

In assessing a proposed transaction, the FCC must consider technological and market trends, as well as the nature, complexity, and speed of change within the communications industry.¹⁹ The Commission must also determine whether a proposed transaction complies with the relevant provisions of the Communications Act, other applicable statutes, and the Commission's rules,²⁰ and whether the proposed transferee is qualified to hold FCC licenses under the Act, relevant statutes, and rules.

The proposed transaction satisfies the standard—and will yield substantial public interest benefits without any potential harm to the public. Accordingly, the Commission should expeditiously grant the Application.

III. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST BY ALLOWING THE COMBINED COMPANY TO OFFER LOWER PRICES AND INCREASED CHOICE.²¹

The merger of Sirius and XM will generate substantial, merger-specific,²² public interest benefits. The synergies resulting from the merger will allow the combined company to provide consumers lower prices and more programming choices. Subscribers will be able to continue to use their existing radios and eventually purchase new radios capable of receiving all of the

¹⁹ See, e.g., *Adelphia Order*, 21 FCC Rcd at 8218 (¶ 24); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,544 (¶ 41); *AT&T-Comcast Order*, 17 FCC Rcd at 23,255 (¶ 27); *AT&T-MediaOne Order*, 15 FCC Rcd at 9821-22 (¶ 11).

²⁰ See, e.g., *Adelphia Order*, 21 FCC Rcd at 8217-8 (¶ 23); *AT&T-Comcast Order*, 17 FCC Rcd at 23,255 (¶ 26).

²¹ This section is responsive to Question A.21 on Schedule A of FCC Form 312.

²² See, e.g., *Adelphia Order*, 21 FCC Rcd at 8307-08 (¶ 244); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Commc'ns, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 11,526, 11,564 (¶ 105) (2006); *SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18,290, 18,384 (¶ 182) (2005); *Verizon-MCI Order*, 20 FCC Rcd at 18,530 (¶ 193); *GM-News Corp. Order*, 19 FCC Rcd at 610-11 (¶ 317).

content of both services. These synergies and the resulting cost-savings will both benefit consumers and preserve the future viability of satellite radio.

A. A Combined Sirius-XM Will Offer Consumers More Choice at Lower Prices.

As a result of the merger, consumers will benefit from lower prices and greater program choice. The Commission has repeatedly acknowledged that lower prices and increased consumer choice are cognizable public interest benefits.²³ For example, the Commission has stated that it will consider whether a proposed transaction will enhance a combined company's "ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service, or new products."²⁴

The Applicants will provide customers with more choices at lower prices, more closely tailoring services to listener needs and desires. Today, Sirius and XM each provide consumers one service offering at one price—\$12.95 per month. Consumers have only a limited ability to tailor their service, such as the ability to request that certain channels be blocked.²⁵ Consumers

²³ See, e.g., *Adelphia Order*, 21 FCC Rcd at 8307 (¶ 243); *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 30,063 (¶ 158) ("Efficiencies generated through a merger can mitigate competitive harms if such efficiencies . . . result in lower prices, improved quality, enhanced service or new products"); *The Merger of MCI Commc'ns Corp. and British Telecomms. plc*, Memorandum Opinion and Order, 12 FCC Rcd 15,351, 15,430 (¶ 205) (1997) ("*BT/MCI Order*") (describing "lower prices, improved quality, enhanced service or new products" as examples of consumer benefits resulting from merger-specific efficiencies that are relevant to the public interest analysis).

²⁴ *Adelphia Order*, 21 FCC Rcd at 8307 (¶ 243); see also *GM-News Corp. Order*, 19 FCC Rcd at 610 (¶ 316); *AT&T Corp., British Telecomms., plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Ltd. Applications; For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection With the Proposed Joint Venture Between AT&T Corp. and British Telecomms., plc*, Memorandum Opinion and Order, 14 FCC Rcd 19,140, 19,146-147 (¶ 14) (1999) ("*AT&T/BT Order*").

²⁵ These consumers, however, do not receive any rebate on their monthly subscription fee for the blocked channels. In addition, consumers may add additional radios to their service for a reduced price.

seeking programming from both Sirius and XM must subscribe to both services for a combined payment of \$25.90 per month.

The proposed merger will generate significant synergies that will allow the combined company to offer consumers programming choices on a more à la carte basis at lower prices. Customers may, if they elect, continue to enjoy programming substantially similar to that which they currently receive after the merger at the existing monthly price of \$12.95; the combined company will also offer consumers the options of receiving either fewer channels at a lower price or more channels, including the “best of both” networks, at a modest premium to the existing \$12.95 per month price.

- Consumers who want fewer channels than currently offered will be able to select one or more packages of channels for less than \$12.95 per month. These packages will include an attractive mix of music, news, informational, sports, children’s, and religious programming.
- Consumers who want to continue to receive substantially the same channel lineup of either Sirius or XM may continue to do so at the same price—\$12.95 per month.
- Sirius and XM customers also will be able to access popular, previously exclusive programming of the other provider for a modest premium over what they are paying now. Under this “best of” option, for example, current Sirius listeners could have access to Major League Baseball and Oprah. Likewise, current XM subscribers could have access to the National Football League and Martha Stewart. In effect, consumers might no longer have to choose between Oprah and Martha Stewart or between Major League Baseball and the National Football

League as the combined company will make certain “prime” programming available to subscribers on both networks.²⁶

- When interoperable radios are commercially available, consumers who want to have access to the complete offerings of both companies will be able to do so on a single device for significantly less than the current price of \$25.90.²⁷
- Finally, while customers of both companies currently have the option of blocking adult programming, the combined company will provide customers a credit if they choose to do so.

B. The Combined Company Will Provide Consumers More Diverse Programming.

In the long-term, the combined company will provide consumers with an even more diverse selection of content.²⁸ Currently, both Sirius and XM provide a wide range of commercial-free music channels, exclusive and non-exclusive sports coverage, news, talk, traffic and weather, and entertainment programming. However, there is significant overlap and redundancy in the channel line-ups. For example, 12 identical channels are available on both

²⁶ Final decisions to make currently exclusive programming available on both services will be subject to contractual negotiations with programming partners.

