

ORIGINAL

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Federal Communications Commission
Office of the Secretary

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

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)

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

REPLY TO OPPOSITION TO PETITION TO DENY

The Alaska Broadcasters Association and the Hawaii Association of Broadcasters (collectively "Alaska/Hawaii Broadcasters") hereby timely file this Reply (the "Reply") to the Opposition (the "Sirius Opposition") to Alaska/Hawaii Broadcasters' earlier 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.

1. The Sirius Opposition provides no fact or law to refute the basic premise that the STA Sirius seeks will initiate service that is contrary to law and established policy. Sirius says nothing to refute the clear rule of law that requires a SDARS licensee to actually provide satellite-transmitted service and have customers who actually require such supplementary service to overcome earthbound physical blockages or multipath interference. These needs must be identified BEFORE the Commission grants authority to supplement satellite service with Repeaters.

2. Lacking the ability to actually deliver such service (and, as a result, maintain a customer base in the two non-mainland states), Sirius seeks to skip over the inconvenient step of expanding its satellite service first. Instead, it seeks the STA to provide terrestrial service in the most densely populated parts of the two states -- authorizations that will do nothing to bring service to villages and communities from these urbanized areas. As Sirius itself states: “These benefits should be experienced by all U.S. citizens.” *Sirius Opposition* at 4. But, apparently Sirius is not interested in bringing service to those who lack much media service, but only in taking profits from more well-endowed urban areas, without the inconvenience and expense of actually building facilities capable of providing the satellite service for which it is licensed.

3. Nonetheless, Sirius attempts to cast the terrestrial broadcasters, who provide crucial local news, information and community contact, as bad guys who are trying to keep the benefits of satellite-delivered audio from the underserved populations of the 49th and 50th states. But, as the Alaska/Hawaii Broadcasters emphatically stated in their Petition, they do not oppose SDARS; rather, they oppose the terrestrial service that Sirius proposes here – a broadcast service that would arrive without satellite delivery. People in the Alaskan bush and Hawaii’s outlying communities would be delighted to receive SDARS service – if only Sirius would deliver it the way its authorization requires: by Satellite. Allowing Repeater service, in the absence of actual satellite signals, in metropolitan areas such as Anchorage and Honolulu will do nothing for listeners in Fort Yukon or Pakala Village.

4. Sirius fools no one when it attempts to confuse the matter. When stating, “Sirius’s service area covers the entire United States, including Alaska and Hawaii,” *Sirius Opposition* at 2, it is playing verbal games. Yes, its service area does include all 50 states – but its actual

service footprint, where one of its heavily marketed receivers will receive programming by satellite excludes all of Hawaii and most of Alaska. The Commission must not be fooled by such equivocation – and Alaska/Hawaii Broadcasters trust that it will not be. Just because the FCC authorizes a service area does not mean service is provided – and provision of satellite-delivered service is the benchmark. Until Sirius meets that requirement, it cannot have authority to deliver programming by Repeater as it simply has no transmissions to repeat.

5. Sirius, now attempting to eliminate competition through a merger with its only SDARS competitor, XM, also states that Alaska/Hawaii Broadcasters stand in “opposition to competition in any form.” *Sirius Opposition* at 1. But such scurrilous attacks are belied by Sirius’s own statements in pursuit of its SDARS monopoly. The “audio entertainment marketplace today is characterized by a diversity and multiplicity of options that, despite some differentiation, offer consumers similar content and features.” Form K-1, filed by Sirius Satellite Radio, Inc., SEC File No. 0-24710, Mar. 20, 2007 at 24. Alaska/Hawaii Broadcasters successfully face such competition every day, and provide local content that is unparalleled. They are not seeking government protection from legitimate competition. They only want Sirius to compete within rules that have been calibrated to ensure the public interest. That means Sirius must provide satellite signals first, then, and only then, may it obtain repeater authorization. As noted in the Petition, any shortcut that eliminates the satellite delivery requirement in Alaska and Hawaii would hinder the public interest in localism. Sirius is certainly free to deliver programming via the Internet in Alaska and Hawaii. Alaska/Hawaii Broadcasters are ready and able to meet such legitimate competition. But, until Sirius provides spot beams capable of providing primary service from the sky to its dedicated radio receivers, it must not be permitted to circumvent the basic regulatory regime

that ensures the public interest, convenience and necessity. The STA proposal simply fails to do so because it would allow for terrestrial delivery before Sirius ever would be required to provide satellite-delivered service.

