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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAY 24 2004

In re Applications of)	Federal Communication Commission
)	Bureau / Office
XM Radio, Inc. Request for Special Temporary)	File No. SAT-STA-20031112-
Authority to Operate Additional Satellite Digital)	00371
Audio Radio Service Terrestrial Repeaters)	
)	
Sirius Satellite Radio, Inc. Request to Modify Special)	File No. SAT-STA-20031106-
Temporary Authority to Operate Satellite DARS)	00370
Terrestrial Repeaters)	

Received

JUN 01 2004

Policy Branch
International Bureau

To: Chief, International Bureau

CONSOLIDATED OPPOSITION TO REQUEST FOR SPECIAL TEMPORARY

AUTHORITY

The WCS Coalition¹, in response to the Commission's April 23, 2004 *Public Notice* soliciting public comment,² hereby opposes the grant of the above-captioned requests for special temporary authority filed by XM Radio, Inc. ("XM") for additional satellite digital audio radio service ("SDARS") terrestrial repeaters and Sirius Satellite Radio, Inc. ("Sirius") to modify the

¹ The following companies are included in the WCS Coalition: AT&T Wireless Services, Inc., Verizon Laboratories Inc., BellSouth Corporation, Inc., Allegheny Communications, Central States Communications, Wireless Communications Association International (WCAI), WCS Wireless, LLC. Each member of the WCS Coalition is a WCS Licensee, (except "WCAI") and together these entities hold licenses for WCS spectrum throughout the entire country.

² "Satellite Space Applications Accepted for Filing," *Public Notice*, Report No. SAT-00211 (rel. April 23, 2004).

technical parameters of existing SDARS terrestrial repeaters (together, the “STA Requests”).³ The Commission should not grant the STA Requests because the operation of these additional or modified repeaters will cause an increased potential for interference to licensees in the adjacent Wireless Communications Service (“WCS”) spectrum. In addition, grants of the STA Requests would detrimentally alter the dynamic of the formal discussions between the SDARS licensees and the WCS licensees to determine what technical rules should govern the operation of SDARS terrestrial repeaters that would reduce or eliminate such interference. Finally, neither XM nor Sirius has made the public interest showings necessary under Section 25.120 of the Commission’s Rules to justify an STA.

The Commission has not yet adopted technical rules to govern the use of terrestrial repeaters in conjunction with SDARS systems. Despite that fact, in September of 2001 the Commission granted, over the formal objection of many WCS licensees, XM and Sirius’ requests for temporary authority to operate 467 and 104 terrestrial repeaters respectively.⁴ The Commission then released a *Request for Further Comment on Selected Issues Regarding the Authorization of Satellite Digital Audio Radio Service Terrestrial Repeater Networks* (the

³ Letter from Lon Levin, XM Radio, Inc. to Marlene H. Dortch, SAT-STA-20031112-00371, filed November 25, 2003; Letter from Patrick Donnelly, Sirius Satellite Radio, Inc. to Marlene H. Dortch, SAT-STA-20031006-00370, filed November 5, 2003.

⁴ See *XM Radio, Inc., Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complimentary Terrestrial Repeaters, Order and Authorization*, DA 01-2172 (rel. September 17, 2001”) and *XM Radio, Inc. Request for Special Temporary Authority*, File No. SAT-STA-20020815-00153 (August 13, 2002); (“XM Radio STA Order”). *Sirius Satellite Radio, Inc. Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complimentary Terrestrial Repeaters, Order and Authorization*, File No. SAT-STA-20010724-00064 (rel. September 17, 2001); (“Sirius STA Order”).

“*Request for Further Comment*”).⁵ The *Request for Further Comment* set forth various proposals to resolve the conflict between the operation of SDARS terrestrial repeaters and the interference the operation of those repeaters will cause to WCS facilities.⁶ Many of the members of the WCS Coalition responded to the *Request for Further Comment* indicating that the Commission proposal would cause harmful interference to the WCS spectrum and therefore was unacceptable. Similarly, the SDARS licensees also were opposed to many aspects of the proposal. After receipt of all of the comments, the Commission, represented by the Office of Engineering and Technology (“OET”), the Wireless Telecommunications Bureau (“WTB”) and the International Bureau (“IB”) held a meeting with all interested parties and requested that the SDARS licensees and WCS licensees work together to craft a solution that was technically viable for both services. In response to that request, the WCS and SDARS licensees have been working together since that time to develop a workable solution.

