

technical parameters at variance from those authorized by the Commission pursuant to the 2001 STA (the “Non-Compliant Repeaters”). Although the request seeks authority to operate those eleven repeaters as illegally constructed, in the August 5, 2008 Consent Decree between the Commission and Sirius (the “Consent Decree”),⁴ the Commission effectively rejected Sirius’ request with respect to nine of those repeaters and directed Sirius to bring those nine repeaters into compliance with the 2001 STA before operating.⁵ Thus, as reflected by the August 6, 2008 *Public Notice*, only the two repeaters identified in Attachment E – repeaters in Pebble Beach, California and Wilmington, Delaware – are at issue here.⁶ The WCS Coalition does not object to the International Bureau granting the STA for the modification of the Pebble Beach, California repeater as that facility will operate at less than 2000 watts average EIRP. However, for the Wilmington, Delaware repeater Sirius has requested a power level of 2900 watts EIRP, and as such poses a serious risk of future interference.

Section 25.120(b)(1) of the Commission’s Rules is clear: “the Commission may grant a temporary authorization *only* upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest”⁷ Here, however, Sirius has made no showing of “extraordinary circumstances” to operate above 2000 watts average EIRP. To justify its request for authority to continue operating the illegally-constructed repeaters, Sirius states “the public interest will be served by meeting customer demand for the seamless service envisioned in the

⁴ *Sirius Satellite Radio, Inc.*, Order, 23 FCC Rcd 12303 (2008) [“Consent Decree”].

⁵ Neither the Consent Decree nor any document available to the WCS Coalition explains why the Commission has opened the door to consideration of modifications in Pebble Beach and Wilmington, while rejecting modification of the other nine repeaters.

⁶ *See* Consent Decree, 23 FCC Rcd at 12308.

⁷ 47 C.F.R. § 25.120(b)(1) (emphasis added).

Commission's DARS rulemaking-by rapidly granting the application.”⁸ However, Sirius provides the Commission with no explanation whatsoever (much less the requisite citation to extraordinary circumstances) as to why it cannot serve the area that had been served by the Wilmington, Delaware facility with one or more repeaters operating at no more than 2000 watts EIRP.⁹ This omission is startling given that the Commission has previously warned Sirius that “[a] request for special temporary authority must contain . . . all facts sufficient to justify the temporary authority sought and the public interest therein.”¹⁰ Given Sirius' total silence on the issue, and given that Sirius is operating other repeaters at or below 2000 watts average EIRP, the Commission cannot reasonably conclude that there are extraordinary circumstances requiring Sirius to employ a high-power repeater to serve the Wilmington, Delaware area.

Sirius' failure to establish extraordinary circumstances requiring use of more than 2000 watts average EIRP is particularly telling when evaluated in the context of the ongoing debate in IB Docket No. 95-91 and WT Docket No. 07-293 over the rules that will govern WCS/DARS coexistence. As the Commission is aware, Sirius' proposal in IB Docket No. 95-91 and WT Docket No. 07-293 to permit terrestrial repeaters to operate routinely operate at high power levels has been among the most contentious issues in the long-running debate between the Wireless Communications Service (“WCS”) and DARS communities.¹¹ The record before the Commission establishes beyond peradventure that terrestrial repeaters operating above that 2000

⁸ See STA Application, Attachment at 2.

⁹ See 2001 Grant Order, 16 FCC Rcd at 16779.

¹⁰ *XM Radio Inc., Sirius Satellite Radio Inc.*, Order and Authorization, 19 FCC Rcd 18140, 18142 (IB 2004) (citation omitted).