²⁷ In the near term, however, subscribers will have to own two legacy receivers (one XM receiver and one Sirius receiver) to receive the complete offerings of both services. This is due to the fact that the combined company must continue to operate both legacy systems. Neither system currently has enough capacity to offer both companies’ full programming lineup. *See infra* Section III.C.

²⁸ *See 2002 Biennial Review—Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,631 (¶ 36) (2003) (“2003 Media Ownership Order”) (noting importance of programming diversity as a Commission “policy goal”).

Sirius and XM.²⁹ A further 75 channels overlap by genre—providing substantially similar programming (e.g., both offer channels dedicated to music from the 1970s).³⁰

Eventually, the combined company will be able to consolidate much redundant programming. The result ultimately will free capacity for even more diverse offerings that are not currently available on either company's system, including expanded non-English language programming, children's programming, and additional programming aimed at minority and other underserved populations.³¹ Without this merger, however, an increase in programming diversity is unlikely, as both companies will be required to maintain overlapping, mainstream content in order to retain and attract customers.³²

²⁹ These are Radio Disney, FOX News, CNN, CNN Headline News, ABC News and Talk, CNN en Espanol, CNBC, Bloomberg Radio, BBC, ESPN Radio, ESPNEWS, and E! Entertainment Radio.

³⁰ See *2003 Media Ownership Order*, 18 FCC Rcd at 13,739 (¶ 308) (noting that “duplication of programming . . . generally results in an inefficient use of the scarce radio spectrum and a lost opportunity to use that spectrum to serve” the public interest).

³¹ See Statement of Representative Sheila Jackson-Lee, Hearing of the Antitrust Task Force Subcommittee of the House Judiciary Committee, *Competition and the Future of Digital Music*, Feb. 28, 2007, at 2007 WLNR 4055629 (advocating the need for increased diversity for various minority groups, including African Americans, Hispanics, Asians, and women); Statement of Representative Fred Upton, Hearing of the Telecommunications and the Internet Subcommittee of the House Energy and Commerce Committee, *Digital Future of the United States: Part II—The Future of Radio*, Mar. 7, 2007 (advocating the importance of increasing the availability of foreign language programming to consumers); William J. Drummond, *A merged satellite radio still isn't free*, SAN FRANCISCO CHRONICLE, Mar. 6, 2007, at <http://www.freepress.net/news/21540> (last visited Mar. 14, 2007) (noting that satellite radio should strive for “programming to capture the imagination of its present listeners as did radio during its ‘golden age’” and suggesting a channel for “original contemporary radio drama”).

³² This increased diversity may even stimulate more diverse programming on terrestrial radio. See James Surowiecki, *Satellite Sisters*, THE NEW YORKER, Mar. 19, 2007, at http://www.newyorker.com/talk/2007/03/19/070319ta_talk_surowiecki (last visited Mar. 17, 2007) (“Allowing Sirius and XM to merge . . . would significantly increase the competitive pressure on traditional radio stations, perhaps forcing them to abandon their cookie-cutter model. Paradoxically, by reducing choice you could stimulate diversity. Sometimes, it seems, you can have fewer competitors but more competition.”).

This additional capacity also will allow the combined company to provide additional programming related to public safety and homeland security. Indeed, satellite communications have proven to be an essential component of disaster recovery efforts because of their survivability and availability when terrestrial-based communications systems are damaged or otherwise inoperable.³³ Both of the Applicants have demonstrated their commitment to homeland security and public safety issues,³⁴ and both companies transmit emergency alert information throughout the country. Indeed, during the Hurricane Katrina recovery effort, XM aired the “Red Cross Radio” channel, which provided up-to-date disaster relief information to volunteers and the public 24 hours a day, and Sirius equally devoted a channel to Katrina-related information. Sirius and XM also donated radios to the Red Cross.

C. The Merger Will Help Accelerate Deployment of Advanced Technology.

The combined company will be able to offer consumers access to advanced technology sooner than would otherwise occur. The efficiencies gained from the merger, including the marriage of the two engineering organizations, will ensure better results from each dollar invested in research and development. As a consequence, the combined company will be able to improve on products such as real-time traffic and rear-seat video.³⁵ In addition, the combined

³³ See Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission*, June 12, 2006, at 10-11, at <http://www.fcc.gov/eb/hkip/karrp.pdf>.

³⁴ See Letter from Carl R. Frank, Counsel to Sirius Satellite Radio Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, EB Docket No. 04-296 (filed Aug. 23, 2006); Letter from David S. Konczal, Counsel to XM Satellite Radio Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, EB Docket No. 04-296, at Attachment (filed Sept. 12, 2006).

³⁵ As a result of the merger, consumers also will be able to choose between a wider range of low cost, easy-to-use, multi-functional devices because of efficiencies in chip set and radio design and procurement. See, e.g., *GM-News Corp. Order*, 19 FCC Rcd at 610 (¶ 316) (noting that the FCC will consider development of “new products” in its public interest analysis).

company will be able to introduce new services, such as advanced data and telematics services; including enhanced traffic, weather, and infotainment offerings; more rapidly and with greater capabilities through a combined research and development effort. The common engineering standards and protocols which would come from a combined effort will accelerate the involvement of third party manufacturers and technology partners in developing and offering innovative devices and services. These benefits would not be possible absent the proposed transaction.

D. The Merged Company Will Be Capable of Commercializing Interoperable Receivers, Providing Greater Customer Choice and Convenience.

Today, XM and Sirius have approximately 20 million radios in the market, including millions built into vehicles manufactured by automakers. This merger will neither interrupt nor affect customers' use of these existing radios. After the merger, current subscribers may choose to continue to receive substantially similar service at the same price over their existing satellite radio. No customer will need to purchase a new radio in order to keep substantially similar service.

However, the merger will also foster the commercial introduction of interoperable satellite radios. In originally implementing rules for the satellite radio service, the Commission required the companies to develop designs for a radio capable of receiving the signal of either system.³⁶ In accordance with this requirement, Sirius and XM created a jointly funded engineering team that has developed a radio that is interoperable with each other's networks.³⁷

³⁶ See 47 C.F.R. § 25.144(a)(3)(ii). See also *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, 5795-98 (¶¶ 102-07) (1997) (“*Satellite Radio Implementation Order*”).

