

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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Petition for Rulemaking) RM-9395
)
)
USA Digital Radio Partners, Inc.)
(formerly USA Digital Radio Partners, L.P.))
)
Amendment of Part 73 of the)
Commission's Rules to Permit)
the Introduction of Digital Audio)
Broadcasting in the AM and FM)
Broadcast Services)

REPLY COMMENTS OF BIG CITY RADIO, INC.

Big City Radio, Inc. ("Big City"), pursuant to Section 1.405 of the Commission's Rules, hereby submits these Reply Comments in response to various comments relating to the above-captioned Petition for Rulemaking (the "Petition") by USA Digital Radio Partners, Inc. (formerly USA Digital Radio, L.P.) (collectively, the "USADR"). Big City agrees with the many commenters that urge the Commission to act prudently with respect to the future of terrestrial digital radio, and to consider the broad issues relating to digital radio through a formal Notice of Inquiry. Too much is unknown about the potential strengths and weaknesses of any particular digital radio technology for the Commission to propose rules at this time. Rather, a Notice of Inquiry is necessary to enable development of the principles that will determine which digital radio technology the radio broadcasting

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industry should implement in the new millennium, and how any such digital transition intends to protect and preserve existing radio services. By choosing to issue a Notice of Inquiry, rather than a premature Notice of Proposed Rule Making, the Commission would strike the proper balance between radio's need for digital options in the near future and the many technical and business considerations that must be evaluated before any digital radio transition may occur.

I. A NOTICE OF INQUIRY IS NECESSARY TO DETERMINE THE PRINCIPLES THAT WILL GUIDE RADIO'S DIGITAL REVOLUTION.

At this point, only a few certainties about any transition to digital radio are known. First, the Commission must ensure that radio will have an opportunity to transition to digital lest terrestrial radio broadcasts lose their ability to compete in an increasingly digital media marketplace. ^{1/} Second, the Commission must make clear that any transition to digital radio must preserve existing radio services, including those provided by FM boosters and by more recent innovations, such as synchronized, multi-station simulcasting, that enable stations to better serve the public. ^{2/} Third, although a single digital standard for radio

^{1/} See, e.g., Comments of Greater Media, Inc. ("GMI Comments") at 3; Consumer Electronic Manufacturers Association Comments ("CEMA Comments") at 3-5. 8-9.

^{2/} See Big City Comments at 6-7. See also Comments of Ford Motor Company ("Ford Comments") at 14 ("[T]he Commission must not, in the name of progress, sacrifice the gains achieved in the past."); Comments of Disney/ABC at 5 ("Any transition from analog terrestrial radio to digital terrestrial radio service must be accomplished in a manner that is least disruptive to the public and its reliance on local radio broadcasting for entertainment, news and information.")

transmissions ultimately must be selected, it is important that the standard not be chosen too soon, lest promising technologies be prematurely rejected or radio broadcasters be condemned to use relatively primitive forms of digital technology for the indefinite future. 3/

Nearly all other propositions with respect to digital radio are still subject to change. It has not been determined which digital audio technology would best serve the public and broadcasters. It is not known when such digital radio broadcasts should begin. It is not even certain what criteria are to be used to resolve these and other questions arising from the advent of digital radio.

A Notice of Inquiry would enable these fundamental principles to be debated and determined while digital innovators are developing, testing, and preparing to present their various digital radio solutions. USADR, though the first to petition for a rulemaking, is hardly the only party working to develop a digital radio transmission system. At least two other entities, *see* GMI Comments at 5-6, are developing alternate digital radio technologies. *See also* Comments of Holtzman Inc. Yet, the field testing that is critically important to gauge the likelihood of ultimate success of each alternative has not begun in any substantial form. *See* Lucent Comments at 16-17. In fact, as CEMA noted in its comments, it and the NAB adopted such testing guidelines only last month. *See* CEMA Comments at 6-7.

3/ *See generally* Lucent Comments at 17, 25 (noting the risk of premature introduction of technologies or elimination of potential breakthroughs).

Accordingly, the issuance of a focused Notice of Inquiry offers an appropriate next step in the development of terrestrial digital radio. A formal Notice of Inquiry would confirm that the Commission understands and appreciates that existing radio services will require an opportunity to broadcast digitally if they are to continue to be able to compete in an increasingly digital media environment. It also would offer a useful forum for resolving the principles that should guide any digital radio revolution. But it would not reward any digital radio innovator simply for being the first to file a petition for a digital radio rulemaking with the Commission, and it would enable the Commission and broadcasters alike to prevent the potentially catastrophic long-term consequences of incompletely considered rules or inadequately tested technologies.

