

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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-86**
) **PP-87**

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**COMMENTS OF THE
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Table of Contents

I. Introduction and Summary.....	1
II. Localism and a Competitive Diverse Local Radio Service Are Worth Preserving.....	9
A. Localism.....	10
B. Competition, Availability and Diversity in Small Town Local Radio.....	12
C. Competition, Availability and Diversity in Local Radio Everywhere.....	16
D. Local Public Service in the Public Interest.....	19
III. Satellite DARS Would Severely Impact Local Radio and Local Service Everywhere.....	21
A. Analyzing the Impact of DARS on Local Radio.....	22
B. Syllogism of Economic Impact and Reduction in Local Service.....	24
IV. Satellite DARS Would So Affect Small Market Local Radio That Local Service to Local Communities Would Be Greatly Diminished.....	33
A. The Voices of Small Market Radio.....	34
B. The Impact of Satellite DARS on Small Market Local Radio.....	36
C. The Impact of Satellite DARS on Local Community Service.....	37
V. The Real Benefits of Satellite DARS Are Too Few To Justify the Costs.....	40

VI.	The Shape and Structure of a Satellite DARS Service	44
	A. Design of Service	44
	B. Licensing Approaches	54
	C. Licensing Procedures and Technical Rules	59
VII.	Conclusion.....	62

ATTACHMENTS

LIST OF ATTACHMENTS

- | | |
|----------------------|---|
| Attachment 1 | Local Perspectives on Localism in Broadcasting and the Adverse Impact of Satellite DARS |
| Attachment 2 | NAB Analysis of the Number of Radio Stations In Arbitron Markets |
| Attachment 3 | 1995 Radio Stations Availability By County Study |
| Attachment 4 | An Analysis Of the Number of Formats Offered In Arbitron Markets |
| Attachment 5 | Estimating the Audience Diversion from Broadcast Radio by the Introduction of Satellite Digital Audio Radio Service (DARS) |
| Attachment 6 | The Standard of Excellence, 1995 NAB Crystal Awards |
| Attachment 7 | Estimating the Impact of Satellite Digital Audio Radio Service on the Existing Radio Market By Product Analogy and consumer Demand Analysis |
| Attachment 8 | The Four Share World |
| Attachment 9 | The Economic Impact of Satellite-Delivered Radio on Local Radio Stations |
| Attachment 10 | DARS' Proponents Suggested Formats |
| Attachment 11 | Listings of Spanish-language Formats and Listing of Top 50 Hispanic Metro Markets. |
| Attachment 12 | Listings of Stations With Foreign Language/Ethnic Programming |
| Attachment 13 | Radio Station Financial Picture |
| Attachment 14 | Miller, Kaplan, Arase & Co. Report |

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Comments of the National Association of Broadcasters

The National Association of Broadcasters (“NAB”)¹ hereby submits its comments on the Notice of Proposed Rule Making² in the above-captioned proceeding.

I. Introduction and Summary

On January 12, 1995 the Commission adopted its Report and Order³ allocating spectrum for a new digital audio radio service (“DARS”) that would provide satellite radio services direct-to-consumer, to both mobile and fixed receivers. NAB has opposed, and continues to oppose, authorization of satellite DARS as an unneeded, duplicative service, with little net public benefit. NAB believes, as do its radio broadcaster members, that whatever incremental benefits DARS brings will be at great cost to the public good. NAB believes, and here seeks to demonstrate, that DARS will precipitate a diminution in the

¹ NAB is a nonprofit, incorporated association which serves and represents America’s radio and television broadcast stations and networks.

² Notice of Proposed Rule Making, IB Docket 95-91, Gen. Docket 90-357, 60 Fed. Reg. 35166 (July 6, 1995) (“Notice”).

³ Report and Order, Gen. Docket 90-357, 10 FCC Rcd 2310 (1995).

quality and amount of local public service rendered by radio stations, small and large, in all sized markets. That local public service comes in the form of local programming, local announcements, local identity, local diversity and local connectedness.

