

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

In the Matter of)	File Nos. EB-06-SE-250 and
)	EB-06-SE-386
)	
Sirius Satellite Radio Inc.)	Acct. No. 200832100061
)	
)	FRN No. 0006345730

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 Sirius Satellite Radio Inc. (“Sirius”). The Consent Decree terminates investigations by the Commission into whether (a) certain radio receivers intended for use with Sirius’ satellite radio service and marketed by or on behalf of Sirius 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) Sirius constructed and operated terrestrial repeaters without Commission authorization in violation of Section 25.120 of the Commission’s Rules.³

2. The Commission and Sirius 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 the Consent Decree and the apparent involvement of certain Sirius 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 Sirius’ satellite radio service and the impact on the public and other licensees that Sirius’ 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 Sirius 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 Sirius 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 Sirius, Robert L. Pettit, Esq., Wiley Rein LLP, 1776 K St., NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴ 47 U.S.C. § 154(i).

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Sirius Satellite Radio Inc.)	Acct. No. 200832100061
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)	FRN No. 0006345730

CONSENT DECREE

The Federal Communications Commission (“Commission” or “FCC”) and Sirius Satellite Radio Inc. (“Sirius”), 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 Sirius’ satellite radio service and marketed by or on behalf of Sirius were in compliance with Section 302(b) of the Communications Act of 1934, as amended (the “Act”),¹ and Parts 2 and Part 15 of the Commission’s rules²; and (b) Sirius constructed and operated terrestrial repeaters without Commission authorization in violation of Section 25.120 of the 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 Sirius’ satellite radio service and marketed by or on behalf of Sirius are not in compliance with Section 302(b) of the Act and Parts 2 and Part 15 of the Rules, or that Sirius failed to comply in all respects with the special temporary authority to operate eleven of its terrestrial repeaters granted pursuant to Section 25.120 of the Rules.

¹ 47 U.S.C. § 302a(b).

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

³ 47 C.F.R. § 25.120.

- (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 9.
- (g) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (h) “FM-Out Switched Radios” means radio receivers bearing FCC ID Numbers NKRUPAKW001, O6ZS50-C1, NKRUPASY001, NKRUPAST201 and NKRUPARK001.
- (i) “FM-Out Unswitched Radios” means radio receivers bearing FCC ID Numbers P3HXTR3, P3H-XTR3, P3HXTR3G3S, P3HCALYPSO, P3HKT-SR3000, P3HSV1, P3HSV1G3, P3HSV1G3S, P3HSPR1, P3HSPR1-1, P3HSP-R1-1 and P3HSP-R2.
- (j) “Investigations” means (a) the investigation in File No. EB-06-SE-250 commenced by the Bureau’s June 20, 2006 Letter of Inquiry⁴ commenced by the Bureau in April 2006 into the manufacture, authorization, importation, distribution and marketing of the Radio Receivers; and (b) the investigation in File No. EB-06-SE-386 commenced by the Bureau relating to Sirius’ operation of its terrestrial repeaters.
- (k) “OET” means the Office of Engineering and Technology of the Federal Communications Commission.
- (l) “Other Radios” means radio receivers bearing FCC ID Numbers NKRUPAUS007 and NKRUPAUS002.
- (m) “Parties” means Sirius and the Commission.
- (n) “Radio Receivers” means all satellite radio receivers with built-in wireless FM modulators manufactured, sold or distributed for use with Sirius’ satellite radio service on or before the Effective Date under FCC ID Numbers NKRUPAKW001, O6ZS50-C1, NKRUPASY001, NKRUPAST201, NKRUPARK001, P3HXTR3, P3H-XTR3, P3HXTR3G3S, P3HCALYPSO, P3HKT-SR3000, P3HSV1, P3HSV1G3, P3HSV1G3S, P3HSPR1, P3HSPR1-1, P3HSP-R1-1, P3HSP-R2, NKRUPAUS007 and NKRUPAUS002.
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Sirius” means Sirius Satellite Radio Inc. and its predecessors-in-interest and successors-in-interest.

