



October 28, 2004

**Via Electronic Filing**

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

**Re: XM Radio Inc.  
Written *Ex Parte* Presentation  
MB Docket No. 04-160**

Dear Ms. Dortch:

In the above-captioned proceeding, the National Association of Broadcasters (“NAB”) is arguing that traffic and weather channels offered by XM Radio Inc. (“XM”) and Sirius Satellite Radio Inc. (“Sirius”) will have an adverse economic impact on terrestrial radio broadcasters.<sup>1</sup> On August 20, 2004, XM and Sirius filed a letter with the Commission containing quotations from executives of terrestrial radio companies Citadel, Cumulus, Emmis, and Entercom admitting that they do not perceive satellite radio as anything more than a niche market that will have virtually no economic impact on terrestrial radio.<sup>2</sup> All of these admissions were made after XM and Sirius introduced their traffic and weather service in early 2004. This letter is attached hereto.

Over two months have passed since this letter was filed, with no response from the NAB or terrestrial broadcasters. In fact, as the attached new quotations indicate, including one from NAB’s own President, the terrestrial radio industry has been even more insistent since the August 20<sup>th</sup> letter that satellite radio does not pose a competitive threat to their industry. These quotations reveal that there is simply no basis for NAB’s claim that a satellite radio traffic and weather service will have an adverse economic impact on terrestrial radio.

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<sup>1</sup> National Association of Broadcasters, Petition for Declaratory Ruling, MB Docket No. 04-160 (April 14, 2004) (“*NAB Petition*”).

<sup>2</sup> See Letter from Lon C. Levin, XM Radio Inc., and Patrick L. Donnelly, Sirius Satellite Radio Inc., to Ms. Marlene H. Dortch, FCC, MB Docket No. 04-160 (August 20, 2004).

Ms. Marlene H. Dortch  
October 28, 2004  
Page 2

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/Lon C. Levin

Lon C. Levin

Senior Vice President

cc: Catherine Crutcher Bohigian, FCC  
Jon Cody, FCC  
Stacy Robinson Fuller, FCC  
Jordan Goldstein, FCC  
Johanna Mikes Shelton, FCC  
Kenneth Ferree, FCC  
Rosalee Chiara, FCC  
Stephen Duall, FCC

## Attachment A

**Edward Fritts, President and CEO, National Association of Broadcasters (as quoted in “Forbes Attack Has Broadcasters Riled,” *Radio Business Report*, Vol. 21, Issue 170 (August 31, 2004))**

“Hometown radio stations have little to fear in the form of competition from satellite. The 175 million listeners who choose free, local radio compared to the 2 million subscribers who elect the niche programming of satellite demonstrates which product has wider appeal.”

**Emmis Communications, Second Quarter 2004, Earnings Conference Call (September 28, 2004) (source: Fair Disclosure Wire)**

Jeff Smulyan, Chairman and CEO, Emmis Communications:

“You know when you look at the perception of satellite radio, which reaches a few million people, as opposed to terrestrial radio, which reaches almost 300 million people, you would think that it was reversed.”

**Jeff Smulyan, Chairman and CEO, Emmis Communications (as quoted in Frank Ahrens, “Stern’s Move to Satellite Radio Is a Signal Event,” *Washington Post* (October 8, 2004))**

Quoting Jeff Smulyan as stating that even if the Satellite Radio Providers achieve “their wildest dreams” of 40 million total subscribers, “295 million people will still be listening exclusively” to AM and FM radio.

**Rick Cavagnaro, Vice President, Columbia George Broadcasters (as quoted in “Another Broadcaster Fires Back at Forbes,” *Radio Business Report*, Vol. 21, Issue 173 (September 4, 2004))**

“The satellite competition is welcome . . . bring it on. As an operator of five local stations answering a parade of local needs daily, I would love to see a plan from XM or Sirius that will serve my market better than we do.”

**William O’Shaughnessy, President, Whitney Radio (as quoted in “More Outrage at Forbes From Broadcasters,” *Radio Business Report*, Vol. 21, Issue 171 (September 1, 2004))**

“Radio is still like the biblical Lazarus. TV couldn’t kill it. The internet couldn’t do it in. Nor will XM.”

**Barry Drake, President and CEO, Backyard Broadcasting (as quoted in “Forbes Attack Has Broadcasters Riled,” *Radio Business Report*, Vol. 21, Issue 170 (August 31, 2004))**

“[T]echnology is moving so fast, XM is old news before it ever got started. There have been more i-pods sold this year than there are subscribers to both satellite companies combined.”

