

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

REPLY COMMENTS OF NATIONAL PUBLIC RADIO, INC.

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Summary

The record in this proceeding establishes the technical feasibility and public interest benefits inherent in multicasting audio program services, as well as overwhelming support for multicasting among broadcasters, related industry segments, and others. Indeed, a significant number of noncommercial stations ("NCE") stations have not only endorsed multicasting, they have proposed specific audio program services that promise to serve historically underserved audiences. The limited opposition to multicasting is misinformed about the technology, the purposes of DAB, and the applicability of the Commission's rules. Accordingly, we think the Commission's path is clear: it should immediately authorize stations to commence multicasting without requiring individual or other special licensing processing.

Just as important, the service rules the Commission adopts should provide broadcasters, and inherently local NCE broadcasters in particular, with substantial flexibility to determine the needs of their communities and develop the services that will best serve those needs. As in the case of multicasting, the call for regulatory flexibility was broadly sounded by broadcasters, receiver and transmission equipment manufacturers, iBiquity itself, and other, non-broadcast industry parties. With respect to specific regulatory proposals, the commenters overwhelmingly agreed there is no need to require a minimum amount of "high definition" audio or for the Commission to specify channel data rates for audio or data services. Likewise, the Commission should continue its longstanding forbearance from content regulation and not mandate specific amounts of "local" programming. Nor should the Commission mandate separate call signs for supplemental audio services, prohibit leasing of digital capacity or, in general, adopt new rules or modify existing ones absent a compelling justification.

We appreciate the concern expressed by radio reading services regarding the digital transition for such services. Enabling off-the-shelf radios to receive radio reading services would facilitate the use and availability of these important, life-line services. Toward that end, NPR, with financial support from the Corporation for Public Broadcasting ("CPB"), is leading an effort to develop the extended hybrid capabilities of the iBiquity technology so that such services might be made more freely available. Working with reading service representatives, NPR will also evaluate a variety of digital audio codecs. We expect to report to the Commission on this testing in the next 2-3 months. Until we have had an opportunity to conduct this testing, we urge the Commission to defer promulgating new regulatory requirements applicable to the digital transmission of radio reading services.

The Commission should reject the extreme regulatory proposals advocated by the Public Interest Coalition. These comments are predicated on a flawed understanding of existing legal requirements, the iBiquity technology, and the DAB transition, and ignore the fundamentally local character of NCE broadcasting. Adoption of these regulatory proposals would deter rather than encourage the important services, including multicasting, that the digital technology enables.

Consistent with the Communications Act and past Commission precedent, the Commission should authorize NCE stations to offer remunerative services without having to pay spectrum fees. Given important safeguards that will continue to ensure the commitment of NCE stations to local service, remunerative services are likely to provide a limited, but important, source of private funding, further diversifying the revenue mix of NCE stations. There is no authority or support for the imposition of spectrum fees, but, in the event the Commission adopts such fees, it should exempt NCE broadcasters, given longstanding exemptions from other regulatory fees.

Restricting NCE radio station activities based on the Commission's approach to NCE digital television ("DTV") stations, as two commenters recommended, ignores the more exacting regulatory mandate that has long applied to NCE television broadcasting. Given the more limited opportunities inherent in the in-band, on-channel approach to DAB, moreover, requiring NCE stations to reserve a "substantial majority" of their entire digital capacity would substantially limit stations' ability to determine the appropriate mix of services based on the needs of their communities. Accordingly, the Commission should specify the appropriate service outcome -- a digital NCE service of equal or greater quality to the free over-the-air NCE analog broadcast service -- without specifying an amount of the digital bitstream required to provide the NCE service.

Finally, the Commission should carefully consider changes to its technical rules and withhold action on digital audio content controls as premature at this time. The Commission should not simply extend the existing television Channel 6 rules to DAB, but should examine the continuing need for even the existing rules. NPR and others support the use of digital booster and translator facilities as important adjuncts to primary, local service, but the Commission should not require stations to convert all existing translators as a condition of converting a licensee's primary station, and it should not impose distance or other limitations on translator stations without first affording potentially affected parties an opportunity to comment on specific proposed limits. In response to comments raised about potential interference associated with short-spaced or superpowered FM stations, we encourage the Commission to monitor such matters closely and facilitate efforts by all stations to resolve instances of interference, but we believe a categorical approach, such as requiring all such stations to operate with reduced digital power, is unwarranted at this time.

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To: The Commission

Reply Comments of National Public Radio, Inc.

Introduction

Pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. (“NPR”) hereby responds to the comments filed in response to the Commission's Further Notice of Proposed Rulemaking and Notice of Inquiry in the above-captioned proceeding.¹

¹ In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, Further Notice of Proposed Rulemaking and Notice of Inquiry, MM Docket 99-325, rel. Apr. 20, 2004 [hereinafter "FNPRM/NOI"]. Unless otherwise indicated, all citations to comments are to comments filed in this proceeding in response to the FNPRM/NOI.

I. The Record Overwhelmingly Supports The Immediate Authorization of Multicasting

In NPR's initial comments, we established the twin underpinnings to authorizing all stations to broadcast multiple audio program streams. First, based on extensive testing conducted by NPR and others, the IBOC digital bitstream can be split to produce two robust signals possessing a sound quality between CD and current FM radio without generating interference to the host analog signal or any authorized adjacent signals.² Second, not only does multicasting work as a technical matter, it promises to advance the Commission's longstanding objective of localism³ by giving local stations the additional capacity to provide additional audio services to underserved audiences within their communities.⁴

In reviewing the comments submitted in response to the FNPRM/NOI, we are gratified by the overwhelming response in favor of the immediate authorization of audio multicasting. Although the public interest benefits of multicasting have been plain for us to see, we could not have predicted such unanimity among commercial broadcasters,⁵ receiver and transmission

² Comments of National Public Radio at 2-5 [hereinafter "NPR Comments"].