6. Finally, Sirius haggles over procedural matters, claiming that Alaska/Hawaii Broadcasters did not file affidavits demonstrating their “standing,” as required. While precedent is clear – Alaska/ Hawaii Broadcasters have standing, *see FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940) – in the interests of taking this non-issue off the table, Alaska/Hawaii Broadcasters submit Declarations¹ attesting to their standing (attached hereto at Exh. A). In this way, the Commission need not be distracted by attacks on the messenger, when the real issue is found in the message: Sirius must not be allowed to circumvent the public interest in satellite-delivered SDARS service available to all Americans, by skipping over the investment-intensive satellite transmission requirement and, instead, delivering pay programming terrestrially ONLY in more populous urban areas of Alaska and Hawaii. Such an outcome would leave the bulk of the two state’s land area with no SDARS service at all – something that was clearly not intended when the Commission established SDARS to bring benefits, as Sirius notes, to “all U.S. citizens, including residents of the 49th and 50th states.” *Sirius Opposition* at 4. The STA would not only harm localism, as discussed at length in the Petition, but it will deprive the rest of these two states’ populations of SDARS benefits while Sirius reaps gains from the easier to service urban areas without investing the kind of everywhere service that goes with SDARS licenses.

¹ One declaration is provided by the Executive Director of the Alaska Broadcasters Association, the second declaration is provided by the president of the Hawaii Association of Broadcasters.

7. For all the reasons discussed above, and in the Petition, the Commission must deny or dismiss Sirius's STA request.

Respectfully submitted,
ALASKA BROADCASTERS ASSOCIATION
HAWAII ASSOCIATION OF BROADCASTERS



Frank R. Jazzo
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Their Counsel

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Exhibit A

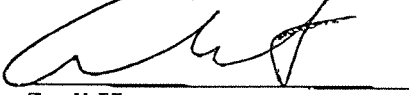
Standing

DECLARATION OF SUSII HEARST

I, Susii Hearst, under penalty of perjury under the laws of the United States, hereby declare and state that the following is true and correct to the best of my personal knowledge, information and belief:

1. I am President of the Hawaii Association of Broadcasters (the "Association").
2. The Association is a membership organization that represents broadcast station licensees in the State of Hawaii.
3. Among the Association's members are licensees of radio stations with primary contours in areas in which Sirius Satellite Radio, Inc. proposes terrestrial repeater service pursuant a special temporary authority ("STA") request now pending before the FCC. The business of these members would be affected by the STA, should it be granted.

Signed on behalf of the HARB by its President



Susii Hearst

4/13/07
Date

DECLARATION OF DARLENE SIMONO

I, Darlene Simono, under penalty of perjury under the laws of the United States, hereby declare and state that the following is true and correct to the best of my personal knowledge, information and belief:

1. I am executive director of the Alaska Broadcasters Association (the "Association").
2. The Association is a membership organization that represents broadcast station licensees in the State of Alaska.
3. Among the Association's members are licensees of radio stations with primary contours in areas in which Sirius Satellite Radio, Inc. proposes terrestrial repeater service pursuant a special temporary authority request now pending before the FCC. The business of these members would be affected by the STA, should it be granted.

Darlene Simono
Darlene Simono

04/12/2007
Date

CERTIFICATE OF SERVICE

I, Carla Whitlock, a secretary at Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing "PETITION TO DENY" was sent this 13th day of April 2007, First-Class United States mail, postage prepaid to the following:

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Sirius Satellite Radio, Inc.
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A handwritten signature in cursive script, reading "Carla M. Whitlock". The signature is written in black ink and is positioned above a horizontal line.

Carla Whitlock