

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Digital Audio Broadcasting Systems)	MM Docket No. 99-325
And Their Impact On the Terrestrial)	
Radio Broadcast Service)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

1771 N Street, NW
Washington, D.C. 20036
(202) 429-5430

Marsha J. MacBride
Jack N. Goodman
Valerie Schulte
Jerianne Timmerman
Larry Walke

Lynn Claudy
John Marino
David H. Layer
NAB Science and Technology

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SUMMARY

The National Association of Broadcasters (“NAB”) files these comments in response to the FCC’s *Further Notice of Proposed Rulemaking* on final operational requirements, licensing and service rules changes for terrestrial digital audio broadcasting, and to the accompanying *Notice of Inquiry* on copy protection issues.

NAB urges the Commission to promptly endorse final authorization of IBOC digital radio service, including nighttime AM IBOC broadcasts, which will provide the certainty and confidence for broadcasters and equipment manufacturers to continue to roll-out digital operations and products. With regard to AM nighttime authorization, NAB believes that the benefits to be gained for AM broadcasters and AM listeners will far outweigh the limited additional interference predicted by iBquity Digital’s studies. AM IBOC promises to revitalize AM service, but to become a truly vibrant service, AM IBOC requires full daytime/nighttime operation. NAB requests that unexpected instances of interference to AM stations’ primary nighttime analog service areas be addressed by the Commission.

The Commission should move ahead with permanent authorization of IBOC service in advance of the final Commission standardization of iBiquity’s HD Radio systems and adoption of detailed technical rules, which will follow submission of final standards documents by the National Radio Systems’ Committee (NRSC), expected in the latter part of 2004.

NAB requests that the Commission now extend the Media Bureau’s approval of the use of separate antennas for FM IBOC signals to a Commission authorization, which

would dispense with the need to seek and renew Special Temporary Authorization (STA) for this purpose.

NAB submits that in the *Further Notice* the Commission itself establishes what should be the watchword for any policies it adopts concerning IBOC: flexibility. NAB endorses the Commission's tentative conclusion that a flexible IBOC service policy will enable radio broadcasters to serve the public with higher quality audio, as well as innovative supplemental services, and, in turn, better compete in the marketplace. As a result, a flexible IBOC service policy should expedite the transition to digital radio. NAB believes that Commission regulation of audio quality is unnecessary. Market forces similarly should dictate the digital services broadcasters provide, including secondary audio and data services. We also believe it is premature to determine whether there are certain datacast services that should be required, or how FCC rules governing secondary audio channel transmissions, subsidiary communications, or sponsorship identification should be amended to accommodate IBOC technology. In addition, any Commission effort to impose fees on ancillary IBOC services may chill the development of digital radio.

The significant commitment of radio broadcast stations to their local communities, evidenced by NAB's recent *National Report on Local Broadcasters' Community Service*, will only be enhanced by the deployment of digital radio services. Digital radio has the clear potential to increase the diversity of programming available to local communities, especially if secondary audio services prove commercially viable in the future, allowing more specialized programming options that appeal to more narrow or specific audiences, including minority groups, as well as the provision of local

information, including news, weather and traffic updates, and more PSAs. These additional services will follow the adoption of flexible service rules that permit innovation. At the very least, the Commission should not adopt any rules, including public interest requirements, which disincent radio broadcasters from offering new programs and service to consumers, particularly given terrestrial radio's need to compete freely against satellite radio. The Commission is well aware that innovation is best incubated in an unregulated or lightly regulated environment, and, while public interest obligations clearly apply to digital radio, the FCC should not inhibit the emergence of innovative new services by prematurely imposing specific additional obligations on services yet to develop, much less succeed.

The same public interest obligations that apply today to broadcasters' single analog service should continue to apply to a single high quality digital audio service. If IBOC stations transmit a main channel audio service with a secondary audio channel, then existing "broadcast type" public interest obligations generally should apply to those services. Otherwise, there are significant limitations on the Commission's authority to impose specific, content-related public interest requirements that are not expressly envisioned in the Communications Act.

Finally, NAB believes that RIAA's concerns about copy protection from indiscriminate recording and Internet redistribution from unencrypted digital radio broadcasts have not yet been established, nor has a technical protection system been developed and agreed to by various industry parties, as was the case with the "broadcast flag" for digital television. Thus, while the Commission may want to explore the rights

of digital audio content owners, NAB believes that this issue should not be permitted to slow down the permanent authorization and progress of digital radio.

NAB urges the Commission to act expeditiously to approve an open and flexible regulatory environment that will allow innovative digital services to be rolled-out and flourish.

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The FCC has issued a *Further Notice of Proposed Rulemaking* on final operational requirements, licensing and service rule changes for terrestrial digital audio broadcasting, as well as a *Notice of Inquiry* on copy protection issues.¹ The National Association of Broadcasters (“NAB”) hereby files comments in response to the *Further Notice* and responds to issues addressed therein,² such as final authorization of FM and AM digital operations, including nighttime AM digital service, policies relevant to the digital radio transition, the types of digital services offered, how the FCC’s existing public interest, programming and operational rules should be applied to digital radio, and formal technical standards and documentation of the chosen iBiquity Digital “HD Radio” AM and FM IBOC systems.

NAB urges the Commission promptly to endorse permanent authorization of IBOC service, which will provide the confidence for broadcasters and equipment manufacturers to continue to roll-out digital operations and products, for the benefit of

¹ *Further Notice of Proposed Rulemaking and Notice of Inquiry*, MM Docket No. 99-325, (rel. Apr. 20, 2004) (“*Further Notice*”).

² NAB serves and represents the American broadcast industry as a nonprofit, incorporated association of radio and television stations.

America's listening public and its free over-the-air radio broadcasters who seek to serve listeners and compete in an increasingly digital world.

I. Introduction And Overview.

In the *First Report and Order* in this proceeding,³ the FCC selected in-band, on-channel (IBOC) as the technology for AM and FM digital operations and iBiquity Digital Corporation's "HD Radio" IBOC AM and FM systems as the *de facto* transmission standard for AM and FM digital radio. In doing so, the Commission pointed to IBOC's dramatic improvement in digital audio quality, more robust transmission systems, and the advent of new auxiliary services, as well as the spectrum efficiency of IBOC systems that can accommodate digital operations for all existing AM and FM radio stations on their existing channels, with no additional allocation of spectrum.⁴ The Commission also pointed to the benefits of the "hybrid" nature of IBOC, whereby both the analog and digital signals are transmitted within the spectral mask of a single AM or FM channel, and the "backward and forward" compatibility allowing new IBOC radios to receive analog broadcasts from stations who have yet to convert and digital broadcasts from those who have converted, all the while preserving the ability of current radios to receive the analog portions of the "hybrid" broadcast.⁵ The Commission authorized interim FM and daytime AM IBOC operations, which broadcasters and other industry commenters wholeheartedly supported to pave the way for the introduction of digital radio by equipment makers, broadcasters and consumers.

