

**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.

Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Reply Comments in response to the comments on the Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

Virtually all of the commenters shared NPR's view that, at this early stage in the digital radio transition, there is no need for the Commission to adopt new regulatory obligations to govern HD radio.² The Commission should instead allow the digital transition to evolve based on the public's willingness to purchase new digital receivers to receive new digital audio and other radio services. As in the analog world, there is also every reason to expect noncommercial

¹ In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, MM Docket 99-325, 22 FCC Rcd. 10344 (2007) [hereinafter "DAB Second R&O and Second Further NPRM"]. Unless otherwise indicated, all citations to comments are to comments filed in this proceeding in response to the DAB Second R&O and Second Further NPRM.

² See Comments of National Public Radio, Inc. at i [hereinafter "NPR Comments"]; Comments of iBiquity Digital Corporation at 1 [hereinafter "iBiquity Comments"]; Comments of the National Association of Broadcasters at 2 [hereinafter "NAB Comments"].

educational ("NCE") broadcasters to develop digital services that further their principal non-profit, educational purpose and, within the limited constraints permitted by existing law, remunerative digital services that support that mission. If there is a future need for the Commission to intervene in the digital radio transition, that need will become apparent in due course and with ample opportunity for the Commission to act.

I. The Record Supports Authorizing NCE And Other Radio Stations To Offer Addressable Services, Subject To The Requirement That Each Station Provide A Free Over-The-Air Analog Broadcast Service And A Free Over-The-Air Digital Broadcast Service Of Equal Or Better Quality

The commenters overwhelmingly supported authorizing stations to offer subscription and other addressable services.³ The suggestion by one joint commenter that digital broadcast station licensees have no prior basis to provide addressable services is demonstrably incorrect.⁴ The Commission long ago authorized stations to provide addressable services via their analog subcarriers.⁵ In the case of NCE stations, moreover, Congress expressly authorized such stations to provide remunerative services, including on a subscription basis.⁶

³ See iBiquity Comments at 6-7; Comments of Microsoft Corporation at 5-6. Like NPR, iBiquity Digital Corporation recognizes that the Commission's reference to "subscription services" addresses only a subset of non-broadcast services stations have provided via analog subcarriers and are expected to provide in the digital future. iBiquity Comments at 3-4. The broader category of such services includes radio reading and other services for which no subscription fee is imposed. See NPR Comments at 4. Whether described as "conditional access" or "addressable" services, the point is that stations are in the process of exploring a range of services that involve the authorization of individual HD receiver sets without necessarily involving the payment of a fee.

⁴ See Comments of Benton Foundation, Campaign Legal Center, Center for Governmental Studies, Common Cause, New America Foundation, Office of Communication of the United Church of Christ, Inc., and Prometheus Radio Project at 5 [hereinafter "Comments of Benton et al."].

⁵ NPR Comments at 3-4. See 47 C.F.R. § 73.295(a).

⁶ NPR Comments at 3.

The vast majority of commenters also overwhelmingly opposed the imposition of an arbitrary limit on the amount of digital capacity that a station might devote to addressable services. Any such limit is more likely to harm than promote the public interest by undermining innovation, among other adverse consequences.⁷ In the case of NCE stations, as NPR noted in its initial comments, a digital capacity-based limit may produce the perverse incentive of encouraging such traditionally under-resourced stations to devote their artificially limited digital capacity to more commercial services so as to maximize the economic value of the capacity.⁸

The Commission should be mindful of how it addressed the same issue in the digital television ("DTV") proceeding. There, the Commission properly recognized that the obligation to offer a free over-the-air analog broadcast service and a free over-the-air digital broadcast service of equal or better quality was sufficient to preserve free over-the-air broadcasting.⁹ Applying such an approach to digital radio is likewise supported by the overwhelming weight of the record in this proceeding.¹⁰

As we addressed in our initial comments, moreover, authorizing NCE stations to provide addressable services, including remunerative services, will not fundamentally change the nature of NCE broadcasting. Because NCE stations are, by statute, licensed only to non-profit

⁷ See Microsoft Comments at 7-8. See also Joint Comments of Named State Broadcasters Associations at 4 (noting that a percentage limit assumes the bit rate of transmission and the bit rate of playback are the same, which may preclude services that deliver content for later playback) [hereinafter "Joint State Broadcasters Comments"].

