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Federal Communications Commission
Bureau / Office

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of)
)
XM Radio Inc.) File No. SAT-STA-20061114-00138
)
Request for Special Temporary Authority to)
Operate a Single Digital Audio Radio Service)
Repeater at Specific PGA Tour Events)

To: Acting Chief, International Bureau

CONDITIONAL PETITION TO DENY

The WCS Coalition, by its attorneys and pursuant to Section 25.154(a) of the Commission's Rules, hereby conditionally petitions the International Bureau to deny the above-captioned request filed by XM Radio Inc. ("XM") for a 180-day special temporary authority ("STA") to operate a single temporary Digital Audio Radio Service ("DARS") terrestrial repeater at specific PGA tour events from January 1, 2007 through and including July 1, 2007.¹ Consistent with its position on XM's other event-specific proposals to operate repeaters for limited periods of time, the WCS Coalition has no objection to authorization of XM's proposed repeater at the proposed PGA sites² during the proposed timeframes if, but only if, XM commits

¹ See Request of XM Radio Inc. for Special Temporary Authority, File No. SAT-STA-20061114-00138 (Nov. 14, 2006) ["XM PGA 180-day STA Request"]. On December 22, 2006, the Bureau announced that it had accepted the XM PGA 180-day STA Request, thus triggering a 30-day period for responsive filings. See Policy Branch Information, Report No. SAT-00407, Public Notice (rel. Dec. 22, 2006).

² The WCS Coalition notes that two of the proposed PGA sites are located in Hawaii, where XM does not offer DARS service. See XM PGA 180-day STA Request, Exhibit A (proposing, *inter alia*, to temporarily operate proposed repeater at the Mercedes Championships, Kapalua, HI (January 1-7) and at the Sony Open in Hawaii, Honolulu, HI (January 8-14)). While the WCS Coalition has no objection to that request provided that XM commits to operating its proposed repeater at no more than 2,000 Watts peak EIRP, XM's purported justification for its proposed repeater operation (*i.e.*, the need to provide "fill-in" service to overcome terrain obstructions at PGA events) cannot logically apply in areas where XM does not offer DARS service to begin with. More importantly, the WCS Coalition's willingness to withhold its opposition to XM's proposed operation of a single temporary repeater at the two specified Hawaii PGA events is limited to those events exclusively. It in no respect reflects the WCS Coalition's position should XM propose to operate terrestrial repeaters in Hawaii on a permanent basis – indeed, the

to operating that repeater at no more than 2,000 Watts *peak* equivalent isotropically radiated power ("EIRP").³

Unfortunately, XM's above-captioned request once again obfuscates the critical issue of whether XM is proposing to operate at a maximum of 2,000 Watts *peak* EIRP. XM suggests that its proposal is not controversial because "[t]he low power repeater authorized under this STA will transmit at a maximum [EIRP] of 2 kW, a power level which adjacent band licensees have stated does not present an interference concern."⁴ As XM well knows, however, the WCS Coalition has made it clear that that the Commission should only be authorizing XM and Sirius Satellite Radio Inc. to operate new terrestrial repeaters at no more than the 2,000 Watts *peak* EIRP limit imposed on WCS licensees.⁵ Yet, XM fails to specify anywhere in the STA request

WCS Coalition would have serious concerns about the potential interference impact of such permanent repeater operations on the provision of WCS service in Hawaii.

³ See Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to John Giusti, Acting Chief, International Bureau, FCC, File No. SAT-STA-20061218-00153 (filed Dec. 22, 2006); Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to John Giusti, Acting Chief, International Bureau, FCC, File Nos. SAT-STA-20061211-00147 and SAT-STA-20061211-00148 (filed Dec. 14, 2006). As in the past, the WCS Coalition's willingness to withhold its opposition to XM's request is based on the presumption that any STA will include the unequivocal obligation to protect WCS licensees from interference.

