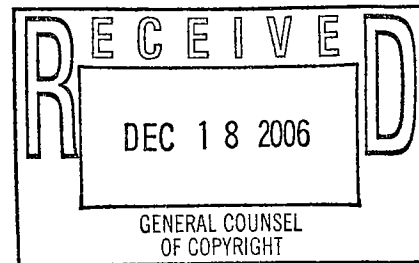


Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.



_____)
In the Matter of)
Retransmission of Digital)
Broadcast Signals Pursuant)
to the Cable Statutory License)
_____)

Docket No. RM 2005-5

REPLY COMMENTS OF NATIONAL PUBLIC RADIO

National Public Radio, Inc. ("NPR") hereby submits its reply comments regarding the retransmission of digital broadcast signals pursuant to the cable statutory license. *See* Notice of Inquiry, 71 Fed. Reg. 54948 (Sept. 20, 2006) ("NOI"). *See also* 71 Fed. Reg. 67508 (Nov. 22, 2006) (extending the time for filing reply comments to December 18, 2006). In its initial comments, NPR addressed the retransmission of digital audio broadcast ("DAB") signals and the portion of the NOI devoted to those cable carriage issues. In these reply comments, we respond to the comments of Capitol Broadcasting Company, Inc. ("Capital").¹

As NPR's initial comments explained, in-band, on-channel ("IBOC") DAB technology, commonly known as HD Radio, enables an individual terrestrial radio station to offer multiple digital services, program related data services, as well as its longstanding analog service, all utilizing its previously authorized spectrum. *See* Comments of National Public Radio, Inc. at 2

¹ NPR also supports the joint reply comments filed by the Joint Sports Claimants, the Program Suppliers, and others.

(filed Nov. 6, 2006). The principal difference between the television and radio digital transitions is that television stations were given additional spectrum temporarily to permit dual analog and digital operations. That "loan" of spectrum requires a fixed transition date by which analog television transmissions must cease. The digital radio transition, by contrast, is ongoing and open-ended, such that many radio stations are now broadcasting analog and digital signals and are likely to continue broadcasting analog signals for the foreseeable future. As of April 2006, among noncommercial educational stations that receive funding from the Corporation for Public Broadcasting, 457 stations are in the process of converting to HD Radio, and 159 digitally converted public radio transmitters are already broadcasting digitally. *See* www.cpb.org/grants/06digitalradioconversion/update060421.html.

Capitol urges the Copyright Office to disregard the digital radio transition for purposes of Section 111 of the Act for two reasons, neither of which have any merit. First, Capitol points out that there is no mandate for digital radio stations to convert to HD Radio. As discussed above and in NPR's comments, that fact is irrelevant. The digital television transition requires a mandate so that the Federal government can recoup and auction the temporarily loaned spectrum. There is no need for a mandate in the case of the digital radio transition because there is no loan of spectrum. More fundamentally, the presence or absence of a mandate has nothing to do with the retransmission of radio station broadcast signals for purposes of Section 111.

Second, Capitol claims that HD Radio is an experimental service and therefore may be ignored. Capitol is mistaken. The Federal Communications Commission ("FCC") has definitively authorized radio stations to transmit digitally. *In the Matter of Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, 17 FCC Rcd 19990 (2002) [*"DAB Report and Order"*]. How the FCC authorizes individual stations to

commence digital operations -- whether by *pro forma* special temporary authority, individual license application, or blanket approval -- is irrelevant to whether the cable retransmission of HD Radio is authorized and compensable under Section 111.

Finally, Capitol urges the Copyright Office to "forego creating a new regulatory framework for DAB until the service. . . is more widely available in the marketplace." Capitol Comments at 4. We submit that the service is widely available now. Of the approximately 15,000 commercial and noncommercial AM and FM stations licensed by the FCC, *Broadcast Station Totals as of September 30, 2006*, www.fcc.gov/mb/audio/totals/index.html, there are already 1,125 HD Radio stations in operation across the country. www.iberquity.com/hd_radio/hdradio_find_a_station. In addition, HD Radio receivers are available through a number of major retailers. See www.hdradio.com/available_products.php. We also attach several HD Radio receiver product manuals, which address how a consumer may utilize the radio to receive FM radio programming retransmitted by a cable system. See Recepter Radio® Owner's Manual at 11 (Attachment A); Accurian HD Radio User's Guide at 4 (Attachment B); Radiosophy multistream™ HD User's Guide at 10 (Attachment C).²

That said, we also do not believe the advent of HD Radio requires a fundamentally new regulatory framework. A given station's digital service area is comparable to its analog service coverage area, *DAB Report and Order*, 17 FCC Rcd at 20001; cable retransmissions of radio station signals are likely to continue on an all-band or select signal basis; and the incidence of a cable retransmission requires the reporting of that retransmission and is a prerequisite to a cable royalty claim. Accordingly, it is sufficient and appropriate for the Copyright Office to confirm

² While the attached product manuals indicate that the digital component of the radio station signal is currently not receivable, see, e.g., Accurian HD Radio User's Guide at 4, the Copyright Office rules should accommodate all retransmissions radio station signals, whether analog or digital, including all multicast digital signals.

that its rules continue to govern the cable retransmission of FM radio station analog broadcast signals, to clarify that the retransmission of radio stations transmitting digitally is covered by the Section 111 license, and to require the reporting of all such retransmissions of analog and digital radio broadcast signals.