The Commission, we believe, is sensitive to the risks it takes in turning away from localism as the bedrock principle for radio service in this country. Thus, at the time it allocated DARS spectrum, the Commission noted that, in considering licensing rules for a DARS service, it would “request information on and consider all relevant and available information which addresses the impact of satellite DARS on traditional service.”⁴ Commissioners Barrett and Ness for example then voiced explicit concerns with the potential adverse impact a new DARS service could have on localism and on traditional over-the-air local broadcasting.⁵ And thus, the first issue discussed in the Notice⁶ is the potential economic impact of a satellite DARS service on existing terrestrial broadcasters and the concomitant impact on the public interest. In separate statements to the Notice, Commissioner Quello indicates his concern with satellite DARS’ “potential impact on the future viability of terrestrial radio”⁷ and Commissioner Ness indicates her similar concerns, specifically that DARS has “the potential to overwhelm local terrestrial broadcasting.”⁸

⁴ Id. at 13.

⁵ Id. at Separate Statement of Commissioner Andrew C. Barrett and Separate Statement of Commissioner Susan Ness. See also, oral statements of Commissioners Barrett and Ness at the Jan 12, 1995 FCC meeting adopting the Report & Order.

⁶ Id. at 4-7

⁷ Id. at Separate statement of James H. Quello at 1.

⁸ Id. at Separate statement of Commissioner Susan Ness at 1.

NAB appreciates the Commission's desire to foster digital technology. NAB in fact has been encouraging the development of new technology that will enable traditional local radio to bring the benefits of digital technology and CD-quality radio to the American people in a swift and seamless way, as an "in-band" digital transmission that will not require the use of additional spectrum. This, we believe, is the way for the Commission and the American people to "have their cake and eat it too." That is, have the benefits of digital radio technology, but not diminish the extraordinary extent of local radio service and its great public benefits. We believe that, at the very least, the Commission must assess the potential costs of its authorization of satellite DARS, as well as the putative benefits, and develop policies that preserve the fruits of fifty years of public policy promoting localism and the provision of local radio service.

The extensive availability, diversity and competitiveness of local radio has been the direct result of public policy designed to expand *local* radio service, particularly in the smaller and medium markets. Local radio, particularly in the smaller markets, has served and still serves to promote and reinforce traditional American values of community cohesion and local identity. As Chairman Hundt has remarked, public policy and government must concern itself with the search for American values.⁹ NAB contends that important American values are found in small market radio and that public policy should be designed to foster rather than diminish them.

And, while the promise of DARS of increased programming choices would seemingly most benefit the smaller markets with fewer programming choices than are

⁹ Chairman Hundt, in remarks to the Ad Council on July 21, 1995, emphasized the need for government to manifest a concern with the search for American values.

available in the large markets, it is precisely these smaller markets whose local radio service and local connectedness and local diversity are most at risk from the flood of new DARS signals. It would of course be a sad and ironic note should the authorization of DARS service, with its aimed-for benefits of greater diversity and availability, *actually diminish* the extraordinary amount and quality of *local* service and *local* diversity, to the end result of “homogeneous” national diversity.

It is precisely this concern, the “overwhelming” of traditional radio and local diversity by DARS, that has prompted NAB’s participation in this rule making. Broadcasters’ concerns in this regard are deep and widespread. They see the impact of satellite DARS on local radio coming over time, starting in the small markets, but felt everywhere. *The impact they believe would be greatest on small market radio because stations there, with relatively so few “pairs of ears,” are especially vulnerable to the effects of audience fragmentation. Even losing only some audience some of the time, a local station, without a critical mass of audience and already operating on a modest profit margin, may fall quickly into unprofitably. It must then cut costs. Operating on small budgets with small staffs, these stations will necessarily look to trim programming, expenses to restore profitability. Local, community-oriented programming which is usually the most expensive and least profitable component of small market radio fare, is likely to be reduced. Eventually, as more efficient, satellite-fed programming replaces local news and other community programming, jobs will be cut and local diversity will be lessened.*

The small markets have already begun to feel the audience fragmentation that has long been the trend in the larger markets. Small markets have felt regional competition and audience fragmentation from new stations and power increases authorized in Docket 80-90.¹⁰ Small market stations, like the larger markets before them, have responded by cutting costs, primarily those of programming and staff. But they fear the avalanche of fragmentation and audience diversion from satellite DARS will end altogether the vibrant competitive local radio system in small markets. Lost could be *local* competitive formats and *local* competitive advertising outlets. Lost could be the wealth of local information and local service and local connections.

