

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
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Digital Audio Broadcasting Systems and their ) MM Docket No. 99-325  
Impact on the Terrestrial Radio Broadcast Service )  
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**Comments of the Office of Advocacy, U.S. Small Business Administration on the Notice of  
Proposed Rulemaking and the Initial Regulatory Flexibility Analysis**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”) respectfully submits these Comments to the *Notice of Proposed Rulemaking* (“NPRM”) and the Initial Regulatory Flexibility Analysis<sup>1</sup> in the above-captioned proceeding, regarding conversion of AM and FM broadcast audio services to digital audio broadcasting (“DAB”).<sup>2</sup> The Federal Communications Commission (“Commission”) explores in-band, on-channel (“IBOC”) DAB technology, which is designed to permit the simultaneous transmission of analog and digital signals without interfering with existing analog service. The Commission notes that IBOC DAB may be in the final stages of development but has not yet been shown to be technically viable. The Commission intends to further the development of IBOC and evaluate IBOC and other DAB technologies. The Commission wishes to promote DAB yet preserve free audio broadcast service and not impose costly new equipment burdens on the broadcast industry.

The Commission seems to recognize the uncertain state of DAB technologies, but

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<sup>1</sup> *Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service, Notice of Proposed Rulemaking*, WT Docket No. 99-325, FCC 99-327 (rel. November 1, 1999).

<sup>2</sup> Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. *See* 15 U.S.C. §§ 634 (a)-(g), 637. Its statutory duties include serving as a focal point for concerns regarding the government’s policies as they affect small business, developing proposals for changes in Federal agencies’ policies, and communicating these proposals to the agencies. *See* 15 U.S.C. § 634(c)(1)-(4). Advocacy also has a statutory duty to monitor and report to Congress on the Commission’s compliance with the RFA.

Advocacy wishes to ensure that the Commission does not decide prematurely to pursue IBOC DAB, without extensive real-world testing and study of DAB transition on small business. The Commission should ensure that DAB transition does not interfere with current analog transmissions and should carefully study small broadcasters' ability to shoulder any new equipment costs before changing the current state of audio broadcasting. The Commission's IRFA does not adequately consider the potential impact of digital transition on small business. Instead, the IRFA references the *NPRM's* request for comment on how DAB transition may be accomplished without imposing burdens on broadcasters. Thus, the Commission has not satisfied the requirements of the Regulatory Flexibility Act of 1980,<sup>3</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Subtitle II of the Contract with America Advancement Act<sup>4</sup> (collectively "RFA").

The Commission should not promulgate rules until it studies the impact that DAB transition would have on small business and considers ways to minimize any unintended impact, while still serving the Commission's purpose of improving the quality of audio broadcast services. The Commission should issue another Notice of Proposed Rulemaking to share with the public what it learns as a result of its *NPRM*.

**1. The NPRM Does Not Consider DAB's Impact on Small Business.**

The Commission offers little discussion of the impact that IBOC DAB may have on small business and offers scant reassurance that small broadcasters, which constitute 96% of all audio radio stations,<sup>5</sup> would be able to afford digital equipment. The Commission seems convinced that DAB conversion is in the public interest. The Commission also seems to prefer the eventual

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<sup>3</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.).

<sup>4</sup> Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)).

<sup>5</sup> See *NPRM*, Appendix A, Initial Regulatory Flexibility Analysis.

replacement of current services with digital services. But the Commission offers no preliminary analysis of how expensive digital equipment would be to manufacture or install. Before concluding that analog systems must sunset, the Commission should provide data on the cost of transition and should ensure that DAB will not burden small business. This analysis should precede a decision that DAB is in the public interest.

The Commission cites past tests that indicate technical problems with IBOC DAB systems, including incompatibility with analog FM service and poor performance in impaired signal conditions.<sup>6</sup> But IBOC proponents argue they've made substantial progress toward developing viable systems.<sup>7</sup> IBOC proponents believe their signal processing techniques will permit digital transmission without disrupting analog services.<sup>8</sup>

The Commission indicates that new test results are imminent.<sup>9</sup> But the Commission should make these tests public and seek comment on the test results before drawing conclusions regarding DAB conversion. The Commission also should determine how the licensing of low-power FM will affect digital conversion. The Commission should collect data on real-world interference concerns that may arise from low-power FM. This may mean more testing, in the laboratory and in the field. This data also should be put before the public for comment. Should DAB prove viable and compatible with analog broadcast, the Commission should explore the costs of the system and how those costs would affect broadcasters.

