

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

File No. SAT-STA-20010712-00063

NOV 6 2001
Satellite Policy Branch
International Bureau

OPPOSITION TO APPLICATION FOR REVIEW

XM Radio Inc. ("XM Radio") hereby files this Opposition to the Application for Review filed by AT&T Wireless Services Inc. ("AWS") 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.¹ AWS does not object to the authorization of repeaters operating in excess of 2 kW EIRP. Rather, AWS's sole objection is that the Bureau acted in violation of the Section 25.120(a) of the Commission's rules by granting XM Radio its STA without requiring XM Radio to disclose the location and technical parameters of repeaters operating at or below 2 kW EIRP.

The Bureau made the proper decision to grant XM Radio an STA without requiring the prior disclosure of the repeaters it planned to operate at 2 kW EIRP or less ("low power repeaters"). As the Bureau noted, during the course of the related rulemaking the WCS licensees limited their concerns to terrestrial repeaters operating in excess of 2 kW EIRP; thus, the decision not to require disclosure of information regarding low power repeaters was appropriate.

¹ AT&T Wireless Services Inc., Application for Review, File No. SAT-STA-20010712-00063 (Oct. 17, 2001) ("Application for Review").

In addition, contrary to AWS's claim, the STA does not give XM Radio unlimited authority to construct and operate low power repeaters, as the Commission specifically bounded the number of low power repeaters operating pursuant to the STA to a list provided by XM Radio. The Bureau addressed any potential interference concerns of WCS and MDS/ITFS licensees from operation of low power repeaters by specifically requiring XM Radio to provide these licensees with information regarding the location and technical parameters of these low power repeaters. The fact that AWS and other WCS licensees refuse to enter into a reasonable non-disclosure agreement governing this information has no bearing on the appropriateness of the Bureau's action in this proceeding. For these reasons, AWS's Application for Review should be rejected.

Background

On July 12, 2001, XM Radio 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.² XM Radio's request provided location information for over 700 repeaters that XM Radio 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 Radio did not disclose the location of the repeaters that it planned to operate at a power level of 2 kW or less.³ Throughout the ongoing repeater rulemaking, AWS has accepted the operation an unlimited number of repeaters transmitting at no more than 2 kW EIRP (400W/MHz).⁴

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

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

⁴ See Letter from William Wiltshire, Counsel for AWS, to Ms. Magalie Roman Salas, FCC, IB Docket No. 95-91, at 7 (Feb. 20, 2001); Letter from William Wiltshire, Counsel for AWS, to Ms. Magalie Roman Salas, FCC, IB Docket No. 95-91, at 2, 8 (April 30, 2001). To the extent that AWS also advocated prior coordination of repeaters, the

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On September 17, 2001, the International Bureau ("Bureau") issued an *Order* granting XM Radio's STA request to operate terrestrial repeaters for commercial service on a non-interference basis.⁵ In the *STA Order*, the Bureau required XM Radio 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. *STA Order* at ¶ 14. The Bureau later extended this information sharing condition to MDS/ITFS licensees.⁶ 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. *STA Order* at ¶ 14.

Since XM Radio has begun operation, AWS has not indicated any problems with interference from DARS repeaters. Recently, AWS indicated that it is terminating its current WCS business, transitioning all of its fixed wireless customers to other technology in the next few months.⁷

On October 17, 2001, AWS filed the instant Application for Review of the *STA Order*. AWS's sole objection is that the Bureau acted in violation of the Section 25.120(a) of the Commission's rules by granting XM Radio its STA without requiring XM Radio to disclose the

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Bureau provided for that in the *STA Order* by requiring XM Radio to disclose to WCS licensees upon request the location and technical parameters of its low power repeaters. See *STA Order* at ¶ 14; *infra* pages 5-6.

⁵ XM Radio Inc., *Order and Authorization*, File No. SAT-STA-20010712-00063 (Sept. 17, 2001) ("*STA Order*").

⁶ XM Radio Inc., *Order*, File No. SAT-STA-20010712-00063 (Oct. 15, 2001) ("*STA Modification Order*").

⁷ See Letter from William Wiltshire, Counsel for AWS, to Ms. Magalie Roman Salas, FCC, IB Docket 95-91 (Oct. 29, 2001).

location and technical parameters of repeaters operating at or below 2 kW EIRP. Application for Review at 1-3. AWS also contends that, although WCS licensees have advocated limiting repeater EIRP to 2 kW, WCS licensees have never waived their objection to repeaters operating below 2 kW. *Id.* at 3. AWS argues that the Bureau's grant gives XM Radio blanket authority to construct repeaters below 2 kW without prior consent and that the Commission has no idea of the number and location of these low power repeaters. *Id.* AWS notes that XM Radio's STA was granted on a non-interference basis and WCS licensees need to know the location and technical parameters of XM Radio's low power repeaters to determine the source of interference. *Id.* at 4. Finally, AWS argues that it was inappropriate for the Bureau to suggest that XM Radio could require WCS licensees to enter into a non-disclosure agreement prior to receiving information regarding XM Radio's low power repeaters. *Id.* at 4-5.

