

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

Application of )  
 )  
SIRIUS XM RADIO INC. ) File No. SAT-STA-20081027-00210  
For Special Temporary Authority to Operate )  
Twenty SDARS Terrestrial Repeaters in the )  
Commonwealth of Puerto Rico )

To: Chief, International Bureau

**OPPOSITION TO PETITION TO DENY**

Sirius XM Radio Inc. (“Sirius XM”), pursuant to Section 25.154(c) of the Commission's Rules, 47 C.F.R. § 25.154(c), respectfully submits its opposition to late-filed Petition to Deny of the Radio Broadcasters Association of Puerto Rico (the “Broadcasters”) challenging Sirius XM’s application to operate terrestrial repeaters in Puerto Rico, FCC File No. SAT-STA-20081027-00210 (the “Application”). Broadcasters base their arguments on factual inaccuracies as to the scope of Sirius XM’s service, misstatements regarding the Sirius XM merger and repeater rulemaking proceedings, and competitive concerns which the Commission has dismissed at least twice. Failing to raise any valid claim, the Bureau should promptly deny the Petition and grant the Application.

**Factual Background**

In the course of the Commission’s consideration of the merger application of Sirius Satellite Radio Inc. and XM Radio Inc.,<sup>1</sup> numerous commenters raised issues relating to the importance of providing satellite radio service in the Commonwealth of Puerto Rico.

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<sup>1</sup> Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc., XM Satellite Radio Holdings Inc., Transferor, and Sirius Satellite Radio Inc., Transferee (Mar. 20, 2007).

Significantly, these commenters included elected federal and territorial legislators who are in the best position to understand the need for satellite radio in the Commonwealth: two United States Congressmen – Rep. Luis G. Fortuño (R, Puerto Rico)<sup>2</sup> and Rep. José Serrano (D, New York)<sup>3</sup> – as well as the Senate of Puerto Rico,<sup>4</sup> and an organization of legislators from outlying U.S. territories called the Outlying Areas Senate Presidents Caucus.<sup>5</sup> While these commenters approached the issue from different perspectives, they each stressed the need for the merged company to treat Puerto Rico comparably to the contiguous United States for purposes of providing satellite radio service, emphasizing that satellite radio “access by all consumers in the United States [should] be a central tenet of the Commission’s merger review.”<sup>6</sup>

Responding to these concerns, Sirius and XM jointly sent the Commission a letter on June 13, 2008, which included the following commitment:

Within three months of the consummation of the merger, the combined company will file the necessary applications to provide the Sirius satellite radio service to the Commonwealth of Puerto Rico using terrestrial repeaters and will, upon grant of the necessary permanent authorizations, promptly introduce such satellite radio service to the Commonwealth.<sup>7</sup>

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<sup>2</sup> Letter from U.S. Rep. Luis G. Fortuño, to Kevin J. Martin, Chairman, FCC, MB Docket No. 07-57 (Jan. 18, 2008) (FCC should not approve merger unless satellite radio service area includes Puerto Rico and other non-contiguous U.S. territories), Letter from U.S. Rep. Luis G. Fortuño, to Kevin J. Martin, Chairman, FCC, MB Docket No. 07-57 (July 8, 2008) (withdrawing objection to merger, based on Sirius and XM’s commitments to FCC on service to Puerto Rico).

<sup>3</sup> Letter from Chairman José E. Serrano of the Subcommittee on Finance Services and General Gov’t Communications on Appropriations, to Kevin J. Martin, Chairman, FCC, MB Docket No. 07-57 (Sept. 19, 2007) (inquiring about FCC’s plans to more strongly encourage satellite radio access to residents of AK, HI, PR, and other U.S. territories).

<sup>4</sup> Senate Resolution 3392, Commonwealth of Puerto Rico, Oct. 1, 2007 (opposing merger until exclusion of Puerto Rico and other non-continuous U.S. jurisdictions from satellite radio coverage ceases).

<sup>5</sup> Letter from Members of the Outlying Areas Senate Presidents Caucus, to Kevin J. Martin, Chairman, FCC, MB Docket No. 07-57 (May 19, 2008) at 1-2 (FCC should condition its consent on merged companies’ pledge to make its full range of satellite services available to outlying areas within two years).

