

COPY

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED - FCC

JAN 18 2007

Federal Communications Commission
Bureau / Office

In the Matter of

Sirius Satellite Radio Inc.

File No. SAT-STA-20061107-00131

Request for Special Temporary Authority to
Operate Four Satellite DARS Terrestrial
Repeaters in Alaska and Hawaii

To: Acting Chief, International Bureau

OPPOSITION TO PETITION TO DENY

Sirius Satellite Radio Inc. (“Sirius”) opposes the Petition to Deny (“Petition”) filed by the Mt. Wilson FM Broadcasters, Inc. (“Mt. Wilson”),¹ which objects to grant of Special Temporary Authority (“STA”) for Sirius to operate four satellite digital audio radio service (“satellite DARS”) terrestrial repeaters in Alaska and Hawaii. Sirius also answers related questions raised by the National Association of Broadcasters (“NAB”) in recent discussions with staff from the offices of Commissioners Adelstein and McDowell.²

As shown below, Mt. Wilson failed to file an affidavit demonstrating it is a party-in-interest with standing in this proceeding. Indeed, Mt. Wilson—a provider of terrestrial digital radio service in Los Angeles—could not possibly be harmed by grant of the instant application for Sirius satellite DARS repeaters in Alaska and Hawaii.

¹ Mt. Wilson FM Broadcasters, Inc. Petition to Deny, File No. SAT-STA-20061107-00131 (filed Jan. 5, 2007) (“Petition”).

² See Letter from Larry Walke to Marlene H. Dortch, File No. SAT-STA-20061013-00121, -00122, 20061107-00131 (filed Jan. 12, 2007) (“*Ex Parte*”).

Furthermore, contrary to the concerns of Mt. Wilson and NAB, Sirius' satellite DARS service area covers the entire United States, including Alaska and Hawaii. Indeed, grant of the requested STA conforms to the Commission's directive to ensure the public interest benefits of satellite DARS are available to *everyone*—including the residents of America's 49th and 50th states. Accordingly, the Bureau should deny Mt. Wilson's Petition, dismiss NAB's informal inquiry—and promptly grant Sirius' request.

I. MT. WILSON WILL BE UNAFFECTED BY SIRIUS' OPERATION OF TERRESTRIAL REPEATERS IN ALASKA AND HAWAII AND THUS HAS NO STANDING TO OPPOSE GRANT OF THE REQUESTED STA

Mt. Wilson is not a “party-in-interest” for purposes of this proceeding, and thus lacks standing to oppose Sirius' application. Only a “party in interest may file with the Commission a petition to deny any application.”³ To be a party-in-interest, “a petitioner must make specific allegations of fact sufficient to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury”⁴ and demonstrate that the requested relief prevents such injury.⁵

³ 47 U.S.C. § 309(d)(1); 47 C.F.R. § 25.154(4).

⁴ *Applications of Hispanic Information and Telecomms. Network, Inc. For a New Instructional Television Fixed Service Station on the A Group Channels at Anderson, Indiana, Hispanic Information and Telecomms. Network, Inc. For a New Instructional Television Fixed Service Station on the C Group Channels at Indianapolis, Ind., Ball State Univ. For a New Instructional Television Fixed Service Station on the A Group Channels at Anderson, Ind., and Ball State Univ. For a New Instructional Television Fixed Service Station on the B Group Channels at Kokomo, Ind.*, Memorandum Opinion and Order, 18 FCC Rcd 23,872, 23,879 (¶ 19) (2003) (“*Hispanic Network*”); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

⁵ *Hispanic Network*, 18 FCC Rcd at 23,879 (¶ 19) (“the petitioner must demonstrate a causal link between the claimed injury and the challenged action by demonstrating that the injury can be traced to the challenged action and the injury would be prevented or redressed by the relief requested.”); see also *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in Possession, to Subsidiaries of Cingular Wireless LLC*, Memorandum Opinion and Order, 19 FCC Rcd 2570, 2579-80 (¶ 21) (2004); *Applications of Airgate Wireless, L.L.C., Assignor and Cricket Holdings, Inc., Assignee*, 14 FCC Rcd 11,827, 11,845 (¶ 35) (1999).

Here, Mt. Wilson fails to establish by facts and affidavit⁶ that it will suffer direct injury from Sirius' operation of terrestrial repeaters in Alaska and Hawaii pursuant to STA. Nor could it: Mt. Wilson operates over a thousand miles from where these repeaters will be installed and operated, confirming the absence of a nexus between any hypothetical harm to Mt. Wilson and the requested denial of the instant application. Quite simply, Mt. Wilson will be unaffected by Sirius' operation of terrestrial repeaters in Alaska and Hawaii and thus has no standing to oppose grant of Sirius' STA request.

II. GRANTING SIRIUS STA TO OPERATE TERRESTRIAL REPEATERS IN ALASKA AND HAWAII IS SQUARELY IN THE PUBLIC INTEREST

NAB suggests satellite DARS repeaters in the Aloha State and The Last Frontier are not "permissible."⁷ Mt. Wilson argues Sirius' adding four terrestrial repeaters in Alaska and Hawaii will transform its satellite system into a "statewide terrestrial digital audio radio service."⁸ Nonsense. In its 1997 Report and Order, the Commission specifically determined that the service area of satellite DARS licensees extends throughout the United States.⁹ Indeed, authorizing Sirius' Alaska/Hawaii repeaters will further the agency's directive for satellite DARS to cover America outside of the co-terminus U.S. "where practical to do so."¹⁰

⁶ See *Buckeye Commc'ns Co.*, Memorandum Opinion and Order, 16 F.C.C.2d 867, 868 (¶ 4) (1969) ("Michigan Bell's petition to deny is not supported by an affidavit as required by section 309(d) (1) of the Communications Act of 1934, as amended. The petition, therefore, is defective and will be dismissed.").

