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Federal Communications Commission
Washington, D.C. 20554*

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 73 of the)
Commission's Rules to Permit)
the Introduction of Digital Audio)
Broadcasting in the AM and FM)
Broadcast Services)

Docket No. RM-9395

COMMENTS OF CUMULUS MEDIA INC.

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List A B C D E

TABLE OF CONTENTS

Summary	(i)
Comments	1
I. INTRODUCTION	1
II. THE PUBLIC INTEREST WOULD BE SERVED BY THE INTRODUCTION OF TERRESTRIAL DIGITAL RADIO	2
III. AN IBOC SYSTEM PROVIDES THE BEST METHOD OF PROVIDING DIGITAL RADIO SERVICE	5
IV. THE COMMISSION MUST SET A STANDARD FOR IBOC DIGITAL RADIO.....	7
V. THE COMMISSION SHOULD ADOPT A TRANSITION PLAN FOR IBOC DAB WHICH WILL ADDRESS THE TWIN GOALS OF PRESERVING ANALOG RADIO FOR A REASONABLE PERIOD OF TIME AND PERMITTING ADOPTION OF DIGITAL SERVICE AS SOON AS PRACTICABLE	9
VI. CONCLUSION	10

SUMMARY

The ability of terrestrial radio broadcasters to provide digital service, including digital data services, is important to the public interest and critical to the ability of those broadcasters to compete with providers of other media services such as satellite digital radio. Cumulus Media Inc. and its subsidiaries ("Cumulus") believe that an in-band, on-channel ("IBOC") system provides the best solution for terrestrial digital radio. IBOC will make possible a seamless transition from analog to digital, and will permit terrestrial digital radio to become a reality without the need for the allocation of additional spectrum.

Cumulus also believes that the success of IBOC depends upon the Commission setting a single standard which will assure compatibility among all IBOC transmission and reception equipment. Absent such a standard, equipment manufacturers will be at a loss to know what kinds of transmission and reception apparatus should be built, and broadcasters and listeners will lack sufficient incentives to invest in IBOC.

Finally, Cumulus believes that the Commission should adopt the proposal of USA Digital Radio Partners, L.P. ("USADR") that analog service be "sunset" after a 12-year transition period. However, the Commission should retain the flexibility to impose an earlier sunset date if IBOC receiver penetration becomes widespread prior to expiration of the 12-year sunset period.

COMMENTS

I. INTRODUCTION

Cumulus Media Inc. is the holder of all the stock of various subsidiaries which, collectively, hold Commission authorizations for over 150 commercial radio stations in 20 states. In addition, Cumulus Media Inc. and its subsidiaries (collectively, "Cumulus") program a number of other stations under time brokerage or local marketing agreements with licensees. According to the industry publication *Who Owns What*, Cumulus is the third largest radio station group owner in the United States, based upon the number of stations owned and programmed.^{1/}

Cumulus began acquiring radio stations in 1997 and has grown to its current size in slightly over a year. Although Cumulus' rise in the industry has been swift, its senior management team has an aggregate of over 75 years of experience in the media and radio broadcasting industries. Cumulus believes that its position as an aggressive, forward-looking industry player, coupled with the depth and breadth of the experience of its senior management team, gives it an important perspective on digital radio.

Cumulus is committed to helping to make digital audio broadcasting ("DAB") a reality in the near future, and firmly believes that an in-band, on-channel ("IBOC")

^{1/} *Who Owns What*, December 21, 1998.

system is the best means of accomplishing that goal. In these comments, Cumulus hopes to assist the Commission in this important process by providing its perspective on IBOC DAB and on USADR's Petition for Rulemaking.

II. THE PUBLIC INTEREST WOULD BE SERVED BY THE INTRODUCTION OF TERRESTRIAL DIGITAL RADIO

Digital transmission of information is clearly the path of the future. Virtually all of the services regulated by the Commission, with the exception of radio broadcasting, have commenced, or have been authorized by the Commission to commence, digital transmission. The driving force behind this digital revolution is clear; for most applications, digital is simply superior to analog.

In no service is this more true than in radio. DAB will dramatically improve the audio quality of radio. This quantum leap forward will be especially evident in the AM band, where audio will be improved from the current interference-prone reception to a quality on par with today's FM stereo. Cumulus believes that this improvement will make AM stations far more viable competitors in their local markets and will give more listening options to listeners who today seldom tune in to AM radio, due to the sometimes poor quality of its signal.