<sup>6</sup> *Applications for Consent to the Transfer of Control of Licenses; XM Satellite Radio Holdings, Inc., Transferor, To Sirius Satellite Radio, Inc.* Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12,348, 12,416 (¶ 148) (2008) (“*Merger Order*”).

<sup>7</sup> *Merger Order*, 23 FCC Rcd at 12,435 (Appendix B).

The Commission ultimately consented to the merger “subject to the condition that Applicants fulfill the voluntary commitments as set forth in Appendix B,” including the commitment on service to Puerto Rico quoted above.<sup>8</sup> Three months after the merger’s consummation, on October 27, 2008, Sirius XM applied for Special Temporary Authority (“STA”) to operate terrestrial repeaters in Puerto Rico. The Commission subsequently issued a Public Notice finding the application acceptable for filing,<sup>9</sup> followed by Broadcasters’ Petition to Deny.<sup>10</sup>

### Discussion

A. **Sirius XM Currently Provides Service In Puerto Rico.** The Petition’s fundamental factual premise is incorrect: Sirius XM does in fact provide satellite radio service to Puerto Rico. As demonstrated on Attachment 1 hereto, the current Sirius satellites cover the Commonwealth with signal levels ranging from approximately 55 to 58.5 dBW, depending on where each satellite is located in its orbit. Since this signal level provides a positive margin above what is required for satellite radio reception, the current satellite signal levels are more than adequate to allow reception of Sirius service at all times in any area of Puerto Rico having a clear line-of-sight to the satellites. A Sirius subscriber in Puerto Rico driving on terrain with unobstructed satellite views or using his receiver at a fixed location which sees the Sirius satellites will therefore enjoy service comparable to that available in the contiguous United States.

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<sup>8</sup> *Merger Order*, 23 FCC Rcd at 12,435 (Appendix B).

<sup>9</sup> Public Notice, Policy Branch Information, Report No. SAT-00599 (Apr. 27, 2009).

<sup>10</sup> The Petition to Deny suffers from several procedural infirmities which should lead to its prompt dismissal. First, the Request for Extension of Time filed on May 27, 2009 argues that Broadcasters should be allowed to file their Petition late only because they could not decide in time whether to participate in this proceeding. Broadcasters own indecision provides no basis for delaying this proceeding and the extension request should therefore be denied, with the Petition dismissed as a late-filed pleading. Secondly, the Petition includes no affidavit supporting specific allegations of fact -- such as those concerning the alleged uniqueness of the Puerto Rico broadcast market -- as required by Section 25.154(a)(4) of the Rules, 47 C.F.R. § 25.154(a)(4) . At best, Commission may treat the Petition as an informal objection pursuant to 47 C.F.R. § 25.154(b).

However, because the satellite radio signal covering Puerto Rico is weaker than the signal covering the contiguous United States, and the strength of the Sirius satellite signal varies depending on the satellite's location in its elliptical orbit, Sirius reception in Puerto Rico is subject to more frequent interruptions from foliage and similar obstructions. Due to these technical limitations on Sirius XM's ability to provide highly reliable satellite service throughout the Commonwealth, the company does not currently publicize the availability of its service in Puerto Rico or actively market to customers there. Indeed, the limited satellite coverage over Puerto Rico demonstrates the critical need for the Commission to grant the Application, which will allow Sirius XM to provide repeater coverage in locations on the island comparable to those where Sirius XM has repeaters in the United States (*e.g.*, urbanized areas, major highways, and near underpasses), thereby significantly enhancing signal availability and reliability in those areas. However, neither the current level of satellite coverage over Puerto Rico nor the need for repeaters alters the conclusion that Sirius satellites in fact "serve" the island.<sup>11</sup>

Moreover, Sirius XM is preparing for the launch of its first geo-stationary satellite -- called FM-5 -- which is expected to occur this month.<sup>12</sup> The FM-5 satellite will provide a consistent signal level of approximately 57 dBW over Puerto Rico, which will substantially improve the service's reliability over all parts of the island. *See* Attachment 2 (portion of FM-5 contour map showing coverage over Puerto Rico and surrounding areas) and Attachment 3 (Puerto Rico signal coverage plot following commencement of FM-5 service).