II. A NOTICE OF INQUIRY STRIKES THE PROPER BALANCE BETWEEN THE EXTREMES ADVOCATED IN A FEW COMMENTS.

The comments in response to the Petition fall in three distinct groups: those that want to de-emphasize digital radio indefinitely in favor of additional crowding of the radio spectrum; those that want the Commission to propose rules for digital radio immediately; and those that ask the Commission to move judiciously in determining what principles should govern radio's digital transition prior to determining which of the several competing digital technologies would best satisfy those principles.

Obviously, Big City disagrees with the few commenters which hint that terrestrial radio should be denied the opportunity of other media to upgrade

their signals using digital technologies. *See, e.g.,* Comments of the National Lawyers Guild Committee at 1-2. The Commission cannot sacrifice the ability of broadcast radio -- which already serves millions of listeners with local news, entertainment and information -- to compete with the countless new forms of digital content, including broadcast, satellite and cable television, DVDs and CDs, the internet, and nationally-transmitted satellite radio. In particular, it cannot sacrifice the digital future of broadcast radio to protect the unknown and unknowable interests of a currently non-existent service that may never be authorized or implemented.

However, Big City also cannot agree that the Commission should issue proposed rules for digital radio at this time. Rules favoring an inefficient or ineffective means of digital radio transmission or, worse, a means of digital radio transmission that interferes with existing analog signals, also risk the continued success of radio as a means of providing local news, entertainment, and information. Although Big City appreciates the effort made by USADR to raise anew the issue of digital radio, it cannot join the parties who believe USADR's proposed technology should be the only one on which proposed digital rules are based. Most of these parties suggest that a Notice of Proposed Rule Making must be issued immediately if radio is not to lose its audience to the number of digital media entering or soon to enter the marketplace. *See, e.g.,* Comments of Bonneville International Corporation at 3-4. That digital radio may be a future necessity, however, is no reason to act prematurely with regard to a Notice of Proposed Rule

Making. In fact, the likely importance of digital radio -- and the ultimate need for a single digital radio standard -- are reasons that the Commission should progress cautiously and deliberately in planning for such a digital transition. A rulemaking proceeding initiated too soon may result in rules that endorse a technology that does not work or is otherwise not in the public interest.

That a large number of the parties supporting an immediate Notice of Proposed Rule Making now have a business interest in USADR is another reason to discount their support for USADR's proposal. *See, e.g.*, USADR Press Release (released January 7, 1999, and filed with the Commission on January 8, 1999) (naming CBS, Clear Channel, Cumulus, Gannett, Heftel, and Radio One as parties with equity stakes in USADR). The Commission should not credit the advocacy of USADR's investors as a reason for moving hastily on its Petition, especially when USADR's proposed technology has been only incompletely simulated and even less sufficiently tested. *See* Big City Comments at 6-7.

The ongoing transition to digital broadcast television is a recent reminder of what happens when parties focus on the end result of digital transmissions without first developing sufficient consensus or completing adequate testing of the proposed technology. The transition to digital television took six separate rulemakings and more than 10 years from the initial proposal to begin to be implemented. Yet, initial results have indicated that terrestrial high-definition television ("HDTV") still may suffer from visible artifacts of signal compression or other inadequacies. The transition to digital radio should be guided by the

procedural lessons of HDTV: instead of proceeding quickly into rulemaking proposals, the Commission should use one or more inquiry proceedings to establish a broad industry consensus as to the principles that will guide any transition to digital radio while allowing all potential forms of digital radio to be tested and compared. Once these principles are largely accepted, and field tests of competing technologies complete, the Commission may then more effectively propose rules for any digital transition, and big and small radio broadcasters alike will have significantly more confidence that the proposed transition will not reduce the quality of their existing level of service.