**Attachment B**

**XM RADIO INC.  
SIRIUS SATELLITE RADIO INC.**

August 20, 2004

**Via Electronic Filing**

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

**Re: XM Radio Inc. and Sirius Satellite Radio Inc.  
Written *Ex Parte* Presentation  
MB Docket No. 04-160**

Dear Ms. Dortch:

XM Radio Inc. (“XM”) and Sirius Satellite Radio Inc. (“Sirius”) (collectively, the “Satellite Radio Providers”) hereby submit this *ex parte* in the above-captioned proceeding in which the National Association of Broadcasters (“NAB”) has asked the Commission to forbid the Satellite Radio Providers from offering “locally oriented” services on nationally distributed channels.<sup>1</sup> In this proceeding, terrestrial radio broadcasters have argued that the traffic and weather services currently offered by XM and Sirius will have an adverse economic impact on terrestrial radio broadcasters.<sup>2</sup>

When not seeking to have the Commission insulate them from any form of potential competition, terrestrial radio broadcasters have been painting a far different picture of the competitive threat from satellite radio. As the attached statements from executives of terrestrial radio companies Citadel, Cumulus, Emmis, and Entercom demonstrate, the terrestrial radio industry does not perceive satellite radio as anything more than a niche market that will have virtually no economic impact on terrestrial radio. All of these statements were made in 2004 – after the introduction of the satellite radio traffic and weather service.

Among other things, these executives note that the number of terrestrial radio listeners dwarfs the number of satellite radio subscribers and will remain as such even if the rosiest

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<sup>1</sup> National Association of Broadcasters, Petition for Declaratory Ruling, MB Docket No. 04-160 (April 14, 2004) (“*NAB Petition*”).

<sup>2</sup> See, e.g., *NAB Petition* at 18; Reply Comments of Entercom Communications Corporation, MB Docket No. 04-160 (June 21, 2004), at 1 (“Entercom submits that the provision of local programming content by SDARS providers to subscribers . . . would adversely impact the economic viability of terrestrial broadcasters . . .”).

Ms. Marlene H. Dortch  
August 20, 2004  
Page 2

projections for satellite radio subscriber growth come true. Moreover, these executives note that, as a subscription-based service, satellite radio is a fundamentally different service offering than free terrestrial radio and, as such, is not a competitive threat to terrestrial radio.

As XM and Sirius have already noted in this proceeding, their local traffic and weather service will have no adverse economic impact on local terrestrial radio.<sup>3</sup> As the attached statements indicate, the terrestrial radio industry agrees.

Respectfully submitted,

XM RADIO INC.

SIRIUS SATELLITE RADIO INC.

By: Lon C. Levin

By: Patrick L. Donnelly

Lon C. Levin  
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Patrick L. Donnelly  
Executive Vice President, General Counsel  
and Secretary  
Sirius Satellite Radio Inc.  
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New York, NY 10020  
(212) 584-5100

August 20, 2004

cc: Kenneth Ferree, FCC  
Rosalee Chiara, FCC  
Stephen Duall, FCC

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<sup>3</sup> See Opposition of Sirius Satellite Radio Inc. and XM Radio Inc., MB Docket No. 04-160 (June 4, 2004), 8-13; *see also* Opposition of the Satellite Broadcasting and Communications Association, MB Docket No. 04-160 (June 4, 2004), at 10-13.

## Attachment A

**Lew Dickey, Chairman and CEO of Cumulus Media on “Kudlow and Cramer” CNBC (August 3, 2004) (available at: <http://mms.tveyes.com/ExpandGuest.asp?ln=50228>)**

“[XM and Sirius] are really not getting market share. They’ve got about 3 million subs with over 200 million people listening to the radio. . . .

So now we are dealing with a service -- satellite radio, XM and Sirius, that are not advertising-based mediums -- they’re really simply subscription-based mediums -- so as a result what they have to do to have a real impact on radio is take a serious amount of listening away from terrestrial radio. And that might mean 40, 50 million subscribers. And when we review demand forecast models, we have a very hard time seeing it reach that level. So, we think it is a good niche service. It can really exist and coexist very easily with our service. It doesn’t really compete with terrestrial broadcast radio.”

