

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Nos. EB-06-SE-148 and
)	EB-06-SE-356
)	
XM Radio, Inc.)	Acct. No. 200832100062
)	
)	FRN No. 0007714579

ORDER

Adopted: July 25, 2008

Released: August 5, 2008

By the Commission: Chairman Martin and Commissioners Adelstein and Tate issuing separate statements.

1. In this Order, we adopt the attached Consent Decree entered into between the Federal Communications Commission (“Commission”) and XM Radio, Inc. (“XM”). The Consent Decree terminates investigations by the Commission into whether (a) certain radio receivers intended for use with XM’s satellite radio service and manufactured and marketed by or on behalf of XM were in compliance with Section 302(b) of the Communications Act of 1934, as amended, (the “Act”),¹ and Parts 2 and 15 of the Commission’s rules;² and (b) XM constructed and operated terrestrial repeaters without Commission authorization in violation of Section 25.120 of the Commission’s Rules.³

2. The Commission and XM have negotiated the terms of the Consent Decree that resolve these matters. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigations. We do not come to this conclusion easily. The apparently intentional nature of some of the violations resolved by this Order and Consent Decree and the apparent involvement of certain XM personnel in these violations are very troubling. Indeed, the ability and willingness to conform one’s conduct to the requirements of the Commission’s Rules are central to the qualifications of any Commission licensee. We must balance our concern, however, against the public’s interest in the continued availability and viability of XM’s satellite radio service and the impact on the public and other licensees that XM’s violations precipitated. These considerations, taken together with the rigorous oversight and reporting obligations and substantial voluntary contribution prescribed in this Order and the Consent Decree, persuade us that settlement of these matters would best serve the public interest.

4. In the absence of new material evidence relating to this matter, therefore, we conclude that our investigations raise no substantial or material questions of fact as to whether XM possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.1 *et seq.* and § 15.101 *et seq.*

³ 47 C.F.R. § 25.120.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigations **ARE TERMINATED**.

7. **IT IS FURTHER ORDERED** that all third-party complaints against XM before the Commission related to the above-captioned-investigations as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to counsel for XM, Scott Blake Harris, Esq., Harris, Wiltshire & Grannis LLP, 1200 Eighteenth St., NW, Washington, DC 20036 and to James S. Blitz, Esq., Vice President and Regulatory Counsel, 1500 Eckington Place, NE, Washington, DC 20002-2164.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴ 47 U.S.C. § 154(i).

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XM Radio, Inc.)	Acct. No. 200832100062
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CONSENT DECREE

The Federal Communications Commission (“Commission” or “FCC”) and XM Radio, Inc. (“XM”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Commission’s investigations into whether (a) certain radio receivers intended for use with XM’s satellite radio service and manufactured and marketed by or on behalf of XM were in compliance with Section 302(b) of the Communications Act of 1934, as amended, (the “Act”),¹ and Parts 2 and 15 of the Commission’s rules;² and (b) XM constructed and operated terrestrial repeaters without Commission authorization in violation of Section 25.120 of the Commission’s Rules.³

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Complaints” means third-party complaints that may have been received by, or are in the possession of, the Commission or Bureau alleging that certain radio receivers intended for use with XM’s satellite radio service and manufactured and marketed by or on behalf of XM are not in compliance with Section 302(b) of the Act and Parts 2 and Part 15 of the Rules, or that XM failed to comply in all respects with the special temporary authority to operate its terrestrial repeaters granted pursuant to Section 25.120 of the Rules.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.1 *et seq.* and § 15.101 *et seq.*

³ 47 C.F.R. § 25.120.

- (g) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (h) “Investigations” means (i) the investigation in File No. EB-06-SE-148 commenced by the Bureau’s April 20, 2006 Letter of Inquiry⁴ into the manufacture, authorization, importation, distribution and marketing of the Radio Receivers; and (ii) the investigation in File No. EB-06-SE-356 commenced by the Bureau’s February 15, 2007 Letter of Inquiry⁵ relating to XM’s operation of its terrestrial repeaters.
- (i) “Parties” means XM and the Commission.
- (j) “Radio Receivers” means all satellite radio receivers with built-in wireless FM modulators manufactured, sold or distributed for use with XM’s satellite radio service on or before the Effective Date under FCC ID Numbers BGAXMXP01, RS2SA10101, RS2R101, RS2SA10177, RS2SA10113, RS2GEX-AWARE1, RS2TXM 1000, RS2SA 10085, SICXR9, RS2GEXINNO1, RS2YX-M1, and RS2YP-XZC.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (l) “XM” means XM Radio, Inc. and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Pursuant to section 302(b) of the Act⁶ and Parts 2 and 15 of the Rules,⁷ certain radio frequency devices, including wireless FM modulators, must be authorized in accordance with the processes set forth in the Rules and comply with all applicable technical standards and labeling requirements prior to importation into, or marketing in, the United States. On April 20, 2006, the Bureau issued a Letter of Inquiry to XM in File No. EB-06-SE-148 initiating an investigation into the manufacture, authorization, importation, distribution and marketing of certain satellite radio receivers (with wireless FM modulators) intended for use with XM’s satellite radio service.⁸

