

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

In the Matter of:)
)
Review of the Emergency Alert System) EB Docket No. 04-296
)
Amendments to Part 11 of the)
Commission's Rules) PS Docket No. 15-94
Regarding the Emergency Alert System)
)

To: The Commission

**MOTION FOR LEAVE TO SUPPLEMENT PETITION FOR RECONSIDERATION
AND REQUEST FOR LIMITED WAIVER**

Sirius XM Radio Inc. (“Sirius XM”) hereby requests leave to supplement its pending Petition for Partial Reconsideration and Clarification¹ (the “Petition”) of the Commission’s First Report and Order and Further Notice of Proposed Rulemaking² regarding the Emergency Alert System (the “EAS”) and, to the extent necessary, requests a limited waiver of the Commission’s EAS rules.³ The Petition discussed Sirius XM’s commitment to emergency communications and explained that certain EAS testing rules adopted in the Order subject satellite radio and its listeners to more stringent requirements than those imposed on direct broadcast satellite (“DBS”), cable television, or terrestrial broadcasters. The Petition also asked the Commission to recognize a unique aspect of satellite radio technology – which does not limit the ability of

¹ The Petition was originally filed by XM Radio Inc., with supporting comments filed by Sirius Satellite Radio Inc., prior to the 2008 merger of those two entities. For purposes of the instant filing, the petitioning entity is referred to as “Sirius XM.”

² *Review of the Emergency Alert System*, 20 FCC Rcd 18625 (2005) (the “Order”).

³ 47 C.F.R. §§ 1.429(b), 1.3.

listeners to hear EAS alerts – but instead impacts only whether the transmission of EAS tones on several XM satellite channels would trigger the EAS equipment of other EAS participants.

The nationwide EAS test that the Commission coordinated with the Federal Emergency Management Agency (“FEMA”) in September 2016 provides a prime opportunity to resolve this proceeding. Moreover, since the Petition was filed, advances in technology and changes in business practices have enabled Sirius XM to clarify the relief it requests. Sirius XM therefore files this supplement to (a) limit the request sought in the Petition to revising satellite radio’s obligations to conduct weekly and monthly tests as discussed in Sirius XM’s *ex parte* letter in this proceeding filed on July 31, 2014,⁴ and (b) acknowledge the technical limitations initially discussed on pages 8-9 of the Petition as clarified below, and request a limited waiver of the EAS rules to the extent such a waiver is required.

The Petition noted that a limited number of satellite radio channels on the XM platform use compression technology to maximize efficient use of spectrum, which may prevent EAS codes and attention signals transmitted on these channels from activating the EAS equipment of other EAS participants. This technological limitation continues today, although it extends to fewer transmitted channels and impacts national (rather than state and local) EAS alerts. Importantly, however, the EAS codes and attention signals transmitted over all of Sirius XM’s channels are readily identifiable by satellite radio listeners as EAS alerts, and EAS transmissions on channels available to all non-subscribed radios and non-compressed Sirius XM channels (which comprise the vast majority of its channels) would fully trigger the equipment of any other EAS participants who may monitor Sirius XM transmissions for this purpose. Moreover, Sirius XM fully complies with its agreement with FEMA to deliver FEMA-originated emergency alert

⁴ A copy of the July 31, 2014 *ex parte* letter is attached as Exhibit A.

messages to Primary Entry Point stations and others, including state emergency operations centers.

The Commission has discretion to waive its rules when waiver is consistent with the public interest and where “good cause” is shown.⁵ Indeed, the D.C. Circuit has explained that “[t]he agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances,”⁶ and has made clear that the FCC must give waiver requests a “hard look.”⁷

To the extent necessary, Sirius XM requests a limited, thirty month waiver of any obligation it may have to transmit the EAS codes and attention signals on its compressed channels in a manner that would activate the emergency alerting equipment of other EAS participants. Given the technological limitations described above, a requirement of “strict compliance” is not “in the public interest.”⁸ Thirty months is the minimum amount of time Sirius XM needs to develop, test, and implement technical solutions that can address the issue identified in its earlier Petition and clarified herein. Grant of the waiver will also affirmatively serve the public interest,⁹ given Sirius XM’s participation as a PEP station through its relationship with FEMA and the fact that listeners will continue to receive information regarding any national EAS activation on all channels (including those for which compression technology

⁵ 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁶ *WAIT Radio*, 418 F.3d at 1157.