³ *First Report and Order*, MM Docket No. 99-325, 17 FCC Rcd 19990 (2002).

⁴ *Id.* at ¶¶ 3, 32, *passim*.

⁵ *Further Notice* at ¶¶ 2, 3.

NAB applauds the Commission's expeditious authorization of interim IBOC operations, which has allowed for an initial rollout of digital signals and receivers. Today, there are over 300 stations licensed in over 100 markets. Two manufacturers have IBOC radios for sale, with another shipping IBOC radios to stores this month. What is needed now to provide certainty and confidence to manufacturers, broadcasters and consumers that IBOC is here to stay, is permanent authorization of IBOC service, including nighttime AM IBOC broadcasts.⁶ Permanent authorization of AM and FM IBOC operations will encourage further rollout of digital radio signals and receivers, as well as the development and introduction of innovative services and expanded programming options for the benefit of consumers. Radio broadcasters will finally be in a position to compete in a digital world, with digital audio quality and expanded, diverse formats and services. Consumers will be the beneficiaries.

iBiquity Digital's "HD Radio" IBOC technology and hybrid systems also contain the path to all-digital service, but importantly, permit a digital radio transition that can be governed by the marketplace and consumers, with no "loaned" spectrum to be reclaimed and no regulatory urgency to see a digital conversion completed. The marketplace nature of the digital radio transition will allow broadcasters to go digital and allow consumers to replace their existing radios at their own pace. Thus, as to the pace of the digital radio transition, the Commission can be confident that the marketplace will effectively facilitate the transition.

⁶ In March of this year, NAB formally recommended nighttime AM IBOC operations, with the belief that the benefits to be gained for AM broadcasters and AM listeners will "far outweigh the limited additional interference predicted by iBiquity's studies." Letter from Jack N. Goodman, Senior Vice President and General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, MM Docket No. 99-325 (filed Mar. 5, 2004) ("NAB March 5, 2004 Letter") at 1.

NAB supports the Commission's position regarding adoption of policies and procedures relating to the all-digital mode of IBOC operation and agrees that such actions would be premature in the absence of "comprehensive and impartial testing" of all-digital systems.⁷ However, it is important to recognize that, at this point in the digital transition, the all-digital mode is an integral part of the HD Radio system specification and that, according to iBiquity, the software iBiquity provides to its transmitter and receiver manufacturer licensees includes all-digital modes of operation. Consequently, when the time is ripe to consider use of the all-digital mode, consumers and broadcasters who have already invested in HD Radio equipment will not be disenfranchised and a smooth transition from the hybrid to the all-digital environment will be assured.

The Commission asks what policies would likely encourage radio stations to convert to HD Radio. First and foremost, NAB recommends that, in establishing rules for the terrestrial digital radio service, the Commission be careful not to disadvantage broadcasters who elect to implement digital transmissions, as compared to broadcasters continuing with only analog services. In particular NAB notes that broadcasters currently electing to implement ancillary services using FM subcarriers may do so with tremendous freedom and flexibility, being constrained only by rules regarding the (FM baseband) spectral occupancy and injection level of these subcarriers, rules which serve primarily to protect the analog main channel audio portion of the FM broadcast. Ancillary services implemented using the capabilities of IBOC digital radio should similarly be constrained only to the extent that such services might adversely impact the broadcaster's main

⁷ *Further Notice* at ¶ 15.

channel audio service. This approach to ancillary service regulation will foster its use and encourage innovation.⁸

Indeed, comments already filed in this matter suggest that ancillary services, most notably the availability of secondary audio channel (“SAC”) capability, offer the potential to be an important driving force in the near-term conversion of some broadcast facilities to digital.⁹ Not surprisingly, many of these comments are coming from public radio stations familiar with (and in some cases participants in) the work of NPR and its “Tomorrow Radio” project. These early comments suggest that the best way for the Commission to encourage stations to convert to HD Radio in the near term is to craft rules that allow for and encourage proliferation of innovative ancillary services.

NAB thus submits that the path to digital radio is chosen, the technology is proven and the time is ripe for the FCC to endorse IBOC digital radio by means of permanent authorization of IBOC service. The FCC has said it stands ready to act expeditiously with regard to digital radio,¹⁰ and to date it has done so. NAB urges the Commission to now act expeditiously to give its approval to an open and flexible

⁸ In their early-filed comments, Music Express Broadcasting Corporation of Northeast Ohio notes that “[t]he datacasting and multicasting features of the HD Radio system are digital upgrades to existing SCA services and should not give rise to a new class of fees that would unfairly burden the digital service for offerings that are analogous to current analog services.” Comments of Music Express Broadcasting Corporation of Northeast Ohio, MM Docket No. 99-325, (filed June 2, 2004), at 3.

⁹ See e.g., comments of The WOSU Stations which state that the “approval of final rules for multiplexed audio services will likely drive the digital conversion of our stations in Mansfield, Portsmouth, Coshocton and Marion.” Comments of The WOSU Stations, MM Docket No. 99-325 (filed June 1, 2004). See also the comments of Wyoming Public Radio stating: “Wyoming Public Radio would immediately implement a new and separate radio service for Wyoming citizens.” Comments of Wyoming Public Radio, MM Docket No. 99-325 (filed May 28, 2004).

¹⁰ *Notice of Proposed Rulemaking*, MM Docket No. 99-325, 15 FCC Rcd 1722, 1743-44 (1999).

regulatory environment that will see innovative digital services flourish and a smooth, seamless and gradual marketplace transition to a digital radio future begin in earnest.

II. The Commission Should Afford Maximum Flexibility to New IBOC Services.

In the *Further Notice*, the Commission itself establishes what should be the watchword for any policies it adopts concerning IBOC: flexibility. For example, the Commission notes the flexibility inherent in IBOC, such as the ability of radios with IBOC technology to operate both “backward and forward;” that is, to receive analog broadcasts from stations that have not yet converted to digital, and also digital broadcasts from stations that have converted.¹¹ Then, the Commission tentatively concludes that a flexible IBOC service policy will enable broadcasters to serve the public with higher quality audio, as well as innovative supplemental services, and in turn, better compete in the marketplace. As a result, a flexible IBOC service policy should expedite a conversion to digital radio. *Id.* at ¶ 18. NAB wholeheartedly endorses this approach.

The Commission queries whether it should adopt rules regarding the panoply of services that broadcasters will want to offer through IBOC technology, including “high definition” digital radio, secondary audio channels, datacasting, and subscription services. *Id.* at ¶¶ 19-29. The Commission seeks comment on whether it should require broadcasters to provide a minimum amount of high definition audio, and in this vein, how much capacity is needed for a station to broadcast a high quality digital signal along with other supplemental services. *Id.* at ¶ 19. The Commission also asks about the potential for interference when a station delivers multiple audio streams, and whether the

¹¹ *Further Notice* at ¶ 2 citing http://www.iBiquity.com/hdradio/hdradio_how.htm

availability of additional programming may spur public demand for digital radio receivers. *Id.* at ¶ 20.

