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June 21, 2004

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VIA COURIER

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

JUN 21 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Dortch:

On behalf of Entercom Communications Corp., there are transmitted herewith an original and two copies of its Reply Comments in response to the Petition for Declaratory Ruling filed by the National Association of Broadcasters in MM Docket No. 04-160.

As indicated by the accompanying Certificate of Service, copies have been filed upon major parties to this proceeding. Because more than 25,000 comments have been filed, however, a copy of these Reply Comments is also being filed electronically so that they may be accessed by parties not served directly. If appropriate, it is respectfully requested that the Media Bureau serve copies of the accompanying filing upon all participants in the proceeding by e-mail or other electronic means.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Very truly yours,

Brian M. Madden

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

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JUN 21 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Establishment of Rules and Policies)
For the Digital Audio Radio Satellite)
Service in the 2310-2360 MHz)
Frequency Band)
Radio Service Terrestrial Repeaters Network)

MB Docket No. 04-160

To: The Media Bureau

REPLY COMMENTS OF
ENTERCOM COMMUNICATIONS CORP.

Entercom Communications Corp. ("Entercom"), by its attorneys, hereby submits these Reply Comments in support of the Petition for Declaratory Ruling ("Petition") filed by the National Association of Broadcasters ("NAB") in the above-captioned proceeding.

The Petition urges the Commission to clarify that satellite digital audio radio service ("SDARS") providers are prohibited from: (1) using any technology to permit the delivery of content that would be aired on a receiver in one location that differs from the content that would be aired on a receiver in a different location; and (2) providing locally oriented services on nationally distributed channels. Entercom endorses the arguments made by the NAB. Entercom submits that the provision of local programming content by SDARS providers to subscribers is entirely inconsistent with the representations made by the two licensed SDARS providers that satellite radio would be an inherently national, and not local, programming service; undermines the Commission's core rationale and public interest justification for authorizing SDARS; and would adversely impact the

economic viability of terrestrial broadcasters, an outcome the Commission has specifically sought to avoid.

I. The Commission's Authorization of SDARS Is Premised On Its Classification As A National Programming Service And Satellite Radio Has Been Less Than Forthright In Disclosing Its Intentions.

NAB filed its Petition in response to the announcement by XM Radio, Inc. ("XM") and Sirius Satellite Radio, Inc. ("Sirius") that they would make available to subscribers local traffic and weather reports. The record reflects that such local programming content is now offered by both SDARS providers, and is featured prominently in XM's current television advertising campaign. During the Commission's early deliberations on whether to authorize SDARS, the SDARS applicants collectively assured the Commission that SDARS would be a national service that would supply unique, niche programming for the unserved and underserved, including foreign-language audiences, children and senior citizens.¹ At no time did advocates of SDARS even raise the possibility that local programming content would be made available by the service.

In the Commission's June 1995 *Notice of Proposed Rule Making*, the Commission's assessment that satellite radio would advance the public interest was premised on the belief that SDARS would not offer local programming content, but would be a nationally based, specialized service that would focus on unique

¹ Petition at 4.

programming to targets audiences that were not then served by traditional radio stations.² Indeed, the Commission's initial finding that the potential adverse impact of the authorization of SDARS on terrestrial radio would be limited assumed that SDARS providers would not have the ability to offer local content, such as local public affairs and local news, weather and traffic reports.³ At that time, the Commission believed that the technology to enable SDARS providers to offer such local content did not even exist.⁴

Advocates for SDARS were direct in telling the Commission that the SDARS providers had no intention of supplying local programming content. For example, XM informed the Commission that satellite radio service "will not carry local news and information. It therefore is at a significant competitive disadvantage against local stations which have the ability to carry local news, sports, weather, and other local information"⁵ For its part, Sirius declared that "[s]atellite radio is an inherently national service and therefore offers no competitive threat whatsoever to traditional radio stations' local programming strengths, such as local news, weather, traffic, school closings personalities, spots, talk and the like."⁶

When the Commission ultimately authorized SDARS in 1997, it did so on the basis of these representations by XM and Sirius that satellite radio would be a national

² In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Notice of Proposed Rulemaking*, IB Docket No. 95-11 (11 FCC Rcd 1 (1995).

³ *Id.* at ¶ 4.

⁴ *Id.* at ¶ 19.

⁵ In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of American Mobile Radio Corporation, IB Docket No. 95-91 (September 15, 1995) at 18.

⁶ In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of CD Radio, Inc., IB Docket No. 95-91 (September 15, 1995) at 73.

programming service, one very different from terrestrial radio's local programming service. In response to broadcasters' complaints that the introduction of satellite radio would adversely affect terrestrial radio's advertising revenues, and correspondingly affect the nature of the community-responsive service rendered to local listeners, the Commission noted that while SDARS providers would have a significant advantage in offering advertising to a *national* audience, "[l]ocal advertising revenue is much more important than national advertising revenue for terrestrial radio's viability and prevalence, and, at this time, we have no evidence that satellite DARS would be able to compete for local advertising revenue."⁷

Broadcasters repeatedly urged in the SDARS proceedings before the Commission that SDARS has the potential to cause significant competitive harm to terrestrial radio. Because of the representations of the SDARS advocates, in authorizing the new service, the Commission declined to accept claims of the potential harm that might be caused to terrestrial radio. But the Commission recognized that circumstances could change, including the advent of new technologies, and declared that "we cannot entirely rule out the possibility of a major adverse impact."⁸ After noting its commitment to support "a vibrant and vital terrestrial radio service," the Commission wisely promised that it "will continue to monitor and evaluate the potential and actual impact of satellite DARS, particularly in small radio markets, so that we will be able to take any necessary action to safeguard the important service that terrestrial radio provides."⁹

⁷ In the Matter of 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 5754 (1997).

