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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of)
)
XM RADIO, INC.) File No. SAT-STA-20010712-00063
)
Request for Special Temporary Authority)
to Operate Terrestrial Repeaters)
To: Chief, International Bureau

Received

OCT 19 2001

Satellite Policy Branch
International Bureau

CONSOLIDATED REPLY

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys, hereby replies to the "Opposition to Petition for Reconsideration" and "Opposition to Emergency Motion for Stay" filed by XM Radio, Inc. ("XM") in response to WCA's petition for reconsideration of the International Bureau's September 17, 2001 *Order and Authorization* granting XM special temporary authorization (the "STA")¹ to commercially operate terrestrial repeaters in the spectrum licensed for satellite Digital Audio Radio Service ("SDARS") and WCA's request for an emergency stay of the STA pending disclosure by XM to Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees of location and technical parameters of terrestrial repeaters operating at or below 2 kw EIRP. As will be demonstrated below, XM is once again advancing disingenuous arguments in a transparent effort to avoid any liability for interference it causes to Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees.

As the Bureau considers XM's filings, two facts must be kept in mind:

¹ *XM Radio, Inc.*, DA 01-2172,) File No. SAT-STA-20010712-00063 (rel. Sept. 17, 2001)[hereinafter cited as "STA"].

- 1) In the comments WCA filed in response to the Commission's July 31, 2001 *Public Notice* seeking public input regarding XM's request for an STA,² WCA reiterated its oft-stated concern that terrestrial DARS operations can cause harmful brute force overload interference to MDS and ITFS facilities.³ WCA called upon the Commission, *inter alia*, to impose upon the SDARS licensees the same condition imposed on Wireless Communications Service ("WCS") licensees by Section 27.58 of the Commission's Rules – that they be required to provide all neighboring MDS and ITFS licensees 30 days advance notice of the technical parameters of all terrestrial repeaters (not just those operating above 2,000 watts EIRP);⁴ and
- 2) *XM made no effort whatsoever to refute WCA's position.*

Strangely, neither of XM's recent pleadings even attempt to explain why the arguments XM is now advancing were not made at an appropriate time. Perhaps XM recognizes what is obvious – its failures are inexcusable.

More importantly, the arguments XM advances now for refusing to provide MDS and ITFS licensees with the location and operating parameters for all of its repeaters are not only untimely, but are devoid of merit. By now, there should be no question that the operation of terrestrial transmit facilities in the 2.3 GHz band can result in brute force overload interference to older MDS and ITFS downconverters. When it established WCS, the Commission recognized that even limiting WCS operations to a maximum of 2,000 watts peak EIRP did not provide complete interference protection to then-existing MDS and ITFS downconverters.⁵ The record in this STA proceeding (and, it bears repeating, XM never even responded to WCA's initial

² "Satellite Policy Branch Information Applications Accepted for Filing," *Public Notice*, Report No. SAT-00077 (rel. July 31, 2001).

³ See Comments of WCA in Opposition to Grant of STA Requests, File Nos. SAT-STA-20010712-00063 and File No. SAT-STA-20010712-00064, at 3-5 (filed Aug. 21, 2001)[hereinafter cited as "WCA Comments"].

⁴ See *id.* at 8.

⁵ See *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, 12 FCC Rcd 3977, 3984 (1977).

comments concerning the risk of brute force overload interference), just like the record in IB Docket No. 95-91, is devoid of any meaningful distinction between the brute force overload interference threat posed by WCS and that posed by terrestrial DARS repeaters.⁶ To the contrary, even Sirius Satellite Radio, Inc. has conceded that terrestrial DARS operations “would be likely to cause overload of the MDS downconverters” at receive locations within 2048 meters of a terrestrial repeater.⁷ Given the state of the record, XM can hardly be surprised that the STA acknowledges:

The issue of blanketing interference to WCS and MDS/ITFS systems will be further and more fully addressed [in IB Docket No. 95-91]. Indeed, *there are areas around terrestrial repeaters where this equipment may be susceptible to blanketing interference*⁸

and mandates that “XM . . . immediately reduce the power level or, if necessary, cease operation of any repeater that causes interference to a WCS, MDS or ITFS authorized station upon the receipt of a written, descriptive notification from a WCS, MDS or ITFS licensee identifying the specific source of interference.”⁹

Apparently recognizing that any attempt to refute this overwhelming evidence would be fruitless, XM has changed its tactics and now argues for the first time in this proceeding that it should not be required to provide information regarding 2 kw repeaters because there is no “evidence” in the record that any of the pre-August 20, 1998 downconverters that are most vulnerable are still in the field. Simply put, *that is not true and XM knows it* – in a January 25,

⁶ See Letter from Paul J. Sinderbrand to Magalie Roman Salas, IB Docket No. 95-91, at 2-3 (filed Oct. 2, 2001).

⁷ See Sirius Supplemental Comments, IB Docket No. 95-91, at Exhibit 2, at 9-10 (filed Jan. 13, 2000).

⁸ STA, at ¶13 (emphasis added)

⁹ *Id.* at ¶ 14.

2001 *ex parte* submission in IB Docket No. 95-91 substantial information was provided to the Commission and XM regarding the continued use of downconverters installed prior to August 20, 1998.¹⁰ Moreover, it stands to reason that WCA would not be spending tens of thousands of dollars to protect such older downconverters from interference if none were currently being used. Nor would the Commission have included in the STA conditions designed to protect older MDS and ITFS equipment¹¹ if, as XM surmises (albeit without any support), the Commission “concluded that no such block downconverters are in use at this time.”¹²

Indeed, the position XM is taking here simply cannot be squared with that it continues to advocate in IB Docket No. 95-91. If XM truly believes that there are no older MDS/ITFS downconverters in the field that would be subject to interference from terrestrial DARS repeaters operating at or below 2 kw EIRP, one must wonder why XM is so vigorously urging in the rulemaking proceeding that the Commission adopt draconian limits on XM’s liability for curing interference it causes to such downconverters.¹³ On the other hand, if XM truly believes that it would face a substantial risk of liability were the Commission to impose the obligation to cure interference to older downconverters on DARS licensees, it should not be advancing here the

¹⁰ See Letter from Paul J. Sinderbrand, *et al.*, to Magalie Roman Salas, IB Docket No. 95-91, at 1 (filed Jan. 25, 2001).

¹¹ The STA requires that “XM . . . immediately reduce the power level or, if necessary, cease operation of any repeater that causes interference to a WCS, MDS or ITFS authorized station upon the receipt of a written, descriptive notification from a WCS, MDS or ITFS licensee identifying the specific source of interference” and, to facilitate the process of addressing interference issues, the STA mandates that XM “provide the name and telephone number of a point of contact to all WCS licensees and to WCA prior to commencing operation, that will be available on a continuous basis (i.e., 24 hours a day, 7 days a week) to receive reports of actual interference and to take immediate action to correct it.” *STA*, at ¶ 14.

¹² XM Opposition to Emergency Motion for Stay, at 5.

¹³ See Letter from Paul J. Sinderbrand to Magalie Roman Salas, IB Docket 95-91, at 3-4 (filed Oct. 2, 2001).

disingenuous argument that there are no older downconverters that would be subject to interference. XM cannot have it both ways.

However, while it certainly is not necessary given the state of the record before the Commission, in hopes of putting to rest once and for all XM's line of argument, attached is a Declaration of Lee Haglund, Director of Video Services for Sprint Corporation ("Sprint"), confirming that Sprint's affiliates continue to utilize downconverters installed prior to August 20, 1998.

Implicitly acknowledging that there are, in fact, older MDS/ITFS downconverters subject to brute force overload from terrestrial DARS, XM, for the first time in this proceeding, takes the absurd position that because these older downconverters will not be entitled to interference protection from WCS after February 20, 2002, XM should be free to cause interference to MDs and ITFS licensees *now*.¹⁴ The logic of that argument escapes WCA, and WCA trusts it will escape the Commission as well. If XM wants to operate prior to February 20, 2002, there is no reason for it to be exempt from the same cure obligations imposed on WCS licensees who operate prior to February 20, 2002.

