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September 15, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

95-911

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SEP 15 1995
FEDERAL COMMUNICATIONS COMMISSION

In Re: Comments of Mt. Wilson FM Broadcasters, Inc.

Dear Mr. Caton

On behalf of Mt. Wilson FM Broadcasters, Inc., licensee of Station KKG0-FM, Los Angeles, California, there is herewith transmitted an original and 10 copies of its "Comments", in general Docket No. 90-357 (DARS).

Yours very truly,


Robert B. Jacobi

Enclosures

- cc: Chairman Reed E. Hundt
- Commissioner James H. Quello
- Commissioner Andrew C. Barrett
- Commissioner Rachelle B. Chong
- Commission Susan Ness
- Valerie G. Schulte, Esq., NAB

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SEP 15 1995

FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE

Federal Communications Commission

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

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COMMENTS OF MT. WILSON FM BROADCASTERS, INC.

Mt. Wilson FM Broadcasters, Inc. (Mt. Wilson) licensee of Station KKG0-FM, Los Angeles, CA, hereby submits its Comments in the above captioned proceeding.^{1/}

1. The FCC is committed to fostering the provision of local programming both as to radio and TV. See Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, Notice of Proposed Rulemaking, MM Docket No. 95-92 at ¶10, released June 15, 1995 ("[We] ask commenters to address whether multichannel video programming distributors provide **sufficient local news and other programming responsive to community needs to satisfy the Commission's longstanding goal that the public receive these types of programming.**") (emphasis added). The instant Notice of Proposed Rulemaking (NPRM) recognizes that DARS will compete with terrestrial radio (Paragraphs 2, 3, 13, 17 and 20). While the potential threat of competition is no longer a basis for rejecting a new service, Commission

^{1/} In addition to Station KKG0-FM, Mt. Wilson is also the licensee of Stations KKG0(AM), Frazier park, CA.; KULA(AM), Honolulu, HI.; KNNS(AM), Beverly Hills, CA.; KNNZ(AM), Costa Mesa, CA.

concern for terrestrial radio is based upon the impact on the public interest, more specifically, the impact on the ability of local stations to continue to provide local programming directed to the community of license. Indeed, paragraphs 10-20 of the NPRM reflect the Commission effort to assess the potential DARS impact upon terrestrial radio in terms of adversely impacting upon localism. The role of terrestrial radio, in terms of localism, was succinctly described by Commissioner Ness in a speech delivered at the recent NAB New Orleans Convention, as follows:

“Since its inception in the early 1920's, radio broadcasting essentially has been a local service. History amply demonstrates that radio broadcasters have been responsive to the needs of their communities; providing news and information, weather and traffic reports, school closings, and the like---in addition to the music formats listeners... want to hear.”

2. Like the FCC, Mt. Wilson is also committed to fostering the provision of local programming. KKGO-FM is the only commercial, all classical radio station serving the counties of Los Angeles, Orange, San Bernardino and Riverside, and is dedicated to providing local programming and serving the needs of its community. Local cultural institutions rely upon station KKGO-FM for support of their respective programs. KKGO-FM provides more than 120 minutes of programming pertaining to public affairs, cultural affairs news and weather Monday through Friday as well as numerous local PSA's throughout the week. On Sunday, the station devotes two hours to public affairs programming, and another hour to promoting upcoming events at local performing arts centers and theaters and to interviews with artists who will perform at these local arenas. In total, station KKGO-FM provides more than 5 hours weekly to programming promoting the local arts. The station also devotes 32 hours a year to on-air fundraising for the Los Angeles Philharmonic (two 8 hour days, two times a year) and 8 hours a year to on-air fundraising for the Los Angeles Chamber Orchestra. In terms of dollars, the station donates about half a million dollars in

advertising time to the Los Angeles Philharmonic and the Hollywood Bowl Association. See letter of Ernest Fleischmann, Executive Vice President and Managing Director of the Los Angeles Philharmonic, to the Secretary of the Federal Communications Commission, dated July 21, 1995 (attached hereto as exhibit A). Virtually 100% of the station's programming is local.^{2/}

3. Classical music stations are an endangered species. There are approximately 50 commercial classical radio stations remaining in the United States many of which, including KKGO-FM, are of the so-called "Mom and Pop" variety. Generally, classical music stations will have a small share of the market and limited financial advertising support. According to Arbitron, Station KKGO-FM averages around a 1.7 audience share.^{3/}

4. While it is impossible to project precise audience loss resulting from DARS services, there is no doubt that DARS services, if licensed, will harm local radio stations economically and, therefore, have an adverse effect on the ability of local radio stations to provide local programming. Classical music radio stations lead a financially precarious existence and survive only because of the dedication of their owners. Any fragmentation of that audience will affect a station's ability to serve its community. Considering the relatively small audience attracted by Station KKGO-FM (or, for that matter, other classical music stations and/or other niche formatted stations), the loss of even a small percentage of its audience will predictably result in less local programming, less localism, indeed, perhaps the total loss of the station's format.

