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January 16, 1998

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

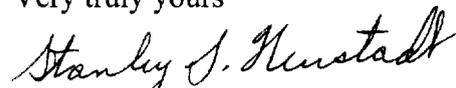
Re: **IB Docket No. 95-91**
GEN Docket No. 90-357
RM No. 8610

Dear Ms. Salas

Mount Wilson FM Broadcasters, which has filed Comments in response to the Further Notice of Proposed Rule Making in the above-referenced matter, hereby, in accordance with Section 1.419(b) of the Commission's Rules, files ten additional copies of its Comments filed on June 13, 1997, its Supplement to Comments filed on July 9, 1997, and its Further Supplemental Comments filed on October 24, 1997, for distribution to the Commissioners.

These additional copies are filed at this time because at the time the Comments were originally filed four of the present five Commissioners were not in office, and Mount Wilson wishes that the new Commissioners be aware of its position in opposition to the authorization of a land-based system of terrestrial transmitters for the DARS service because of their strong potential to drive locally owned stations out of business.

Very truly yours


Stanley S. Neustadt

Enclosures

cc: William E. Kennard
Susan Ness
Harold Furchtgott-Roth
Michael Powell
Gloria Tristani

No. of Copies rec'd 029
List A B C D E

1124 003 - BROWN

STAMP AND RETURN

BEFORE THE

Federal Communications Commission

RECEIVED
JUN 13 1997

Federal Communications Commission
Office of Secretary

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

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: 
Robert B. Jacobi

COHN AND MARKS
1333 New Hampshire Avenue, N. W.
Suite 600
Washington, D. C. 20036-1573

Its Attorneys

Date: June 13, 1997

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

RECEIVED
JUL 9 1997
FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE SECRETARY

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

Mt. Wilson FM Broadcasters, Inc. (hereinafter "Mt. Wilson") submitted Comments in the above referenced proceeding on June 13, 1997. The Mt. Wilson Comments referenced the existence of "spot beam" technology which would allow a DARS licensee to provide local-oriented programming to a specific market. Mt. Wilson urged (among other arguments) that if the Commission permits terrestrial repeaters for DARS licensees, the Commission should adopt rules which prohibit terrestrial repeaters from transmitting spot beam programming. The basis for the Mt. Wilson argument was that the Commission itself recognized the possibility that DARS could adversely affect the viability of terrestrial radio; that the Commission specifically cited as an incentive for terrestrial broadcasters to maintain viability an emphasis on local programming; but that permitting DARS licensees through the use of terrestrial repeaters to carry spot beam programming would provide the capability of destroying those "incentives."

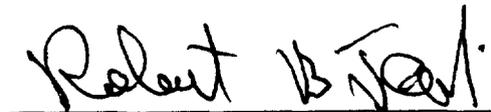
The singular purpose of this "Supplement" is to bring to the Commission's attention an article from the publication Broadcast Electronics, "Washington Update" -- wherein the subject of "spot beams" and the impact on terrestrial broadcasters is discussed.

Spot beam programming is an existing reality; the authorization of terrestrial repeaters to distribute spot beam programming will exacerbate the acknowledged DARS potential for adversely affecting terrestrial radio -- at a minimum, predictably resulting in a substantial decrease in the number of terrestrial radio facilities.

Pragmatically, defunct stations (particularly standard broadcast stations) are not likely to be resurrected. Absent the adoption of appropriate rules as a condition precedent to the authorization of terrestrial repeaters, the damage to terrestrial broadcasters will have become irreparable.

Respectfully submitted,

By:



Robert B. Jacobi
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Suite 600
Washington, D.C. 20036
(202) 293-3860

Counsel for Mt. Wilson FM Broadcasters,
Inc.

Dated: July 9, 1997



WASHINGTON

Update



BY ANDY BUTLER

Consulting Engineer, Public Broadcasting

Read A Good Book Lately?

It sounds strange but I'm urging my friends in radio to take a weekend off and read a book. The book I'm recommending is *Defining Vision* by Joel Brinkley. It accurately chronicles the difficult and convoluted process the Television industry just experienced in developing the ATSC Digital Television System and getting it adopted by the FCC. Urging radio broadcasters to read a book about television sounds bizarre but I think getting enough of the right people to read that book may mean the difference between life and death for radio broadcasting as we know it in the US.

The book is a cross between a who's who in US technology and a basic training manual in Techno Politics as practiced in the US. You will find yourself alternately shaking your head in disbelief and laughing out loud at events and people that seem utterly ridiculous. The fact is that all of the events in the book are true and the author is actually conservative in many cases.

