

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Bureau / Office

In the Matter of)
)
 Sirius XM Radio Inc.)
)
 Request for Modification of SDARS Repeater)
 Special Temporary Authority -180 Days)
)
 XM Radio Inc.)
)
 Request for Modification of SDARS Repeater)
 Special Temporary Authority -180 Days)

File No. SAT-STA-20061013-00121

File No. SAT-STA-20061013-00119

To: Chief, International Bureau

JOINT OPPOSITION TO PETITIONS TO DENY

Sirius XM Radio Inc. ("Sirius XM"), on its own behalf and on behalf of XM Radio Inc. ("XM"),¹ hereby opposes the Petitions to Deny the above-captioned applications filed by the WCS Coalition, a trade association for the 2.3 GHz Wireless Communications Service ("WCS").² These petitions object to Sirius and XM's requests to modify their long-standing

¹ On July 25, 2008, the Commission granted applications to allow the acquisition of XM Satellite Radio Holdings Inc. ("XM") by Sirius Satellite Radio Inc. ("Sirius"). *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd. 12348, FCC 08-178 (rel. Aug. 5, 2008). The transaction was consummated on July 28, 2008, and the surviving parent company has been named Sirius XM Radio Inc. XM Radio Inc. is a wholly owned subsidiary of Sirius XM Radio Inc. To the extent XM and Sirius hold separate grants of Special Temporary Authority ("STA") and maintain separate repeater networks, they are referred to separately herein.

² Petition to Deny of the WCS Coalition, File No. SAT-STA-20061013-00121 (filed Sept. 5, 2008) ("Petition to Deny Sirius XM Application"); Petition to Deny of the WCS Coalition, File No. SAT-STA-20061013-000119 (filed Sept. 5, 2008) ("Petition to Deny XM Application"). Since the two Petitions to Deny raise only a single issue and are identical in all substantive respects, Sirius XM addresses both through this joint opposition.

FCC authorizations for a network of terrestrial repeaters.³ Specifically, the Coalition objects to the proposed modification of Sirius and XM's STA grants to the extent those modifications would allow each company to operate terrestrial repeaters having an average equivalent isotropic radiated power ("EIRP") in excess of 2,000 watts.⁴ The Coalition offers three related arguments in opposition to Sirius and XM's requests to modify their current terrestrial repeater STAs: (1) that the new repeaters could cause future interference,⁵ (2) that a non-interference condition is inadequate in light of the pending repeater rulemaking proceeding,⁶ and (3) that the applications fall short of the statutory justification for an STA.⁷ For the reasons set forth below, these arguments are without merit and the Commission should reject the Petitions to Deny and grant the Sirius and XM applications.

First, Sirius and XM's applications should not be denied based on the Coalition's belief that the repeaters *may* cause interference sometime in the future. Although the petitions are replete with references to interference, the WCS Coalition claims not once that the repeaters

³ See *Sirius Satellite Radio Inc. Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters*, Order and Authorization, 16 FCC Rcd 16773, at ¶ 3 (rel. Sept. 17, 2001) ("*Sirius STA Order*"); *XM Radio Inc. Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters*, Order and Authorization, 16 FCC Rcd 16781, 167877-88, at ¶ 18 (rel. Sept. 17, 2001) ("*XM STA Order*").

⁴ See Petition to Deny Sirius XM Application at 1; Petition to Deny XM Application at 1.

⁵ See Petition to Deny Sirius XM Application at 3-4; Petition to Deny XM Application at 3.

⁶ See Petition to Deny Sirius XM Application at 5; Petition to Deny XM Application at 4-5; *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, IB Docket No. 95-91, FCC 07-215 (rel. Dec. 18, 2007).

⁷ See Petition to Deny Sirius XM Application at 1-3; Petition to Deny XM Application at 1-3.

have caused or will cause actual interference to WCS operations – undoubtedly due to the simple fact that actual deployments of WCS services are few and far between.⁸ Instead, the Coalition bases its arguments upon the supposition that, at some undefined time in the future, WCS will be deployed in the area of the repeaters for which authority is sought in these STA requests.⁹ Thus, lacking any plausible past or present interference, the WCS Coalition proffers hypothetical harms to hoped-for future deployments. The Commission should not deny reliable, ubiquitous service to hundreds of thousands of satellite radio subscribers, based merely upon such hypothetical and unproven concerns of future interference.

Concerns with future interference are without merit given the lack of WCS units that could receive interference and the non-interference condition Sirius XM will be obliged to follow. Sirius XM would not object to having the Commission condition any STA grants upon the repeaters operating without causing interference to WCS operations. Therefore, should Sirius XM's terrestrial repeaters cause any interference to WCS, Sirius XM would be required to promptly mitigate the interference to the benefit of WCS licensees. The WCS Coalition itself has essentially admitted that its interests and future operations are protected as long as Sirius XM's STAs are conditioned on non-interference.¹⁰

⁸ In fact, Sirius and XM are currently operating repeaters within the parameters proposed in the applications at issue, and there has been no reported interference from these operations.