³ 47 U.S.C. § 307(b). See Pinellas Broadcasting Co. v. FCC, 230 F.2d 204, 207 (D.C. Cir. 1956) ("In requiring a fair and equitable distribution of service, Section 307(b) encompasses not only the reception of an adequate signal but also community needs for programs of local interest and importance and for organs of local self-expression."), cert. denied, 350 U.S. 1007.

⁴ NPR Comments at 5-8.

⁵ See Joint Comments of the Named State Broadcasters Association at 8 ("The Associations agree that 'adopting DAB service rules that encourage more audio streams would promote program diversity'" (quoting FNPRM/NOI at ¶ 20) [hereinafter "State Broadcasters Association Comments"]). See also Comments of the National Association of Broadcasters at 5 & 8-9 [hereinafter "NAB Comments"]; Comments of Infinity Broadcasting Corporation at 5; Comments of Entercom Communications Corp. at 4.

equipment manufacturers,⁶ and others.⁷ Touted as "[o]ne of DAB's primary innovations, . . . multicasting offers incredible opportunities to expand program diversity and listener choice."⁸ Indeed, complementing the opportunity for broadcast stations to provide new services is the public's expected desire for new services, which, many commenters believe, will drive the public's adoption of DAB.⁹

The lone voice opposing multicasting, Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), is misinformed about the purposes of DAB, the technical feasibility of multicasting, and the competitive consequences of authorizing full-power broadcast stations to broadcast multiple audio channels.¹⁰ As an initial matter, Mt. Wilson claims that the Commission's multiple ownership rules preclude multicasting,¹¹ but the relevant rules clearly apply to "stations,"¹² and

⁶ See Comments of Kenwood USA Corporation at 3 (multicasting "makes the digital receiver far superior to the analog receiver") [hereinafter "Kenwood Comments"]; Comments of Harris Corporation at 10 ("Minority populations in many cities are typically underserved members of the radio community, but with multicasting capabilities, many radio providers will seek to provide programs targeting such communities.") [hereinafter "Harris Comments"].

⁷ See Comments of Microsoft Corporation at 2-3 ("encourag[ing] the Commission to promote the public interest by allowing multicasting" and multiple datacasting transports) [hereinafter "Microsoft Comments"]; Comments of iBiquity Digital Corporation at 16 ("iBiquity believes multicasting will allow broadcasters to create new services and niche programming targeted at underserved audiences.") [hereinafter "iBiquity Comments"].

⁸ Comments of Cox Radio, Inc. at 4 [hereinafter "Cox Radio Comments"].

⁹ Microsoft Comments at 2 ("Microsoft believes that consumers will be encouraged to transition to DAB if the service offers a greater variety of content than is currently available, both via multicasts of audio streams and via a range of datacast systems."). Kenwood Comments at 2 ("History has shown that new content available only on digital receivers is the best way to stimulate this demand.") See also NPR Comments at 8.

¹⁰ Comments of Mt. Wilson FM Broadcasters [hereinafter "Mt. Wilson Comments"].

¹¹ Id. at 1-2.

¹² 47 C.F.R. § 73.3555.

multicast authorization does not, by itself, change the number of stations in which a person or an entity possesses an attributable interest. For similar reasons, the concern that large station owners will enjoy a competitive advantage¹³ makes little sense because all stations will possess the same multicast opportunity.

With respect to multicasting itself, Mt. Wilson is simply wrong in asserting that the sole purpose of DAB is improved audio quality.¹⁴ The promise of DAB has long extended well beyond sound quality to include new and enhanced audio and data service capabilities.¹⁵ Most egregiously, Mt. Wilson mischaracterizes the testing that NPR and others conducted to demonstrate the feasibility of multicasting.¹⁶ As we explained in our comments, that testing proved both the robustness and the sound quality of the secondary audio channel ("SAC").¹⁷

Concerning the "significant issues" that ostensibly remain unresolved,¹⁸ NPR, the Harris Corporation, and Kenwood USA Corporation are only the early proponents of multicasting, and the entire broadcasting industry will have ample opportunity to participate in the development of DAB. In addition, while we look forward to the formalization of an IBOC standard, the absence

¹³ Mt. Wilson Comments at 2.

¹⁴ Id. at 2-3.

¹⁵ See In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, Notice of Proposed Rulemaking, 15 FCC Rcd 1722, at 1731-36 (1999) (proposing 10 tentative selection criteria, including auxiliary service capability).

¹⁶ Mt. Wilson Comments at 3-4.

¹⁷ NPR Comments at 4-5. While we therefore do not believe that multicasting derogates the main audio program ("MAP") channel, Section 336(b)(2) of the Communications Act is simply irrelevant because that section concerns digital television. See 47 U.S.C. § 336(a).

¹⁸ Mt. Wilson Comments at 4.

of one does not mean that early generation DAB receivers will become obsolete.¹⁹ Rather, receivers are expected to be forward compatible, capable of continuing to receive the MAP channel.²⁰ Finally, the claim that the lack of a blend-to-audio feature for the SAC will result in "utter confusion to the listener"²¹ is belied by the seventy plus year history, if not inherent nature, of terrestrial broadcasting: given a national system of local broadcast stations,²² mobile listeners are quite familiar with reaching the end of a particular station's coverage area and losing reception of that station's signal.

