

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 27 of the)	
Commission’s Rules to Govern the)	WT Docket No. 07-293
Operation of Wireless Communications)	
Services in the 2.3 GHz Band)	
)	
Establishment of Rules and Policies for the)	IB Docket No. 95-91
Digital Audio Radio Satellite Service in the)	GEN Docket No. 90-357
2310-2360 MHz Frequency Band)	RM No. 8610
)	

COMMENTS

The Alaska Broadcasters Association and the Hawaii Association of Broadcasters (collectively “Alaska/Hawaii Broadcasters”) hereby comment on the proposals contained in the “Notice of Proposed Rule Making and Second Further Notice of Proposed Rulemaking” in the above-referenced proceeding (the “Rulemaking”).¹ The Alaska/Hawaii Broadcasters specifically comment on proposals related to operation of Satellite Digital Audio Radio Service (“SDARS”) terrestrial repeaters (the “Repeaters”).

Introduction and Summary

1. Repeaters, quite simply, must have a signal to repeat. The FCC’s proposals regarding SDARS repeater authorizations have always required that an SDARS operator first deliver satellite-transmitted service to a place before it is allowed to build and operate a repeater to serve that area.² The principle is that SDARS repeater service is only authorized to overcome earthbound physical blockages or multipath interference.

¹ FCC 07-215, rel. Dec. 18, 2007.

² *Digital Audio Radio Satellite Service*, 12 FCC Rcd 5754, 5811 (1997) at para 139 and Appendix C.

2. But in this Rulemaking, the Commission seeks comment on whether it is appropriate, as a general principle, to adopt rules governing the ability of SDARS licensees to deploy repeaters in geographic areas not within the service footprint of SDARS satellites.³ The Commission essentially asks if it should allow repeaters when no satellite signal exists to feed them—turning them into broadcast programming originators.

3. As these facilities will relay and repeat nothing, the Alaska/Hawaii broadcasters will distinguish, throughout these comments between true “Repeaters” (designed to provide fill-in service for SDARS signals that should arrive at a place but are blocked by electronic or physical obstructions) and those that could never be fed by SDARS satellite (hereinafter, “Originators”).

4. The Alaska/Hawaii Broadcasters oppose any rule allowing terrestrial SDARS Originators. SDARS is, by design, a nationwide service that does not and cannot serve local communities. SDARS Originators would cherry pick audiences in the two states’ limited urban areas, undermining the significant public interest in localism – and the news, public affairs, and emergency information that Alaska/Hawaii Broadcasters provide for their communities each and every day. Just as the Commission is beginning an effort to reinvigorate its localism requirements,⁴ it considers a measure that will harm localism. If SDARS providers wish to provide a land-based service, they may build or buy AM or FM stations, or enter into programming agreements with terrestrial broadcasters, so that local elements will be required along with SDARS nationwide programming.

5. Competition is a fact of life, but Alaska/Hawaii Broadcasters oppose any measure that allows SDARS operators to skip over the satellite-delivery part of their obligations. Such a

³ See *Rulemaking*, para 51.

⁴ *Broadcast Localism*, Report and Notice of Proposed Rulemaking, FCC 07-217 (rel. Jan. 24, 2008) (“Localism NPRM”).

development would be contrary to the international spectrum allocation for SDARS, as well as public interest mandates of the Communications Act. Such a measure, therefore, must not be enacted.

Discussion

6. The Commission has been clear. The role of repeaters is only “in conjunction with an operating satellite DARS system to ensure its complementary nature” *Digital Audio Radio Satellite Service*, 12 FCC Rcd 5754, 5811 (1997). “Complementary” service means relay of standard satellite-delivered transmission to overcome effects of earthbound “satellite signal blockage and multipath interference.” *Sirius Satellite Radio, Inc.*, 16 FCC Rcd 16,773 (2001) at para. 1 (citing *Digital Audio Radio Satellite Service, supra* at 5754).