³⁷ See Letter from William Bailey, Senior Vice President, Regulatory and Government Affairs, XM Radio, Inc. and Patrick Donnelly, Executive Vice President and General Counsel,

These interoperable radios are currently larger, consume more power, and are more expensive and less feature rich than the current single-system radios. There is also little incentive for either company to subsidize the cost of interoperable radios, because of uncertainty whether the subsidy would be recouped since the buyer might not subscribe to that company's service. Because of these limitations, manufacturers have not expressed an interest in producing and distributing these radios, nor have any automobile manufacturers opted to include these radios in their vehicles.

As a practical matter, the merger will improve this situation. After the transaction is consummated, the marketplace itself will provide economic incentives to encourage further innovation and the subsidization and commercial distribution of interoperable radios. With appropriate subsidies to lower the costs, radio manufacturers would likely shift some amount of production, consistent with customer demand, to fabricating radios that tune to all channels of the combined service. Indeed, over the long run, such radios will enable the combined company to offer significantly enhanced content and services. Thus, the merger will enhance the availability and distribution of interoperable equipment allowing consumers to obtain all of the content available on both systems with a single consumer device.

(Continued . . .)

Sirius Satellite Radio Inc. to Thomas S. Tycz, Chief, International Bureau, Federal Communications Commission, IB Docket No. 95-91, at 1 (filed Mar. 14, 2005) (reconfirming compliance with 47 C.F.R. § 25.144(a)(3)(ii) and noting that "XM and Sirius have designed and licensed receiver systems that share a common head unit, antenna, and wiring harness"); Letter from Robert D. Briskman, Executive Vice President, Engineering, Sirius Satellite Radio Inc. and John R. Wormington, Senior Vice President, Engineering and Operations, XM Radio Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission (filed Oct. 6, 2000).

E. **The Merger Will Create Operational Efficiencies and Will Safeguard the Future of Satellite Radio.**

The proposed merger will allow Sirius and XM to achieve large-scale operational efficiencies and will ensure that satellite radio continues to be a viable competitor in the market for audio entertainment services. In 2006, the two companies incurred total costs of approximately \$3.4 billion, the vast majority of which was associated with the operation, depreciation, and management of the companies' infrastructure and cost of acquiring new subscribers. Efficiencies from the proposed merger can be identified in every cost category of the income statement. Importantly, operating expense savings can be passed on to subscribers in the form of lower subscription rates.

First, the merged company will be able to create its commercial-free music channels with the combined efforts of the respective programming staffs and eventually reduce duplicative programming expenses while continuing to offer subscribers a broad selection of music, talk, sports, and entertainment content that they have received in the past.

Second, the merged company will be able to reduce operational expenses for infrastructure used to broadcast and transmit satellite radio programming. Today, both Applicants maintain distinct broadcast operations infrastructure to facilitate the scheduling, storage, compression, transmission, and uplink of programming and content to the Applicants' satellites and terrestrial repeater networks.

Third, one of the largest expense items for each company is the ongoing marketing and subscriber acquisition costs associated with gaining new customers, growing the subscriber base, and increasing brand awareness. The merged company will enjoy the efficiencies of combined advertising and marketing campaigns as well as a unified set of product offerings with lower per unit manufacturing costs due to larger scale production that should ultimately result in lower

product prices for end consumers. In addition, the merged company will be able to focus marketing dollars not simply to drive brand awareness, but also to reduce consumer confusion over what satellite radio offers and to more effectively distinguish satellite radio from other competitive audio entertainment services.

Fourth, the Applicants will be able to accelerate innovation while reducing the cost of research and development efforts required to supply products and services in the retail and automotive distribution channels. The proposed merger will enhance innovation, and reduce the cost of duplicative research and development efforts that would otherwise be necessary to ensure the Applicants remain competitive in the market for audio entertainment services.

Finally, the Applicants will be able to achieve operating efficiencies by reducing duplicative General & Administrative expense.

Analysts predict that these and other combined synergies will save the merged company \$200-400 million per year in the near term,³⁸ and several billion dollars over the long term.³⁹ As noted above, significant portions of these savings will be shared with customers immediately and in the long-term through lower prices and improved service offerings. In addition to eliminating duplicative operating expenses as outlined, the merger will also allow the Applicants to operate

³⁸ See *Consolidation of SIRI and XM Announced*, UBS INVESTMENT RESEARCH, Feb. 20, 2007, at 2 (noting that savings opportunities “could represent approximately \$205 million in potential savings”); *Sirius Satellite Radio, And then there was one*, MERRILL LYNCH, Feb. 20, 2007, at 1 (estimating “annual cost synergies of ~\$400mm in the near-term”).

³⁹ *Sirius Satellite Radio, And then there was one*, MERRILL LYNCH, Feb. 20, 2007, at 3 (“[o]ver the next 10 years, we believe MergeCo could have a present value of future cost synergies of \$4.3 bb”); *Consolidation of SIRI and XM Announced*, UBS INVESTMENT RESEARCH, Feb. 20, 2007, at 1 (noting that long-term cost synergies could range from \$3 to \$4.7 billion).

more effectively by adopting the best and most efficient practices of the two companies based on each Applicant's core competencies.⁴⁰

The proposed merger will also preserve and expand an FCC success story. The efficiencies from combining these two companies will produce a stronger, more stable competitor in the audio entertainment market. Satellite radio is a capital-intensive and expensive business given the significant cost of designing, launching, and operating satellites, and the significant investment each Applicant has made to design chipsets and encourage their distribution, to market their brands, and to create compelling programming for subscribers. Sirius and XM each have invested over \$1 billion in their initial in-orbit constellations and over \$5 billion each in their business overall and continue to report significant operating losses, including reported net losses of \$1.1 billion (Sirius) and \$719 million (XM) in 2006.⁴¹ The vast preponderance of each company's annual expense is associated with the operation, depreciation, and management of its infrastructure and cost of acquiring new subscribers. Both providers must

⁴⁰ These operational efficiencies clearly benefit the public interest in that they will allow the combined entity to provide consumers with greater choice at lower prices and innovative products and services as detailed above. *See, e.g., Applications of Nextel Commc'ns, Inc. and Sprint Corp. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,967, 14,016 (¶ 137) (2005) ("Sprint Nextel will achieve merger specific efficiencies in information technology, billing, customer care, sales and marketing systems"); *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20,063 (¶ 158); *AT&T-Comcast Order*, 17 FCC Rcd at 23,317 (¶ 184) (noting that the "greater scale and scope of [a] merged entity is likely to spur new investment" including by allowing "significant up-front . . . investment costs" to be "spread . . . across a larger customer base" and enabling the sharing of "expertise" that "should contribute positively to consumer experience").

