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

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Federal Communication Commission
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In re the Matter of)
)
Sirius Satellite Radio Inc. Request to Modify)
Special Temporary Authority to Operate)
Satellite DARS Terrestrial Repeaters)

File No. SAT-STA-20031106-00370

Received

JUN 21 2004

Policy Branch
International Bureau

To: Chief, International Bureau

**OPPOSITION TO CONSOLIDATED OPPOSITION TO
REQUEST FOR SPECIAL TEMPORARY AUTHORIZATION**

Sirius Satellite Radio Inc. ("Sirius") hereby opposes the Consolidated Opposition to Request for Special Temporary Authorization filed by the "WCS Coalition" on May 24, 2004 (the "WCS Opposition").¹ In the *WCS Opposition*, certain entities licensed to provide Part 27 Wireless Communications Services ("WCS") request that the Commission deny Sirius' request to modify special temporary authorization (the "STA Request") filed in November 2003.² The STA Request proposed to modify some of the technical parameters on sixteen of Sirius' terrestrial repeaters in the satellite digital audio radio service ("satellite DARS") that are already operating pursuant to STA granted on September 17, 2001.³ For the reasons set forth below, the

¹ Although titled an "opposition", the *WCS Opposition* requests denial of Sirius' application and thus amounts to a "petition to deny" under Section 25.154 of the Commission's rules. 47 C.F.R. § 25.154 (2003).

² *Sirius Satellite Radio Inc. Request to Modify Special Temporary Authority to Operate Satellite DARS Terrestrial Repeaters*, File No. SAT-STA-20031106-00370 (filed Nov. 6, 2003) ("*Sirius STA Request*").

³ *Sirius Satellite Radio Inc. Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters*, Order and Authorization, 16 FCC Rcd 16773 (2001) ("*Sirius STA Order*").

WCS Opposition is without merit, and Sirius respectfully requests that the Commission grant its STA Request.

The FCC has long recognized that terrestrial repeaters are a key component of satellite DARS service.⁴ In fact, the Commission's rules, and the International Telecommunication Union Radio Regulations, have expressly defined the satellite DARS service to include such terrestrial repeaters.⁵ The Commission has also expressly stated that "Sirius . . . needs to employ terrestrial repeaters to provide adequate service."⁶

Further, the Commission has already decided, rightly, that satellite DARS is in the public interest:

The Commission has identified many public interest benefits that satellite DARS can provide. DARS will offer high quality radio signals to listeners in areas that have limited radio service. With nationwide satellite coverage, motorists will have continuous radio coverage on long-distance trips. Diverse program formats, including educational, ethnic and religious programming are possible with the many channels that DARS will provide.⁷

⁴ *Sirius STA Order*, 16 FCC Rcd at 16775; *Satellite CD Radio, Inc., Application for Authority to Construct, Launch, and Operate Two Satellites in the Satellite Digital Radio Service*, Order and Authorization, 13 FCC Rcd 7971, 7994 (1997), modified by *Sirius Satellite Radio Inc. for Minor Modification of License to Construct, Launch and Operate a Non-Geostationary Satellite Digital Audio Radio Service System*, Order and Authorization, 16 FCC Rcd 5419, 5421 (2001); *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5770 (1997) ("*Terrestrial Repeater NPRM*") (stating "[i]t has been widely known and discussed in the record that DARS providers will need to rely on terrestrial repeaters and gap fillers.").

⁵ See 47 C.F.R. § 25.201 (2003) (defining satellite DARS as "[a] radiocommunications service in which audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations, and which may involve complementary repeating terrestrial transmitters. . ."); ITU Radio Regulations, 5.396 (including "complementary terrestrial broadcasting stations" as part of the frequency allocation for space stations of the broadcasting satellite service).

⁶ *Sirius STA Order*, 16 FCC Rcd at 16775.

⁷ See *id.* at 16776.

Because satellite DARS is in the public interest, and because terrestrial repeaters are part of satellite DARS, the STA Request serves the public interest as well.

The rulemaking to establish technical rules to govern the use of terrestrial repeaters as part of satellite DARS systems commenced in 1997 and remains unresolved today.⁸ The FCC broke the log-jam and authorized over 100 of Sirius' repeaters by STA.⁹ Sirius has spent more than \$1 billion, met its milestone requirements, proceeded with satellite construction, launched all three of its satellites,¹⁰ and is currently in commercial operation with approximately a half-million subscribers. The instant request is designed to adjust repeater coverage in light of *actual operating experience*,¹¹ just as the FCC expected. The fact that Sirius needs to employ terrestrial repeaters to provide adequate service, coupled with the fact that final Commission rules to authorize satellite DARS repeaters still do not exist, "has created the extraordinary circumstances required by the statute and [the Commission's] rules to justify grant of an STA."¹²

The *WCS Opposition* is predicated on its contention that "the operation of these . . . modified repeaters will cause an increased potential for interference to licensees in the adjacent . . . 'WCS' Spectrum."¹³ In fact, the *WCS Opposition* supplies neither a technical showing nor a sworn statement to substantiate any interference to WCS operations.¹⁴ Indeed, the WCS

⁸ See *Sirius STA Order*, 16 FCC Rcd at 16775; *WCS Opposition* at 2.

