

Summary

XM Radio Inc., one of the two satellite radio providers in the United States, can play a vital role in improving the utility of the Emergency Alert System (“EAS”) both by providing its own subscribers with national, state, and local EAS alerts as well as by serving as a complementary, satellite-based distributor of alerts to broadcast stations, cable systems, and other entities participating in the EAS.

XM currently provides its subscribers in both mobile (*e.g.*, in cars) and fixed (*e.g.*, in homes and offices) environments with access to real-time emergency information which in many ways surpasses the quality, quantity, and timeliness of information provided over the EAS. XM provides subscribers with access to this critical information through its twenty-one Instant Traffic & Weather channels as well as through a separate public safety/emergency alert channel dedicated to providing information before, during, and after natural and man-made disasters that impact any part of the contiguous United States. As an additional measure to promote public safety, XM is also committed to voluntarily becoming part of the EAS by transmitting national EAS alerts on all of its channels and state and local EAS alerts on the appropriate Instant Traffic & Weather channels. To ensure that XM can provide its subscribers with EAS alerts in the most expeditious and reliable manner possible, XM must be able to receive EAS alerts directly from the originating EAS sources, such as the Federal Emergency Management Agency, State Governors, or State Emergency Operations Centers. Receiving an alert directly from the originating source eliminates the need for XM to rely on terrestrial broadcast stations for EAS alerts, many of which may be impacted by the very disaster for which an alert is activated. XM believes that voluntary rather than mandatory EAS compliance by satellite radio providers is preferable given that mandatory regulations would limit the ability and incentive of satellite radio operators to innovate and improve the EAS.

XM also has the potential to supplement the distribution of EAS alerts to broadcasters, cable operators, and others. If XM were to receive EAS alerts directly from originating EAS sources, it could transmit these alerts instantaneously throughout its coverage area to other EAS participants, such as broadcast stations, cable systems, and other entities, which in turn will transmit alerts to their viewers and listeners. By serving as a complementary distributor of alerts, XM's satellite-based delivery system can be a vital addition to the EAS alert distribution chain. Use of XM for this purpose is particularly appealing given that (i) it provides coverage throughout the contiguous United States, including to the most rural and remote areas; (ii) its satellites are located thousands of miles above the Earth and are thus unaffected when disasters occur on the ground; (iii) it uses S-band frequencies which are unaffected by the rain fading that afflicts many other satellite services; (iv) satellite radio receivers are small, inexpensive, and readily available today; (v) receivers use omnidirectional antennas which eliminate the need to point an antenna directly at a satellite; and (vi) XM has the ability to encrypt signals as well as instantaneously dedicate one, some, or all of its channels to emergency alert purposes.

Table of Contents

Summary	i
Table of Contents	iii
Background	1
Discussion	8
I. XM Is Committed to Voluntarily Providing Its Subscribers with National EAS Alerts on All Channels as Well as State and Local EAS Alerts for Regions for Which It Offers an Instant Traffic & Weather Channel.....	8
A. XM Is Committed to Voluntarily Providing Its Subscribers with National EAS Alerts on All of Its Channels	8
B. XM Is Committed to Voluntarily Providing State and Local EAS Alerts on Its Instant Traffic & Weather Channels	9
C. EAS Compliance by Satellite Radio Providers Should Be Voluntary and Not Mandatory	11
II. XM’s Satellite-Based Infrastructure Can Be a Vital Complement to the Current EAS Alert Distribution Chain.....	12
Conclusion	14

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

In the Matter of)
)
Review of the Emergency Alert System) EB Docket No. 04-296

Comments of XM Radio Inc.

XM Radio Inc. (“XM”), one of the two providers of satellite radio service in the United States, hereby files these Comments in the above-captioned proceeding in which the Commission is considering, among other things, whether satellite radio should be part of the Emergency Alert System (“EAS”).¹ As discussed herein, XM currently provides its subscribers with real-time access to emergency alerts and information which in many ways surpasses the current capabilities of the EAS. Nonetheless, XM believes that the EAS remains an important part of the nation’s public alert and warning system. XM is committed to voluntarily providing its subscribers with national EAS alerts on all of its channels as well as providing state and local EAS alerts for regions for which it offers a traffic and weather channel. As for improvements to the current EAS, XM believes that its satellite-based infrastructure can be an important complement to the EAS alert distribution chain.