While we cannot explain the motivation underlying this lone objection to multicasting, the comments of many noncommercial educational ("NCE") stations demonstrate the prevailing view that providing additional and new forms of audio program services will serve the public interest. Indeed, a large number of NCE radio stations filed comments specifically urging the Commission to authorize multicasting and suggesting just some of the potential publicly beneficial services that are likely to follow:

- Special programming for English as a Second Language ("ESOL") listeners:
 - Asian/Pacific-language programming²³
 - French-language programming²⁴

¹⁹ See id. at 4.

²⁰ See Kenwood Comments at 5 ("The nature of the IBOC music compression system is such that improvements in the transmitter can be adopted by the installed base of receivers without need for retrofit or replacement of those receivers.").

²¹ Mt. Wilson Comments at 4.

²² 47 U.S.C. § 307(b).

²³ Comments of KUMR-FM at 2; Comments of Wisconsin Public Radio at 2 (Hmong programming).

²⁴ Comments of KRVS-FM at 1.

- Spanish-language programming²⁵
- Native American programming²⁶
- Somali-language programming²⁷

- Public affairs programming, such as school board, civic and local government meetings²⁸

- Youth, young adult and student productions²⁹

- Reading services for the blind³⁰

- Homeland Security/public safety programming³¹

- Arts & culture programming³²

- Breaking news/special news events/emergency alerts³³

- Increased news programming³⁴

- International news coverage³⁵

- Educational/children's programming³⁶

²⁵ Comments of WFIU-FM at 1; Comments of KQED-FM at 2.

²⁶ Comments of KISU-FM at 1; Comments of KUAT-FM at 2.

²⁷ Comments of WOSU-AM/FM, at 2.

²⁸ Comments of KUT-FM at 1; Comments of KBRW-AM/FM at 1.

²⁹ Comments of WNCU-FM at 3.

³⁰ Comments of KMUW-FM at 1; Comments of WDUQ-FM at 1.

³¹ Comments of KERA-FM at 1.

³² Comments of WBGO-FM at 1; Comments of WHYI-FM at 1.

³³ Comments of WAMU-FM at 3.

³⁴ Comments of KCLU-FM at 1; Comments of WWNO-FM at 1.

³⁵ Comments of KQED-FM at 2.

³⁶ Comments of WAER-FM at 1; Comments of WDET-FM at 1.

The public interest benefits associated with facilitating these types of services require no further elaboration and support the immediate authorization of multicasting.

In sum, based on the record in this proceeding demonstrating the technical and public interest merits of multicasting, we again urge the Commission to authorize digital multicasting without delay and without requiring special licensing.

II. Like Multicasting, Regulatory Flexibility Is Essential To A Successful DAB Transition

In response to the Commission's request for comment on the service rules that should apply to DAB, one theme overwhelmingly resounded: stations should have substantial flexibility to use the iBiquity technology in service to their communities. Indeed, the ability of stations to determine how best to serve radio listeners, along with multicasting, may be the most important factors in the public's acceptance of DAB. Comments filed by the "Public Interest Coalition" advocating a sweeping new regulatory regime for DAB do little to illuminate the future of digital radio.³⁷ These comments reflect a utopian radio landscape, ignore the important local service NCE stations have long provided, and offer unrealistic policy pronouncements that would, in fact, undermine the DAB transition and are, therefore, contrary to the public interest.

The vast majority of commenters, representing a broad range of interests, demonstrate the wisdom of allowing stations to explore the capabilities of the iBiquity technology rather than having the Commission dictate the nature, type, and content of services that the public may

³⁷ See Comments of Alliance for Better Campaigns, American Federation of Television and Radio Artists, Benton Foundation, Campaign Legal Center, Center for Creative Voices in Media, Center for Digital Democracy, Center for Governmental Studies, Common Cause, National Federation of Community Broadcasters, New America Foundation, Office of Communication of the United Church of Christ, Inc., Prometheus Radio Project [hereinafter "Coalition Comments"]. Since the Coalition Comments do not describe the various organizations that comprise the Coalition, it is difficult to assess their claim to collectively represent the "public interest."

receive. Many broadcasters, large and small, and having first hand experience both with serving the public and complying with regulatory requirements, urged the Commission to allow stations to innovate at this early stage of the DAB transition. Music Express Broadcasting, for instance, noted that, given the absence of interference concerns, "[t]he Commission . . . should promote policies that provide broadcasters and receiver manufacturers with the flexibility necessary to fully realize the benefits of HD Radio technology."³⁸

Broadcasters were not alone, however, in urging a flexible regulatory approach to DAB. As iBiquity Digital Corporation noted, its HD Radio system is in its infancy, and a flexible regulatory approach "will encourage broadcasters to experiment and will foster the development of innovative new services that will benefit listeners."³⁹ The Microsoft Corporation agreed, noting that, "as a policy matter, the public interest is best served when the Commission's regulations do not impede experimentation or risk-taking by the nation's innovators."⁴⁰ The Harris Corporation and Kenwood USA Corporation, providers of broadcast transmission and receiver equipment, respectively, also urged regulatory restraint.⁴¹ Indeed, Broadcast Signal Lab, a provider of broadcast signal analysis and measurement services, aptly noted that "[j]ust as it will not be healthy to have the controlling hand of one dominant player in the development of new services and features, it will not be healthy to have undue regulation of the use of the IBOC

³⁸ Comments of Music Express Broadcasting Corporation at 2.

³⁹ iBiquity Comments at 7.

⁴⁰ Microsoft Comments at 2.