⁴ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Patrick L. Donnelly, Executive Vice President and General Counsel, Sirius Satellite Radio Inc. (June 20, 2006) (“June 20, 2006 LOI”).

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁵ and Parts 2 and 15 of the Rules,⁶ 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 June 20, 2006, the Bureau issued a Letter of Inquiry to Sirius in File No. EB-06-SE-250 initiating an investigation into the manufacture, authorization, importation, distribution, and marketing of certain radio receivers (with wireless FM modulators) intended for use with Sirius' satellite radio service.⁷

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 repeaters.⁸ 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. Sirius filed an STA request on July 24, 2001, to begin commercial service using its terrestrial repeater network. The STA request was granted on September 17, 2001, along with subsequent STA requests⁹ through October 2006, which were granted per the specifications in Sirius' request.¹⁰ On October 13, 2006, Sirius informed Commission staff that eleven of these terrestrial repeaters had been operating at variance from their authorized specifications. Sirius further informed the Commission that it had turned off these repeaters, and filed requests for STA to authorize each of the repeaters.¹¹ The Bureau subsequently initiated an investigation in File No. EB-06-SE-386 into Sirius' operation of its terrestrial repeaters.

III. TERMS OF AGREEMENT

4. **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.

5. **Jurisdiction.** Sirius 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.

6. **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

⁵ 47 U.S.C. 302a(b).

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

⁷ See June 20, 2006 LOI.

⁸ *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).

⁹ See File Nos. SAT-STA20020312-00029, SAT-STA-20030827-00299, SAT-STA-20020827-0248, SAT-STA-20020827-00162, SAT-STA-20020222-00028, SAT-STA-20031106-00370.

¹⁰ See File No. SAT-STA-20010724-00064 (granted September 17, 2001).

¹¹ See File Nos. SAT-STA-20061013-00121 and SAT-STA-20061013-00122.

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.

7. **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, Sirius 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 Sirius concerning the matters that were the subject of the investigations or with respect to Sirius' 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 Sirius of the same rules at issue in this proceeding or involving misrepresentation or lack of candor by Sirius in its dealings with the Commission.

8. **Terrestrial Repeaters.** The Commission, as of the Effective Date, shall grant Sirius' request for STA to operate for a period of thirty (30) days¹² those repeaters which varied slightly from what it was originally authorized to do listed in Attachment E. Concurrently, the Commission shall place on public notice Sirius' request for STA to operate for a period of 180 days those repeaters which varied slightly from what they were originally authorized to do listed in Attachment E. With respect to those repeaters listed in Attachment F, Sirius may return these repeaters to operation provided that they are first brought into compliance with the specifications that were originally authorized.¹³ The pending requests filed by Sirius for STA to operate the repeaters listed in Attachment F for 30 days and, separately, to operate these repeaters for 180 days will be dismissed as of the Effective Date such that no repeaters in Attachment F shall be permitted to operate if they have not come into compliance.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Sirius agrees to implement a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. Sirius will submit a copy of the Compliance Plan to the Bureau by September 1, 2008. The Plan will include, at a minimum, the following components:

¹² See SAT-STA-20061013-00122. The conditions for all 30-day STA grants shall 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).

¹³ See SAT-STA-20061013-00121. These repeaters in Attachment F are a subset of the STA requests made by Sirius on October 13, 2006. The same conditions noted above would apply to any 180-day STA, if granted.