Background

XM. In 1995, the Commission allocated spectrum in the S-band to the Satellite Digital Audio Radio Service (“SDARS” or “satellite radio”). XM was one of two winning bidders in the

¹ See *Review of the Emergency Alert System, Notice of Proposed Rulemaking*, EB Docket No. 04-296, FCC 04-189 (rel. August 12, 2004) (“*NPRM*”).

satellite radio auction held in April 1997, committing nearly \$90 million to the U.S. Treasury.² XM was awarded the license to provide satellite radio service in the 2332.5-2345 MHz band.

In March 2001, XM successfully launched its first satellite, XM Rock, to the 115°W orbital location. In May 2001, XM successfully launched its second satellite, XM Roll, to the 85°W orbital location. XM also constructed in-band terrestrial repeaters in some markets to fill gaps in satellite coverage. In September 2001, the International Bureau (“IB”) granted XM Special Temporary Authority (“STA”) to operate these repeaters for commercial service.³ In doing so, the IB restricted terrestrial repeaters to simultaneously retransmitting the programming delivered via XM’s satellites.⁴

In September 2001, XM initiated commercial service through its robust, secure, content delivery system, which cost over \$1 billion to deploy. Ever since, XM has been providing high-quality, continuous, multi-channel audio service throughout the contiguous United States. In its first three years of service, XM has proven to be a great success in the marketplace. By the end of September 2004, XM Radio had more than 2.5 million subscribers.

As the Commission has repeatedly recognized, satellite radio provides enormous public interest benefits to the American public.⁵ In the 1997 *SDARS Order*, the Commission recognized that satellite radio could provide multiple channels of nationwide audio programming, thereby

²*American Mobile Radio Corporation*, 13 FCC Rcd 8829 (Int’l Bur., 1997).

³ See *XM Radio, Inc., Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters, Order and Authorization*, DA 01-2172 (rel. September 17, 2001).

⁴ See *id.* ¶ 18(c) (“SDARS repeaters are restricted to the simultaneous retransmission of the complete programming, and only that programming, transmitted by the satellite directly to SDARS subscriber’s receivers.”).

⁵ See, e.g., *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*, 12 FCC Rcd 5754, ¶ 1 (1997) (“*SDARS Order*”).

increasing the variety of audio programming available to the listening public and serving listeners in areas of the country that have been underserved. *SDARS Order* ¶ 1. XM has fulfilled this vision, providing satellite radio programming to subscribers across the contiguous United States—from the downtown urban cores to the most rural and remote parts of the United States.

XM's Commitment to Providing Emergency Alerts and Information. Although it does not currently participate in the EAS, XM provides its subscribers with access to real-time emergency information that in many respects surpasses the quality, quantity, and timeliness of information provided over the EAS. XM provides these critical emergency alerts and information through its twenty-one Instant Traffic & Weather channels as well as through a separate 24/7 public safety/emergency alert channel dedicated to providing critical information before, during, and after natural and man-made disasters that impact any part of the contiguous United States.

The Instant Traffic & Weather channels provide subscribers with in-depth, up-to-the-moment updates on traffic and weather conditions for twenty-one metropolitan regions.⁶ The traffic and weather information is continually updated and transmitted throughout the contiguous United States, 24 hours per day, 7 days per week, on a channel dedicated to a particular region. As with all satellite radio programming, the traffic and weather information is simultaneously transmitted by XM's satellites and terrestrial repeaters directly to subscribers' receivers throughout XM's coverage area. For example, a satellite radio listener located anywhere in the country can hear traffic reports and weather forecasts for the Los Angeles region simply by

⁶ XM currently provides Instant Traffic & Weather channels for the following cities and their surrounding areas: Atlanta, GA; Baltimore, MD; Boston, MA ; Chicago, IL; Dallas/Ft. Worth, TX; Detroit, MI; Houston, TX; Los Angeles, CA; Miami/Ft. Lauderdale, FL; Minneapolis/St. Paul, MN; New York, NY; Orlando, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; San Diego, CA; San Francisco Bay Area, CA; Seattle, WA; St. Louis, MO; Tampa, FL; Washington, DC.

tuning to the channel dedicated to Los Angeles traffic and weather. The service is offered as part of the basic XM monthly service fee. This traffic and weather service provides many vital public interest benefits. For example, the service increases driver safety by alerting drivers to impending threatening weather, allowing them to plan alternate routes around, or to delay trips to, the affected area. Similarly, satellite radio listeners at home or work benefit from up-to-date weather forecasts, particularly in the event of a fast-approaching storm. The information offered via satellite radio is instantly and always available by simply tuning to an Instant Traffic & Weather channel.