¹¹ In fact in the Sirius Comments they oppose permitting WCS operations to utilize average power and insist the power levels for WCS operations remain at 2000 watts peak EIRP. See Comments of Sirius Satellite Radio Inc., WT Docket No. 07-293 at 18-20 (filed Feb. 14, 2008) [“Sirius Comments”]. By all rights the WCS Coalition could be suggesting that Sirius limit its operations on terrestrial repeaters to peak power as well.

watts average EIRP will result in unduly large WCS “exclusion zones” – areas around a terrestrial repeater that WCS licensees cannot reasonably serve because of interference from the terrestrial repeater.¹² Not surprisingly, the Commission has acknowledged the potential for harmful interference from high-powered DARS terrestrial repeaters to WCS operations.¹³ Thus, the WCS community has consistently called for permanent rules restricting DARS terrestrial repeaters to power levels of no more than 2000 watts average EIRP.¹⁴

¹² See, e.g., Comments of WCS Coalition, WT Docket No. 07-293, at 33 (filed Feb. 14, 2008) [“WCS Coalition Comments”]. See also Letter from Karen L. Gulik, Counsel to AT&T Wireless Services, Inc., to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC, IB Docket No. 95-91, at 1-7 (filed Aug. 9, 2001); Letter from Karen L. Gulik, Counsel to AT&T Wireless Services, Inc., to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91, at 6 (filed Feb. 20, 2001); Letter from Karen L. Gulik, Counsel to AT&T Wireless Services, Inc., to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91, at 2-12 (filed April 30, 2001); Comments of BellSouth Corporation, File Nos. SAT-STA-20010712-00063, SAT-STA-20010724-00064, at i-ii (filed Aug. 21, 2001); Letter from Karen B. Possner, BellSouth Corporation, to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed May 18, 2001); Opposition of WorldCom, Inc., to STA Request, File Nos. SAT-STA-20010712-00063, SAT-STA-20010724-00064, at 1 (filed Aug. 21, 2001); Letter from Karen B. Possner, BellSouth Corporation, to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed Aug. 28, 2001); Letter from Paul J. Sinderbrand, Counsel to the Wireless Communications Ass’n Int’l, Inc., to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed Oct. 2, 2001); Letter from the WCS Coalition, to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed Nov. 2, 2001); Comments of the WCS Coalition, IB Docket No. 95-91 (filed Dec. 14, 2001); Reply Comments of the WCS Coalition, IB Docket No. 95-91 (filed Dec. 21, 2001); Letter from the WCS Coalition, to William Caton, Acting Secretary, FCC, IB Docket No. 95-91 (filed Feb. 4, 2002); Letter from the WCS Coalition, to William Caton, Acting Secretary, FCC, IB Docket No. 95-91 (filed Feb. 19, 2002). Indeed, in granting Sirius its initial 2001 STA, the Commission acknowledged that there are areas around terrestrial repeaters where WCS equipment will be susceptible to interference and required Sirius to cure any interference from its terrestrial repeaters. See *2001 Grant Order*, 16 FCC Rcd at 16777.

¹³ In granting and subsequently modifying Sirius’ 2001 STA, the Commission has repeatedly emphasized both that Sirius terrestrial repeaters operating in excess of 2000 watts EIRP must avoid interference to WCS deployments and that, because the grant of the 2001 STA is without prejudice to the eventual outcome of the Commission’s consideration of DARS terrestrial repeater rules in IB Docket No. 95-91 and WT Docket No. 07-293, construction of such high-power terrestrial repeaters pursuant to the 2001 STA is at Sirius’ own risk. See *2001 Grant Order*, 16 FCC Rcd at 16779-80; *Sirius Satellite Radio Inc., Order and Authorization*, 19 FCC Rcd 18140 (2004). The Commission believed that by conditioning Sirius’ STAs in this manner, WCS licensees would not be jeopardized by permitting Sirius to construct and operate the high-power terrestrial repeaters it proposed.

¹⁴ See e.g., WCS Coalition Comments at 24. Sirius can hardly plead ignorance of the problem that the placement of high-power DARS terrestrial repeaters in proximity to other services will cause, having complained to the Commission that “several XM repeaters today generate ground-level ‘dead zones’ – muting reception of the Sirius satellite signal.” “Interference to the SDARS Service from WCS Transmitters,” White Paper prepared by Sirius Satellite Radio Engineering *et al.*, at 3 (March 28, 2006)

