

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

In the Matter of	)	
	)	
Development of Devices Capable	)	MB Docket No. 08-172
of Supporting Multiple Audio	)	
Entertainment Services	)	

**REPLY COMMENTS OF CONTINENTAL CORPORATION**

**INTRODUCTION**

Continental Corporation (“Continental”) hereby submits these reply comments in response to the Notice of Inquiry (the “NOI”) in the above captioned proceeding.

Continental is one of the largest automotive suppliers worldwide, and its products greatly contribute towards enhanced driving safety and protection of the global climate. Today, Continental employs approximately 146,500 at nearly 200 locations in 36 countries.

**DISCUSSION**

In the NOI, the Commission seeks comment on whether it should require the manufacturers of satellite digital audio radio services (“SDARS”) receivers to include in the receivers all chips and other technology necessary to support HD Radio (the “Requirement”). For many reasons, the Commission should not impose the Requirement on manufacturers.

1. The Requirement Would Constitute an Unprecedented and Extraordinary Act of Governmental Intervention, and it Would Have a Dangerous Slippery Slope Effect

The Requirement would constitute a level of governmental intervention that is unprecedented. There is no dispute that the automotive supply industry is highly competitive, yet this industry would be greatly harmed and tremendously burdened by the Requirement. The Requirement would treat these suppliers, including Continental, as monopolists who would be compelled to include HD Radio in all of the SDARS receivers they manufacture. But automotive suppliers are not monopolists, in fact, they are far from it, and should not be so compelled any more than companies in other fields should be told by the government what entertainment features to put in their products. The marketplace should dictate what entertainment products automotive suppliers manufacture and in what quantities they do so -- not the government.

Sirius XM has only a five percent market share itself on the radio airways, so it certainly has no monopoly either. Extraordinary governmental intervention of the type under consideration in this proceeding very rarely, if ever, has any merit, and certainly does not here where the Requirement would be imposed upon entities with non-dominant market shares in their respective markets. Under these circumstances such a Requirement would be unprecedented. As Jaguar Cars Limited and Land Rover (“Jaguar”) commented, the proposed mandated combination of SDARS and HD Radio “is without precedent elsewhere in the World.”<sup>1</sup>

Moreover, the breadth of the Requirement would be extraordinary. If the Requirement is imposed, all (or virtually all) SDARS receivers would include HD Radio

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<sup>1</sup> Comments of Jaguar Cars Limited and Land Rover, MB Docket No. 08-172 (Oct. 29, 2008) (“Jaguar Comments”) at 2.

– regardless of whether the consumer wanted HD Radio or not. If that were to occur, millions of receivers each year would need to be modified and reconfigured at great expense and difficulty even though many consumers do not even want HD Radio.

Also, under such circumstances, iBiquity, through regulation, and not market success, would leap over Sirius XM with regard to sales. Currently, there are more SDARS receivers than HD Radio receivers. But in the blink of an eye, with this Requirement, that would change so that there would be at least as many receivers capable of supporting HD Radio as those supporting SDARS, and perhaps even far more supporting HD Radio if a reciprocal requirement was not imposed on HD Radio receivers. In addition to the utter unfairness of such an approach to Sirius XM and the unwarranted windfall this would give to iBiquity, the Requirement would have a dangerous slippery slope effect as well. If it is imposed, when a new technology comes along, its IP rights holder would ask for the same treatment as iBiquity received. And this slippery slope would not just impact radio receivers. What company would not like to have its license fees grow extraordinarily overnight, and jump ahead of its largest competitor, by persuading the government to mandate companies to include its technology in their products. Such a windfall should not be mandated by the government. iBiquity should earn its customers like all other competitive businesses do, through the value of its product, rather than through government mandate.<sup>2</sup>

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<sup>2</sup> If the Requirement were imposed, iBiquity would also have far less incentive to improve HD Radio.