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<sup>11</sup> Sirius XM fan sites and subscriber blogs frequently discuss the availability of satellite radio service in Puerto Rico. *See e.g.*, <http://www.digitalradiocentral.com/sirius-backstage/sirius-dogstar-cafe/44096-does-sirius-work-puerto-rico.html> (last visited June 17, 2009); <http://www.xm411.com/phpbb/viewtopic.php?t=105> (last visited June 17, 2009).

<sup>12</sup>*See* SAT-LOA-20060901-00096 (granted Apr. 16, 2007); SEC Form 10-K, Sirius XM Radio Inc. at 7 (filed Mar. 10, 2009), at <http://www.sec.gov/Archives/edgar/data/908937/000119312509049874/d10k.htm> (last visited June 17, 2009).

Given the satellite radio service that Sirius XM currently provides to Puerto Rico and the improved coverage that will soon result from the launch and operation of FM-5, it is plainly wrong for Broadcasters to base their entire argument on its assertion that the company “does not provide, and has never provided SDARS service to Puerto Rico.” Petition to Deny, at 2. However, due to the limitations of the satellite coverage that Sirius XM provides over Puerto Rico, residents of the island would benefit significantly from the introduction of terrestrial repeaters, in much the same way that repeaters complement Sirius XM’s service within the contiguous United States.

**B. Granting the Application Should Not Be Tied to the Repeater Rulemaking.**

Sirius XM’s application for terrestrial repeaters in Puerto Rico presents no novel issues requiring the International Bureau to defer grant until the Commission can resolve the terrestrial repeater rulemaking, IB Docket No. 95-91. Although Sirius XM urges the Commission to adopt final terrestrial repeater rules in that proceeding which is long-since ripe for resolution, the status of the rulemaking should not impact processing of the Application. Since 2001, even in the absence of final repeater rules, the Bureau has granted STAs for many satellite radio repeaters fundamentally similar to this ones sought herein. Granting these STA applications has become a relatively routine matter such that, according to the Commission’s public records, the International Bureau has granted nearly 70 separate STAs to Sirius XM and its predecessors allowing their use of terrestrial repeaters. Given the Commission’s widespread and longstanding use of the STA process for satellite radio repeaters, there is no reason why the Application cannot be granted through the same mechanism without waiting for completion of the rulemaking.

Sirius XM's ability to operate terrestrial repeaters in Puerto Rico or in any area outside of the United States has never been an issue in the repeater rulemaking and indeed Broadcasters cite not a single filing in that docket raising this concern. While the early stages of that proceeding expressly recognized the need for terrestrial repeaters in order to provide reliable satellite radio service,<sup>13</sup> the closest the Commission has come to addressing the use of terrestrial repeaters outside of the United States was a discussion about whether satellite radio licensees could use repeaters beyond their service areas.<sup>14</sup> Since Sirius XM already provides service to Puerto Rico, as discussed above, this discussion is irrelevant to the instant proceeding. Moreover, as the Commission is well aware, the “[h]undreds of comments” submitted in that rulemaking in recent years have focused on a single issue -- the potential for terrestrial repeaters to cause interference to licensees in an adjacent frequency band -- which also has no relevance to the Application.

The pendency of the repeater rulemaking should not delay grant of the Application.<sup>15</sup> The Commission recognizes the need for satellite radio to use terrestrial repeaters and it should grant the Application using its long-standing practice of authorizing such repeaters through STA pending resolution of the rulemaking.

### **C. The *Merger Order's* Puerto Rico Condition Was Procedurally Appropriate.**

In light of the history of the merger proceeding as recounted above, Broadcasters cannot plausibly claim surprise or assert any procedural impropriety in the Commission's inclusion of a

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<sup>13</sup> *Establishment of Rules and Policies for the Digital Audio Radio Ser. in the 2310-2360 MHz Band*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5770 (¶ 37) (1997) (“*1997 Order and FNPRM*”) (“It has been widely known and discussed in the record that DARS providers will need to rely on terrestrial repeaters and gap fillers”); *Sirius Satellite Radio Inc.*, Order and Authorization, 16 FCC Rcd 16,773, 16,773-774 (¶ 2) (2001) (“*Sirius Repeater Order*”); *XM Radio Inc.*, Order and Authorization, 16 FCC Rcd 16,782, 16,781-782 (¶ 2) (2001) (“*XM Repeater Order*”) (The use of complementary terrestrial repeaters to overcome the effects of satellite signal blockage and multipath interference was recognized by the Commission when it adopted service rules for SDARS and in [the *1997 Order and FNPRM*]”).