^{2/} All programming (other than remote) originates from the studio of Station KKGO-FM. Some programming, however, is syndicated.

^{3/} Station KKGO-FM is the lowest rated (and the lowest billing) Class B FM station in the Los Angeles Metro Market.

5. With respect to national advertising revenues, Station KKGO-FM receives approximately 30 to 40% of its total advertising revenues from national advertisers, an approximation probably more realistic for classical music stations (and, probably, most niche formatted stations) than the 17 to 18% set forth in the NPRM. Moreover, the availability of DARS services to a national advertiser would offer enhanced efficiency since a single advertising buy from a major advertiser to one DARS company could cover the entire United States. Pragmatically, a DARS company could offer national advertisers low predatory advertising rates at the outset which essentially would have the effect of substantially reducing national advertiser revenue to local stations and destroying the local radio infrastructure. With respect to niche-formatted stations such as KKGO-FM, it would virtually guarantee their demise.

6. Even if DARS service is offered on a purely subscription basis, it will significantly affect KKGO's ability to provide local programming. The one, two or three classical music stations offered by DARS will draw listeners away from the station's minuscule listener base of 1.7 percent, thus diminishing the perceived value of KKGO's air time. To best preserve the ability of a local radio station to provide local programming, DARS service providers should not be allowed to carry either local or national advertisements or to receive revenues of any nature from local or national advertisers. Income from local advertisers constitute 60 to 70 percent of KKGO's revenues, while national advertising contributes an amount equal to approximately 30 to 40 percent of KKGO's income. Clearly the loss of revenue from either local or national advertising will seriously threaten

the station's fragile existence and seriously undermine its ability to provide local programming. DARS revenues should be restricted to a subscription basis on all DARS channels.^{4/}

7. The Commission cannot know and/or predict the impact of DARS on the ability of local radio stations to provide local programming. Therefore, the Commission should consider phasing in DARS services and assessing the impact on local programming at the end of each phase-in period. For instance, the Commission might limit the reception of DARS services to home receivers initially (specifically excluding automobiles, vans, trucks etc.) and review the impact of DARS on the programming of local stations after a three year period.^{5/} To risk the loss of local radio stations by allowing unlimited DARS service without a proper assessment clearly would be contrary to the public interest.

8. Mt. Wilson recognizes that the Commission has approved the DARS service. Nevertheless, the purpose of the instant NPRM is to develop rules which would allow terrestrial radio to compete on "an even playing field" and to continue to provide local oriented programming specifically tailored to the needs of the broadcaster's community of license, a public interest objective beyond the reach of a DARS operation. Obviously, signal distribution is a significant

^{4/} An all-subscription service is not novel to the broadcasting field. Section 73.643(a) of the Commission's rules adopted for subscription Television (Fourth Report and Order), 14RR 2d 1601(1968) provides as follows:

"No commercial advertising shall be carried during subscription television operations except for promotion of subscription television broadcast programs before and after such programs."

The rationale for the limitations placed on subscription television was to ensure the preservation of viable "free" TV stations, not unlike the Commission's current concern to ensure the continued viability of local radio stations.

^{5/} Cable radio has had only a limited impact because it is not heard in automobiles.

factor; the more widely the DARS signal is distributed, the greater the impact upon terrestrial radio stations. To effectuate DARS services, the proponents request the utilization of land based repeaters a position which clearly indicates that satellite distribution by itself is not sufficiently advanced to provide DARS service on a nationwide basis.

9. The new technology (DARS) which the Commission has authorized (on the basis that new technology cannot be held back) should not be allowed to utilize conventional terrestrial radio methodology for signal distribution. Indeed, Commission rules do not allow terrestrial radio stations to construct and operate land based repeaters (translators) beyond their primary service area. To allow DARS to utilize traditional terrestrial radio distribution methodology and, further, to allow DARS to utilize such signal distribution in a manner prohibited to terrestrial radio would be both illogical and inequitable. The Commission has authorized a new nationwide service based on satellite distribution, not a service which is dependent upon “bootstrapping” itself to conventional terrestrial radio distribution methodology. The rules should restrict DARS signal distribution to satellite distribution.^{6/}

10. Related to the matter of “fair” competition is the status of terrestrial radio generally. Functional in-band digital operation (both AM and FM) for the terrestrial radio bands should be a prerequisite condition to the commencement of DARS service. Balancing the public interest factor of ensuring the preservation of local radio outweighs any delay to the implementation of DARS service.

