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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Establishment of Rules and Policies for the
Digital Audio Radio Satellite Service in the
2310-2360 MHz Frequency Band

) IB Docket No. 95-91 ✓
) GEN Docket No. 90-357
) RM No. 8610
) PP-24
) PP-26
) PP-87

**COMMENTS OF THE SATELLITE BROADCASTING
AND COMMUNICATIONS ASSOCIATION OF AMERICA**

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**COMMENTS OF THE
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Introduction and Summary

The Satellite Broadcasting and Communications Association ("SBCA") is pleased to submit to the Commission its comments in the above-referenced proceeding. SBCA is the national trade association of the Direct-To-Home ("DTH") satellite industry, and, as such, is vitally interested in communications matters where satellites are utilized to provide broadcast services direct to consumers. Both Direct-To-Home and Digital Audio Radio Satellite services deliver programming on a national basis.

The DARS companies who are parties in this proceeding are proposing to offer consumers national digital radio service via satellite, and the SBCA supports prompt Commission action to enable these services to commence service to the public. In

that regard, SBCA opposes the use of auctions to license DARS, as well as a re-opening of the "cut-off" date which the Commission had previously established for DARS applications.

SBCA Interest in This Proceeding

The SBCA membership comprises the major industry segments engaged in the delivery of television programming directly to consumers by satellite. Those satellite services include the traditional C-Band large dish antenna systems, the medium-powered Ku-Band, one-meter antenna service offered by Primestar, and the small dish antenna services of DIRECTV/USSB. Other segments include the popular program services and superstations which are available by subscription to DTH consumer households; the manufacturers and distributors of DTH receiving equipment; and the more than 2,000 independent satellite retail dealers who are the point-of-sale for consumers wishing to purchase and/or install DTH systems.

Both DTH and DARS services have an important measure of commonality. They offer (or plan to offer) a relatively new and highly efficient means of delivering programming of superb quality to consumers at their premises or, additionally in the case of DARS, on a mobile basis as well. The introduction of DARS services will be an important step in the continuation of the Commission's policy of encouraging diversity and choice in the market place. Much as DTH service providers are delivering to consumers a significant, competitive "national" alternative in the multichannel video

market place, so will DARS offer unique and much-needed services to consumers in the field of radio broadcasting.

Satellites have become an extremely viable means of providing direct-to-consumer service. They offer a high degree of cost-effectiveness for point-to-multipoint communications, and the large footprint of a typical broadcast satellite has a continental, if not international, expanse. The utilization of satellite for DARS transmission is a highly innovative and practical use of the radio frequency spectrum. It is an idea whose time has come, and it is propitious for the Commission to reject the protectionist arguments which have delayed the implementation of these services. The Commission should expedite the licensing of these services in order to give the public another important choice for receiving radio broadcasts.

Satellites Are an Important Communications Link for Rural Consumers

Rural consumers have traditionally been disadvantaged compared to their urban brethren with regard to the availability of communications services. This has been especially true for video and terrestrial radio delivery. On the video side, for example, cable television has been slow to build out to rural areas because of thinner population densities. If not for DTH satellite delivery, cable programming would be unavailable to most rural households.

The case with regard to terrestrial radio broadcasting is highly analogous. More

sparsely populated areas offer fewer listeners, making them less attractive for terrestrial radio broadcasters as advertisers seek exposure to optimal audience sizes. Therefore there is little incentive for terrestrial radio providers to offer service into areas where a dwindling audience has little impact on a station's advertising rate card.

Many rural communities have only extremely limited terrestrial radio coverage. For the stations which are available, the diversity of programming is practically non-existent in comparison with the wealth of programming choice found in urban areas. In addition, many of the stations which serve rural areas are often AM licensees which offer either low-power, night time service or none at all.

DARS service will prove to be a mighty benefit to rural listeners. In fact, as the Commission has noted in its NPRM, music services such as Digital Music Express and Music Choice are already available by DTH satellite via Ku-Band service providers. In addition, there are a multitude of audio sub-carrier services available on a national basis in the C-Band market place. So it is evident that satellite-delivered "national radio" to fixed locations has been around for a long time. The issue is not over the merits of a national radio service. It is whether the Commission will finally allow the current DARS proponents to offer their service packages to rural listeners who have little radio service to choose from both at home and in their vehicles.

Much as DTH satellite industry was created in its early days by highly visionary

entrepreneurs, so is DARS about to be launched by businesses which have seen the public benefits in launching satellite radio services. The range and availability of these services will not be limited because of demographics, the economics of building out, or other factors which would hinder their delivery to rural consumers. SBCA believes therefore that the Commission should facilitate now the implementation of DARS services in view of their patently clear public service benefits, especially with regard to rural listeners.

In fact, it should be noted that the video market place is just now beginning to realize the fruits of competition between cable, DTH and other video providers. Greater programming choices, better quality service and more choices in delivery systems have helped to create more television consumers. SBCA believes that the advent of competition among radio delivery systems also will bring similar, favorable results: more programming, digital broadcasting and, in the end, a larger listening audience.

