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February 3, 1999

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Dear Madame Secretary:

Enclosed for filing in the above-referenced docket is a copy of Reply Comments of National Association of Broadcasters filed in reference to the Application of WCS Radio, Inc. to construct, launch and operate two new communications satellites in the Digital Audio Radio Service (DARS). As these NAB Reply Comments directly address re-opening the comment period in the above-referenced docket, we are asking that they be included in the record of this docket.

Thank you very much.

Sincerely,


Valerie Schulte

cc: Scott Harris, Esquire
Bruce D. Jacobs, Esquire
Carl R. Frank, Esquire

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Application of WCS Radio, Inc.) SAT-LOA-19981112-00085
For Launch and Operating Authority) SAT-LOA-19981113-00086
In the Digital Audio Radio Service)

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB)¹ hereby files in reply to the Consolidated Opposition of WCS Radio, Inc.² to petitions to deny and other comments filed with regard to its application to construct, launch and operate two new communications satellites in the Digital Audio Radio Service (DARS). NAB also here files in reply to the Opposition to National Association of Broadcasters³ filed by Satellite CD Radio, Inc. (CD Radio) in this same proceeding. NAB's reply to both sets of oppositions comes down, frankly, to amazement that the parties are asking the Commission to act on factual records so bereft of critical facts.

I. THE RECORD ON TERRESTRIAL REPEATERS IS NOT CURRENT AND SHOULD BE REOPENED.

NAB, in its Opposition to the grant of the Application of WCS Radio, Inc., re-iterated its concern with the authorization and use of terrestrial gap fillers in the satellite DARS (SDARS) service. We asked the Commission to re-open the comment period on terrestrial repeater rules,

¹ NAB is a nonprofit incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and all the major networks.

² Consolidated Opposition of WCS Radio, Inc., File Nos. SAT-LOA-19981113-00085, SAT-LOA-19981113-0008, Jan. 26, 1999 (hereinafter "Consolidated Opposition")

³ Opposition to National Association of Broadcasters, File Nos. SAT-LOA-19981113-00085, SAT-LOA-19981113-00086, Jan. 27, 1999.

given the potential addition of a new DARS system as well as the significant changes to the system design of DARS licensee, CD Radio. CD Radio opposes the request of NAB in this regard, stating that the Commission will not re-open a comment period unless the record is not current,⁴ and that, here, neither WCSR's application nor CD Radio's modification application requires a change in the terrestrial repeater record, claiming, as to its changes, only that "CD Radio's new technical proposal will reduce the number of terrestrial repeaters needed for its system."⁵

A closer inspection of the technical record in this matter reveals otherwise. Prior to the submission of their modification application, the most current technical information on terrestrial repeaters was contained in a letter from CD Radio to the Commission, written in response to a Commission request for information on specific issues regarding terrestrial repeaters.⁶ Comparing the technical details on repeaters in this letter with the corresponding details in the modification leaves no doubt that the record on this matter is anything but current and begs for a new opportunity for public comment.

In fact, some of the more sweeping changes proposed in the modification pertain to the use of terrestrial repeaters. In their letter, CD Radio indicated that, for terrestrial repeaters, "the transmission plan is based on CDMA PCS,"⁷ which was the same type of modulation proposed for use in the space-to-earth transmission (at that time). In these earlier plans, the spacecraft and terrestrial repeater transmissions were going to both consist of spread spectrum carriers, occupying the same 12.5 MHz of bandwidth.

⁴ *Id.* at 5.

⁵ *Id.*

⁶ Letter from Robert D. Briskman, Chief Technical Officer, CD Radio, to Rosalee Chiara, Deputy Chief, Satellite Policy Branch, Satellite & Radiocommunication Division, International Bureau, Federal Communications Commission, (Nov. 14, 1997.) (hereafter "CD Radio Letter")

⁷ *Id.* at 3.