3. When the Commission adopted service rules for the Satellite Digital Audio Radio Service (“SDARS”), it recognized that some SDARS applicants intended to use terrestrial repeaters to improve reception of the service in “urban canyons” and other areas where it might be difficult to receive SDARS signals transmitted by satellite, and it sought comment on the rules that should be applicable to those

⁴ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC, to William J. Bailey, Senior Vice President, Regulatory and Government Affairs, XM Radio Inc. (April 20, 2006) (“April 20, 2006 LOI”).

⁵ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC, to James Blitz, Vice President & Regulatory Counsel, XM Radio Inc. (February 15, 2007) (“February 15, 2007 LOI”).

⁶ 47 U.S.C. 302a(b).

⁷ 47 C.F.R. §§ 2.1 *et seq.* and 15.1 *et seq.*

⁸ See April 20, 2006 LOI.

repeaters.⁹ Pending adoption of permanent rules for terrestrial repeaters, the FCC has authorized repeaters through the grant of special temporary authority (“STA”) pursuant to Section 25.120 of the Rules. XM filed an STA request on July 12, 2001, to begin commercial service using its terrestrial repeater network, along with subsequent STAs¹⁰ through September 2006, which were granted per the specifications in XM’s requests.¹¹

4. On September 20, 2006, XM voluntarily disclosed to the Commission that it had constructed and was operating 479 repeaters for which it had not asked for authorization or which varied either slightly or significantly from what it was originally authorized to do and thus operated unauthorized and in an unlawful manner. Of the 479 repeaters, there are 19 repeaters for which it had not asked for authorization, four of which continue to operate. Of the remaining 460 repeaters, 317 of them continue to operate unauthorized and in an unlawful manner.¹² Some repeaters had multiple violations. Specifically, there are 711 violations associated with these 460 repeaters, 354 of which varied slightly and 357 of which varied significantly from what XM was originally authorized to do. There are 495 violations associated with the 317 variant repeaters XM continues to operate, 136 of which varied significantly from what XM was originally authorized to do and 359 of which varied slightly. The Enforcement Bureau (“Bureau”) sent an LOI to XM on February 15, 2007.¹³ XM submitted a response to the LOI on March 12, 2007.¹⁴

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Commission by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** XM agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order, including imposition of the maximum statutory forfeiture for any such violations. Similar penalties shall be imposed for any violation of the underlying rules at issue in this proceeding.

⁹ *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5745, 5810 (1997).

¹⁰ SAT-STA-20020815-00153; SAT-STA-20031112-00371.

¹¹ See File No. SAT-STA-20010712-00063.

¹² Of the repeaters that were powered down, several have other, less significant violations associated with them.

¹³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC, to James Blitz, Vice President and Regulatory Counsel, XM Radio, Inc. (February 15, 2007).

¹⁴ See Letter from James Blitz, Vice President and Regulatory Counsel, XM Radio, Inc. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC (March 12, 2007).

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate its investigations and dismiss the complaints. In consideration for the termination of said investigations and dismissal of the complaints, XM agrees to the terms, conditions, and procedures contained herein. The Commission further agrees that in the absence of new material evidence, the Commission will not use the facts developed in these investigations through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against XM concerning the matters that were the subject of the investigations or with respect to XM's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations, *provided, however*, that the Commission may consider the facts in this proceeding in any future proceeding involving violations by XM of the same rules at issue in this proceeding or involving misrepresentation or lack of candor by XM in its dealings with the Commission.