<sup>14</sup> See *1997 Order and FNPRM*, 12 FCC Rcd at 5811-12. Broadcasters cite this same language as supporting their claim that the Commission “expressly declined to permit” use of repeaters in Puerto Rico more than 10 years ago.

<sup>15</sup> Indeed, the *Merger Order* could have, but did not, defer the effectiveness of directing Sirius XM to add Puerto Rico terrestrial repeaters until the completion of the terrestrial repeater rulemaking.

condition in the *Merger Order* requiring Sirius XM to provide repeater service to Puerto Rico. To the contrary, multiple parties filed comments in the merger docket addressing the need for improved service to Puerto Rico well *before* Sirius XM presented its offer in the June 13, 2008 voluntary commitment letter, which in turn was six weeks before the Commission issued its decision approving of the merger. Trade press articles discussed this issue even prior to the June 13, 2008 commitment letter.<sup>16</sup> Yet despite these filings and publicity surrounding them, Broadcasters somehow make the claim that the Puerto Rico service requirement amounted to “extraordinary relief ... slipped in under the radar at the tail end of a hotly contested matter... as to which the public was largely kept in the dark...” Petition at 6.

If Broadcasters disagreed that Sirius XM should provide repeater service to Puerto Rico as a condition to the merger, they should have voiced their concerns in that docket as did many other broadcast-related organizations on a wide variety of issues. The *Merger Order* directed Sirius XM to file its Application for repeaters to serve Puerto Rico and similarly, that decision must guide the Commission in processing the Application and authorizing repeater service. Ten months after the *Merger Order* has been released and long after the Broadcasters have been foreclosed from filing for reconsideration or court appeal, it is far too late for Broadcasters now to question the substance or procedural underpinning of the Puerto Rico service requirement.

**D. Anti-Competitive Concerns Provide No Basis for the Petition.** Broadcasters acknowledge that their real concern in filing the Petition is the “threat ... that local Puerto Rico broadcasting will suffer” due to competition from satellite radio. Petition, at 5. However, the Commission rejected the identical concerns of broadcasters at length when it first authorized the satellite radio service in 1997. As the Commission concluded over twelve years ago:

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<sup>16</sup> See e.g., <http://www.orbitcast.com/archives/interesting-merger-comments-from-puerto-rico-reps.html> (last visited June 17, 2009); <http://siriusbuzz.com/congressman-serrano-seeks-expansion-of-sdars.php> (last visited June 17, 2009).

[A]lthough healthy satellite DARS systems are likely to have some adverse impact on terrestrial radio audience size, revenues, and profits, the record does not demonstrate that licensing satellite DARS would have such a strong adverse impact that it threatens the provision of local radio service.

*1997 Order and FNPRM*, 12 FCC Rcd at 5768 (¶ 31).

When broadcast interests again raised the argument in the merger proceeding – this time claiming that a combined Sirius and XM would cause them competitive harm -- the Commission summarily dismissed their concerns as “speculative.” Citing studies showing that satellite radio accounts for only about four percent of all radio listeners, the Commission found:

there is insufficient evidence that the merger would decrease the advertising prices that broadcasters could charge, thereby reducing their revenue and negatively affecting the amount of locally produced programming.

*Merger Order*, 23 FCC Rcd at 12,383 (¶ 74). Broadcaster’s tortured ecological metaphors notwithstanding, there is no need to reargue this issue again.<sup>17</sup> Accordingly, Broadcasters concerns about competition from satellite radio provide no basis on which the Commission should deny the Application.<sup>18</sup>

Sirius XM remains committed to providing reliable satellite radio service to residents of Puerto Rico; granting the Application to permit the operation of terrestrial repeaters in the Commonwealth is a necessary step to enable this result. WHEREAS, for the reasons discussed

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<sup>17</sup> The Commission no longer considers detrimental economic effects even when authorizing new broadcasting stations. See *Policies Regarding Detrimental Effects of Proposed New Broad. Stations on Existing Stations*, Report and Order, 3 FCC Rcd 638 (1988), *affirmed*, 4 FCC Rcd 2276 (1989) (abolishing the Carroll Doctrine imposed in *Carroll Broadcasting Co. v. FCC*, 258 F. 2d 440 (D.C. Cir. 1958)).