Large markets will not be immune to the effects of satellite DARS. They labor now under extreme fragmentation of audience and advertising dollars that has come with an abundance of competitors. While mainstream stations in large markets may still profit in this environment because of the large audiences available to them, minority and niche formatted stations in large markets fear for their existence with the advent of satellite DARS. Gone could be a *local* classical music station, with its *local* arts announcements. Gone could be a *local* Hispanic station. Gone could be a *local* religious station.

As requested in the Notice, NAB here presents evidence documenting, quantifying and supporting broadcasters' concerns as to the severe economic impact of a successful satellite radio service on local radio in all market sizes. We set out and support the syllogism, or logical steps, of the economic impact DARS will wreak on local radio everywhere. Relatively modest audience diversion from local radio to DARS translates

¹⁰ Report and Order, BC Docket 80-90, 94 FCC2d 152 (1983).

into a corresponding loss of advertising revenue which reduces (or eliminates) profitability which would severely impact the local community service provided by local radio everywhere.

NAB presents particularized evidence of the disastrous effects of satellite DARS on local radio in small market America and repeats here the calls of some of those small market-America broadcasters for a mitigation of the harm that could befall them and their communities. We present a compendium of comments and quotes from local broadcasters, local officials and local advertisers as to the losses that will befall their communities from the impact of satellite DARS. And we present a variety of financial analyses and studies quantifying the effects that are more vividly described by the local broadcasters and civic officials.

In particular, three studies prepared for NAB by outside consultants for the purposes of this proceeding contain conclusions and findings worth the Commission's careful attention. A sampling of those conclusions are:

Strategic Policy Research Study of six small-town radio markets, based on interviews with local broadcasters, government officials and representatives from private and public enterprise.

- Study participants believe that implementation of satellite DARS will necessarily compel additional efforts to economize on programming costs as audiences are further divided, and that, lacking adequate alternatives, *communities will inevitably suffer some degradation in the local community services they currently receive to the detriment of the local community's ability to thrive and cohere as a special place.*
- Satellite DARS will, to the extent that it succeeds, compel additional economizing efforts by local broadcasters. Those efforts will likely take the form of additional reliance upon satellite-delivered programming. We could well approach a situation where we, in essence, have *two satellite distribution systems for radio broadcast programming -- one* which delivers geographically undifferentiated programming *directly to consumers* and the other which delivers *similar programming indirectly to*

consumers via local broadcast outlets. The logic of competition appears almost to compel that result.

- The Commission may well decide that the benefits of satellite DARS, suitably conditioned, are worth any costs in terms of *losses in diversity* from the degradation of local radio service. In making that decision, *it should not labor under the delusion that there are no such costs.*

Kagan Media Appraisals, Inc. Study on the economic impact of DARS on local radio stations.

- *The impact of the economic effects on local radio from DARS could be devastating to the quality of the vital community service it provides to listeners and the local advertising community.*
- The impact of the onslaught of DARS signals would be such that existing local stations would incur severe economic hardship -- *hardship that would place their survival, let alone continued locally-responsive radio service -- in great peril.*
- *The impact of only one new DARS service could fragment radio audiences severely enough that traditional radio would no longer be profitable.*
- While the impact of a proliferation of DARS programming sources might be shouldered by the largest market stations with the strongest financial resources, *the onslaught of new services would likely be devastating to smaller market local radio operations.*

Miller, Kaplan, Arase & Co. financial evaluation of the impact of revenue losses on individual stations in nine specific small markets.

- With a 10% loss of revenues (from a DARS-induced 10% audience diversion), *approximately two-thirds of the 53 small market station operations evaluated went from achieving a comfortable profit to becoming marginal operations.*
- Of the nine markets examined, *only two markets had an average positive net income after the 10% revenue reduction, where seven of the nine started with positive net incomes.*
- *After the 10% reduction, seven of the nine markets examined wind up with more than half of the operations' losing money.*

NAB then demonstrates that the real expected benefits of satellite DARS are too few to justify the costs to local communities everywhere, particularly to those small market communities which would be expected to benefit the most from DARS' diversity and availability.

