



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

EX PARTE OR LATE FILED

September 14, 1996

INTERNATIONAL BUREAU

BY HAND

Donald Messer  
Voice of America  
Wilbur Cohen Building  
B/EB Room 4245  
Washington, D.C. 20547

RECEIVED  
OCT 1 - 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Don:

Enclosed please find additional materials that Satellite CD Radio, Inc. ("CD Radio") has requested be included in the list of documents that you and the other satellite digital audio radio ("DARS") pioneer's preference panelists are currently reviewing pursuant to my letter to you dated August 30, 1996. A list of the enclosed supplemental documents for review is attached.

Please note that, with respect to your consideration of the two enclosed copies of U.S. patents, the Commission has stated that "our pioneer's preference policy is not based on the policies underlying the patent laws. [P]atentability is not necessarily probative of whether a pioneer's preference request should be granted."<sup>1</sup> Similarly, in another order the Commission stated:

That Ameritech may receive a U.S. patent for its open network architecture interface in itself does not qualify [it] for a pioneer's preference. Broadband PCS systems are likely to vary widely, and each may have unique components that are patentable; however, our decisions to award pioneer's preferences are based upon showings of substantial innovation and complete system design. We addressed the relevance of patents in the Pioneer's Preference Report and Order establishing the pioneer's preference rules, where we stated that "while portions of a broad-based radio service may be patentable, including both equipment and specific services, such as call protocols, the entire broad-based service would not be." Whether or not Ameritech warrants a patent is not dispositive of whether under our rules they merit a pioneer's preference for having developed a technically feasible new service or technology.<sup>2</sup>

<sup>1</sup> *Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services*, 9 FCC Rcd 1309 at ¶ 67 (1994).

<sup>2</sup> *Broadband PCS Recon. Order*, 9 FCC Rcd 7805 at ¶ 17 (1994).

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2

Please contact me by email or fax if you have any substantive questions or requests as you continue your review.

Sincerely,



John P. Stern, Senior Legal Advisor  
International Bureau

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

- 18) Experimental Report submitted by Satellite CD Radio, Inc. (4/12/94)
- 19) Experimental Report submitted by Satellite CD Radio, Inc. (11/23/94)
- 20) Experimental Report submitted by Satellite CD Radio, Inc. (7/24/94)
- 21) U.S. Patent assigned to CD Radio Inc. (1/16/96)
- 22) U.S. Patent assigned to CD Radio Inc. (6/7/94)