- (a) **FCC Compliance Officer.** Sirius will hire an FCC Compliance Officer, who will be responsible for overseeing the FCC-related aspects of the company's operations, ensuring Sirius' compliance with all FCC Rules, and serving as point of contact for Sirius management, employees, FCC staff, and the public with reference to Sirius' FCC regulatory compliance. The FCC Compliance Officer will report directly to Sirius' Senior Vice President, Internal Audit, who, in turn, will report to the Audit Committee of Sirius' Board of Directors.
- (b) **Equipment Design and Certification.** By September 1, 2008, Sirius will adopt a Procedural Guide for satellite radio receivers ("Procedural Guide") establishing step-by-step procedures that Sirius 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. Sirius will submit a copy of the Procedural Guide to the Bureau within five days of its adoption. In addition, Sirius 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 Sirius 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 Sirius' 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.** Sirius 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 Sirius 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 Sirius and in compliance with applicable FCC rules.
- (d) **Repeater Licensing and Modifications.** To ensure its compliance with FCC rules relating to its terrestrial repeaters, Sirius will adopt a Repeater Change Guide establishing procedures to be followed before any changes can be made to Sirius' terrestrial repeater network, including adding any new repeater sites or making changes to existing repeaters. Sirius 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 Sirius' repeater network must be approved in advance by Sirius' Senior Vice President, Engineering, and the FCC Compliance Officer. If 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 Sirius' Senior Vice President, Engineering, and the FCC Compliance Officer.
- (e) **Compliance Training Program.** Sirius 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. Sirius will conduct refresher training programs for relevant employees at least annually and will train relevant new employees within 90 days of their employment.

10. **Voluntary Contribution.** Sirius agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$2,200,000. 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). Sirius will also send electronic notification on the date said payment is made to Kathy Berthot at Kathy.Berthot@fcc.gov.

11. **Waivers.** Sirius 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. Sirius shall retain the right to challenge Commission interpretation of this 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 Sirius nor the Commission shall contest the validity of this Consent Decree or the Adopting Order, and Sirius shall waive any statutory right to a trial *de novo*. Sirius 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.

12. **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, Sirius will undertake the following efforts:

- (a) With respect to potentially non-compliant Radio Receivers purchased by a consumer but activated after the Effective Date, Sirius will use reasonable efforts to identify such consumers, and shortly after such consumer contacts the company to activate such device, offer such consumer the choice, as appropriate, of: (i) in the case of consumers using an FM-Out Switched Radio, an “FM extender” device, which has been evaluated by the OET; (ii) in the case of consumers using an FM-Out Unswitched Radio, an “attenuator plug,” which has also been evaluated by the OET; (iii) a cassette tape adapter usable with potentially non-compliant Radio Receivers; (iv) a direct audio connection cable; or (v) a coupon redeemable at no charge to the consumer for a directly connected antenna switchbox with professional installation. Sirius 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, Sirius will commence sending notices to, and make substantial progress towards notifying, by U.S. or electronic mail,¹⁴ all Sirius subscribers with Radio Receivers as of the Effective Date one of the notices described below. 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.

¹⁴ Electronic mail notices will be sent to all subscribers for whom Sirius has electronic mail addresses. All other notices will be sent by U.S. mail, postage prepaid.

- (i) Sirius subscribers with an FM-Out Switched Radio will receive a notice in substantially the form included in Attachment A offering each subscriber the choice of: (1) an “FM extender” device; (2) a cassette tape adapter usable with potentially non-compliant radio receivers; (3) a direct audio connection cable; or (4) a coupon redeemable at no charge to the subscriber for a directly connected antenna switchbox with professional installation;
- (ii) Sirius subscribers with an FM-Out Unswitched Radio will receive a notice in substantially the form included in Attachment B offering each subscriber the choice of: (1) an “attenuator plug”; (2) a cassette tape adapter usable with potentially non-compliant radio receivers; or (3) a direct audio connection cable; and,
- (iii) Sirius subscribers with Other Radios will receive a notice in substantially the form included in Attachment C offering each subscriber the choice of: (1) a cassette tape adapter usable with potentially non-compliant radio receivers; or (2) a direct audio connection cable.

Each such notice will also contain a hyperlink or an address to a website maintained by Sirius 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 Sirius, or a third party retained by Sirius, of the solutions.