⁴¹ Sirius and XM have generated total cumulative net losses of \$3.8 billion and \$3.5 billion, respectively, from inception through December 31, 2006. *See* Sirius Satellite Radio Inc., 2006 Form 10-K Annual Report, at 26 (filed Mar. 1, 2007), at http://www.sec.gov/Archives/edgar/data/908937/000093041307001865/c47044_10k.htm (last visited Mar. 17, 2007); XM Satellite Radio Holdings Inc., 2006 Form 10-K Annual Report, at 32 (filed Mar. 1, 2007), at <http://www.sec.gov/Archives/edgar/data/1091530/000119312507044379/d10k.htm> (last visited Mar. 17, 2007).

continue to maintain and update this infrastructure and fund replacement spacecraft before the current satellites' end of life.⁴²

Such an advanced, next-generation system will be facilitated by the combined entity's increased scale, expertise, and resources. Post merger, the best minds from both companies will be able to cooperate on research and development and technical issues. Moreover, the proposed merger will enable the combined company to achieve efficiencies in the near term through an integrated system sparing plan and in the longer term through the coordination of satellite architecture and procurements. Further, as a more viable competitor in the audio entertainment market, the combined company will have improved access to the capital markets, thereby ensuring that consumers can continue to count on state-of-the-art technology providing even greater choice and flexibility.

IV. THE TRANSACTION WILL NOT HARM COMPETITION IN THE MARKET FOR AUDIO ENTERTAINMENT SERVICES.

The various public interest benefits that would result from the proposed satellite radio merger will not be undercut by any adverse effects on competition. The Commission has emphasized that competition depends on consumers having choices among products that can be substituted for each other.⁴³ The availability of such choices restrains all market participants,

⁴² Efficiencies in this area will be realized in a relatively short term, perhaps as short as five years, because the planning stages for deploying a next-generation system must begin well in advance of a satellite's end of life. Indeed, XM has recently launched its replacement satellites and is constructing its system spare satellite, and Sirius is building the first of its replacement spacecraft.

⁴³ See, e.g., *Adelphia Order*, 21 FCC Rcd at 8234 (¶ 59); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,552 (¶ 57).

because it enables consumers to respond to one carrier's practices by simply switching to a substitute.⁴⁴

The Commission already has an extensive record relevant to these issues. As the National Association of Broadcasters ("NAB") explained to the Commission just two months ago, "there can be no reasonable doubt that the current media marketplace is robustly competitive, and indeed exploding at the seams with consumer choices for both delivery mechanisms and content."⁴⁵ Similarly, Clear Channel Communications, one of the largest owners of radio stations in the nation, has stated:

Today's media marketplace is accurately characterized as bearing "abundance" and "multiplicity"—not "dominance" or "scarcity," let alone "monopoly." Within this vast and constantly-expanding media marketplace, terrestrial radio broadcasters are subject to fresh and ever-growing competition from a vast array of new technologies and services that deliver music, entertainment, and news.⁴⁶

Given this indisputably competitive environment, economic forces will be more than sufficient to ensure that the proposed merger will have no anti-competitive effects in the market for audio entertainment services.

A. Satellite Radio is a Small Part of a Highly Competitive and Ever-Expanding Market for Audio Entertainment.

The Commission's product market analysis necessarily begins with the product supplied by the merging firms. As of December 31, 2006, XM and Sirius combined had approximately

⁴⁴ *Adelphia Order*, 21 FCC Rcd at 8234 (¶ 59).

⁴⁵ *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Reply Comments of the National Association of Broadcasters, MB Docket No. 06-121, at 34 (filed Jan. 16, 2007).

⁴⁶ *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of Clear Channel Communications, Inc., MB Docket No. 06-121, at 10 (filed Oct. 23, 2006) ("Clear Channel Comments, 2006 Quadrennial Regulatory Review").

14 million subscribers. One study predicts this will grow to 25 million by the beginning of 2010,⁴⁷ and others have projected similar growth.⁴⁸ Although satellite radio has proven to be an appealing and popular new product, the current 14 million subscribers pales in comparison to terrestrial radio's approximately 230 million weekly listeners⁴⁹ (and is also dwarfed by Internet radio's 72 million monthly listeners⁵⁰). Both companies offer many channels of music and a range of other programming, including national and international news, sporting events, and talk shows. Both also offer consumers a variety of ways to access this programming, including in their cars, on their computers, at home, and in a portable capacity. Despite strong initial growth, satellite radio's market penetration remains quite limited: A recent Arbitron study found that satellite radio accounted for *just 3.4 percent of all radio listening*, spread out among the approximately 300 channels that XM and Sirius combined currently offer.⁵¹

⁴⁷ Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007).

⁴⁸ See, e.g., Credit Suisse, *2007 Satellite Radio Outlook*, Jan. 16 2007, at 7 (projecting 25.5 million subscribers by the end of 2009 and 28.9 million by the end of 2010); Stifel Nicolaus, *Satellite Radio Merger Attempt Likely, Based on History & Risk/Reward*, Nov. 27, 2006, at 10, 12 (projecting 27.0 million subscribers by the end of 2009 and 31.7 million subscribers by the end of 2010).

⁴⁹ See *infra* n.59.

⁵⁰ See Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007).

