

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *In the Matters of XM Radio, Inc. and Sirius Satellite Radio, Inc., File Nos. EB-06-SE-148 and EB-06-SE-356, and EB-06-SE-250 and EB-06-SE-386*

Today, we approve one of the largest voluntary contributions ever agreed upon by the Commission for violations of Commission rules. XM and Sirius have agreed to pay a total amount of \$19.5 million for their intentional and repeated violations of rules intended to protect other licensees and the public. The brazen nature of these violations indeed warrants this substantial monetary contribution and rigorous oversight and reporting obligations.

It is my hope that the Commission will vigorously enforce all elements of today's Order and Consent Decree, but history suggests otherwise. In April and June 2006, the Commission launched an investigation into alleged noncompliant XM and Sirius satellite radio devices; and that fall, the Commission learned about widespread unauthorized use of terrestrial repeaters. XM, for example, had constructed and was operating 479 unauthorized or variant repeaters. In light of such unprecedented violations, it is stunning that the Commission was poised to approve the merger of XM and Sirius before resolving these enforcement matters. It is inconceivable to me that we would even consider approving such a merger with such a large and serious number of outstanding violations unresolved. That would have never crossed our minds if the transactions involved terrestrial broadcasters. I commend my colleague, Commissioner Tate, for insisting that we conclude enforcement action prior to concluding the merger transaction.

In the same vein, I am discouraged that the Commission has not yet decided the interference issues between the SDARS and Wireless Communications Service ("WCS") in the 2.3 GHz band. That these issues have been before the Commission for over a decade is completely unacceptable. This enforcement action implicates a number of transmitters that are now operating with special temporary authority (STAs). These STAs would no longer be necessary, and they could operate under regular authorization, if this matter were resolved. It should have been done before or concurrent with this enforcement matter, and certainly before the merger was approved. The longer we delay implementing rules governing the coexistence of SDARS and WCS, the longer we delay WCS rollout of critical wireless broadband services to rural, unserved and underserved areas. It is not enough to talk about rural broadband deployment. We need to do something about it. Here, we are in fact standing in the way. We need to act, and do so in a way which promotes broadband and protects listeners of satellite radio. Today, I urge my colleagues to determine final technical rules so that WCS licensees can manufacture compliant equipment and devices.