In addition to basic traffic and weather information, XM also transmits up-to-date emergency information over its Instant Traffic & Weather channels. XM receives alerts from national organizations dedicated to promoting public safety, such as the Federal Emergency Management Agency (“FEMA”), the National Oceanic and Atmospheric Administration’s (“NOAA”) National Weather Service (“NWS”), the U.S. Department of Health and Human Services (“HHS”), and the American Red Cross, among others. XM also works closely with state and local public safety organizations in each of the metropolitan regions for which it offers an Instant Traffic & Weather channel. These state and local public safety organizations relay critical information to XM. The Instant Traffic & Weather channels are staffed 24 hours per day, 7 days per week, meaning that critical emergency information can be received and transmitted at any time of day or night. As soon as XM receives emergency information from one of these national, state, or local organizations, it instantaneously transmits the information on one or more of its Instant Traffic & Weather channels.⁷ XM’s satellites are located thousands of miles above

⁷ For example, critical information surrounding Hurricane Ivan, which impacted the entire Gulf Coast, was broadcast on XM’s Houston, Orlando, and Tampa Instant Traffic & Weather channels.

the Earth and are thus unaffected by local natural or man-made disasters. XM can transmit emergency information from its uplink facility in Washington, D.C. or from its back-up facility located in a geographically diverse location without being impacted by a disaster afflicting a particular region.

In addition to critical weather and disaster-related information, XM also transmits Amber Alerts over its Instant Traffic & Weather channels. These alerts include both verbal delivery of critical information about the alleged abductor and a visual scroll of the alleged abductor's license plate number and other vital information, which appears on the display screen of the XM receiver. XM's coverage of the contiguous United States is critically important in the case of Amber Alerts. A listener tuned to an Instant Traffic & Weather channel when approaching a particular metropolitan region will still hear an Amber Alert and be able to notify authorities if the alleged abductor is witnessed fleeing the region. Since the launch of its Instant Traffic & Weather channels in March 2004, XM has transmitted over twenty-five Amber Alerts.

XM's 24/7 public safety/emergency alert channel, XM Emergency Alert (XM Channel 247), also represents its commitment to providing timely and accurate emergency information. XM Emergency Alert provides critical information, such as evacuation routes and shelter locations, involving natural and man-made disasters that impact any area in the contiguous United States. This channel is available without a paid subscription to XM, so that anyone who has an XM receiver is able to listen to this channel. Listeners are provided with a toll-free number to call to both inform XM of important developments and to ask XM for more detailed information concerning the disaster. Launched this summer during the height of hurricane season, XM Emergency Alert has proven to be a resounding success. For example, during Hurricane Ivan, XM received calls from Gulf Coast residents seeking information on whether

evacuations had been lifted for their towns. In one instance, based on information provided to XM by FEMA and the American Red Cross, an XM Instant Traffic & Weather producer was able to provide a resident of Pensacola, FL with details concerning which roads she could use to return to Pensacola as well as information regarding shelters available in the area. In another instance, an XM Instant Traffic & Weather producer provided a convoy of repair crews with alternate travel routes after the main bridge to Pensacola was rendered impassable. XM has also provided emergency information in emergencies other than hurricanes and other strong storms. Most recently, XM has been transmitting on its XM Emergency Alert channel the latest developments surrounding the impending eruption of Mt. St. Helens in Washington State, based on up-to-date information XM receives from the United States Geological Survey (“USGS”).