XM also contends that MDS and ITFS licensees should not be afforded access to the location and technical parameters of terrestrial DARS repeaters operating at or below 2 kw EIRP because, XM claims, such information is not absolutely essential for them to identify the source of interference coming from DARS terrestrial repeaters.¹⁵ Of course, XM's position cannot be squared with the Commission's decision to provide WCS licensees with information regarding

¹⁴ See XM Opposition to Emergency Motion for Stay, at 6.

¹⁵ See XM Opposition to Petition for Reconsideration, at 6.

terrestrial DARS repeaters operating at or below 2 kw EIRP. Clearly, the location and technical information XM must provide WCS licensees is as essential to MDS and ITFS licensees that may be exposed to interference from terrestrial DARS repeaters as it is to WCS licensees.

Moreover, XM's claim that even without information regarding the location of XM's repeaters, an MDS or ITFS licensee could readily identify the source of interference through the use of a spectrum analyzer is not necessarily correct. XM conveniently ignores that the "detective work" inherent in this approach can be quite time-consuming, all the while licensed MDS and ITFS services must suffer interference at the hands of XM's operations. XM cannot deny that having the location and technical parameters will, if nothing else, expedite the ability of the MDS or ITFS licensee to identify the specific repeater believed to be causing the interference. Equally importantly, due to multipath or other propagation phenomenon, a spectrum analyzer's indication of the direction from which an interference signal is coming will not necessarily point to the offending repeater. Thus, use of a spectrum analyzer alone does not make it possible for MDS and ITFS licensees to meet their obligation under the STA to "identifying the specific source of interference."¹⁶ Only with the specific location of the terrestrial repeater will MDS and ITFS licensees be able to identify the specific repeater that is the cause of the problem.

Indeed, XM's argument demonstrates a total lack of understanding of the regulatory regime the Commission imposed to assure that WCS would not cause brute force overload interference to MDS and ITFS. XM completely mis-states the provisions of Section 27.58(a)(1) when it claims that "[t]he rule itself contemplates that these legacy block downconverters will be

¹⁶ STA. at ¶ 14.

completely eliminated by February 2002.”¹⁷ In fact, there is no requirement that these older downconverters be replaced by February 20, 2002, nor will they all be replaced by that date. In adopting the rule, the Commission recognized that, since WCS would be limited to 2 kw EIRP, block downconverter interference will only prove problematic in close proximity to WCS transmitters. It would have been incredibly wasteful for the Commission to order the replacement of all MDS and ITFS downconverters, since it was recognized that most are not likely to suffer brute force overload interference from WCS. Thus, the Commission shifted the burden of curing interference to WCS licensees for a period of time, after which it shifted back to MDS and ITFS licensees. In addition, and this XM conveniently forgets, the Commission obligated WCS licensees to provide advance notice of the location and technical parameters of WCS transmitters in perpetuity. See 47 C.F.R. § 27.58(e). Thus, the regulatory scheme contemplates that, even after February 20, 2002, MDS and ITFS licensees will have 30 days advance notice before new WCS transmitters become operational or before existing transmitters begin operating at higher power, and thus will have an opportunity to prevent brute force interference before it occurs.

Finally, XM for the first time asks the Commission to impose conditions on any obligations it may have to disclosure information to the MDS/ITFS community.¹⁸ To the extent that XM asks that it be required to make information available to MDS and ITFS licensees and not WCA, WCA has no objection – indeed, that is exactly what WCA has proposed.¹⁹

¹⁷ See XM Opposition to Emergency Motion for Stay, at 6.

¹⁸ XM Opposition to Petition for Reconsideration, at 7-8.