9. **Terrestrial Repeaters.** With respect to any of the 100 repeaters listed in Attachment C, within a period of 60 days from the Effective Date of this Consent Decree, XM shall cease operating 50 of these repeaters and must bring the remaining 50 repeaters into compliance with the specifications that they were originally authorized or cease operating them. The Commission, as of the Effective Date of this Consent Decree, shall also grant XM's request for STA to operate for a period of thirty (30) days¹⁵ those repeaters for which it seeks authority listed in Attachment D. Concurrently, the Commission shall place on public notice XM's request for STA to operate these repeaters for a period of 180 days.¹⁶

10. **Compliance Plan.** For purposes of settling the matters set forth herein, XM agrees to implement a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. XM will submit a copy of the Compliance Plan to the Bureau prior to the Effective Date. The Plan will include, at a minimum, the following components:

- (a) **FCC Compliance Officer.** XM has hired an FCC Compliance Officer, who is responsible for overseeing the FCC-related aspects of the company's operations, ensuring XM's compliance with all FCC Rules, and serving as point of contact for XM management, employees, FCC staff, and the public with reference to XM's FCC regulatory compliance. The FCC Compliance Officer will report directly to XM's General Counsel.

¹⁵ See SAT-STA-20061002-0014. The conditions for all 30-day STA grants include but are not limited to:

1. Any actions taken as a result of this STA are solely at the applicant's own risk. This STA shall not prejudice the outcome of the final rules adopted by the Commission in IB Docket No. 95-91. The issue concerning EIRP raised by the WCS Coalition will be addressed in that proceeding. Operations prior to such action will be subject to condition 2 below.
2. Operation of all SDARS repeaters authorized pursuant to this STA is on a non-interference basis with respect to all permanently authorized radiocommunication facilities. The operator shall provide the information and follow the process set forth in paragraphs 14 and 17 in 16 FCC Rcd 16773 (Int'l Bur. 2001) and 16 FCC Rcd 16781 (Int'l Bur. 2001), as modified by 16 FCC Rcd 18481 (Int'l Bur. 2001) and 16 FCC Rcd 18484 (Int'l Bur. 2001).

¹⁶ See SAT-STA-20061013-00119. These repeaters in Attachment C are a subset of the STA requests made by XM on October 2, 2006, as modified by XM's filing of March 22, 2007. The same conditions noted above would apply to any 180-day STA, if granted. See note 19, above.

- (b) **Equipment Design and Certification.** By September 1, 2008, XM will adopt a Procedural Guide for satellite radio receivers (“Procedural Guide”) establishing step-by-step procedures that XM employees must follow in connection with testing and obtaining FCC certification of any new radio receivers, as well as making any modifications to existing radio receivers where such changes may implicate FCC rules or certifications. XM will submit a copy of the Procedural Guide to the Bureau within five days of its adoption. In addition, XM will implement the following internal procedures related to equipment design and certification for radios intended to be sold at retail: (i) the FCC Compliance Officer will have ultimate responsibility over FCC testing and certification; (ii) authority over the design and manufacture of XM radio receivers will be separated from authority over FCC testing and certification for those radio receivers; (iii) prior to commencing manufacturing of commercial quantities of any devices governed by FCC rules, the FCC Compliance Officer will be required to certify directly to XM’s Chief Executive Officer and General Counsel that such device has been designed to comply with those rules; and (iv) the FCC Compliance Officer will supervise the audit of randomly selected radio receivers manufactured for retail distribution in order to help ensure the continued compliance of those devices with FCC rules.
- (c) **Modification of Vendor Agreements.** XM will ensure that all new agreements it enters into with vendors to manufacture radio receivers specifically require that such devices be manufactured in accordance with specifications provided or approved by XM and in compliance with applicable FCC rules. All existing agreements will be conformed to similarly ensure that devices are manufactured in accordance with specifications provided or approved by XM and in compliance with applicable FCC rules.
- (d) **Repeater Licensing and Modifications.** To ensure its compliance with FCC rules relating to its terrestrial repeaters, XM will adopt a Repeater Change Guide establishing procedures to be followed before any changes can be made to XM’s terrestrial repeater network, including adding any new repeater sites or making changes to existing repeaters. XM will submit a copy of the Repeater Change Guide to the Bureau by September 1, 2008. Pursuant to the Repeater Change Guide, any construction or other changes to XM’s repeater network must be approved in advance by the Senior Vice President, Ground Systems Engineering and the FCC Compliance Officer. Where the FCC Compliance Officer determines that FCC approval is needed before a change is made, no construction or modification may be made until such FCC approval is received, and pursuant to the direction of the Senior Vice President, Ground Systems Engineering and the FCC Compliance Officer.
- (e) **Compliance Training.** XM will establish an FCC Compliance Training Program for all current employees who engage in activities subject to FCC regulation. The training program will be developed and fully implemented no later than December 1, 2008. XM will conduct refresher training programs for relevant employees at least annually and will train relevant new employees within 90 days of their employment.

