

JAN 16 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications 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

REPLY

The WCS Coalition, by its attorneys and pursuant to Section 25.154(e) of the Commission's Rules, hereby replies to the Opposition of Sirius Satellite Radio Inc. ("Sirius") to the WCS Coalition's Petition to Deny Sirius' request for a modification to its existing special temporary authority ("STA") that would allow Sirius to construct and operate a new high-powered Digital Audio Radio Service ("DARS") terrestrial repeater in Las Vegas, Nevada (the "Las Vegas 180-day STA Request").¹ As will be discussed below, Sirius' latest filing studiously avoids the serious issues raised by the WCS Coalition's Petition,² and ultimately fails to provide

¹ 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"].

² An example of how Sirius ignores the important issues presented by this proceeding can be found in its continued refusal to specify whether proposed repeaters will transmit at *peak* or *average* equivalent isotropically radiated power ("EIRP"). The difference is significant, and the WCS Coalition noted in its Petition that Sirius had failed to indicate whether the proposed repeater at issue here would operate at 4,400 Watts peak or average EIRP. See Petition of the WCS Coalition to Deny, File No. SAT-STA-20061107-00132, at 2 n.5 (filed Dec. 18, 2006) ["WCS Coalition Petition"]. Yet, Sirius' Opposition sheds no light on Sirius' intentions. As the WCA Coalition noted in its Petition, "[i]t 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 95-91 and elsewhere." *Id.*

the International Bureau with a basis for granting an STA pursuant to Section 25.120(b)(1) of the Commission's Rules.

The issue presented by the WCS Coalition's Petition is not, as Sirius implies, whether Sirius should be permitted to utilize terrestrial repeaters in Las Vegas.³ The WCS Coalition made that clear in its Petition.⁴ Rather, the issue is whether extraordinary circumstances are present that justify a grant to Sirius of authority to operate a high-power repeater in Las Vegas that has not previously been authorized.⁵ The WCS Coalition's Petition showed that Sirius has not demonstrated that Sirius cannot serve the area at issue here with the 2,000 Watts peak EIRP repeaters it is free to deploy under its current STA without further Commission approval.⁶ Significantly, Sirius' Opposition does not deny that the geographic area previously served from the Stardust site can be served by already-authorized repeaters operating at no more than 2,000 Watts peak EIRP.⁷ There is absolutely nothing on the record to suggest that higher-powered repeaters are needed. Sirius' continued silence on the issue makes it impossible for the Bureau to reasonably conclude that there are extraordinary circumstances precluding Sirius from providing service in the area at issue here absent grant of the requested STA modification.

³ See Opposition of Sirius Satellite Radio Inc. to Petition to Deny, File No. SAT-STA-20061107-00132, at 1-2 (filed Jan. 4, 2007) ["Sirius Opposition"].

⁴ See WCS Coalition Petition at 2 ("[T]he issue here is not whether Sirius should be allowed to operate repeaters.").

⁵ See 47 C.F.R. § 25.120(b)(1)(2005).

⁶ See 2001 STA Grant Order, 16 FCC Red at 16779.

⁷ Sirius does contend, rightly, that it has no obligation at the present time to utilize only repeaters operating at 2,000 Watts or less. See Sirius Opposition at 4. By the same token, the Commission has no obligation to authorize Sirius to operate any new repeaters, much less repeaters in excess of 2,000 Watts peak EIRP. The question here is whether Sirius has satisfied the requirement under Section 25.230(b)(1) that it show extraordinary circumstances to justify a modification of its STA, and it has clearly failed to do so.

Sirius also does not deny that terrestrial repeaters operating above 2,000 Watts peak EIRP power level will result in unduly large Wireless Communications Service (“WCS”) “exclusion zones” – areas around a terrestrial repeater that WCS licensees cannot reasonably serve because of interference from the terrestrial repeater.⁸ Rather, it argues that interference to WCS operations is not a risk because its STAs are conditioned on non-interference to WCS.⁹ Once again, Sirius completely ignores the point made in the WCS Coalition’s Petition – that the proposed conditions offer WCS licensees scant comfort in light of Sirius’ recent proposals in IB Docket No. 95-91 to not only “grandfather” all DARS terrestrial repeaters constructed pursuant to STAs, but to eliminate the unqualified obligation Sirius has pursuant to its STAs to protect WCS operations from interference.¹⁰

⁸ See WCS Petition at 3 n.8, *citing* 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. 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 See Sirius Opposition at 3-4.

¹⁰ 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). Sirius takes comfort in the fact that the proposed repeater is intended to replace that which previously had been located at the Stardust Hotel. See Sirius Opposition at 2-3. However, it is only since the Stardust facility was authorized that Sirius began

Simply put, Sirius cannot have it both ways – proclaiming here that it will provide absolute protection to future WCS operations, while in IB Docket No. 95-91 seeking to be relieved of any obligation to provide that protection. So long as Sirius continues to call 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 this one repeater at a power level above 2,000 Watts peak EIRP can only exacerbate the present difficult situation.

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

Respectfully submitted,

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taking the position that repeaters constructed pursuant to an STA should be grandfathered, but not the obligation to protect WCS from interference eliminated. Thus, the Commission can and must consider anew whether the public interest will best be served by allowing Sirius to construct a new high-power repeater to serve a portion of Las Vegas that presumably can be served by already-authorized low-power repeaters.

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that the foregoing Reply was served this 16th day of January, 2007 by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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