Discussion

I. THE BUREAU ACTED PROPERLY IN GRANTING XM RADIO'S STA REQUEST WITHOUT REQUIRING PRIOR DISCLOSURE OF INFORMATION REGARDING LOW POWER REPEATERS

The Bureau acted properly in granting temporary authority to XM Radio without requiring prior disclosure of the location and technical parameters of the repeaters XM Radio planned to operate at 2 kW EIRP or less. As the Bureau recognized in the *STA Order*, AWS and other WCS licensees have conceded the operation of repeaters at up to 2 kW EIRP and have stated that the such repeaters do not present an interference concern.⁸ Hence, the only

⁸ STA Order at ¶ 9 ("We agree with XM that because the focus of the party's technical interference objections has been on repeaters operating above 2 kW EIRP and because the particulars of those stations have been disclosed, Section 25.120's requirements for specificity have been satisfied."); *see also* Comments of AT&T Wireless Services, Inc., File No. SAT-STA-20010712-00063 (August 21, 2001) at 4 (noting that AT&T Wireless and other WCS licensees have proposed blanket licensing of 2 kW DARS repeaters); Comments of Metricom, File No. SAT-STA-20010712-00063 (August 21, 2001) at 8

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“particulars of the proposed operation”⁹ that could have been relevant to WCS licensees were the locations and technical parameters of repeaters operating in excess of 2 kW. Indeed, it is ironic the any WCS licensee would be concerned about operation of 2 kW repeaters considering that WCS licensees themselves have unlimited authority to deploy 2 kW transmitters in their service areas and have no knowledge of the locations and technical parameters of other WCS licensee’s transmitters.

AWS’s claim that the *STA Order* gives XM Radio unlimited authority to operate repeaters at less than 2 kW is just wrong. Application for Review at 2-3, 5. The *STA Order* specifically states that “[i]n order to limit the scope of the STA,” XM Radio is required to make available to the Commission upon request a list of the locations and technical parameters of the repeaters with an EIRP of 2 kW or less as of the grant date of the STA. *STA Order* at ¶ 17. The Bureau stated that “XM Radio’s authority with respect to these lower power repeaters extends only to those repeaters on this list.” *Id.* Commission staff has requested and XM Radio has provided such a list, thereby assuaging AWS’s concern that the STA grant was somehow limitless in scope with respect to low power repeaters.

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(“Metricom’s system can accommodate the operations of SDARS terrestrial repeaters at power levels at or below 2 kW EIRP”); Comments of Wireless Communications Association International, Inc., File No. SAT-STA-20010712-00063 (August 21, 2001) at 5-6; Opposition of Worldcom, Inc., File No. SAT-STA-20010712-00063 (August 21, 2001) at 2).

⁹ 47 C.F.R. § 25.120(a).

II. THE BUREAU ADDRESSED INTERFERENCE CONCERNS BY REQUIRING XM RADIO TO PROVIDE INFORMATION REGARDING ITS LOW POWER REPEATERS TO WCS AND MDS/ITFS LICENSEES UPON REQUEST

AWS notes that XM Radio's operations pursuant to the STA are on a non-interference basis to other services, but that without information regarding XM Radio's low power repeaters, it cannot determine the source of any interference it may suffer. Application for Review at 4-5. The Bureau specifically recognized this concern by requiring XM Radio to provide WCS and MDS/ITFS licensees with information regarding its low power repeaters upon request "in order to facilitate coordination." *STA Order* at ¶ 14; *STA Modification Order* at ¶ 4. As required by the *STA Order*, XM Radio has offered to provide this information to AWS and other WCS licensees in order to facilitate coordination pursuant to a commercially reasonable non-disclosure agreement. AWS, however, has refused to sign a non-disclosure agreement because it wants to use the information XM Radio provides not for coordination and identifying the source of any harmful interference, but for unspecified purposes in the on-going rulemaking proceeding regarding terrestrial repeaters.¹⁰ If AWS is truly concerned about interference from low power repeaters, then it would have signed the non-disclosure agreement in order to assess those concerns.¹¹

AWS also complains that the Bureau "invited" XM Radio to require WCS licensees to enter into a non-disclosure agreement. Application for Review at 4. XM Radio did not need an invitation to require such an agreement. It is a standard commercial practice when exchanging

¹⁰ Letter from William Wiltshire, Counsel for AWS, to Donald Abelson, Chief, International Bureau, FCC, File No. SAT-STA-20010712-00063 (Oct. 5, 2001).

¹¹ XM Radio notes that AWS's interference concerns have grown even more remote given its recent announcement that it will cease WCS operations shortly. See Letter from
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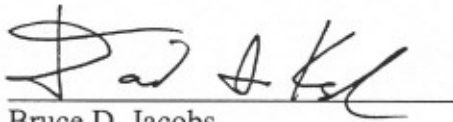
confidential information. In this instance, AWS has no valid reason to use this information for anything other than coordinating and determining the source of any interference from XM Radio's low power repeaters.

Conclusion

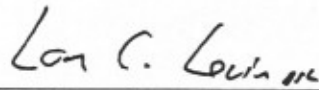
Based on the foregoing, the Commission should deny AWS's Application for Review.

Respectfully submitted,

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November 1, 2001

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William Wiltshire, Counsel for AWS, to Ms. Magalie Roman Salas, FCC, IB Docket 95-91 (Oct. 29, 2001).

CERTIFICATE OF SERVICE

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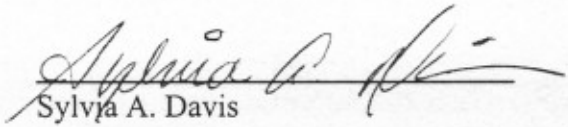
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