11. **Voluntary Contribution.** XM agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$17,394,375. The payment will be made within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card,

an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). XM will also send electronic notification on the date said payment is made to Kathy Berthot at Kathy.Berthot@fcc.gov.

12. **Waivers.** XM waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. XM shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither XM nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and XM shall waive any statutory right to a trial *de novo*. XM hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Radio Receivers.** The Commission will allow operation of the Radio Receivers that have been sold or distributed on or before the Effective Date. With regard to these existing Radio Receivers, XM will undertake the following efforts:

- (a) With respect to potentially non-compliant Radio Receivers purchased by a consumer but activated after the Effective Date, XM will use reasonable efforts to identify such consumers, and shortly after such consumer contacts the company to activate such device, offer such consumer at no charge to the consumer the choice, as appropriate, of: (1) a ferrite package, with instructions for how to attach the ferrites to the consumer's radio cables (including on the cables of radios that have been professionally installed); (2) a replacement cassette adaptor (for consumer whose vehicles have cassette players); or (3) a ferrite package and an installation kit with hardware to use in connection with a professional installation of the consumer's Radio Receiver, along with a coupon redeemable at no charge to the consumer for professional installation. XM will deliver to such consumers one of the above referenced solutions and a written communication to explain the benefits to consumers.
- (b) Within seven (7) business days of the Effective Date, XM will commence sending notices to, and make substantial progress towards notifying, by U.S. or electronic mail, all XM subscribers with Radio Receivers as of the Effective Date. The notice will inform subscribers that the subscriber's Radio Receiver may not be in compliance with FCC Rules and it may interfere with others' FM radio reception. The notice will direct subscribers to a website or a toll-free customer service number for further information and to choose from among the following options. For each subscriber who uses a Radio Receiver in the wireless FM modulator mode or who uses a Radio Receiver that has been professionally installed, XM will send the subscriber at no cost to the subscriber his or her choice of either:
 - (i) A ferrite package, with instructions for how to attach the ferrites to the subscriber's radio cables (including on the cables of radios that have been professionally installed);
 - (ii) A replacement cassette adaptor (for subscribers whose vehicles have cassette players); or
 - (iii) For subscribers whose vehicles do not have cassette players, a ferrite package and an installation kit with hardware to use in connection with a professional

installation of the subscriber's radio, along with a coupon redeemable at no charge to the consumer for professional installation.

Each such notice, which will be substantially in the form included in Attachment A, will also contain a hyperlink or an address to a website maintained by XM that allows subscribers to search for open FM frequencies by zip code. Distribution to subscribers of these solutions will be effected based upon subscriber responses and will begin within five (5) business days following receipt by XM, or a third party retained by XM, of the solutions.

- (c) The website and toll-free customer service number will advise all subscribers using a Radio Receiver with a cassette adaptor in a vehicle or with an RCA cable in a fixed location that if there is a menu setting enabling the FM modulator to be turned "off," it should be turned "off" when the cassette adaptor or RCA cable is attached.
- (d) XM will also provide such notice to subscribers via its website, subscriber newsletter and automated telephone response.
- (e) XM will cause all non-compliant Radio Receivers returned by consumers to XM for repair or warranty claims to be modified to be compliant with Section 302(b) of the Act and Parts 2 and 15 of the rules or replaced with compliant devices.
- (f) Within seven (7) business days of the Effective Date, XM will begin broadcasting an on-air notice regarding the Radio Receivers on a daily basis on high listenership news, talk and entertainment programming selected by XM. XM will continue such on-air notices for three months after the Effective Date. The Commission shall have the option of extending the on-air notice requirement for three additional months by notifying XM in writing of the need for such an extension one week prior to the termination of the initial three month period. The on-air notice shall contain in substantial form the information in Attachment B.

14. **Marketing of Radio Receivers.** XM agrees that every radio receiver that is marketed by XM in the United States on or after the Effective Date of this Consent Decree shall be designed to be compliant with Section 302(b) of the Act and Parts 2 and 15 of the Rules.