Why is this tale important? Used properly it is a guidebook for fostering fundamental changes in broadcast technology. Radio needs to learn these methods to develop and implement a digital alternative to traditional broadcasting. We already know several reasons for desiring this change; better coverage at lower power levels, no multi-path distortion, noise-free reception, better frequency response and dramatically improved signal to noise performance. These were just joined by another compelling force.

On April 1 the FCC awarded two Digital Audio Radio Service (DARS) satellite licenses to Satellite CD Radio and American Mobile Radio.

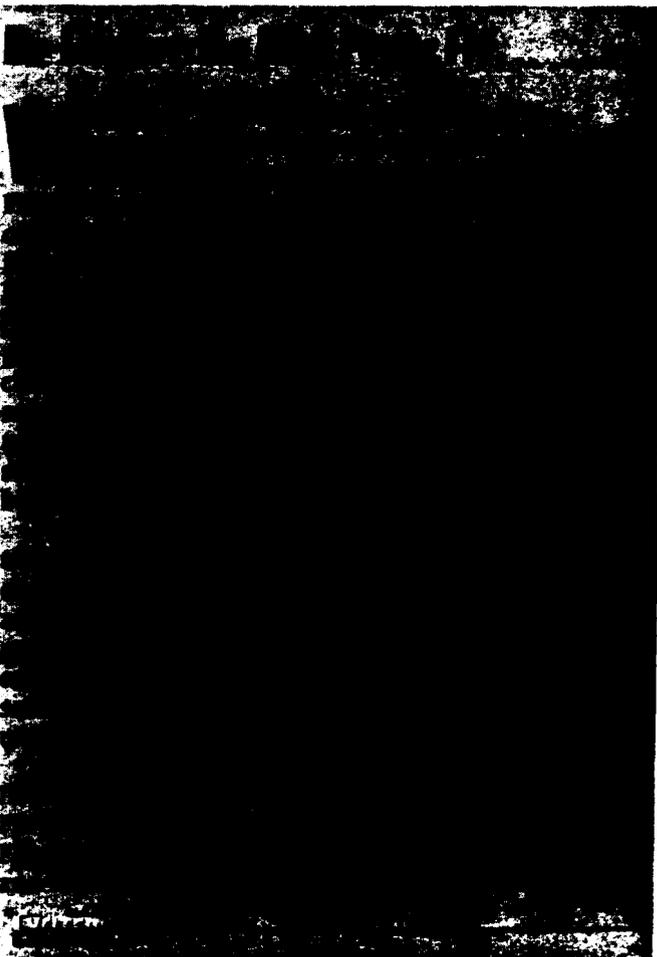
On the surface this may not seem like much of a threat but there are several things to consider. Each licensee will offer 30 to 40 CD quality program channels. They are permitted to use "spot beams" on

their multiple satellites to direct particular programming (or commercials) to given geographic regions. Because the services are subject to interruption in urban areas from buildings, bridges and other obstructions, both companies will be allowed to install terrestrial based boosters or repeaters on an unlimited basis. There is nothing in the rules that prohibits feeding at least some amount of programming directly to these transmitters effectively making them local, over-the-air stations.

The FCC did not limit the two companies to subscription only service. They will be free to raise revenue either by subscription or by selling spots. One company has indicated that they will pursue regional and national advertising sales at least on non-music channels. The subscription fee for full time music service will be less than \$10 a month. The receivers will be very similar to the Eureka receivers being sold in Europe, Canada and many other countries. Due to market size, they are expected to sell for about \$100.

All of these factors taken together profile a service that could give local radio some real competition. Radio needs to fight back. Some of radios smartest people need to study the Brinkley book, make the commitment to create a viable digital alternative for existing terrestrial broadcasting and then work it through the Washington system. It's probably not too late but earlier would certainly have been easier.

THE EXCITER



1124-003 - BROWN
Stamp and Return

BEFORE THE

Federal Communications Commission

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OCT 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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.

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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

WBYW (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 corporate net proceeds from the sale used to repay outstanding the Heritage stations.

FCC Issues First L

Radio Property Ventures KPHP Radio Inc., licenses were officially granted 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 on 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 also

FCC Nixes Change

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

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

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

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

Nebraska

KBBX-FM & KESY-Omaha

PRICE: \$5,475,000

The only men

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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Washington, D.C. 20006

Valerie G. Schulte, Esq.
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036-2891


Brenda Chapman