Finally, NAB presents its views on matters about which comments were requested in the Notice as to the shape and structure of a DARS service. NAB urges the Commission to only adopt a service design that will minimize the potentially devastating impact that the introduction of satellite DARS could have on terrestrial broadcasters and their continued ability to provide locally produced, community oriented programming. To this end, NAB suggests that the Commission, if it authorizes DARS at all, only do so on a *non-broadcast, subscription basis*. Not only will this preclude the added impact on local radio of the direct loss of advertising revenue, it will promote DARS providers' offering more specialized programming. NAB further urges that the Commission, rather than imposing specific public interest obligations on DARS providers, require that satellite DARS licensees comply with their promises for future performance, especially with respect to the ethnic and niche formats satellite DARS proponents have cited as the principal justification for their service. Thus the Commission could to some extent ensure that its public interest tradeoff in sacrificing potentially significant levels of local radio service will be at least partially justified.

As to the DARS licensing approaches proffered by the Commission, NAB believes that the option proposed of re-opening the satellite DARS processing window and allowing additional applicants to file satellite DARS proposals is by far the most desirable

result from a public interest standpoint. The new technology landscape has changed radically in the years since the Commission opened and closed a narrow application window for satellite DARS applications, and there is no sound policy reason that the universe of satellite DARS providers should be limited to four favored applicants who will simply be handed 50 MHz of extremely valuable virgin spectrum. Licensing multiple applicants will bring more diversity of viewpoint and business capability to the emerging DARS industry, and ultimately will allow the marketplace to determine the most efficient uses of the DARS spectrum. To do otherwise, NAB suggests, would be to bestow an enormous spectrum windfall on the present applicants, one that would be grossly disproportional to whatever “equities” that can be said to have accrued to these applicants.

NAB comments as well on licensing procedures and technical rules. We propose two channel plans that are consistent with the licensing approach we have urged. We oppose the use of terrestrial gap-fillers because they will effectively transform the satellite DARS service into a terrestrial-based one. And we suggest that the Commission should preclude or only cautiously allow use of 7 GHz for DARS feeder links.

II. Localism and a Local Competitive Diverse Radio Service Are Worth Preserving.

“What’s going to happen if we take away the mechanism for us to communicate with the people and for the people to become better informed citizens? If you’ve got a satellite that gives you information about what’s happening in Washington, D.C., but doesn’t tell you what’s happening in Longview, Washington, where are you going to get that information? If I’ve got a worry, it’s that we might be weakening one of the major ways we have to communicate with our citizenry and that helps keep them apprised of matters that affect them close to home. Our local radio stations have been very good about covering local news and their community involvement. They may have some rules and regulations that they are bound by, but they voluntarily have made extra efforts to help the citizens of this community

communicate with one another. If we didn't have that or had less of it, I don't know what we'd do to replace it."¹¹

--Ed Iby, City Manager, Longview, Washington

A. Localism

Localism is the bedrock on which the United States system of radio broadcasting has been built. This concept, that of locally-based broadcasters, oriented to and participating in local communities, has been the touchstone and goal of public policy making for over fifty years. This goal has been pursued and reinforced by the Commission in its policies as to spectrum allocation, as to station licensing and even as to deregulation of radio. Congress similarly has steadfastly supported the promotion and extension of localism and local broadcast voices addressed to each community's needs and interests. Localism in practice helps binds people to each other and to their communities with a sense of shared place and common goals. It reinforces the connections and reflects the diversity in each community. It is about cohesion and individuality.

NAB has commissioned for this proceeding a study by Strategic Policy Research documenting and discussing, in the context of the instant rule making and the issues raised therein, the history, economics and voices of localism, entitled "Local Perspectives on Localism in Broadcasting and the Adverse Impact of Satellite DARS."¹² The SPR Study discusses the history of localism as a public policy goal, reviewing its primacy in myriad regulatory decisions through the years.¹³ The SPR Study sees the introduction of satellite

¹¹ SPR Study, infra, at 111.

¹² Local Perspectives on Localism in Broadcasting and the Adverse Impact of Satellite DARS, John Haring and Hary M. Shooshan III, Strategic Policy Research, September 12, 1995 ("SPR Study"), attached hereto as Appendix 1.

¹³ Id. at 19-35.