From a practical and economic standpoint, the flexibility of a radio station using IBOC technology to divide its digital capacity in order to deliver a quality main audio stream along with a secondary audio channel is one of the key features of this technology likely to make it attractive to both broadcasters and consumers. Commission regulation in this area could chill the digital conversion by thwarting the ability of stations to leverage digital technology to meet consumer demands and generate ratings and revenues.

Radio stations must compete for consumers' attention with all the various media available today, including television, video games, movies, and the Internet. Moreover, as the Commission is well aware, terrestrial radio stations in the U.S. face new, direct competition from satellite radio providers XM and Sirius. As a result, radio stations are continuously exploring ways to enhance their appeal to listeners, with digital radio a major component of that endeavor. NAB thus asserts that Commission regulation of digital audio quality is unnecessary to motivate radio stations to maximize digital technology to best serve their audiences. Instead, the most suitable regulatory approach most likely is the one already established for secondary radio transmissions. Specifically, under the Commission's rules, "an AM broadcast station may use its AM carrier to transmit signals not audible on ordinary consumer receivers, for both broadcast and non-broadcast purposes . . . [if] such use does not disrupt or degrade the station's own programs or the programs of other broadcast stations."¹²

¹² 47 C.F.R. § 73.127(a).

This approach would sensibly allow market forces to dictate the digital services broadcasters provide. A broadcaster's decisions regarding audio quality and other services offered should turn on the fundamentals of individual stations, the format of a station, consumer demand and competition, rather than government mandate. Stations' business models for digital radio inevitably will vary. Some stations, such as those with jazz or classical music genres, may choose to focus their resources on promoting the highest quality audio signal, while others may want to implement and publicize multiple streams of news or weather or financial information. NAB submits that these are the kinds of decisions best left to consumer demand and the marketplace.¹³

For example, Wyoming Public Radio describes the relatively high costs to convert to digital radio service, but then states that "the promise of doubling the capacity for public service broadcasting via multiplexing . . . decisively tilts the cost-benefit ratio in favor of radio digital conversion." Specifically, Wyoming Radio intends to use a supplemental stream to deliver a new 24-hour classical music network for Wyoming citizens.¹⁴ Similarly, WOSU Stations of The Ohio State University is considering using its supplemental capacity to deliver programming aimed at currently underserved parts of

¹³ The Commission also seeks comment on local marketing agreements ("LMA") in the context of digital audio streams. *Further Notice* at ¶ 21. The Commission asks to what extent radio stations should be permitted to lease unused airtime to unaffiliated programmers, and how its current rules should apply in this context. Consistent with our position regarding secondary audio channels, NAB would support the extension of LMAs for digital stations, and sees no reason why the Commission's existing rules governing these relationships could not apply to digital service as they do today to analog radio. LMA-like agreements would further expand the opportunities for niche, innovative programming.

¹⁴ Comments of Wyoming Public Radio, MM Docket No. 99-325 (filed June 1, 2004).

its community, such as its large Somali immigrant community and other non-English speaking segments of its listening area.¹⁵

Commission restraints on main audio quality or additional services also would be premature and ill advised from a technical perspective. At present, the only real-world example of a secondary audio channel model is the “Tomorrow Radio Project” that National Public Radio has tested in conjunction with the engineering firm of Hammett & Edison. However, the only configuration tested by these parties consisted of a 64 kbps main channel audio signal and a 32 kbps secondary audio channel (SAC).¹⁶ Nothing in this test, however, suggests that other divisions of an IBOC station’s signal would not provide useful services.

Thus, with respect to audio quality, the Commission should refrain from dictating a particular number of bits that must be devoted to a station’s main channel audio. Reducing the bits available to main channel audio only will affect the quality of the host station’s offerings. It will not affect the signals of any other stations since scalability of a digital signal does not create an interference risk to other stations. NAB also believes that, at this early point in the digital radio transition, it is impossible to conclude with any measure of certainty the number of bits necessary to support a good quality main audio signal or how many secondary audio streams an IBOC radio station can transmit without causing interference or degrading audio quality.¹⁷ Moreover, given that interference to

¹⁵ Comments of WOSU Stations of The Ohio State University, MM Docket No. 99-235 (filed June 1, 2004).

¹⁶ See *Tomorrow Radio Field Testing in the Washington, D.C., New York City, San Francisco, and Los Angeles (Long Beach) Radio Markets*, National Public Radio (rel. Jan. 6, 2004) (supplemental audio programming test results); *Further Notice* at n. 42.

¹⁷ In this context the only interference issue raised is one of “self-interference;” that is, interference to a radio station’s “host” analog signal resulting from close proximity to

other stations will not present any problems, the Commission's technical justification for mandating a level of audio quality also may be uncertain. NAB thus urges the Commission to forebear from making conclusions in this regard, at least until the digital conversion is well under way and information is available that will enable the Commission to fully comprehend the consequences of any policies it may adopt.

The Commission in the *Further Notice* also asks how its general prohibition against an FM licensee's entering into an agreement to deliver its main channel programming to any particular subscriber should apply to digital secondary audio channel services.¹⁸ NAB believes that such services should be exempt. First, as discussed above, digital radio stations will need maximum flexibility to respond to new competitive pressures from satellite pay services. Enabling digital radio stations to enlist subscribers for secondary audio channel services will enhance stations' financial incentives to create diverse, innovative programming and services. Again, the Commission should permit the market to govern the development of secondary audio services. Second, in many respects, secondary audio service will be digitized upgrades of FM multiplexed subcarriers, which are currently exempt from the bar on subscription. Under the Commission's rules, FM licensees may contract with individuals to deliver subcarrier information,¹⁹ which are secondary services broadcasters currently transmit via an automatic subsidiary communications authorization ("SCA"), so long as certain

that same station's IBOC digital sidebands. Further, it is fair to assume that any "self-interference" due to secondary audio streams would only result from a broadcaster's decision to utilize one of the "extended hybrid" modes of operation, since the NRSC's evaluation of FM IBOC indicated that listeners should not perceive an impact on analog host reception due to "normal" hybrid FM IBOC operation, which is the only mode evaluated by the NRSC.

¹⁸ *Further Notice* at ¶ 22 citing 47 C.F.R. § 73.277.

¹⁹ 47 C.F.R. § 73.293.

transmission standards are satisfied.²⁰ Specifically, subcarrier channels are piggybacked on the “sideband” of an FM station’s broadcast signal without causing material degradation to the main channel quality.²¹ Subcarrier broadcasts are typically used to deliver alternate or supplemental services such as reading services for the blind or visually impaired, educational services, MUSAK, and data services (e.g., stock quotes, weather). Accordingly, additional audio services will closely parallel subcarrier programming both in terms of their technical relationship to a licensee’s main channel information and in their purpose. Therefore, such digital supplementary programming should be similarly exempt from the Commission’s prohibition against subscriber payment for its delivery. Treating secondary services like subcarrier programming for subscription purposes would be one more significant way the Commission could foster the growth of digital radio by enabling broadcasters to leverage IBOC technology to its fullest potential.