- (c) Sirius will also provide such notices to subscribers via its website, subscriber newsletter and automated telephone response.
- (d) Sirius will cause all non-compliant radio receivers returned by consumers for repair or warranty claims to be replaced with compliant devices.
- (e) Within seven (7) business days of the Effective Date, Sirius 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 Sirius. Sirius will continue such on-air notices for three (3) months after the Effective Date. The Commission shall have the option of extending the on-air notice requirement for three additional months by notifying Sirius 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 D.

13. **Marketing of Radio Receivers.** Sirius agrees that every radio receiver that is marketed by Sirius 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.

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

- (a) Beginning on September 1, 2008, and continuing at three-month intervals thereafter until the expiration of this Consent Decree, Sirius 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 Sirius;

- (ii) the status of its compliance efforts set forth in paragraph 12 and a certification that Sirius has provided the notices required in paragraph 12(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 Sirius' Senior Vice President, Engineering, as an agent of Sirius, stating that the officer has personal knowledge that Sirius 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.

15. **Termination Date.** Except with respect to paragraph 9(e), the requirements of this Consent Decree will expire five (5) years after the Effective Date.

16. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or this 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.

17. **Subsequent Rule or Order.** The Parties agree that if any provision of this 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 Sirius does not expressly consent) that provision will be superseded by such Commission rule or Order.

18. **Successors and Assigns.** Sirius agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

19. **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 Sirius of the same rules at issue in this proceeding or involving misrepresentation or lack of candor by Sirius 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, Sirius 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.

20. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

21. **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.

22. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

23. **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

Patrick L. Donnelly
Executive Vice President, General Counsel and
Secretary
Sirius Satellite Radio Inc.

Date

ATTACHMENT A

[DATE], 2008

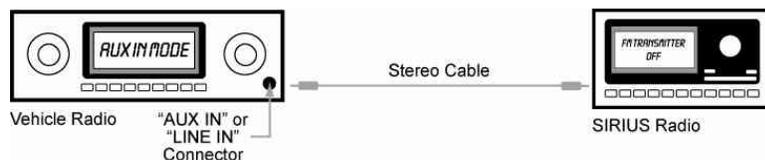
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Dear <fname>:

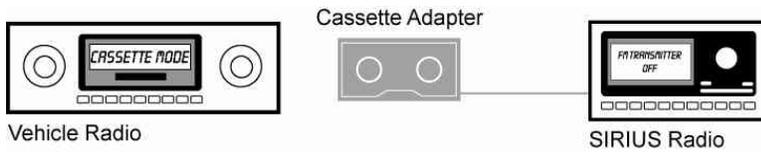
Your Sirius radio contains an FM transmitter that allows it to operate wirelessly through your car FM radio. We have determined that the output of this transmitter exceeds the limits established by the Federal Communications Commission (FCC). As a result, the unit may interfere with the performance of radios operating in areas adjacent to your radio. **There are no health or safety concerns associated with this issue.**

- If you listen to your Sirius radio wirelessly through your vehicle's FM radio, then please review the solutions listed below and select the one that works best for you. Sirius will provide you the best solution at no cost.
- If you use your Sirius radio only when docked in a boombox, or directly connected to your car radio or home stereo using audio cables or a cassette tape adapter, then no interference can occur and no further action is required, provided you have turned off your FM transmitter. To turn off the FM transmitter, first press the MENU button. Use the channel up/down buttons to highlight "FM Transmitter" and push the SELECT button. Use the channel up/down buttons to highlight the "FM On/Off" menu item and then press the SELECT button. Use the up/down buttons to highlight "FM Off" and press the SELECT button. To exit the "FM On/Off" menu, press the MENU button. *Use the same procedure to turn off the FM transmitter if you use Solution 1 or Solution 2 below.*

