

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

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In the Matter of )  
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XM Radio Inc. )  
 )  
Application for Special Temporary Authority )  
to Operate Satellite Digital Audio Radio )  
Service Complementary Terrestrial Repeaters )

OCT 15 2001  
File No. SAT-STA-20010712-00063

Satellite Policy Branch  
International Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

XM Radio Inc. ("XM") hereby files this Opposition to the Petition for Reconsideration filed by the Wireless Communications Association International, Inc. ("WCA") of the International Bureau's *Order* in the above-captioned proceeding granting XM special temporary authority ("STA") to operate Satellite Digital Audio Radio Service ("DARS") terrestrial repeaters in its licensed frequency band, 2332.5-2345 MHz.<sup>1</sup>

The Bureau made the proper decision not to require XM to provide Multipoint Distribution Service ("MDS") or Instructional Television Fixed Service ("ITFS") licensees with the location and technical parameters of all repeaters operating pursuant to the STA. WCA has never shown any harm to any MDS or ITFS operation from the hundreds of repeaters that have been disclosed by the DARS licensees or from any operation of those repeaters, either during their non-commercial, experimental operation or since their authorization. Indeed, the record does not even show that, in the cities in which such repeaters are being deployed, MDS or ITFS operators continue to use the old block downconverters that may vulnerable to DARS repeaters

<sup>1</sup> Wireless Communications Association International, Inc., Petition for Reconsideration, File No. SAT-STA-20010712-00063 (September 25, 2001) ("Petition for Reconsideration").

and were to be replaced by February 2002. In addition, even if MDS/ITFS facilities were vulnerable to interference from DARS repeaters, there is no need for MDS/ITFS licensees to know the exact location of XM's repeaters prior to experiencing actual interference.

If WCA and its members are sincere about resolving potential interference issues with XM, they have had (and continue to have) ample opportunity to do so. Unfortunately, WCA instead seems determined to forego practical efforts at resolving these issues in favor of wasting the resources of the Commission and other parties on frivolous matters such as this Petition for Reconsideration.

### **Background**

On July 12, 2001, XM filed a request for temporary authority to operate DARS terrestrial repeaters for commercial service on a non-interference basis pending the outcome of a four-year-old rulemaking regarding terrestrial repeaters.<sup>2</sup> The XM request provided location information for over 700 repeaters that XM plans to operate in approximately 60 urban areas at a power level greater than 2 kW EIRP. Consistent with its discussions with Commission staff, XM did not disclose the location of the approximately 550 repeaters that it plans to operate at a power level of 2 kW or less.<sup>3</sup>

The Commission issued a *Public Notice* of this STA request on July 31, 2001. *Public Notice*, Report No. SAT-00077 (July 31, 2001). The *Public Notice* asked commenters to provide specific information concerning interference from DARS repeaters to stations that are "currently deployed and operational." In response to the *Public Notice*, two Wireless Communications Service ("WCS") licensees identified specific repeaters that might cause interference to their

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<sup>2</sup> XM Radio Inc., Request for STA, File No. SAT-STA-20010712-00063 (July 12, 2001).

<sup>3</sup> See Reply Comments of XM Radio Inc., File No. SAT-STA-20010712-00063, pp. 10-11.

facilities. Neither WCA nor any MDS or ITFS licensee identified a single instance in which its operations might be affected in any of the cities in which XM proposes to operate.<sup>4</sup>

On September 17, 2001, the International Bureau ("Bureau") issued an *Order* granting XM's STA request to operate terrestrial repeaters for commercial service on a non-interference basis.<sup>5</sup> In the *STA Order*, the Bureau required XM to make available to WCS licensees, pursuant to appropriate confidentiality agreements and reciprocal information sharing concerning WCS facilities, the locations and technical parameters of repeaters operating pursuant to the STA, including those operating at or below 2 kW EIRP.<sup>6</sup> The Bureau did not require XM to provide this information to MDS/ITFS licensees. The Bureau also required XM to provide WCS licensees and WCA with the name and telephone number of a point of contact to receive reports of actual interference.<sup>7</sup>

On September 25, 2001, WCA filed a Petition for Reconsideration of the *STA Order*, arguing that the Bureau did not adequately protect MDS/ITFS licensees from interference from XM's repeaters when it failed to require XM to provide MDS/ITFS licensees with information about the location and technical parameters of all repeaters operating pursuant to the STA,

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<sup>4</sup> BellSouth Corporation and Worldcom, Inc. are MDS/ITFS licensees, but their comments focused exclusively on potential interference to their WCS operations.