Although Sirius here proposed that its STA be conditioned on non-interference to WCS,¹⁵ that protection offers WCS licensees scant comfort in light of Sirius' recent proposals in IB Docket No. 95-91 and WT Docket No. 07-293. In those dockets, Sirius is not only asking the Commission to "grandfather" all DARS terrestrial repeaters constructed pursuant to STAs, but it would have the Commission eliminate the unqualified obligation Sirius has pursuant to its STAs to protect WCS operations from interference – the obligation that was an essential precondition to the Commission's willingness to grant the STAs in the first place.¹⁶ Given Sirius' position calling for the "grandfathering" of terrestrial repeaters but elimination of the condition that protects WCS from interference from those repeaters and the rejection of the WCS Coalition's position to permit grandfathering subject to non-interference, granting Sirius authority to operate even one new repeater at power levels above 2000 watts average EIRP can only exacerbate the present difficult situation. Absent any evidence that extraordinary circumstances preclude Sirius from serving the areas at issue here with repeaters operating at no more than 2000 watts average EIRP, there is no reason for the Commission to make a bad situation even worse.

While fortuitously Sirius' illegal repeater in Wilmington is not located in close proximity to any operating WCS facility, it is located in an area where it is highly likely WCS will be deployed in the coming years. As the Commission is well-aware, the lack of final rules

filed as an attachment to Letter from Carl R. Frank, Counsel to Sirius Satellite Radio Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-256 (filed March 29, 2006). Indeed, Sirius complained bitterly that allowing WCS licensees to increase their power levels as proposed by WCS Wireless, LLC and XM in WT Docket No. 03-264 "could undermine the SDARS service completely," the WCS power levels they proposed are 7 dB *lower* than the maximum power level permitted under the DARS terrestrial repeater STAs. *Id.* at 4. In other words, Sirius is operating under its existing STAs in some instances at approximately *five times* the increased WCS power level it objected to.

¹⁵ See STA Application, Attachment at 2.

¹⁶ See Sirius Comments at 35-37; Petition of Sirius Satellite Radio Inc. for Rulemaking and Comments, IB Docket No. 95-91 (filed Oct. 17, 2006); Letter from Carl R. Frank, Counsel to Sirius Satellite Radio Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 95-91 (filed Aug. 14, 2006).

governing DARS terrestrial repeaters has forced WCS licensees to deploy systems at locations where there are no DARS terrestrial repeaters.¹⁷ However, if the WCS spectrum at 2.3 GHz is to achieve its potential as a viable, globally-harmonized home for broadband wireless services, ubiquitous coverage will be required, and that, in turn, will require the construction of WCS facilities in close proximity to DARS terrestrial repeaters. Thus, there is no doubt that if Sirius is permitted to operate above 2000 watts average EIRP, in time Sirius will cause unreasonable levels of harmful interference to WCS-based broadband offerings.

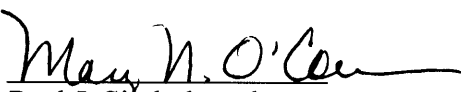
In short, rather than legitimize Sirius' illegal construction and operation of a high-power repeater in Wilmington, the Commission should advise Sirius that, if Sirius desires to provide terrestrial service in the Wilmington, Delaware area, Sirius must utilize repeaters operating at no more than 2000 watts average EIRP.

¹⁷ See Request of AT&T Inc., BellSouth Corporation, Comcast Corporation, NextWave Broadband Inc., NTELOS, Inc., Sprint Nextel Corporation, Verizon Laboratories Inc., and WaveTel NC License Corporation for Limited Extension of Deadline for Establishing Compliance with Section 27.14 Substantial Service, WT Docket No. 06-102, at 5-6 n.12 (filed March 22, 2006).

WHEREFORE, for the foregoing reasons, the Commission should deny Sirius' request for modification of its 2001 STA that would provide it authority to modify the Wilmington, Delaware repeater.

Respectfully submitted,

THE WCS COALITION

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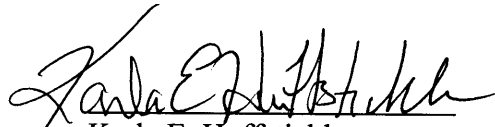
September 5, 2008

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that the foregoing Petition to Deny was served this 5th day of September, 2008 by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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