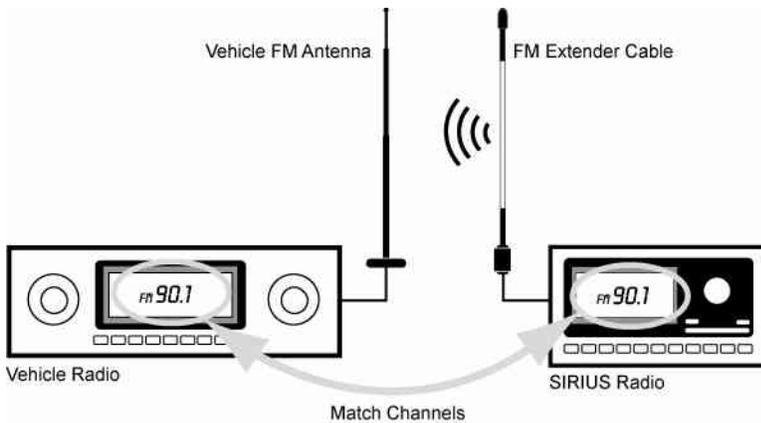
Solution 1 - Direct Wired Audio Connection: If your vehicle radio has a "LINE IN" or "AUX IN" jack, you can use a stereo cable to connect directly to your Sirius radio. This solution is the easiest to install and provides the best audio performance. Many newer vehicles provide the required audio input jack. It will normally be found on or near the front faceplate of your vehicle's radio.



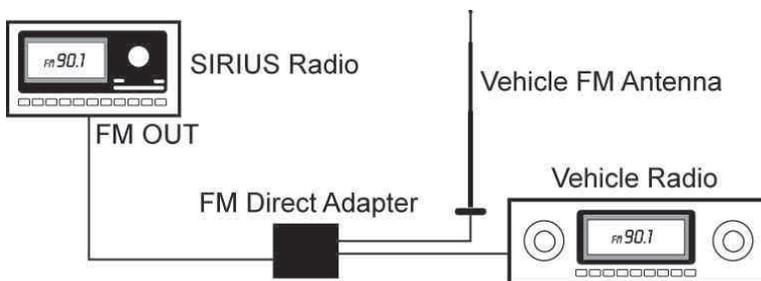
Solution 2 - Cassette Tape Adapter: If your vehicle has a cassette tape player, you can use a cassette adapter that allows you to play your Sirius radio through the cassette portion of your vehicle radio. The adapter slips into your vehicle radio as easily as a cassette tape and provides better performance than a wireless connection.



Solution 3 - FM Extender Cable Kit: An FM extender cable will provide a special transmitter antenna that allows you to obtain the best audio performance through your vehicle's FM radio. This solution is easy to self-install, but does require that an easy-to-hide wire be run in your vehicle so the transmitter antenna can be placed in close proximity to your vehicle's radio antenna. Using this FM Extender Cable Kit, you will continue to use your Sirius radio exactly the same way as you do currently.



Solution 4 - FM Direct Adapter with Professional Installation: An FM Direct Adapter provides a wired connection between your SIRIUS radio and your vehicle's radio. You will continue to listen to your SIRIUS radio through the FM tuner of your car radio, but the FM Direct Adapter eliminates the outside static and interference you sometimes experience when using a wireless FM connection. This solution usually requires professional installation. We will provide a certificate redeemable for installation at an installation center in your area.



Please go to optimize.sirius.com and select the solution that works best for you. **<ADDITIONAL PROCESS DETAIL TO BE INSERTED HERE WHEN FINALIZED>** If you have any questions, please call <###) ###-####>. Detailed instructions will be included with your solution.

You will improve the performance of your Sirius radio and reduce the potential for interfering with adjacent radios if you properly tune your FM transmitter. Please see the enclosed FM Transmitter Set-Up Tips for more information.

We are sorry for this inconvenience. We are confident these solutions will allow you to continue to enjoy the great music, news, sports and entertainment that only Sirius Satellite Radio can offer with no impact on your radio's performance.

