

**EX PARTE OR LATE FILED**

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**ORIGINAL**

November 28, 2006

**FILED/ACCEPTED**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**NOV 28 2006**

Federal Communications Commission  
Office of the Secretary

Re: *Request Of Sirius Satellite Radio Inc. For Special Temporary Authorization Regarding Digital Audio Radio Service Terrestrial Repeaters* – File No. SAT-STA-20061013-00122  
WRITTEN EX PARTE NOTICE

Dear Ms. Dortch:

I am writing on behalf of the WCS Coalition to respond to a recent *ex parte* filing by Sirius Satellite Radio Inc. (“Sirius”) pressing the Commission to “expeditiously” grant its above-referenced request for a 30-day special temporary authorization (“STA”) permitting Sirius to operate eleven Digital Audio Radio Service (“DARS”) terrestrial repeaters that Sirius previously had illegally constructed and operated.<sup>1</sup> The Commission should do no such thing. Rather, the Commission should deny the request and require Sirius to provide terrestrial service where it had operated illegal repeaters only pursuant to Sirius’ current blanket STA that allows it to deploy repeaters operating at up to 2,000 Watts peak equivalent isotropic radiated power (“EIRP”).<sup>2</sup> To do otherwise would reward Sirius for its misconduct and provide an incentive for Sirius and others to ignore the limitations imposed by Commission authorizations.

As a procedural matter, Section 25.120(b) of the Commission’s Rules mandates that the Commission place Sirius’ STA request on public notice and afford an opportunity for public comment before it is acted upon. Just last week, the WCS Coalition reiterated to the International Bureau the critical importance of issuing a public notice and soliciting public comment whenever a DARS licensee seeks an STA that will permit long-term operation of

<sup>1</sup> See Letter from Robert L. Pettit, Counsel for Sirius Satellite Radio Inc., to Marlene Dortch, Secretary, FCC, SAT-STA-20061013-00122 (filed Nov. 17, 2006)[“Sirius Nov. 17 Letter”].

<sup>2</sup> See *Sirius Satellite Radio, Inc.*, Order and Authorization, 16 FCC Rcd 16773, 16779 (2001)[“*Sirius 2001 STA Grant*”], modified on recon. Order, 16 FCC Rcd 18481 (2001).

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terrestrial repeaters at power levels in excess of 2,000 Watts peak EIRP.<sup>3</sup> There, the WCS Coalition established that such an approach is not only required by Section 25.120(b) of the Commission's Rules, but is sound policy because it will elicit a full record before controversial facilities are permitted to operate. In the interest of brevity, the WCA Coalition will not repeat those arguments here, but urges that they be considered before any action is taken on Sirius' request for permission to return its illegal repeaters to service.

Solicitation of public comment regarding the instant STA request is particularly appropriate because Sirius has distorted the record regarding the nature and effect of its illegal activities. For example, Sirius seeks to trivialize the extent of its misconduct by claiming that "[t]he variances between the authorized and requested authorizations are minor."<sup>4</sup> That simply is not true. Despite the fact that the Commission expects facilities authorized by a site-specific STA to be constructed exactly as authorized, Sirius unilaterally elected to construct every one of the eleven repeaters at issue here at sites that differed from those authorized by the Commission. In eight cases, the repeaters were constructed at least one mile away from the authorized location; most famously, the repeater for Lansing, MI was constructed at a location in Detroit 67 miles from the authorized location!<sup>5</sup> Such sizable deviations far exceed anything the Commission has ever before considered to be "minor."

Moreover, Sirius violated the specific terms of its STAs in other ways. In ten cases, Sirius deployed more transmission antennas than were permitted by its STAs.<sup>6</sup> Nine of Sirius' illegal repeaters have been deployed with a cumulative antenna system beamwidth that exceeds the beamwidth authorized by the Commission, in many cases exceeding the authorized beamwidth by 270 degrees.<sup>7</sup> And, in four cases the transmission antennas were unlawfully

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<sup>3</sup> See Letter from Paul J. Sinderbrand, Counsel to WCS Coalition, to John Giusti, Acting Chief, International Bureau, FCC, SAT-STA-20061107-00133 (filed Nov. 22, 2006).

