

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

DEC 18 2006

Federal Communication Commission
 Bureau / Office

In the matter of)
)
 Sirius Satellite Radio Inc.) File No. SAT-STA-20061107-00132
)
 Request for Modification of Special)
 Temporary Authority to Operate New)
 Terrestrial Repeater in Las Vegas, NV)

To: Acting Chief, International Bureau

PETITION TO DENY

The WCS Coalition,¹ by its attorneys and pursuant to Section 25.154(a) of the Commission's Rules, hereby petitions the International Bureau to deny the above-captioned request by Sirius Satellite Radio Inc. ("Sirius") for a modification to its existing special temporary authority ("STA") that would allow Sirius to construct and operate a new Digital Audio Radio Service ("DARS") terrestrial repeater in Las Vegas, Nevada (the "Las Vegas 180 Day STA Request").² As will be discussed below, Sirius has not satisfied the substantive

¹ The WCS Coalition consists of AT&T Inc., BellSouth Corporation, Comcast Corporation, Horizon Wi-Com LLC, NW Spectrum Co., NTELOS Inc., Sprint Nextel Corporation, and WaveTel NC License Corporation. The Coalition includes the licensees that hold all of the Wireless Communications Service ("WCS") spectrum in the 2.3 GHz band in the Las Vegas area.

² See Request of Sirius Satellite Radio Inc. for Special Temporary Authority, File No. SAT-STA-20061107-00132 (filed Nov. 7, 2006) ["Las Vegas 180 Day STA Request"]; *Sirius Satellite Radio Inc.*, Order and Authorization, 16 FCC Rcd 16773 (2001), *modified on recon.* Order, 16 FCC Rcd 18481 (2001) ["2001 STA Grant Order"]. On November 17, 2006, the Bureau indicated that Sirius's request had been accepted for filing and thus was subject to petitions to deny under Section 25.154(a). See *Policy Branch Information*, Report No. SAT-00403, Public Notice, DA 06-2322, at 2-3 (rel. Nov. 17, 2006). At the same time, the Bureau also announced that it had granted, just eight days after it was filed, Sirius' simultaneous request for a 30 day STA to operate the terrestrial repeater at issue here (File No. SAT-STA-20061107-00133). *Id.* By letter to the Bureau dated November 22, 2006, the WCS Coalition expressed concern over the fact that the Bureau had granted Sirius' request without having first placed it on public notice and secured public comment on the merits as required by Section 25.120(b) of the Commission's Rules. See Letter from Paul J. Sinderbrand, Counsel to the WCA Coalition, to John Giusti, Acting Chief, International Bureau, Federal Communications Commission, File No. SAT-STA-20061107-00133 (filed Nov. 22, 2006) ["Coalition November 22 Letter"]. In that letter, the WCS Coalition advised the Commission that it intended to petition to deny the instant request. *Id.* at 5.

standards set forth in Section 25.120(b)(1) for an STA, as it has failed to establish that extraordinary circumstances preclude it from meeting its service needs under the terms of its existing STAs.

Section 25.120(b)(1) is clear: “[t]he Commission may grant a temporary authorization *only* upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest”³ Here, however, Sirius has made no showing of “extraordinary circumstances.” To justify its request for authority to construct a new repeater in Las Vegas that would operate at a power level of 4,400 Watts equivalent isotropically radiated power (“EIRP”), Sirius simply cites to the closure and anticipated demolition of the Stardust Hotel (where it has an authorized repeater), and references the Commission’s 2001 decision allowing it to operate repeaters pursuant to STA for the first time.⁴ But the issue here is not whether Sirius should be allowed to operate repeaters. Rather, it is whether extraordinary circumstances justify a grant to Sirius of authority to operate repeaters above and beyond those the Commission has already authorized.⁵ Yet, Sirius provides the Commission with no explanation whatsoever as to why it cannot serve the area that had been served by the Stardust Hotel facility by deploying one or more repeaters operating at no more than 2,000 Watts peak EIRP – repeaters it is free to deploy

³ 47 C.F.R. § 25.120(b)(1) (emphasis added).