⁹ See *Sirius STA Order*.

¹⁰ See *id.* at 16775.

¹¹ See *Sirius STA Request* at 1.

¹² See *Sirius STA Order*, 16 FCC Rcd at 16775 (referring to the requirement in 47 C.F.R. § 25.120(b)).

¹³ *WCS Opposition* at 2.

¹⁴ Cf. 47 U.S.C. § 309(d) (2000).

Coalition merely professes a purely hypothetical possibility , providing no argumentative or factual basis whatsoever.

The failure to validate any claimed injury highlights the central weakness of the WCS Coalition's filing. Outside of a few point-to-point networks- mostly communicating in coastal waters where satellite DARS terrestrial repeaters never will be deployed—WCS Coalition member licensees have built no systems to serve paying customers. Neither the existing Sirius repeaters' configuration, nor the modifications proposed in the instant STA, will interfere with WCS systems today. The Commission should not credit hypothetical predictions about embryonic services—unplanned and un-built, serving un-identified prospective customers some time in the future—to hamstring existing services that the public clearly wants.¹⁵

Even were the agency concerned about improbable interference to yet-to-come WCS service, granting the STA Request will not significantly alter the risks. Before submitting its proposal to the Commission, Sirius notified each entity holding a WCS license covering a market affected by its proposal, and requested that each licensee respond.¹⁶ Most licensees did not respond at all, and those that did respond either indicated no objection to Sirius' proposal or failed to address the interference aspects of the proposal.¹⁷ Only one WCS licensee raised concerns about interference and, much like the claim made by the WCS Coalition in the *WCS*

¹⁵ It is abundantly clear that the public wants satellite radio service. Subscriber growth is exceeding initial expectations, and industry envisions that it will be standard on all new cars in the future. Technology continues to advance, which will allow for new and unique services in the future. See Valerie Milano, *Like A/C, Power Windows Industry Analysts Bullish on Satellite Radio Growth*, *Communications Daily*, June 4, 2004, at 4-5. Surely, the public interest favors a service that has the public and industry this excited over a WCS service that largely does not even exist.

¹⁶ *Sirius STA Request* at 1-2.

¹⁷ *Id.* at 2, Attachments B-E.

Opposition, that claim was wholly unsupported.¹⁸ In short, none of the responses (or non-responses) provided any basis for concluding that Sirius' proposal would result in interference to WCS operations. Since the assertedly affected WCS licensee could not demonstrate any interference difficulties relating to Sirius' proposal when first notified, the WCS Coalition's bald assertions should be rejected.

Apparently recognizing the weakness of its undocumented anxiety about future interference, the *WCS Opposition* also claims granting the STA Request would "detrimentally alter the dynamic of the formal discussions between the [satellite DARS] licensees and the WCS licensees to determine what technical rules should govern the operation of [satellite DARS] terrestrial repeaters that would reduce or eliminate such interference."¹⁹ After rehearsing the long history of the current negotiations, WCS insists "the parties are at a critical juncture . . . and if the Commission grants the STA Request now before it, it would have a significant adverse effect on the negotiations."²⁰ Though it never correlates the particular technical modifications in the STA Request with any specific preclusive effect, the *WCS Opposition* avers that FCC approval would "alter the interference environment that forms the basis of the negotiations" and "change the interference baseline from which the parties have been negotiating by causing additional potential interference to the WCS spectrum."²¹ All of this, the WCS Coalition concludes, would "render all progress made to date virtually irrelevant."²²

¹⁸ *Id.* at 2-3, Attachment F.

¹⁹ *WCS Opposition* at 2.

²⁰ *Id.* at 2-4.

²¹ *Id.* at 4.

²² *Id.* at 4.

The WCS Coalition exaggerates. Throughout the course of the negotiations, the parties have contemplated that new satellite DARS terrestrial repeaters would be added and that existing satellite DARS terrestrial repeaters might be modified. Indeed, the FCC already has done so—twice.²³ In both instances, the negotiations with WCS licensees continued. Thus, Sirius neither seeks the extraordinary nor desires scuttling on-going and productive discussions. Sirius remains committed to good-faith resolution of all concerns within the present process; granting the STA does not lessen Sirius' motivation.²⁴

The *WCS Opposition* also claims the FCC cannot modify Sirius' existing STA because the STA Request serves only the “convenience to the applicant, such as marketing considerations . . . will not be deemed sufficient” for grant of an STA.²⁵ Of course, the STA Request is neither “convenience” nor “marketing concerns”—it reflects Sirius' desire better to serve the public interest through improved nationwide coverage. In any event, the Commission already rejected this precise argument when approving Sirius' initial repeater STA.²⁶