DARS as representing a “major change in the policy direction of the Commission (*viz.*, national versus local service)” and, while “by no means the first time the Commission has confronted many of the issues posed by satellite DARS, it *is*, given existing operating conditions in the radio broadcast industry, the first time resolution of the issues appears to entail such a significant departure from what has historically been the touchstone of the government’s broadcasting policy literally from the beginning.”¹⁴

The Commission’s Notice does not acknowledge the authorization of DARS as a major policy shift away from localism. Rather, the Notice appears to presuppose that authorization of DARS is not inconsistent with localism and the locally-based radio broadcasting system, or, as the Report and Order put it, that DARS can “supplement, rather than supplant, local broadcast stations.”¹⁵ The Notice does, however, recognize that satellite DARS “will both compete with and complement traditional terrestrial AM and FM radio service.”¹⁶ The Notice concedes that DARS may result in some “costs” to local broadcasters, by reducing audiences and thus advertising revenues. The Notice also acknowledges that, and inquires to what extent, such “costs” to local broadcasters may directly affect the amount of local and public affairs programming that traditional broadcasters provide. This of course means “what cost to localism.”

But the “amount of local and public affairs programming” is a description of “localism” and what local radio service means to most smaller and medium sized

¹⁴ Id. at 4.

¹⁵ Report and Order, *supra*, at 12.

¹⁶ Notice, *supra*, at 2.

communities. Jesus Larios, General Manager of KJOP, in the small community of Hanford in California's agricultural and dairy central valley, better describes local service:

The majority of our listeners are farm workers, foremen, ranchers, cattle people, including many people who migrate from other states, and, of course, from Mexico. . . . Our job is to entertain these people, many of whom work from 4:00 in the morning until late in the afternoon, and keep them informed about what's going on in the community. . . . [W]e do not rely on satellite programming services of any kind. We have recorded music and live local groups. . . . We try to involve the community in all the big holidays. . . . What this means to people is that they have a radio station that they can depend on in good times and bad. We cover things that belong to the community. We do it out of a sense of obligation and because it's our community. We have a duty to provide these services to our community. . . . We have a local soccer league whose matches we cover. . . . We get kids involved here at the radio station. We have two college kids who have a program here at the station. They have different music groups they feature and they counsel kids about the importance of education, staying drug-free, and events of interest to the young people. . . . A while back the Highway I-5 bridge fell and killed seven people. We went to the site to cover the accident and then we organized a relief effort. . . . The community needs this kind of a service and this kind of support in times of adversity. . . . We are here for the purpose of helping the community and to help our merchants.¹⁷

Through six small market case studies, the SPR Study repeats many stories similar yet different to that of Jesus Larios. They best tell what "localism" and local radio service mean to their communities.¹⁸ They also describe the intense competition, wide availability and substantial diversity in even small town radio.

B. Competition, Availability and Diversity in Small Town Local Radio.

The SPR Study summarizes in five principal findings some consistent themes stressed by participants in the six small markets studied by SPR. Participants, as is evident from the interviews contained in the SPR Study, were not only general managers of

¹⁷ SPR Study, at 115, 117, 122, 127.

¹⁸ See SPR Study, at 8-18.

stations, but also local civic leaders and advertisers. One of SPR's principal findings is that "local radio markets are highly competitive, providing listeners with a broad array of program choices and advertisers with an effective means of reaching target audiences."¹⁹

SPR quotes a general manager in Kelso/Longview, Washington:

We're under the Portland umbrella, so we have a lot signals coming in here from Portland... Just counting the stations that show up in the book survey here, we have five local stations showing -- 14 other radio stations that show some strong listenership in this market, so we're also competing for audience with those. And there are, of course, a variety of other signals you can pick up coming from other places. In terms of formats, we have a variety of country stations -- then there are stations that are playing a variety of other musical formats, everything from hard rock to soft rock to jazz, classical, what have you. They all show here. All of the modern music formats are very strong, in addition to the talk formats... KBAM does a significant amount of Spanish programming and on a couple of occasions has tried some Vietnamese programming.