⁴ See Las Vegas 180 Day STA Request, Attachment A at 1.

⁵ Although Sirius proposes to operate at 4,400 Watts EIRP, it does not specify whether that figure represents peak or average power level. *Id.* The WCS Coalition has noted that Sirius omitted the same information from its simultaneous request for its 30-day STA for the Las Vegas facility. See Coalition November 22 Letter at 4 n.9. Sirius has now done so again in its December 8 application to renew that 30 day STA (File No. SAT-STA-20061208-00146) and in its December 7 application for authority to add a total of fifteen new terrestrial repeaters in the Atlanta, Chicago, Cleveland, Detroit, Kansas City, New York, Orlando, Phoenix and Tampa markets (File No. SAT-STA-20061207-00145). It is baffling that Sirius continues to leave the Commission and WCS licensees in the dark on this issue, particularly given the attention that Sirius, the WCS Coalition and others have given the peak vs. average power issue in IB Docket 95-81 and elsewhere.

under its current STA without further Commission approval.⁶ This omission is startling given that the Commission has previously warned Sirius that “[a] request for special temporary authority must contain . . . all facts sufficient to justify the temporary authority sought and the public interest therein.”⁷ In light of Sirius’ total silence on the issue, the Commission cannot reasonably conclude that there are extraordinary circumstances precluding Sirius from providing service in the Las Vegas area absent grant of the requested STA modification.

Sirius’ failure to establish that extraordinary circumstances prevent it from serving the area at issue under its existing STAs is particularly troubling when evaluated in the context of the ongoing debate in IB Docket No. 95-91 over the rules that will govern WCS/DARS coexistence. As the Commission is aware, Sirius’ proposal in IB Docket No. 95-91 to permit terrestrial repeaters to operate routinely at power levels above the 2,000 Watt peak EIRP limit applicable to WCS licensees has been among the most contentious issues in the long-running debate between the WCS and DARS communities. The record before the Commission establishes beyond peradventure that terrestrial repeaters operating above that power level will result in unduly large WCS “exclusion zones” – areas around a terrestrial repeater that WCS licensees cannot reasonably serve because of interference from the terrestrial repeater.⁸ The Commission has

⁶ See *2001 STA Grant*, 16 FCC Rcd at 16779.

⁷ *XM Radio Inc., Sirius Satellite Radio Inc.*, Order and Authorization, 19 FCC Rcd 18140, 18142 (IB 2004) (citation omitted) [“*2004 STA Grant*”].

⁸ See, e.g., Letter from Karen L. Gulik, Counsel to AT&T Wireless Services, Inc., to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC, IB Docket No. 95-91, at 1-7 (filed Aug. 9, 2001); Letter from Karen L. Gulik, Counsel to AT&T Wireless Services, Inc., to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91, at 6 (filed Feb. 20, 2001); Letter from Karen L. Gulik, Counsel to AT&T Wireless Services, Inc., to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91, at 2-12 (filed April 30, 2001); Comments of BellSouth Corporation, File Nos. SAT-STA-20010712-00063, SAT-STA-20010724-00064, at i-ii (filed Aug. 21, 2001); Letter from Karen B. Possner, BellSouth Corporation, to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed May 18, 2001); Opposition of WorldCom, Inc., to STA Request, File Nos. SAT-STA-20010712-00063, SAT-STA-20010724-00064, at 1 (filed Aug. 21, 2001); Letter from Karen B. Possner, BellSouth Corporation, to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed Aug. 28, 2001); Letter from Paul J.

acknowledged the potential for harmful interference from high-powered DARS terrestrial repeaters to WCS operations.⁹ Thus, the WCS community has consistently called for permanent rules restricting DARS terrestrial repeaters to power levels of no more than 2,000 Watts peak EIRP.¹⁰

Although Sirius here proposes that its STA be conditioned on non-interference to WCS,¹¹ that protection offers WCS licensees scant comfort in light of Sirius' recent proposals in IB Docket No. 95-91. There, Sirius is not only asking the Commission to "grandfather" all DARS