²³ See Public Notice, *Policy Branch Information, Actions Taken*, Rept. No. SAT-00184, File No. SAT-STA-20020827-00248 (Jan. 7, 2004) (granting Sirius STA to modify terrestrial repeaters and add new terrestrial repeaters); see also *Sirius Satellite Radio Inc. Request to Modify Special Temporary to Operate Satellite DARS Terrestrial Repeaters*, File Nos. SAT-STA-20010724-00064 and SAT-STA-20020312-00029 (verbal grant from J. Gilsonan, FCC given on Mar. 12, 2002) (granting authority to modify terrestrial repeaters in Detroit and Las Vegas).

²⁴ For example, negotiations have addressed grandfathering existing terrestrial repeaters, including those repeaters the subject of the instant modification. Sirius notes that its present STA, and extensions thereto, are subject to technical requirements designed, *inter alia*, to address potential interference issues. Sirius will comply with all such requirements, including similar conditions accompanying grant of the instant STA.

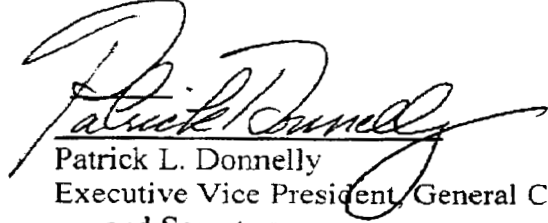
²⁵ *WCS Opposition* at 4-5 (citing 47 C.F.R. § 25.120(b)).

²⁶ See *Sirius STA Order*, 16 FCC Rcd at 16775 (“[A]lthough Section 25.120 states that marketing considerations and customer service dates are not a sufficient justification for STA requests, we find that this portion of the rule does not apply in these circumstances.”) (internal citations and quotations omitted).

The *WCS Opposition* pre-supposes Sirius' STA Request will be evaluated in some sort of regulatory "tabula rasa." Yet, the FCC repeatedly has confirmed that deployment and improvement of satellite DARS terrestrial repeaters serves the public interest. Nothing has changed. Sirius therefore respectfully requests that the Commission adhere to precedent and permit Sirius to advance the public interest by granting the STA Request.

Respectfully submitted,

SIRIUS SATELLITE RADIO INC.



Patrick L. Donnelly
Executive Vice President, General Counsel
and Secretary
Sirius Satellite Radio Inc.
1221 Avenue of the Americas
New York, NY 10020
(212) 584-5100

June 8, 2004

CERTIFICATE OF SERVICE

I, Vanessa Lansdowne, hereby certify that the copies of the foregoing Opposition to Consolidated Opposition to Request for Special Temporary Authorization has been served this 8th day of June, 2004, by first class United States mail, postage prepaid, to the following:

Douglas I. Brandon
Vice President, External Affairs and Law
AT&T Wireless Services, Inc.
1150 Connecticut Ave., NW
4th Floor
Washington, DC 20036

Scott Donohue**
WCS Wireless, LLC

Stephen Duall*
Federal Communications Commission
445 12th Street, S.W.
Room 6C411
Washington, DC 20554

Bruce A. Franca*
Federal Communications Commission
445 15th Street, S.W.
Room 7C153
Washington, DC 20554

Jennifer Gilsean*
Federal Communications Commission
445 12th Street, S.W.
Room 6A520
Washington, DC 20554

Andrew Kreig
Wireless Communications Association
International
1140 Connecticut Avenue, NW
Suite 810
Washington, DC 20036-4001

Leslie Owsley
Assistant General Counsel-Federal Regulatory
Verizon Laboratories Inc.
1515 North Court House Road
Suite 500
Arlington, VA 22201

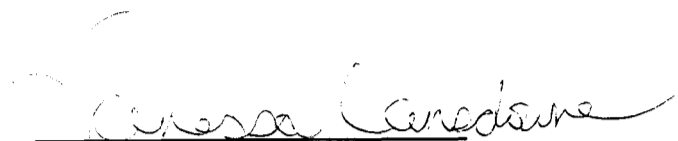
Paul Posner
Allegheny Communications
Central States Communications
1999 Gulfmart #514
San Antonio, TX 78217

Edmond Thomas*
Federal Communications Commission
445 12th Street, S.W.
Room 7C155
Washington, DC 20554

Karen B. Possner
BellSouth Corporation
1133 21st Street, NW
Suite 900
Washington, DC 20036-3351

Lon Levin
XM Radio, Inc.
1500 Eckington Place NE
Washington, DC 20002

Bruce Jacobs
Shaw Pittman, LLC
2300 N Street, N.W.
Washington, DC 20554



Vanessa Lansdowne

* *Via hand Delivery*

** *No address given. Unable to Serve.*