DAB will also greatly improve the quality of FM radio reception, to the point where FM reception will provide near CD quality sound. Perhaps the most important improvement in FM radio, however, will be the ability of stations to provide data and other services beyond audio broadcasting.^{2/} Cumulus believes that in the near future, a large market will develop for the provision of mobile wireless data services, especially to vehicles.^{3/} Because much of the data demanded by consumers is likely to be local in content (*e.g.*, weather, traffic, parking, *etc.*), terrestrial radio stations, due to the local nature of their operations and their long history of local service, will be uniquely suited to discern and to respond to consumer demands and provide such data.^{4/}

Beyond giving listeners a far broader array of choices in their radio listening experience, and the opportunity to receive new data services currently unavailable to

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- ^{2/} AM radio may also be able to participate in providing such other services; however, due to the much greater bandwidth of FM channels, the ability of FM stations to provide such services will be superior to that of AM stations.
- ^{3/} For example, Microsoft Corp. and Clarion Corp. recently launched the Auto PC, a device that fits in an automobile dashboard and integrates various digital data functions such as digital radio, CDs, mobile telephone, e-mail, traffic reports, *etc.*
- ^{4/} It is of great importance to the public interest, and to the continuing viability of free local radio service, that the rules eventually adopted by the Commission for DAB allow broadcasters to provide whatever data and other non-broadcast services the market demands, so long as they continue to provide at least one channel of audio broadcasting. This was the approach taken by the Commission with respect to digital television, and Cumulus believes that it is also the correct approach for digital radio. *See Fifth Report and Order in the Matter of Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 12809 (1997), at ¶¶ 27-36.

them, DAB will serve the public interest in another important respect; it will help to assure the survival and viability of free local radio service to millions of American radio listeners. The Commission has granted licenses to provide satellite-delivered digital audio radio service (“DARS”) to two entities, Satellite CD Radio, Inc. and XM Satellite Radio, Inc. (formerly American Mobile Radio Corp.). Both of those entities are very well funded and expect to commence digital satellite radio service by the year 2000. Satellite DARS will be able to deliver to consumers CD quality audio programming as well as a variety of digital data services.^{5/}

There is no doubt that satellite DARS providers will target the radio listeners of terrestrial broadcasters such as Cumulus. While Cumulus has no fear of competing with satellite DARS, the playing field for that competition must be level. Without the enhanced audio quality, and the ability to supply data services, that DAB will provide, terrestrial radio stations will be at a distinct competitive disadvantage. If terrestrial radio is unable to compete effectively with satellite DARS, and with other media such as Internet broadcasting, there is a possibility that radio stations will fail, thus depriving the public of the free, locally-originated and locally-oriented programming that terrestrial

^{5/} The Commission has provided satellite DARS licensees great flexibility to provide data and other ancillary services to the public. *See Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking in the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Services in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754 (1997), at ¶¶ 94-96.

radio provides. While radio broadcasters should not, and Cumulus does not, ask to be insulated from competition, it is critical that such competition be fair and equitable, and that terrestrial radio broadcasters not be placed at a competitive disadvantage.

III. AN IBOC SYSTEM PROVIDES THE BEST METHOD OF PROVIDING DIGITAL RADIO SERVICE

For a number of reasons, Cumulus feels strongly that an IBOC system is the best means of implementing DAB. First, IBOC makes possible a seamless transition from analog to digital service. The hybrid feature of IBOC, which allows digital broadcasting to commence while analog service continues to be provided on the same channel, eliminates the need to set an artificial timetable for a transition to digital service and recapture of the analog spectrum. The IBOC system will permit each broadcaster and each listener to determine when they will convert to digital. While a point will come where the transition will have to be deemed complete and the entire channel will be used for digital service, IBOC gives the Commission considerable flexibility in determining that analog “sunset” date, free from concerns about trading off the need to retain analog service against the need to recapture spectrum used for analog service, as was the case with digital television.

The on-channel feature of IBOC also makes the transition to digital far more transparent to a listener than will be the transition to digital television for television

viewers. In addition to purchasing digital reception devices, a television viewer wishing to make the switch from analog to digital will need to find the stations he or she wants to watch on their new “paired” digital channels. No such problem will confront radio listeners wishing to switch to digital if IBOC is implemented; the digital listener will continue to be able to tune in the desired stations at the same channel positions. IBOC will thus make for an efficient transition from analog to digital by minimizing listener confusion during the transition and by eliminating the transaction costs which would be incurred by broadcasters migrating to new digital channels.

IBOC also allows radio broadcasters to offer digital services without the need for the allocation of additional spectrum. Due to the congested nature of the AM and FM bands, it is unlikely that the Commission could locate sufficient spectrum for each radio station in the United States to be allocated an additional in-band digital channel, as was done in the transition to digital television. Absent an IBOC solution, additional scarce spectrum outside the existing AM and FM bands would need to be allocated for digital radio. Under an IBOC system, such spectrum would be available for its current use or for auction by the Commission.