EAS. The national EAS uses a hierarchical and terrestrial-based structure for distribution of “Presidential Level” alerts to the public. FEMA has designated 34 radio stations as Primary Entry Points (“PEP”). FEMA distributes Presidential Level alerts to these 34 PEP stations, which are monitored by 550 Local Primary One (“LP1”) broadcast stations. The LP1 stations are in turn monitored by other radio and television broadcast stations and cable systems which then transmit the alert to the viewers and listeners. The Commission requires broadcast stations and cable systems to conduct weekly and monthly tests of the EAS system. 47 C.F.R. § 11.61. To date, the EAS has never issued a Presidential Level alert. *NPRM* ¶ 24. State and local EAS use a similar hierarchical and terrestrial-based structure for distribution of state and local emergency alerts. State alerts are originated by the State Governor or State Emergency Operations Center and are transmitted to State entry points, such as broadcast stations, state emergency operations centers, or other statewide networks. *NPRM* ¶ 18. State Emergency

Communications Committees (“SECCs”) and Local Emergency Communications Committees (“LECCs”) prepare state and local plans for the EAS. *Id.* ¶ 15.

EAS NPRM. Currently, the Commission’s rules mandate that only broadcast stations (radio and television) and cable systems (both wired and wireless) participate in the EAS. All other entities, including satellite radio operators, are not required to participate in the EAS, but may do so on a voluntary basis. 47 C.F.R. § 11.11(e). The *NPRM* request comment on whether other entities, including satellite radio operators, should be required to be part of the EAS.

NPRM ¶ 29. The Commission notes that satellite radio providers serve a nationwide audience and asks whether this national distribution structure limits the ability of satellite radio operators to comply with state and local EAS obligations. *Id.* In assessing whether satellite radio and other communications providers should be required to be part of the EAS, the Commission asks whether the benefits of extending EAS obligations outweigh the burdens. *Id.*

The Commission does not require participation in state and local EAS. *NPRM* ¶ 24. The Commission requests comment on whether it should mandate such participation. *Id.* The Commission also seeks comment on whether uniform national EAS guidelines are preferred over the disparate manner in which states and localities implement EAS. *Id.* ¶¶ 24-25.

In the *NPRM*, the Commission also seeks input on whether the EAS is still an effective means for informing the public of emergencies and how it might be improved. *NPRM* ¶¶ 1, 27. The Commission acknowledges that some SECC members have expressed concern with the current daisy-chain EAS distribution structure. *Id.* ¶ 27. For example, a “down chain” station may miss an important state or local alert if the “up chain” station fails to transmit the alert. *Id.* Moreover, some “down chain” stations may not receive an “up chain” station signal due to terrain blockage or because the “down chain” station is located in a rural area too far from an “up

chain” station to receive a reliable signal. *Id.* Some SECC members have also expressed concern with the delay in transmitting an alert in a daisy-chain structure throughout a state. *Id.* The Commission seeks comments on how it might improve the distribution of emergency alerts on a national, state, and local level. *Id.* In particular, the Commission asks whether originating sources should transmit EAS alerts directly to as many stations and cable systems as possible without intervening relay stations. *Id.* The Commission also asks whether satellite delivery systems should be used as part of a backbone to distribute EAS alerts. *Id.*

Discussion

I. XM IS COMMITTED TO VOLUNTARILY PROVIDING ITS SUBSCRIBERS WITH NATIONAL EAS ALERTS ON ALL CHANNELS AS WELL AS STATE AND LOCAL EAS ALERTS FOR REGIONS FOR WHICH IT OFFERS AN INSTANT TRAFFIC & WEATHER CHANNEL

As discussed above, XM currently provides emergency alerts and information to its subscribers which in many ways surpasses the quality, quantity, and timeliness of information currently provided over the EAS. Nonetheless, XM is committed to voluntarily being part of the EAS by transmitting national EAS alerts on all of its channels and state and local EAS alerts on its appropriate Instant Traffic & Weather channels.

A. XM Is Committed to Voluntarily Providing Its Subscribers with National EAS Alerts on All of Its Channels

XM is committed to voluntarily transmitting national EAS alerts to its subscribers on all of its channels. XM currently has EAS equipment located at its headquarters in Washington, D.C. which monitors an LP1. In the event that a Presidential Level alert is delivered, XM is equipped with a manual switching device that can force every XM channel to the emergency audio alert delivered by the President or his designate. XM’s headquarters and operations center are staffed 24 hours per day, 7 days per week, thus enabling Presidential Level alerts to be received and transmitted at any time.

XM is also committed to testing its EAS system. Rather than performing tests on every one of its channels, however, XM believes a reasonable compromise is to test its EAS equipment on a weekly and monthly basis on its XM Emergency Alert channel. If XM's equipment is capable of receiving and delivering an EAS alert over its XM Emergency Alert channel, then it will also be capable of delivering the alert over every channel in the event of an actual Presidential Level alert. Performing tests on every channel would not only be unnecessary, but also unduly disruptive to XM's subscribers.