15. **Compliance Reports.** XM will file compliance certifications and reports with the Commission as follows:

- (a) Beginning on September 1, 2008, and continuing at three (3)-month intervals thereafter until the expiration of this Consent Decree, XM shall provide a report detailing:
 - (i) to its knowledge, the total number of Radio Receivers that remain activated as of the most recent date on which that information is available to XM;
 - (ii) the status of its compliance efforts set forth in paragraph 13 and a certification that XM has provided the notices required in paragraph 13(b); and
 - (iii) any changes in the technical parameters at which its terrestrial repeaters are operating.
- (b) Each report shall include a compliance certificate from XM's Senior Vice President, Ground Systems Engineering, as an agent of XM, stating that the officer has personal knowledge that XM has established and implemented operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for

the officer's compliance certification. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Kathy Berthot at Kathy.Berthot@fcc.gov.

16. **Termination Date.** Except with respect to paragraph 10(e), the requirements of this Consent Decree will expire five (5) years after the Effective Date.
17. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
18. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which XM does not expressly consent) that provision will be superseded by such Commission rule or Order.
19. **Successors and Assigns.** XM agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.
20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders, *provided, however*, that the Commission may consider the facts in this proceeding in any future proceeding involving violations by XM of the same rules at issue in this proceeding or involving misrepresentation or lack of candor by XM in its dealings with the Commission. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, XM does not admit or deny noncompliance, violation or liability for violating the Act or Rules in connection with the matters that are the subject of this Consent Decree.
21. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.
22. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.
23. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

24. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Marlene H. Dortch
Secretary
Federal Communications Commission

Date

Gary N. Parsons
Chairman of the Board of Directors
XM Radio, Inc.

Date

ATTACHMENT A

Draft Text of Customer Notice

Dear XM Subscriber,

The FCC has notified XM that some of our older receiver models (generally, those purchased before August, 2006) may not operate in the manner required by the FCC and may cause interference to FM radio users depending on how the XM radio is installed or used.

The receiver models include the Rody2, SkyFi2, MyFi, Airware, Tao, RodyXT, Xpress, Sportscaster, XR9-XCX9, Jensen JXR9, Inno, Helix, and Nexus. Please note **this notice does not apply to you** if your new car came installed with an XM receiver.

If you do have one of the receivers mentioned above and use it with the wireless FM option or you have had the receiver professionally installed, then we have several options available at no cost to you to alleviate this possible interference. Please visit our website at www.#####.com or call us toll-free at ###-###-##### to choose one of the following three options:

Option A: We will send you ferrite beads to attach to your XM antenna and power adaptor cables. (Ferrite beads are typically placed on the end of data cables to reduce interference.)

Option B: We will send you a replacement cassette adapter to use with your XM radio. Only choose this option if your car radio has a cassette player.

Option C: For subscribers whose vehicles do not have cassette players, a ferrite package and an installation kit with hardware to use in connection with a professional installation of the subscriber's radio, along with a coupon redeemable at no charge to the consumer for professional installation.

Please visit the following website, www.#####.com for more information and to select your option. If you do not have access to the Internet, you may call our toll-free automated telephone response system at ###-###-##### for information on how to alleviate this possible interference.

Thank you for your attention to this matter.

Best Regards,
XM Management

ATTACHMENT B**Draft Text of On-Air Announcement**

The FCC has notified XM that some of our older receiver models could cause interference to FM radio users. If you are currently using one of the affected models, you will receive an email or letter from XM with information to assist you in deciding whether your receiver needs changes and what changes you should make. Please visit our website www.#####.com or call us toll-free at ###-###-##### for further information. Please note that this notice does not apply to you if your new car came installed with an XM receiver. Thank you for your attention to this matter.

ATTACHMENT C

No.	Market Area	Repeater ID
1	Akron	AKR004A
2	Albuquerque	ALQ004A
3	Atlanta	ATL009A
4	Atlanta	ATL046A
5	Atlanta	ATL095A
6	Atlanta	ATL003C
7	Buffalo	BUF001A
8	Buffalo	BUF003A
9	Buffalo	BUF012A
10	Charlotte	CHA007B
11	Charlotte	CHA015B
12	Charlotte	CHA021B
13	Charlotte	CHA037A
14	Charlotte	CHA009F
15	Charlotte	CHA038B
16	Chicago	CHI137B
17	Chicago	CHI106B
18	Chicago	CHI125A
19	Chicago	CHI222A
20	Chicago	CHI238A
21	Chicago	CHI241D
22	Cincinnati	CIN025C
23	Cincinnati	CIN041B
24	Dallas	DFW507B
25	Dayton	DAY011B
26	Detroit	DET005D
27	Detroit	DET035A
28	Detroit	DET037A
29	Detroit	DET043A
30	Detroit	DET030A
31	Greenville	GRV027B
32	Harrisburg	HAB008A
33	Hartford	HAR035A
34	Houston	HOU020A
35	Jacksonville	JAC009A
36	Kansas City	KAC022C
37	Los Angeles	LAX645B
38	Los Angeles	LAX011A
39	Los Angeles	LAX020B
40	Los Angeles	LAX108A
41	Los Angeles	LAX144A
42	Los Angeles	LAX024A
43	Los Angeles	LAX103A
44	Los Angeles	LAX117C
45	Los Angeles	LAX116A
46	Miami	MIA019B
47	Miami	MIA022A
48	Minneapolis	MIN027A