⁴¹ Harris Comments at 4 ("By recognizing the dynamic nature of the technology, the Commission should adopt rules that empower broadcasters to experiment with the technology and perhaps develop innovations in the IBOC standard that we cannot foresee today."); Kenwood Comments at 6 ("Broadcasters should have the flexibility to choose the service parameters to match their content, to compete and to serve the community of license.")

spectrum."⁴²

With respect to specific regulatory issues, commenters agreed there is no need to require a minimum amount of "high definition" audio or for the Commission to specify channel data rates for audio or data services.⁴³ Likewise, there is a broad consensus that the Commission should not attempt to dictate the audio services stations provide by mandating specific amounts of "local" programming in any broadcast audio program service, requiring stations to dedicate an entire programming service to "local" programming, or otherwise requiring a certain quantum of "news" or "public affairs" programming.⁴⁴ Nor, based on the record, should the Commission mandate separate call signs for supplemental audio services,⁴⁵ prohibit leasing of digital capacity,⁴⁶ or, generally, adopt new rules or modify existing ones unless compelled to by changed circumstances brought about by DAB.⁴⁷

⁴² Comments of Broadcast Signal Lab at 5. See also id. at 12 ("This type of [supplemental audio] use has to be given a chance to evolve to see how it is received by the public, so it would be premature to require particular public-interest use of the supplemental channel when it is adopted as a standard.")

⁴³ See iBiquity Comments at 13-14; Comments of Greater Media, Inc. at 5 [hereinafter "Greater Media Comments"]; Comments of Susquehanna Radio Co. at 2-3; Kenwood Comments at 5-6.

⁴⁴ See State Broadcasters Association Comments at 14-15; Greater Media Comments at 8-9. See also NAB Comments at 20-21 (noting "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").

⁴⁵ See Greater Media Comments at 9-10; iBiquity Comments at 20-21.

⁴⁶ See State Broadcasters Association Comments at 8; iBiquity Comments at 17.

⁴⁷ See Cox Radio Comments at 3-4. See also NPR Comments at 15-16 ("[T]he Commission should refrain from modifying a given rule absent a changed circumstance that justifies the modification.").

In the latter regard, NPR appreciates the urgent desire among radio reading services to migrate from specialty analog receivers to off-the-shelf digital ones.⁴⁸ Radio reading services have long been transmitted via station subcarrier ("SCA") frequencies and received by specially produced and programmed receivers that, unfortunately, are vulnerable to adjacent channel interference. As a result, the reading service commenters have called for such far reaching regulatory measures as reallocating spectrum exclusively for radio reading service use,⁴⁹ regulating radio receivers as telecommunications equipment,⁵⁰ and/or mandating radio station carriage.⁵¹ While the reading services are understandably anxious about securing a digital means of transmission, we caution the Commission to avoid what may be precipitous regulatory action.

As we explained in our initial comments, NPR has obtained a grant from CPB to conduct laboratory testing of the iBiquity technology to determine whether one or more of the extended hybrid partitions can be used to transmit radio reading services without causing interference to

⁴⁸ Comments of Communication Center, Minnesota State Services for the Blind [hereinafter "MSSB Comments"]; Comments of the International Association of Audio Information Services [hereinafter "IAAIS Comments"].

⁴⁹ MSSB Comments at 4-5.

⁵⁰ MSSB Comments at 3-4; IAAIS Comments at 2.

⁵¹ The IAAIS Comments state variously that a regulatory requirement comparable to Section 73.593 should extend to DAB and that radio reading services should have first priority among supplemental audio services carried by any radio station, a section of the digital spectrum should be designated for use only by a reading service, and reading service channel-spaces should grow in program channel capacity. IAAIS Comments at 5. By comparison, Section 73.593 provides that an NCE radio station is under no obligation to use its SCAs and that an NCE radio stations may use its SCA for remunerative purposes, provided the remunerative use will not be detrimental to the provision of radio reading services. 47 C.F.R. § 73.593. Compare In the Matter of Amendment of Part 73, Subpart C of the Commission's Rules to Require Licensees of Noncommercial FM Stations to Accommodate Requests by Radio Reading Services to Utilize their Subcarrier Capacity on an Incremental cost Justified Basis, Memorandum Opinion and Order and Notice of Inquiry, 2 FCC Rcd. 680, 682 (1987) (rejecting proposal by IAAIS's predecessor organization to mandate NCE SCA carriage of radio reading services).

the analog host signal or otherwise.⁵² In addition to testing the coverage capabilities of extended hybrid operation, NPR, in consultation with the IAAIS, will conduct full perceptual testing of the latest digital audio codecs that may be used for radio reading services. We expect to report to the Commission on the results of this testing within the next 2-3 months, but we are cautiously optimistic that use of the extended hybrid partitions will provide the DAB means of transmitting radio reading services.⁵³ Thus, while we support digital service rules analogous to the requirements of Section 73.593, we urge the Commission to recognize the infancy of the iBiquity technology and await the results of the extended hybrid testing before considering whether to promulgate regulatory requirements applicable to carriage of radio reading services.⁵⁴

Finally, there is little to commend the dense regulatory blanket in which the Public Interest Coalition would envelop all radio stations converting to DAB. As a threshold matter, the legal and policy arguments the Coalition marshals in support of its various public policy proposals are flawed at best. For instance, the Coalition asks the Commission to micromanage radio news programming⁵⁵ based on a survey showing a broadly positive public view of radio

⁵² NPR Comments at 13-14.

⁵³ Of course, NPR cannot control whether radio receiver manufacturers produce off-the-shelf receivers with the capability to receive a service transmitted via an extended hybrid partition.

⁵⁴ As we discussed in our initial comments, because the transition from analog to hybrid to all-digital is likely to take place over an extended period of time, we believe it is premature for the Commission to adopt rules applicable to all-digital operation, including radio reading service carriage by stations operating in all-digital mode. NPR Comments at 17.