^{6/} Existing technology (land based repeaters, i.e., translators) would permit FM radio service beyond a station’s primary service contour without, in many cases, causing interference. Existing (and sensible) Commission rules, however, prohibit such operation, in the name of protecting local station operations.

11. Station KKGO-FM, a niche-formatted radio station, is located in Los Angeles, a major market. There are more than a dozen radio stations in the Los Angeles market that broadcast specialized formats, i.e., classical music, foreign language, jazz, ethnic oriented, etc. Niche-formatted stations located in a major market will be impacted upon as severely as general market stations located in medium and small markets. Indeed, and pragmatically, the greatest potential for the specialized programming provided by niche-formatted stations will be in the major markets because major markets will contain numerically the largest diversity. The fragmentation of that small niche audience, and the reduction of advertiser revenue (both national and local) must have an adverse impact upon such niche-formatted stations.

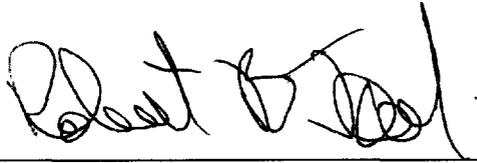
12. DARS services will not provide grass roots programming to local communities. DARS services, however, will adversely impact upon local stations including niche-formatted stations in major markets. While DARS services may offer a choice of classical music formats, DARS will not and cannot make the contribution to the Los Angeles community provided by KKGO-FM. To preserve localism, it is incumbent upon the Commission to adopt rules which will minimize the impact on local stations irrespective of market size. To summarize, such rules should include the following:

- a. Prohibit local and national advertising;
- b. Subscription service only, on all DARS channels;
- c. Phasing in of DARS service, initially limited to home receivers (excluding receivers in vehicles);
- d. No land based repeaters, satellite distribution only;

- e. Commencement of DARS service conditioned upon functional in-band digital operation.

Respectfully submitted

MT. WILSON FM BROADCASTERS, INC.

By: 

Robert B. Jacobi
Cohn and Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036

EXHIBIT A

Los Angeles Philharmonic Letter

THE LOS ANGELES PHILHARMONIC

Esa-Pekka Salonen
Music Director
C. Joseph LaBonté
Chairman of the Board
Robert S. Attiyeh
President
Ernest Fleischmann
*Executive Vice President
and Managing Director*

July 21, 1995

Secretary
Federal Communications Commission
Washington, D.C.

Dear Sir:

It has come to our attention that the federal government is proposing to license satellite radio stations capable of transmitting multiple formats, including classical music, on up to 50 different channels simultaneously throughout the nation. This, of course, would have a devastating economic impact on our local classical music station and, in turn, on the Los Angeles Philharmonic.

As a non-profit arts organization, we depend on the extraordinary support provided to us by the commercial classical station KKGO FM 105.1 in Los Angeles. The station provides the Los Angeles Philharmonic with almost half a million dollars worth of public service time each year. This includes concert announcements, two weekend marathons to promote the Hollywood Bowl summer season and the Music Center winter season, a daily program allowing me to inform listeners about interesting future events, daily news coverage when the orchestra is on tour, a weekly Philharmonic Preview Hour, interviews with artists, and more.

With ever decreasing support from governmental and private sources, the L.A. Philharmonic cannot afford to lose its support from KKGO. This is not the time for government to undermine the local broadcast services that play such an important role in our city's cultural life while helping to provide employment opportunities for so many in the arts community.

I am writing this letter not only on behalf of our Orchestra but also on behalf of all the arts organizations in Los Angeles which KKGO so selflessly assists on a year-round basis.

Sincerely,



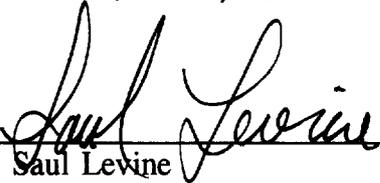
Ernest Fleischmann

DECLARATION

Saul Levine, President of Mount Wilson FM Broadcasters, Inc., hereby declares as follows:

I have read the "Comments" to be filed on behalf of Mount Wilson FM Broadcasters, Inc. The factual information contained in the "Comments" is true and correct to the best of my knowledge.

Dated: 9-12-95

Signed: 
Saul Levine