

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	IB Docket No. <u>95-91</u>
)	GEN Docket No. 90-357
Establishment of Rules and)	RM No. 8610
Policies for the Digital)	PP-24
Audio Radio Satellite Service)	PP-86
in the 2310-2360 MHz)	PP-87
Frequency Band)	

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TO: The Commission

FCC MAIL ROOM

COMMENTS OF BELL BROADCASTING COMPANY

Bell Broadcasting Company ("Bell"), by its attorney, hereby respectfully submits the following Comments in this proceeding:

I. Bell Broadcasting Company.

1. Bell Broadcasting Company was originally founded in 1955 by two African Americans, Haley Bell and Wendell Cox. The company was initially awarded a construction permit for an AM station, WCHB, which operates to this day serving the Black population in the vicinity of Detroit, Michigan. The company also owns an FM broadcast station, WJZZ, licensed to Detroit, as well as other AM stations situated at Frankenmuth, Michigan, and Bay City, Michigan. To this day, 100% of the stock of the company is beneficially owned by African Americans.

2. Bell is filing these Comments because it is concerned with the trend towards more and more concentration of control of

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broadcasting in the hands of a few large companies. Heretofore, the FCC and the Congress have promoted a policy of diversification, i.e., it has been considered "good" to have the widest possible number of different voices for expression of ideas, through broadcasting. Recently, however, it has become fashionable, particularly in some libertarian circles, to advocate that the government abandon all efforts to diversify the voices of expression in favor of a so-called "free market" approach, in which a few large companies will be permitted to own all of the broadcast outlets in the United States. Bell believes that this notion is grievously misplaced. It is misplaced because there is not and cannot be a truly "free market" in broadcasting, so long as the market is created by the government. So long as the FCC specifies the spectrum that can be used for broadcast purposes, and so long as the FCC limits the uses to which that spectrum can be put, the market is not free; it is a creation of government. That being so, government has a responsibility not to allow the creation of monopolies or semi-monopolies.

3. This proceeding contemplates that a handful of licenses will be issued to a few large companies, who will be permitted to offer multi-channel audio broadcast services by direct transmission from satellites. Evidently, the FCC contemplates that these companies will be permitted to control the programming of all these channels. In these Comments, Bell will show that such a result is not in the public interest; that, at most, satellite owners should be required to operate as common carriers, and not to

control the programming broadcast over their facilities.

II. The Threat to Free Broadcasting.

4. In its NPRM, the FCC requests comments on the threat that DARS may pose to the conventional broadcasting industry. That threat is very real. As the NPRM points out, 6 MHz of bandwidth can be used to provide 75 channels of CD quality music programming. But the FCC does not propose to limit DARS to music. To the contrary, as pointed out at paragraph 54 of the NPRM, DARS licensees may use some of their spectrum for low data rate audio (voice). Thus, a DARS licensee might offer 60 high quality music channels and use the rest of its spectrum for, perhaps, 50 voice-quality channels. These channels could offer such popular programs as the Rush Limbaugh Show, G. Gordon Liddy, the Black Avenger, etc. By using a memory chip in the customer's receiver, local news for all fifty states could be sent and stored at regular intervals. The customer could retrieve that news, usually no more than a half hour old, by pushing a button. Other channels could carry continuous national and world news, stock market quotes, religious programs, foreign language programs, etc. A customer equipped with such a radio would have absolutely no reason to listen to his local AM or FM stations!

5. Interestingly, the FCC has the capacity to put conventional broadcasters out of business, right now, without resorting to satellites. Approximately 300 MHz of prime spectrum is being ceded back to civilian use by the military. That spectrum, parts of which lie in the high desirable 300 MHz range,

could be used to create a second FM band, or to create many new VHF television stations. It will not be used for that purpose, because the Commissioners have common sense, i.e., they recognize that the free TV and audio broadcast industries could not withstand such a proliferation of new stations.

6. The only difference between terrestrial broadcasting and satellite broadcasting is the platform from which the broadcasts originate. In the one instance, it is a tower, situated on land; in the other, a satellite orbiting in space. There is no other difference. The Commission should, therefore, apply the same common sense approach to satellite broadcast allocations that it applies to terrestrial allocations. There are obvious limits to the number of new stations that can be allocated, without destroying the existing system.

III. DARS Licensees Should Operate as Common Carriers.

7. It costs approximately \$40,000,000 to launch a satellite. Bell does not have \$40,000,000. It does, however, have sufficient resources to lease a channel from a satellite owner, at market rates. If such a channel became available, Bell would, in fact, lease the channel and make its programming available, nationwide.

8. Historically, when an engineering project required the investment of huge amounts of capital, it has been the practice to require the owners of the project to serve everyone equally and fairly. In the late 1900's the building of railroads required enormous investments. The government responded by encouraging

those investments, but regulated the railroads as common carriers and required them to serve all customers at the same rates and upon the same terms.

9. Similar regulations were applied to the electric and gas utilities and to the telegraph and telephone companies. There was a recognition that it was not practicable to have a dozen or more electric or gas companies serving one city, or a dozen or more telephone or telegraph companies. Therefore, the government created monopolies, but demanded, in return, fair and equitable treatment for all customers.