NAB agrees with the Commission that stations may want to provide data services through IBOC technology. In the *Further Notice*, the Commission notes that, like secondary audio programming, datacasting will be analogous to certain secondary information currently offered by broadcasters. The Commission also notes that iBiquity has developed first generation IBOC data services that will deliver enhanced information such as breaking news, traffic alerts, and listener controlled functions like the ability to pause or replay audio programming.²²

²⁰ 47 C.F.R. §§ 73.319 and 73.322.

²¹ See http://www.euonline.org/pub/iboc/appendix_j.pdf

²² *Further Notice* at ¶¶ 23-26.

NAB believes it is premature to determine whether there are certain datacast services that should be required,²³ or how FCC rules governing secondary audio channel transmissions, subsidiary communications, or sponsorship identification should be amended to accommodate IBOC technology.²⁴ However, as discussed above, it is not too early for the Commission generally to embrace a flexible, hands-off policy regarding the types and number of supplemental services a station may offer in a digital world. Datacasting services are still in the nascent stage, therefore the Commission's main goal at this time should be to encourage and enable broadcasters to innovate and experiment with these aspects of digital radio. Again, providing broadcasters flexibility in this area will help expedite the emergence of digital radio.

The Commission asks whether it should impose fees on ancillary services offered by IBOC broadcasters. *Further Notice* at ¶ 29. It should not. The Commission generally has not sought to impose fees on new services offered by existing licensees, viewing the availability of new services using existing spectrum resources as strongly serving the public interest.²⁵

As the Commission notes, the one exception to this policy is digital television, where subscription ancillary services are subject to a fee. This fee, however, was specifically mandated by Congress. 47 U.S.C. § 336(e). It is far from clear that the

²³ The Commission seeks comment on requiring that stations provide "enhanced emergency services" before they are allowed to offer other services. *Further Notice* at ¶ 27. NAB will comment on this proposal once these services are further defined.

²⁴ 47 C.F.R. §§ 73.127, 73.295 and 73.593; *Further Notice* at ¶ 27.

²⁵ See *Subsidiary Communications Authorizations*, 53 RR 2d 1519, 1523 (1983).

Commission, in the absence of a similar specific mandate, has the general authority to impose fee requirements on licensees.²⁶

Even if such authority might exist, it would be inappropriate to consider fees at this time since a fee requirement would have the effect of discouraging innovation. Whether consumer equipment able to receive ancillary services will become widespread, and whether subscription services that are fundamentally different from those that have been offered by radio broadcasters to date will become successful are unknown today. If new subscription services become viable, if these services appear to compete with services that use auctioned spectrum and if the Commission has authority to impose fees absent a statute, the question of whether fees should be placed on new IBOC ancillary services can be considered when the answers to these questions are clear.

III. Public Interest Obligations Clearly Apply to Digital Radio Audio Services.

A. The Deployment of Digital Radio Will Improve Broadcasters' Service to their Local Communities.

In 2003, broadcast stations contributed \$9.6 billion in community service nationwide.²⁷ Approximately \$7.3 billion of this amount consisted of the value of airtime that local radio and television stations contributed for public service announcements ("PSAs"). During 2003, the average radio and television station ran 195 and 143 PSAs per week, respectively, and 65% of the radio PSAs and 56% of the television PSAs pertained to local community issues, including health, education and safety issues, alcohol and drug abuse prevention, children's issues, poverty and homelessness, and

²⁶ Notably, other licensee fees, such as application and regulatory fees, are also imposed pursuant to specific statutory direction. *See* 47 U.S.C. §§ 158, 159.

²⁷ National Association of Broadcasters, *A National Report on Local Broadcasters' Community Service* at 2 (June 2004) ("*Community Service Report*").

many others. Additionally, 60% of all radio stations aired local public affairs programs of at least 30 minutes in length every week during 2003.²⁸

The value of local broadcasters' fundraising efforts for charitable causes or needy individuals was \$2.1 billion in 2003, during which 97% of local stations participated in such charitable activities. The average radio station that raised funds for charitable causes raised approximately \$95,000, while the average television station raised just over one million dollars. Local broadcasters in 2003 also raised about \$158 million for victims of natural disasters. *Id.* at 3, 5.

Broadcasters' charitable and related activities are, moreover, unique. When a broadcaster partners with a charitable or community organization, it offers not only dollars (like other corporate sponsors would), but also the opportunity for those organizations to speak directly to local communities and to forge connections within communities. Broadcasters provide charitable and other local and national organizations a voice in, and access to, local communities, thereby leveraging the fund raising, public awareness and educational efforts of literally thousands of these organizations across the country.²⁹

In addition, broadcasters serve their local communities – and indeed the nation – with innovative programs such as The AMBER Plan. Created in Dallas after the 1996 abduction and murder of nine-year-old Amber Hagerman, The AMBER Plan (America's Missing: Broadcast Emergency Response) is a voluntary partnership between law

²⁸ *Community Service Report* at 5-6.

²⁹ Many charitable and community organizations have explained the unique benefits that broadcasters offer to them, emphasizing the ability to speak to and educate the public. *See, e.g., Community Service Report* at 7-21 and 32-34 (numerous charitable, volunteer and community groups discuss the vital role that broadcasters play in aiding the missions of these groups).

enforcement agencies and broadcasters to issue urgent bulletins via the Emergency Alert System in the most serious child abduction cases. Currently there are 97 local, regional and statewide AMBER plans in the nation, and, to date, these plans have been credited with successfully recovering 134 children. Broadcasters are justly proud of this record of public service to their local communities.

This significant commitment of broadcast stations to their local communities will only be enhanced by the deployment of digital radio services. Digital radio should enrich service to local listeners through vastly improved sound quality, the choice of secondary audio streams, and other services, including data. Digital radio has the clear potential to increase the diversity of programming available to local communities, especially if secondary audio services prove commercially viable in the future.³⁰ Secondary audio services could increase the number and variety of programming choices, and will allow broadcasters to provide more specialized programming options that appeal to more narrow or specific audiences, including minority groups.³¹ In addition, secondary audio capability should increase the need of stations for programming, thereby producing new opportunities for program providers, including members of minority groups or women.³²

³⁰ *Further Notice* at ¶ 20 (inquiring how secondary audio services could further FCC's diversity goals).

³¹ For example, Spanish language programming could be provided on secondary audio channels in radio markets with limited Spanish-speaking populations where it has been economically infeasible for stations to devote their sole analog programming stream to Spanish language fare. Digital television stations are already actively exploring the multicasting of Spanish language streams. *See, e.g.*, Decl. of Jim Keelor of Liberty Corp., Exhibit E to Special Submission of NBC Television Affiliates Association in CS Docket No. 98-120 (filed Jan. 8, 2004).