2. The Requirement Would Harm Automotive Suppliers, Automobile Companies, and, Most Importantly, Consumers

*Automotive Suppliers*

The Requirement would undoubtedly greatly harm automotive suppliers, including Continental. As the comments of Jaguar and Delphi Corporation correctly state, the Requirement would tremendously add to both the cost and difficulty of producing SDARS receivers because the technologies embodied in SDARS and HD Radio are “fundamentally different” and the “spectrum, modulation method and data encoding methods are quite different” as well.<sup>3</sup> The increased costs and complexity of manufacturing such receivers would be further compounded by the additional costs incurred as a result of royalty payments that would then be owed to iBiquity for all such HD Radio receivers. Moreover, as a result of the added costs to consumers for these products if the Requirement is imposed, the demand for SDARS receivers would likely decrease as well, further harming automotive suppliers.

And iBiquity knows full well that the Requirement would greatly add to the cost and complexity of producing SDARS receivers. While it attempts to downplay such expense and difficulty in its comments, when the shoe is on the other foot and the question is should manufacturers of HD Radio receivers be required to include SDARS capability, the truth comes out. That is, iBiquity unambiguously admits that “it would be inappropriate to burden HD Radio technology with the costs and complications

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<sup>3</sup> Jaguar Comments at 1; Comments of Delphi Corporation, MB Docket No. 08-172 (Oct. 28, 2008) (“Delphi Comments”) at 1.

associated with a mandatory inclusion of SDARS technology.”<sup>4</sup> But iBiquity cannot have it both ways, and the Commission should reject iBiquity’s attempt to burden SDARS technology with the costs and complications associated with a mandatory inclusion of HD Radio technology.

#### *Automobile Companies*

Automobile companies are also opposed to the Requirement. The costs to such companies of the SDARS receivers will rise significantly if the Requirement is instituted (both because of the increased cost in manufacturing the receivers and the royalty fee payments that would then be owed to iBiquity). This increased cost will create an undue economic burden on the automobile industry, and the last thing the industry needs right now is a governmental requirement that will further increase its costs. Moreover, and not surprisingly, with respect to entertainment services in cars, automobile companies wish to provide their customers with exactly what the customers want. No more, no less. If enough customers want a feature, they will provide it. If customers do not want it, it will not be provided. Satisfied customers are of the utmost importance to the automobile industry. In short, it is critical to automobile companies’ success that the marketplace – and not the government -- decide what entertainment-related products are included in their cars.

#### *Consumers*

If the Requirement is adopted, consumers will be saddled with a significant portion of the increased receiver costs. Of course, most consumers who have SDARS do not want HD Radio as well. If the opposite were true, such consumers would purchase

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<sup>4</sup> Comments of iBiquity Co, MB Docket No. 08-172 (Nov. 10, 2008) (“iBiquity Comments”) at 13.

HD Radio equipment right now, yet relatively few consumers who have SDARS have HD Radio as well.

Accordingly, if the Requirement is imposed, the bottom line is simple: consumers will be paying far more for SDARS receivers simply because those receivers include HD Radio, even though most consumers do not want HD Radio if they have SDARS receivers. That is, in countless cases the Requirement would force the consumer to pay for an entertainment service that he or she does not want. To put it mildly, the Commission should not mandate such a result.

In fact, the Requirement should be entitled the “Anti-A La Carte Proposal.” With regard to video programming, some Commissioners so strongly supported a la carte offerings that the Commission seriously considered issuing rules mandating that cable operators offer all programming on an a la carte basis so that consumers pay only for what they want. Here, the Requirement would have the complete opposite impact. Amazingly, the Requirement would prohibit automobile companies from providing consumers with exactly what the customer wants, and instead require those companies to force the consumer to receive more than it wants, which will ordinarily be at a far higher price to the consumer. It is one thing to not mandate a la carte offerings, it is quite another to prohibit a la carte offerings altogether, which is what the Commission is considering here. The end result of this Requirement would be higher costs to consumers for a service that most SDARS customers do not even want. As a result, many consumers would likely forego purchasing SDARS and HD Radio altogether rather than pay for HD Radio functionality that they neither want nor need.