<sup>18</sup> Broadcasters’ reference to the fact that satellite radio is not a local service (Petition, at 5-6) is especially odd, given the broadcast industry’s persistent efforts to prevent Sirius XM from providing any local content. A condition imposed in the *Merger Order* – sought by broadcasters – prohibits Sirius XM from originating local programming or advertising through their repeater networks. See Letter from Clear Channel Communications, Inc., at 2, MB Docket No. 07-57 (June 20, 2008); *Merger Order*, 23 FCC Rcd at 12,435 (Appendix B). This condition reflects a requirement imposed on Sirius and XM since 2001, also at the request of broadcasters. See *Sirius Repeater Order*, 16 FCC Rcd at 16,776-777 (¶¶ 10-11); *XM Repeater Order*, 16 FCC Rcd at 16,784-785 (¶¶ 10-11).



herein, the Commission should DENY the Petition to Deny filed by the Radio Broadcasters Association of Puerto Rico and GRANT the application of Sirius XM to operate terrestrial repeaters in Puerto Rico.

Respectfully submitted,

By: 

James S. Blitz  
Vice President, Regulatory Counsel

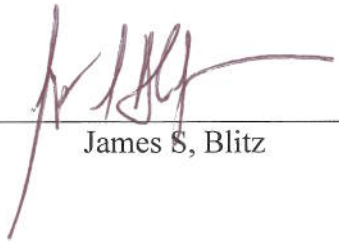
Sirius XM Radio Inc.  
1500 Eckington Place, N.E.  
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Dated: June 18, 2009

**CERTIFICATE OF SERVICE**

I, James S. Blitz, do hereby certify that on June 18, 2009, I caused a copy of the foregoing "Opposition to Petition to Deny" to be served upon the following party by U.S. first-class mail, postage pre-paid:

Francisco R. Montero  
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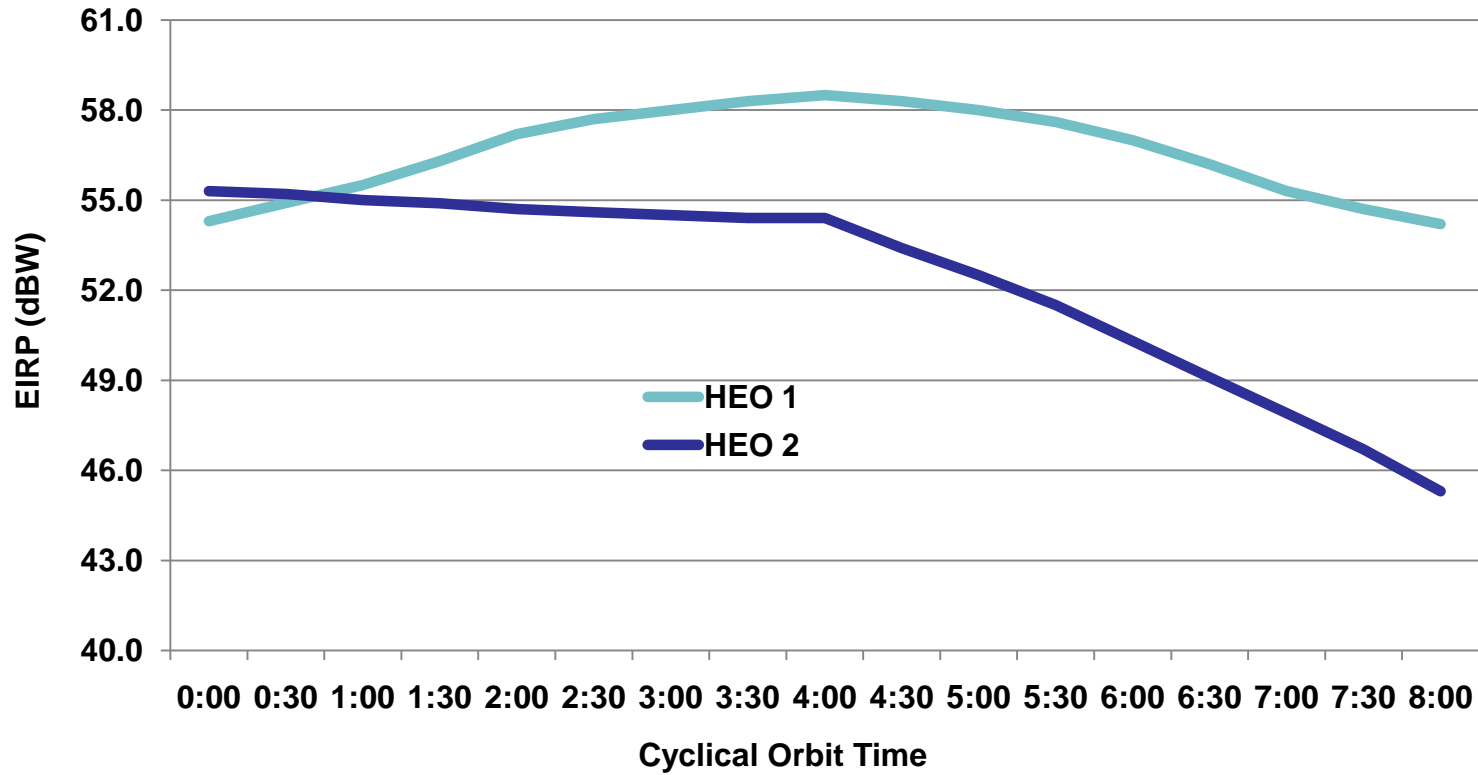