⁷ *Id.*

⁸ *National Ass’n of Broadcasters v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009).

⁹ *See, e.g., WAIT Radio*, 418 F.2d at 1157 (FCC’s authority to grant waivers of its rules follows from Congress’ directive that the FCC regulate in the public interest, because the agency has “an obligation to seek out the ‘public interest’ in particular, individualized cases”).

is used) while the waiver is in effect. Moreover, Sirius XM is committed to working with the Commission during the requested waiver period to determine whether any other EAS participant may be monitoring a compressed Sirius XM channel and, if so, to make any such participants aware of alternatives that will ensure that their equipment is activated in the event of a national EAS alert.¹⁰

Sirius XM respectfully requests that the Commission reconsider the Order and grant the Petition as supplemented herein, including granting the limited waiver to the extent it is needed. Sirius XM has notified Public Safety and Homeland Security Bureau staff of its plans to file the instant motion and Bureau staff has expressed no objection to the filing.

Respectfully submitted,



James S. Blitz
Vice President, Regulatory Counsel
SIRIUS XM RADIO INC.
1500 Eckington Place, NE
Washington, DC 20002
202-380-1383

June 5, 2017

¹⁰ Sirius XM has no reason to believe that any EAS participants monitor a compressed XM channel. Indeed, as part of its arrangement with FEMA, Sirius XM designed and provided 108 EAS receivers to be installed at PEP stations and state emergency communications offices across the country, and Sirius XM is not aware that any other entities in the EAS network monitor Sirius XM as a source of national alerts.

EXHIBIT A

July 31, 2014 *Ex Parte* Letter



Sirius XM Radio Inc.
1500 Eckington Place NE
Washington, DC 20002

T: 202-380-1383
F: 202-380-4981

siriusxm.com

July 31, 2014

Filed By ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: EB Docket 04-296

Dear Ms. Dortch:

On July 29, 2014 the undersigned and Anthony Masiello of Sirius XM Radio Inc. ("SiriusXM") met with Gregory Cooke and David Munson of the Commission's Public Safety & Homeland Security Bureau and Stephen Duall and Chip Fleming of the Commission's International Bureau, to discuss SiriusXM's Petition for Partial Reconsideration and Clarification (the "Petition")¹ of the Commission's 2005 decision² regarding the Emergency Alert System (the "EAS"). SiriusXM files this notice with the Commission pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

The Petition explained that the EAS testing rules as applied to SiriusXM were unnecessarily onerous, imposing requirements having a more significant impact on satellite radio and its listeners than those the Commission imposed on DBS, cable television, or terrestrial broadcasters. The Petition discussed the extent of SiriusXM's efforts to promote emergency communications, but requested that the Commission scale back its EAS testing requirements for SDARS to bring them more into line with the obligations of similar broadcast-type media.

SiriusXM has complied with the EAS testing rules since the rules adopted in the 2005 Order went into effect. Nonetheless, the concerns that SiriusXM expressed in the Petition remain valid and need to be addressed. In the intervening years, while SiriusXM's commitments

¹ The Petition was originally filed by XM Radio Inc., with supporting comments filed by Sirius Satellite Radio Inc., prior to the 2008 merger of those two entities. For purposes of the instant filing, the petitioning entity is referred to as "SiriusXM."

² *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625 (the "2005 Order").

to emergency alerting and the EAS system remain just as strong,³ it has become even more apparent that the Commission's EAS testing rules are unnecessarily broad and require revision as they apply to satellite radio.

The requirement to carry weekly and monthly EAS tests on all SiriusXM channels has imposed an excessive, disproportionate, and unnecessary burden on SiriusXM and its subscribers. Unlike other multichannel services such as cable television, the satellite radio service rarely has natural breaks in programming for inserting a test, and never has uniform breaks that apply to all of our approximately 150 channels. All of our music channels are also broadcast without commercials, which further minimizes the opportunities for the natural programming breaks that most broadcasters use to transmit EAS tests.

