

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

To: The Commission

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits these reply comments in response to initial comments received by the Commission on its *Second Further Notice of Proposed Rulemaking* in this proceeding.² In the *Notice*, the Commission sought comment on several issues concerning the continued deployment of Digital Audio Broadcasting (“DAB”), notably potential restrictions and requirements for subscription services offered via digital radio and additional public interest obligations for subscription services and for digital radio operations in general. The *Notice* also sought comment on two issues that apply to radio broadcasters generally, namely public inspection files on the Internet and automated broadcast operations.

The comments received in response to the *Notice* were virtually unanimous in agreeing with the positions presented in NAB’s comments urging minimal regulation and

¹ The National Association of Broadcasters is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.

² *Second Further Notice of Proposed Rulemaking* in MM Docket No. 99-325 (rel. May 31, 2007) (“*Notice*”).

flexible rules for the new digital radio service and, in particular, for nascent subscription services that may develop for digital radio consumers. The comments similarly were virtually unanimous in rejecting mandatory posting of public files on the Internet and against re-visiting rules that once prohibited automated broadcast operations. NAB reviews these near-consensus positions here and urges the Commission to cautiously avoid unnecessary restrictions that would inhibit this budding and exciting technological advancement.

Subscription Services

Commenters were in virtual accord in urging the Commission to allow subscription services to develop for digital radio unimpeded by government regulation that might stifle innovation or deployment of services consumers may desire and embrace.³ Thus, most commenters rejected limitations on the amount of subscription services that may be offered, finding such regulation unnecessary to the preservation of free, over-the-air digital radio.⁴ These commenters correctly note, and agree with NAB, that the basic requirement of the *Second Report and Order* that DAB broadcasters provide “one free digital audio programming service that is comparable to or better in audio quality than that of their current audio service”⁵ will assure the vitality of the free

³ Comments of Clear Channel Communications, Inc. at 2-3; 6-12 (“Clear Channel”); Comments of Cox Radio, Inc. at 4-8 (“Cox Radio”); Comments of iBiquity Digital Corporation at 6-7 (“iBiquity”); Joint Comments at 2-5 (“State Associations”); Joint Comments of the North Carolina, Ohio, and Virginia Associations of Broadcasters at 2-3, 5 (“Associations”); Comments of Microsoft Corporation at 1-2, 5-10 (“Microsoft”); Comments of National Public Radio, Inc. at 2, 6, 9-12 (“NPR”), in MM Docket No. 99-325 (filed Oct. 15, 2007).

⁴ Clear Channel at 8-9; Cox Radio at 7; iBiquity at 6-7; State Associations at 2-5; Associations at 2-4; Microsoft at 7-8; NPR at 6-12.

⁵ *Second Report and Order* in MM Docket No. 99-325 at ¶ 28 (rel. May 31, 2007) (“*Second Report and Order*”).

radio service.⁶ They agree that, beyond this baseline requirement, broadcasters should be free to allocate remaining bandwidth in response to consumer demand and changing marketplace conditions. *Id.* Arbitrary government standards, based solely on speculation, will serve only to constrain future products and could delay or prevent innovative new services from reaching the public. *Id.* Cox Radio, Inc. makes the additional point that the penetration level for digital radio receivers with conditional access capabilities will not support a subscription service model for some time and thus it would be unreasonable for the Commission to establish subscription spectrum caps now.⁷

Similarly, virtually all commenters rejected the notion of a spectrum fee that could create disincentives for new subscription services that the public might desire.⁸ As NAB and others noted, another fee on this still-developing service (the costs of which are not insignificant to most broadcasters) would create a disincentive that would almost certainly doom the technology before a market can develop.⁹ Many parties pointed to the lack of any statutory mandate to impose such a fee, in addition to the negative effects of so doing.¹⁰

Commenters, save one, also roundly rejected application of public interest obligations on new digital subscription services, finding them premature, unnecessary or, in many if not all cases, inappropriate.¹¹ The sole dissenter on this score, the Benton

⁶ Clear Channel at 8-9; Cox Radio at 7; iBiquity at 6-7; State Associations at 2-5; Associations at 2-4; Microsoft at 7-8; NPR at 6-12.

⁷ Cox Radio at 7.

⁸ Clear Channel at 4-6; Cox Radio at 7; iBiquity at 7-12; Associations at 4; Microsoft at 9; NPR at 13-16.

⁹ NAB Comments at 8; Clear Channel at 4; iBiquity at 11-12; Associations at 4.

¹⁰ Clear Channel at 4-6; Cox Radio at 7; iBiquity at 7-11; State Associations at 5; Microsoft at 9; NPR at 13-16.

¹¹ Clear Channel at 9-12; Cox at 5-7; Associations at 4-5; Microsoft at 8-9; NPR at 16.