⁵¹ Phil Rosenthal, *Satellite deal foes don't hear message*, CHICAGO TRIBUNE, Feb. 28, 2007, at <http://www.chicagotribune.com/business/columnists/chi-0702280164feb28,0,1928140.column?coll=chi-navrailbusiness-nav> (last visited Mar. 17, 2007) (summarizing the results of the Arbitron study); see also The Katz Radio Group, *Satellite Radio Penetration*, RADIOWAVES, Dec. 2006, at <http://www.katz-media.com/pubs/RadioWaves/121206/RadioWavesDEC2006.pdf> (last visited Mar. 17, 2007) (finding that satellite radio constituted 4.1 percent of the market).

This modest market share is not surprising. Today's audio entertainment marketplace includes services that did not even exist when the Commission first authorized satellite radio, many of which provide music as well as news, talk formats, public safety information, and a range of other valuable programming over the Internet and on handheld devices that can be used in a variety of locations, including through car stereo systems. Further, new devices and services emerge every day.⁵² The Commission has acknowledged this competition before,⁵³ but it has yet to account fully for the many market developments of the past several years.⁵⁴ Nationwide, the

⁵² For example, Slacker recently introduced an Internet and satellite radio-based service. The service will be received by consumers through a device designed and distributed by Slacker. The Slacker will come with 4-inch color display, will support MP3, WMA, WMV, and MPEG-4 files, and will come with built-in WiFi and satellite reception capabilities. *See Introducing Slacker, a new kind of Satellite Radio company*, ORBITCAST, Mar. 14, 2007, at <http://www.orbitcast.com/archives/introducing-slacker-a-new-kind-of-satellite-radio-company.html> (last visited Mar. 15, 2007); *see also* J.D. Biersdorfer, *Now, A Radio Station for (Your Name Here)*, NEW YORK TIMES, Mar. 15, 2007, at C8.

⁵³ *See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 1988 n.110 (¶ 44 n.110) (2003) (noting that satellite radio "appears in many respects to compete directly with segments of the terrestrially based broadcast market") (citing Brian Steinberg, *XM Satellite Radio's Ads Generate Some Heavy Static*, WALL ST. J., Feb. 1, 2002).

⁵⁴ *See 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Reply Comments of Clear Channel Communications, Inc., MB Docket No. 06-121, at 5 (filed Jan. 16, 2007) (stating that "the vast majority" of the competitive alternatives now available for audio entertainment "did not become real participants in the marketplace" until after 2003). In 2003, when the Commission last reviewed its media ownership rules, it identified "radio listening" as a product market that included only free AM and FM radio. *2003 Media Ownership Order*, 18 FCC Rcd at 13,715-16 (¶ 245). At that time, the Commission further observed that the only other audio entertainment services, satellite radio and "Internet audio streaming," competed directly with broadcast radio but were not adequate substitutes. *See id.* Specifically, the Commission found that "satellite radio may be a substitute for broadcast radio," but only for the 600,000 people that subscribed to it at the time. *Id.* It similarly observed that Internet audio "may be a substitute for broadcast radio when listening takes place while working on a computer or in a small office environment," but not in the mobile environment. *Id.*

audio entertainment marketplace today is characterized by a diversity and multiplicity of options that, despite some differentiation, offer consumers similar content and features.⁵⁵

1. Terrestrial Radio

Foremost among the audio entertainment options available to consumers is terrestrial, “over-the-air” AM and FM radio. By any measure, and for 80 years, terrestrial radio—offered free of charge to all consumers—has been and remains the most dominant form of audio entertainment service by a substantial margin. Nearly 14,000 radio stations exist in the United States today,⁵⁶ an increase of almost 14 percent over the last ten years.⁵⁷ Much of the content available over terrestrial radio mirrors that available over satellite radio.⁵⁸ Approximately 230

⁵⁵ Of course, the following list of competitive services is not exhaustive, as there are many other audio entertainment options. For example, many cable and satellite television providers provide subscribers with a wide variety of music channels.

⁵⁶ See News Release, Federal Communications Commission, *Broadcast Station Totals as of December 31, 2006*, Jan. 26, 2007 (announcing that there were 13,837 full power AM and FM radio stations as of December 31, 2006).

⁵⁷ See News Release, Federal Communications Commission, *Broadcast Station Totals as of December 31, 1996*, Jan. 21, 1997 (announcing that there were 12,140 terrestrial radio stations operating in the United States as of December 31, 1996).

⁵⁸ The extent of this overlap was illustrated during questioning by Representative Anthony Weiner of Sirius CEO Mel Karmazin and NAB President and CEO David Rehr, during the February 28, 2007 hearing before the House Judiciary Committee:

WEINER: . . . Mr. Rehr, do your member stations compete with Mr. Karmazin’s product?

REHR: They do – yes.

WEINER: All right. Do your member stations play music, have music on some of them?

REHR: Yes, 13,000 radio stations, yes.

WEINER: Mr. Karmazin, do some of your broadcast stations have music?

KARMAZIN: Yes sir.

million Americans choose to listen to terrestrial radio each week,⁵⁹ *more than fifteen times* the total number of subscribers to satellite radio. These figures are not necessarily surprising when considered in light of the overwhelming ubiquity of terrestrial radios.

Terrestrial radio continues to thrive despite the emergence of competing audio entertainment services. One study noted that 89 percent of Americans aged 15-24—a demographic that may be the most likely to adopt new technologies—cited terrestrial radio as a

(Continued . . .)

WEINER: Mr. Rehr, do some of your broadcasters have talk?

REHR: Yes.

WEINER: Mr. Karmazin, some of your stations have talk?

KARMAZIN: Yes sir.

WEINER: Mr. Rehr, do some of your stations have sports?

REHR: Yes.

WEINER: Mr. Karmazin, do some of your stations have sports?

KARMAZIN: Yes.

Hearing of the Antitrust Task Force Subcommittee of the House Judiciary Committee, *Competition and the Future of Digital Music*, Feb. 28, 2007, at 2007 WLNR 4055618.

