



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 04-1096
April 27, 2004

MEDIA BUREAU ACTION

REQUEST FOR COMMENT ON PETITION FILED BY THE NATIONAL ASSOCIATION OF BROADCASTERS REGARDING PROGRAMMING CARRIED BY SATELLITE DIGITAL AUDIO RADIO SERVICES

On April 14, 2004 the National Association of Broadcasters (NAB) filed a Petition for Declaratory Ruling. NAB's Petition requests the Commission to 1) prohibit satellite digital audio radio service ("SDARS") from using any technology to permit the delivery of content that would be aired on a receiver in one location that differs from the content that would be aired on a receiver in a different location; and 2) prohibit SDARS providers from providing locally oriented services on nationally distributed channels. Alternatively, NAB requests the Commission to reopen the SDARS licensing proceeding to evaluate the impact of the service on local broadcasting. We request public comment on the issues raised by this Petition. We are assigning this proceeding a Commission docket number, MB 04-160, in order to facilitate filing public comment.

Pursuant to Section 1.1200(a) of the Commission's rules, 47 C.F.R. 1.1200(a), this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to nonrestricted proceedings under Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206.¹ Permit-but-disclose *ex parte* procedures permit interested parties to make *ex parte* presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written presentation to the Commissioners or Commission employees must file the written presentation with the Commission, as set forth below, no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(1). Persons making oral *ex parte* presentations must file a summary of the presentation, as set forth below, and deliver copies to the Commissioners or Commission

¹ An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, that, if written, is not served on other parties to the proceeding or, if oral, is made without an opportunity for all parties to be present. See 47 C.F.R. § 1.1202.

employees involved with the presentation no later than the next business day after the presentation. 47 C.F.R. §1.1206(b)(2). All *ex parte* filings must be clearly labeled as such and must reference MB 04-160.

Parties making oral *ex parte* presentations are directed to the Commission's statement reemphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. §1.1206.

Parties may file responses to the Petition on or before **June 4, 2004** and replies on or before **June 21, 2004**. Please place the docket number **MB 04-160** on all filings.

The Petition is available for public inspection in the Commission's Reference Information Center:

445 12th Street, S.W.
Washington, D.C. 20554
202-418-7092

This document is also available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418-7426 (Voice), (202) 418- 7365 (TTY), or by sending an email to bmillin@fcc.

Copies of the Petitions and other pleadings are available for purchase from:

QUALEX INTERNATIONAL
202-863-2893

When filing responses or replies, one copy of each pleading must be served on all parties, and an original and two copies of all pleadings should be addressed to:

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Attn: Media Bureau

Parties are encouraged to file comments using ECFS. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Media Contact: Michelle Russo, (202) 418-7200

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