³² For example, in the digital television context, minority groups have contended that the expansion of available airtime through multicasting will eliminate "the major impediment to programmers' ability to reach minority and other non-mass-market" consumers. *Ex Parte* Submission of Black Education Network, CS Docket No. 98-120 (filed Jan. 28,

And obviously the expansion of available airtime through secondary audio services would enable radio broadcasters to air even greater numbers of PSAs than they already do, including those pertaining to local community issues.

As the *Further Notice* also emphasized, localism has been a core concern of the Commission since the inception of broadcasting. *Id.* at ¶ 34. If secondary audio services ultimately prove viable, digital radio should enable broadcasters to offer increased local programming, including political, to listeners. Airing supplemental audio programming streams would allow digital radio broadcasters to offer greater coverage of local news and events. Secondary audio services could allow radio stations to continue airing music on one audio stream and broadcast news, information and/or talk on a second stream. Some have suggested that radio stations might be particularly interested in using a second audio stream to provide continual weather and traffic updates. Auxiliary capabilities should create opportunities for additional election and political coverage, especially as part of a news and informational audio stream.

In sum, the most important task for the Commission in addressing the public interest obligations of radio broadcasters in a digital environment will be the adoption of flexible service rules that promote broadcasters' provision of new and innovative radio services, including secondary audio services and perhaps non-audio services as well. Especially if supplemental audio services ultimately succeed in the marketplace, then an increase in the number and diversity of services and programs, including news and information, available to local listeners will ineluctably follow. At the very least, the Commission should not adopt any rules, including public interest requirements, which

2004) at 2. Secondary audio channels should offer similar benefits for radio program providers whose offerings focus on minority or niche audiences.

would reduce incentives of radio broadcasters to offer new programs and services to consumers. The Commission has noted that the terrestrial broadcast industry is under assault, and thus a fully successful transition to digital radio should “enable terrestrial radio broadcasters to better compete” with other service providers including “satellite radio.”³³ And, after all, it is only competitively viable radio stations that can truly serve the public interest and effectively contribute to diversity in local markets.³⁴

B. Public Interest Obligations Clearly Apply to Digital Radio, but the FCC Should Not Inhibit the Emergence of Innovative New Services by Imposing Specific Additional Obligations on Those Services Until They Are Developed.

The Commission is well aware that innovation is best incubated in an unregulated or lightly regulated environment.³⁵ Through digital radio, broadcasters will potentially be able to choose from a variety of digital services: a single high quality audio service, complete with auxiliary services such as data, some of which may be offered on a subscription basis, or a higher quality main channel audio service with secondary audio channel (SAC) programming possibilities, and also including supplemental data services. The public interest obligations applying to these various services will necessarily differ because the type of obligations imposed should reflect the type of services provided. The Commission will therefore have difficulty in tailoring appropriate and cost-effective public interest requirements for radio broadcasters during this formative stage of digital radio’s development, while it is still unclear which types of digital services will even be

³³ *Further Notice* at ¶ 16.

³⁴ *See Report and Order, Revision of Radio Rules and Policies*, MM Docket No. 91-140, 7 FCC Rcd 2755, 2760 (1992) (“The [radio] industry’s ability to function in the ‘public interest, convenience and necessity’ is fundamentally premised on its economic viability.”).

³⁵ *See, e.g., Notice of Proposed Rule Making* in CC Docket No. 02-33, FCC 02-42 at ¶ 5 (*rel.* Feb. 15, 2002).

offered, much less which will ultimately succeed in the marketplace. At this preliminary stage of digital radio's development, NAB offers the following general suggestions about the public interest obligations that should attach to the various types of services that radio broadcasters might offer in a digital environment.

If radio stations utilize IBOC digital radio to transmit a single high quality audio service, then the same public interest obligations that apply today to broadcasters' single analog audio service should continue to apply. As the Commission explained in the *Further Notice*, the "current public interest rules" were developed for broadcasters airing a "single, analog audio programming service,"³⁶ and should, in our view, apply to a single, high quality audio programming service. The mere transmission of a hybrid digital/analog signal, rather than an analog signal, simply provides no basis for altering radio broadcasters' well-established public interest obligations.

If radio stations use IBOC digital radio to transmit a main channel audio service with a secondary audio channel, then existing "broadcast type" public interest obligations generally should apply to those services. For example, the political broadcasting requirements of Section 312 and 315 of the Communications Act should apply to every free over-the-air audio program service broadcast by radio stations.³⁷

It is, however, premature for the Commission to impose more specific or additional public interest obligations on secondary audio services that have yet to develop or prove viable in the marketplace. The Commission would be better able to formulate appropriate public interest requirements for secondary audio services if such rules

³⁶ *Further Notice* at ¶ 31.

³⁷ *Id.* at ¶ 36 (inquiring how the political broadcasting rules should apply in digital radio context).

reflected the actual services offered by broadcasters. Rules adopted in a vacuum based only on speculative assumptions about the types of services that might ultimately be offered could, in the end, be inappropriate for the services that actually succeed in the marketplace.

Indeed, it as yet remains unknown whether secondary audio channel services will be viable commercially. A secondary audio service might in fact only divide a station's existing audience, rather than increase it, in which case advertising-supported secondary audio programming would have no additional revenue producing potential and might increase broadcasters' programming costs. Even more significantly, it currently remains unclear how many stations will ultimately air a secondary audio channel on a regular basis, because not all receivers -- even the new HD Radio receivers -- will be capable of receiving SAC.³⁸ The capability to receive SAC will be an "extra" capability that must be added to HD Radio receivers, and it will entail extra costs for the manufacturers in the form of additional software and hardware in the receivers. Manufacturers therefore may or may not choose to add this capability to some or all of the digital receivers they will produce in the future. And if many, or even some, of the new HD Radio receivers available for consumers to purchase are incapable of receiving SAC signals, then secondary audio options may not become widespread or even commercially viable for most radio stations. The Commission should first observe whether and how secondary audio services develop in the marketplace, and then formulate specific or additional public interest obligations for these services.

³⁸ Clearly, the hundreds of millions of analog radio receivers being used today are not capable of receiving a secondary audio channel.

There are also significant limitations on the Commission’s authority to impose on broadcasters airing secondary audio services specific, content-related public interest requirements (such as those discussed in the *Further Notice*), which are not expressly envisioned in the Communications Act.³⁹ In *Motion Picture Association of America, Inc. v. FCC*, 309 F.3d 796, 802-803 (D.C. Cir. 2002), the D.C. Circuit Court of Appeals found that no provision of the Communications Act (including § 1) authorized the Commission to adopt video description requirements for television broadcasters because such regulations “significantly implicate[d] program content.” The Court explained that the “general provisions of § 1 have not been construed to go so far as to authorize the FCC to regulate program content” in order to “avoid potential First Amendment issues.” *Id.* at 805. The Court also noted that “Congress has been scrupulously clear when it intends to delegate authority to the FCC to address areas significantly implicating program content.” *Id.* (citing statutory sections explicitly authorizing the FCC to regulate indecent programming and the “equal opportunity” provision of air time to political candidates).