Now this situation is completely different. In the modified system, details of which were *first presented* in the modification and have never been subject to public comment, the spacecraft and the terrestrial repeaters are now using *different* types of modulation, and are placing these transmissions in *different* parts of CD radio's assigned spectrum. According to CD Radio, its 12.5 MHz frequency band will be segmented "in thirds and [their system will] use time division modulation for its satellite transmissions and coded orthogonal frequency division multiplexing for its terrestrial transmissions,"⁸ understanding that "similar segmentation and modulations will be used by the other satellite DARS licensee, XM Satellite Radio, Inc."⁹

Changes in the space segment of CD Radio's system, also revealed for the first time in the modification, impact the information provided in the letter on terrestrial repeaters, as well. For example, they describe in their letter the three types of terrestrial repeaters they plan to employ: active, passive, and "tunnels."¹⁰ The passive repeater description includes details on its receive antenna, indicating it will be directive (with a 17° beamwidth), and "pointed at one CD radio satellite,"¹¹ however, now that the satellites are no longer geostationary this configuration won't work, since the moving satellites now proposed would not be tracked by the sort of apparatus described.

These important changes, and others, are simply glossed-over in the CD Radio Opposition with the promise that "fewer terrestrial repeaters" will be necessary (with respect to their original plan), as if that is sufficient reason not to discuss them. Receiver designs are impacted in a major way by these changes – previously, a CD Radio receiver was simply a 12.5 MHz-wide CDM receiver, receiving and processing both satellite and terrestrial receivers alike.

⁸ Application of Satellite CD Radio, Inc. to Modify Authorization. File No. 44/45-DSS-AMEND-92. December 11, 1998, at 5.

⁹ *Id.*

¹⁰ CD Radio Letter at 4.

Now, each receiver will actually be two receivers in one—a satellite signal TDM receiver and a terrestrial signal OFDM receiver—which don't even operate on the same frequencies. It's as if CD Radio has created two separate systems – a satellite system, which feeds satellite receivers and the input side of a terrestrial repeater network, and, a terrestrial system, with a receiver of its own, a frequency band of its own, albeit fed from a broadcast satellite source. It is completely preposterous of CD Radio to suggest that in light of these changes, the record on this matter is current.

In some ways this situation seems familiar - from the start, the technical record in this proceeding on terrestrial repeaters has been paltry. Indeed, in spite of the detailed submissions filed by the SDARS licensees over the course of this record, there was so little information available on repeaters at the time of the most recent NPRM that the Commission had to make a special request of the licensees to be forthcoming in this matter. Even then, the Commission's request for information was only met in a superficial way by CD Radio, and even more superficially by the other SDARS licensee, XM Radio.¹² CD Radio is continuing in this tradition when it suggests that the record on repeaters is current – it is not, and the changes that exist are substantial and deserve additional public scrutiny.

II. OWNERSHIP ISSUES RAISED BY COMMENTERS IN THIS MATTER DEMONSTRATE THAT THE WCS RADIO APPLICATION IS NOT YET RIPE FOR CONSIDERATION.

WCS Radio's response to petitions to deny and other oppositions strains credulity even more than CD Radio's response regarding the gap filler technical record with its failure to reveal which WCS licensees are joining together to make this application for nation-wide DARS

¹¹ *Id.*

¹² XM Radio's response was a short, one page letter with little information of technical merit. See letter from William Garner, Chief Scientist, American Mobile Radio Corporation, to Rosalee Chiara, Deputy Chief, Satellite Policy Branch, International Bureau, FCC (Nov. 14, 1997).

service and what WCS licenses they are bringing to this consortia. Commenters, including NAB, have raised issues about the ownership and "workability" of the WCSR application, and have suggested that, until WCSR clearly establishes which WCS band license holders (and which licenses) are participating in the WCSR consortium, it would be premature for the Commission to consider its application. Taken together, and along with the information included in WCSR Consolidated Opposition, these comments clearly demonstrate that there are major issues to be resolved regarding WCSR's application.

Bell South *et al.* in their Petition to Dismiss or Deny point out that, apparently, "no licensee of WCS spectrum is definitively committed to the WCS Radio venture and that none currently has an equity interest in the venture."¹³ While WCSR claims, in its Consolidated Opposition, that the Commission does not require submission of ownership information as part of its application,¹⁴ they miss the point that, for this application in particular, license "ownership" plays a unique, defining role in the ability of the applicant to offer its proposed service. If ownership is not clearly established, the applicant simply is unable to demonstrate that its proposed service will meet one of the basic requirements of SDARS service, that of CONUS service. Without full ownership information on the table, WCSR is not even able to establish which frequencies the service will be operating on (within the appropriate 25 MHz portion of the WCS band).