⁸ NPR Comments at 7.

⁹ In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809, 12820-21 (1997). See NPR Comments at 11.

¹⁰ See Microsoft Comments at 6-8; iBiquity Comments at 7. The only commenter to support the imposition of a percentage limit offered no policy rationale, only the unfounded assumption that a limit of at least 25% is necessary to preserve free over-the-air radio broadcasting. See Comments of Benton et al. at 5.

educational organizations or governmental entities,¹¹ they are compelled to pursue a noncommercial educational mission and to devote all but an insubstantial portion of their services and activities to that mission. Other factors further operate to preserve the noncommercial educational nature of NCE broadcasting, including the dependence of stations on public support and such social forces as community advisory boards, open public meetings, the presence of public board members, and the public availability of an organization's tax reporting.¹²

That is why we expect stations to utilize the addressability of the IBOC technology to offer radio reading services for the print-impaired, close-captioned radio for the hearing impaired, arts, language, and other programming for niche audiences, and other specialized services of a fundamentally noncommercial nature.¹³ Indeed, there is no reason to assume otherwise. After all, the availability of the Internet and other digital media, including DTV, have not fundamentally altered the noncommercial nature or mission of educational institutions and organizations.

Although the International Association of Audio Information Services ("IAAIS") did not support imposing an arbitrary percentage limitation on the offering of conditional access services, it sought to revisit the Commission's decision declining to require each station to offer a radio reading service for the print-impaired.¹⁴ We certainly appreciate the desire to transition

¹¹ 47 U.S.C. § 397(6.)

¹² See NPR Comments at 9-11.

¹³ See id. at 5-6.

¹⁴ Comments of the International Association of Audio Information Services at 4-5 [hereinafter "IAAIS Comments"]. See DAB Second R&O and Second Further NPRM, 22 FCC Rcd. at 10376-77. To the extent the IAAIS is seeking reconsideration of the Second Report and Order in this proceeding, we are compelled to note that the deadline for such petitions has passed. See 72 Fed. Reg. 45670 (Aug. 15, 2007); 47 C.F.R. §§ 1.4(b)(1), 73.429(d).

radio reading services from specialized to off-the-shelf radio receivers, given the longstanding involvement of NCE radio stations in the carriage of reading services. Nonetheless, we believe the Commission was fundamentally correct in deferring how it might address the interplay between the offering of radio reading and other digital radio services until the digital transition has more clearly evolved.¹⁵

The IAAIS focused on a 2004 NPR commissioned study that measured subjective qualitative differences among the then-latest digital audio coders that might be used for radio reading services.¹⁶ Unfortunately, IAAIS draws the incorrect conclusion that "[t]he only codec possible for reading service use for the foreseeable future is iBiquity's HDC" and that "HDC was unable to provide any substantial improvement in audio quality unless the bit-rate was a minimum of 24 kbps."¹⁷ In fact, the HDC coder was not designed for low bit rate applications, the testing of other low bit rate coders occurred more than 3 years ago, and, significantly, that testing only considered coders at either low (24 kbps) or very low (12 kbps) bit rates, nothing in between. Even so, one of the very low (12 kbps) bit rate coders and all of the low (24 kbps) bit rate coders produced improved audio quality compared to a typical analog SCA service.¹⁸

We can assure the Commission, moreover, that NPR is continuing to build on the prior work of NPR Labs to make radio more accessible to the disabled community.¹⁹ Indeed, NPR Labs is now in the second year of a 3-year grant from the National Institute on Disability and

¹⁵ DAB Second R&O and Second Further NPRM, 22 FCC Rcd. at 10377.