⁸ *Id.* at ¶ 33.

⁹ *Id.*

As the NAB points out, intervening technological developments now threaten to transform satellite radio from the national programming distribution service that XM and Sirius previously committed to provide into a local broadcast service comparable to terrestrial radio.¹⁰ Such a transformation will undoubtedly have a significant adverse impact on terrestrial radio stations, including most importantly the diversion of audiences to SDARS, an issue that the Commission is compelled to address at this time. The Commission should not allow SDARS providers to offer local content without, at a minimum, re-opening the SDARS proceeding specifically to evaluate the impact such action would have on the terrestrial radio stations.

II. Local Content On Satellite Radio Will Compromise The Ability of Terrestrial Radio To Continue To Serve The Needs and Interests Of Their Local Communities and Undermine Local Service By Terrestrial Broadcasters.

As Radio One, Inc. demonstrates in its Comments in this proceeding, terrestrial radio stations are burdened by regulations and limitations that will restrict their ability to compete effectively with satellite radio in the local content arena.¹¹ First and foremost, radio stations are subject to the Commission's local multiple ownership rules, which limit the number of stations one entity can own in a particular market. These ownership restrictions are designed to prevent undue concentration of media voices and to promote diversity of viewpoints, goals that the Commission has consistently pledged to support. SDARS providers, in contrast, are not subject to any regulatory limits on the market share they may control, nor the number of different program streams each can provide to

¹⁰ Petition at 2.

¹¹ Comments of Radio One, Inc., (June 4, 2004) at 2.

listeners in a given geographic area. XM and Sirius have effectively each been granted the ability to provide a virtually unlimited number of “voices” through their satellite radio licenses, all controlled by just two operators, and they now are attempting to leverage their competitive advantages into the local programming arena.

To the extent that SDARS providers are permitted to provide local content to subscribers, viewpoint diversity will be severely compromised, and the ability of terrestrial radio stations to continue to provide their licensed communities with local public service programming will ultimately suffer. As satellite, with its hundreds of channels, grows in share, the risk increases that a number of local terrestrial broadcasters will be marginalized and crowded out, and local public interest programming – not required of satellite operators – will be lost, eroding the diversity of voices which the Commission advocates.

III. Terrestrial Radio Stations Will Be Significantly Disadvantaged In Their Ability To Compete Effectively Against SDARS Providers Offering Local Content.

Each terrestrial radio station is subject to a comprehensive scheme of regulations intimately linked to the station’s obligation to serve the public interest through programming responsive to the needs and interests of its community of license. Radio stations must, for example, maintain a local main studio to ensure that the station has a meaningful presence in the community and maintain a public file containing, among other things, letters and complaints from the public concerning the station’s programming, quarterly lists of the station’s programming that addressed issues of concern to the public, a political file, agreements with citizen groups, identification of

program sponsors of controversial station programming, and copies of complete station ownership information, all required to be made available to the public for their inspection to foster a better understanding of the nature and extent of the responsiveness of the programming service to the local community. Broadcast stations must also monitor and air emergency alert information to inform the public of pending local or national emergencies.

The NAB has thoroughly documented the extensive investment that local broadcasters as an industry make each year to their communities of license through public service programming and local campaigns, above and beyond the stations' adherence to the Commission's regulatory obligations. Entercom stations and employees in each of the company's markets generously give their time and energy to make a difference in their communities. In 2003, \$53 million was raised for charitable causes through the company's PSAs, fundraising activities, advertising and promotional support. One day each year, employees participate in a company-wide program called "Make a Difference Day," which provides community based charitable work that benefits a variety of humanitarian causes. The wide variety of local community activities of the Entercom stations conducted in each of the company's markets on March 16, 2004, this year's "Make a Difference Day," are described in Attachment A.

Because SDARS was never designed to provide a local service, XM and Sirius are not subject to the same public interest programming obligations, nor do they make investments in local communities. However, if SDARS providers are allowed to siphon away significant numbers of listeners by the provision of localized traffic and weather reports, advertising revenues will inevitably follow those listeners and thus decline, and

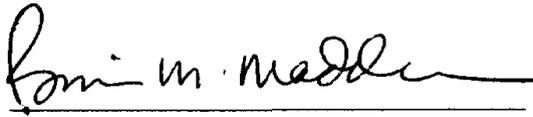
the ability of terrestrial radio stations to compete and to continue to serve their local communities with public service, issue-responsive programming and other valuable community services will be significantly hindered. Any loss of the highly individualized local services now provided by terrestrial broadcasters will not likely be replaced by offerings from satellite operators, since they have no regulatory obligation and no economic incentive to provide such service in the first place.

Conclusion

For the reasons set forth herein, Entercom respectfully urges that the Commission grant the NAB's Petition and in so doing limit SDARS providers to the provision of a national programming service, as originally envisioned and authorized.

Respectfully submitted,

ENTERCOM COMMUNICATIONS CORP.

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June 21, 2004

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CERTIFICATE OF SERVICE

I, Tamara L. Mariner hereby certify that a complete copy of the foregoing Reply Comments of Entercom Communications Corp. was sent this 21st day of June, 2004 by first-class United States mail, postage prepaid to:

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