

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
Wireless Fixed Access )  
Local Loop Services )  
Petition for Allocation of )  
Radio Spectrum in the 2 GHz )  
Band for the Provision of )  
Wireless Fixed Access Local )  
Loop Services )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

RM No. 8837

**PARTIAL OPPOSITION OF CD RADIO INC.**

Satellite CD Radio Inc. ("CD Radio"), by its attorneys, hereby submits this partial opposition to the above-captioned Petition for Rulemaking filed June 10, 1996, by DSC Communications Corporation ("DSC").<sup>1</sup> In its rulemaking petition, DSC asks the Commission to adopt one of several proffered spectrum allocations between 1.3 GHz and 2.7 GHz for the development of wireless fixed access-local loop service. The 2310-2360 MHz band is included in certain of the potential allocations suggested by DSC.

CD Radio takes no position on the merits of wireless fixed access-local loop service or other candidate bands requested by DSC. CD Radio limits this opposition to opposing the inclusion of 2310-2360 MHz as a possible allocation for the operations DSC seeks to provide. As discussed in detail below, 2310-2360 MHz has recently

<sup>1</sup> DSC Communications Corporation, Petition For Rulemaking (filed June 10, 1996). DSC's Petition for Rulemaking was placed on Public Notice July 11, 1996.

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been allocated for satellite digital audio radio services ("DARS") and the Commission's proposed service and licensing rules to govern DARS operations are the subject of an ongoing rulemaking. As such, allocation of any portion of these frequencies for wireless fixed access-local loop service would be inappropriate and inconsistent with the Commission's prior action.

**I. The 2310-2360 MHz Band Should Not Be Considered as a Potential Allocation for Wireless Fixed Access-Local Loop Services.**

In May of 1990, CD Radio filed the first application to construct, launch, and operate a satellite system capable of providing high-fidelity digital audio service to rural, mobile, and other users. In response to a petition for rulemaking filed by CD Radio requesting an allocation of frequencies for its proposed operations, the Commission issued a Notice of Inquiry initiating a broad inquiry into all aspects of satellite digital audio radio services ("DARS").<sup>2</sup> Thereafter, in November of 1992, the Commission released a Notice of Proposed Rulemaking and Further Notice of Inquiry proposing to allocate 2310-2360 MHz for development of domestic digital audio radio services.<sup>3</sup>

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<sup>2</sup> Amendment of the Commission's Rules With Regard To The Establishment and Regulation of New Digital Audio Radio Services, 5 FCC Rcd 5237 (1990).

<sup>3</sup> Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 7 FCC Rcd 7776 (1992).

In January of 1995, the Commission adopted a Report and Order that allocated the entire 2310-2360 MHz band for satellite DARS.<sup>4</sup> In doing so, the Commission deleted the existing allocation to aeronautical mobile telemetry, moving those operations to other portions of the S-band or to the L-band.<sup>5</sup> The Commission expressly found that allocation of the 2310-2360 MHz band for satellite DARS would serve the public interest by providing continuous radio service of high quality to all listeners, by offering increased choice of over-the-air audio programming, and by making programming available to underserved or unserved geographic areas and population segments.<sup>6</sup>

Simply put, therefore, DSC's request that the 2310-2360 MHz band be made available for wireless fixed access-local loop operations is untimely. This spectrum has been allocated for satellite DARS and numerous companies, including CD Radio, have devoted considerable resources in reliance on the Commission's decision to allocate 2310-2360 MHz for satellite DARS operations. For example, CD Radio has already

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<sup>4</sup> Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 10 FCC Rcd 2310 (1995) [hereinafter *Allocation Order*].

<sup>5</sup> *Id.* at 2315. See also Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, 11 FCC Rcd 1, 38 (1995). In June of 1995, the Commission adopted a Notice of Proposed Rule Making containing service and licensing rules to govern satellite DARS operations. Although comments and replies have been filed, final action is still awaited in that proceeding. Consequently, satellite DARS applicants, such as CD Radio, are still waiting to commence operations.

<sup>6</sup> *Allocation Order*, 10 FCC Rcd at 2314.

spent or obligated \$ 40 million on behalf of satellite DARS. DSC did not participate in the rulemaking proceeding involving the allocation of this spectrum for satellite DARS and does not indicate why it could not have done so. Furthermore, DSC's petition presents no basis for the Commission to reconsider what is now the agency's settled policy. In light of the Commission's January, 1995 allocation order and satellite DARS applicants' reliance on the action taken therein, DSC's request for an allocation including 2310-2360 MHz is simply too late.

Moreover, DSC has failed to provide any analysis of how satellite DARS operations and wireless fixed access-local loop service would share the 2310-2360 MHz band, or any data sufficient to characterize such sharing. If DSC had investigated sharing, it would have discovered that its plan is utterly impossible: the sharing of spectrum between satellite DARS and ubiquitous terrestrial fixed services would result in harmful interference, leaving both types of systems incapable of operating. As a result, there is no record evidence on which to base any reallocation of S-band spectrum from satellite DARS

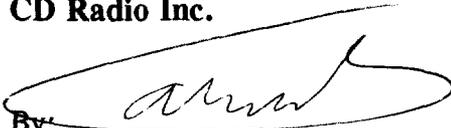
## **II. Conclusion**

CD Radio does not address the merits of DSC's proposed wireless fixed access-local loop architecture in spectrum other than 2310-2360 MHz. However, just 18 months ago, the Commission allocated the 2310-2360 MHz band to satellite DARS operations and cleared the band for satellite services. An allocation for terrestrial fixed

services would interfere with DARS satellite transmissions, rendering both types of systems unusable. In view of the soundness of the Commission's decision to allocate 2310-2360 MHz to satellite DARS and the fact that the satellite DARS rulemaking proceeding is still ongoing, allocation of any portion of this band to another service would be inappropriate and contrary to the public interest.

Respectfully submitted,

**CD Radio Inc.**

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Dated: August 12, 1996

Its Attorneys

**CERTIFICATE OF SERVICE**

I, Robin Walker, hereby certify that on this 12th day of August 1996, I caused true copies of the foregoing to be delivered to the following persons via first class, postage prepaid mail:

Mr. James L. Donald  
Chairman and Chief Executive Officer  
DSC Communications Corporation  
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Plano, Texas 75075-5813

  
Robin Walker