⁵⁹ See Arbitron, *Radio Today: How America Listens to Radio*, 2006 Edition, at 2, at <http://www.arbitron.com/downloads/radiotoday06.pdf> (last visited Mar. 19, 2007) (estimating that 93 percent of Americans twelve years old and over listen to radio each week); *The 2007 Statistical Abstract*, The National Data Book, U.S. Census Bureau, at Table 11, at <http://www.census.gov/compendia/statab/population/> (estimating 2005 resident population by age). According to another report, this number is even higher. See Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007) (estimating 282 million weekly radio listeners). Even NAB acknowledges terrestrial radio's dominance. See Remarks of David Rehr, President and CEO, National Association of Broadcasters, "The Future of Broadcasting," The National Press Club – October 4, 2006, at http://www.nab.org/AM/Template.cfm?Section=News_room&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=6937 (last visited Mar. 17, 2007) ("Satellite radio says it has at most 12 million subscribers. By contrast, 260 million people listened to local radio last week. This is week in and week out.").

primary source of music listening in 2006.⁶⁰ Moreover, research shows that 46 percent of teen- and college-aged owners of MP3 players are also interested in listening to AM/FM radio on their MP3 players.⁶¹ The continued dominance of AM/FM radio is further reflected in its ongoing economic clout; for example, in 2005, the largest ten radio operators posted revenue of \$9 billion and billions in positive cash flow.⁶²

2. HD Radio

HD Radio offers an expanded array of programming as compared to traditional AM and FM radio and is spreading rapidly. Through the HD Digital Radio Alliance—a consortium of broadcasters that includes almost all major players, including Clear Channel Communications, CBS, and ABC Radio—the terrestrial radio industry has committed hundreds of millions of dollars to promoting this technology.⁶³ That investment already has had proven effects. Approximately 1,200 HD Radio stations are already on the air,⁶⁴ and hundreds more have

⁶⁰ Bridge Ratings, *Youth Audience Media Use Study 2007*, Feb. 14, 2007, at http://www.bridgeratings.com/press_02.14.07-Youth%20Media%20Use.htm (last visited Mar. 13, 2007).

⁶¹ *Study: iPod ownership reaches a new high*, MACDAILYNEWS, June 30, 2006, at <http://www.macdailynews.com/index.php/weblog/comments/10050/> (last visited Mar. 13, 2007) (summarizing results of Ipsos Insight, TEMPO digital music market report).

⁶² Project for Excellence in Journalism, *The State of the News Media 2007: An Annual Report on American Journalism*, “Economics,” at <http://www.stateofthedia.org/2007/> (last visited Mar. 15, 2007) (reporting BIA data).

⁶³ See Tom Lowry, *HD Radio Still Taking the Rap*, BUSINESSWEEK, Jan. 29, 2007, at http://www.businessweek.com/technology/content/jan2007/tc20070129_381520.htm (last visited Mar. 13, 2007) (describing a \$250 million advertising campaign for HD Radio).

⁶⁴ Statement of Peter H. Smyth, President and Chief Executive Officer, Greater Media, Inc., on behalf of the National Association of Broadcasters, Hearing of the Telecommunications and the Internet Subcommittee of the House Energy and Commerce Committee, *Digital Future of the United States: Part II-The Future of Radio*, Mar. 7, 2007, at 3, at http://energycommerce.house.gov/cmte_mtg/110-ti-hrg.030707.NAB_Smyth-Testimony.pdf (last visited Mar. 17, 2007) (reporting 1183 HD Radio stations in operation).

licensed HD Radio technology.⁶⁵ These new multi-channel competitors are expected to exceed 3,000 within the next few years,⁶⁶ and the HD Digital Radio Alliance has combined the resources of its dominant national members jointly to establish program offerings and formats in order to provide compelling, coordinated, multi-channel program offerings across major markets throughout the country. More than 500 sidebands of HD Radio multicasts are available in 50 U.S. radio markets, including 42 of the top 50 markets⁶⁷ and 85 of the top 100 markets.⁶⁸ By some estimates, almost one-third of one million Americans already listen to HD Radio on a weekly basis, and this number is expected to increase to approximately 12 million by 2010.⁶⁹ As of August 2006, Clear Channel already was airing HD Radio multicasts on 269 of its stations in 66 of its markets.⁷⁰

⁶⁵ Bridge Ratings, *HD Radio Study – Consumer Satisfaction*, May 22, 2006, at http://www.bridgeratings.com/press_5.22.06.HDSatisf.htm (last visited Mar. 13, 2007).

⁶⁶ See Press Release, HD Digital Radio Alliance, *BMW First Auto Maker to Offer HD Radio Receivers Throughout its Entire Product Range*, Jan. 5, 2007, at http://www.hdradio.com/press_room.php?newscontent=51 (last visited Mar. 14, 2007).

⁶⁷ Bridge Ratings, *HD Radio Study – Consumer Satisfaction*, May 22, 2006, at http://www.bridgeratings.com/press_5.22.06.HDSatisf.htm (last visited Mar. 13, 2007); Letter from John M. Burgett, Counsel to iBiquity Digital Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, MM Docket No. 99-325, Attach. at 2 (filed Feb. 22, 2007) (“iBiquity HD Radio Presentation”) (noting 555 multicasting stations).

⁶⁸ Tom Lowry, *HD Radio Still Taking the Rap*, BUSINESSWEEK, Jan. 29, 2007, at http://www.businessweek.com/technology/content/jan2007/tc20070129_381520.htm (last visited Mar. 13, 2007).

⁶⁹ Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007).

⁷⁰ Clear Channel Comments, *2006 Quadrennial Regulatory Review*, at 30.

The availability of HD Radio receivers is steadily and rapidly increasing. A year ago, there were only four or five HD Radio models available and the lowest price was \$599.⁷¹ Now there are 30 manufacturers of radios and price points under \$200.⁷² HD Radio is now available on all new BMW vehicles⁷³ and in RadioShack stores.⁷⁴ In addition, Wal-Mart, the nation's largest retailer, recently announced plans to sell HD Radio receivers.⁷⁵

3. Internet Radio

Many consumers are not waiting for the prevalence of HD Radio to find digital-quality sound for their audio entertainment. Increasingly, consumers are turning to Internet radio, which requires a device, such as a personal computer, connected to the Internet.⁷⁶ In one survey, 34.5

⁷¹ Bunzel Media Group, *The State of Radio: 2007*, Jan. 5, 2007, at 17, at http://www.arbitron.com/downloads/State_of_Radio_2007.pdf (last visited Mar. 17, 2007).