Today we compete with cable television in this marketplace

[The newspaper] is a daily . . . but it does not have the advantage of immediacy. If there is a snowstorm here and Bob' Merchandise wants to get on, say, "Come down and get snow shovels." or there's a flood, which we have occasionally, advertisers can use the immediacy of radio. We have a standing order from our large tire dealer that every time that there's a snowstorm, we get on the air and start running his commercials.²⁰

--Steve Hanson, KLOG/KUKN, Kelso-Longview, Washington

And they quotes local advertisers from the same market about the value of local radio advertising:

We are a local business and do all of our advertising locally. If local radio were less effective in reaching people, we'd have a hard time getting to our customers. We can get to them through the local newspaper, but the radio have a real sense of urgency about it. If we get into situation where the smelt are running or something else of particular relevance to our business is happening, I can be on the radio in

¹⁹ Id., supra, at 8.

²⁰ Id., at 96, 103.

five minutes. With a newspaper, it could be up to two, three, maybe even four days before I can be reaching customers. That's a major concern to us.²¹

--Bob Schlert, Bob's Warehouse, Longview, Washington

In the Coalinga/Hanford, California area, where there are only three stations serving those communities specifically (with two more FMs more serving the greater Fresno area), there are "40-50 odd signals penetrating our market," according to Tony Viera of station KIGS in Hanford.²² Ken Niles of KFO in the neighboring town of Coalinga says it's 45 or 50 signals. And he says

We've probably got about 30 AM signals we're competing against plus all the FMs. Then you've got cable TV, satellite TV, direct TV, laser disc TV. People also have their CD players and their cassette players. The market is pretty saturated.²³

The local stations in these three close little communities themselves are Country (KFO), Portuguese-language (KIGS) and Spanish-language ((KJOP), with two higher-powered FM stations in Hanford serving Hanford and the greater Fresno area with an all news format (KMPH) and a rock-formatted station (KPZR).

And in Enid, Oklahoma, a general manager reports on the competition and diversity there:

In the Enid market itself, we have five signals that are in the market proper and scanning up and down the AM and FM dials, there are probably 40 to 50 signals. Here in Enid we have news/talk, contemporary country, classic country and an oldies/adult contemporary mix station. There is real competition for Enid coming from Oklahoma City. I don't know of anyone who has large numbers from Tulsa or from Wichita, but Oklahoma City stations do very well. They have the classic rock stations, the album-oriented rock stations, the contemporary hit stations, there's a jazz station. There are classical-format public stations. The one out of

²¹ Id., at 102.

²² Id., at 125.

²³ Id., at 115.

Stillwater has good listenership in this market. Commercially, the competition is really coming from Oklahoma City.²⁴

--Bert Chambers, KGWA/KOFM, Enid, Oklahoma

In Morgan City, Louisiana, the three local stations serve an important role for local advertisers:

Radio is an intricate part of what we are all about. The local news aspect is very, very important. . . . And, of course, there's the advertising function. That is probably the critical point that we all look to. . . . Our radio stations are all locally owned and operated. . . . You can't have that type of relationship with a national conglomerate²⁵

--Emile Babin, Executive Director, Chamber of Commerce,
Morgan City, Louisiana

We do things the old-fashioned way. . . . We still take the DJ and do the [remote broadcast] show. . . . We also do the telephone remote, but if you look at the results, from a telephone remote and a full remote, there's a dramatic difference for the retailer. . . . We do at least four full remotes a month, but that requires having the staff to do them, usually a DJ and a sales person at each location.²⁶

--Paul Cook, Owner, KQKI-FM, Morgan City, Louisiana

The eight stations in Laconia, New Hampshire also have competition, variety and choice in radio:

We did a survey through the local technical college of what we consider to be our competition. We turned up 16 stations with significant audience, and there are certainly other signals that are heard. So listeners have a lot of choice and a variety of formats including jazz, classical and all-news.²⁷

--Craig Sikowski, General Sales Manager, WLNH/WBHG,
Laconia, New Hampshire.

²⁴ Id., at 80.

²⁵ Id., at 55.

²⁶ Id., at 52.

²⁷ Id., at 61.

C. Competition, Availability and Diversity in Local Radio Everywhere.

While the SPR Study recites anecdotally the competition, availability and diversity in local radio in small towns, the same and more competition, great availability and wide diversity obtains in local radio everywhere, and it can be quantified.