Thus, while there is no doubt that broadcasters must serve the public interest, and that the Commission can require them to show they have done so, the Commission’s authority – in the absence of an explicit congressional authorization – to prescribe specific public interest requirements “significantly implicating program content,” such as those additional obligations discussed in ¶ 34 of the *Further Notice*, is very much in doubt. *MPAA v. FCC*, 309 F.3d at 806-807 (concluding that the FCC’s general powers

³⁹ See *Further Notice* at ¶ 34 (inquiring whether radio stations that have converted to IBOC should be required to air “local” programming, including specifically “news or other public affairs programming,” on some or all of their audio streams).

under Sections 1, 4(i) and 303(r) did not authorize the Commission to adopt video description rules because those rules were “about program content”).⁴⁰

Beyond offering secondary audio services, IBOC will additionally enable broadcasters to provide data or other non-audio program services, perhaps on a subscription basis. As discussed above in connection with secondary audio services, it may well be premature to develop detailed public interest obligations for non-audio and/or subscription services that have yet to develop or prove viable in the marketplace. The Commission, moreover, should refrain from reflexively imposing all the “broadcast type” public interest obligations on non-audio IBOC services simply because those services are offered by a broadcast licensee. Many of the traditional broadcast public interest requirements (such as the political broadcasting rules) simply are inapposite to specialized data or other non-program services. And because the public interest obligations attaching to any service should follow from the characteristics of the service (rather than from the identity of the provider), the obligations applying to a data or other non-audio service offered by a IBOC broadcaster should be comparable to the obligations applying to any similar data services offered by other licensees, whether or not those licensees also provide broadcast services. This approach roughly equalizing regulatory treatment between comparable services, such as data, would clearly encourage broadcasters to develop new, innovative non-audio services for the benefit of consumers.⁴¹

⁴⁰ See also *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 650 (1994) (“FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations”).

⁴¹ The FCC has previously emphasized the importance of “like services be[ing] treated equally.” *First Report and Order*, BC Docket No. 82-536, 53 RR 2d 1519 at ¶ 20 (1983).

With regard to subscription services specifically, NAB notes that the Commission has in the past declined to impose traditional “broadcast type” public interest obligations on subscription services (including video and audio program services), especially when those services are first developing. Indeed, in 1987, the Commission expressly determined that subscription video services are *not* broadcasting services subject to Title III broadcasting obligations, including the political broadcasting rules.⁴² The Commission has also declined to impose traditional broadcast regulations on subscription services carried on FM subcarrier frequencies, such as background music programs.⁴³ Consistent with these previous decisions, the Commission should refrain from applying the various “broadcast type” public interest requirements to IBOC radio subscription services, at least until those services, if any, have matured sufficiently so that

When expanding broadcast licensees’ authorized uses of their FM subchannels to include nonbroadcast as well as broadcast uses, the FCC determined that it would treat “FM subchannels used for non-broadcast related communications” (such as paging, dispatching and data distribution) in the “same manner, with all the same benefits, obligations and responsibilities as the [nonbroadcast licensee] providers of similar services.” *Id.* Thus, the FCC has already recognized the “equity” of treating data and other nonbroadcast services offered by broadcast licensees “in the same manner” as “similar services” offered by nonbroadcast licensees, such as “common carrier” or “private radio” licensees. *Id.*

⁴² See *In the Matter of Subscription Video*, 2 FCC Rcd 1001 (1987), *aff’d*, *Nat’l Assoc. for Better Broadcasting v. FCC*, 849 F.2d 665 (D.C. Cir. 1988). And even where Congress has expressly authorized the FCC to apply public interest requirements to a subscription video service such as Direct Broadcast Satellite (*see* 47 U.S.C. § 335(a)), the Commission has chosen not to exercise this authority on an immature industry, but has instead waited to see how the industry developed before imposing public interest obligations. See *Report and Order*, MM Docket No. 93-25, 13 FCC Rcd 23254, 23279-80 (1998) (declining to impose public interest requirements on DBS) and *Second Order on Reconsideration of First Report and Order*, MM Docket No. 93-25, FCC 04-44 at ¶ 28 (*rel.* March 25, 2004) (finding that “the DBS industry has matured and expanded” in ways that “warrant[ed] imposing more detailed public interest rules”).

⁴³ See *KMLA Broadcasting Corp. v. Twentieth Century Cigarette Vendors Corp.*, 264 F. Supp. 35, 42 (C.D. Cal. 1967).

appropriately tailored and cost-effective rules can be formulated.⁴⁴ The Commission should also be reluctant to impose on broadcasters offering subscription audio services any public interest requirements more expansive and burdensome than those imposed on competitors, such as SDARS licensees, offering comparable subscription audio services.⁴⁵ Unequal regulatory burdens are not only fundamentally unfair, but would also deter broadcasters from offering innovative subscription audio services to consumers.

IV. EAS Functionality Is Appropriate Under Certain Conditions, But It Is Premature To Mandate Updated EAS Decoders At This Time.

The Commission also tentatively concludes that its rules governing the Emergency Alert System (“EAS”) should apply to all audio streams broadcast by a digital radio station, and seeks comment on the relative costs to stations of having to update or replace their existing EAS decoders, as needed.⁴⁶ As a preliminary matter, NAB recognizes that EAS is a vital link between government authorities and the public. We also note that one of the benefits of introducing digital radio broadcasting using IBOC technology is that EAS functionality will be fully preserved during the transition to digital radio, and with minimum disruption to all parties involved. This is because the primary mechanism for transmission of EAS information, the analog radio signal, continues to exist as a fundamental part of the hybrid IBOC signal. Consequently, during the portion of the digital transition where all-digital broadcasts are not yet authorized, all

⁴⁴ See *Report and Order* in MM Docket No. 93-25, 13 FCC Rcd at 23280 (because further public interest obligations would be “burdensome at this time and could prevent [DBS] from realizing its potential,” FCC declined to impose these obligations on “young” DBS industry, but determined to wait and “see how DBS serves the public” as it “matures”).

⁴⁵ SDARS licensees are only required to comply with the FCC’s equal employment opportunity and political broadcasting rules. See *Report and Order*, IB Docket No. 95-91 and GEN Docket No. 90-357, 12 FCC Rcd 5754, 5791-92 (1997).

⁴⁶ *Further Notice* at ¶¶ 37-38 citing 47 C.F.R. § 73.1250.

equipment currently being used by public safety officials and by broadcasters for the EAS will continue to be sufficient for support of such services. Therefore, NAB believes that any questions regarding the updating or replacement of EAS decoders that may be necessary for digital radio can be set aside until a future, more timely inquiry by the Commission into the many unanswered questions concerning the regulation of all-digital terrestrial radio broadcasting.

