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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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August 30, 1996

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Don Messer
Voice of America
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Washington, D.C. 20547

SEP 9 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Don:

Thank you again for volunteering to apply your expertise by serving on the panel organized to review the three pioneer's preference requests made by applicants for satellite digital audio radio services (DARS) licenses. To expedite the Commission's pending rulemaking for DARS, we are asking that the panel complete its review and submit its written recommendations regarding each request on or before September 23, 1996. You are one of four government experts in satellite technology who have agreed to assist us in this project. The other three panelists are: John Gilsenan at the State Department, Bill Long at the Defense Information Systems Agency and Don Messer at the United States Information Agency.¹

Enclosed are the three requests for pioneer's preferences, one each from Digital Satellite Broadcasting Corporation ("DSBC"), Primosphere Limited Partnership ("Primosphere") and Satellite CD Radio, Inc. ("CD Radio"), as well as related documents filed in the pioneer's preference dockets. We have enclosed documents incorporated by the requests, including some of the license applications, descriptions of experimental reports, and other relevant documents such as comments in the rulemaking proceedings and petitions to deny the license applications, portions of which reference the preference requests. A list of the documents we have provided is attached. If you believe you need additional material, please email us at the address below.

We ask that the panel submit, on or before September 23, joint written recommendations to the Commission for each of the three requests, explaining why the panel believes each request

¹ Attached is a listing of the panelists' addresses, phone numbers, fax number and e-mail addresses.

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should or should not be granted.² The panel's report may also include any separate statements, dissents, or concurring views by any of the individual panelists. You should proceed in whatever manner you believe makes most sense (e.g., meetings, conference calls, exchange of draft recommendations via electronic mail). The panel may recommend that none of the three requests be granted or that one or more be granted.

In the course of preparing your recommendations, each panelist should evaluate each request on its individual merits, not comparing them, and such evaluation should comport with the Commission's standards for awarding pioneer's preferences. "The pioneer's preference program provides preferential treatment in the Commission's licensing processes for parties that make significant contributions to the development of a new service or to the development of a new technology that substantially enhances an existing service." *Memorandum Opinion and Order*, ET Docket No. 93-266, 10 FCC Rcd 2468 (1996).

To qualify for a pioneer's preference an applicant must demonstrate:

- 1) "that it (or its predecessor in interest) has developed the capabilities or possibilities" of a new service or technology "or has brought them to a more advanced or effective state", 47 C.F.R. § 1.402(a),
- 2) "the technical feasibility of its proposal, by summarizing its experimental results in its preference application, unless it instead submits an acceptable showing of technical feasibility", 47 C.F.R. § 5.207, and,
- 3) that the "rules, as adopted, are a reasonable outgrowth of the [applicant's] proposal and lend themselves to a grant of a preference." 47 C.F.R. § 1.402(a).

You are asked only to apply the first two criteria to the requests before you, because the Commission has not yet approved rules for DARS. The Commission will consider the third criteria when it ultimately determines whether to grant or deny each pioneer's preference request.

With respect to the first of the two criteria, the Commission has stated:

The Commission, in its discretion, will award a pioneer's preference to an entity that

² This deadline was changed from September 16 due to conflicting vacation schedules and other professional obligations.

demonstrates that it . . . has developed an innovative proposal that leads to the establishment of a service not currently provided or a substantial enhancement of an existing service . . . [W]e will consider the development of an innovative proposal to mean that the petitioner . . . has brought out the capabilities or possibilities of the new technology or service or has brought them to a more advanced or effective state. Generally, we believe that an innovation could be an added-functionality, a different use of the spectrum than previously available, or a change in the operating or technical characteristics of a service, any of which involve a substantial change from that which existed prior to the time the preference is requested. Further, technologies that yield efficiencies in spectrum use, speed or quality of information transfer, or spectrum sharing, or which significantly reduce costs to the public, will be given careful consideration. We do not intend these factors to be all inclusive. . . We can emphasize only that we do not intend to bestow preferences casually. An applicant for a pioneer's preference will have a significant burden to persuade the Commission that its proposal has sufficient merit.