Moreover, that WCSR "will be able to use far less than the entire 25 MHz block for satellite transmissions"¹⁵ is a new fact, presented in its Consolidated Opposition to clarify in WCSR's own words, a "basic misconception of WCSR's proposal." But this is a misconception

¹³ Petition to Dismiss or Deny, File Nos. SAT-LOA-19981113-00085, SAT-LOA-19981113-00086, Jan. 13, 1998, at 1 (hereinafter "BellSouth *et al.* Petition").

¹⁴ Consolidated Opposition at 2.

¹⁵ Consolidated Opposition at 14.

fostered by the application itself, which stated in its summary that “WCS Radio proposes to use **all 25 MHz** of the available WCS spectrum for space-to-Earth transmissions of its DARS signals.”¹⁶ Ignoring these contradictory WCSR positions on spectrum usage, the remark in the Consolidated Opposition regarding use of “less” spectrum would seem to stem from the fact that the WCS licenses were awarded in 5 MHz and 10 MHz-wide spectrum blocks (“A, B, C, and D blocks”), and that WCSR does not anticipate being able to reach agreement with of the license holders for some or all of the blocks.

In fact, the record on this matter makes it clear that they cannot reach agreement with license holders in all blocks. Bell South *et al.* points out that they have “...paid millions of dollars for the rights *to all four WCS spectrum blocks* in [seven] MEAs,”¹⁷ precluding their use by WCSR. In light of these facts, Bell South *et al.* recommend that the Commission “return the [WCSR] application without prejudice and instruct ... applicant[s] for a SDARS authorization utilizing WCS spectrum that future applications must include a demonstration that the applicant has secured WCS authorizations for the channels and geographic areas within the footprint of any proposed space station.”¹⁸ NAB supports this recommendation as it stands, and further recommends that applicants be required to demonstrate not only this, but that the applicant will provide full CONUS service as required by the service rules.¹⁹

¹⁶ Consolidated Opposition at 1 (emphasis added).

¹⁷ BellSouth et al. Petition at 5 (emphasis in original). The seven MEAs are Charlotte-Greensboro-Greenville, Atlanta, Tampa-St. Petersburg-Orlando, Miami, Louisville-Lexington-Evansville, Nashville, and New Orleans-Baton Rouge.

¹⁸ BellSouth et al. Petition at 10.

¹⁹ 47 C.F.R. § 25.144(a)(3)(i).

III. WCSR DOES NOT AND CANNOT COMPLY WITH THE DARS REQUIREMENT FOR FULL CONUS DARS SERVICE.

WCSR's failure to disclose which WCS licenses have been aggregated for WCSR's DARS proposal serves to *not* highlight its inability to comply with the DARS requirement that each applicant "demonstrate that its system will, at a minimum, **service** the 48 contiguous states of the United States (full CONUS)."²⁰ But even what seems to be WCSR's fancy footwork pointing out that the DARS rules language in this regard "does not quite correspond to the text of the adopting order," which requires CONUS "coverage," cannot save its inability to demonstrate compliance with the DARS rule requirement. One, the DARS rules say "service," not "coverage." Two, the text of the adopting order clearly reveals that the issue there was whether to require *more* service by DARS providers, not less. Three, WCSR is attempting to draw a distinction between "coverage" and "service" that is not evinced anywhere in discussing these issues in the DARS Order.

WCSR's fancy footwork extends to attempting to reconcile for the Commission the supposed inconsistency between this DARS rule requirement for full CONUS service with the "right" of "each" WCS licensee "to use its spectrum for SDARS."²¹ Instead, this line of argument serves to point up that the WCS spectrum was auctioned and licensed with *terrestrial* use in mind, irrespective of the technical allocation of this spectrum for DARS use as well. Surely the Commission did not intend to "grant each WCS licensee [potentially 128] the right to use its spectrum for SDARS," a point also made in greater detail by Bell South.²² A more sensible interpretation is that this spectrum, in a single (or aggregated) nation-wide block, could

²⁰ 47 CFR § 25.144 (a)(3)(i) (emphasis added).

²¹ Consolidated Opposition at 34. It is telling here that WCSR provides no citation for this "right."

