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October 24, 1997

VIA HAND DELIVERY

DOCKET FILE COPY ORIGINAL

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

In re: IB Docket No. 95-91; GEN Docket No. 90-357; RM No. 8610

Dear Mr. Caton

On behalf of Mt. Wilson FM Broadcasters, Inc., there is herewith transmitted an original and five copies of "Further Supplemental Comments" in the above-referenced proceeding.

Yours very truly



Robert B. Jacobi

RBJ:btc

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE 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

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

New evidence exists that DARS proponents are attempting to set up a new land-based system of radio broadcasting that would involve building thousands of terrestrial transmitters because of the concern that satellite delivered DARS will not be viable without the addition of terrestrial transmitters.. The DARS plan to implement satellite transmissions by means of a land-based system was never revealed to either the FCC or to the broadcast industry -- and to now condition implementation on an "or else" threat is simply outrageous.

Mt. Wilson FM Broadcasters, Inc. (hereinafter "Mt. Wilson") submitted "Comments" in the above-referenced proceeding on June 13, 1997 and "Supplemental Comments" on July 9, 1997.^{1/} The singular purpose of this Mt. Wilson "Further Supplement" is to provide the Commission with a copy of an article from the October 3, 1997 issue of Radio & Records

^{1/} The Mt. Wilson "Comments" focused on the use of terrestrial repeaters to carry "spot beam" programming and the potential adverse impact on terrestrial broadcast stations. The "Supplemental Comments" transmitted a copy of an article from a publication entitled Broadcast Electronics pertaining to "spot beam" programming which stands to confirm the Mt. Wilson position.

(R&R) which reported dialogue/discussion (concerning DARS/terrestrial repeaters) at a forum held in connection with the convention of the Audio Engineering Society. The import of the article reflects the position attributable to CD Radio, Inc. (one of the two companies having received a DARS license) to the effect that DARS will not be economically feasible and will not commence unless the FCC allows terrestrial repeaters. Also of note is the position attributed to the CEMA Director of Engineering to the effect that “. . . mobile satellite reception may fail at speeds greater than 40 miles per hour.”

Neither the Commission nor the broadcast industry initially was made aware that terrestrial repeaters would be a primary factor necessary to the economic success of DARS operations. Indeed, to the contrary, the DARS proponents emphasized the benefits of satellite radio, i.e., program diversity to underserved areas (niche programming) and service to cross-country travelers -- benefits which did not entail a need for terrestrial repeaters. Whether or not DARS would have been authorized -- if coupled with the demand for terrestrial repeaters -- is uncertain. What, however, is certain is that the DARS proponents are attempting to accomplish in two separate steps -- what may not have been “doable” in a single step. The Commission has authorized a new satellite radio service; it should not allow itself to be swayed by belated economic arguments resulting from DARS proponents’ calculated tactics of pursuing a two-step plan.

Respectfully submitted,

MT. WILSON FM BROADCASTERS, INC.

By: 
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Its Attorneys

Date: October 24, 1997

DAB

Continued from Page 4

Spectrum For L-band

One of the most important issues that the International Bureau's Planning and Negotiations Division — which is overseeing the determination of a domestic DAB standard — faces is whether or not there is spectrum available for an L-band solution. NAB Sr. Engineer David Layer said in the AES forum that the Eureka-147 DAB system is not feasible in the United States because it uses the L-band spectrum (1435-1530 MHz), which is used domestically by the military and the commercial airline industry for aeronautical telemetry. IBOC, however, utilizes the existing AM and FM spectrum and preserves the current industry infrastructure (no new transmitters or sharing of facilities).

On the other hand, manufacturers may not be willing to produce IBOC (in-band, on-channel) receivers. In tests performed by the DAR (Digital Audio Radio) Subcommittee of the Consumer Electronic Manufacturers Association (CEMA), the performance of the USADR IBOC system in the lab was substandard, and the company withdrew its system from field testing, while Eureka-147 was the superior performer.

Jim Davis, an engineer with Delco, which has already produced a

prototype Eureka system for Europe, told R&R that the FM band is too crowded to consider an IBOC solution. However, Russ Johnson, VP/Product Planning for Pioneer North America's Car Electronics division, which is rolling out Eureka systems for Europe and Canada in the next year, told R&R that if the USADR system were to meet the minimum standards of CEMA's tests, manufacturers would begin pushing out IBOC receivers within two years.

