

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

In re Request of)	
)	
AT&T Inc., BellSouth Corporation, Comcast Corporation, NextWave Broadband Inc., NTELOS, Inc., Sprint Nextel Corporation, Verizon Laboratories Inc., and WaveTel NC License Corporation)	WT Docket No. 06-102 IB Docket No. 95-91 ET Docket No. 04-186
For Limited Extension of Deadline for Establishing Compliance With Section 27.14 Substantial Service Requirement)	

To: The Commission

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction.

The National Association of Broadcasters (“NAB”)¹ submits these comments in the above-captioned proceeding addressing the issue of local origination of content on Satellite Digital Audio Radio Service (“SDARS”) terrestrial repeaters. AT&T Inc., BellSouth, *et al.* (“WCS Coalition”) requests an extension of the July 21, 2007 construction deadline.² Under Section 27 of the Commission’s rules, WCS licensees are required to make a showing of substantial service in their license area by the end of their license term. *See* 47 C.F.R. § 27.14.

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.

² *See Public Notice*, Wireless Telecommunications Bureau Seeks Comment on Consolidated Request by the WCS Coalition for Waiver of Wireless Communications Services (WCS) Construction Rule, WT Docket No. 06-102, rel. May 10, 2006.

WCS Coalition states that a three year extension from the time the Commission releases an order establishing final service rules for SDARS terrestrial repeaters operating in spectrum adjacent to the WCS allocation is necessary.³ As discussed below, NAB urges the Commission to issue final service rules for SDARS repeaters, in order to provide regulatory certainty for WCS licensees, as well as terrestrial and satellite broadcasters.

II. The Commission Should Codify No-Local Origination Rules for SDARS Repeaters.

Since SDARS service was authorized in 1997, parties in the proceeding have primarily focused their efforts towards resolving the single issue pending in the *Further Notice*, namely, final service rules for SDARS terrestrial repeaters.⁴ In authorizing SDARS service, the Commission stated that the sole purpose of terrestrial repeaters is the retransmission of information from the satellite signal in order to overcome “effects of signal blockage and multipath interference.”⁵ At that time, the Commission stated that rules governing SDARS use of terrestrial repeaters would require that the signals being transmitted by the repeater be received from the operating DARS satellites. The Commission also “tentatively concluded” to prohibit SDARS repeaters from transmitting locally-originated programming “to prohibit the use of terrestrial repeaters to transmit locally originated programming *which would be inconsistent with the allocation of this spectrum.*”⁶ XM Radio, Inc. (“XM”) and Sirius Satellite Radio, Inc.

³ See *In re Request of AT&T Inc., BellSouth Corporation, et al., Consolidated Request for Limited Extension of Deadline For Establishing WCS Compliance with Section 27.14 Substantial Service Required*, filed on March 22, 2006 (“WCS Coalition Request”).

⁴ 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 (1997) (“1997 Order/Further Notice”).

⁵ *Id.* at ¶ 138.

⁶ *Id.* at ¶ 142 (emphasis added).

(“Sirius”) have repeatedly avowed that they would not use terrestrial repeaters to deliver locally originated programming.⁷

Although technology has rapidly developed since the 1997 SDARS authorization,⁸ the Commission must ensure that XM and Sirius do not utilize new technology to fundamentally

⁷ “In fact, Sirius proposed the rule prohibiting local origination of programming, which was subsequently echoed by the Commission.” In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of Sirius Satellite Radio, Inc., IB Docket No. 95-91, Oct. 13, 1995 at fn. 27. “Terrestrial devices will not be used to originate programming.... Terrestrial repeaters *will not change the essential nature* of the satellite DARS service.” In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of CD Radio, Inc. IB Docket No. 95-91, June 13, 1997 at 3 (emphasis added). Application of Satellite CD Radio, Inc. (now Sirius Satellite Radio, Inc.) For Authority to Construct, Launch and Operate a Space Station in the Satellite Sound Broadcasting Service, Supplement to Petition for Rulemaking, July 17, 1990, at 2, “use of terrestrial repeaters is essential to ensure the availability of uncompromised CD-quality stereo broadcasting service in heavily shadowed urban areas.” Similarly, XM repeatedly asserted the same pledge: “XM Radio has consistently reasserted its intention that the repeaters will only simultaneously rebroadcast the programming from its satellites.” In the Matter of Request of XM Radio Inc. for Special Temporary Authority to Operate Digital Audio Radio Service Terrestrial Repeaters, Reply Comment of XM Radio, Inc., FCC File Not. SAT-STA-2001-712-00063, Aug. 31, 2001 at 3; AMRC does not contest the Commission’s proposed prohibition on the origination of local programming from terrestrial repeaters.” In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Reply Comments of American Mobile Radio Corporation (now XM Radio, Inc.), IB Docket No. 95-91, June 27 1997 at 6.

⁸ For example, SDARS providers have greatly expanded upon what the Commission envisioned at the time of the rulemaking, namely, a 30 channel lineup that had no local traffic and weather content. See In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Notice of Proposed Rulemaking*, IB Docket No. 95-91, 11 FCC Rcd 1 at ¶ 2 (1995). Currently, XM and Sirius offer 170 and 150 channels, respectively, with over 40 channels devoted exclusively to local traffic and weather coverage. See http://www.xmradio.com/programming/full_channel_listing.jsp?sort=number and <http://www.sirius.com/servlet/ContentServer?pagename=Sirius/CachedPage&c=ChannelLineup&cid=1139320914821> (last visited June 9, 2006).

alter the nature of satellite radio service. NAB is particularly concerned that XM and Sirius may be actively developing a next generation of SDARS receivers that can deliver “localized” programming, including advertisements, news, etc., to its subscribers by using Global Positioning Satellite (“GPS”) and store-and-forward technologies. Using these technologies, an SDARS provider could, for example, beam to its listeners local content feeds (*i.e.*, using excess bit stream capacity outside of the active audio streams) to be stored in memory chips or hard disk drives of next generation receivers. In turn, these receivers would be capable, based either on the geographic position of the receiver or by other information such as the listener’s subscriber number, of filtering and placing into the listener’s audience stream, at specified times (*e.g.*, commercial breaks), local content that is tailored to the listener’s location. Thus, SDARS licensees appear poised to “localize” their services in an effort to make them indistinguishable from local radio. Given the Commission’s specific finding that satellite radio will not provide a local service, and therefore not compete with broadcasters for local advertising,⁹ such a prohibition is required.