Sinderbrand, Counsel to the Wireless Communications Ass'n Int'l, Inc., to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed Oct. 2, 2001); Letter from the WCS Coalition, to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91 (filed Nov. 2, 2001); Comments of the WCS Coalition, IB Docket No. 95-91 (filed Dec. 14, 2001); Reply Comments of the WCS Coalition, IB Docket No. 95-91 (filed Dec. 21, 2001); Letter from the WCS Coalition, to William Caton, Acting Secretary, FCC, IB Docket No. 95-91 (filed Feb. 4, 2002); Letter from the WCS Coalition, to William Caton, Acting Secretary, FCC, IB Docket No. 95-91 (filed Feb. 19, 2002). Indeed, in granting Sirius its initial STA, the Commission acknowledged that there are areas around terrestrial repeaters where WCS equipment will be susceptible to interference and required Sirius to cure any interference from its terrestrial repeaters. *See 2001 STA Grant*, 16 FCC Rcd at 16777.

⁹ In granting Sirius' STA, the Commission has repeatedly emphasized both that Sirius terrestrial repeaters operating in excess of 2,000 Watts peak EIRP must avoid interference to WCS deployments and that, because the grant of the STA is without prejudice to the eventual outcome of the Commission's consideration of DARS terrestrial repeater rules in IB Docket No. 95-91, construction of such high-power terrestrial repeaters pursuant to the STA is at Sirius' own risk. *See 2001 STA Grant*, 16 FCC Rcd at 16779-80; *2004 STA Grant*, 19 FCC Rcd at 18143-44. The Commission believed that by conditioning Sirius' STA in this manner, WCS licensees would not be jeopardized by permitting Sirius to construct and operate the high-power terrestrial repeaters it proposed.

¹⁰ *See, e.g.*, Letter from Douglas I. Brandon, Vice President, External Affairs and Law, AT&T Wireless Services, Inc. *et al.*, to Magalie Roman Salas, Secretary, FCC, IB Docket No. 95-91, at 1 (filed Oct. 4, 2001); Comments of the WCS Coalition, IB Docket No. 95-91, at 3-6 (filed Dec. 14, 2001). Sirius can hardly plead ignorance of the problems that the placement of high-power DARS terrestrial repeaters in proximity to other services will cause, having complained to the Commission that "several XM repeaters today generate ground-level 'dead zones' – muting reception of the Sirius satellite signal." "Interference to the SDARS Service from WCS Transmitters," White Paper prepared by Sirius Satellite Radio Engineering *et al.*, at 3 (March 28, 2006) *filed as an attachment to* Letter from Carl R. Frank, Counsel to Sirius Satellite Radio Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-256 (filed March 29, 2006). Indeed, while Sirius complained bitterly that allowing WCS licensees to increase their power levels as proposed by WCS Wireless, LLC and XM Radio Inc. in WT Docket No. 03-264 "could undermine the SDARS service completely," the WCS power levels they proposed are 7 dB *lower* than the maximum power level permitted under the DARS terrestrial repeater STAs. *Id.* at 4. In other words, Sirius is operating under its existing STAs in some instances at approximately *five times* the increased WCS power level it objected to.

¹¹ *See* Las Vegas 180 Day STA Request, Attachment A at 2.

terrestrial repeaters constructed pursuant to STAs, but it would have the Commission eliminate the unqualified obligation Sirius has pursuant to its STAs to protect WCS operations from interference – the obligation that was an essential precondition to the Commission’s willingness to grant the STAs in the first place.¹² Given Sirius’ position calling for the “grandfathering” of terrestrial repeaters but elimination of the condition that protects WCS from interference from those repeaters, granting Sirius authority to operate even one new repeater at power levels above 2,000 Watts peak EIRP can only exacerbate the present difficult situation. Absent any evidence that extraordinary circumstances preclude Sirius from serving the area at issue here with repeaters operating at no more than 2,000 Watts peak EIRP, there is no reason for the Commission to make a bad situation even worse.

WHEREFORE, for the foregoing reasons, the Commission should deny Sirius’ request for modification of its STA that would provide it authority to operate a new high-power repeater in Las Vegas, Nevada.