¹⁹ See WCA Petition for Reconsideration, at 4 (“WCA has no choice but to seek reconsideration of the STA and the imposition of a specific condition mandating that XM provide technical information regarding its repeaters to

However, the other conditions requested by XM are unnecessary and unduly burdensome. At the outset, it is worth noting that WCS licensees have been providing the location and technical parameters of their facilities to MDS and ITFS licensees for years without ever seeking any conditions of the sort that XM is now requesting. XM has provided no explanation, and none is apparent, why DARS licensees somehow require additional protections from the Commission – indeed, XM has failed to provide any argument whatsoever that would justify the Commission imposing different obligations.

Nonetheless, WCA would not object to the imposition of the obligation requested by XM that any MDS or ITFS licensee receiving the information execute a *reasonable* non-disclosure letter (although WCA notes that the difficulties WCS licensees have encountered in negotiating non-disclosure letters does not bode well). However, WCA strongly objects to XM's call for MDS and ITFS licensees to provide detailed information to XM in order to receive information from XM. To the extent that XM wants information regarding MDS and ITFS transmit facilities, that information is in the public record (unlike WCS licensees, MDS and ITFS licensees must apply for and receive Commission approval for all transmission facilities) and can be readily accessed by XM through the Mass Media Bureau's Broadband Licensing System. While XM wants "the exact number and location of legacy downconverters," XM has failed to present any explanation as to why it needs that information or how it would be utilized. WCS licensees have been operating for years without it, and there is no apparent reason for XM to have it (other than

requesting MDS and ITFS licensees."); WCA Comments, at 8 ("any STA grant should be conditioned on requiring XM and Sirius to provide *all neighboring MDS and ITFS licensees* 30 days advance notice of the technical parameters of all terrestrial repeaters (not just those operating above 2,000 watts EIRP) in the same fashion that WCS licensees are obligated to give advance notice pursuant to Section 27.58.").

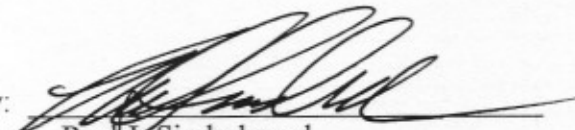
to burden the providers of licensed MDS and ITFS services who are going to be subject to interference from XM's operations pursuant to the STA).

In short, XM's recent filings are devoid of any justification for refusing to provide MDS and ITFS licensees with information regarding terrestrial repeaters operating at or below 2 kw. XM is simply playing a delaying game with the MDS and ITFS community that the Commission should not tolerate. Indeed, the vigor with which XM is again fighting disclosure of benign information should be raising a large red flag at the Commission – just what is it that XM is attempting to hide?

Respectfully submitted,

WIRELESS COMMUNICATIONS
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By:



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October 15, 2001

CERTIFICATE OF SERVICE

I, Anna Lee Silver, hereby certify that the foregoing Consolidated Opposition was served this 15th day of October 2001 unless otherwise noted by depositing a true copy with the United States Postal Service, first class postage prepaid, addressed to:

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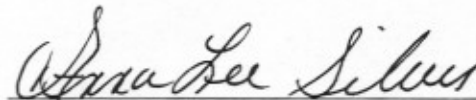
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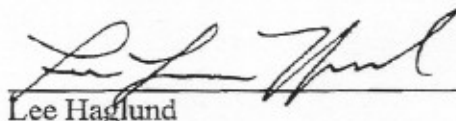


Anna Lee Silver

DECLARATION

I, Lee Haglund, hereby declare under penalty of perjury that:

1. I am Director of Video Services for Sprint Corporation ("Sprint") and am familiar with the multichannel video programming services offered by Sprint's various subsidiaries over Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") channels across the nation.
2. I make this declaration in response to assertions by XM Radio, Inc. questioning whether any MDS or ITFS reception sites are utilizing block downconverters installed prior to August 20, 1998. Although the exact number and location of such downconverters are not readily available, Sprint's affiliates are today utilizing block downconverters installed prior to August 20, 1998 to provide service.



Lee Haglund