49	Minneapolis	MIN030A
50	Nashville	NAS508A
51	Nashville	NAS001A
52	Nashville	NAS038D
53	New Orleans	NOX004A
54	New York	NYC192C
55	New York	NYC010A
56	Norfolk	NOR003A
57	Orlando	ORL005C
58	Pittsburgh	PIT011C
59	Pittsburgh	PIT033A
60	Pittsburgh	PIT037B
61	Portland	POR003B
62	Portland	POR028A
63	Raleigh	RAL009A
64	Raleigh	RAL016C
65	Raleigh	RAL017B
66	Raleigh	RAL021B
67	Raleigh	RAL029B
68	Raleigh	RAL022A
69	Sacramento	SAC006A
70	San Francisco	SFX007A
71	San Francisco	SFX716B
72	San Francisco	SFX058A
73	San Francisco	SFX064A
74	San Francisco	SFX117A
75	San Francisco	SFX214B
76	Seattle	SEA007A
77	Seattle	SEA012A
78	Seattle	SEA016A
79	Seattle	SEA021B
80	St. Louis	STL009D
81	St. Louis	STL001A
82	St. Louis	STL020A
83	St. Louis	STL023A
84	Tampa	TAM015A
85	Tampa	TAM003A
86	Tampa	TAM008A
87	Tampa	TAM009C
88	Tampa	TAM001A
89	Tampa	TAM002A
90	Tampa	TAM013A
91	Tampa	TAM014A
92	Washington DC	WDC430A
93	Washington DC	WDC232E
94	Washington DC	WDC502A
95	Washington DC	WDC220C
96	Washington DC	WDC227E
97	Washington DC	WDC501B
98	Washington DC	WDC515A
99	Washington DC	WDC519A
100	Washington DC	WDC215B

ATTACHMENT D

No.	Market Area	Repeater ID
1	Akron	AKR002B
2	Albany	ALB006D
3	Albany	ALB013B
4	Atlanta	ATL007A
5	Atlanta	ATL010B
6	Atlanta	ATL016C
7	Atlanta	ATL024A
8	Atlanta	ATL030B
9	Atlanta	ATL043B
10	Atlanta	ATL063A
11	Atlanta	ATL064C
12	Atlanta	ATL067A
13	Atlanta	ATL068A
14	Atlanta	ATL069A
15	Atlanta	ATL110B
16	Atlanta	ATL525A
17	Austin	AUS003A
18	Birmingham	BIR006A
19	Boston	BOS101E
20	Boston	BOS109B
21	Boston	BOS122A
22	Boston	BOS124A
23	Boston	BOS125A
24	Boston	BOS127A
25	Boston	BOS128A
26	Boston	BOS132A
27	Boston	BOS134A
28	Boston	BOS135A
29	Boston	BOS202C
30	Boston	BOS226A
31	Boston	BOS232B
32	Buffalo	BUF004A
33	Buffalo	BUF006A
34	Chicago	CHI115D
35	Chicago	CHI116F
36	Chicago	CHI118E
37	Chicago	CHI121A
38	Chicago	CHI123F
39	Chicago	CHI133A
40	Chicago	CHI134D
41	Chicago	CHI136C
42	Chicago	CHI140A
43	Chicago	CHI142B
44	Chicago	CHI201E
45	Chicago	CHI213A
46	Chicago	CHI225B
47	Chicago	CHI250A
48	Chicago	CHI251E
49	Chicago	CHI255B