Appended hereto is an attachment showing the number of radio stations in the country, by market size.²⁸ As can be seen, there are many, many radio stations in every size market, with greater and greater numbers of stations serving and competing the larger the market gets. There are, for example, 64 radio stations located in Los Angeles, 45 stations in Minneapolis/St. Paul, 43 stations in Knoxville and 60 stations located in Boston.²⁹ There are even 27 stations located in Joplin, Mo., the 226th ranked Arbitron market, with a 12 and older population of only 115,500.³⁰

In fact, 27.2 % of the U.S. population has an average of **59.5** stations *located* in their markets (markets ranked 1-10), another 15% of the population has an average of **41** stations *located* in their markets (markets ranked 11-25), the next 12.7 % of the population has an average of **35** stations *located* in their markets (markets ranked 26-50), the next 12.5% of the population has **28.8** stations *located* in their markets (markets ranked 51-100), and even the 14.7% of the population in the lowest ranked markets

²⁸ An Analysis of the Number of Radio Stations in Arbitron Markets, (“NAB Station Number Analysis”), NAB Research and Planning Departments, August 1995, appended hereto as Attachment 2.

²⁹ Id.

³⁰ Id. at 6.

(markets ranked 101-261) has an average of **18** stations *located* in their medium-sized to smallish markets (age 12 and older populations ranging from 369,700 to 49,700).³¹

Not only is there an abundance of direct radio competition in every radio market, *there is an even greater availability of radio signals coming into every market.* Attached to these comments, as Attachment 3, is the NAB 1995 County Radio Listening Study.³² The results of this study reveal a tremendous number of radio stations available in every county in the United States. *Even the smallest counties, those with a 12 and older population of less than 1,000, receive, on average, nearly 15 signals.*³³ In the next smallest counties, those with a 12 and older population of 1,000 - 10,000, an average 20.5 radio signals are receivable.³⁴ In counties with populations of only 50,000 - 100,000, an average of 46 stations are received.³⁵ For the largest metropolitan counties, those with over one million population, an average of over 100 radio stations are listed as available to listeners.

The Listening Study also shows that *only .003% of the total age 12 and older population (6,100 people out of 210 million) live in counties receiving less than 6 radio*

³¹ Id.

³² 1995 County Radio Listening Study, NAB Research and Planning Department, September 15, 1995, appended hereto as Attachment 3.

³³ Id., Figure 1.

³⁴ Id.

³⁵ Id.

*stations.*³⁶ *Only 7 million people* in the country (3% of 210 million) live in counties that *receive less than 21 radio stations.*³⁷

There is today an all-time high of 11,965 U.S. radio stations, with 4,906 commercial AM stations, 5,260 commercial FM stations and 1,799 non-commercial FMs.³⁸

It is widely said in fact, in every market size, that there are “too many” radio stations today, given the advertising revenue base to support the existing radio stations and their other competitors. This fact has even been noted by FCC officials³⁹ and has been a factor in the relaxation of the radio national ownership and local duopoly rules, as well as policies on time brokerage agreements and other joint ventures among radio broadcasters that have allowed some consolidation and reviving of an “over-radioed” industry.⁴⁰ Indeed, the Commission’s changes to these rules were intended to counteract the financial instability caused by “too many” radio stations. There, the Commission

³⁶ Id., Figure 2.

³⁷ Id.

³⁸ FCC News Release, “Broadcast Station Totals as of August 31, 1995,” Released September 8, 1995.

³⁹ For example, then Chairman Al Sikes was reported to seem “to agree with some critics that the Commission made a mistake in Doc. 80-90 some years ago that allowed radio expansion: [It] was the equivalent of adding a lot of shoe stores to the shopping mall...Bottom line: There are too many radio, TV, cable and other outlets competing for dwindling ad dollars to leave rules unchanged [regarding revisions for national ownership and local duopoly rules, as well as policies on time brokerage and LMAs], Sikes said.” “FCC May Settle on Permitting Ownership of 30 AMs, 30 FMs; Change Duopoly Rule,” Communications Daily, March 12, 1992, at 2. See Also Mass Media Bureau Chief Roy Stewart has been quoted as “re-stat[ing] numerous times in New Orleans [at the NAB Radio Show] that Docket 80-90 was huge mistake.” “Roy Stewart: May Be Time to Change FM Allotments,” Inside Radio, Sept. 14, 1992.