Sincerely,

SIRIUS SATELLITE RADIO

ATTACHMENT C

[DATE], 2008

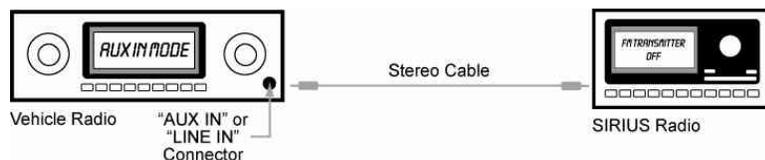
<Contact fname> <Contact lname>
 <Title>
 <Address1>
 <Address2>
 <City,> <State> <ZIP>

Dear <fname>:

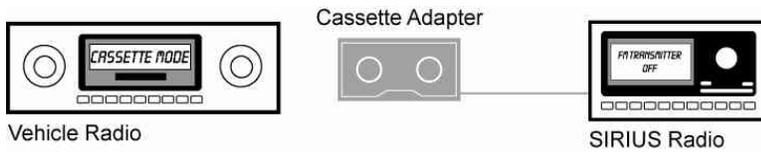
Your Sirius radio contains an FM transmitter that allows it to operate wirelessly through your car FM radio. We have determined that the output of this transmitter exceeds the limits established by the Federal Communications Commission (FCC). As a result, the unit may interfere with the performance of radios operating in areas adjacent to your radio. **There are no health or safety concerns associated with this issue.**

- If you listen to your Sirius radio wirelessly through your vehicle's FM radio, then please review the solutions listed below and select the one that works best for you. Sirius will provide you the best solution at no cost.
- If you use your Sirius radio only when docked in a boombox, or directly connected to your car radio or home stereo using audio cables or a cassette tape adapter, then no interference can occur and no further action is required, provided you have turned off your FM transmitter. To turn off the FM transmitter, first press the MENU button. Use the channel up/down buttons to highlight "FM Transmitter" and push the SELECT button. Use the channel up/down buttons to highlight the "FM On/Off" menu item and then press the SELECT button. Use the up/down buttons to highlight "FM Off" and press the SELECT button. To exit the "FM On/Off" menu, press the MENU button. *Use the same procedure to turn off the FM transmitter if you use Solution 1 or Solution 2 below.*

Solution 1 - Direct Wired Audio Connection: If your vehicle radio has a "LINE IN" or "AUX IN" jack, you can use a stereo cable to connect directly to your Sirius radio. This solution is the easiest to install and provides the best audio performance. Many newer vehicles provide the required audio input jack. It will normally be found on or near the front faceplate of your vehicle's radio.



Solution 2 - Cassette Tape Adapter: If your vehicle has a cassette tape player, you can use a cassette adapter that allows you to play your Sirius radio through the cassette portion of your vehicle radio. The adapter slips into your vehicle radio as easily as a cassette tape and provides better performance than a wireless connection.



Solution 3 – Attenuator Plug: If your vehicle does not have an AUX IN or LINE IN jack, you can use a special plug from Sirius to be inserted into the FM OUT jack on your receiver. The plug will reduce the signal radiated by the FM transmitter by an amount sufficient to reduce the potential for the receiver to cause interference to other receivers.

Please go to optimize.sirius.com and select the solution that works best for you. <ADDITIONAL PROCESS DETAIL TO BE INSERTED HERE WHEN FINALIZED> If you have any questions, please call <###) ###-####>. Detailed instructions will be included with your solution.

You will improve the performance of your Sirius radio and reduce the potential for interfering with adjacent radios if you properly tune your FM transmitter. Please see the enclosed FM Transmitter Set-Up Tips for more information.

We are sorry for this inconvenience. We are confident these solutions will allow you to continue to enjoy the great music, news, sports and entertainment that only Sirius Satellite Radio can offer with no impact on your radio's performance.