⁷² *Id.* at 14, 17.

⁷³ iBiquity HD Radio Presentation at 3; Tom Lowry, *HD Radio Still Taking the Rap*, BUSINESSWEEK, Jan. 29, 2007, at http://www.businessweek.com/technology/content/jan2007/tc20070129_381520.htm (last visited Mar. 13, 2007) (noting BMW's announcement in January 2007 that it would become the first carmaker to offer factory-installed HD Radio receivers as an option in all of its 2007 models).

⁷⁴ See Tabletop & Clock HD Radios, RadioShack Home Page, at <http://www.radioshack.com/family/index.jsp?categoryId=2032185&cp=2032057&allCount=17&fbc=1&f=PAD%2FProduct+Type%2FHD+radio&fbn=Type%2FHD+radio> (last visited Mar. 18, 2007).

⁷⁵ Associated Press, *Wal-Mart to sell HD digital radio receivers*, L.A. TIMES, Mar. 6, 2007, at <http://www.calendarlive.com/tv/cl-fi-radio6mar06,0,7415452.story?coll=cl-tvent> (last visited Mar. 18, 2007).

⁷⁶ Broadband Internet is available to the vast majority of American consumers. See Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of June 30, 2006*, Jan. 2007, at 3 & Tbls. 14-16, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf (reporting that 99 percent of zip codes have at least one high-speed connection in service to an end user, and estimating (1) that high-speed DSL connections were available to 79 percent of the households to whom incumbent LECs could provide local telephone service as of June 30, 2006, and (2) that high-speed cable modem service was available to 93 percent of the households to whom cable

percent of Americans aged 15-24 mentioned online streaming as a primary source of music consumption in 2006 (up from 9.7 percent in 2004).⁷⁷ Today, almost 20 percent of the U.S. population aged 12 and over listens to Internet radio at least once a week,⁷⁸ and over 72 million Americans listen to Internet radio on a monthly basis (which is expected to double by 2010).⁷⁹ Internet radio audiences are estimated to have grown 25 to 50 percent between 2005 and 2006.⁸⁰ Arbitron tracks online radio usage, and has recently announced changes in the way it will report simulcast radio stations for its measure of radio usage, recognizing “that simulcasting has become a significant operational and marketing strategy for many radio broadcasting companies.”⁸¹ Several Internet radio services, including Yahoo! LAUNCHcast and Pandora, allow users to create their own Internet radio stations based on their listening preferences.⁸²

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system operators could provide cable television service).

⁷⁷ Bridge Ratings, *Youth Audience Media Use Study 2007*, Feb. 14, 2007, at http://www.bridgeratings.com/press_02.14.07-Youth%20Media%20Use.htm (last visited Mar. 13, 2007).

⁷⁸ Bridge Ratings, *Industry Update – Internet Radio*, Feb. 21, 2007, at http://www.bridgeratings.com/press_02.21.07.Internet%20RadioUpd-.htm (last visited Mar. 13, 2007).

⁷⁹ Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007).

⁸⁰ *Compare 2006 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of CBS Corporation, MB Docket No. 06-121, at 10 (filed Oct. 23, 2006) (noting a 50 percent increase from January 2005 to January 2006) (citation omitted), with Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007) (noting a 25 percent increase from 2005 to 2006).

⁸¹ Arbitron, *Learn About Online Radio: Frequently Asked Questions*, at http://www.arbitron.com/onlineradio/about_onlineradio.htm (last visited Mar. 15, 2007); Arbitron, *Total Line Reporting, Effective Winter 2006 Survey*, at

Internet radio, like HD Radio, is becoming a source for mobile audio entertainment as well. Slacker, a service unveiled just last week, allows users not only to customize their music channels but also to listen to them on portable devices, including in their cars; the service includes a free, advertising-based version as well as a subscription option.⁸³ Various Internet radio offerings are already available on mobile phones, and Internet radio is expected to become widely available on portable devices, including car radios, by 2008.⁸⁴ Already, almost 19 million Americans report receiving media over the wireless Internet each month.⁸⁵

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http://www.arbitronradio.com/radio_stations/wcu_tlr.asp (last visited Mar. 13, 2007); Arbitron, *Simulcast Total Line Reporting Q&A*, at

http://www.arbitronradio.com/radio_stations/wcu_tlr.asp (last visited Mar. 15, 2007). Arbitron defines simulcasting as providing the exact same broadcast over the internet as a listener would receive from the terrestrial broadcast, including commercials.

⁸² See Stefanie Olsen, *Pandora's music box inspires fans*, CNET NEWS.COM, July 20, 2006, at http://news.com.com/Pandoras+music+box+inspires+fans/2100-1027_3-6096619.html (last visited Mar. 13, 2007).

⁸³ See J.D. Biersdorfer, *Now, a Radio Station for (Your Name Here)*, N.Y. TIMES, Mar. 15, 2007, at C8 (“Web sites like Pandora.com personalize the music you stream to your desk, while satellite radio offers portable listening but little personalized track choice. Slacker, a music service unveiled this week, hopes to merge the two concepts into something new: personal portable radio for the computer, car and coat pocket.”); Erica Ogg, *A new wavelength for satellite radio*, CNET NEWS.COM, Mar. 13, 2007, at http://news.com.com/A+new+wavelength+for+satellite+radio/2100-1041_3-6166934.html (last visited Mar. 13, 2007) (“The device-plus-service combines satellite radio, standard portable music player and WiFi-enabled gadget with 10,000 custom music channels that users can tailor according to their taste, covering virtually every possible genre. The end result is essentially portable radio with video instead of audio ads—or, for a price, no ads at all—with content that refreshes automatically based on personal preference.”).

⁸⁴ Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007).