⁵⁵ The Coalition would have the Commission issue public interest demerits based on such inherently subjective judgments as whether the coverage focuses on the "horserace" aspects of an election, Coalition Comments at 26, or whether the station provides the public with a "unique perspective." *Id.* at 27. The Coalition's proposal for mandatory local origination requirements, *id.*, is likewise flawed. *See* NPR Comments at 14-15.

news,⁵⁶ and even though multicasting will likely result in more and deeper news coverage.⁵⁷ In arguing for new political programming obligations, moreover, the Coalition quotes a Supreme Court dissenting opinion as though it were the views of the Supreme Court majority,⁵⁸ when in fact the majority in that case upheld broad licensee discretion over political news coverage.⁵⁹ Along similar lines, the Coalition suggests that licensees are required by law to afford reasonable access to political candidates for non-Federal office,⁶⁰ when that is not the case,⁶¹ and that Section 336 of the Act, which addresses television broadcast spectrum flexibility, authorizes the Commission to adopt privacy regulations for DAB.⁶²

More fundamentally, much of the Coalition's policy proposals are predicated on flawed assumptions about the iBiquity technology and the transition to DAB. While it is correct that the

⁵⁶ See Coalition Comments at 24 (citing Radio-Television News Directors Association and Foundation, The American Radio News Audience Survey, available at <http://www.rtndf.org/radio/perception/>).

⁵⁷ See notes ²⁸ & ³³⁻³⁵ and accompanying text.

⁵⁸ Coalition Comments at 29 (quoting Arkansas Educational Television Commission v. Forbes, 523 U.S. 666, at 685 (1998)). The Coalition also failed to mention that broadcast coverage of political debates -- the subject of the Supreme Court's decision in Forbes -- are exempt from the political broadcast rules. See 47 U.S.C. § 315(a).

⁵⁹ The Supreme Court upheld the constitutionality of the licensee's broad discretion to set the terms of debate participation. Arkansas Educational Television Commission v. Forbes, 523 U.S. at 683.

⁶⁰ Coalition Comments at 35.

⁶¹ See 47 U.S.C. § 312(a)(7). See also In the matter of Codification of the Commission's Political Programming Policies Political Programming Policies, 7 FCC Rcd. 678, 682 (1991) ("The Commission will not require a specific right of access for non-federal candidates. Section 312(a)(7), the only access provision in the political broadcasting laws, is quite explicit in creating a right of "reasonable access" exclusively for federal candidates. Thus, no statutory basis exists to create a right which Congress implicitly rejected.")

⁶² See Coalition Comments at 66.

iBiquity HD system uses a station's first adjacent channel to transmit the digital signals, at least during the period of hybrid analog/digital operation,⁶³ it is fundamentally incorrect in asserting that this spectrum use "causes significant consequences for other services."⁶⁴ Absent a complete re-packing of the FM band or unforeseeable improvements in the selectivity and interference immunity characteristics of consumer radio receivers, it is not possible for other services to utilize the first adjacent channel of an existing station.

Just as significantly, the Coalition misapprehends the voluntary, listener-based nature of the DAB transition. Thus, the Coalition justifies its hyper-regulatory approach because "the public will be required to invest in new technology to benefit."⁶⁵ In reality, neither radio broadcasters nor the public are under any compulsion to adopt the iBiquity technology. Rather, the success of the digital transition depends on the ability of radio broadcasters to develop compelling new services to entice the public to purchase new digital-ready receivers, a not-insubstantial matter. Indeed, failure of the transition is far more likely if radio broadcasters are required to offer services of the Coalition's or the Commission's choosing.

Likewise, while the Coalition claims to support multicasting as a means of giving airtime

⁶³ The Coalition also bases much of its proposed new regulatory regime on speculation about what the post transition, all-digital radio future will be like, see id. at 18-19, but it is far too early for the Commission to adopt service rules based on how the iBiquity technology, let alone the rest of the media landscape, may evolve in the next 10, 20, or more years. The Coalition appears to recognize this problem, conceding, at one point, that "[b]ecause these [datacasting] services are in the infancy, it is somewhat difficult to predict the contours of the service." Id. at 61. Nonetheless, the Coalition proposes specific numbers of points for "public interest data transmission" in 10 minute increments during and outside of drive time or for percentages of digital capacity dedicated to datacasting. Id.

⁶⁴ Id. at 17.

⁶⁵ Id. at 16.

to independent program producers,⁶⁶ its regulatory prescriptions are likely to dissuade stations from leasing capacity to third parties. Otherwise private contractual arrangements between stations and independent programmers, for instance, would be subject to a variety of regulatory conditions, including price regulation and public disclosure of the agreement terms via the station's public file.⁶⁷ It is difficult to imagine many stations voluntarily choosing to lease airtime to independent third parties if such undertakings were subject to common carrier-type regulation.⁶⁸

In proposing a comprehensive regulatory scheme purporting to promote localism, the Coalition also fails to address the inherent localism of NCE broadcasting. Public radio stations are inherently local institutions with an exemplary history of service to their communities through the broadcast of noncommercial news, information, and cultural programming. As we exhaustively explained in our initial comments, public radio stations are subject to a variety of institutional forces, including community advisory boards, open public meetings, and public board members, which ensure their responsiveness to the public they are licensed to serve. Public radio stations also derive the largest share of their revenue from their communities in the form of voluntary membership pledges, further ensuring their responsiveness. Accordingly, the Coalition's desire to impose a variety of new public interest obligations in the future digital world is entirely misplaced in the case of public radio.

In the end, the Commission should heed the views of the broad range of broadcast and non-broadcast entities that have argued that substantial regulatory flexibility is necessary to

⁶⁶ See id. at 54-59.

⁶⁷ Id. at 58.