50	Chicago	CHI604B
51	Cleveland	CLE002A
52	Cleveland	CLE005D
53	Cleveland	CLE006A
54	Cleveland	CLE027A
55	Columbus	COL020F
56	Columbus	COL501A
57	Dallas	DFW011A
58	Dayton	DAY013A
59	Detroit	DET001A
60	Detroit	DET008A
61	Detroit	DET012A
62	Detroit	DET014A
63	Detroit	DET016A
64	Detroit	DET029B
65	Detroit	DET031C
66	Detroit	DET034A
67	Detroit	DET038A
68	Detroit	DET040A
69	Detroit	DET044A
70	Detroit	DET047A
71	Detroit	DET048A
72	Detroit	DET515A
73	Detroit	DET549A
74	Greensboro	GRE003A
75	Greenville	GRV005B
76	Harrisburg	HAB014A
77	Hartford	HAR040A
78	Indianapolis	IND002C
79	Kansas City	KAC025A
80	Kansas City	KAC125A
81	Kansas City	KAC225A
82	Knoxville	KNO001A
83	Las Vegas	LVX003A
84	Las Vegas	LVX005A
85	Los Angeles	LAX001B
86	Los Angeles	LAX012C
87	Los Angeles	LAX014A
88	Los Angeles	LAX018A
89	Los Angeles	LAX028B
90	Los Angeles	LAX037B
91	Los Angeles	LAX101B
92	Los Angeles	LAX105A
93	Los Angeles	LAX109A
94	Los Angeles	LAX110A
95	Los Angeles	LAX111A
96	Los Angeles	LAX113B
97	Los Angeles	LAX118C
98	Los Angeles	LAX126A
99	Los Angeles	LAX130A
100	Louisville	LOU005A
101	Louisville	LOU007B

102	Louisville	LOU009B
103	Memphis	MEM003A
104	Memphis	MEM011B
105	Miami	MIA003F
106	Miami	MIA005A
107	Miami	MIA007B
108	Miami	MIA008A
109	Miami	MIA009A
110	Miami	MIA010A
111	Miami	MIA029C
112	Miami	MIA101E
113	Minneapolis	MIN012A
114	Minneapolis	MIN014B
115	Minneapolis	MIN016D
116	Monterey	MON008C
117	Nashville	NAS009A
118	Nashville	NAS017B
119	Nashville	NAS020A
120	New York	NYC003A
121	New York	NYC004A
122	New York	NYC008B
123	New York	NYC009A
124	New York	NYC012B
125	New York	NYC017C
126	New York	NYC019F
127	New York	NYC020B
128	New York	NYC027A
129	New York	NYC028C
130	New York	NYC031D
131	New York	NYC035A
132	New York	NYC046A
133	New York	NYC053E
134	New York	NYC055A
135	New York	NYC058D
136	New York	NYC070G
137	New York	NYC132H
138	New York	NYC136C
139	New York	NYC141A
140	New York	NYC161A
141	New York	NYC172A
142	New York	NYC193B
143	New York	NYC195B
144	New York	NYC196A
145	New York	NYC200A
146	New York	NYC205A
147	New York	NYC214B
148	New York	NYC222C
149	New York	NYC611B
150	New York	NYC614B
151	Oklahoma City	OKC001B
152	Orlando	ORL001C
153	Philadelphia	PHI002A

154	Philadelphia	PHI049A
155	Phoenix	PHO006A
156	Phoenix	PHO101A
157	Pittsburgh	PIT002A
158	Pittsburgh	PIT004D
159	Pittsburgh	PIT019C
160	Pittsburgh	PIT042B
161	Portland	POR017B
162	Portland	POR021A
163	Portland	POR030A
164	Portland	POR035A
165	Providence	PRO001B
166	Raleigh	RAL004A
167	Raleigh	RAL007A
168	Raleigh	RAL028A
169	Richmond	RIC008A
170	Richmond	RIC020A
171	Richmond	RIC033A
172	Richmond	RIC034A
173	Rochester	ROC002A
174	Sacramento	SAC001C
175	Salt Lake City	SLC001A
176	Salt Lake City	SLC004B
177	San Antonio	SAN001A
178	San Diego	SDX002B
179	San Diego	SDX019C
180	San Francisco	SFX005A
181	San Francisco	SFX009C
182	San Francisco	SFX139B
183	San Francisco	SFX250A
184	Seattle	SEA001B
185	Seattle	SEA002A
186	Seattle	SEA011A
187	Seattle	SEA014A
188	Seattle	SEA019C
189	Seattle	SEA033B
190	Seattle	SEA034A
191	Seattle	SEA050A
192	Seattle	SEA053A
193	Seattle	SEA056A
194	Springfield	SPR001A
195	Springfield	SPR003B
196	St. Louis	STL003A
197	St. Louis	STL006A
198	St. Louis	STL012C
199	St. Louis	STL017E
200	Syracuse	SYR004A
201	Syracuse	SYR008F
202	Tampa	TAM011A
203	Toledo	TOL505A
204	Tulsa	TUL001A
205	Washington DC	WDC102E

