National Association of
NAB
BROADCASTERS

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April 24, 2007

Ex Parte Communication

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20445

Re: **<u>MB Docket No. 07-57</u>**

Dear Ms. Dortch:

The National Association of Broadcasters respectfully requests that the attached story from Bloomberg News concerning the unlawful repeater networks of XM Satellite Radio Holdings, Inc. and Sirius Satellite Radio, Inc. be placed in the above-captioned record.[1]

Please direct any questions to the undersigned.

Respectfully submitted,

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Attachment

[1] Christopher Stern, *XM's Rogue Antennas Amplify Signals, Scrutiny of Sirius Merger*, Bloomberg.com, Apr. 24, 2007, available at <http://www.bloomberg.com/apps/news?pid+20670001&refer=&sid=azdBm8rw6BmU>.

XM's Rogue Antennas Amplify Signals, Merger Scrutiny (Update1)

By Christopher Stern

April 24 (Bloomberg) -- XM Satellite Radio Holdings Inc. became the nation's largest satellite broadcaster with a network of hundreds of antennas that were built and operated in violation of U.S. Federal Communications Commission rules.

At least a third of the 800 antennas that beam XM's radio channels to millions of customers were placed in unapproved locations or emitted signals that were too strong, according to a review of FCC filings. XM says some now comply with the rules, though it doesn't know how many.

The misplaced antennas may result in fines or a shutdown of part of the company's network. Lawmakers including U.S. Representative Edward Markey say regulators should take the violations into account when they consider XM's plan to combine with Sirius Satellite Radio Inc.

``This series of apparent violations by XM does provide fuel to opponents of the merger and gives them reason to think they can get the deal rejected,'' said Paul Gallant, a Washington-based policy analyst with Stanford Washington Research.

Sirius and XM need approval from the FCC and Justice Department for the $4 billion merger.

The extent of the breach hasn't been widely disclosed by XM. The company told shareholders on Feb. 22 in a Securities and Exchange Commission filing that ``certain'' antennas had unapproved locations or power without giving further details, and said that the FCC had begun an investigation.

`Administrative Problems'

XM Chief Executive Officer Hugh Panero told investors on a Feb. 26 conference call that while ``clearly there were mistakes or administrative problems,'' the FCC isn't likely to force the company to make changes that would affect customers. The company is ``just working with'' the FCC to find a solution, Panero said.

``XM voluntarily disclosed these variances to the FCC, took unilateral action to eliminate many of them, and continues to work directly with the FCC to address any concerns,'' XM spokesman Chance Patterson said. The differences between the approved and actual locations or signal strength are ``generally immaterial,'' he said.

XM depends more on its ground-based network than Sirius, whose satellites give better coverage. Sirius Chief Executive Officer Mel Karmazin has told Congress that 11 of the company's 138 antennas violated rules and that he switched them off in October.

Four Hearings

Lawmakers have no direct authority to block the merger, though they might influence the outcome by making their feelings known. Congress has held four hearings on the proposed combination at which legislators raised concerns over issues including XM's violation of FCC rules.

Shares of XM fell 7 cents to $11.06 in Nasdaq Stock Market composite trading at 9:52 a.m. They've dropped 20 percent since the purchase by Sirius was announced. Sirius shares were unchanged at $2.80 and are down 24 percent since the announcement.

The two companies ran afoul of the FCC last year, when the agency said they were selling radios with signals that were too strong. Sirius and XM pulled the radios off the market temporarily while they were fixed.

XM uses antennas, or repeaters, to boost signals where buildings or hills block reception from orbiting satellites. The unapproved repeaters are dotted throughout 59 markets including Los Angeles, New York and Chicago, Washington-based XM said in an FCC filing in January.

42 Percent

In the filing, XM said the antennas in violation serve 42 percent of its network. In Los Angeles, 23 of XM's 39 antennas are in breach of the rules, the company said. In New York, 35 of 91 are.

XM said in December filings that turning off Los Angeles repeaters would have a ``drastic and adverse impact'' on reception and a New York shutdown ``would devastate'' service.

Some antennas were erected thousands of feet from their approved location, said XM, which has 7.5 million subscribers. In Chicago, an antenna was more than 11 miles from the authorized spot. In Austin, Texas, a repeater sanctioned for a height of 490 feet was 900 feet high.

Consumer groups including the Consumers Union and the National Association of Broadcasters, the trade group for broadcasters that provide free radio, said the violations show why the companies shouldn't be allowed to combine.

``Given their repeated lack of candor in dealing with the FCC, it is astonishing that XM and Sirius would now seek a government-sanctioned monopoly,'' said Dennis Wharton, spokesman for the broadcasters' group. FCC spokesman David Fiske declined to comment.

Raising Doubt

XM's failure to follow FCC rules indicates it may not live up to Karmazin's promises that the combined company will offer consumers more choice and lower prices, said Markey, who chairs the House Telecommunications and Internet Subcommittee.

``What is the expectation it will follow through or fulfill any public interest conditions?'' Markey, a Massachusetts Democrat, said in an e-mailed statement.

XM committed the violations as it raced against Sirius to begin service in 2001 and sign up customers. The two have racked up combined losses of more than $6.4 billion in five years as they built their networks. Annual sales at XM grew from $20 million to $933 million in four years. Sirius had revenue of $637 million.

The companies say the merger won't stifle competition because of the availability of alternative providers of entertainment and information such as Apple Inc.'s iPod as well as high-definition and traditional radio.

To contact the reporter on this story: Christopher Stern at and **cstern3@bloomberg.net**

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