⁶⁸ Compare 47 U.S.C. § 201(b).

encourage the innovative development of the iBiquity technology and to serve the public interest. We continue to believe that, with relatively few exceptions, the Commission's existing regulatory requirements will be sufficient to accommodate the DAB transition, and only compelling circumstances should warrant the adoption of new requirements. Accordingly, and particularly in recognition of public radio's inherent localism, the Commission should establish a threshold requirement that stations provide a free, over-the-air digital channel of equal or greater audio quality to its simulcast free over-the-air analog channel, but otherwise accord stations maximum regulatory flexibility to ascertain and serve the needs of the public.

III. NCE Stations Should Be Authorized to Offer Ancillary And Supplemental Services for Remuneration And Without Having to Pay Spectrum Fees

As we discussed above and in our initial comments, DAB and multicasting, in particular, provide unparalleled opportunities for stations to expand their public service. The numerous comments filed by individual NCE broadcasters are a testament to their commitment to the public interest first and foremost. Subject to a threshold obligation to offer free over-the-air digital and analog NCE services, however, and because it is fundamental to their continued service to their communities, NCE stations should be authorized to offer remunerative services without having to pay spectrum fees.

Since the authorization of enhanced underwriting and remunerative subcarrier services in the early 1980s to help offset the anticipated decline in Federal appropriations, the ensuing diversity of revenue sources has emerged as the key to public radio's independence from any single revenue source and, in important respects, its editorial independence. While the remunerative use of NCE station facilities and analog spectrum has, to date, provided only modest amounts of revenue, the remunerative use of digital technology will enable NCE stations to better weather the periodic downturns in corporate and foundation underwriting, member

dues, and, in the case of public radio, state and federal funding. As underscored by the current authorization of remunerative SCA use, the Commission possesses ample authority to authorize the remunerative use of station digital capacity.

Among the initial commenters in this proceeding, only the Public Interest Coalition addressed the matter in any detail.⁶⁹ They contended that NCE radio broadcasters should be required to "use their entire digital capacity primarily for nonprofit, noncommercial, educational broadcast service,' meaning a 'substantial majority' of their entire digital capacity."⁷⁰ The Public Interest Coalition then expressed its policy opposition to allowing NCE radio stations to offer advertising supported services on a non-broadcast basis.

With respect to the first point, and as we explained in our initial comments, NCE television stations and NCE radio stations have long been subject to different regulatory standards.⁷¹ NCE television stations are subject to a more exacting regulatory mandate to furnish "primarily" a non-profit and noncommercial television broadcast service,⁷² which the Commission construed in the DTV proceeding to require the above-quoted service obligation. NCE radio stations, on the other hand, are licensed "for the advancement of an educational

⁶⁹ Clear Channel Communications devoted a single, three-sentence paragraph stating its "belie[f] that the policy adopted in 2001 with respect to DTV service by noncommercial educational ("NCE") television stations is equally appropriate for NCE radio stations." Comments of Clear Channel Communications, Inc. at 9. We address this point in response to the Coalition's comments advancing the same contention.

⁷⁰ Coalition Comments at 43-44 (quoting Ancillary or Supplemental Use of Digital Television Capacity by Noncommercial Licenses, 16 FCC Rcd 19042, 19048 (2001) aff'd sub nom. Office of Commun. of the United Church of Christ v. FCC, 327 F.3d 1222 (2003)).

⁷¹ NPR Comments at 20-21.

⁷² 47 C.F.R. § 73.621

program."⁷³ As the Commission previously explained, it adopted a higher standard for NCE television stations because NCE television stations use greater amounts of spectrum, have more extensive coverage areas, and are far fewer in number.⁷⁴

Requiring NCE radio stations to reserve a "substantial majority" of their entire digital capacity would also substantially restrict station flexibility to determine the appropriate mix of services -- and how much capacity to devote to each -- based on the specific needs of their community of service. Unlike DTV, DAB's challenge to protect the host analog service, while transmitting two duplicate digital bitstreams, means there is relatively little digital capacity to use. Indeed, requiring a "substantial majority" of the bitstream would prevent stations from dividing the 96 kbps bitstream into two 48 kbps service streams, an approach that WAMU-FM, Washington, DC is already pursuing.⁷⁵ Moreover, a minimum quantitative requirement, and one requiring a "substantial majority" of the bitstream, in particular, would countermand the

⁷³ 47 C.F.R. § 73.503(a)(2).

The Commission applies a higher standard to applicants for NCETV reserved channels than is applied to NCEFM applicants based upon the more stringent requirement for eligibility in the relevant rule. While applicants for NCEFM and NCETV stations both must demonstrate that their programming will be "used for the advancement of" an educational program, only applicants for NCETV stations must show that "the proposed stations will be used primarily to serve the educational needs of the community.

WQED Pittsburgh and Cornerstone Television, Inc., 15 FCC Rcd. 202, at 216 (1999).

⁷⁴ WQED Pittsburgh and Cornerstone Television, Inc., 15 FCC Rcd. at 216 n.41. See Way of the Cross, 101 F.C.C.2d 1368, 1371 n.3 (1985) (explaining that "all 20 reserved FM channels use spectrum that is equal to two-thirds of one television channel, television stations typically cover greater area than their FM counterparts, and fewer television than FM channels can be allocated in a given area").

⁷⁵ See Public Radio Stations Tentatively Embracing 2nd Digital Audio Channel, Communications Daily, at 9, June 25, 2004 (noting that, pursuant to tests conducted under an experimental license, "WAMU has found that splitting the bandwidth evenly into 48 kbps each was 'extremely good' for both the main and the supplemental channel [sic]").

inevitable improvement in audio coding technology that will otherwise permit higher quality audio using fewer kilobits. We therefore urge the Commission to specify the appropriate service outcome -- a digital NCE service of equal or greater quality to the free over-the-air NCE analog broadcast service -- without specifying an amount of the digital bitstream required to provide the NCE service.