⁸⁵ *Id.*

4. iPods and Other MP3 Players

MP3 players, such as iPods, are characterized by high sound quality and portability, as well as other attractive features, such as integration with car stereo systems. Several features of iPods and other MP3 players have allowed these devices to compete with satellite radio for listeners.⁸⁶ First, many MP3 players can be connected to online music subscription services, such as Real Network's Rhapsody, Napster 2.0, and Yahoo! Unlimited.⁸⁷ For example, Rhapsody provides members with access to millions of CD-quality music tracks, which may be listened to as an unlimited package on personal computers and MP3 players.⁸⁸ In addition to allowing members to listen to hand-selected music, Rhapsody's service also provides subscribers with personalized music suggestions specifically tailored to individuals' musical tastes and a multitude of specialized channels that mimic satellite radio music offerings, thereby allowing for

⁸⁶ See 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Comments of the National Association of Broadcasters, MB Docket No. 06-121, at 19 (filed Oct. 23, 2006) ("NAB Comments, 2006 Quadrennial Regulatory Review") (noting references to podcasts as a "new form of radio") (citation omitted).

⁸⁷ Napster's worldwide paid subscription base at the end of 2006 (including university and Japanese subscribers) totaled 556,000, and is expected to increase by 50 percent when subscribers to AOL's music subscription business are transitioned to Napster in late March 2007. Press Release, Napster, *Napster Reports Record Sales of \$28.4 Million in the Third Quarter; Expects to End Fiscal Year at Record Subscriber Levels*, Feb. 8, 2007, at http://www.napster.com/press_releases/pr_070208.html (last visited Mar. 14, 2007).

⁸⁸ See Ed Sutherland, *Rhapsody in MP3*, INTERNETNEWS.COM, Sept. 18, 2006, at <http://www.internetnews.com/bus-news/article.php/3632686> (last visited Mar. 17, 2007). Rhapsody's subscribers can play individual tracks and radio channels on their computers for \$9.99 per month, or on their computer and MP3 player for \$14.99 per month. As of October 2006, RealNetwork's Rhapsody service had 1.625 million subscribers. In addition, songs may be purchased on an individual basis. Press Release, RealNetworks, *RealNetworks Launches Rhapsody 4.0 & Teams to Deliver First Rhapsody-Optimized MP3 Players*, Oct. 5, 2006, at <http://www.realnetworks.com/company/press/releases/2006/rhap4.html> (last visited Mar. 14, 2007).

musical discovery. Similarly, at least one music subscription provider allows subscribers to obtain songs wirelessly.⁸⁹

Further, the online sites used to download music also provide listeners with the opportunity to select music and programs by browsing different categories and genres of music. For example, iTunes, the website used to download music and podcasts onto an iPod, includes constantly updated lists of popular songs within different genres. iTunes also provides listeners with suggestions for additional songs based on listeners' particular song selections. These features allow listeners to choose songs that they want to hear, and also provides them with the opportunity to discover new music and new programs.

Finally, iPods and other MP3 players are regularly used to listen to podcasts. Podcasts, which are generally free, are available on thousands of different subjects, and include independent talk shows along with television and radio programs, including news and sports.⁹⁰ By mid-2006, over 9.2 million Americans had downloaded a podcast.⁹¹ Moreover, additional

⁸⁹ MusicGremlin offers a portable device that allows owners to wirelessly receive songs anywhere. Owners can either purchase individual songs or subscribe to a monthly service that allows them to store an unlimited number of songs. As part of this subscription service, subscribers can have pre-programmed, commercial-free music play lists automatically and wirelessly pushed to their devices. This feature allows users to regularly get fresh content on their devices and discover new music. See MusicGremlin Home Page, at <http://www.musicgremlin.com/default.aspx> (last visited Mar. 16, 2007).

⁹⁰ See Maria Puente, *Get an Earful of Offbeat Podcasts*, USA TODAY, Mar. 15, 2007, at http://www.usatoday.com/tech/webguide/2007-03-15-podcast-directory_N.htm?csp=34 (last visited Mar. 16, 2007) ("Podcasts cost little (except in time) to produce. There's no pressure to get ratings or sell ads, so a podcaster can decide to continue (or stop) his podcast whether he has 100 regular listeners or 1 million.").

⁹¹ NetRatings, Inc., *Podcasting Gains an Important Foothold Among U.S. Adult Online Population, According to Nielsen//NetRatings*, July 12, 2006, at http://www.nielsen-netratings.com/pr/pr_060712.pdf (last visited Mar. 17, 2007).

research shows that 2.6 million people download a podcast each week, a figure that is expected to nearly triple to 7.7 million people by 2010.⁹²

More than 116 million MP3 players have been sold.⁹³ By the beginning of 2009, this figure will have nearly tripled, as an estimated 341 million MP3 players are projected to have been sold in the United States by that time, with approximately 250 million expected to be in use.⁹⁴ From mid-2006 to the present, ownership of MP3 players grew by 33 percent.⁹⁵ There are a variety of accessories available to play such MP3 players in cars, through the vehicle's FM radio or tape deck. In addition, Apple recently announced that it has teamed with Ford, General Motors, and Mazda to provide "seamless iPod integration across the majority of their brands and models, making it easy for iPod owners to enjoy and control their iPod's high-quality sound through their car's stereo system. With the addition of these models, more than 70 percent of

⁹² Bridge Ratings, *Podcasting Audience Project: Measuring & Projecting Behavior – 2006 Update*, Sept. 30, 2006, at http://www.bridgeratings.com/press_09.30.06.Podcast%20Expo%20Slides.htm (last visited Mar. 13, 2007).

⁹³ Bridge Ratings, *Digital Media Growth Projections*, Feb. 19, 2007, at http://www.bridgeratings.com/press_021907-digitalprojectionsupd.htm (last visited Mar. 15, 2007).

⁹⁴ *Id.*

⁹⁵ *Study: iPod ownership reaches a new high*, MACDAILYNEWS, June 30, 2006, at <http://www.macdailynews.com/index.php/weblog/comments/10050/> (last visited Mar. 13, 2007) (summarizing results of Ipsos Insight, TEMPO digital music market report).