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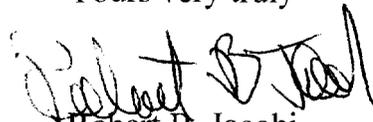
VIA HAND DELIVERY

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

Dear Mr. Caton

On behalf of Mt. Wilson FM Broadcasters, Inc., there are herewith transmitted an original and nine copies (including copies for distribution to Commissioners) of Comments filed in the Commission's Further Notice of Proposed Rulemaking pertaining to DARS/terrestrial repeaters, IB Docket No. 95-91, GEN Docket No. 90-357, RM No. 8610.

Yours very truly


Robert B. Jacobi

RBJ:btc

Enclosures



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Federal Communications Commission
Office of Secretary

BEFORE THE

Federal Communications Commission

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

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COMMENTS OF MT. WILSON FM BROADCASTERS, INC. ON FURTHER NOTICE OF PROPOSED RULEMAKING

I. INTRODUCTION

Mt. Wilson FM Broadcasters, Inc. (hereinafter "Mt. Wilson"), licensee of classical music station KKGO-FM, Los Angeles, California, through counsel, hereby respectfully submits its Comments with respect to the matter of terrestrial repeaters.^{1/} Mt. Wilson opposes the concept of allowing a satellite service to utilize terrestrial repeaters. The Commission has authorized a new national radio distribution service to be effectuated by satellite, not by terrestrial radio means. Should the Commission, nevertheless, authorize terrestrial repeaters, it must adopt rules which would prohibit terrestrial repeaters to be used to carry spot beams.

^{1/} Mt. Wilson is also the licensee of stations KKHI-FM and KKHI, San Rafael, California; KNOB, Costa Mesa, California; KGIL, Beverly Hills, California; KULA, Honolulu, Hawaii.

II. ARGUMENT

1. The initial intent of DARS was to establish a national satellite program service which would provide program diversity to underserved areas and function as a single source of programming for cross-country motorists. In espousing this concept and authorizing DARS, the Commission concluded that terrestrial broadcasters can remain viable and, indeed, that “. . . satellite DARS may create incentives for at least some terrestrial stations to increase their emphasis on local programming in order to attempt to differentiate their service. . . .” (par. 30). The authorization of terrestrial repeaters not only would be contrary to the original DARS concept but would seriously undermine the very foundation upon which the prospect for viability rests.

2. DARS was envisioned and, indeed, justified on the basis that it constituted the next technological step -- a national satellite radio service. Utilization of terrestrial repeaters, of course, alters the “satellite” nature of the service, that is, to something other than satellite, a hybrid, a service which is inconsistent with the allocation of the spectrum. Specifically, the Commission’s attention is directed to its Report and Order, FCC 95-17, GEN Docket No. 90-357, 76 RR.2d 1477 (1995) wherein paragraph 1 states as follows: “By this action, the Commission allocates spectrum in the 2310-2360 MHz band for satellite digital audio radio services (DARS).” Simply stated, terrestrial repeater use of the spectrum is not a satellite use of the spectrum. Moreover, it should be noted that the underlying concept of providing a satellite national radio service which would provide program diversity to underserved areas and a continuous source of programming for cross-country motorists can be achieved by DARS without the necessity of relying upon terrestrial repeaters. Whereas the Commission found significant public interest benefits of satellite DARS as against potential adverse impact on terrestrial radio, there are no analogous benefits justifying the use of terrestrial repeaters. To the contrary, the use of terrestrial repeaters will

alter the balance (characterized by the Commission as “uncertainty” in terms of the potential impact on terrestrial broadcasters) and adversely affect the viability of terrestrial radio.

3. The Commission decision reflects the Commission’s concern as to the use of terrestrial repeaters. In paragraph 142, the Commission stated that it:

“ . . . must determine how to ensure any use of terrestrial repeaters is complimentary to the DARS service and is only for retransmission of signals received from the satellite. We also seek comment on our tentative conclusion to prohibit the use of terrestrial repeaters to transmit locally originated programming which would be inconsistent with the allocation of this spectrum.”

In addition to the matter of being concerned about the use of terrestrial repeaters to transmit locally originated programming, the Commission should be equally (if not more) concerned by the prospect of the utilization of terrestrial repeaters to carry localized spot beams. Spot beams can be individualized for any city/community and can provide a plethora of local programming, i.e., local advertising, local news, local announcements -- the bedrock upon which the Commission has concluded (paragraph 30) affords terrestrial broadcasters the prospect of maintaining their viability.

4. Mt. Wilson accepts the fact that the Commission has authorized DARS. In considering the matter of terrestrial repeaters in this Further Notice of Proposed Rulemaking, however, the Commission has overlooked the existence of localized spot beams which bears the potential for literally destroying those “incentives” for terrestrial broadcasters to increase their emphasis on local programming. If terrestrial repeaters are authorized for DARS operations, rules must be adopted which would preclude terrestrial repeaters from transmitting localized spot beams.^{2/}

^{2/} Absent the adoption of rules, DARS operators will be free of any future constraints, irrespective of their current pronouncements.

5. Throughout the Commission decision, there is expressed a tone of continued uncertainty as to the impact of DARS on terrestrial broadcasters (see, for example, paragraphs 24, 25, 33). Indeed the “uncertainty” is of such concern that the Commission stated that it

“. . . will continue to monitor and evaluate the potential and actual impact of satellite DARS, particularly in small radio markets, so that we will be able to take any necessary action to safeguard the important service that terrestrial radio provides” (paragraph 33).

The authorization of terrestrial repeaters with the ability to saturate the market with local programming through localized spot beams poses the genuine prospect of lessening competition. At paragraph 9 of its decision, the Commission defined the public interest as follows:

“The public interest in this regard is the provision of services of value to the listening public and includes the protection of competition, not competitors.”

The Commission concern with competition, of course, is consistent with Section 313 of the Communications Act of 1934 (47 U.S.C. 313). Use of localized spot beams unequivocally demonstrates the potential to decrease competition (not competitors, but competition), that is, the prospective demise of existing licensed facilities. The recognition of “uncertainty,” the delicate balance that now exists, should not be fatally altered by authorizing terrestrial repeaters.

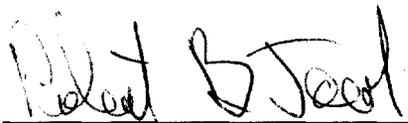
6. The lessening of competition has other anti-trust implications. In the ongoing review by the Department of Justice (DOJ) of multiple ownership acquisitions, the DOJ has identified as a potential adverse impact on advertisers the decrease in market area stations having similar formats. The potential for a decrease in a given market resulting from

the use of localized spot beams transmitted by terrestrial repeaters is more than obvious. The Commission's public interest standard (which recognizes the protection of competition as a legitimate facet of the public interest) surely is not so tethered as to ignore the plight of advertisers -- resulting from fewer stations in the market.

CONCLUSION

DARS, utilizing terrestrial repeaters, is inconsistent with the allocation of spectrum set aside for a national satellite radio service -- it is no longer a satellite service. Moreover, the use of terrestrial repeaters to transmit localized spot beams jeopardizes the foundation of terrestrial broadcasters -- local programming oriented to the local community. Utilization of terrestrial repeaters to transmit localized spot beams predictably will result in the demise of terrestrial broadcast facilities and in the overall lessening of competition. While terrestrial repeaters should not be a part of DARS, at the very least, the use of terrestrial repeaters to transmit localized spot beams should be precluded.

Respectfully submitted

By: 
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