

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

In re Application of

SIRIUS SATELLITE RADIO, INC.)

)

)

File No. SAT-STA-20061107-00131

For Special Temporary Authority to Operate)

)

Four SDARS Terrestrial Repeaters in)

)

Alaska and Hawaii)

)

FILED/ACCEPTED

To: Office of the Secretary

Attention: Chief, International Bureau

JAN - 5 2007

Federal Communications Commission
Office of the Secretary

PETITION TO DENY

Mt. Wilson FM Broadcasters, Inc. ("Petitioner"), licensee of FM Broadcast Station KMZT-FM, 105.1 MHz, Los Angeles, California (Facility ID 43939)¹, by its attorneys and pursuant to Section 1.939 of the Commission's Rules, hereby petitions to deny the above-captioned application of Sirius Satellite Radio, Inc. ("Applicant") for special temporary authority ("STA") to operate four Satellite Digital Audio Radio Service ("SDARS") terrestrial repeaters in Alaska and Hawaii. In support thereof the following is set forth.²

Applicant provides a national digital audio program service via satellite transmissions as augmented, pursuant to STA (Order and Authorization, 16 FCC Rcd 16773 (2001)), by hundreds of terrestrial repeaters to overcome the effects of satellite signal blockage and multipath interference which occurs when radio waves bounce off buildings, hills, or other obstacles and the radiowaves reach the receiver at different times, causing interference; Petitioner provides a terrestrial digital audio program service in the Los Angeles, California radio market.

¹ Station KMZT-FM transmits both digital and audio signals using the iBiquity hybrid in-band, on-channel (IBOC) system.

² This Application has not yet been placed on Public Notice and, accordingly, this petition is timely filed.

Accordingly, Applicant and Petitioner are competing digital audio program distributors in the Los Angeles, California area. Moreover, as will be shown below, Commission action herein raises public interest concerns as to the very nature of the digital audio services provided by Applicant in competition with Applicant. Thus, Petitioner submits that it is an interested party in the instant matter and has standing to file this petition.

Applicant seeks authority in the instant application to use terrestrial repeaters in Alaska and Hawaii, not primarily for the purpose of augmenting its satellite service in those states, but, rather, because Applicant essentially does not and cannot provide satellite service in those states (Applicant's satellites are focused over the continental United States and do serve Alaska and Hawaii through the use of spot beams); thus, with respect to Alaska and Hawaii, Applicant proposes to primarily, if not wholly, provide a statewide terrestrial digital audio radio service in lieu of a satellite digital audio radio service.

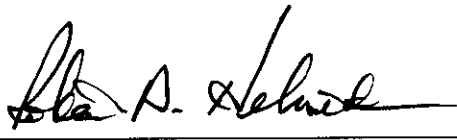
In its Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking establishing SDARS, the Commission stated that it "proposed to prohibit the operation of terrestrial gap-fillers [i.e., repeaters to overcome the effects of signal blockage and multipath interference] except in conjunction with an operating satellite DARS system to ensure its complementary nature and so that there would be no transformation of satellite DARS into an independent terrestrial DARS network." 12 FCC Rcd 5754, 5811 (1997). Indeed, in subsequently authorizing Applicant to utilize terrestrial repeaters on an interim STA basis pending adoption of final rules, the Commission conditioned such authorization so as to provide that "SDARS repeaters are restricted to the simultaneous retransmission of the complete programming, and only that programming, transmitted by the satellite directly to SDARS subscriber's [sic] receivers." 16 FCC Rcd at 16779.

Because Alaska and Hawaii are primarily or wholly outside of the footprint of its satellite, Applicant has few if any subscribers in those states, not because of the effects of satellite signal blockage or multipath interference within areas of those states, but because Applicant effectively has no satellite signal in those states. Thus, the purpose of the requested terrestrial repeaters is not to provide complementary SDARS fill-in service, but, rather, to provide initial DARS programming via terrestrial repeaters separate and independent of any direct reception of Applicant's satellite signal.

Petitioner submits that the proposed terrestrial repeater facilities requested by Applicant are inconsistent with the complementary terrestrial repeater network facilities previously and conditionally authorized by the Commission and, therefore, Petitioner submits that the above-captioned application for STA must be summarily denied.

Respectfully submitted

MT. WILSON FM BROADCASTERS, INC.

By 

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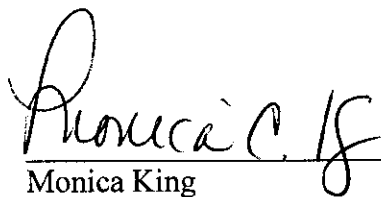
Its Counsel

January 5, 2007

CERTIFICATE OF SERVICE

I, Monica King, hereby certify that a true and correct copy of the foregoing Petition to Deny was sent by first-class postage prepaid mail this 5th day of January 2007 to the following:

Mr. Patrick L. Donnelly
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Monica King