



XM Radio, Inc. (“XM”), that Sirius XM was required under the terms of its 2008 consent decree with the Commission to return that repeater to authorized parameters by October 4, 2008 or cease operating it, and that Sirius XM has been unable to secure the consent of the site owner to the required modifications.<sup>3</sup> Thus, the elimination of CIN025C and the proposed modification of Sirius XM’s Cincinnati repeater network is not the result of storm damage – it is the direct result of XM’s illegal construction of CIN025C and hundreds of other repeaters.

The WCS Coalition has previously stated, and steadfastly maintains, that the Commission should not be authorizing any DARS repeaters in excess of 2000 watts average EIRP until the final rules in IB Docket No. 95-91 governing the operation of DARS terrestrial repeaters are adopted.<sup>4</sup> While the WCS Coalition recognizes that in some cases Sirius XM is proposing to reduce the authorized operating level of certain repeaters, the WCS Coalition has previously demonstrated that any DARS repeater operating in excess of 2000 watts average EIRP poses a real threat of future interference to the Wireless Communications Service (“WCS”).<sup>5</sup> The WCS Coalition need not repeat those arguments here. Significantly, Sirius XM does not allege, much less demonstrate, that it requires repeaters operating in excess of 2000 watts average EIRP to adequately serve the Cincinnati area. Given that the repeaters at issue here are all currently authorized to operate at no more than 2000 watts average EIRP pursuant to a 30-day STA, this failure to justify the need for additional power beyond that level speaks volumes.

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<sup>3</sup> See Application at 2 n.3; Request of XM Radio Inc. for Special Temporary Authority, File No. SAT-STA-20081002-00198 (filed Oct. 2, 2008); Request of XM Radio Inc. for Extension of Special Temporary Authority, File No. SAT-STA-20081029-00212 (filed Oct. 29, 2008); Request of XM Radio Inc. for Extension of Special Temporary Authority, File No. SAT-STA-20081205-00224 (filed Dec. 5, 2008).

<sup>4</sup> See Petition of WCS Coalition to Deny, File No. SAT-STA-20060623-00067, at 7 (filed Sept. 18, 2006); Comments of WCS Coalition, WT Docket No. 07-293, at 24 (filed Feb. 14, 2008); Petition of WCS Coalition to Deny, File No. SAT-STA-20061013-00119, at 4 (filed Sept. 5, 2008); Letter from Paul J. Sinderbrand, Counsel to WCS Coalition, to Marlene H. Dortch, Secretary, FCC, File No. SAT-STA-20061208-00146, at 4 n.8 (filed Dec. 14, 2006).

<sup>5</sup> See Comments of WCS Coalition, WT Docket No. 07-293, at 33 (filed Feb. 14, 2008).

Finally, Sirius XM is disingenuous in suggesting that grant of the Application will be benign to WCS licensees because any STA will be conditioned on non-interference to WCS.<sup>6</sup> What Sirius XM conveniently ignores is that in IB Docket No. 95-91 and WT Docket No. 07-293, it is currently asking the Commission to “grandfather” all DARS terrestrial repeaters constructed pursuant to STAs, but would have the Commission completely eliminate the unqualified obligation Sirius XM has pursuant to its STAs to protect WCS operations from interference – the obligation that has been an essential precondition to the Commission’s willingness to grant STAs in the first place.<sup>7</sup> Sirius XM cannot have it both ways.

WHEREFORE, for the foregoing reasons, the Commission should not grant the Application to the extent it seeks authority to operate the repeaters at issue here in excess of 2000 watts average EIRP.

Respectfully submitted,

**THE WCS COALITION**

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September 4, 2009

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<sup>6</sup> See Application at 6; Opposition at 4.

<sup>7</sup> See Letter from Robert L. Pettit, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 95-91, at 45 (filed Aug. 11, 2009); Letter from Robert L. Pettit, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 95-91, at 45 (filed Dec. 2, 2008); Comments of XM Radio Inc., WT Docket No. 07-293, at 25 (filed Feb. 14, 2008); Letter from Patrick L Donnelly and James S. Blitz, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 95-91 (filed Sept. 19, 2007); Letter from Bruce D. Jacobs, Counsel to XM Radio Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 95-91 (filed Jan. 5, 2007).

## CERTIFICATE OF SERVICE

I, Jennifer L. Canose, hereby certify that the foregoing Reply to Opposition to Informal Objection was served this 4<sup>th</sup> day of September, 2009 by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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/s/ Jennifer L. Canose  
Jennifer L. Canose