<sup>5</sup> XM Radio Inc., *Order and Authorization*, File No. SAT-STA-20010712-00063 (September 17, 2001) ("*STA Order*").

<sup>6</sup> *STA Order* ¶ 14.

<sup>7</sup> XM provided this contact information in its August 31 Reply Comments, prior to the Commission requiring such information. Reply Comments of XM Radio Inc., File No. SAT-STA-20010712-00063, at 11 (August 31, 2001) ("In the event of an interference complaint, XM Radio designates Derek de Bastos ([derek.debastos@xmradio.com](mailto:derek.debastos@xmradio.com); (202) 380-4184) and Phil Barsky ([phil.barsky@xmradio.com](mailto:phil.barsky@xmradio.com); (202) 380-4090) as its points of contact.").

including those operating at or below 2 kW EIRP.<sup>8</sup> Because XM's STA request already provides the Commission and interested parties with the location and technical parameters of the repeaters it seeks to operate above 2 kW EIRP, WCA's Petition amounts to a request that the Bureau require XM to provide MDS/ITFS licensees with information concerning repeaters that will operate at 2 kW EIRP or less. For the reasons stated below, the Bureau should dismiss WCA's Petition for Reconsideration.

### Discussion

#### I. THE BUREAU ACTED PROPERLY IN NOT REQUIRING XM TO PROVIDE MDS/ITFS LICENSEES WITH THE LOCATION AND TECHNICAL PARAMETERS OF ALL REPEATERS OPERATING PURSUANT TO THE STA

The Bureau's decision not to require XM to provide MDS/ITFS licensees with the location and technical parameters of the repeaters XM will operate pursuant to its STA was proper considering the absence of any evidence that MDS or ITFS licensees will be harmed by the higher-power repeaters identified in the STA request. WCS licensees were the only ones to submit any evidence of potential interference to existing facilities. Indeed, to this day, there is no evidence in the record showing that MDS and ITFS users continue to use the block downconverters that are allegedly vulnerable to SDARS repeater transmissions, or the extent of

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<sup>8</sup> Wireless Communications Association International, Inc., Petition for Reconsideration, File No. SAT-STA-20010712-00063 (September 25, 2001) ("Petition for Reconsideration"). Concurrent with its Petition for Reconsideration, WCA filed an Emergency Motion for Stay requesting the Bureau to immediately stay the effectiveness of the *STA Order* until it acts on its Petition for Reconsideration. See Wireless Communications Association International, Inc., Emergency Motion for Stay, File No. SAT-STA-20010712-00063 (September 25, 2001). XM filed an Opposition to this stay request on October 5, 2001. See XM Radio Inc., Opposition to Emergency Motion for Stay, File No. SAT-STA-20010712-00063 (October 5, 2001).

such use. Thus, the Commission could reasonably have concluded that no such block downconverters are in use at this time in those cities.

WCA's argument that it needs information regarding the location and technical parameters of XM's repeaters assumes that operation of these repeaters will cause interference to MDS/ITFS facilities. As XM and Sirius Satellite Radio Inc. ("Sirius") have demonstrated in their comments in the DARS rulemaking docket, this is not the case.<sup>9</sup> MDS/ITFS licensees have been replacing their legacy analog receivers that require protection from operators in adjacent frequency bands with new digital receivers that are less susceptible to interference.<sup>10</sup> MDS/ITFS licensees have had to replace these old analog receivers due to the advent of personal communications services ("PCS") systems operating in the 1930-1990 MHz band and WCS systems operating in the 2305-2320 MHz and 2345-2360 MHz bands. In fact, the Commission's rules contemplate that these legacy block downconverters will be completely replaced by February 2002. 47 C.F.R. § 27.58(a)(1).

The failure of WCA or any MDS/ITFS licensee to identify a single MDS/ITFS facility that is likely to suffer interference from XM's repeaters, despite the Commission's request for such information in the *Public Notice*, demonstrates the lack of any real interference threat to MDS/ITFS facilities posed by XM's repeaters. This should come as no surprise considering that XM has been testing its repeaters pursuant to a nationwide experimental license for over a year, but has not received any complaints of interference from MDS/ITFS licensees or customers during this time.

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<sup>9</sup> Consolidated Reply of XM Radio Inc., IB Docket No. 95-91 (March 8, 2000) ("XM March 2000 Comments"); Reply Comments of Sirius Satellite Radio, IB Docket No. 95-91 (March 8, 2000) ("Sirius March 2000 Comments").

<sup>10</sup> XM March 2000 Comments at 8-14; Sirius March 2000 Comments 6-14.