USADR says it is addressing the problems of first- and second-channel interference that its system experienced through the company's use of the Lucent Technologies PAC (Perceptual Audio Coding) algorithm. However, CEMA Director/Engineering Ralph Justus said at the forum that USADR must overcome its inherent multipath and interference problems if the PAC audio quality improvements are to matter.

What About DARS?

Then there is DARS (digital audio radio service), which would provide 50 channels of national, satellite-delivered, mobile, subscription-based, and commercial-free programming. Robert Briskman, chief technical officer of Satellite CD Radio, one of the two companies tentatively granted the right to provide the service by the FCC (official granting of the licenses was expected this week), said at the forum

that his company will launch the operation in December 1999. CD Radio has a simple solution if OEMs don't "subscribe" to its product: It will initially roll out its own receivers, called the "Radio Card."

However, DARS won't get "on" the ground if the FCC doesn't allow the companies to fill in gaps in coverage in difficult propagation environments — such as urban areas — by using a network of terrestrial repeaters. Rosalee Chiara, an attorney with the International Bureau, told R&R that the FCC would probably decide on the notice of proposed rulemaking by late fall. Justus also claimed that mobile satellite reception may fail at speeds greater than 40 miles per hour.

Briskman noted that CD Radio is also using a PAC scheme to compress its signal, and that the company has been satisfied with its performance.

The upshot, then, is that it is up to USADR to prove in the next year that it has a system that performs well enough in mobile testing to please receiver manufacturers; otherwise, with broadcasters backing an IBOC and not an L-band solution, the battle for a domestic DAB standard is sure to drag on for several more years. Meanwhile, satellite-delivered radio — if the terrestrial repeater proceeding goes its way — looms on the horizon as a formidable threat to local, terrestrial radio.

Alcohol

Continued from Page 4

serve 'the public interest.' However, that vague mandate does not give the FCC free rein to restrict whatever speech it may find distasteful, as the courts have already determined."

In his report, O'Neil points out that the DC Circuit Court cautioned that the Commission does not possess a license "to scan the airwaves for offensive material with no more discriminating a lens than the 'public interest' or even the 'public health.'"

Indeed, during Senate confirmation hearings for FCC Commissioner nominees Harold Furchtgott-Roth, Gloria Tristani, and Michael Powell on Tuesday, Sen. John Ashcroft (R-Mo.), Chairman of the Senate Subcommittee on Consumer Af-

fairs, complained that the current FCC leadership is "incapable of doing what it is supposed to do" and reminded the nominees that the FTC "was established for the purpose of monitoring advertising over the airwaves."

The report found that despite instances in the past when the Commission has assumed power over advertisers — such as regulation of cigarette ads in the 1960s — the world has since changed. O'Neil believes the ban on smoking ads offers no precedent. "It was based on the long-since repudiated Fairness Doctrine, the Commission's authority was clearly limited to tobacco, and the rule was enacted prior to the Supreme Court's recognition that commercial speech warrants First Amendment protection."

TRANSACTIONS

Continued from Page 6

Michigan

WBW (FM CP)/Grand Rapids

PRICE: \$200,000

TERMS: Asset sale for cash

BUYER: **Cornerstone Baptist Educational Ministries**, headed by President **Rex Rogers**. It owns WAYK-FM/Grand Rapids and WCSG-FM/Kalamazoo, MI. Phone: (616) 942-1500

SELLER: **Grand Rapids Broadcasting Corp.**, headed by President **Al Lane**

WMSH-AM & FM/Sturgis

PRICE: \$600,000

TERMS: Asset sale for cash

Bloomberg

Continued from Page 4

some stockholders convert stock into Class A common dividend of 6% and is converted net proceeds from the offer used to repay outstanding the Heritage stations.

FCC Issues First Cr

Radio Property Venture KPHP Radio Inc., licensee was officially granted coverage on the AM expanded band 1705 kHz. The FCC refused applications filed jointly by communications Inc.

They asked the Commission period that will allow broadcast for five years of frequencies. At the end of return either their existing for cancellation. The station considered for the expansion the Audio Services Division to act on the remaining WJDM-AM/Elizabeth, N. San Rafael, CA are already

FCC Nixes Chame

The FCC revoked the license for misrepresentation. Berthot told R&R that license earlier it was being forced and requested an STA (sit tower closer to Houston. actually leased out its Berkeley site. Due to the compact revoked.