With respect to the Public Interest Coalition's opposition to advertising supported non-broadcast services, the Coalition urges the Commission not to repeat the "error" it made in authorizing NCE television stations to offer such services -- without explaining just what was erroneous about the Commission's DTV decision.⁷⁶ It points to no examples of NCE television advertising-supported non-broadcast services, let alone controversial ones. The Coalition also claims that allowing NCE stations to offer advertising supported non-broadcast services violates the intent underlying the original reservation of spectrum and will reduce "the ratio of noncommercial-to-commercial programming."⁷⁷ Apart from the obvious difficulty of calculating such a "ratio" in an ever expanding universe of electronic and print media, the reality is that the Commission originally reserved a finite amount of spectrum for NCE radio broadcasting, and multicasting will result in a tremendous increase in the amount of NCE radio broadcast programming.

Finally, while the Coalition worries that "overcommercialization" will discourage public support for public broadcasting,⁷⁸ it can rest assured that public broadcasters have a concrete interest in the matter, and the Commission should continue to allow NCE radio stations the

⁷⁶ Coalition Comments at 44.

⁷⁷ Id. at 44-45.

⁷⁸ Id. at 45.

flexibility to ascertain and serve the needs of their communities. In this context, it is important to remember that public radio stations are locally licensed, locally governed, locally programmed, and locally staffed. Institutionally and practically, these very direct and significant local affiliations have accomplished their intended purpose: public radio stations are responsive and responsible to the communities and listeners they serve.

More specifically, as either governmental or nonprofit educational organizations, NCE stations are also limited in their ability to engage in commercial activities.

NCE licensees are . . . constrained by such limitations as the nonprofit educational mission upon which their tax exempt status is based, the need to preserve viewer and government support, the requirement to pay taxes on income unrelated to the exempt purpose of the organization, and the oversight of stations by responsible bodies.⁷⁹

While Governmental NCE licensees are not subject to the Internal Revenue Code, they are subject to public oversight and are often limited in their ability to offer commercial services.⁸⁰

As a result, we do not expect NCE radio stations to rush to engage in advertising-supported or other commercial services. Rather, stations are likely to offer non-broadcast audio program services that relate in some way to their free over-the-air NCE service. As we suggested in our initial comments, one example might be a "pledge-free" channel for those listeners who financially support the station. Stations might also experiment with underwriting acknowledgments that are generally consistent with what one typically hears on an NCE radio station today but that might violate the Commission's underwriting rules and policies in some specific way. In sum, NPR believes it is critical that the Commission provide NCE radio stations

⁷⁹ Ancillary or Supplemental Use of Digital Television Capacity by Noncommercial Licensees, 16 FCC Rcd. 19042, at 19055 (2001) aff'd sub nom. Office of Commun. of the United Church of Christ v. FCC, 327 F.3d 1222 (2003).

⁸⁰ See NPR Comments at 10-12 & 22-24.

with sufficient flexibility to develop innovative new services, including subscription and advertising-supported services.

Finally, while there was no support for the imposition of spectrum fees, we reiterate our view that the Commission is not statutorily authorized to impose spectrum fees⁸¹ and that, in any event, it should exempt NCE radio broadcasters from any spectrum fee the Commission may adopt.⁸² The Commission's existing fee authority is specific and narrow: the Commission is authorized to impose application fees, regulatory fees, and, in the case of digital television stations, spectrum fees.⁸³ NCE radio stations are statutorily exempt from application and regulatory fees, and DTV spectrum fees are obviously not applicable.⁸⁴ As a matter of policy, moreover, Congress and the Commission have exempted NCE broadcasters from application and regulatory fees to reinforce the financial support many NCE broadcasters receive from CPB, the National Telecommunications and Information Administration, and other Federal and state entities.⁸⁵ With respect to a fee imposed on ancillary and supplementary uses of spectrum, it would undermine the Congressionally encouraged efforts of NCE stations to generate additional

⁸¹ As Cox Radio points out, the Commission itself has recognized that its authority to impose spectrum fees, in particular, depends on specific Congressional authority that is absent in the case of DAB. Cox Radio Comments at 7 (citing Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 1962, 2016 (2003)).

⁸² See NPR Comments at 21-24.

⁸³ Id. 21-22.

⁸⁴ Id. at 21-22.

⁸⁵ Id. at 22 (citing In the Matter Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Memorandum Opinion and Order, 3 FCC Rcd 5987, 5988 (1988) and In the Matter of Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Notice of Proposed Rulemaking, 9 FCC Rcd 6957, 6967 (1994)).

revenue through private means. For all these reasons, were Commission to decide to impose a spectrum fee, it should exempt NCE radio stations from such a fee.

IV. The Commission Should Carefully Consider Changes to Its Technical Rules and Withhold Any Further Action on Digital Audio Content Controls at This Time

In our initial comments, we advocated the same general approach to technical rule changes that we believe should apply to service rules: unless compelled by new or changed circumstances, the Commission should refrain from adopting or modifying an otherwise applicable rule. We noted, however, that there are several technical issues that warrant the Commission's attention. These include the existing television Channel 6 rules and facilitating the use of digital translator and booster stations, but exclude the adoption of digital audio content controls at this time.