Spectrum Auctions Should Not Be Utilized for DARS Services

SBCA is firmly of the opinion that utilizing auctions to assign frequency spectrum to DARS services is counterproductive and will discourage, rather than promote, entrepreneurial use of the airwaves. In fact, we are dismayed that auctions, as a matter of public policy, are being proposed in situations where there is no mutual exclusivity and when the Commission has yet to truly justify their use. We are disappointed that the initial attraction of gaining revenue for the U.S. treasury appears

to have taken precedent over a thoughtful and formal debate over the long term ramifications of such a system of frequency allocation or assignment of licenses.

Spectrum auctions can have a pernicious effect on the entrepreneurial development of projects such as DARS services. The planning and design of such satellite systems can entail the expenditure of millions of dollars. This is a bold commitment under any circumstance, but it is further made vulnerable by the unpredictable but additional cost potential of a bidding competition. The specter of such a cost can have a chilling effect on prospective entrepreneurs engaged in the development of new and innovative technological applications. In the case of enterprises which are nearing fruition, costs attributable to auctions will ultimately be passed on to consumers -- a hidden tax, if you will, which was not part of the original business plan.

Furthermore, the SBCA is deeply concerned at the model which the U.S. Government is establishing for other countries by resorting to auctions solely as a means of acquiring revenue. The U.S. satellite industry has established itself as a leading global telecommunications technology. It continues to assert its potential through the development of innovative uses of the spectrum for the transmission of important and often critical services. DARS is one of many new satellite services which would benefit a significant portion of the U.S. population and also be exported to many regions of the world.

In this regard, there is no practical distinction between a domestic or international satellite service when it comes to auctions. In the first place, even a "domestic" satellite reaches out to neighboring countries by virtue of the size of its footprint. So as a practical matter, it is difficult to distinguish between a "domestic" and "international" satellite service. In addition, auctioning domestic frequency assignments signals other countries that it is an acceptable practice, regardless of the type of service being offered by the applicant. In other words, we see a definite linkage between domestic auctions and the incentive they give to other countries to implement auction regimes on their own, regardless of the type of service being subjected to auctions.

SBCA also takes issue with the Commission's procedure regarding the filing of DARS applications under the terms of the "cut-off" in 1992 where applications were required to be filed by December 15, 1992. Nearly three years have passed since that benchmark date (and five years since the filing of the initial DARS application), and the Commission has yet to grant a DARS license. To make matters even worse, the Commission is now considering in its NPRM the lifting of the "cut-off" in order to permit additional applicants for the DARS frequency spectrum.

The SBCA has been an interested observer during the development of DARS technology over the past four years. As such, we would be remiss if we did not comment on the basic inequity of a proposal which would basically turn back the clock

on the existing DARS applicants. These entities both filed their applications in a timely manner in accordance with the terms of the "cut-off" and proceeded with their business plans on the good faith basis that the Commission was prepared to award licenses by the ground rules which it had established.

It is difficult to believe that there is even thought being entertained to changing those ground rules in view of the commitments the original applicants have since made on the basis of the Commission's very own stated process. We are puzzled by this development. A probable result of re-opening the "cut-off" would be the creation of situations of "mutual exclusivity," thus militating the use of auctions.

In the past three years, the DARS applicants have worked with the existing users of the 2310-2360 MHz band to support the DARS allocation. As a result, they have been able to eliminate an environment of mutual exclusivity and have cooperated to fashion workable DARS service rules. Thus the applicants have advanced the Commission's well-established goals of fostering innovation and full utilization of the radio spectrum. To artificially create mutual exclusivity to force the use of auctions would ignore these efforts and destroy the incentive for proponents of new services to engage in these valuable and innovative undertakings.

We would be hard pressed to believe that the Commission would deliberately change its tack regarding DARS frequency assignments simply to enable an environment

where auctions would be the sole spectrum allocation vehicle for their own sake.

Auctions for DARS at this late stage of the game will only retard further the development of an exciting new radio technology and the advent of new listening choices for the consumer. They clearly do not promote efficient use of the spectrum or serve the public.

SBCA trusts that the Commission will fulfill the obligations it undertook when it established the "cut-off" in 1992. We are confident that the basic communications policy of diversity and choice in the consumer market place will not be overtaken by whatever near-term results may be achieved by selling spectrum to the highest bidder.

Conclusion

The points in these comments which SBCA has taken to task are made with the utmost respect for the Commission's ability to guide the complex and highly competitive telecommunications market place in the direction which is of greatest benefit to all Americans. In that regard, it should be evident that the public interest benefits of DARS services, and particularly in meeting the listening needs of rural audiences, are a paramount objective which SBCA urges the Commission to pursue without further delay.

Based on the record, there is sufficient spectrum available to accommodate the applicants. The Commission, in establishing its 1992 "cut-off," has already signalled

to the DARS proponents that the establishment of the service should be enabled, and the proponents have responded through their investment in the technology. We can think of no reason to postpone awarding the licenses, and we respectfully request that the Commission adopt license and service rules promptly and license the pending applicants forthwith.

**For the Satellite Broadcasting and
Communications Association**

A handwritten signature in cursive script, appearing to read "Andrew R. Paul", written over a horizontal line.

**Andrew R. Paul
Senior Vice President**

September 15, 1995