Report and Order, Gen Docket No. 90-217, 6 FCC Rcd 3488, 3494 (1991).

With respect to the second criterion, the Commission has stated that "The applicant must demonstrate that the new service or technology is technically feasible by submitting either the summarized results of an experiment or a technical showing." *Memorandum Opinion and Order, 10 FCC Rcd at 2468.*

Please email us at the address below if you would like us to provide you with any or all of the Commission's past orders regarding pioneer's preferences.

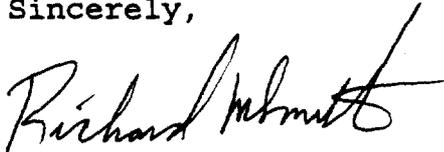
Because of the need for the panel's independent, expert recommendations that will become part of the public record in this proceeding, we ask that you email or fax to us any questions or requests you may have with respect to this assignment, so that we may include all such correspondence in the public record. In addition, while applicants, their representatives, or others may attempt to contact you and the other panelists regarding the merits of the requests and your review and recommendations, we

request that you avoid any such ex parte contacts or presentations and confine your evaluation to the written materials we have provided and that are part of the public record. However, should you and the other panelists desire additional materials or information, in cooperation with the applicants, we will be happy to help. Confining your review to the materials submitted by the applicants and that are part of the public record will safeguard the independence and integrity of your review and permit the panel to make its recommendations expeditiously.

If you have any substantive questions please email or fax them to us via John Stern at (202) 418-2818 (fax) or "jstern@fcc.gov" (email) or feel free to call with logistical questions at (202) 418-0746.

Again, we thank you for contributing your time and expertise to assist the Commission in this important project.

Sincerely,



Richard M. Smith, Chief
Office of Engineering and Technology



Donald H. Gips, Chief
International Bureau

Encls.

cc: (by mail) Satellite CD Radio, Inc., Digital Satellite Broadcasting Corporation and Primosphere Limited Partnership w/o enclosures

DARS Pioneer's Preference Review Panel

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LIST OF DOCUMENTS FOR PANEL REVIEW OF DARS PIONEER'S PREFERENCE REQUESTS

- 1) Request for Pioneer's Preference filed by Satellite CD Radio ("CD Radio") (9/30/91)
- 2) January 23, 1992 Supplement to Request for Pioneer's Preference filed by CD Radio (1/23/92)
- 3) Supplement to Pioneer's Preference Request filed by CD Radio (6/2/93)
- 4) Supplement to Pioneer's Preference Request filed by CD Radio (9/20/95)
- 5) Comments filed by CD Radio (1/29/93)
- 6) Reply Comments of American Mobile Radio Corp. (3/1/93)
- 7) Pioneer's Preference Request filed by Digital Satellite Broadcasting Corporation ("DSBC") (6/2/93)
- 8) Application of DSBC for a Digital Audio Radio Satellite System (12/15/92)
- 9) Amendment of Pioneer's Preference Request filed by DSBC (9/20/95)
- 10) Petition to Deny Application by DSBC filed by Satellite CD Radio (4/9/93)
- 11) Opposition to Petition to Deny and Response to Comments filed by DSBC (5/21/93)
- 12) Reply of DSBC (to comments concerning the NPRM and FNOI) (3/1/93)
- 13) Request for Pioneer's Preference of Primosphere Limited Partnership ("Primosphere") (6/2/93)
- 14) Supplement to Request For Pioneer's Preference of Primosphere (9/20/95)
- 15) Application of Primosphere (for DARS License) (12/15/92)
- 16) Petition to Deny Primosphere's Application for DARS License filed by Satellite CD Radio (4/9/93)
- 17) Reply of Primosphere Limited Partnership to Comments and Petitions to Deny (5/21/93)