IV. THE COMMISSION MUST SET A STANDARD FOR IBOC DIGITAL RADIO

Cumulus strongly believes that in order to accomplish the successful implementation of IBOC DAB, it is critical for the Commission to adopt a standard which will assure compatibility among all transmitting and receiving equipment. Most radio listeners expect to be able to listen to a variety of radio stations. In the face of various competing and incompatible systems, it will be impossible for listeners to access all of them, and such a situation would discourage listeners from purchasing digital receivers. Similarly, broadcasters would be reluctant to purchase digital transmitting equipment and to make the significant investments necessary to upgrade their stations to provide DAB service, if they were not assured that all listeners within the range of their broadcasts would be able to purchase a single receiver that is universally compatible.

It is entirely appropriate for the Commission to set an IBOC standard by regulation. There are five radio group owners which own, or are in the process of acquiring, a total of more than 100 stations each. Fourteen group owners have over \$100 million in annual revenues.^{6/} In addition, there are three companies vying for leadership in the development of an IBOC system and in the production of IBOC transmitting equipment. There are likely to be even more manufacturers who will emerge to produce IBOC receivers. In the face of so many fragmented constituencies, it is unlikely that

^{6/} *Who Owns What*, December 21, 1998.

intra-industry and inter-industry agreements can be reached upon the appropriate standard.

It would be even more unrealistic to expect that the marketplace can establish a single IBOC standard. Deference to a hoped-for marketplace solution would result, at best, in years of uncertainty before a single leading standard might emerge, and more likely would inhibit a single standard from ever emerging. In Cumulus' view, the uncertainty which would result from a Commission determination to allow the market to set the standard for IBOC would prevent broadcasters and listeners from investing in digital equipment and would result in the failure of DAB.

As noted above, there is a wide variety of constituencies concerned with IBOC DAB. In setting the IBOC standard, the Commission should receive input from transmission equipment manufacturers, receiver manufacturers, broadcasters, listeners, and others. In addition, the standard should be set only after each of the three principal IBOC system developers shall have completed extensive field tests under realistic conditions. Such tests should be undertaken in a variety of geographical regions and with "real world" equipment of a design that will be affordable for broadcasters and listeners.^{7/}

^{7/} For example, USADR has indicated its intention to "handpick radio stations that have the worst possible environments [and] make sure our systems work in those worst-case scenarios." Statement of David Salemi, USADR Director of Marketing, quoted in *Broadcasting and Cable*, October 26, 1998.

The rule making proceeding requested by USADR will provide the diverse DAB constituencies with an opportunity to comment upon the standard that should be established for IBOC and will provide the companies developing IBOC systems with the opportunity to put before the Commission all information relevant to the Commission's determination as to what standard to adopt.

V. THE COMMISSION SHOULD ADOPT A TRANSITION PLAN FOR IBOC DAB WHICH WILL ADDRESS THE TWIN GOALS OF PRESERVING ANALOG RADIO FOR A REASONABLE PERIOD OF TIME AND PERMITTING ADOPTION OF DIGITAL SERVICE AS SOON AS PRACTICABLE

As discussed in Section III above, IBOC's capability for on-channel digital and hybrid analog/digital operations eliminates the need for difficult choices as to when to sunset analog service. Analog service should not be eliminated until listeners shall have had ample opportunity to acquire digital receivers. Eventual elimination of analog service, however, will free up bandwidth for additional digital services such as data transmission and should therefore occur as soon as practicable without unduly depriving analog listeners of service.

Cumulus believes that the 12-year analog sunset period proposed by USDAR in its Petition for Rulemaking will provide enough time for DAB to achieve sufficient penetration so that nearly all listeners will have acquired digital receivers. Cumulus supports USDAR's proposal for a 12-year analog sunset period, but believes that the

Commission should retain the flexibility to provide for an earlier termination of analog service on a market-by-market, and perhaps on a national, basis depending upon digital receiver penetration in a given market or nationally.

VI. CONCLUSION

A rule making proceeding at this time affords the best means to assure that digital audio service will be provided in a timely manner. The rule making will enable the Commission to obtain input from the wide variety of groups whose contributions will be necessary to establish an IBOC standard. Given digital radio's importance to the radio broadcast industry, and the need for radio broadcasters to commence digital operations as soon as practicable in order to meet the threat to free local radio service posed by other emerging audio service providers, Cumulus urges the Commission to commence the rule making proposed by USADR at the earliest practicable time.

Respectfully submitted,

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Certificate of Service

I, Alicia M. Altamirano, a secretary in the law firm of Paul, Hastings, Janofsky & Walker LLP, hereby certify that true copies of the foregoing "COMMENTS OF CUMULUS MEDIA INC." were sent this 23rd day of December, 1998, by United States first-class mail, postage prepaid, to the following:

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