While no other commenter addressed the Commission's request for comment on the existing television Channel 6 rules, we believe that, given the unique history behind those rules, NPR's position on the matter is unassailable.⁸⁶ The current rules were adopted as a temporary measure at a time when large segments of the public relied on over-the-air broadcast reception and based on now-20-year old analog television receiver design. Moreover, because of the reduced signal strength associated with IBOC digital transmissions, digital radio stations in television Channel 6 markets are even less likely to cause new or increased interference. Accordingly, in the interest of spectrum efficiency, the Commission should examine the continuing need for any Channel 6 rules and not simply extend the existing rules.

With respect to digital booster and translator stations, other commenters agree that digital boosters offer the promise of filling in gaps in coverage areas while avoiding the host

⁸⁶ See *id.* at 24-28.

interference problems that have long plagued analog booster stations.⁸⁷ Commenters also support regulatory measures to facilitate the use of digital translators but not a requirement that stations simultaneously convert all translators when they convert their primary station.⁸⁸ Only a few commenters addressed whether the Commission should authorize the use of alternative means of feeding a signal to non-reserved FM translators that extend the station's signal beyond its primary coverage area, and the commenters took opposite positions.

Western Inspirational Broadcasters advocated eliminating the present rule requiring the feeding of such translators only with an over-the-air signal.⁸⁹ The Public Interest Coalition argued that, subject only to narrow exceptions, all translators should be subject to a flat mileage limitation.⁹⁰ While the Public Interest Coalition is misinformed of the relevant law,⁹¹ and we disagree with its proposal to subject all translators to a flat mileage limitation,⁹² we share its

⁸⁷ NAB Comments at 30; Harris Comments at 5. See NPR Comments at 29.

⁸⁸ See, e.g., Harris Comments at 5 ("By adopting rules that mandate radio station broadcasters simultaneously convert their boosters and translators, the Commission may be creating a disincentive to radio stations to convert their primary station to HD radio."). See NPR Comments at 29.

⁸⁹ Comments of Western Inspirational Broadcasters, Inc. at 2.

⁹⁰ Coalition Comments at 69.

⁹¹ The Coalition states that "[n]oncommercial FM stations are exempt from th[e] requirement" that a station feed a translator via an over-the-air signal. Id. at 68. See also id. at 69 (referring to "the broad-based exemption for all noncommercial broadcasters"). In fact, only NCE translator licensees operating on a reserved channel and making special showings may use alternative means of signal delivery. 47 C.F.R. § 74.1231(b).

⁹² The Coalition's assertion that only translators that fill-in a primary service area are "connected to their communities" is ridiculous on its face and belied by the decades of service, supported by the Federal government through the Public Telecommunications Facilities Program, provided by translators extending service beyond a primary station's minimum protected service contour. See, e.g., <http://www.ntia.doc.gov/ptfp/Projects/2002/02grantsSub.cfm?RT=RADIO> (grant to Silakkuagvik Communications, Inc., licensee of KBRW-

concern about preserving translator service as an adjunct to local origination service.

Nonetheless, while we believe the more flexible approaches NPR proposed are preferable, we do not believe the Commission can equitably resolve the matter on the basis of the present record.

Accordingly, and as we proposed in our initial comments, if the Commission is inclined to authorize alternative signal delivery methods, the Commission should first seek public comment on the specific distance or other limitation(s) it may be contemplating so that potentially affected parties can identify problematic aspects of the proposed approach(es).

Two commenters submitted comments about issues not raised in the FNPRM/NOI concerning special categories of FM stations. Press Communications urged the Commission to address potential interference from short-spaced stations that were authorized before the present spacing requirements were set.⁹³ Livingston Radio Company and Taxi Productions urged the Commission to address potential interference from superpowered FM stations by adopting a categorical limit on the digital power output of such stations.⁹⁴ FM IBOC interference is properly a concern of the Commission, and it is something in which NPR has a direct and immediate interest. Moreover, interference issues have arisen, and we believe they will continue to arise during the early period of the DAB transition, but, based on our experience, we believe they can be resolved on a case-by-case basis, as Press Communications itself suggests.⁹⁵

Accordingly, we encourage the Commission to monitor the operation of both short-spaced and

FM, Barrow, AK); *id.* (grant to University of Louisiana at Lafayette, Licensee of KRVS-FM, Lafayette, LA).

⁹³ Comments of Press Communications, LLC at 1-3.

⁹⁴ Comments of Livingston Radio Company and Taxi Productions, Inc. at 4-6.

⁹⁵ Comments of Press Communications at 3.

superpowered FM stations for possible interference problems, but work with the affected stations to resolve the problem in the first instance rather than adopting a categorical solution.

Finally, despite apocalyptic predictions, we do not believe the recording industry and its allies have demonstrated either of the predicates necessary for the Commission to impose DAB receiver-based content controls. First, the Commission lacks statutory authority to promulgate copyright regulations, and the effort to demonstrate otherwise was singularly unavailing.⁹⁶ Second, the recording industry has not met its burden of demonstrating a concrete need for the rules it desires. Accordingly, we join with the multitude of commenters who believe it is premature at this time to adopt rules limiting the recording of DAB broadcasts via consumer electronics equipment.⁹⁷

⁹⁶ Indeed, one has to wade through more than 40 pages addressing the threat posed by DAB to the recording industry before encountering the record industry's tortured theories that copyright regulation is a natural incident to the Commission's authority over broadcasting under Titles I and III of the Communications Act. See Comments of the Recording Industry Association of America at 42-57.

⁹⁷ See generally Comments of the Home Recording Coalition; Comments of the Electronic Frontier Foundation and the Brennan Center for Justice.

Conclusion

NPR strongly supports the Commission's efforts to facilitate the transition to digital radio broadcasting and urges the prompt authorization of digital multicasting and adoption of other appropriate measures consistent with NPR's initial Comments and the foregoing Reply Comments.

Respectfully submitted,

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