206	Washington DC	WDC105F
207	Washington DC	WDC202A
208	Washington DC	WDC203B
209	Washington DC	WDC222A
210	Washington DC	WDC223A
211	Washington DC	WDC230A
212	Washington DC	WDC307A
213	Washington DC	WDC313B
214	Washington DC	WDC314B
215	Washington DC	WDC325A
216	Washington DC	WDC329A
217	Washington DC	WDC401B
218	Washington DC	WDC405A
219	Washington DC	WDC409A
220	Washington DC	WDC500B
221	Washington DC	WDC513A

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Sirius Satellite Radio Inc.*

Re: *XM Radio, Inc.*

The Commission has longstanding technical rules regarding the marketing of equipment, including FM modulators, and the construction and operation of terrestrial repeaters pursuant to Special Temporary Authority. These rules serve important consumer protection and competitive goals. As I have said before, the Commission takes a licensee's obligation to comply with our rules very seriously and will not tolerate non-compliance.

In order to resolve the Commission's investigation into whether these license holders were violating the Commission's technical requirements regarding FM modulators, as well as our rules regarding the construction and operation of terrestrial repeaters, the two companies have agreed to undertake significant corrective actions and implement various reforms to ensure future compliance with the Commission's rules. They also have agreed to make significant contributions to the U.S. Treasury totaling nearly \$19.6 million.

In reaching a conclusion to these investigations, the apparently intentional nature of some of the violations was troubling. Indeed, the ability and willingness to conform one's conduct to the requirements of the Commission's rules are central to the qualifications of any Commission licensee. On balance, however, the public's interest in the continued availability and viability of satellite radio services and the impact on the public and other licensees that the violations precipitated, taken together with the rigorous oversight and reporting obligations and substantial voluntary contribution, persuade me that settlement of these matters would best serve the public interest.

Through this strong enforcement action that we take today, the Commission has provided clear guidance to the licensees that we expect them to conform their conduct to the Commission's rules and sends a strong message that we will not tolerate non-compliance.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Sirius Satellite Radio Inc.*

Re: *XM Radio, Inc.*

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.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *XM Radio, Inc.*

Beginning in 1927 with its predecessor, one of the core purposes for the Federal Communications Commission was to ensure that licensees operate in accordance with technical specifications of their license. Adherence to Commission authorizations ensures that all spectrum licensees can make efficient use of the bandwidth they have been allocated. That is why I felt it imperative to resolve these outstanding enforcement issues before moving to consideration of this merger.

The licensee that is the subject of today's voluntary forfeiture and consent decree failed to comply—knowingly and repeatedly, at the highest levels of management—with the specifications for its FM modulators and the terms of its Special Temporary Authorizations (“STAs”) for more than five years. I believe the Consent Decree we adopt today reflects the gravity of the violations, and the seriousness with which I view them.

XM has agreed to a voluntary contribution of \$17,394,375 for operating terrestrial repeaters at variance from their specification, and authorizing non-compliant FM modulators. In addition, XM has entered into a consent decree that mandates strict compliance with certifications, reporting requirements, and penalties associated with future violations. Specifically, XM has agreed to the following:

- A Compliance Plan to remain in effect for five (5) years, requiring reporting every three (3) months; almost twice the FCC's customary compliance plan period.
- Hire FCC Compliance Officer responsible for ensuring future compliance with Act and Commission rules;
- Adopt Procedural Guide establishing procedures for testing, certifying and making modifications to satellite radio receivers and Repeater Change Guide establishing procedures for making any changes to terrestrial repeater network;
- Conduct audits of randomly selected satellite radio receivers to ensure compliance;
- Establish an FCC Compliance Training Program for all employees who engage in activities subject to FCC regulation;
- Provide notices to subscribers offering various technical fixes to non-compliant radio receivers at no cost to subscriber via its website, subscriber newsletter and automated telephone response;
- Broadcast on-air notices to subscribers regarding non-compliant radio receivers;
- Replace non-compliant radio receivers returned by consumers for repair or warranty claims with compliant devices; and
- Submit periodic compliance reports to FCC.

With regard to terrestrial repeaters, within 60 days XM will shut down or bring into compliance 100 of its repeaters. All others will be referred to the FCC's International Bureau for processing.

Administration of effective spectrum policy requires that licensees comply with Commission rules and that the Commission is vigilant in its oversight. This will foster a level playing field for competition and encourage technological innovation. The American public requires and deserves no less.