Conclusion

For the foregoing reasons, and as addressed in NPR's initial comments, NPR urges the Copyright Office to clarify its regulations to expressly encompass the retransmission of digital FM radio stations.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.



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December 18, 2006

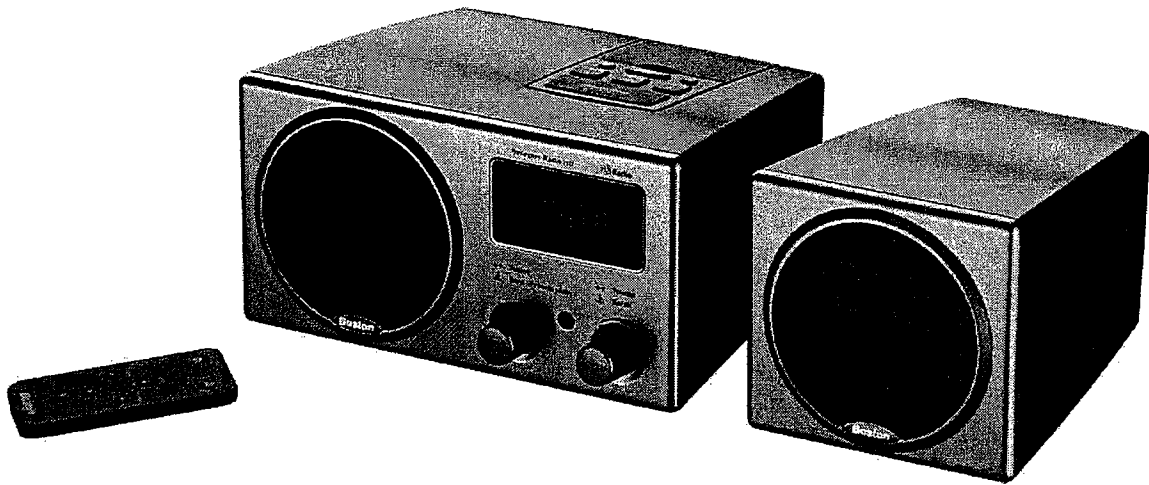
Attachment A

Boston
Boston Acoustics

Your Sound Solution™

Recepter Radio® HD

Owner's Manual



Shown with second speaker for stereo operation.



IMPORTANT SAFETY INSTRUCTIONS



This symbol found on the apparatus indicates hazards arising from dangerous voltages.



This symbol found on the apparatus indicates the user should read all safety statements found in the user manual.



This symbol found on the apparatus indicates double insulation.



Warning!

To reduce the risk of fire or electrical shock, do not expose this apparatus to rain or moisture.

1. Read these instructions.
2. Keep these instructions.
3. Heed all warnings.
4. Follow all instructions.
5. Do not use this apparatus near water.
6. Clean only with dry cloth.
7. Do not block any ventilation openings. Install in accordance with the manufacturer's instructions.
8. Do not install near any heat sources such as radiators, heat registers, stoves, or other apparatus (including amplifiers) that produce heat.
9. Do not defeat the safety purpose of the polarized or grounding-type plug. A polarized plug has two blades with one wider than the other. A grounding-type plug has two blades and a third grounding prong. The wide blade or the third prong is provided for your safety. If the provided plug does not fit into your outlet, consult an electrician for replacement of the obsolete outlet.
10. Protect the power cord from being walked on or pinched particularly at plugs, convenience receptacles, and the point where they exit from the apparatus.
11. Only use attachments/accessories specified by the manufacturer.
12. Unplug this apparatus during lightning storms or when unused for long periods of time.
13. Refer all servicing to qualified service personnel. Servicing is required when the apparatus has been damaged in any way, such as the power-supply cord or plug is damaged, liquid has been

spilled or objects have fallen into the apparatus, the apparatus has been exposed to rain or moisture, does not operate normally, or has been dropped.

14. Maintain a minimum distance of 2" (50mm) around the front, rear, and sides of the apparatus for sufficient ventilation. The ventilation should not be impeded by covering the ventilation openings or placing on or around the apparatus items such as newspapers, table cloths, curtains, etc.
15. No open flame sources, such as lighted candles, should be placed on the apparatus.
16. The apparatus should not be exposed to dripping or splashing. No objects filled with liquids, such as vases, should be placed on the apparatus.

U.S. Users

Note: This equipment has been tested and found to comply with the limits for a Class B digital device, pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates, uses, and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one or more of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio/TV technician for help.

Caution: Unauthorized changes or modifications to the receiver could void the user's authority to operate the equipment.

Canadian Users: This Class B digital apparatus complies with Canadian ICES-003.

Cet appareil numérique de la classe B est conforme à la norme NMB-003 du Canada.