As for EAS accessibility, NAB supports the Commission's tentative conclusion that EAS signals be carried on the main audio channel portion of the digital audio stream; otherwise, listeners using IBOC receivers would receive EAS alerts only if they were in a weak signal (or otherwise reception impaired) area where the receiver had "blended to analog." Further, we believe that it is appropriate in certain circumstances to require EAS functionality on certain types of secondary audio services. As described in the comments of various non-commercial stations, it is possible that some secondary audio channels may evolve into genuine alternatives to a station's main audio channel programming, such that mandating EAS availability on these channels would be proper. At the same time, however, some supplementary services may deliver more focused programming, or data, or perhaps be made available only to subscribers, on which EAS information may not be suitable. Accordingly, NAB believes that the Commission should require EAS functionality on secondary audio services intended for the general public, but at this time not extend this requirement to other services.⁴⁷

⁴⁷ The Commission also seeks comment on how to apply its station call identification rules in a digital world. *Further Notice* at ¶ 39. NAB believes that, like today, a station's required identifying information (*e.g.*, call sign and city) should be announced at the top of every hour on every audio channel provided by the station.

V. The Commission Should Provide Final Authorization For AM And FM IBOC Operations And Streamline Initiation Of Further Operating Improvements.

The *First Report and Order* in this proceeding concluded that, on the basis of extensive evaluations by the National Radio Systems' Committee of laboratory and field tests of both the FM and AM systems, iBiquity's AM and FM IBOC systems offer "enhanced audio fidelity and increased robustness to interference and other signal impairments, [and that] coverage for both systems would be at least comparable to analog coverage."⁴⁸ As to FM IBOC and daytime AM IBOC operation, the Commission agreed that "the potential for new interference from IBOC operations is insignificant when compared with the advantages and opportunities inherent in this digital technology." *Id.* On these bases, the Commission authorized interim FM and daytime AM IBOC operations to commence by use of a notification procedure.

NAB suggests that, on these same bases and conclusions, the Commission should now approve final authorization of FM and AM IBOC service, which should also include AM nighttime IBOC service, as recommended by NAB in its March 5, 2004 letter to the Commission.⁴⁹

As indicated in NAB's letter, NAB supports expansion of the interim authorization of AM IBOC to nighttime hours. We here extend those recommendations for permanent authorization of AM nighttime IBOC service. NAB believes that the benefits to be gained for AM broadcasters and AM listeners will prove to far outweigh the limited additional interference to AM analog service predicted by iBiquity's studies which demonstrated the IBOC system can be expected to provide digital service at night

⁴⁸ *First Report and Order* at ¶ 32.

⁴⁹ See NAB March 5, 2004 Letter.

to the core market served by existing analog AM broadcasts.⁵⁰ The results also showed that, in the majority of circumstances, any interference to existing groundwave analog broadcasts will occur at the edge of coverage and is not expected to impact a station's core listenership.

Specifically, iBiquity studies confirmed that for most AM stations, existing levels of analog co-channel interference are the limiting factors in AM nighttime coverage. For these stations, the levels of co-channel interference exceed the levels of IBOC interference and mask the IBOC signal. iBiquity found this masking to be most apparent for Class C channels; introduction of IBOC on adjacent channels was found to have little impact on the already constricted service areas of those stations.

For Class A stations, the iBiquity studies portray a somewhat different situation. Class A stations lack significant co-channel interferers, so there is limited potential to mask IBOC interference. However, Class A stations generally are adjacent to other Class A stations. As a result, there may be only one or two adjacent channel stations introducing IBOC interference to a Class A station.

Where stations with large coverage areas are adjacent to crowded local channels, the iBiquity studies found the introduction of IBOC on all the local stations would increase the noise floor and impact the large coverage area of the adjacent channel

⁵⁰ NAB's request for expansion of AM IBOC service was supported by technical propagation studies performed by iBiquity on AM nighttime service as well as on field testing done by iBiquity to characterize the interaction of AM IBOC digital signals with AM analog signals. See "AM Nighttime Compatibility Study," iBiquity Digital Corporation, May 23, 2003; "Field Report AM Nighttime Compatibility," iBiquity Digital Corporation, October 31, 2003; and, "Field Report AM Nighttime Performance," iBiquity Digital Corporation, October 20, 2003.

station. Even under this scenario, however, the impact is on the outer coverage area rather than in an area of core listenership.

Thus, while the impact on analog service from AM nighttime IBOC service is not as benign or predictable as the corresponding impact from FM IBOC or AM daytime IBOC, the improvement in local AM service would seem to be well worth the limited tradeoffs.⁵¹ AM IBOC promises to revitalize the AM service, which has suffered tremendously from a difficult RF environment, a high level of interference from various sources, limited receiver performance and lack of effective stereo operations. But to become a truly vibrant service, AM IBOC requires full daytime/nighttime operation, which will permit the introduction of new formats, notably music formats, as well as auxiliary data services. NAB thus urges the FCC to allow all AM stations to implement IBOC service at night without prior authority and on a permanent basis, but with the continued proviso that unexpected instances of interference to stations' primary nighttime analog service areas beyond that predicted in the studies will be addressed by the Commission.

NAB also requests that the Commission authorize the use of separate antennas for FM IBOC signals without the need to seek and renew Special Temporary Authorization (STA) for this purpose. On the basis of a report submitted by NAB,⁵² the FCC last

⁵¹ The NAB Radio Board's recommendations in the NAB March 5, 2004 Letter at 4, as well as the conclusions of the NAB Ad-hoc Technical Group on AM IBOC Nighttime Performance discussed therein, included that "[i]n the event that there are reductions in stations' primary nighttime analog service areas beyond those predicted by the studies, the FCC should take steps to address those problems."

⁵² See *Supra* note 50.

March approved the use of separate antennas to implement FM IBOC,⁵³ and approved as well the parameters suggested by NAB for such use. The use of separate antennas in many instances will result in reduced implementation costs, which, in turn, should provide an incentive for broader and swifter broadcaster adoption of IBOC. NAB urges the Commission to extend the Media Bureau's approval of the use of separate antennas on a blanket basis, and dispense with the need for STAs for this purpose.

Similarly, as broadcasters and equipment manufacturers continue to gain experience with IBOC there will undoubtedly be new innovations and new ways found to implement an IBOC facility.⁵⁴ NAB encourages the Commission to grant delegated authority to the Media Bureau to consider and, when appropriate, approve on a blanket basis new transmission techniques and apparatus that will enable broadcasters to bring the benefits of IBOC technology to the listening public in more efficient and/or cost-effective ways, further expediting the digital transition and providing additional incentives to initiate IBOC.

VI. Other Technical Matters

The Commission in the *Further Notice* raises other technical matters and NAB here comments on several specific points.