⁹ See Petition to Deny Sirius XM Application at 5; Petition to Deny XM Application at 5. It is unknowable whether WCS systems will ever develop in the areas in which Sirius XM proposes to operate the repeaters at issue, given that very few WCS licensees have constructed systems after more than a decade.

¹⁰ See Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to Marlene H. Dortch, Secretary, FCC, File No. SAT-STA-20061207-00145 (filed March 19, 2007).

Arguments that a non-interference condition is inadequate in light of the pending terrestrial repeater rulemaking are misplaced.¹¹ Importantly, the Coalition does not object to the concept of a non-interference condition – a condition that Sirius XM is willing to abide by should interference occur. The WCS Coalition’s objection to the non-interference condition rests instead with its concern that the Commission’s repeater rules may ultimately be unfavorable to WCS licensees.¹² But any such concern should be addressed within the rulemaking process and not adjudicated in the context of an STA application that, in any event, could be superseded by the Commission’s repeater rules once promulgated. Indeed, the Commission is addressing such interference concerns in the pending repeater rulemaking and should not allow the WCS Coalition to infuse the issue into the current STA application process.

Last, the statutory justification for the grant of an STA in the instant case has been met.¹³ The Communications Act and the implementing regulations provide that STAs may be granted when “there are extraordinary circumstances requiring temporary operations in the public interest and . . . delay . . . would seriously prejudice the public interest.”¹⁴ The statute and regulations do not provide guidance on what is meant by “extraordinary” or how great an impact on the public is required before an STA should be granted. The Commission, therefore, has a fair degree of discretion in determining when circumstances and the public interest warrant granting of an STA. The Commission has consistently exercised its discretion to grant STAs

¹¹ See Petition to Deny Sirius XM Application at 5; Petition to Deny XM Application at 5.

¹² See *id.* at 5-6.

¹³ See 47 C.F.R. § 25.120(b)(1) (“The Commission may grant a temporary authorization only upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of these temporary operations would seriously prejudice the public interest.”).

¹⁴ 47 U.S.C. § 309(f) (2007); 47 C.F.R. § 25.120(b)(1) (2007).

when doing so “would not cause harmful interference to other licensed operations and would serve the public interest, convenience and necessity.”¹⁵ In other words, if the grant of a temporary authorization will provide more service or competition to consumers, without adversely affecting another licensee or other consumers, the STA will be granted until the Commission can decide if a permanent authorization is warranted.¹⁶

In the instant case, the Commission has already concluded that the stalled repeater proceeding “has created the extraordinary circumstances required by the statute and [the Commission’s] rules to justify grant of an STA.”¹⁷ Those circumstances remain today. As discussed below, operating the terrestrial repeaters at issue in these applications is unlikely to cause harmful interference to other licensed operations and, even if they did, interference can be easily mitigated due to the non-interference condition, as addressed above. Moreover, it is already a matter of record in this proceeding that the increase in service to satellite radio consumers that will result from the operation of these repeaters will serve the public interest.¹⁸ Thus, the instant applications have met the statutory standard for modifications to STAs, and the Commission is well within its authority to exercise its discretion and grant the STAs.

The sole issue here is whether to authorize the operation of repeaters in the Sirius and XM repeater networks, where both circumstances and conditions remain unchanged since grant

¹⁵ *EchoStar Satellite Corporation; Application for Renewal of Special Temporary Authority; Rainbow DBS Company LLC; Application for Special Temporary Authority*, Order and Authorization, 18 FCC Rcd 19825, 19827, ¶ 5 (2003).

¹⁶ Moreover, the Commission grants STAs with particular speed where, as here, it has already granted an STA and the licensee seeks changes that have no impact on the Commission’s underlying rationale for granting the existing STA.

¹⁷ *Sirius STA Order* at ¶ 7; *XM STA Order* at ¶ 7.

¹⁸ Supplemental Information of Sirius Satellite Radio Inc., File Nos. SAT-STA-20061013-00121, SAT-STA-20061013-00122 (filed Apr. 26, 2007); Ex Parte Memorandum in Support of STA Request of XM Radio Inc., File No. SAT-STA-20061002-00114 (filed Nov. 21, 2006).

of the 2001 STAs. Lacking any genuine basis for objection, the WCS Coalition misreads the law, invents specious issues, and demands duplicative protections. Even if its claims are correct (and they are not), the issues raised in the Petitions to Deny are best directed to the repeater rulemaking and not this STA request. Accordingly, the FCC should deny the Petitions to Deny and grant the Sirius and XM applications.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert L. Pettit', with a long horizontal flourish extending to the right.

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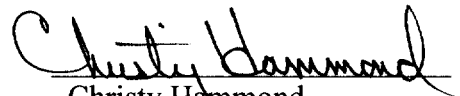
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CERTIFICATE OF SERVICE

I, Christy Hammond, do hereby certify that on September 18, 2008, I served a copy of the Joint Opposition to Petitions to Deny upon the following parties by U.S. first-class mail, postage pre-paid:

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