**Emmis Communications Third Quarter Earnings Conference Call (January 8, 2004) (source: FD (Fair Disclosure) Wire):**

Jeff Smulyan Emmis Communications Corporation, Chairman of the Board, President and CEO:

“I really believe that any alternative to anything we do whether it’s video games or CDs or cassettes or satellite radio certainly creates competition but the reality is a pay national service even with some local inserts for traffic if they get it done doesn’t change the fundamental nature of a universally distributed locally based business that we are in. The most optimistic projections about satellite radio is 20 million people at the end of the next decade. We reach as an industry about 295 million people every week and we do so many things to be involved in our communities. Sure, every competitor, everything that competes for share of time and mind for our listeners is a competitive threat, but the reality is that I just -- and I wish the satellite people well, I know them, I like them, but I just don’t believe that’s a significant -- listen, I’ve always said if it were mandated the American public pay for their radio, it would certainly improve our business model but I just don’t see it as a significant threat to what we do. We have a motto here, never ever have your head in the sand and be a dinosaur. I’ve lived all sides of the satellite question. If they get their 20 million, sure it will have some erosion but that’s a number of years away and right now the aggregate is a little over a million people and nobody has even studied churn rates yet on this and churn rate on pay audio historically has been very, very high. I’m not worried.”

**Entercom Communications at Deutsche Bank Securities 12th Annual Media Conference  
2004 (June 8, 2004) (source: FD (Fair Disclosure) Wire):**

David Fields, President and CEO, Entercom Communications:

“Satellite radio continues to lose hundreds of millions of dollars a year and has a penetration rate of roughly 1 percent of the United States at this point in time. There is evidence to suggest that their churn rates are going up, and there is also evidence to suggest that a significant chunk of their consumers right now are promotional customers who are not paying for the service. So having said all that, satellite radio we suspect will continue to grow and continue to expand its penetration. But there is nothing to suggest that it becomes anything more than a relatively small slice of the entertainment pie. Furthermore, since both of those companies have adopted a subscription model and really have eschewed the advertising model, from our standpoint ultimately we don't really foresee any scenario under which they have any effect on our revenue model.

You know, will radio listening free radio listening be as high in 2010 as it is in 2004? No. Will television viewing be as high in 2010 as today? Will newspaper readership be as high? We have a proliferation of new technologies and new toys that will continue to fuse the use of consumer time across our country. But what remains clear is that radio as a relative standpoint as an advertising medium looks particularly strong because we are much less threatened from a competitive standpoint than television and newspaper, direct-mail and other advertising vehicles, and remain at extraordinarily good value and bargain for advertisers because we are the low-cost provider. None of that is fundamentally threatened.”

**Emmis Communications First Quarter 2004 Earnings Conference Call (June 30, 2004)  
(source: FD (Fair Disclosure) Wire):**

Q3. Jim Boyle, Wachovia: “When your sales people negotiate with add agencies and local advertisers, broadcasting has always competed with primary major competitors like newspaper. Has one, satellite radio even entered the conversation yet? Two, Internet specifically local search engines, has that been tossed yet in your sales people's faces? And three, if not, when do you think they will be?”

A. Jeff Smulyan, Emmis Communications Corporation, Chairman of the Board, President and CEO:

“Well, no. It hasn't. And as for when they might be, I don't know. Satellite just has not come up in those conversations. Now, that doesn't mean there isn't some curiosity from a technological standpoint about the sound of satellite radio, etc. But that has not been an issue to my knowledge for our sales folks across our markets.”

\* \* \* \*

A. Walter Berger, Emmis Communications Corporation, EVP, CFO:

“I have seen so much written about satellite radio and by the wildest projection of satellite radio in five years if they took 25 million total listeners, we would be left with population growth, probably around 280 million people a week listening to the terrestrial radio and I think that is lost in a lot of people.”

**Citadel Broadcasting Corporation at Deutsche Bank Securities 12th Annual Media Conference 2004 (June 7, 2004) (source: FD (Fair Disclosure) Wire):**

Farid Suleman, Chairman, CEO, Citadel Broadcasting Corporation:

“The fundamentals of the radio industry, the external ones really have not changed. We still get two-thirds of our listening out of the home. It’s still one of the cheapest media in place. It’s very flexible. It’s highly targeted. The fundamental change technologically why there is nothing, and we will talk about satellite radio but there’s nothing out there that really is threatening.”