of the Comment Period that the Federal Communications Commission is, like most of us, unclear and unsure of the impact DARS would have on an industry which has been carefully structured and nurtured over the past sixty or so years.

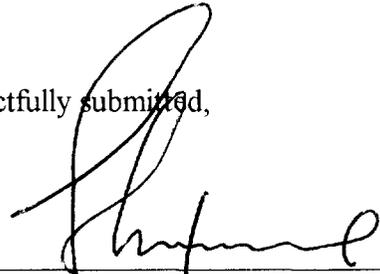
Further, it seems apparent that the Federal Communications Commission is, perhaps, unwittingly “launching” an entirely new industry which could severely and terminally harm an existing communications infrastructure which is functioning quite nicely and serving the public interest.

To completely dispose of the “important” considerations, rules and regulations with which terrestrial broadcasters must comply; while multiplying the number of aural services to the public, has all the similarities of hand-cuffing an entire broadcast industry while concentrating the unregulated “new power” in the hands of relatively few.

Axdahl and Kirkwood simply cannot understand how any of the DARS proposals or questions would improve an industry which has, for decades, struggled to comply with, even more so, helped create the rules and regulations through which citizens of the United States have been the ultimate beneficiaries.

While Pearl Harbor and War of the Worlds have long since passed, they are memories bolstered by everything that make the existing terrestrial industry unique to this planet. Today's local events, from a simple play-by-play of softball to intense coverage of local severe weather, are superior broadcast elements threatened by a hugely impersonal NPRM which has all the fingerprints of historical lessons from which we should have learned and matured.

Respectfully submitted,

By  _____
Lee O. Axdahl, President
Kirkwood Broadcasting, Inc.

Dated: August 18, 1995

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