It is premature to decide that DAB should replace analog radio. The Commission should first determine whether DAB transition would burden small broadcasters before it decides that such transition serves the public interest. It may well be that digital systems will be too

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<sup>6</sup> See *NPRM*, paragraph 9.

<sup>7</sup> See *NPRM*, paragraph 10.

<sup>8</sup> See *NPRM*, paragraph 7.

<sup>9</sup> See *NPRM*, paragraph 10.

expensive for small broadcasters to develop and employ. (This may be particularly true of low-power FM broadcasters.) Should specific DAB transition plans require burdensome investments in new transmission equipment, a better course of action might be to permit stations to install digital systems but only if they do not cause interference to analog systems. In this scenario, digital and analog systems would operate concurrently.

Advocacy agrees with the Commission's goal to "ensure that the introduction of DAB does not weaken the vitality of our free, over-the-air radio broadcast service, which provides service to virtually all Americans through a strong, independent system of privately owned and operated stations."<sup>10</sup> The vast majority of these stations are owned by small businesses. Thus, analysis of burdens on these small businesses is central to the question whether DAB threatens free radio or whether DAB serves the public interest. It is too early to settle on a DAB plan, unless and until it can be shown that transition is possible and will not harm small business with expensive new equipment standards. The Commission is engaged in a multiple-step process and should issue additional notices of proposed rulemaking as it gleans additional information regarding the feasibility and desirability of DAB transition.

## **2. The IRFA Does Not Discuss Alternatives Designed to Minimize the Regulatory Burden on Small Entities.**

The Commission's Initial Regulatory Flexibility Analysis ("IRFA") does not specifically discuss DAB alternatives that might "minimize any significant economic impact of the proposed rule", as is required by the RFA.<sup>11</sup> Rather, the Commission merely references its *NPRM*, which "sets forth policy objectives and proposes criteria for the selection of alternative DAB models and/or systems that will promote the interests of small entities and minimize the economic

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<sup>10</sup> See *NPRM*, paragraph 16.

<sup>11</sup> 5 U.S.C. § 603(c).

impact on such entities of a transition to DAB service.”<sup>12</sup> But the Commission’s *NPRM* only expresses a desire not to burden industry and asks commenting parties to propose ways to minimize transition costs. The Commission itself does not propose or analyze alternatives, as it is required to by law.<sup>13</sup> At no point does the Commission actually analyze the impact of the proposed DAB plans on small business. The *NPRM* notes assurances by IBOC proponents that DAB would not burden broadcasters, but the Commission does not analyze this assertion. The Commission invites commenting parties to explore the impact of DAB on small business and propose alternative transition plans that minimize equipment costs and maximize digital compatibility with existing analog services. The Commission offers no specific discussion of small business costs in this context. The Commission seems to have concluded that DAB transition is in the public interest before it has explored its impact on the 96% of broadcasters that are small businesses.

## **Conclusion**

The Commission concludes that transition to digital audio broadcasting would serve the public interest and seeks comments on which plan would best accomplish a smooth transition. The Commission offers little evidence, and may not have any evidence, that digital audio broadcasting is technically feasible, compatible with analog broadcast (including low-power FM), and cost effective for broadcasters. That, ostensibly is the purpose of this *NPRM*. Before choosing to establish digital audio broadcasting, the Commission should present real-world data to the public showing that digital audio broadcasting is feasible, interference-free, and reasonably

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<sup>12</sup> See *NPRM*, Appendix A, Initial Regulatory Flexibility Analysis.

<sup>13</sup> See 5 U.S.C. § 603(c). For a proper IRFA, the RFA requires that the Commission consider alternatives, such as (1) differing compliance requirements or timetables, (2) clarification, consolidation, or simplification of compliance requirements, (3) use of performance rather than design standards, and (4) exemption – either in whole or in part – for small entities. See 5 U.S.C. § 603(c)(1)-(4). The Commission does not analyze these or any other alternatives, and therefore has not conducted a proper IRFA.

priced. Only then can the Commission analyze the impact of digital transition on small business. Only then can the Commission reasonably conclude that digital conversion would serve the public interest.

Respectfully submitted,

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