¹⁶ "Report On Perceptual Tests of Coders at Low- and Very Low-Bit Rates," MM Docket No. 99-325, filed Oct. 20, 2004 [hereinafter "Low and Very Low Bit Rate Coder Tests"].

¹⁷ IAAIS Comments at 3.

¹⁸ Low and Very Low Bit Rate Coder Tests at 16.

¹⁹ See DAB Second R&O and Second Further NPRM, 22 FCC Rcd. at 10376.

Rehabilitation Research ("NIDRR") to examine ways of making radio more accessible to segments of the disabled community, including through the digital deployment of radio reading services to the print-impaired.²⁰ It is also important to note that identifying a low bit rate coder to integrate into the iBiquity HD technology holds promise not just for digital radio reading services but also for the prospect of AM multicasting. Accordingly, now is not the time for the Commission to establish a specific coder, a specific bit rate for digital radio reading services, or a specific station obligation to carry such services.

II. There Is No Support For The Imposition Of Spectrum Fees, Especially On NCE Stations

In response to the Commission's request for additional comment on whether it can and should impose spectrum fees, there was nearly unanimous agreement both that the Commission lacks authority to impose such fees and that it should refrain from attempting to do so.²¹ The commenters noted the absence of express authority to impose spectrum fees on digital radio stations²² and ancillary jurisdiction to generate revenue for the U.S. Treasury.²³ Only one joint commenter expressed a contrary view, a result it reached only through a creative, but

²⁰ The NIDRR grant is also funding laboratory research into captioned radio for the hearing impaired.

²¹ See iBiquity Comments at 7-12. See also Comments of Cox Radio, Inc. at 8 ("[D]igital radio is still such a nascent service -- and subscription digital services are so far in the future -- that it would be counterproductive for the Commission to attempt to articulate rules or adopt fees for such services at this time.") [hereinafter "Cox Radio Comments"].

²² As Cox Radio points out, the Commission itself has recognized that "outside of Congress's directive to impose fees on DTV ancillary and supplemental services, 'no similar grant of authority directs [it] to impose fees on other flexible uses that [it] permit[s].'" 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)).

²³ See, e.g., iBiquity Comments at 10 (explaining why the imposition of fees on subscription radio services would not relate to "the Commission's effective performance of its statutorily mandated responsibilities").

unsupported, interpretation of the Commission's authorizing statute.²⁴

This joint commenter purports to base the imposition of spectrum fees on Section 309(j) of the Communications Act,²⁵ which it interprets to require the Commission to recover "a portion of the value of the public spectrum use" when the Commission issues an exclusive license.²⁶ In this case, however, the Commission is not issuing an exclusive license to offer addressable services. Indeed, there is no additional licensing involved in the conversion to digital radio.²⁷ In addition, the obligation to recover "a portion of the value of the public spectrum use" is an objective in the design of systems of competitive bidding which has no applicability in this case.²⁸ It is not, as the commenter suggests, an over-arching authorization for the Commission to regulate whenever and however it sees fit.²⁹

Even if the Commission possessed the statutory authority to impose spectrum fees, public policy considerations militate against such a course. As numerous commenters noted, unlike the digital television transition, there is no allocation of new spectrum and, thus, no "windfall" to justify an offsetting spectrum fee.³⁰ Moreover, because the digital transition is entirely a market-

²⁴ See Comments of Benton et al. at 6.

²⁵ 47 U.S.C. § 309(j).

²⁶ Comments of Benton et al. at 6.

²⁷ See DAB Second R&O and Second Further NPRM, 22 FCC Rcd. at 10367.

²⁸ See 47 U.S.C. § 309(j)(3). It is worth noting that the logical extension of this interpretation of Section 309(j) would be to exempt NCE stations from spectrum fees. See 47 U.S.C. § 309(j)(3)(C).

²⁹ Reliance on a decision concerning the 800 MHz band is, therefore, misplaced. See Comments of Benton et al. at 6 n.16 (citing In re Improving Public Safety Communications in the 800 MHz Band, 19 FCC Rcd. 14969, 15017 (2004)). That decision involved the allocation of relocation costs associated with license modifications among the affected licensees. 19 FCC Rcd. 14969, 15011. At issue here, by contrast, is what, if any, service rules to adopt.