<sup>4</sup> Sirius Nov. 17 Letter at 1.

<sup>5</sup> Those eight repeaters are in Akron, OH (1.411 mi), Greensboro, NC (1.851 mi), Harrisburg, PA (5.355 mi), Knoxville, TN (5.964 mi), Lansing, MI (67.355 mi), Monterey, CA (2.119 mi), Orlando, FL (1.693 mi) and Philadelphia, PA (7.882 mi).

<sup>6</sup> Each of the eleven repeaters at issue here were authorized to operate utilizing a single antenna. Sirius has conceded that the repeaters in Akron, OH, Atlanta, GA, Detroit, MI, Greensboro, NC, Harrisburg, PA, Knoxville, TN, Monterey, CA, Pebble Beach, CA, Philadelphia, PA and Wilmington, DE were all constructed with two or more antennas.

<sup>7</sup> Those nine situations involve Akron, OH (actual beamwidth of system exceeds authorized beamwidth by 270 degrees), Atlanta, GA (actual beamwidth of system exceeds authorized beamwidth by 40 degrees), Greensboro, NC (actual beamwidth of system exceeds authorized beamwidth by 270 degrees), Harrisburg, PA (actual beamwidth of system exceeds authorized beamwidth by 270 degrees), Knoxville, TN (actual beamwidth of system exceeds authorized beamwidth by 270 degrees), Monterey, CA (actual beamwidth of system exceeds authorized beamwidth by 60 degrees), Pebble Beach, CA (actual beamwidth of system exceeds authorized beamwidth by 270 degrees), Philadelphia, PA (actual beamwidth of system exceeds authorized beamwidth by 65 degrees), and Wilmington, DE (actual beamwidth of system exceeds authorized beamwidth by 90 degrees).

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installed at greater heights than permitted by the Commission.<sup>8</sup> Again, these flagrant violations are not “minor” under any definition of the term.

Not only is Sirius wrong in claiming that these violations are “minor,” but it is wrong when it asserts that “[t]here is no chance that these repeaters will cause harmful interference.”<sup>9</sup> The record before the Commission in IB Docket No. 95-91 clearly establishes that DARS terrestrial repeaters operating at power levels in excess of 2,000 Watts peak EIRP pose an unreasonable risk of interference to nearby Wireless Communications Service (“WCS”) operations.<sup>10</sup> Grant of Sirius’ request for permission to continue operating its illegal high-power repeaters is of particular concern to the WCS Coalition since, just days after disclosing the unlawful construction and operation of these repeaters, Sirius submitted to the Commission a “Petition for Rulemaking, and Comments” that, among other things, would “grandfather” these repeaters by exempting them from whatever final rules the Commission adopts to govern DARS terrestrial repeaters, but would eliminate Sirius’ absolute obligation under its present STAs to protect WCS from harmful electrical interference.<sup>11</sup>

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<sup>8</sup> Those four repeaters are located in Akron, OH, Harrisburg, PA, Knoxville, TN and Pebble Beach, CA.

<sup>9</sup> Sirius Nov. 17 Letter at 1.

<sup>10</sup> See, e.g., 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 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 *Sirius 2001 STA Grant*, 16 FCC Rcd at 16777 (2001).

<sup>11</sup> See Petition of Sirius Satellite Radio Inc. for Rulemaking, and Comments, IB Docket No. 95-91, at 6 (filed Oct. 17, 2006). On November 7, 2006, the WCS Coalition submitted its preliminary views regarding Sirius’ petition. For present purposes, suffice it to say that the WCS Coalition stressed that “nothing in the Sirius Petition alters the WCS Coalition’s view that the DARS licensees should not be permitted to operate those repeaters *ad infinitum* unless they also remain subject to their current obligation to cure any interference that may be caused to future WCS deployments.” Letter from Paul J. Sinderbrand, Counsel to WCS Coalition, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 95-91, at 3 (filed Nov. 7, 2006) (citation omitted). DARS terrestrial repeaters were authorized by the

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While fortuitously Sirius' illegal operations are not located in close proximity to any operating WCS facility, they are all located in areas where it is highly likely WCS will be deployed in the near future. As the Commission is aware, the lack of final rules governing DARS terrestrial repeaters has forced WCS licensees to deploy systems at locations where there are no DARS terrestrial repeaters, as well as hindering efforts by the WCS community to complete the design, development and standardization of equipment.<sup>12</sup> For the WCS spectrum at 2.3 GHz 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 proximity to DARS terrestrial repeaters.<sup>13</sup> There is no doubt that if the Commission grants the instant STA request and Sirius is permitted to operate its illegally-constructed high-power repeaters, in time it will cause harmful interference to WCS and adversely impact the viability of WCS-based broadband offerings.

