

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
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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: Chief, International Bureau

**OPPOSITION TO PETITIONS TO DENY**

Sirius Satellite Radio Inc. ("Sirius") opposes the Petitions to Deny ("Petitions") filed by the National Association of Broadcasters ("NAB") and the Alaska/Hawaii Broadcasters,<sup>1</sup> which object to grant of Special Temporary Authority ("STA") for Sirius to operate four satellite digital audio radio service ("satellite radio") terrestrial repeaters in Alaska and Hawaii.

The Petitions represent the latest installment of terrestrial broadcasters' continuing opposition to competition in any form.<sup>2</sup> And, as usual, they are factually and legally baseless.

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<sup>1</sup> Petition to Deny of National Association of Broadcasters, File No. SAT-STA-20061107-00131 (filed Mar. 19, 2007) ("NAB Petition"); Petition to Deny of Alaska Broadcasters Association and Hawaii Association of Broadcasters, File No. SAT-STA-20061107-00131 (filed Mar. 19, 2007) ("Alaska/Hawaii Broadcasters Petition"). Sirius also incorporates by reference its Opposition to Petition to Deny filed in response to Mt. Wilson FM Broadcasters, Inc Petition to Deny. See Opposition to Petition to Deny of Sirius, IBFS File. No. SAT-STA-20061107-00131 (Jan. 18, 2007).

<sup>2</sup> Sirius notes that neither NAB nor the Alaska/Hawaii Broadcasters filed an affidavit establishing their standing in this proceeding as required by the Communications Act. 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.") The Alaska/Hawaii Broadcasters do discuss standing, noting that their member companies would "find their economic base under attack...by a competitor." Alaska/Hawaii Broadcasters Petition at 6. Presumably, NAB's standing is based on similar

Contrary to the terrestrial broadcasters' assertions, Sirius' service area covers the entire United States, including Alaska and Hawaii. Moreover, grant of the requested STA conforms to the Commission's directive to ensure the public interest benefits of satellite radio are available to *everyone*—including the residents of America's 49<sup>th</sup> and 50<sup>th</sup> states. Sirius' current STA request is identical to those made for repeaters deployed elsewhere in its service area, and the proposed repeaters will operate in a manner identical to Sirius' other terrestrial repeaters. Finally, the Alaska/Hawaii Broadcasters assertions regarding localism are irrelevant to the current proceeding and hypocritical in light of terrestrial broadcasters' previous concerns about satellite radio operators' provision of local content.

**I. GRANTING SIRIUS AUTHORITY TO OPERATE THESE REPEATERS IS SQUARELY IN THE PUBLIC INTEREST**

NAB states that “Alaska and Hawaii are simply not within Sirius' SDARS coverage area.”<sup>3</sup> But the NAB is simply wrong. In its 1997 Report and Order, the Commission determined that the service area of satellite DARS licensees would not be limited to CONUS and extends throughout the United States.<sup>4</sup>

Likewise, the Alaska/Hawaii Broadcasters are incorrect that the requested STA is

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competitive concerns, as NAB has not and cannot evidence interference to its member companies arising from the proposed repeaters. The only parties that might have legitimate interference concerns, WCS operators, have already indicated that they do not oppose a grant of the STA to operate these repeaters. *See* Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition to Helen Domenici, Chief, International Bureau, FCC in File No. SAT-STA-20061107-00131, at 1 (March 19, 2007) (noting that “the WCS Coalition will not be interposing any objection to a grant of the above-referenced request”).

<sup>3</sup> NAB Petition at 7.

<sup>4</sup> *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) (“1997 Report and Order”).

