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October 23, 2006

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Mr. Chairman:

NAB writes to express our alarm regarding recent separate requests by Sirius Satellite Radio, Inc. and XM Radio, Inc. for special temporary authorizations (“STAs”) to knowingly continue or resume operating satellite digital audio radio service (“SDARS”) terrestrial repeaters that were constructed and deployed inconsistently with the terms and conditions of the STAs under which the FCC initially authorized (and repeatedly re-authorized) Sirius and XM’s terrestrial repeater networks.<sup>1</sup> Given the scope of Sirius and XM’s wanton disregard of the FCC’s rules, NAB respectfully submits that the FCC should immediately launch a full investigation into both companies’ conduct and candor before the Commission to determine the true extent of their persistent and pervasive noncompliance with the FCC’s regulations, and impose appropriate sanctions.<sup>2</sup>

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<sup>1</sup> Application for Space Station Special Temporary Authority, XM Radio Inc., File Number SAT-STA-20061013-00119 (filed Oct. 13, 2006)(“XM 180-day STA”); Application for Space Station Special Temporary Authority, Sirius Satellite Radio Inc., File Number SAT-STA-20061013-00121 (filed Oct. 13, 2006)(“Sirius STA”). Both XM and Sirius also filed requests for 30-day STAs, with both stating that the FCC can act upon these shorter requests immediately (and without public notice) while the 180-day STA requests are considered under the FCC’s processes for longer term STAs.

<sup>2</sup> In addition to the FCC’s general rule that any applicant for any FCC authorization must provide only truthful and accurate statements to the FCC, 47 C.F.R. § 1.17, the FCC’s standard application for space station special temporary authority cautions that “Willful False Statements Made on This Form are Punishable by Fine and/or Imprisonment (U.S. Code, Title 18, Section 1001), and/or Revocation of Any Station Authorization (U.S. Code, Title 47, Section 213(a)(1)), and/or Forfeiture (U.S. Code, Title 47, Section 503).”

Although the specifics of Sirius and XM's STA requests differ slightly, both requests are little more than transparent attempts to legitimize the continued or resumed unlawful operation of numerous repeaters. For instance, among other breaches of the FCC's rules, XM admits that:

- 19 of XM's repeaters were never authorized at all, yet XM continues to operate four of those repeaters despite their admitted illegality.
- 142 of XM's repeaters were constructed and deployed at locations that differ by at least five seconds (*i.e.*, roughly 500 feet) from their FCC authorized locations. This equates to almost 18% of the 794 repeaters listed in XM's STA request. XM does not discuss how many others of these 794 repeaters may be located between one and five seconds away from their authorized locations.
- At least 221 repeaters (or almost 28% of XM's total) have been operating at power levels that exceed authorized levels, and that XM continues to operate at least two repeaters at excessive power levels despite their illegality.
- At 21 repeater stations, XM has installed a second or third unauthorized antenna, and at 79 repeater locations, it has installed antennas at heights that exceed authorized levels. XM STA Request at 2-5.

For its part, Sirius reveals problems with 11 of its terrestrial repeaters, stating that with "one exception, the repeaters were placed at locations that differ slightly from the STA – more than half of them within two miles of their reported sites." Sirius STA Request at 2. However, Sirius' effort to minimize the significance of its transgressions is apparent. Close examination of Sirius' request reveals that, of the 11 repeaters in question, 8 are located at least 1.4 miles away from their authorized locations, four are placed at least five miles from their reported locations, and one in Lansing, Michigan is located *67 miles away* from its FCC-authorized location. *Id.* at Exhibit 1.

Of course, the circumstances described above reflect only those violations of the FCC's rules that Sirius and XM voluntarily admit in the recently filed STA requests. Both Sirius and XM delicately word their applications to minimize the significance of their alleged misconduct. For example, Sirius states that none of the 11 repeaters in question are currently operating, yet notably fails to indicate when they turned off these repeaters or how many years these repeaters were operating in violation of the FCC's authorizations. Similarly, although XM lists 142 repeaters that were constructed at distance equivalent to almost two football fields away from their authorized locations, this only begs the question of how many of XM's repeaters were constructed somewhat closer to their reported locations, yet still not in compliance with XM's authorizations.

Most importantly, neither Sirius nor XM explain why they initially chose to deploy illegal facilities instead of following the FCC's rules, or why it has taken both companies almost five years after the FCC authorization of their repeater networks to disclose these problems. Speculation abounds whether it was just too much trouble for XM and Sirius to find suitable repeater locations within the FCC's parameters, or if XM and Sirius were rushing to beat each to market and could not slow down to comply with the FCC's rules. Or, perhaps the nascent

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SDARS operators were wary of the impact that disclosure and compliance with the FCC's authorizations would have on their stock price or Wall Street financing.

NAB is particularly disturbed at Sirius and XM's transparent attempts in the STA requests to downplay the seriousness of their non-compliance, as well as their audacity in asking for FCC approval to continue or resume operation of hundreds of repeaters that presumably have operated for years in violation of the FCC's rules. Coming on the heels of both Sirius and XM's continued failure to resolve interference to FM service caused by noncompliant radio devices already in circulation in the market,<sup>3</sup> these latest disclosures reveal a persistent corporate (if not industry) circumvention of the FCC's regulations. Accordingly, the FCC should immediately commence a full investigation into both the actual and reported operations of Sirius and XM's terrestrial repeater networks, including both companies' conduct and candor before the FCC, and defer consideration of the STA requests at hand until such an investigation is complete.

NAB looks forward to discussing these and other issues of concern with you and your fellow Commissioners. Please let us know what we can do to assist the FCC in its consideration of these or other matters.

Best wishes.

Sincerely,



David K. Rehr

cc: Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell  
John Giusti, Acting Chief, International Bureau  
Kris Monteith, Chief, Enforcement Bureau

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<sup>3</sup> Letter from David K. Rehr, President & CEO, National Association of Broadcasters, to Nate David, President & COO, XM Satellite Radio, Inc. and Mel Karmazin, CEO, Sirius Satellite Radio, Inc., Sep. 21, 2006.