To ensure that XM can provide its subscribers with access to national alerts in the most expeditious and reliable manner possible, XM should be designated as a "national PEP" and thus receive Presidential Level alerts directly from FEMA. This would eliminate the need for XM to rely on terrestrial PEP or LP1 stations for transmission of alerts. Once XM receives a Presidential Level alert from FEMA, it can instantaneously transmit the alert to its subscribers throughout the contiguous United States, ensuring that the American public is alerted to an emergency in the most expeditious manner possible.

B. XM Is Committed to Voluntarily Providing State and Local EAS Alerts on Its Instant Traffic & Weather Channels

XM is also committed to voluntarily transmitting state and local EAS alerts to its subscribers on the Instant Traffic & Weather channel appropriate for the region in which the emergency occurs. XM has a presence in each of the metropolitan regions in which it provides its Instant Traffic & Weather service that enables it to monitor for state and local EAS alerts. These alerts can be relayed back to XM's operations center and then transmitted throughout the contiguous United States on the appropriate Instant Traffic & Weather channel. XM listeners tuned to the Instant Traffic & Weather Channel for the region in which the emergency occurs will thereby receive alerts just as terrestrial television viewers and radio listeners do.

Not every XM listener in the vicinity of an emergency will be tuned to the Instant Traffic & Weather Channel covering its region when an emergency occurs. While XM could transmit state and local EAS alerts throughout its coverage area on all of its channels to ensure every listener receives the alert, this would be unreasonably confusing and disruptive to XM's subscribers. For example, an XM subscriber located in San Diego listening to an XM music channel is likely to be alarmed and confused if an EAS alert is transmitted for a tornado occurring in Missouri. Moreover, it would be unduly disruptive to XM's subscribers to receive state and local EAS alerts for all emergencies occurring throughout the contiguous United States. In this sense, satellite radio is fundamentally unlike other multichannel programming providers, such as cable systems. For cable systems, broadcasting of EAS alerts on all channels is appropriate because all of the subscribers will be located in the vicinity of the emergency. With its extensive coverage area, satellite radio is fundamentally different than these locally-based multichannel programming providers. Most EAS alerts will be of no relevance to the vast majority of the nation. For these reasons, the burdens of mandating broadcasts of state and local EAS alerts on all satellite radio channels outweigh any benefits.⁸

In addition, XM notes that its Instant Traffic & Weather channels cover twenty-one major metropolitan regions at present. While this covers a significant percentage of the nation's population and land mass, XM is not able at present to transmit state and local EAS alerts for other regions. First, XM does not have an Instant Traffic & Weather channel dedicated to these regions on which to transmit state and local EAS alerts. Second, XM does not have a presence in these other regions to monitor for state and local EAS alerts. To the extent a single entity were established to collect and transmit all state and local EAS alerts, or if state and local EAS sources

⁸ *NPRM* ¶ 29 (asking whether the burdens of extending EAS obligations to additional communications providers outweigh the benefits).

were to transmit alerts directly to XM, XM could explore providing state and local EAS alerts for additional regions as well.

XM is committed to testing its state and local EAS system. Similar to the national level EAS tests, rather performing tests on every one of its channels, XM believes a reasonable compromise is to test its EAS equipment on a weekly and monthly basis on its Instant Traffic & Weather channels. This is appropriate given that XM will transmit state and local EAS alerts only on its Instant Traffic & Weather channels.

Similar to the national EAS, to ensure that XM can provide its subscribers with access to state and local EAS alerts in the most expeditious and reliable manner possible, XM must receive EAS alerts directly from the originating EAS sources, such as the State Governor or State Emergency Operations Center. Receiving alerts directly from their originating source eliminates the need for XM to rely on terrestrial broadcast stations for receipt of EAS alerts, many of which may be impacted by the very disaster for which an alert is transmitted.

Finally, XM agrees that uniform national guidelines for EAS are preferable to disparate state and local EAS plans. *NPRM ¶¶ 25-26*. As a provider of service throughout the contiguous United States and of Instant Traffic & Weather channels for twenty-one major metropolitan regions, it would be burdensome for XM to monitor and comply with disparate state and local EAS plans for each region. A uniform national guideline would facilitate the participation of satellite radio providers in state and local EAS plans.