On November 12, 2003 the WCS licensees, SDARS licensees, representatives from OET, WTB and IB met again to assess the progress that was being made in the ongoing negotiations to develop rules that would effectively permit both WCS and SDARS licensees to deploy communications systems without harmful interference. The participants also discussed a timeline by which the negotiations should conclude. During the meeting, the WCS licensees were asked if the grant of STAs to modify and add SDARS terrestrial repeaters would be harmful to the current negotiations. After the WCS licensees met to discuss the issue, they

⁵ See *Request for Further Comment on Selected Issues Regarding the Authorization of Satellite Digital Audio Radio Service Terrestrial Repeater Networks* DA 01-2570 (rel. November 1, 2001).

⁶ See *Request for Comment* at p. 2.

notified the Commission of their conclusion that the baseline from which the negotiations were operating would be significantly altered if terrestrial repeaters were added or modified. Thus, a grant of the STAs would have a significant negative impact on the formal negotiating process.

As mentioned in a recent letter filed jointly by the WCS and SDARS licensees in this matter, the parties are close to arriving at a potential solution and anticipate presenting a proposal to the Commission by the beginning of August.⁷ Therefore, the parties currently are at a critical juncture in their negotiations, and if the Commission grants the STA Request now before it, it would have a significant adverse effect on the negotiations. Clearly, the grant of the STA Requests would alter the interference environment that forms the basis of the negotiations. Not only would the grant of the STA Request harm the spirit of cooperation that has been developed by the parties, but it also would change the interference baseline from which the parties have been negotiating by causing additional potential interference to the WCS spectrum. Such changes could result in delays in concluding the negotiations and more importantly, cause harmful interference that could undermine the WCS licensees' right to use their licensed spectrum. In addition, timing of such a grant would render all progress made to date virtually irrelevant. Too many resources have been expended in this effort to reach such an unproductive result.

Pursuant to Section 25.120(b) of the Commission's Rules, the Commission can only grant an STA upon finding "extraordinary circumstances requiring temporary operation in the public interest."⁸ The rule also clearly states that "convenience to the applicant, such as

⁷ See letter from Lon Levin, XM Radio, Inc. and Mary O'Connor, Wireless Communications Association International to Edmond J. Thomas filed March 3, 2004.

⁸ See 47 C.F.R.25.120(b).

marketing considerations...will not be deemed sufficient.⁹ The STA Requests by XM and Sirius fail to meet this standard. Neither XM nor Sirius have represented to the Commission that extraordinary circumstances exist that would warrant grants of their STA Requests. Indeed, both companies have systems that are running efficiently as evidenced by their subscriber numbers and representations made in their marketing campaigns. Sirius is already authorized to operate at each site they are requesting to modify and XM simply wants to expand its network further by adding 49 new sites that they did not include in their initial application. Clearly, there is nothing “extraordinary” about the present circumstances. In accordance with the Commission’s Rules, the STA Requests should therefore be denied.

The WCS Coalition requests that any grant be subject to the same conditions as set forth in the grant of the XM Radio STA Grant and the Sirius STA Grant.¹⁰ Most importantly, the operation of these temporary repeaters are at XM’s and Sirius’ own risk, and any future operation will be subject to any final Commission rules that govern use of terrestrial repeaters to compliment an SDARS system.

⁹ *Id.*

¹⁰ XM Radio STA Grant at ¶¶ 13-18 and Sirius STA Grand at ¶¶ 13-18.

WHEREFORE, for the foregoing reasons, the WCS Coalition urges the Commission to dismiss the STA Requests.

Respectfully submitted,

WCS COALITION

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CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that copies of the foregoing Reply to Consolidated Opposition to Special Temporary Authority has been served this 24th day of May, 2004, by first class United States mail, postage prepaid, to the following:

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