

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

FILED/ACCEPTED

MAR 19 2007

Federal Communications Commission  
Office of the Secretary

Application of )  
SIRIUS SATELLITE RADIO, INC. )  
 )  
For Special Temporary Authority to Operate )  
Four SDARS Terrestrial Repeaters in )  
Alaska and Hawaii )

File No. SAT-STA-20061107-00131

TO: Office of the Secretary  
For delivery to the Chief, International Bureau

**PETITION TO DENY**

The Alaska Broadcasters Association and the Hawaii Association of Broadcasters (collectively "Alaska/Hawaii Broadcasters") hereby timely file this Petition to Deny (the "Petition") the above captioned application for Special Temporary Authority ("STA") to permit Sirius Satellite Radio, Inc. ("Sirius") to operate four Satellite Digital Audio Radio Service ("SDARS") terrestrial repeaters (the "Repeaters") in Alaska and Hawaii.

**I. Introduction and Summary**

1. To operate Repeaters, a SDARS provider must first provide satellite-transmitted service and have customers who require such service to overcome earthbound physical blockages or multipath interference. In this instance, these preconditions to authorization simply do not exist. What Sirius seeks, primary service provided by terrestrial stations, is contrary to law and established policy. The STA requested would, thus, ill-serve the public interest. Repeater regulation is in place in large measure because it supports the strong public interest in localism. Sirius has no localism obligations. Its proposed use of Repeaters without first meeting satellite delivery obligations would allow Sirius to cherry pick audiences, diminishing the resources available to free over the air broadcasters to meet their localism

obligations in the best possible way. Alaska/Hawaii Broadcasters have no objection to SDARS competition – if done the right way. But the Commission must not allow Sirius to skip over the satellite-delivery part of its obligations, as is the case here. A grant in such circumstances would not only violate established regulation, it would also violate the Communications Act by undermining its clear and long-recognized mandate that the Commission act in the interests of broadcast localism. The Commission must not let Sirius violate law and regulation, as proposed.

## **II Discussion**

### **A. The Proposed Use of Terrestrial Repeaters in Alaska and Hawaii Is Contrary to Established Regulation.**

2. The Commission has been clear. The role of repeaters is only “in conjunction with an operating satellite DARS system to ensure its complementary nature . . . .” *Digital Audio Radio Satellite Service*, 12 FCC Rcd 5754, 5811 (1997). The Commission has only granted Sirius special temporary authority in previous instances to operate repeaters for programming “transmitted by the satellite directly to SDARS subscribers’ receivers.” *Sirius Satellite Radio, Inc.*, 16 FCC Rcd 16,773, 16,777 (2001).

3. But this Application is different from those leading to previous Repeater STAs. Here, Sirius seeks to operate Repeaters in places where it essentially lacks both reliable satellite delivery capacity and subscribers and, therefore, cannot possibly provide a “complementary” service to standard satellite-delivered transmission. The lack of reliable satellite delivery means Sirius cannot possibly have a need to overcome effects of earthbound “satellite signal blockage and multipath interference.” *Sirius Satellite Radio, Inc.*, 16 FCC Rcd 16,773 (2001) (citing *Digital Audio Radio Satellite Service*, *supra* at 5754).

4. Sirius has provided no evidence of its subscriber base in those most populous parts of Alaska and Hawaii where it seeks to transmit via Repeaters – Anchorage, Juneau, Fairbanks and Honolulu. Indeed, technical analysis of its current operations demonstrates that, in both Alaska and Hawaii, Sirius’s satellites have little or no footprint due to orbital location or satellite design.<sup>1</sup> Rather than “complement” its satellite service with Repeaters to overcome earth-bound physical and electrical obstacles to reception of satellite-transmissions, the Proposed STA is designed to provide primary service to areas that Sirius’s satellite transmissions simply do not reliably reach. In short, the proposal violates the regulation that Repeaters are not to “extend a SDARS licensee’s coverage area.” *Digital Audio Radio Satellite Service, supra* at 5811. Sirius, nonetheless, proposes to use Repeaters for such coverage extension.

5. Sirius has, itself, consistently defined its service footprint in terms of the continental US. *See* Application of Satellite CD Radio, Inc., File No. SAT-MOD-1998 1211-00099 (Filed Dec. 11, 1998). As a result of its recent Canadian authorization, Canada is included, too.<sup>2</sup> But throughout, Sirius has itself acknowledged that Hawaii and Alaska are not part of its satellite footprint and are, therefore, outside its satellite service area.

6. Given the technical constraints, well acknowledged even by Sirius itself, it is not surprising that the STA request fails to demonstrate a subscriber base in need of repeaters to

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<sup>1</sup> *See, e.g. Petition to Deny of the National Association of Broadcasters*, in this proceeding, which provides graphical illustrations, including those submitted by Sirius itself.

<sup>2</sup> However, its Canadian service is transmitted to subscribers by the same space-based facilities as its U.S. service. Thus, the same transmission limitations affect reception north of the border as they do in the U.S. Of course, about 75 percent of Canada’s population lives within 100 miles of the border with the United States (source: [http://canada.usembassy.gov/content/can\\_usa/didyouknow.pdf](http://canada.usembassy.gov/content/can_usa/didyouknow.pdf)). So, in fact, Sirius has the same transmission difficulties to Canada’s outlying areas as it does in reaching Alaska and Hawaii.

overcome obstacles hindering reception from the sky in Honolulu, Anchorage, Fairbanks or Juneau. As Sirius lacks subscribers in the places the proposed Repeaters would serve; it only stands to reason that Sirius did not provide such information – because it cannot know where non-existent listeners suffer non-existent signal blockage problems.