Foundation *et al.*, urges adoption of broadcast-type public interest obligations, including the political broadcasting and payment disclosure rules, for subscription-based services.¹² Benton’s broad-brush approach, however, fails to anticipate the variety of potential subscription-based services that could arise from digital radio technology. Application of Benton’s suggestion would be wholly inappropriate for most subscription-based services, and would almost certainly constrain the development of digital radio.

For example, Microsoft, a provider of subscription datacasting services using analog FM subcarriers who is transitioning these services into the DAB environment, notes in its comments that broadcast public interest obligations are not appropriate for subscription datacasting services, such as the MSN Direct service.¹³ Microsoft points out that “in many cases, application of existing radio rules would be disruptive and damaging to the growth” of DAB services, citing potential (mis)application of political broadcasting rules to paging services or point-to-point messages. *Id.* Clear Channel Communications similarly believes that applying to digital radio broadcasters’ subscription services the same regulatory requirements that apply to free programming streams would be unnecessary and over-regulatory.¹⁴

Additional Public Interest Obligations

Commenters were again virtually unanimous in opposing imposition of additional public interest obligations on DAB broadcasters generally, agreeing with NAB that no

¹² 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 in MM Docket No. 99-325 (filed Oct. 15, 2007) at 14-16 (“Benton”).

¹³ Microsoft at 8-9.

¹⁴ Clear Channel 9-13.

new regime of regulation is called for with digital radio.¹⁵ Commenters stress that broadcasters serve the public interest in myriad ways and will continue and expand doing so with digital radio. *Id.* Broadcasters accept application of our existing obligations to DAB free audio services. *Id.*

The Benton Foundation *et al.* stand alone in urging expansive new public interest requirements for digital radio.¹⁶ The Benton arguments would throw the Commission back to an outdated era of heavy-handed and unnecessary regulation. They ignore the extensive and unique public service of broadcasters in emergency situations and the new local services that broadcasters can and will provide to their audiences without additional government requirements.

Cox Radio states that the unexplored potential of digital radio is the very reason why the Commission should refrain from imposing novel public interest obligations.¹⁷ Cox “fears that, no matter how well-intentioned, additional regulations would unnecessarily impede the roll-out of digital radio and discourage technological innovation.” *Id.* Cox states that it and other radio broadcasters have every incentive to deliver new and enhanced services to local communities, but additional regulation creates new costs. *Id.* at 7. Instead of investing in new technologies, stations would have to spend more on compliance. *Id.* NAB agrees and calls on the Commission to reject Benton’s demands for an expansive new regulatory regime for DAB.

¹⁵ Clear Channel at 9-12; Cox Radio at 5-7; Associations at 5; NPR at 16.

¹⁶ Benton at 10-14.

¹⁷ Cox Radio at 6. National Public Radio agrees and urges that stations should be allowed to explore the service potential of DAB technology without having to contend with significant new regulatory requirements. NPR at i, 16.

Standardized Disclosure Form

Commenters Clear Channel Communications, Cox Radio and National Public Radio all question the wisdom and burden of requiring radio stations to use a standardized disclosure form to provide information on how a station serves the public in a variety of pre-selected content categories.¹⁸ NPR voices its concern about the burdens on stations, many of which operate with limited resources, in complying with such disclosure requirements.¹⁹ In fact, the Benton Foundations comments, again urging extensive re-regulation of radio, demonstrate well the burdensome reporting categories that such an idea could involve.²⁰ They urge the Commission to collect and evaluate information in 17 pre-determined areas. NAB questions, in NPR's words, whether "a standardized disclosure form will necessarily elicit a better understanding of a station's public service."²¹ NPR also is concerned that standardized disclosure requirements may have several negative consequences, such as standardized programming that satisfies the form rather than the communities' needs. *Id.* at 19. It would amount to a re-institution of burdensome formal ascertainment. *Id.* NAB concurs and urges the Commission to demur from such heavy and potentially counter-productive regulation of content.

Public Inspection Files

NAB's initial comments stated that requiring radio stations to place their public files on the Internet could be unduly burdensome, especially for smaller stations.²² Here

¹⁸ Clear Channel at i,10; Cox Radio at 7; NPR at 17-19.

¹⁹ NPR at 17.

²⁰ Benton at 17,18.

²¹ NPR at 18.

²² Comments of NAB in MM Docket No. 99-325 at 11 (filed Oct. 15, 2007) ("NAB").

again, commenters, except for Benton *et al.*, were united in their rejection of such a regulation, agreeing with NAB that the burden would be unreasonable and unnecessary.²³

Numerous state associations of broadcasters strongly opposed such a rule, saying that the burden of compliance would greatly outweigh potential benefits.²⁴ One group of state associations said that “the added financial burden will divert resources from core broadcast operations and programming.”²⁵ That group points out that the Commission has consistently held that the interaction between station personnel and members of the community seeking access to the public file provides a key element of localism, which would be undermined by a Web-posting requirement.²⁶ Another group of state associations objects to a Web requirement, particularly one requiring “a level of technical sophistication sufficient to host complex document management servers.”²⁷ Yet another group of state associations note that the suggestion that state broadcaster associations would be able to maintain the online public file on the association’s Web site “is utterly impracticable and would cause more problems than it resolves,” both legal and practical.²⁸ NAB joins with the state associations and other commenters in urging rejection of a rule to require Web posting of public files.

