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DEC 14 2006

Federal Communications Commission
Office of the Secretary

December 14, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Request Of Sirius Satellite Radio Inc. For Extension Of Special Temporary Authorization Regarding Digital Audio Radio Service Terrestrial Repeaters – File No. SAT-STA-20061208-00146*

Dear Ms. Dortch:

I am writing on behalf of the WCS Coalition to oppose the above-referenced request by Sirius Satellite Radio Inc. (“Sirius”) for special temporary authority (“STA”) to operate its new high-power Digital Audio Radio Service (“DARS”) terrestrial repeater in Las Vegas, NV for an additional 30 days. Sirius has failed to demonstrate that extraordinary circumstances exist (as required by Section 25.120(b)(1) of the Commission’s Rules) that justify allowing Sirius to operate the subject facility beyond the initial 30-day period authorized by the International Bureau.¹

The WCS Coalition has previously expressed its disappointment that the Bureau granted Sirius’ initial proposal to construct and operate a new terrestrial repeater in Las Vegas with an operating power of 4,400 Watts equivalent isotropically radiated power (“EIRP”)² just eight days

¹ See *Policy Branch Information*, Report No. SAT-00403, Public Notice, DA 06-2322, at 2-3 (rel. Nov. 17, 2006).

² Although Sirius proposed to operate at 4,400 Watts EIRP, it did not specify whether that figure represents peak or average power level. See *Request of Sirius Satellite Radio Inc. for Special Temporary Authority*, File No. SAT-STA-20010724-00064, Attachment A, Exhibit A (filed July 24, 2001). Notwithstanding the fact that the WCS Coalition criticized Sirius for omitting this information (see *Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to John Giusti, Acting Chief, International Bureau, Federal Communications Commission, at 4 n.10* (filed Nov. 22, 2006) [“Coalition November 22 Letter”]), Sirius has done the same thing 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 obfuscate 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. See, e.g., *Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. SAT-STA-20061107-00133* (filed Dec. 13, 2006).

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after it was filed, without having first placing it on public notice and securing public comment on the merits as required by Section 25.120(b) of the Commission's Rules.³ Such public comment, the WCS Coalition has established, would have disclosed that Sirius had not satisfied the substantive standards set forth in Section 25.120 for an STA. The instant request by Sirius for a second 30-day STA affords the Bureau an opportunity to rectify this error and mitigate the potential harm to the future deployment of broadband services over Wireless Communications Service ("WCS") spectrum.

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 . . ."⁴ Here, however, Sirius has made no showing of "extraordinary circumstances." To justify its request for authority to operate for an additional 30 days a 4,400 Watts EIRP repeater in Las Vegas, Sirius simply cites to the closure and anticipated demolition of the Stardust Hotel (where it has an authorized repeater) and cites to the Commission's 2001 decision allowing it to operate repeaters pursuant to STA in the first place.⁵ But the issue here is not whether Sirius should be operating repeaters, it is whether extraordinary circumstances justify a grant to Sirius of authority to operate repeaters above and beyond those the Commission has already authorized. Sirius provides the Commission with no explanation whatsoever as to why it cannot serve the area that had been served by the Stardust facility with one or more repeaters operating at no more than 2,000 watts peak EIRP – repeaters Sirius is free to deploy under its current STA without further Commission approval.⁶

Sirius' 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

³ See Coalition November 22 Letter. The WCS Coalition also has established that the Bureau should not be granting 30-day STAs to Sirius for repeaters that Sirius intends to operate on a regular basis without public notice and an opportunity for public comment, since Section 25.120(b)(4) of the Commission's Rules specifically excludes such STAs from the Bureau's authority to generally grant such STAs. See *id.* at 1-3. In the interest of brevity, the WCS Coalition will not repeat that argument in detail here. Suffice it to say that before the Bureau grants Sirius an additional 30-day STA for its new Las Vegas facility, public notice and an opportunity for public comment is required.

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

⁵ See Request of Sirius Satellite Radio Inc. for Special Temporary Authority, File No. SAT-STA-20061107-00132, Attachment A at 1 (filed Nov. 7, 2006).

⁶ See *Sirius Satellite Radio, Inc.*, Order and Authorization, 16 FCC Rcd 16773, 16779-80 (IB 2001).


⁷ *XM Radio Inc., Sirius Satellite Radio Inc.*, Order and Authorization, 19 FCC Rcd 18140, 18142 (IB 2004) (citation omitted).

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precluding Sirius from providing service in the Las Vegas area absent grant of an additional 30-day STA.⁸ Thus, the instant request for an additional 30-day STA must be rejected.

Should you have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,



Paul J. Sinderbrand

Counsel to the WCS Coalition

cc: John Giusti
Stephen Duall
Carl Frank
Patrick L. Donnelly

⁸ Sirius' failure to establish that there are extraordinary circumstances precluding it from meeting its needs under its existing STAs is particularly telling when evaluated in the context of the ongoing debate in IB Docket No. 95-91 over the rules that will govern WCS/DARS coexistence. The WCS Coalition has previously established that terrestrial repeaters operating above 2,000 Watts peak EIRP 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, and that the Commission has acknowledged the potential for harmful interference from high-powered DARS terrestrial repeaters to WCS operations and required all Sirius repeaters constructed pursuant to STAs to provide WCS with absolute protection against interference. *See, e.g.,* Coalition November 22 Letter, at 3-4. The WCS Coalition has also demonstrated that, in light of Sirius' recent proposal in IB Docket No. 95-91 calling for the "grandfathering" of terrestrial repeaters built pursuant to its STAs, 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. *See, e.g., id.* at 4-5.