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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

_____)
In the Matter of)
)
SIRIUS SATELLITE RADIO, INC.)
)
Request for Special Temporary Authority)
To Operate Satellite Digital Audio Radio)
Service Complementary Terrestrial)
Repeaters)
_____)

File No. SAT-STA-20010724-00064

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Satellite Policy Branch
International Bureau

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

AT&T Wireless Services, Inc. ("AWS"), pursuant to Section 1.115(d) of the Commission's rules,¹ hereby responds to the Opposition of Sirius Satellite Radio, Inc. ("Sirius") to AWS' Application for Review of the International Bureau's grant of special temporary authority ("STA") to Sirius.² Sirius first argues matters of procedure: AWS lacks standing to seek review of the order, its arguments are moot, and it fails to present a "clear question" for Commission review. Finally responding to the questions AWS does raise, it simply follows the Bureau's lead, misapplying the requirements of Section 25.120(b) and turning a blind eye to the inescapable fact that without a planned commercial launch date, it could neither establish "circumstances requiring immediate . .

¹ 47 C.F.R § 1.115(d).

² *Sirius Satellite Radio Inc. Application for Special Temporary Authorization to Operate Satellite Digital Audio Radioservice Complementary Terrestrial Repeaters*, File No. SAT-STA-20010724-00064, DA 01-2171 (Sept. 17, 2001)(STA Order); *Sirius Satellite Radio Inc. Application for Special Temporary Authorization to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters*, File No. SAT-STA-20010724-00064, DA 01-2383 (Oct. 15, 2001) (STA Modification Order).

. use of facilities” nor demonstrate that “delay in the institution of these temporary operations would seriously prejudice the public interest.”³

A. Procedural Issues

Sirius’s procedural challenges are easily dismissed. AWS’ recently announced decision to transition its existing WCS customers to alternate providers, Sirius asserts, extinguishes any “legitimate interest” in Sirius’ use of adjacent spectrum. Accordingly Sirius would have the Commission find that AWS lacks administrative standing. Certainly this would be a novel ruling, breaking new ground and reducing the Commission’s workload by significantly limiting those who may appear before it. The simple truth is that AWS remains a licensee. Because AWS retains the rights and responsibilities attendant to its license, its interest in preserving the integrity of its spectrum is no less. Moreover, AWS will continue to use its WCS licenses to provide service until it can complete the transition of thousands of customers to wireline alternatives. Accordingly, it is “aggrieved” by the Bureau’s action.

Sirius next suggests that AWS’ arguments are moot because final rules, yet to be adopted in a separate rulemaking proceeding, will “obviate” AWS’ concerns. While AWS and Sirius are parties to a rulemaking proceeding concerning blanketing interference from SDARS terrestrial repeaters to WCS receivers, this proceeding concerns the grant of special (“extraordinary” or “out of the ordinary”) temporary authority authorizing commercial operations by an individual licensee. AWS’ application for review does not argue policy concerning resolution of interference; it

³ 47 C.F.R § 1.115(a),(b).

argues that the grant of an STA did not comply with the requirements of Section 25.120. The rulemaking has no bearing upon the requirements of Section 25.120.⁴

Concluding its procedural attacks, Sirius claims that AWS has not presented a “clear question” for review. In footnote 15 of its Opposition, Sirius correctly recites the “factors” listed in Section 1.115 supporting an application for review. As it acknowledges, among the possible factors a party may raise is that “the action taken pursuant to delegated authority is in conflict with . . . regulation.”⁵ Yet even as Sirius alleges that the application fails these “basic pleading requirements,” it actually cites the application’s charge that “the Bureau acted in derogation of the Commission’s rule.” AWS can only presume that Sirius did not read the lengthy discussion in the Application for Review of (1) the legal requirements to obtain STA that are set forth in Section 24.120, and (2) AWS’ analysis of the Bureau’s failure to apply those requirements to Sirius’s application for STA. To the extent that Sirius is alleging that Section 1.115 requires bullet points listing each “factor” and each “question,” we disagree.

B. Substantive Issues

Nonetheless, Sirius manages to respond to AWS’ charge that the Bureau erred in its finding of “extraordinary circumstances.” Sirius merely recites the Bureau’s suggestion that Commission delay in the pending rulemaking “created the extraordinary circumstances required by the statute and our rules to justify grant of an STA.”⁶ If it is true that the duration of a rulemaking alone creates “extraordinary circumstances,” any bureau will be able to grant STA based upon its prediction of the outcome of a

⁴ Generally an argument is considered moot when the issues it presents have otherwise been resolved. Blacks Law Dictionary, Fifth Edition, 1986. Suggesting that an issue “is” moot because of a possible resolution that may occur in the future requires innovative interpretation of the movement of time.

⁵ 47 C.F.R. § 1.115(b)(2)(i).

⁶ Sirius Opposition at 9, citing STA Order at ¶7.

rulemaking that has been pending for some time – a not uncommon occurrence. This would be an unprecedented extension of the Commission’s STA precedent.

Responding to AWS’s argument that the Bureau’s grant of STA is premature, Sirius asserts that “it faced the *imminent prospect* of sacrificing quality of service or delaying initiation of high-quality nationwide satellite DARS”⁷ and that the STA provides “*the missing link* needed to allow Sirius to begin to offer services to subscribers.”⁸ This ignores the fact that when Sirius made its request for STA in July, it had no planned date for a commercial launch other than an estimate of the fourth quarter of 2001.⁹ Like the Bureau Order, Sirius simply does not respond to this point. In the Application for Review, AWS noted that Sirius had subsequently announced further delay into 2002. Because this fact extinguishes any claim of exigency, Sirius did not respond, but rather chastised AWS for raising “new facts.” Of course Section 1.115(j) expressly allows such information where “evidence . . . has become available only since the original taking of evidence.”

Finally, Sirius responds that the Bureau correctly concluded that Sirius had provided the “full particulars of [its] proposed operation,” despite the fact that it had listed only high power repeaters. At the time of its application, Sirius indicated that it “has not included this information for the low power (*i.e.*, EIRP of 2 kW or less) it seeks to operate pursuant to the STA.” AWS alleged in the application for review that information on *all* repeaters was required to satisfy the requirement that an applicant for STA disclose the “full particulars of [its] proposed operation” as required by Section 25.120(a). After it received its STA, Sirius revealed that “Sirius is investigating the

⁷ *Id.*, at 9 (emphasis added).

⁸ *Id.* at 10 (emphasis added).

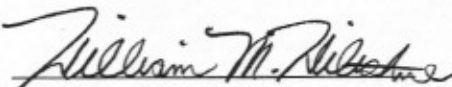
⁹ Application for Review, at 2.

deployment of several repeaters less than 2 kW,"¹⁰ suggesting but not affirmatively stating that it had not deployed any low power repeaters pursuant to the STA. This uncertainty only underscores the fact that the Bureau approved an STA in violation of Section 25.120, not knowing precisely what (if anything) it had authorized.

For the reasons stated above, the Commission must grant the application for review and reverse the Bureau's grant of the STA.

Respectfully submitted,

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Dated: November 13, 2001

¹⁰ Letter from Carl R. Frank, Counsel for Sirius Satellite Radio, Inc. to William M. Wiltshire (dated September 25, 2001).

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2001, a copy of the foregoing
Reply to Opposition to Application for Review was served by first class mail, postage
prepaid, upon:

Carl R. Frank
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A handwritten signature in cursive script, appearing to read "Carl R. Frank", is written over a horizontal line.