⁹ In the 1995 *Notice of Proposed Rulemaking*, the Commission articulated two findings. First, terrestrial broadcasters would not “necessarily” be adversely affected by the introduction of “30 or more channels of national digital audio programming” because, *unlike SDARS*, terrestrial broadcasting “has the ability to provide local public affairs programming, local news and *weather, local traffic* reports and local personalities.” In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Notice of Proposed Rulemaking*, IB Docket No. 95-91, 11 FCC Rcd 1 at ¶ 2 (1995) (emphasis added). Second, “[the FCC] believe[s] that even with spot beams, local news, *weather, traffic* and public affairs programming *could not practically be provided* via satellite DARS.” *Id.* at ¶ 4. Thus, the Commission did not believe that it would be technologically feasible for SDARS to provide local programming. Further, in authorizing satellite radio service, the Commission also determined that (1) because local content would be unique to terrestrial broadcasters, and (2) because a majority of advertising dollars on radio stations flowed from local advertising, the economic impact to terrestrial broadcasters and their ability to provide valuable public services would not be severely impacted. *See 1997 Order/Further Notice* at ¶ 23 (in which the Commission stated it had “no evidence that satellite DARS would be able to compete for local advertising”).

Additionally, XM recently sought to acquire additional spectrum in the WCS band, spectrum it contended, was free from any limitations that apply to its use of SDARS spectrum.¹⁰ Although the XM-WCS acquisition was recently abandoned, before XM and Sirius invest in technology or in acquiring additional spectrum, the Commission must clarify that in authorizing SDARS licensees, the FCC authorized a national, not a local broadcasting service. NAB thus urges the Commission to make clear in its final service rules that SDARS providers are prohibited from using any technology to permit the delivery of content that would be aired on a receiver in one location that differs from the content that would be aired on a receiver in a different location.

III. Final Service Rules For Terrestrial Repeaters Will Allow Deployment Of Advanced Wireless Services.

Issuance of final rules will also advance another important Commission goal, spectrum management. The WCS Coalition states that licensees have determined “that the most efficient and viable business model for the 2.3 GHz band is to use the spectrum for the provision of advanced wireless services, including wireless broadband.” WCS Coalition Request at 6. Widespread deployment of such services, however, has not occurred in this band. Two years after the Commission authorized satellite radio service, XM and Sirius first detailed the technical parameters of their vast repeater network.¹¹ At that time, WCS licensees expressed its concern

¹⁰ See In the Matter of Application for Transfer of Control of WCS Licenses from WCS Wireless, Inc., Transferor, to XM Satellite Radio Holdings, Inc., Transferee. File No. TC-0002240823 and Letter from Hugh Panero and Gary Parson, XM, to U.S. House of Representatives (July 27, 2005).

¹¹ See, e.g., In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of Bellsouth Corporation and Bellsouth Wireless Cable, Inc., IB Docket No. 95-91, Feb 22, 2000; In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-

about the potential for overload and intermodulation interference to WCS if the repeaters were not appropriately regulated. WCS Coalition Request at 7-8. It is of significance that at a time when the Commission is contemplating authorizing unlicensed devices to deliver advanced wireless services, including broadband service, in the television broadcast bands,¹² the prime WCS spectrum continues to lie fallow. This clearly does not benefit the public interest. The time has therefore come for the Commission to resolve these interference concerns and issue final service rules for the thousands of terrestrial repeaters that have been operating under Special Temporary Authority.¹³ The Commission should also refrain from authorizing unlicensed devices in the television broadcast bands until it has determined whether advanced wireless services in the 2.3 GHz band, or other bands that may be underutilized, would be better suited to deliver broadband and other advanced telecommunications services, without the threat of harmful interference to free, over-the-air television.

IV. Conclusion.

For the above-stated reasons, NAB urges the Commission to promptly resolve the outstanding interference issues in the 2.3 GHz band and issue final service rules for SDARS' terrestrial repeaters, and to make clear that satellite radio providers are prohibited from using any technology to permit the delivery of content that would be aired on a receiver in one

2360 MHz Frequency Band, Comments of Wireless Communications Association International, Inc (WCA), IB Docket No. 95-91, Feb 22, 2000.

¹² See In the Matter of Unlicensed Operation in the TV Broadcast Bands, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, *Notice of Proposed Rulemaking*, ET Docket No. 04-186, FCC 04-113 (rel. May 25, 2004).

¹³ See XM Radio Inc., Application for Special temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters, *Order and Authorization*, 16 FCC Rcd 16781 (2001), modified, 16 FCC Rcd 18484 (2001); 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 16773 (2001), modified, 16 FCC Rcd 18481 (2001).

location that differs from the content that would be aired on a receiver in a different location.

Commission action will ensure regulatory certainty for WCS licensees as well as terrestrial and satellite radio licensees, and will allow for the deployment of advanced wireless services.

Respectfully submitted,

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