10. In the case of DARS, the FCC proposes to issue as many as four licenses. As a practical matter, however, few citizens will have the desire or the need to install more than one service in their home, office, or car. One service, offering 60 channels of music and 50 additional channels of voice-quality audio, should certainly suffice. Thus, the owners of that service, if they are permitted to control the programming, will control all of the ideas disseminated to their listeners. If the service decides to carry Rush Limbaugh and not to carry the speeches of President Clinton, listeners will get Limbaugh, not Clinton (and vice versa). Moreover, because of the high signal quality of DARS, and the convenience, there is little reason to believe that listeners will care to tune back to the conventional broadcast bands, AM or FM.

11. Furthermore, even if there are four competing DARS licensees, initially, it is quite likely that one licensee will

soon come to dominate the market. Indeed, that licensee is likely to eventually purchase the systems of the other licensee, enabling it to control all audio broadcasting in the United States. Bell cannot believe that such a result is in the public interest.

12. That is why Bell urges that, if the FCC is determined to authorize direct audio broadcasting from satellites, the DARS licensees should be required to make their channels available for lease by independent programmers, such as Bell, and should not be permitted to either offer their own programming or control the programming broadcast from the satellites. Interestingly, if all of the 40 MHz which the FCC proposes to dedicate to DARS were awarded to just one licensee, there might well be enough channels available to allow almost every existing broadcast licensee in the U.S., to have at least one voice quality channel, provided, that is, that the channel could be leased.

IV. How Will DARS Be Supported?

13. As the NPRM points out, one proposed DARS licensee plans to use advertising to support its system, while the others propose to sell their services to subscribers. Bell wholeheartedly agrees with the NAB that, if DARS is to be made available to only three or four mammoth companies, they should be permitted to offer service only on a subscription basis, and they should not be permitted to sell advertising.

14. Already, free broadcasters face serious competitive threats from CATV systems which sell local advertising. Furthermore, broadcasters' audiences are threatened by competition

from CD and tape players. There are not sufficient advertising revenues available to withstand competition for those revenues from an advertising supported national DARS system.

15. Bell points out, however, that requiring DARS licensees to serve as common carriers would ameliorate some of these problems, by opening the door to smaller, advertising-supported players, e.g., Bell, to obtain access to the satellite radio marketplace. For this to happen, however, the DARS licensees must not only be required to operate as common carriers; they must be forbidden from offering so-called "bulk rates". Otherwise, one large company could and would buy all of the available channels, at a discounted rate.

V. Should the FCC Hold an Auction?

16. The NPRM requests comments as to whether the FCC should auction the spectrum to be used for DARS. The FCC is to be congratulated upon the efficient manner in which it set up and completed the successful Personal Communications System (PCS) auctions, which raised some \$7 billion for the treasury. The monies from these auctions, however, did not come from a money tree. Most of the spectrum was purchased by telephone companies, and will be paid for by telephone customers, in the form of higher telephone bills. Since most telephone customers probably don't want to pay these higher rates, the auctions resulted in the imposition of a tax on telephone service. This is not necessarily a bad thing; it simply needs to be understood.

17. In the case of DARS, the monies raised by an auction

would, of course, be paid, ultimately, by the subscribers to those services. To the extent that the DARS licensee are required to provide common carriage, any huge sums of money paid for spectrum at an auction could and would be passed on to prospective channel lessees (e.g., Bell) and might price smaller companies out of the market. If therefore, the FCC adopts Bell's suggestion that the DARS licensees be required to provide common carriage, Bell does not favor the auction approach.

18. As a practical matter, there are probably no more than four companies in the U.S., who have the financial wherewithal and willingness to launch satellites for DARS. Therefore, an auction is not needed. Construction permits could be issued for limited amounts of time (e.g., 6 months) and, if a satellite was not launched and made operational within that time, the permit could be forfeited, and someone else given an opportunity.

VI. The Principle of Diversity.

19. In closing, we return to a matter touched upon, earlier, i.e., the principle of diversity. For years, the FCC has followed a policy of maximizing the number of diverse voices for self expression, in the broadcast market place. In this proceeding, however, the FCC seems to have departed from that policy, in favor of a policy which would place hundreds of audio broadcast channels in the complete control of three or four mammoth organizations.

20. Bell Broadcasting Company believes that the former policy of maximizing the number of different voices for self

expression is still the right policy, for a number of very sound reasons. One reason is that the development of a centrally controlled Digital Audio Radio Satellite Service would very likely destroy the current broadcast system, putting 300,000 people out of work. These people would find no replacement jobs in the centrally controlled system, because it would be operated with just a few hundred employees in some central location, e.g., New York City.

21. Economics aside, however, it is simply dangerous to concentrate so much control over the dissemination of ideas, in the hands of a few large organizations. There is no guarantee that they will allow or encourage the robust discussion and interchange of ideas, which the public interest requires. Therefore, Bell does not favor the approach advocated in this proceeding, but suggests an alternative approach, as set forth in these Comments.

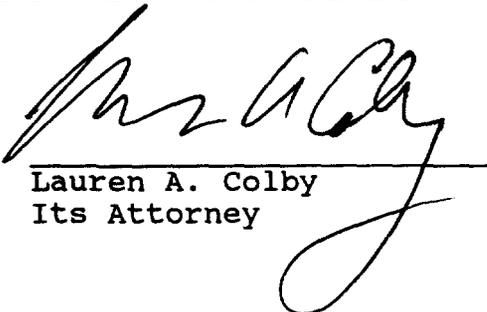
Respectfully submitted,

September 13, 1995

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