“contrary to law and established policy” and would “ill-serve the public interest.”<sup>5</sup> First, the terrestrial broadcasters are unable to point to any law that prohibits the grant of the requested STA, and there is none. Indeed, the proposed repeaters will operate in a manner identical to Sirius’ other deployed repeaters and serve the purpose envisioned by the Commission. Specifically, 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.”<sup>6</sup> In addition, the purpose of these proposed repeaters mirrors that of Sirius’ operating repeaters—*i.e.*, to overcome satellite signal shortfalls and thus ensure consistent and reliable service to the public. Moreover, grant of the proposed repeaters will further the Commission’s policy goal of providing satellite radio outside the co-terminus United States. In fact, the Commission “strongly encourage[d] coverage to other areas...where practical to do so.”<sup>7</sup>

The Commission has long recognized that satellite radio benefits consumers and has long recognized the importance of terrestrial repeaters in bringing that benefit to all American consumers. In the FCC’s initial grant of Sirius’ terrestrial repeater network, the agency noted that the public interest is served by Sirius’ provision of “high quality radio signals to listeners in 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

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<sup>5</sup> Alaska/Hawaii Broadcasters Petition at 1.

<sup>6</sup> *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”).

<sup>7</sup> *1997 Report and Order*, 12 FCC Rcd at 5794 (¶ 99).

programming.”<sup>8</sup> These benefits should be experienced by all U.S. citizens, including residents of the 49<sup>th</sup> and 50<sup>th</sup> states.

## **II. THE ALASKA/HAWAII BROADCASTERS’ LOCALISM CONCERNS ARE IRRELEVANT AND HYPOCRITICAL**

The Alaska/Hawaii Broadcasters claim that localism will be harmed by Sirius’ operation of these repeaters because “[r]epeater regulation is in place in large measure because it supports...localism” and “Sirius has no localism obligations.”<sup>9</sup> Clearly, the terrestrial broadcasters’ complaint is with the existence of satellite radio rather than the use of complementary repeaters. But the Commission is long past that policy decision, and terrestrial broadcasters should move on.

Moreover, the terrestrial broadcasters provide no valid link between the protectionism they seek and satellite radio repeaters. The terrestrial broadcasters simply fail to establish that there is greater harm by operation of these repeaters than by the provision of satellite radio to these areas without the proposed repeaters. Finally, many of the rationales cited by the broadcasters for the protection of localism in these areas – including remoteness and unique terrain – also support the provision of more reliable satellite radio in these areas.

Finally, terrestrial broadcasters’ claims are particularly ironic given their historical objection to the provision of any local content by satellite radio operators – a concern that stems from broadcasters’ traditional disdain for competition and not from any purported concerns about localism. In fact, the NAB has historically maintained that satellite radio repeaters “must be

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<sup>8</sup> *2001 STA Order*, 16 FCC Rcd at 16,776 (¶ 9).

<sup>9</sup> Alaska/Hawaii Broadcasters Petition at 1.

explicitly *prohibited* from transmitting any locally originated programming.”<sup>10</sup> Having fought against any local programming, terrestrial broadcasters’ current claim that satellite radio providers now have a competitive advantage because they have no local programming “obligation” is patently absurd.

### III. CONCLUSION

Terrestrial broadcasters have fought satellite radio – as they have other audio and video platforms – from its inception. Clearly, terrestrial broadcasters do not like competition and believe that the FCC exists to protect them from competition. Sirius urges the Commission once again to reject this competitive protectionism. The operation of the proposed repeaters is squarely in the public interest, and neither NAB nor the Alaska/Hawaii Broadcasters provide any evidence otherwise. The Commission should expeditiously grant the subject application.

Respectfully submitted,

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<sup>10</sup> See Comments of the National Association of Broadcasters, IB Dkt. No. 95-91, 6-7 (Feb. 22, 2000)(emphasis added).

CERTIFICATE OF SERVICE

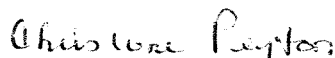
I, Christine Peyton, do hereby certify that on April 3, 2007 I served a copy of the aforementioned **Sirius Satellite Radio Inc. Opposition To Petition To Deny** upon the following parties by U.S. first-class mail, postage pre-paid:

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