In other tower news, the Co.'s request to build a station mission said that its engineering the marshy area that would

BUYER: **Lake Cities Broadcasting Corp.**, headed by President **Andrews**. It owns three other stations. Phone: (219) 665-9554

SELLER: **Forum Communications Inc.**, headed by President **Brink**. Phone: (616) 343-17

Nebraska

KBBX-FM & KESY-Omaha

PRICE: \$5,475,000

The only men

DAB Battle Dwindles Down To IBOC Vs. L-Band

By MATT SPANGLER
R&R WASHINGTON BUREAU

At a forum on digital audio broadcasting (DAB) at last week's Audio Engineering Society convention in New York that featured a global mix of panelists, one thing was apparent: The United States is lagging far behind the rest of the world in the implementation of a national standard. The reason why? Too much bureaucracy.

The FCC's International Bureau has asked various representative organizations to recommend a standard, which has proven to be a formidable

task. The Consumer Electronics Manufacturers Association, which represents the manufacturers that would make DAB receivers, wrapped up tests

late last year that showed the USA Digital Radio IBOC (in-band, on-channel) system as a poor performer, and the Eureka-147 L-band (satellite-delivered) system as the best. The NAB DAB Task Force, consisting of over 60 broadcasting executives, is backing an IBOC solution.

Don't expect to be tuning in CD-quality radio anytime soon.

DAB/See Page 8

FCC Has No Authority To Ban Alcohol, Says Media Institute

Report says advertising is protected under First Amendment

By JEFFREY YORKE
R&R WASHINGTON BUREAU CHIEF

The FCC has no statutory authority to regulate broadcast advertising of alcohol products, according to the Media Institute, a DC-based think tank that last week released a report on the issue. Written by First Amendment scholar and University of Virginia law professor Robert O'Neil, the study concludes that attempts to restrict alcohol advertising by any government branch would be found unconstitutional if brought before the Supreme Court.

O'Neil notes that authority to regulate advertising "of all types continues to reside with the Federal Trade

Commission, which has the power to regulate deceptive and unfair advertising — including ads that target

young people for adult products — in all media."

Outgoing FCC Chairman Reed Hundt has been strongly opposed to distilled spirits advertising and ads for some other alcohol products, and has called for a ban against advertising liquor. The Media Institute's report notes that Hundt has asserted that "the FCC has the power to regulate liquor advertising as part of its statutory mandate to make sure broadcasters

Alcohol/See Page 8

Bloomberg

Studios Donated For Broadcast

The facilities and equipment of WCFL recently moved to a new studio in Children's Home Society of Florida, St. used as a broadcasting school for at-ri- nics Communications Learning Center of the Palm fall and be run by the society through Department of Juvenile Justice Farn. picked up WOLL as part of its recent OmniAmerica Group. The advisory br President Carl Hirsch and Sr. VP/Treas President/CEO Scott Ginsburg and C Broadcasting COO Steven Dinetz.

25 ABC Stations Now Have

Telos Systems Inc. and Olympia Or 25 ABC stations, including KAE WABC-AM/NY, will broadcast their c Audiolounge.com. WABC has already olounge. Currently, more than 500 stat the Internet.

Radio's Annual Growth At

That's the prediction made by Morn Hodge at the company's 27th Ann Francisco last week. It's the largest ar ed exclusively to growth stocks and institutional investors. Hodge noted th tions Act of 1996 has spurred a mass advertising has remained solid. With c it's important for investors to choose Among his recommendations were Cle cellor Media, Emmis Broadcasting, ar

Chancellor Media Extends

Chancellor (Nasdaq: AMFM) has cash tender offer to acquire any mon stock of Katz Media Group (AME October 24. The original offer expires said nearly 13 million shares of Katz idly tendered at that time.

Westinghouse-Gaylord Deal

Westinghouse (NYSE: WX) will which it will acquire Gaylord E major cable networks, TNN and CM mestic and international operations operations of CMT. Gaylord's rema. Gaylord's stockholders immediately p Gaylord shareholders also will receive mon stock tax-free. Closing was set i will continue to be based in Nashville

Paxson Sued By Partner

Paxson Communications Corp. ar ing sued for fraud and breach c partner who owns several sports te Paxson agreed to sell its stake in se Channel Communications without F San Antonio-based Clear Channel a stations in a \$693 million acquisition sports teams, which include the Flor

The Real Winners!

20 years ago...

WLOQ debuted a new contemporary Jazz format.

We salute those who helped make Smooth Jazz the hottest format in Radio!

This Marconi is your award...

To Our Colleagues at WLOQ

CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 24th day of October, 1997 a copy of the foregoing "Further Supplemental Comments of Mt. Wilson FM Broadcasters, Inc. on Further Notice of Proposed Rulemaking" was mailed first-class U.S. mail, postage prepaid to the following:

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