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James S. Blitz

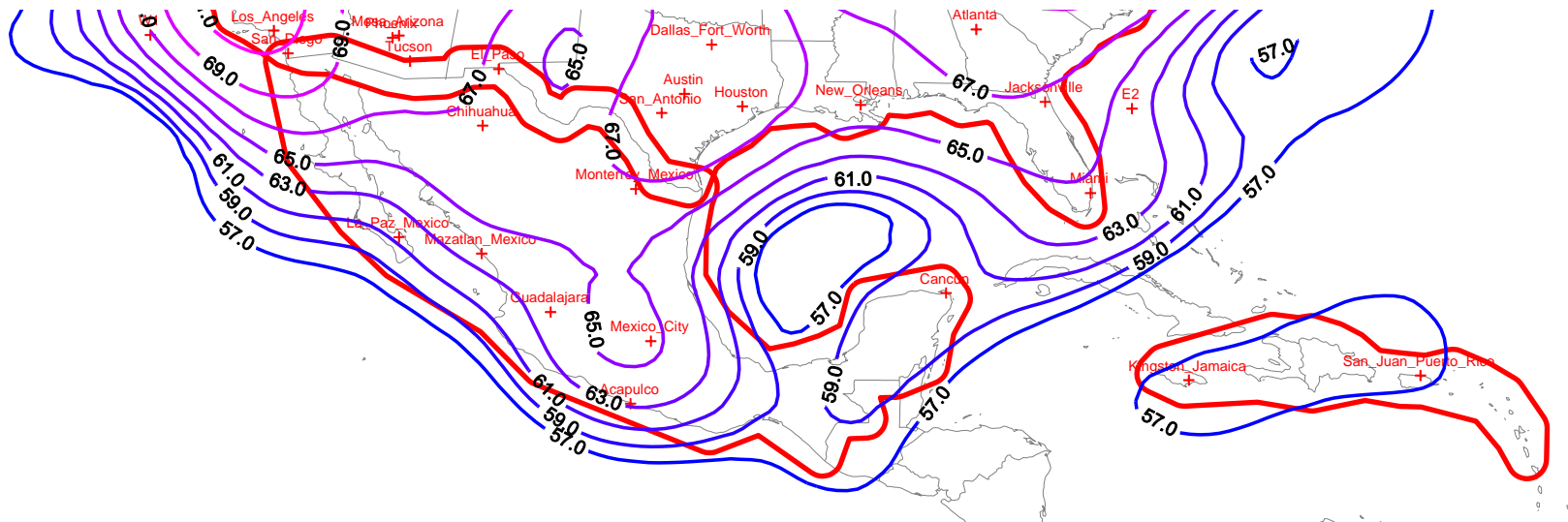
## Attachment 1

# Current Sirius Satellite EIRP Levels over Puerto Rico



## Attachment 2

### Sirius FM5 satellite EIRP (dBW) levels in the Southern U.S. and the Caribbean



Attachment 3

**Sirius Satellite EIRP Levels Over Puerto Rico With FM-5 In Service**

