

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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XM RADIO, INC.)
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Request for Special Temporary Authority)
To Operate Terrestrial Repeaters in the)
Satellite Digital Audio Radio Service)
)

File No. SAT-STA-20010712-00063

Received

OCT 19 2001

Satellite Policy Branch
International Bureau

APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the Commission's rules, AT&T Wireless Services, Inc. ("AWS") respectfully requests that the Commission grant this application for review and reverse the decision of the International Bureau granting XM Radio, Inc. ("XM") Special Temporary Authority ("STA") to operate a nationwide terrestrial repeater network in the 2332.5-2345 MHz band.¹ Absent complete disclosure by XM of the location and technical parameters of **all** repeaters to be operated pursuant to the STA, grant of the STA was in clear violation of the Commission's rules. Accordingly, the Bureau's order must be reversed and XM's request denied.

On July 12, 2001, just prior to publicly announcing September 12 commercial launch of its satellite Digital Audio Radio Service, XM filed an STA request so that it could initiate service using more than 700 high power repeaters, operating at powers up to 40 kW nationwide. Curiously, in a footnote, and without explanation, XM observed

¹ XM Radio Inc., Application for Special Temporary Authority, *Order and Authorization*, File No. SAT-STA-200110712-00063 (rel. Sept. 17, 2001).

that it “has not included this [location and operational] information for the low power repeaters (*i.e.*, EIRP of 2 kW or less) it seeks to operate pursuant to this STA.”²

In response to a *Public Notice* seeking comment on the application,³ AWS detailed a number of substantive and procedural defects in XM’s request and argued that those issues must be addressed prior to any grant of authority.⁴ Specifically, AWS argued (1) that XM’s application was facially defective because it did not include complete information on all of the transmitters it sought to operate pursuant to the STA; and (2) that a number of the high power repeaters disclosed in the application could be shown conclusively to interfere with AWS’s current and near-term deployment of its fixed wireless network.⁵

Section 25.120 of the Commission’s rules governs the standards and requirements relevant to a grant of an STA for satellite communications services. The rule plainly states that “[t]he request [for special temporary authority] must contain the *full particulars of the proposed operation* including all facts sufficient to justify the temporary authority sought and the public interest therein.”⁶ Despite this explicit requirement, the Bureau on delegated authority decided to read the “particularity” requirement out of the rule. At this point, no one except XM knows the locations of hundreds – perhaps thousands – of transmitters that it is operating nationwide. Such a

² XM Radio Inc. Request for Special Temporary Authority to Operate Digital Audio Radio Service Terrestrial Repeaters (July 12, 2001).

³ “Satellite Policy Branch Information Applications Accepted for Filing,” *Public Notice*, Report No. SAT-00077 (rel. July 31, 2001).

⁴ XM Radio Inc. and Sirius Satellite Radio Inc. Request for Special Temporary Authority, *Comments of AT&T Wireless Services, Inc.*, File Nos. SAT-STA-20010712-00063 and SAT-STA-20010724-00064 (August 21, 2001).

⁵ AWS currently operates a fixed wireless network providing lifeline voice and Internet broadband services to residential customers over Wireless Communications Service (“WCS”) spectrum. The SDARS spectrum is located in the midst of the WCS band and thereby poses substantial risk of blanketing interference to the WCS licensees.

⁶ 47 C.F.R. § 25.120(a) (emphasis added).

generous grant of authority -- one that is definitionally unlimited in scope -- clearly exceeds that contemplated by the Commission or authorized by the rule.

The contradictions in the Bureau's order belie its analysis. The Bureau's entire discussion concerning whether it should actually require XM to disclose all of the repeaters for which it sought operational authority is as follows: "because the focus of the party's [sic] technical interference objections has been on repeaters operating above 2 kW EIRP and because the particulars of those repeaters have been disclosed, Section 25.120's requirement for specificity have been satisfied."⁷ Oddly, then, not even the Bureau knows what it has authorized.⁸ Furthermore, because it looks like a blanket grant for all repeaters at or below 2 kW, it appears that XM can continue to construct more repeaters and bring them into operation anywhere in the country *without receiving the prior consent* of the Commission.

The reference to the "parties' objections" as focused on high power repeaters, operating at levels up to 40 kW, is inapposite in this proceeding. As the Bureau recognized, the Commission is actively considering "complex issues" about SDARS repeaters' interference to WCS operations in rulemaking docket No. 95-91. And it is true that many of the WCS licensees, including AWS, have indicated that authorization by rule of repeaters below 2 kW may be appropriate because 2kW is the standard power authorized in the band. However, no such rules have been adopted. Moreover, WCS licensees have *never* indicated that a 2kW environment would leave them free from interference from SDARS repeaters. Though the Bureau's analysis could be read to suggest the WCS licensees have "waived" any objection to repeaters operating at or

⁷ *Order and Authorization*, at ¶ 9.

⁸ In a meeting with IB staff, AWS' counsel confirmed that the Bureau does not intend to ask XM to provide it any information on its repeaters operating at or below 2 kW.

below 2 kW, that is simply not the case. Nor, indeed, is it appropriate for the Bureau to make a ruling in this adjudicatory proceeding based on conjecture about what the Commission may decide in a pending rulemaking proceeding.

Appropriately, the Bureau order indicated that operations pursuant to the STA must be on a non-interference basis to all other licensed services. The order indicates that “XM [must] immediately reduce the power level of or, if necessary, cease operation of any repeater that causes interference to a WCS, MDS or ITFS authorized station.”⁹ Ironically, this requirement is effective upon “receipt of a written, descriptive notification from a WCS . . . licensee *identifying the specific source of interference.*”¹⁰ How a WCS licensee is to identify an interfering transmitter operating at 2 kW is not discussed.

Perhaps recognizing this deficiency, the Bureau required XM to share information on all repeaters it intends to operate pursuant to the STA. However, it invited XM to impose a non-disclosure agreement on any recipient of the information. By taking this path, the Bureau has allowed XM to continue its consistent practice of withholding information that could be useful in resolving interference concerns. To date, despite a formal request made by AWS one month ago, no WCS licensee has received this information.¹¹ Even disclosure through an NDA, however, does not resolve the legal deficiency in the Bureau’s order. That order gives XM a blank check on terrestrial repeaters. The requirement that an applicant for extraordinary relief disclose the “full particulars” of its request exists to protect operational licensees, such as AWS, from unauthorized and potentially dangerous interference. If XM wishes to make the showing

⁹ *Order and Authorization*, at ¶14 (emphasis added).

¹⁰ *Id.*

¹¹ Today XM verified this fact in a letter. XM Letter to the Don Abelson, Chief, International Bureau, File No. SAT-STA-20010712-00063 (October 16, 2001).


necessary to receive confidential treatment of that information, let it do so. But the burden of doing so should be on the applicant *prior to* its receipt of extraordinary relief – and not upon existing licensees who continue to be held in the dark long after XM has begun its operations.

By issuing the STA in the absence of identification of all of the repeaters to be authorized, the Bureau acted in derogation of the Commission's rules. For the reasons stated above, the Commission must grant this application for review and reverse the Bureau's grant of the STA.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

By:



William M. Wiltshire
Karen L. Gulick

HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036
202-730-1300

Douglas I. Brandon
AT&T WIRELESS SERVICES, INC.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, DC 20036
202-223-9222

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