Because the current proposal, which has not undergone adequate field testing or computer simulation, risks significant -- and even fatal -- interference to many existing AM and FM licensees, Big City cannot support the Petition. 4/ Rather, Big City agrees with the large number of commenters that urge the Commission to subject digital radio proposals to more searching and fundamental analysis and evaluation, including the issuance of a Notice of Inquiry. 5/

4/ See Big City Comments at 6-7. For example, while it appears that the proposed USADR IBOC signal may have little impact on second adjacent stations in the immediate vicinity of New York because of the relatively low effective radiated power and high antenna heights of Class B stations in that market, USADR does not appear to have determined what IBOC's effects would be in other markets where Class B and Class C stations run at a significantly higher power. Since such higher operating powers in turn would require a higher-powered DAB signal, the potential for interference may increase greatly in these markets.

5/ Such comments include those that implicitly demonstrate the need for a Notice of Inquiry, without explicitly advocating such a notice. Heftel, despite being a stockholder in USADR, urged the Commission to seek comment "on IBOC/DAB" and "emission masks." Heftel Comments at 3. Such general requests for comment may best be served by an NOI, which would not require the Commission to propose

Even a brief review of these comments demonstrates that there is widespread encouragement, from both radio broadcasters and related manufacturers, for the Commission to move judiciously on digital radio proposals. For instance, Greater Media underscores that, at this point, “any DAB rules or standards, whether or not IBOC-based, would be wholly premature” and that any rules based on USADR’s proposals would be “palpably unfair to other parties . . . and otherwise contrary to the public interest.” GMI Comments at 3. CEMA also warns the Commission not to adopt USADR’s proposal for a rulemaking proceeding at this time. Rather, it suggests a need to discuss the criteria to be used to evaluate various proposals for digital radio and a proceeding in which the various system proponents “would submit . . . test data [and] entertain industry input” -- each of which are matters for which an NOI is admirably suited. ^{6/} Lucent is even more explicit in its support for an NOI, expressly contending that, as the lack of evidence

rules based in fundamental ignorance of any field-tested digital radio system. Similarly, Susquehanna Radio notes that “three separate systems are under final development and are entering a very demanding test phase, which will determine how well these systems work when subjected to the realities of our present allocation system.” Susquehanna Comments at 3. Such a statement indicates that now is not the time for proposals for permanent rules, but rather the issuance of a series of inquiries designed to identify and focus the relevant issues.

^{6/} CEMA Comments at 13-14. National Public Radio likewise understands that an “evaluation of potential IBOC DAB system[s] that relies on notice and comment administrative rulemaking” would be a “process of questionable efficiency in these circumstances.” See NPR Comments at 5.

and testing “make it impossible for the Commission to issue a usefully detailed Notice of Proposed Rulemaking,” the Commission should use an NOI instead. ^{7/}

III. CONCLUSION

The Commission and the radio industry must develop a plan by which all current licensees, from Class A FMs to clear channel AMs, may contemplate a transition from analog to digital broadcasting. That plan must be based on a single digital standard and an industry consensus as to when and how such a transition should proceed. The Commission cannot afford to act prematurely in adopting digital standards that would cause unnecessary disruption to existing radio service.

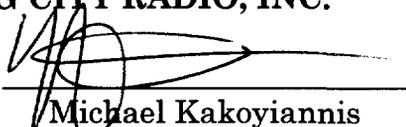
Many commenters to this proceeding, either implicitly or explicitly, have confirmed the need for further investigation of the issues raised by any digital radio transition prior to any formal rulemaking. Accordingly, the Commission should issue a new Notice of Inquiry, which may take into account the comments filed in this and selected prior proceedings and which should seek to establish a set of criteria to guide a transition to digital radio. Once this NOI has enabled a fuller exploration and evaluation of all potential digital technologies, the Commission may then issue a NPRM formally proposing rules that would best serve the broadcast industry and, more importantly, the public interest.

^{7/} Lucent Comments at 26. Although Lucent calls for a continuation of an existing NOI, Big City submits that it would be more effective for the Commission to issue a new, more specific NOI, which includes a series of questions relating to the current status of digital radio, rather than the outdated, general NOI suggested by Lucent. *See id.*

For the foregoing reasons, the Commission should initiate a Notice of Inquiry in the general topic of digital radio broadcasting, which would facilitate discussion of all relevant digital radio issues and proposals prior to implementation.

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By 

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January 25, 1999

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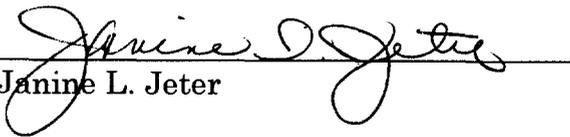
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