Sincerely,

SIRIUS SATELLITE RADIO

ATTACHMENT C

[DATE], 2008

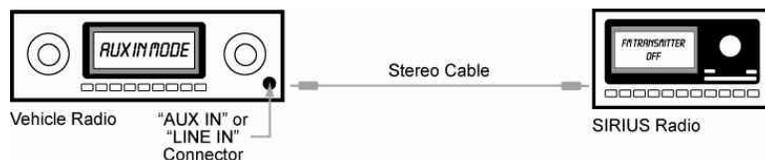
<Contact fname> <Contact lname>
 <Title>
 <Address1>
 <Address2>
 <City,> <State> <ZIP>

Dear <fname>:

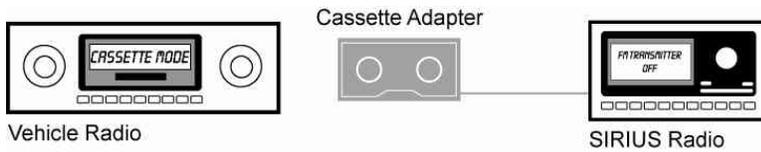
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Solution 2 - Cassette Tape Adapter: If your vehicle has a cassette tape player, you can use a cassette adapter that allows you to play your Sirius radio through the cassette portion of your vehicle radio. The adapter slips into your vehicle radio as easily as a cassette tape and provides better performance than a wireless connection.



Please go to optimize.sirius.com and select the solution that works best for you. **<ADDITIONAL PROCESS DETAIL TO BE INSERTED HERE WHEN FINALIZED>** If you have any questions, please call <((###) ###-####)>. Detailed instructions will be included with your solution.

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Sincerely,

SIRIUS SATELLITE RADIO

ATTACHMENT D

(Queen-Bohemian Rhapsody)

We want our Sirius to sound the best it can
How to do it? How to do it?
Should we do some hard wiring?
Static can be frightening, the buzz is terrifying here
Modulator? Or adapter?
Plug directly? What's that clatter?
Let me knoooooow..
(Music under)

(ANN) SIRIUS WANTS TO HELP YOU GET THE CLEAREST SOUND OUT OF YOUR RADIO AND THE BEST WAY TO DO IT IS WITH A DIRECT CONNECTION.. GO TO SIRIUS DOT COM SLASH (xx) OR CALL 888-888-8888 AND SPEAK TO ONE OF OUR SIRIUS CUSTOMER REPRESENTATIVES FOR DETAILS ON MAKING THE BEST RADIO ON RADIO SOUND EVEN BETTER.

(I can see clearly now)

I can hear clearly now the static's gone..
I can hear everything as clear as day

(ANN) SIRIUS WANTS TO HELP YOU GET THE CLEAREST SOUND OUT OF YOUR RADIO AND THE BEST WAY TO DO IT IS WITH A DIRECT CONNECTION.. GO TO SIRIUS DOT COM SLASH (xx) OR CALL 888-888-8888 AND SPEAK TO ONE OF OUR SIRIUS CUSTOMER REPRESENTATIVES FOR DETAILS ON MAKING THE BEST RADIO ON RADIO SOUND EVEN BETTER.

ATTACHMENT E

Location

1. Pebble Beach, CA
2. Wilmington, DE

ATTACHMENT F

Location

1. Akron, OH
2. Atlanta, GA
3. Greensboro, NC
4. Harrisburg, PA
5. Knoxville, TN
6. Lansing /Detroit, MI
7. Monterey, CA
8. Orlando, FL
9. Philadelphia, PA

**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: *Sirius Satellite 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—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.

Sirius has agreed to a voluntary contribution of \$2,200,000 for operating terrestrial repeaters at variance from their specification, and authorizing non-compliant FM modulators. In addition, Sirius has entered into a consent decree that mandates strict compliance with certifications, reporting requirements, and penalties associated with future violations. Specifically, Sirius 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, the Commission shall grant Sirius' request for a Special Temporary Authority (“STA”) to operate for thirty days those repeaters which varied slightly from their original authorization. Concurrently, the Commission shall place on public notice Sirius' request for an STA to operate those repeaters for a period of 180 days.

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.