C. EAS Compliance by Satellite Radio Providers Should Be Voluntary and Not Mandatory

While XM is committed to voluntarily providing its subscribers with national and some state and local EAS alerts to the extent described above, XM believes that such EAS compliance should remain voluntary and not mandatory. If the Commission were to dictate how XM must

transmit EAS messages, this will limit XM's ability to innovate and develop new ways of providing EAS alerts. For example, if mandatory regulations were adopted, XM would be forced to navigate the rulemaking process to have these regulations modified to accommodate an innovative means of providing EAS alerts. The Commission would face a Herculean task to craft mandatory regulations that are sufficiently flexible to accommodate an always evolving technology. XM notes that voluntary compliance with state and local EAS plans has proven successful to date for broadcasters and cable systems, and there is no reason to believe that a similar voluntary approach will not be successful for satellite radio.

II. XM'S SATELLITE-BASED INFRASTRUCTURE CAN BE A VITAL COMPLEMENT TO THE CURRENT EAS ALERT DISTRIBUTION CHAIN

XM's satellite-based infrastructure can be a vital complement to the current means for distributing EAS alerts. As the Commission acknowledges, the hierarchical and terrestrial-based nature of the EAS is subject to failure if one link in the chain does not transmit an alert. *NPRM* ¶ 27. For example, during the tornados that hit La Plata, Maryland in April 2002, the state relay point for the Washington, DC region (WTOP) did not receive alerts due to a problem with its EAS equipment.⁹ As a result, many radio stations in the region that monitor WTOP did not receive an EAS alert.

Rather than replacing the current EAS alert distribution structure, if the right financial arrangements could be made, XM could potentially serve as a satellite-based complement to the current EAS structure. As the Media Security and Reliability Council has recognized,

⁹ See U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, *Service Assessment: La Plata, Maryland, Tornado Outbreak, April 28, 2002*, at 17 (available at: <ftp://ftp.nws.noaa.gov/om/assessments/laplata.pdf>).

redundancy for media outlets is critical to ensuring the security of the nation's communications infrastructure.¹⁰

With respect to national alerts, if XM is designated as a national PEP and thus was to receive Presidential Level alerts directly from FEMA, it could transmit these alerts throughout its coverage area instantaneously. These alerts could be transmitted not only to XM's own subscribers, but also to EAS participants, such as broadcast stations, cable systems, and other entities the Commission contemplates as becoming part of the EAS. With respect to state and local alerts, if an entity was established to monitor and transmit these alerts, or if state and local EAS sources were to transmit alerts directly to XM, XM could explore transmitting these alerts not only to its own subscribers but to EAS participants as well.

To receive these alerts, television stations, radio stations, cable systems, and other EAS participants would only need a satellite radio receiver. The benefits of using XM's satellite-based infrastructure as an EAS alert distribution mechanism are significant. First, XM's satellites provide reliable coverage of over 99% of the contiguous United States, including the rural and remote areas that may not receive the signal of an "up chain" station transmitting an EAS alert. To the extent a satellite signal is blocked by buildings or terrain, XM has also deployed terrestrial repeaters in many areas to overcome these blockages. This hybrid satellite and terrestrial infrastructure is in place and in use today, providing reliable service to over 2.5 million subscribers. Second, XM's satellites are located thousands of miles above the Earth and are thus not impacted when disasters occur on the ground. Third, XM uses S-band frequencies which are unaffected by the rain fading that afflicts many other satellite services. This is critical

¹⁰ See Media Security and Reliability Council, *Comprehensive Best Practices Recommendations* (March 2, 2004) (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-244391A1.doc).

during hurricanes and other severe storms. Fourth, satellite radio receivers are small (the size of a computer mouse), inexpensive (some satellite radio receivers are offered for under \$100), and readily available today. Fifth, XM uses omnidirectional antennas which eliminate the need to point an antenna at a satellite. This allows receivers to be deployed in seconds without professional installation. Finally, XM has the ability to encrypt its signals as well as dedicate one, some, or all of its channels to emergency alert purposes instantaneously.

Conclusion

In light of the foregoing, XM urges the Commission to act consistently with the views expressed herein.

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