Respectfully submitted,

THE WCS COALITION

By: 

Paul J. Sinderbrand

WILKINSON BARKER KNAUER, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037-1128
202.783.4141

Its Attorney

December 18, 2006

¹² See Petition of Sirius Satellite Radio Inc. for Rulemaking and Comments, IB Docket No. 95-91 (filed Oct. 17, 2006); Letter from Carl R. Frank, Counsel to Sirius Satellite Radio Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 95-91 (filed Aug. 14, 2006).

CERTIFICATE OF SERVICE

I, Lauren F. Boyd-Ellis, hereby certify that the foregoing Petition to Deny was served this 18th day of December, 2006 by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

- | | |
|---|---|
| <p>* Fred Campbell
Federal Communications Commission
Office of Chairman Martin
445 12th Street, SW, Room 8-B201
Washington, DC 20554</p> | <p>* Emily Willeford
Federal Communications Commission
Office of Chairman Martin
445 12th Street, SW, Room 8-B201
Washington, DC 20554</p> |
| <p>* Barry Ohlson
Federal Communications Commission
Office of Commissioner Adelstein
445 12th Street, SW, Room 8-C302
Washington, DC 20554</p> | <p>* John Branscome
Federal Communications Commission
Office of Commissioner Copps
445 12th Street, SW, Room 8-B115
Washington, DC 20554</p> |
| <p>* Bruce Gottlieb
Federal Communications Commission
Office of Commissioner Copps
445 12th Street, SW, Room 8-A302
Washington, DC 20554</p> | <p>* Aaron Goldberger
Federal Communications Commission
Office of Commissioner Tate
445 12th Street, SW, Room 8-A204
Washington, DC 20554</p> |
| <p>* Angela Giancarlo
Federal Communications Commission
Office of Commissioner McDowell
445 12th Street, SW, Room 8-C302
Washington, DC 20554</p> | <p>* Julius Knapp
Federal Communications Commission
Office of Engineering and Technology
445 12th Street, SW, Room 7-C250
Washington, DC 20554</p> |
| <p>* Robert Nelson
Federal Communications Commission
International Bureau
445 12th Street, SW, Room 6-A665
Washington, DC 20554</p> | <p>* Cassandra C. Thomas
Federal Communications Commission
International Bureau
445 12th Street, SW, Room 6-A666
Washington, DC 20554</p> |
| <p>* Rod Porter
Federal Communications Commission
International Bureau
445 12th Street, SW, Room 6-C752
Washington, DC 20554</p> | <p>* Cathleen Massey
Federal Communications Commission
Wireless Telecommunications Bureau
445 12th Street, SW, Room 3-C250
Washington, DC 20554</p> |

* Catherine W. Seidel
Federal Communications Commission
Wireless Telecommunications Bureau
445 12th Street, SW, Room 3-C255
Washington, DC 20554

* Roger Noel
Federal Communications Commission
Wireless Telecommunications Bureau
445 12th Street, SW, Portals I – Rm. 6327
Washington, DC 20554

* Karl Kensinger
Federal Communications Commission
International Bureau
445 12th Street, SW
Washington, DC 20554

* Stephen Duall
Federal Communications Commission
International Bureau
445 12th Street, SW, Room 6-C411
Washington, DC 20554

* Bruce Romano
Federal Communications Commission
Office of Engineering and Technology
445 12th Street, SW, Room 7-C222
Washington, DC 20554

Carl Frank
Wiley, Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

* John Giusti
Federal Communications Commission
International Bureau
445 12th Street, SW
Washington, DC 20554

* Gardner Foster
Federal Communications Commission
International Bureau
445 12th Street, SW
Washington, DC 20554

* Joann Lucanik
Federal Communications Commission
International Bureau
445 12th Street, SW
Washington, DC 20554

* Shabnam Javid
Federal Communications Commission
International Bureau
445 12th Street, SW
Washington, DC 20554

Patrick L. Donnelly
Sirius Satellite Radio, Inc.
1221 Avenue of the Americas, 36th Floor
New York, NY 10020


Lauren F. Boyd-Ellis

* *Via E-mail*