WCA also repeats the argument stated in its comments that because WCS licensees are required to notify MDS/ITFS licensees prior to commencing operations of a WCS facility, DARS licensees should be required to do the same.<sup>11</sup> This rule, however, was adopted over 4 and a half years ago to protect the analog MDS/ITFS receivers that were common at the time.<sup>12</sup> Because these receivers are likely to have been replaced with more robust digital receivers, there should be no need for a similar disclosure requirement for DARS licensees. The rule itself contemplates that these legacy block downconverters will be completely eliminated by February 2002. 47 C.F.R. § 27.58(a)(1).

Finally, WCA states that it needs information regarding the location of all of XM's repeaters operating pursuant to the STA in order to "trace any new or increased interference." Petition for Reconsideration at 2. This is not the case. In the unlikely event that an MDS/ITFS facility were to experience interference, the first step in determining the source of interference would be for the MDS/ITFS operator to use a spectrum analyzer to determine the frequency and the direction of the interfering signal.<sup>13</sup> If the interfering signal is in the 2332.5-2345 MHz band, then the MDS/ITFS operator can reasonably assume that XM is the source of the interference. At that point, the MDS/ITFS operator would notify the XM point of contact and explain the location of the MDS/ITFS facility receiving the interference and the predicted location of the source of that interference. After determining which repeater is the cause of the interference,

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<sup>11</sup> Petition for Reconsideration at 4 n.10; Comments of Wireless Communications Association International, Inc., File No. SAT-STA-20010712-00063, at 5-6 (August 21, 2001) (citing 47 C.F.R. § 27.58).

<sup>12</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), *Memorandum Opinion and Order*, 12 FCC Rcd 3977 (April 2, 1997).

<sup>13</sup> See XM Radio Inc., Opposition to Emergency Motion for Stay, File No. SAT-STA-20010712-00063 (October 5, 2001), at 6-7.

XM will reduce the power of or cease operation of the repeater as required by the clear mandate of the *STA Order*. *STA Order* ¶ 14. Thus, there is no need for MDS/ITFS licensees to know the exact location of a DARS repeater prior to experiencing actual interference. In fact, the same can be said for WCS licensees, but XM has chosen not to challenge the Bureau's requirement that XM provide WCS licensees with information about the repeaters it operates pursuant to the *STA*.

**II. THE BUREAU SHOULD ATTACH CERTAIN CONDITIONS TO ANY REQUIREMENT THAT XM PROVIDE MDS/ITFS LICENSEES WITH THE LOCATION AND TECHNICAL PARAMETERS OF ALL REPEATERS OPERATING PURSUANT TO THE STA**

If the Bureau requires XM to provide MDS/ITFS licensees with information concerning the location and technical parameters of the repeaters XM operates pursuant to the *STA*, then the Bureau should attach certain conditions. First, the Bureau should require MDS/ITFS licensees to share information regarding MDS/ITFS facilities with XM. While the *STA Order* required XM to disclose information regarding its repeaters to WCS licensees, it also imposed a reciprocal obligation on WCS licensees to provide information to XM "regarding the location and technical parameters" of WCS stations. *STA Order* at n.30. The Bureau should impose a similar obligation on MDS/ITFS licensees. For example, MDS/ITFS licensees should be required to provide XM with the exact number and location of the legacy block downconverters in each of the markets where XM will operate repeaters pursuant to the *STA*. It is reasonable for the Bureau to assume that WCA has already gathered this information in determining that the number of legacy block downconverters in these markets is significant enough to justify the filing of its Petition for Reconsideration as well as its Emergency Motion for Stay of the *STA Order*.

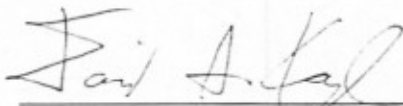
Second, the Bureau should recognize, as it did with its requirement that XM provide information regarding its repeaters to WCS licensees, that it would be reasonable for XM to require MDS/ITFS licensees to enter into a nondisclosure agreement prior to receiving this information. *STA Order* at n.30. Third, the Bureau should make clear that any obligation that XM provide information about the repeaters it operates pursuant to the STA should extend to individual MDS/ITFS licensees and not the WCA. WCA states that information about XM's repeaters is needed to trace the source of harmful interference. *Petition for Reconsideration* at 2. Only a Commission licensee, and not a trade association, would experience harmful interference and would therefore have any need for this information.

#### Conclusion

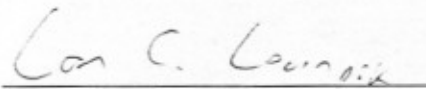
Based on the foregoing, the Commission should deny WCA's *Petition for Reconsideration*.

Respectfully submitted,

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October 9, 2001



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