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Federal Communications Commission  
Office of the Secretary

**Ex Parte**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

*RE: XM Radio Inc., Request for 30-Day Special Temporary Authority to  
Operate A Substitute Low Power Repeater in Las Vegas, Nevada,  
File No. SAT-STA-20070205-00026*

Dear Ms. Dortch:

XM Radio, Inc. has applied for an STA to replace an authorized repeater in Las Vegas that had to be shut down because the building on which it was built is being demolished. XM simply seeks to replace that repeater with a less powerful repeater. As XM has explained, this repeater is needed to supplement service to areas of Las Vegas on and around "The Strip," where XM's satellite signal is blocked by tall buildings.<sup>1</sup> Following drive-testing to determine service outages, XM applied for an STA for a repeater with the minimum power needed to restore adequate coverage to these shielded areas.

The WCS Coalition has, nevertheless, opposed this STA request in its continuing effort to import issues about the appropriate power level for repeaters into the STA process.<sup>2</sup> However, as the Commission has recognized, these issues are more appropriately addressed in the pending rulemaking on SDARS repeaters, IB Docket No. 95-91.<sup>3</sup> The Commission should, thus, quickly end the WCS Coalition's latest attempted end-run around the rulemaking proceeding and grant XM's STA request.

<sup>1</sup> See *Request for 30-Day Special Temporary Authority*, File No. SAT-STA-20070205-00026, Attachment 1 (Letter from James S. Blitz to Marlene H. Dortch (Feb. 2, 2007)) at 1-2 ("XM STA Application Letter").

<sup>2</sup> See, e.g., Letter from Paul J. Sinderbrand to Marlene H. Dortch, File No. SAT-STA-20070205-00026, at 1 (filed Feb. 8, 2006) ("WCS Las Vegas Opposition").

<sup>3</sup> See File Number No. SAT-STA-20061114-00138 ¶ 1 (issued Feb. 7, 2007) ("XM PGA Grant").

Most recently, XM sought an STA for a repeater that it would operate for only several days during PGA golf tournaments, and only to provide service on the golf courses where those events were being played. There was no suggestion that this repeater could, during the course of its authorized use, cause any interference whatsoever to the operations of any WCS licensee. Nevertheless, the WCS Coalition opposed the STA request, arguing at length about measuring EIRP by peak power.<sup>4</sup> The Commission granted the STA over the WCS Coalition's opposition, noting that its decision would not "prejudice the outcome of the final rules adopted by the Commission in IB Docket No. 95-91." The Commission correctly went on to hold that "[t]he issue concerning EIRP will be addressed in that proceeding."<sup>5</sup>

Here, the WCS Coalition opposes this STA request solely because it claims that XM has not shown "that extraordinary circumstances prevent it from covering the area . . . through terrestrial repeaters operating at no more than 2,000 watts *peak* EIRP."<sup>6</sup> However, nothing in the Commission's STA rules establishes any different public interest standard for repeaters that may exceed any particular power level, not to mention the excessively restrictive power level to which the WCS Coalition seeks to limit XM's operations. As XM has explained in other contexts, the appropriate measurement is of a repeater's "average" power, not its "peak" power, and it would be foolishly counterproductive to limit all repeaters to 2 kW power (peak or average).<sup>7</sup> Furthermore, the Commission has granted XM STAs for hundreds of repeaters above 2 kW average EIRP without ever requiring the showing that the WCS Coalition now demands.<sup>8</sup>

In this case, the objection of the WCS Coalition is particularly egregious. XM's proposed repeater will operate at extremely low power – 1068 Watts average EIRP<sup>9</sup> – and is intended to replace a repeater the Commission previously granted to XM to operate at a higher power in the same vicinity.<sup>10</sup> It is also relevant that the Commission granted a 30-

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<sup>4</sup> See WCS Coalition Conditional Petition to Deny, File No. SAT-STA-20061114-00138 (filed January 5, 2007).

<sup>5</sup> XM PGA Grant ¶ 1 (emphasis added).

<sup>6</sup> See WCS Las Vegas Opposition at 1 (emphasis added).

<sup>7</sup> See, e.g., Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, IB Docket No. 95-91, Comments of Sirius Satellite Radio Inc. and XM Radio Inc. at 2 (filed July 5, 2005) (urging the Commission to "clarify that permanent SDARS terrestrial repeater maximum power limits will be expressed in terms of average, and not peak, power.").

<sup>8</sup> See, e.g., XM Radio, Inc., *Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complimentary Terrestrial Repeaters*, Order and Authorization, 16 FCC Rcd. 16,781 (2001) ("*XM Original STA*").

<sup>9</sup> See XM STA Application Letter at 1.

<sup>10</sup> See *XM Original STA*, 16 FCC Rcd. at 16,787 ¶ 17 (authorizing repeaters); Letter from Lon C. Levin, Senior Vice President, XM Radio Inc., to Jennifer Gilsenan, FCC International Bureau, SAT-STA-20031112-00371, Attachment at 42 (filed Dec. 19, 2003) (identifying authorized repeater).

day STA to Sirius Satellite Radio Inc. to operate a similar replacement repeater at 4400 Watts EIRP.<sup>11</sup> The WCS Coalition's opposition to XM's *lower* power replacement is simply part of its strategy to litigate the average versus peak power issue outside of the appropriate forum: the rulemaking proceeding.

Finally, turning to the *actual* STA rules, XM has amply demonstrated that extraordinary circumstances justify its STA request for a replacement repeater in Las Vegas.<sup>12</sup> In fact, this is a textbook case of extraordinary circumstances. The Stardust Hotel -- the location of the currently authorized repeater -- will be demolished in the coming weeks and all communications equipment mounted on the building had to be removed. A replacement repeater is plainly necessary to ensure that residents and travelers in Las Vegas continue to receive the diverse, high-quality service they have come to expect.<sup>13</sup> Moreover, XM conducted on-the-ground testing to ensure that it was seeking authorization for the least powerful repeater necessary to provide the needed service. These circumstances clearly justify the grant of an STA.

The Commission should make it clear that it will not tolerate the WCS Coalition's continued efforts to impede the STA process. Rather, as the Commission has now clearly said, the power-level issue the WCS Coalition inappropriately seeks to raise here should be decided in the context of the rulemaking proceeding.

Respectfully submitted,



Scott Blake Harris  
*Counsel for XM Radio Inc.*

cc: Paul Sinderbrand, counsel for WCS Coalition

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<sup>11</sup> See *Sirius Satellite Radio Application for Special Temporary Authority*, File No. SAT-STA-20061107-00133 (seeking a 30-day STA to operate a replacement repeater due to the destruction of the Stardust Hotel); *Public Notice, Actions Taken*, 21 FCC Rcd. 14066 (2006) (granting the requested STA).

<sup>12</sup> See XM STA Application Letter at 1, 3.

<sup>13</sup> Moreover, nothing has altered the Commission's finding of extraordinary circumstances when granting XM's original STA request in 2001. See *XM Original STA*, 16 FCC Rcd. at 16,783 ¶ 7.