The result is that many of the weekly and monthly EAS tests interrupt what our customers are listening to, and do so in a way that can be intrusive. Whether the programming is live sports, talk radio, news, or live concerts, SiriusXM's subscribers frequently have their listening experience interrupted by emergency alert tests and the company is aware that subscribers have been confused by the practice. Moreover, unlike DBS providers who are not required to transmit weekly tests and have to conduct monthly testing on only 10% of their channels each month, SiriusXM must broadcast EAS tests to its listeners every week, on all channels. And unlike terrestrial broadcasters who can schedule a test during a commercial break or other programming change on a single channel, there is no uniform time when SiriusXM can carry an EAS test on its satellite radio platform that would minimize the disruptions to our 26.3 million customers.

Weekly testing of our emergency alert capabilities is unnecessary and duplicative. First, the Commission's requirement that SiriusXM test its emergency alert equipment is largely superseded by FEMA's own testing of the ENDEC box which is central to our EAS capabilities. FEMA conducts this testing on a regular basis through remote polling of the box without even notifying SiriusXM of the testing – unless a problem is discovered – and without any disruption to our customers. Second, the Commission can further ensure the proper functioning of emergency alert equipment through its logging requirements, as it does for DBS, rather than requiring transmissions to listeners. Third, testing is less critical in the satellite radio context

³ SiriusXM is a part of the national EAS infrastructure as a Primary Entry Point (“PEP”) station. SiriusXM has also worked with the Federal Emergency Management Agency (“FEMA”) since 2006 to provide an alternate transmission means for transporting FEMA-originated emergency alert messages to other PEP stations and state emergency operations centers. Under this arrangement, the company designed and provided 108 EAS receivers to be installed at PEP stations and state emergency communications offices across the country. SiriusXM has been prepared since that time to transmit the Emergency Alert Network's Presidential Message to those receivers using SiriusXM's own satellite infrastructure, if the terrestrial communication distribution system is disrupted in a national emergency. SiriusXM continues to work with FEMA to find additional ways to facilitate the transmission of emergency communications using our facilities.

since in contrast to terrestrial radio and television, no other entities in the EAS network monitor SiriusXM's emergency alerts as a mechanism to trigger their station's own EAS equipment. Finally, to the extent the Commission believes regular EAS testing is critical to ensure listeners' familiarity with emergency alerts and the responses they should take in the event of a real emergency, it is unnecessary to require that SiriusXM broadcast those tests weekly. If it were necessary, the Commission would surely require weekly announcements to be carried by all comparable media, rather than imposing that requirement disproportionately on satellite radio.

The passage of time and changed circumstances since SiriusXM initially filed the Petition has also simplified the relief that is needed. Consistent with SiriusXM's request in the Petition, we now ask that the Commission modify the EAS testing rules applying to satellite radio only as follows:

1. For the weekly EAS tests, the Commission should treat satellite radio in a manner comparable to DBS providers and certain broadcasters in Section 11.61(a)(2)(ii) of the Rules,⁴ such that SDARS providers would not be required to transmit a weekly EAS test but would have to only log receipt of its tests, as specified in Sections 11.35(a) and 11.54(a)(3) of the Rules;⁵ and
2. For the monthly EAS tests, the Commission should treat satellite radio in a manner comparable to DBS providers by allowing SDARS providers to conduct these tests on a minimum of 10% of all satellite radio channels monthly, so that over the course of a given year, 100% of all channels are tested.⁶

The scope of the EAS testing required of satellite radio is inconsistent with the operation of the platform and with the public's needs. Reconsidering the 2005 EAS rules and revising them as requested herein will significantly reduce the burdens on SiriusXM and its customers while imposing obligations commensurate with those required of other communications providers. These changes will not materially impact SiriusXM's ability to demonstrate that its EAS facilities operate as needed, nor will they interrupt programming to our subscribers any more than is necessary, while continuing to ensure the availability and proper operation of the EAS.

⁴ 47 C.F.R. § 11.61(a)(2)(ii).

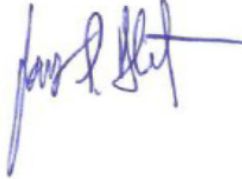
⁵ 47 C.F.R. § § 11.35(a), 11.54(a)(3).

⁶ 47 C.F.R. § 11.61(a)(1)(ii).

Ms. Marlene H. Dortch, Secretary
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Please contact the undersigned if further questions arise in connection with this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "James S. Blitz". The signature is stylized with a long horizontal stroke extending to the right.

James S. Blitz
Vice President, Regulatory Counsel

cc: Gregory Cooke, David Munson, Stephen Duall, Chip Fleming (by email)