⁷ *Ex Parte* at 1.

⁸ Petition at 2.

⁹ *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5793-94 (¶¶ 97-99) (1997).

¹⁰ *Id.*, 12 FCC Rcd at 5794 (¶ 99).

Sirius has no plans to provide terrestrial service that is “separate and independent” of its satellite DARS service.¹¹ The proposed repeaters will be used only for the “simultaneous retransmission of [the complete] programming, [and only that programming,] transmitted by the satellite directly to SDARS subscriber[s]’ receivers.”¹² Similarly, the purpose of these proposed repeaters mirrors that of Sirius’ already operating repeaters—*i.e.*, to overcome satellite signal shortfalls and thus ensure consistent and reliable service to the public. Moreover, Sirius’ proposed Alaska and Hawaii repeaters will operate at or below 2000 watts—minimizing possible future harmful interference, but underpowered for state-wide coverage, as Mt. Wilson imagines.

As the application explains, operation of the proposed terrestrial repeaters is intended to improve reception of satellite DARS by residents in Alaska and Hawaii.¹³ As such, grant of the requested STA fulfills the Commission’s ambition that the advantages of satellite DARS—which include the provision of “high quality radio signals to areas that have limited radio service,” continuous radio coverage for individuals on long-distance trips, and “[d]iverse program formats, including educational, ethnic and religious programming”¹⁴—should be available nationwide.

III. CONCLUSION

Mt. Wilson and NAB want to turn residents of the 49th and 50th States into second-class citizens. The International Bureau should dismiss Mt. Wilson’s petition as lacking standing. On

¹¹ See Petition at 3.

¹² *Sirius Satellite Radio Inc. Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters*, Order and Authorization, 16 FCC Rcd 16,773, 16,777 (¶ 11) (Int’l Bur. 2001) (“2001 STA Order”).

¹³ Though Sirius’ satellites are not focused over Alaska or Hawaii, satellite beam patterns do not conform to state boundaries, and Sirius customers today receive satellite radio service in each state.

¹⁴ *2001 STA Order*, 16 FCC Rcd at 16,776 (¶ 9).

the merits, the Commission defined satellite DARS service areas to include Alaska and Hawaii back in 1997, making both the Mt. Wilson and NAB pleadings late-filed – a decade late – petitions for reconsideration.¹⁵ Accordingly, the Bureau should reject Mt. Wilson’s Petition, and NAB’s suspicions, outright, and instead expeditiously approve the instant STA to improve Sirius service in Alaska and Hawaii—as squarely within established satellite DARS policies and the public interest.¹⁶

Respectfully submitted,

/s/ Patrick L. Donnelly

Patrick L. Donnelly
Executive Vice President and General Counsel
Sirius Satellite Radio Inc.
1221 Avenue of the Americas, 36th Floor
New York, NY 10020
(212) 584-5100

January 18, 2007

¹⁵ Throughout the 1990s, NAB and Mt. Wilson were two of the most vigorous opponents of the new satellite radio allocation and service rules, including eliminating or conditioning terrestrial repeater authorizations. *See e.g.* Comments of Mt. Wilson FM Broadcasters, Inc., IB Docket No. 95-91, 5 (June 13, 1997) (arguing that “DARS, utilizing terrestrial repeaters, is inconsistent with the allocation of spectrum set aside for a national radio service – it is no longer a satellite service.”); Comments of the National Association of Broadcasters, Inc., IB Docket No. 95-91, 1 (June 13, 1997) (noting that “NAB has long been an ardent opponent of SDARS in general and has opposed as well the use of terrestrial repeaters or ‘gap fillers’ in conjunction with a satellite radio service”). Thus, both NAB and Mt. Wilson are aware that terrestrial repeaters were part of the DARS service rules adopted in 1997, *see* 47 C.F.R. § 25.201 (definition of satellite Digital Audio Radio Service); 47 C.F.R. § 25.214(a)(1) (satellite DARS allocated bandwidth).

¹⁶ *Cf.* 47 C.F.R. § 25.148(c) (requiring Digital Broadcast Satellite Service providers to “provide DBS service to Alaska and Hawaii where such service is technically feasible from the authorized orbital location”).

CERTIFICATE OF SERVICE

I, Christopher E. Ryan, do hereby certify that on January 18, 2007 I served a copy of the aforementioned **Sirius Satellite Radio Inc. Opposition To Petition To Deny** upon the following parties by U.S. first-class mail, postage pre-paid:

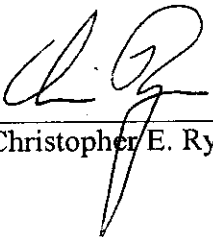
Robert B. Jacobi
Richard A. Helmick
COHN AND MARKS LLP
1920 N Street, N.W.
Suite 300
Washington, DC 20036

Counsel for Mt. Wilson FM Broadcasters, Inc.

Frank R. Jazzo
Fletcher, Heald & Hildreth PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209

Counsel for Alaska Broadcasters Association

Larry Walke
National Association of Broadcasters
1771 N Street, N.W.
Washington, DC 20036



Christopher E. Ryan