Sirius wrongly asserts that, absent grant of its STA request, consumers that had been served by the eleven illegal repeaters will be forced to suffer impaired service.<sup>14</sup> What Sirius fails to acknowledge, either in its STA request or in its *ex parte* filings supporting that request, is that today, without any further action by the Commission, Sirius is authorized by its current STAs to provide service in the affected areas through use of repeaters operating at power levels up to 2,000 Watts peak EIRP.<sup>15</sup> In other words, Sirius can replicate the coverage provided by its eleven unlawful repeaters through the simple expedient of reducing the power level of those repeaters to 2,000 Watts peak EIRP and installing additional repeaters to provide any necessary additional coverage. To the extent Sirius' subscribers currently are suffering a service

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Commission conditioned upon XM Radio Inc. ("XM") and Sirius curing any interference they might cause in the future to WCS facilities, and the Commission explicitly warned both Sirius and XM that any facilities built pursuant to their STAs would have to be modified to comply with future rules governing DARS terrestrial repeaters. See *Sirius 2001 STA Grant*, 16 FCC Rcd at 16779; *XM Radio Inc.*, Order and Authorization, 16 FCC Rcd 16781, 16787 (2001); *XM Radio Inc.*, Order and Authorization, 19 FCC Rcd 18140, 18143 (2004). Sirius would stand that approach on its head – Sirius and XM would be permitted to continue operating their existing repeaters *ad infinitum*, but would no longer be required to cure any resulting interference to WCS.

<sup>12</sup> 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).

<sup>13</sup> *Id.* Because the Commission has yet to act upon the WCS Coalition's long-pending request for an extension of the July 21, 2007 deadline by which WCS licensees must establish that they are offering "substantial service," it is likely that the rate of WCS deployment will accelerate over the coming months (albeit with sub-optimal systems), substantially increasing the potential for harmful interference from Sirius' illegally-constructed high-power repeaters. However, because the requested extension is for only three years (measured from the later of the current deadline or the adoption of final DARS terrestrial repeater rules), interference from high-powered DARS repeaters will become a reality in short order, one way or another.

<sup>14</sup> See Sirius Nov. 17 Letter at 1.

<sup>15</sup> See *Sirius 2001 STA Grant*, 16 FCC Rcd at 16779.

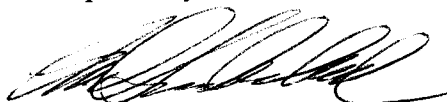
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impairment, it is because Sirius is refusing to take advantage of the flexibility afforded under its existing STA. Since Sirius clearly has an option available to it that will allow the provision of service to the affected areas, Sirius has failed to establish that there are any extraordinary circumstances (as required by Section 25.120(b)) that would justify grant of the instant STA request.<sup>16</sup>

In short, rather than legitimize Sirius' illegal construction and operation of these eleven high-power repeaters, the Commission should deny the instant STA request (after having sought and considered full public comment). By virtue of its current blanket STA, Sirius will be able to provide terrestrial service where it had operated illegally, using repeaters operating at no more than 2,000 Watts peak EIRP. Should you have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,



Paul J. Sinderbrand

Counsel to the WCS Coalition

cc: Fred Campbell  
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<sup>16</sup> In addition, it is worth noting that Sirius has not responded to any of the important questions raised by the National Association of Broadcasters ("NAB") over a month ago regarding the facts and circumstances surrounding Sirius' illegal construction of these repeaters. See Letter from David K. Rehr, President & CEO, NAB, to Hon. Kevin J. Martin, Chairman, FCC, at 2-3 (dated Oct. 23, 2006).

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