²³ Clear Channel at 10-11; Cox Radio at 8-9; State Associations at 7-8; Associations at 5-9; Joint Comments of the Alaska Broadcasters Association, the Arkansas Broadcasters Association, the Mississippi Association of Broadcasters, the New Mexico Broadcasters Association, the Radio Broadcasters Association of Puerto Rico and the Washington Station Association of Broadcasters in MM Docket No. 99-325 at 8-11 (filed Oct. 15, 2007) (“Joint Associations”). *Cf.* NPR at 19-20.

²⁴ Associations at 7; State Associations at 7.

²⁵ Joint Associations at 8.

²⁶ *Id.* at 9.

²⁷ *Jt. Comments* at 7.

²⁸ Associations at 7. *c.* Joint Associations at 10-11; Joint Comments at 7.

Automated Broadcast Operations

Substantial numbers of broadcasters and broadcaster state associations filed comments in this proceeding opposing the Commission's revisiting of rules eliminated more than a decade ago requiring radio stations to maintain personnel that constantly watch over station monitoring and transmission equipment.²⁹ A group of state associations echo other commenters in stating that "there is no reason for the FCC to reconsider [the decision allowing remotely controlled technical operations]" and "advances in technology have improved the capability for reliable unattended operations and remote monitoring."³⁰ NAB agrees with these broadcasters that isolated instances of communication failures between public safety and broadcasters should not result in imposition of costly and unnecessary operation requirements for all broadcasters. *Id.*

Noncommercial satellite stations operating with main studio waivers, in particular, urge the Commission to not now require these operations to be locally staffed, stating that such action would result in numerous satellite stations ceasing their operation due to the expense involved in local staffing of stations serving small communities.³¹ One such broadcaster notes that "the technical advances in automated equipment allow its

²⁹ Clear Channel at 13; State Associations at 8-9; Joint Associations at 3-8; Associations at 9; Comment of Christian Broadcasting System, Ltd. in MM Docket No. 99-325 at 1-4 (filed Sept. 12, 2007) ("CBSL"); Comments of Miller Media Group in MM Docket No. 99-325 at 1-2 (filed July 11, 2007); Comments of Native American Christian Voice in MM Docket No. 99-325 at 1-6 (filed Oct. 1, 2007) ("Native"); Comments of Augusta Radio Fellowship Institute, Inc. at 2-5 ("ARFI"), Comments of Houston Christian Broadcasters, Inc. at 1-7 ("HCBI"), Comments of Life on the Way Communications, Inc. at 1-5 ("LOTWCI"), Comments of The Moody Bible Institute of Chicago at 1-6 ("Moody"), Comments of The Praise Network at 1-6 ("PNI"), in MM Docket No. 99-325 (filed Sept. 28, 2007).

³⁰ State Associations at 8.

³¹ ARFI at 5; HCBI at 7; LOTWCI at 5; Moody at 5; Native at 6; PNI at 6.

satellite stations to respond to an EAS situation just as quickly as one of its fully staffed stations.”³²

One broadcaster commenter notes that the apparent motivation for considering reinstatement of the duty operator requirement is to facilitate the dissemination of emergency information, but that in fact such a requirement would have the opposite effect. It states that “many stations, particularly in smaller markets where there are fewer local media outlets, will simply go off the air earlier and sign on later. The result will be that, during those off-air hours, no emergency information will be disseminated.”³³ Thus, they say, “listeners are much more likely to receive important emergency information in a timely fashion if stations are allowed to operate unattended.” *Id.* NAB agrees. Clear Channel points out that the Commission itself notes that the EAS system is specifically designed for unattended operations, and that any of its stations that is temporarily operating in automatic mode is fully set up to ensure that programming is interrupted immediately upon the receipt of an EAS alert.³⁴

Conclusion

The comments in the this proceeding have overwhelmingly supported NAB’s position that the Commission should tread lightly and avoid rules that could inhibit innovation in the developing digital radio service, with regard to still-nascent digital subscription services in particular and to other proposals affecting radio broadcasters generally. Digital radio promises a world of new services and products for consumers,

³² HCBI at 5; *c.*Native at 5.

³³ CBSL at 2.

³⁴ Clear Channel at 13; *cf.* Comments of Miller Media Group at 1.

and commenters here rightly urge the Commission to act with forbearance and caution, lest the service is strangled by premature, inappropriate or unnecessary restrictions.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

A handwritten signature in black ink, appearing to read "Valerie Schulte", written over a horizontal line.

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November 13, 2007