⁴⁰ Report and Order in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992).

decided that only through consolidation of stations could the industry as a whole return to financial viability.⁴¹

As an indication of the wide diversity of formats available in all market sizes, NAB has prepared an analysis of the number of formats available, by market size.⁴² As can be seen from this exhibit, the stations *located* in the top 10 markets present 26 different format types, stations located in markets 11-50 present over 22 different formats, and even stations in the smallest-ranked markets present nearly 15 different format types to choose from. Moreover, each station offering a particular format type differentiates itself from other stations with the same format type, increasing the choice. And, in every market, there are a great number of stations receivable from other locations, increasing the programming options.⁴³ As can be seen in the comments of the SPR Study participants from those quite small markets, there is wide diversity everywhere.⁴⁴

D. Local Public Service.

Local radio stations in all market sizes provide their listening public with disaster warnings and reports, a wide variety of local information, PSAs, news, weather, traffic reports, school closings, local events and ceremonies, remote advertiser broadcasts and advertising, political candidate spots and debates, local events coverage and reports, talk

⁴¹ See also, Report and Order in MM Docket No. 87-267, 6 FCC Rcd. 6273 (1991). In this decision, for reasons of financial distress as well as interference reduction, the Commission adopted an entirely new AM regulatory scheme looking to fewer rather than more AM stations.

⁴² An Analysis of the Number of Formats Offered in Arbitron Markets ("Format Study"), NAB Research and Planning Department, September 15, 1995, attached hereto as Attachment 4.

⁴³ Id. at 2.

⁴⁴ See SPR Study, supra, at 8, 49 et seq.

about personalities and public issues and goings-on of interest, from the local area, region and nation. Each station presents all this, and more, from its individual perspective and “personality.”

Radio stations provide a wealth of service and information geared to their audiences’ needs and interests. Each year NAB presents the prestigious Crystal Radio Awards recognizing stations for excellence in community service. Since 1987, radio stations across America have been honored for their dedication to providing responsive individual service to the cities, counties and towns they serve. Included here as Attachment 15 is “The Standard of Excellence,” a description of the 1995 NAB Crystal Radio Award Finalists’ efforts in their local communities. The breadth and depth of these local public service efforts in all market sizes can be glimpsed in these descriptions.

But as the SPR Study notes, it is in the relatively *small* markets “where the role local radio plays as a force for community enlightenment and cohesion is most easily perceived and portrayed, and where the consequences of contemplated change are likely to be most apparent.”⁴⁵

Thus, the SPR Study concludes that “[s]tations licensed to these [small]markets play a vital role in the life of the communities they serve, providing an important forum for discussion of significant issues of public importance, a productive catalyst for organization of community affairs, local charities and social action, and an effective vehicle for dissemination of many different types of information of interest to diverse groups within the local community.”⁴⁶ The SPR Study is replete with comments by broadcasters and

⁴⁵ Id., 6.

⁴⁶ Id., at 12.

community leaders recounting the valuable local service that “traditional” radio gives to these small towns. It is also replete with comments on the relative fragility of that local service and how it could be severely impacted by satellite DARS flooding local markets with national signals.

III. Satellite DARS Would Severely Impact Local Radio and Local Service Everywhere.

The Commission’s Notice, while reciting the potential benefits of a new national radio service, is prefaced with concerns and questions about the impact such a service might have on the local radio service and on the very raison d’être of the locally-based structure of radio in this country -- local community service of local needs and interests, local service reinforcing community identity, values and ties among similar and diverse people. As discussed above, the Commission has consistently designed and applied public policy to further the values embodied in the concept of localism and in the structure of local service. It is thus from this perspective that the Commission and the Notice inquire, as the initial matter of the Notice, about the economic impact satellite radio would have on local terrestrial broadcasting.

NAB has throughout the Commission’s consideration of satellite DARS expressed the concerns of its radio members that satellite radio, if successful, would siphon audiences and perhaps national advertising from the existing highly competitive, already “over-radioed” terrestrial radio system. This audience diversion or fragmentation, possibly coupled with loss of national advertising, is seen as potentially the “last straw” for many stations in the smaller markets and for the more vulnerable stations everywhere. It