7. Ultimately, what Sirius proposes is nothing more than terrestrial distribution of its wholly national programming. This would not only violate SDARS regulations. It would also undermine Communications Act mandates that the Commission act in keeping with the strong public interest in localism at the heart of the terrestrial broadcast system.

**B. The Proposed Repeaters, Absent Reliable Satellite Signal Delivery, Would Undermine the Strong Public Interest in Localism.**

8. Unable to deliver reliable signals in Alaska and Hawaii, Sirius – which only provides national programming – seeks to expropriate terrestrial operation authority for primary delivery of its national programming. This, even though the Communications Act, and more than seven decades of related regulation, demonstrate that terrestrial broadcasting authority is designed to be inherently local (*See, e.g.* 47 U.S.C. Sec. 307(b)). Were the Communications Act not so designed, the Commission would have long ago licensed super-powered terrestrial broadcast stations (as is common in other countries) to provide service over vast areas.

9. Localism is especially significant in Alaska and Hawaii, given their remoteness from the mainland. Indeed, the Commission has numerous times, in numerous contexts, recognized the importance of local terrestrial broadcasters in Alaska given its “unique terrain, its remoteness and isolation.” *E.g., Wrangell Radio Group*, 75 FCC 2d 404, 407 (1980). Similarly, the Commission has recognized Hawaii’s “geographical isolation and extreme variations in terrain.” *E.g., Maunawili, Hawaii*, 2 FCC Rcd 1575 (1987).

10. As a result, the Commission has long considered the public interest through the prism of the unique conditions in these remotest of states. Given their limited populations, their extreme population dispersion and terrain difficulties, any action putting Alaska and Hawaii's terrestrial broadcasters at an unfair disadvantage would end up harming their ability to provide the greatest measure of localism. Competition with SDARS, when provided as a satellite service, is a fact of life. Competition with a land-based Sirius distribution system, in the absence of material satellite signal delivery, is not only unfair, but will undermine Alaska and Hawaii's terrestrial broadcasters efforts to meet their localism requirements to the greatest extent possible, as Sirius cherry-picks audiences in the two state's major (but still relatively small) urban centers, without the localism obligations of free over-the-air terrestrial broadcasters.

11. An STA grant here would, thus, undermine not only clearly stated regulation and policy, but also significant public interests underlying these rules. Sirius has shown no good reason to undermine such well-rooted law and policy. Therefore, the Commission will best serve the public interest by rejecting the STA and requiring Sirius to first demonstrate that it is meeting its satellite delivery requirements, and that actual subscribers to its satellite-transmitted programming suffer actual reception problems from earthbound blockages that actually exist. Sirius has not done that – and cannot do it. The public interest, then, is clear: the Commission must reject the STA request.

### **C. Standing**

12. Alaska/Hawaii Broadcasters have standing to file this petition. As the designated representatives of licensed broadcast stations in their respective states, Alaska/Hawaii

Broadcasters are empowered by their members to act on their behalf on matters of significance to them. To establish standing, a petitioner to deny must “meet the same requirements as those required for standing to appeal a Commission decision to a federal court.” *Timothy K. Brady, Esq.*, 20 FCC Rcd 11987, 11990 (MB 2005) (citing *Standards for Determining the Standing of a Party*, 82 F.C.C. 2d 89 (1980)). As articulated by the U.S. Court of Appeals for the D.C. Circuit, those requirements are three-fold: the petitioner must (a) show injury in fact that (b) is fairly traceable to the challenged agency action and (c) is redressable by the relief requested. *E.g., Brady, supra; Omnipoint Corporation v. FCC*, 78 F.3d 620 (D.C. Cir. 1996).

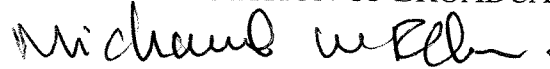
13. Broadcast station members of Alaska/Hawaii Broadcasters will be adversely affected should Sirius receive the STA to the Repeaters in derogation of the strong public interest in localism that underlies the Commission’s Repeaters regulation. Such injury would arise as Alaska/Hawaii Broadcasters’ member stations that serve the public interest in localism find their economic base under attack, through the proposed STA by a competitor operating without a localism mandate. But for such an STA, Alaska/Hawaii Broadcasters’ members would not suffer this harm. Denying the STA request would remedy the harm. Therefore, Alaska/Hawaii Broadcasters have standing.

### **III. Conclusion**

14. SDARS repeaters are only permissible to overcome physical blockages of primary signals delivered directly from satellites. But, Sirius’s satellite service footprint does not provide reliable service to most of the areas for which it seeks authority to operate Repeaters. No signal means it lacks subscribers in need of relief from earth-bound obstructions to Sirius reception. Therefore, no grounds exist for the STA requested. As discussed, a grant of

Repeater authority would harm the public interest in localism mandated by the Communications Act. The Commission should, for these reasons, deny the STA request.

Respectfully submitted,  
ALASKA BROADCASTERS ASSOCIATION  
HAWAII ASSOCIATION OF BROADCASTERS



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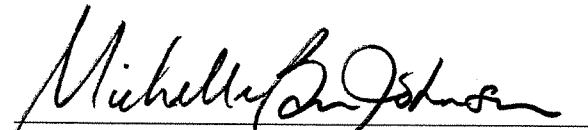
**CERTIFICATE OF SERVICE**

I, Michelle Brown Johnson, a secretary at Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing "PETITION TO DENY" was sent this 19th day of March 2007, First-Class United States mail, postage prepaid to the following:

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