In sum, by compelling millions of consumers to either pay for something they do not want (HD Radio), or forego from purchasing something they do want (SDARS), the Commission would not be expanding consumer choice -- it would be restricting it. And as Delphi Corporation indicated, if the Requirement is imposed it will reduce the number of receiver options available to consumers, and thus even further restrict consumer choice.<sup>5</sup>

3. The Requirement Seeks to Address a Potential Future, Theoretical Harm that is Purely Speculative

As discussed above, the Requirement would constitute an extraordinary example of governmental intervention, and it would greatly harm consumers, automotive suppliers, and automobile companies. Thus, the disadvantages of the Requirement are extremely significant and quite clear. On the other hand, the advantages of imposing the Requirement are, to say the least, murky at best.

The purported rationale for the Requirement is that it would help HD Radio compete with SDARS. But even if one ignores the fact that it is not the government (but rather the marketplace) that should determine winners and losers with respect to entertainment products, the fact of the matter is that HD Radio does not need the assistance. As proponents of the Requirement, such as the National Association of Broadcasters (“NAB”) and iBiquity, both acknowledge, HD Radio is doing quite well. NAB admits that HD Radio “is steadily growing and increasing its market penetration...HD Radio services are available in all 50 states, as well as Washington, DC

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<sup>5</sup> Delphi Comments at 1.

and Puerto Rico.”<sup>6</sup> iBiquity acknowledges that it “is pleased with the status of the HD Radio rollout and its overall progress in the marketplace.”<sup>7</sup> These comments certainly are not the type that should compel the Commission to require the extraordinary measures advocated by iBiquity and NAB.

Moreover, proponents of the Requirement essentially admit that the Requirement’s purpose would be to address a potential future, theoretical harm that they allege “could” occur.<sup>8</sup> That is, the proponents of the requirement speculate about what they say Sirius XM “could” do that might theoretically influence manufacturers in a manner that could possibly harm HD Radio. But whether Sirius XM will take any actions that could theoretically influence manufacturers, whether manufacturers would in actuality be influenced by such actions, and, the impact, if any, on HD Radio, of any such theoretical events, is to say the least purely speculative. As discussed above, at this date what is clear is that the owner of the technology for HD Radio, iBiquity, is admittedly pleased with its progress in the market, and proponents of the Requirement acknowledge that HD Radio is steadily growing in the marketplace. Assuming that such growth will cease based on a supposition of what Sirius XM might do, and the impact that might have, is pure conjecture at best.

It is well settled that the Commission’s regulations are aimed at protecting real harm, “rather than merely theoretical harm.” *See Amendment of Part 76 of the Commission’s Rules and Regulations to Govern Importation of Radio Signals by Cable Television Systems*, 68 FCC 2d 1409 (1978); *Applications for the Assignment of License*

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<sup>6</sup> Comments of the National Association of Broadcasters, MB Docket No. 08-172 (Nov. 10, 2008) at 4.

<sup>7</sup> Comments of iBiquity, MB Docket No. 08-172 (Nov. 10, 2008) (“iBiquity Comments”) at 7.

<sup>8</sup> See, e.g., iBiquity Comments at 7 (“The SDARS provider’s ability to influence the marketplace to the detriment of HD Radiotechnology could take many forms.”)

*from Denali PCS, LLC to Alaska Digital LLC*, 21 FCC Rcd 14863 (2006) (Commission did not reclassify entity as a common carrier because any competitive harm from entity acting as a private carrier is “largely speculative”); *Station Holdings v MCI Worldcom Communications*, 19 FCC Rcd 8699 (1999) (Commission denied request for return of toll free number where the extent of the harm to the company involved was speculative because there was no real evidence that it could not simply use a different number); *Multi-Association Group (MAG Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 111244 (2001) (Commission refused to adopt proposal where harm to be prevented was speculative); *Rochester Telephone Mobile Communications*, 5 FCC Rcd 3233 (1990) (no Commission action is warranted where harm from inaction is speculative); *Action for Children’s Television against Television Stations KTTV, Los Angeles, California*, 58 RR2d 61 (1985) (same).

Accordingly, the Commission should not adopt the Requirement. The tremendous downsides associated with such extraordinary governmental intervention far outweigh any theoretical, speculative advantages of imposing such a Requirement.

**CONCLUSION**

For all of the foregoing reasons, the Commission should not adopt the Requirement.

Respectfully submitted,

**CONTINENTAL CORPORATION**



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