²² Bell South et al. Petition at 6.

be used for DARS service. WCSR's strained and self-serving interpretation simply cannot obviate its failure to demonstrate full CONUS service, as required by the DARS rules.

IV. INTERNATIONAL COORDINATION OF WCSR SERVICE IS LIKELY TO BE DIFFICULT AND NOT IN THE BEST INTERESTS OF THE UNITED STATES.

WCSR, in its Consolidated Opposition, offers a brief, uninformative and misleading explanation of the international coordination issues raised by their application.²³ Rather than bolstering its claim that there is no problem with regard to international coordination, WCSR only serves to highlight the superficial treatment it gives this matter. Additionally, their stated position regarding coordination with a future Mexican SDARS system is self-serving, unrealistic and could well negatively impact relations between the U.S. and its southern neighbor as to international frequency matters, were coordination with Mexico to be carried out as WCSR suggests.

WCSR spends far too much time attempting to discredit earlier positions taken by their would-be DARS competitors, and this distract from the facts of the matter at hand. WCSR states "[n]othing in the terms of that agreement [with Canada] relates to the WCS spectrum...." This statement which reflects only the obvious fact that the coordination specifically addressed the 2310-2345 MHz band, which does not include WCS spectrum. But coordination agreement *does* "relate" to WCS spectrum. Canadian users of the Mobile Aeronautical Telemetry Systems (MATS) being relocated from the 2310-2345 MHz band as a result of the recently concluded coordination, well may end up in the WCS band, since in Canada the MATS allocation extends from 2300 to 2483.5 MHz.²⁴ The agreement also takes note of the fact that "[t]here will be an increased demand for low-capacity fixed systems in the band [i.e. the 2290-2360 MHz band] for

²³ Consolidated Opposition at 11.

²⁴ 47 C.F.R. § 2.106.

services that have been displaced by other newer Canadian services.”²⁵ This added demand in the WCS band only makes more difficult coordination of a WCSR DARS proposal with Canada.

WCSR's Consolidation Opposition devotes a single paragraph to the issue of coordination with Mexico, suggesting that “[f]ar from complicating coordination... WCSR’s proposal offers an opportunity to explore innovative spectrum sharing or joint venture solutions....”²⁶ This mighty attempt to see the glass as half-full would hardly be seen in the same light by Mexico or its future SDARS provider. The WCSR application in reality can only make more difficult the U.S./Mexico negotiations on this spectrum. WCSR Consolidated Opposition acknowledges that Mexico wants to establish an SDARS system. Mexico and the U.S. will thus be in competition for the WCSR frequencies if the WCSR application is approved as the U.S. has already licensed half of the 2310-2360 MHz band for DARS systems that are now on their way to being deployed. For the U.S. to attempt to negotiate for the remaining 25 MHz of this spectrum, for yet a *third* U.S. service, leaving Mexico with only “an opportunity to explore innovative spectrum sharing or joint venture solutions”²⁷ for its DARS service would see, at best, heavy handed” on the part of the U.S. If on the other hand, the WCS band

²⁵ [Agreement] Concerning the Coordination between U.S. Satellite Digital Audio Radio Service and Canadian Fixed Service and Mobile Aeronautical Telemetry Service in the Band 2320-2345 MHz (last visited Feb. 2, 1999) <http://www.fcc.gov/ib/pnd/agree/darsagr4.pdf>, at 2.

²⁶ Consolidated Opposition at 13.

²⁷ *Id.*

licensees are terrestrial users (as originally contemplated), then coordination with potential Mexican SDARS service providers, while still difficult, would not proceed from such an aggrandizing U.S. position.

Respectfully submitted.



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February 2, 1999

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CERTIFICATE OF SERVICE

I, Kimberly T. Washington, hereby certify that a copy of the foregoing *Reply Comments of the National Association of Broadcasters* has been mailed to the following by First Class United States mail, postage prepaid, on this day the 2nd of February:

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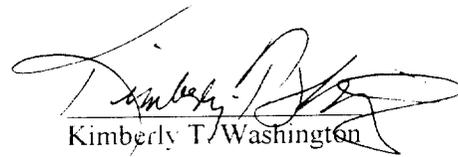
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