7. But here, the Commission considers allowing Originators in the absence of blockage or interference so that SDARS operators would be authorized to broadcast terrestrially, even at places where they have no satellite delivery capacity. Sirius, for its part, has previously attempted to authorize Originators in Alaska and Hawaii through special temporary authority in FCC File No. SAT-STA-20061107-00131⁵ (the “Originator STA Proceeding”). In the Originator STA Proceeding, Sirius’s proposal was clearly unmasked as an attempt to sell SDARS products without meeting the most basic requirements of a SDARS license: actually reaching earth with a satellite-originated signal.⁶

8. Existing rules and precedents were shown, in that proceeding, to preclude such satellite-free SDARS activity. Now, as an alternative route to satellite-free terrestrial delivery,

⁵ The Alaska/Hawaii Broadcasters filed in opposition to the proposed special temporary authority in that proceeding.

⁶ See, e.g., *Petition to Deny of the National Association of Broadcasters*, in this proceeding, which provides graphical illustrations demonstrating Sirius’s lack of satellite coverage in Alaska and Hawaii. These include exhibits Sirius has itself submitted to the Commission.

we see this proposal to allow Originators by rule, despite clear precedent that repeaters are not to” extend a SDARS licensee’s coverage area.” *Digital Audio Radio Satellite Service, supra* at 5811.

9. But, the localism mandates of the Communications Act do not permit such nationwide terrestrial broadcasting. Localism is one of the statutory pillars of broadcast regulation in the United States. *See, e.g.*, 47 U.S.C. Sec. 307(b). In requiring “efficient, and equitable distribution of radio service” among states and communities, Congress rejected the nationwide model of terrestrial broadcast service common in other countries. An administrative agency may not permit, by rule, what statutes oppose. *See* 5 U.S.C. Sec. 706(2). Therefore, the Commission must not allow Originators.

10. Localism is especially significant in Alaska and Hawaii, given their remoteness from the mainland. The Commission has numerous times, in numerous contexts, recognized the importance of local terrestrial broadcasters in Alaska given its “unique terrain, its remoteness and isolation.” *E.g., Wrangell Radio Group*, 75 FCC 2d 404, 407 (2003). Similarly, the Commission has recognized Hawaii’s “geographical isolation and extreme variations in terrain.” *E.g., Maunawili, Hawaii*, 2 FCC Rcd 1575 (1987). The potential effects of SDARS Originators will, therefore, be more profound in the 49th and 50th states.

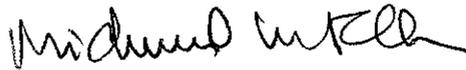
11. Facing limited populations, extreme population dispersion and terrain difficulties, Alaska and Hawaii broadcasters typically face greater challenges than their mainland counterparts. Competition with SDARS, when marketed as a satellite service, is a fact of life. Competition with entirely land-based SDARS Originators, in the absence of satellite signal delivery, is not only unfair, but will undermine Alaska and Hawaii’s terrestrial broadcasters’ efforts to meet their localism requirements to the greatest extent possible. Licensed Originators

will allow SDARS operators, offering nationwide programs delivered free of localism requirements, to cherry-pick audiences in Alaska and Hawaii's major (but still relatively small) urban centers. Diminished revenue means diminished resources for all types of station operations, including locally-responsive programming. At a time when the Commission is expending major efforts to strengthen localism, including issuance of the Localism NPRM, it makes no sense to allow SDARS Originators that effectively redirect resources from local to national broadcasting.

Conclusion

The Commission must not change its rules to allow Originators. As demonstrated, establishing SDARS Originator services would transform SDARS from a nationwide satellite service to a local terrestrial service, and in so doing undermine localism. Adoption of rules that undermine localism would not only violate the Communications Act, but would undermine current Commission efforts to improve localism in broadcasting. No good reason exists to allow Originators – and the Commission must not do it.

Respectfully submitted,
ALASKA BROADCASTERS ASSOCIATION
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