³⁰ iBiquity Comments at 11.

based transition, increasing the cost of developing new services by imposing administrative fees is likely to undermine the transition.³¹

Finally, and particularly in the case of NCE broadcasters, imposing a spectrum fee is contrary to the well-established Federal policy of financially supporting NCE broadcasting. Congress and the Commission have exempted NCE broadcasters from application and regulatory fees to reinforce the financial support many NCE broadcasters receive from the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and other Federal and state entities.³² Imposing a spectrum fee on NCE broadcasters in this case would undermine those efforts as well as Congressionally-backed NCE efforts to generate additional revenue privately.³³

III. The Commission Should Refrain From Imposing New Reporting And Other Public Interest Requirements

Again with one exception, the commenters uniformly supported the Commission's current approach of imposing new regulatory requirements only to address a clearly demonstrated need.³⁴ The Commission's approach trusts stations, in the first instance, to develop services in response to the needs and interests of their communities, and listeners, in the final analysis, to judge whether particular services meet their needs. Since it has been a mere two months since the Second Report and Order became effective,³⁵ it is not surprising that little has

³¹ iBiquity Comments at 12; Joint State Broadcasters Comments at 5-6.

³² NPR Comments at 15.

³³ See id.

³⁴ See, e.g., Cox Radio Comments at 7 ("Given the voluntary nature of implementing digital radio, new public interest obligations necessarily would impede the digital roll-out and discourage technological innovation.")

³⁵ See 72 Fed. Reg. 45670.

occurred to justify regulatory intervention at this time.

Only the joint "public interest" commenters expressed a contrary view, offering a comprehensive blanket of regulatory requirements to govern digital radio services.³⁶ The Commission was correct to reject this approach in the Second Report and Order,³⁷ and it should do so again.

With respect to specific regulatory issues, commenters agreed there is no need for enhanced disclosure requirements, including requiring stations to post the contents of their public files on the Internet.³⁸ As NPR and others pointed out, stations are obligated to serve their communities of license, and requiring worldwide access to station information is neither necessary to promoting the public interest nor appropriate given the financial cost and administrative burden.³⁹ If anything, the Commission should encourage stations to provide Internet access to their public file by allowing them to forego maintaining a hard copy.⁴⁰

There was also no support for revisiting the rules for unattended operation. Automation allows stations to devote scarce resources where they are best able to contribute to providing locally responsive services. Requiring stations to employ technicians to monitor a station's broadcast equipment on an ongoing basis will not necessarily enable the station to respond more quickly in the event of an emergency.⁴¹ For stations operating with limited resources, however,

³⁶ See Comments of Benton et al. at 10-16.

³⁷ DAB Second R&O and Second Further NPRM, 22 FCC Rcd. at 10371.

³⁸ See Joint State Broadcasters Comments at 7-8.

³⁹ See NPR Comments at 19; NAB Comments at 11-12.

⁴⁰ NPR Comments at 19.

⁴¹ See Comments of the National Association of Broadcasters at 14; Joint Comments of the Alaska Broadcasters Association, The Arkansas Broadcasters Association, The Mississippi

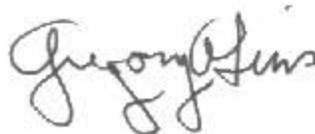
it will likely mean reduced resources for the production of local programming and other important local services. Particularly as stations undertake the expense of converting their facilities to digital operation and developing new services, now is not the time to impose new regulatory obligations and costs.

Conclusion

NPR strongly supports the Commission's efforts to facilitate the transition to digital radio broadcasting and urges the prompt adoption of the measures proposed in these Reply Comments.

Respectfully submitted,

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Association of Broadcasters, the New Mexico Broadcasters Association, The Radio Broadcasters Association of Puerto Rico and the Washington State Association of Broadcasters at 7-8.