⁴ Letter from James S. Blitz, Vice President/Regulatory Counsel, XM Radio Inc., to Marlene S. Dortch, Secretary, FCC, File No. SAT-STA-200611400138, at 1 (filed Nov. 14, 2006) [the "Blitz Letter," provided as an attachment to the XM PGA 180-day STA Request].

⁵ See, e.g., Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to Marlene H. Dortch, Secretary, FCC, File No. SAT-STA-20061002-00114, at 2-3 (filed Dec. 13, 2006) ["WCS Coalition December 13 Letter"]; WCS Coalition Petition to Deny, FCC File No. SAT-STA-20061107-00132 (filed December 18, 2006); Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to Marlene H. Dortch, Secretary, FCC, File No. SAT-STA-20061208-00146 (filed Dec. 14, 2006); Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to Marlene H. Dortch, Secretary, FCC, File No. SAT-STA-20061013-00122 (filed Nov. 28, 2006); Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to John Giusti, Acting Chief, International Bureau, FCC, File No. SAT-STA-20061208-00146 (filed Nov. 22, 2006); WCS Coalition Petition to Deny, File No. SAT-STA-20060623-00067 (filed Sept. 18, 2006).

or in the exhibits thereto whether it is proposing to cap its emissions at 2,000 Watts *peak* EIRP or 2,000 Watts *average* EIRP.⁶

Given the attention that has been paid to the issue of peak power vs. average power in recent filings from both the DARS and WCS communities, it is difficult to understand why XM repeatedly refuses to be specific about the matter in its STA requests. By now XM surely is aware that absent a clear statement of the peak power level of its proposed PGA repeater, neither the Commission nor the WCS Coalition can determine whether that facility will operate above the 2,000 Watt peak EIRP limit. XM's continuing failure to clearly identify the peak EIRP level of its proposed facilities only results in delay and a waste of Commission resources.⁷

⁶ See, e.g., XM PGA 180-day STA Request, Exhibit A ("XM requests Special Temporary Authority to operate one low power repeater with a maximum EIRP of 2 kW at the locations and during the dates listed below.") (footnote omitted). XM also seeks a waiver of Section 25.120(a) of the Commission's Rules, which requires that an STA request "include the full particulars of the proposed operation." See Blitz Letter at 3 n. 8, quoting 47 C.F.R. § 25.120(a). While the WCS Coalition does not object to providing XM with some flexibility in the exact location and tower height of its facilities located at specified PGA events, the Commission should not countenance XM's failure to specify whether it is expressing its maximum power level in terms of peak or average EIRP.

⁷ In a previous filing, the WCS Coalition identified the same problem in XM's request for a 30-day STA to operate a terrestrial repeater at the 2007 Consumer Electronics Show in Las Vegas, NV. See Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition, to John Giusti, Acting Chief, International Bureau, FCC, File No. SAT-STA-20061218-00153 (filed Dec. 22, 2006). Only then did XM advise the Commission that "for purposes of this repeater . . ., the power level of the facilities sought in this application will not exceed 2 kW *peak* EIRP." Letter from James S. Blitz, Vice President/Regulatory Counsel, XM Radio Inc., to John Giusti, Acting Chief, International Bureau, FCC, File No. SAT-STA-20061218-00153 (filed Dec. 22, 2006) (emphasis added). Of course, such explanatory filings (and the waste of the Commission resources devoted to processing them) could be avoided if XM would simply say this upfront in its STA requests, without forcing the Commission or the WCS community to ask for the information every time XM files an STA request.

WHEREFORE, for the foregoing reasons, the Commission should not move forward on XM's above-captioned request until XM commits that it will not operate the proposed repeater at more than 2,000 Watts peak EIRP.

Respectfully submitted,

THE WCS COALITION

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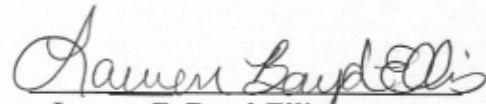
January 5, 2007

CERTIFICATE OF SERVICE

I, Lauren F. Boyd-Ellis, hereby certify that the foregoing Conditional Petition to Deny was served this 5th day of January, 2007 by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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