⁵³ *Use of Separate Antennas to Initiate Digital FM Transmissions Approved*, FCC Public Notice, DA 04-712 (*rel.* Mar. 17, 2004).

⁵⁴ For example, Harris Corporation recently announced yet another innovative approach to IBOC transmission they call Split-Level Combining which according to Harris "can reduce a station's power costs by 5 to 25 percent compared to the high-level method," and "enables stations to continue using existing FM analog transmitters that are already operating near peak capacity." *'Split-Level' Combining Said to Reduce FM Power Costs*, Radio World Online, *available at* <http://www.rwonline.com/dailynews/one.php?id=5297>, (posted June 2, 2004).

AM Stereo

Given that AM IBOC technology is incompatible with the method of analog AM stereo specified by the FCC rules, NAB urges the Commission to relax the requirement that AM broadcasters operating in the expanded band must offer AM stereo transmissions. At this point in time, requiring an AM broadcaster who, for example, is just now commencing operation in the expanded band to support AM stereo disadvantages that broadcaster and is a hindrance to the rapid transition to IBOC technology by all broadcasters. NAB thus urges the Commission to eliminate this requirement completely, or do so for stations in the expanded band that implement IBOC.

FM Boosters

IBOC technology offers broadcasters an opportunity to provide service within their existing coverage area in terrain-obstructed regions that currently experience little or no service through the use of on-channel digital boosters. In this context, a digital booster refers to a low-power transmission facility, operating on the same frequency as a station's main signal and located within the station's protected contour, but transmitting only the digital sideband portions of a hybrid IBOC signal (i.e. no host analog signal).

Currently, a broadcaster may have one or more terrain-obstructed areas that cannot be served by analog boosters due to the fact that even though the main signal experiences significant blockage (thereby preventing reliable reception), there is still enough main signal energy available to cause unacceptable interference to a booster service. An IBOC signal's digital carriers, by contrast, are still viable in such a reception environment since they utilize Orthogonal Frequency Division Multiplexing (OFDM) modulation which is particularly robust under these conditions, and consequently it may

be possible to bring coverage to these areas using digital boosters. While it may be premature at this stage to consider specific rules regarding the use of digital boosters, NAB encourages the Commission to provide broadcasters the flexibility to enhance their digital service by means of FM digital boosters on the basis of individualized applications.

Standards

Commission adoption of technical transmission standards for IBOC digital radio is important for certainty within the radio broadcast service, for both broadcasters and the consumer electronics industry. This is true both in the near term, as the transition to digital radio commences, as well as for the long-term evolution and maturation of this new service. Commission adoption of an industry-developed standard is the clearest, most practical and technically fruitful path to achieving a Commission IBOC technical standard.

NAB is actively involved in the development of open, voluntary industry standards for IBOC through its co-sponsorship of and participation in the National Radio Systems Committee (NRSC).⁵⁵ Throughout the long history of IBOC technology development, the NRSC has been involved in the testing and evaluation of AM and FM IBOC systems and as a result has a wealth and depth of experience and knowledge regarding IBOC unmatched by any other standards-setting body and making it the ideal forum for IBOC standards development. The NRSC's Digital Audio Broadcasting Subcommittee is currently guided by the following objectives (as adopted by the Subcommittee on 1/9/03):

⁵⁵ NAB co-sponsors the NRSC along with the Consumer Electronics Association (CEA). Additional information about the NRSC is available at <http://www.nrscstandards.org>.

- (a) To develop formal NRSC standards that will furnish broadcasters and manufacturers of both broadcast and receiver equipment with a complete and open transmission and reception specification of the AM and FM IBOC systems, providing a clear path for the prompt adoption of this technology and ensuring that all IBOC equipment will be suitable for the hybrid, extended hybrid and all-digital modes of the IBOC system; and
- (b) to provide the FCC with an industry developed and supported standard that will aid in establishing final rules for the implementation of IBOC technology in a manner that will best serve the public interest.

In pursuit of these objectives, the Subcommittee's IBOC Standards Development Working Group (ISDWG) is working diligently with the industry and with iBiquity Digital Corporation to craft FM and AM IBOC standards documents that, when complete, in NAB's view, should form the basis for many of the Commission's detailed technical rules governing the transmission of IBOC digital radio. The initial NRSC IBOC standards are expected to be completed in the latter part of 2004 and will be provided to the Commission for its consideration in conjunction with developing final technical rules for IBOC digital radio.

VII. Notice Of Inquiry

In the *Notice of Inquiry* ("NOI") issued with the *Further Notice*, the Commission seeks comment on concerns raised by the Recording Industry Association of America ("RIAA") involving the possibility of indiscriminate recording and Internet redistribution of musical recordings that are part of digital radio broadcasts.⁵⁶ The Commission notes that future advanced digital devices may, for example, enable users to automatically search for and record the product of a particular artist or group. RIAA asserts that

⁵⁶ *Further Notice* at ¶ 67 citing Letter from Theodore Frank, Counsel for RIAA, to Mary Beth Murphy, Chief, Policy Division, Media Bureau, FCC, dated Oct. 2, 2003 ("RIAA Letter").

launching digital radio broadcasting without encryption measures will allow consumers to “exploit” recorded music in ways that may violate the intellectual property interests of recording artists and labels.⁵⁷ The Commission thus asks to what extent it should be concerned with this potential problem.

At this point in time, RIAA has failed to demonstrate either a right to protection, or a technical system to provide the protection it asserts as necessary. Specifically, RIAA has yet to cite any content owner right to prevent or condition the use of audio content delivered via free, over-the-air terrestrial broadcast services. This has prompted some parties to question the Commission’s jurisdiction to act. Moreover, achieving a broad industry consensus on the technical parameters of such a protection scheme would not be such a simple matter.

While the Commission well may want to explore the rights of digital audio content owners in this context, this issue must not be permitted to slow down the permanent authorization and progress of digital radio. Any copy protection mechanism required by the FCC should apply only to later-produced IBOC receivers on a schedule that would not disrupt the rollout of IBOC receivers. Any steps the Commission were to take at this point with respect to RIAA’s proposal would be based largely on speculative and unsubstantiated concerns, and could endanger the current momentum towards conversion to digital radio. Accordingly, NAB urges the Commission to proceed on this topic on a track separate from its consideration of the permanent authorization of the digital radio service.

⁵⁷ RIAA Letter at 2.

VIII. Conclusion

For the foregoing reasons, NAB urges the Commission to promptly endorse permanent authorization of AM and FM IBOC service and to adopt policies that provide broadcasters the maximum flexibility to implement digital radio to best serve the interests of American consumers. The Commission should act expeditiously to approve an open and flexible regulatory environment that will allow innovative digital services to flourish.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**



Marsha J. MacBride
Jack N. Goodman
Valerie Schulte
Jerianne Timmerman
Larry Walke

1771 N Street, NW
Washington, D.C. 20036
(202) 429-5430

Lynn Claudy
John Marino
David H. Layer
NAB Science and Technology

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