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April 23,2007

Federal Communications Commission
455 12th Street, N.W.
Washington, D.C. 20005

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Re: Public Comment on Proposed XM-Sirius Merger (MB Docket No. 07-57)

To the Commissioners:

As a consumer who subscribes to XM Satellite Radio, I am writing to express my alarm about the adverse impact on price and broadcast content that is all but certain to result if the Commission allows the current satellite radio duopoly to be converted into a satellite radio monopoly. I see no justification for the Government to intervene to block the free market solution that **is** readily apparent in the current situation, **as** is set forth below. The warnings from XM and Sirius that unless they are allowed to merge, the two satellite radio broadcasters will go out of business and that satellite radio will thus disappear are scare tactics that are entirely bereft of plausibility, **as** is explained below. In no other type of over-the-air consumer media has the FCC allowed a monopoly to exist – not in terrestrial television, terrestrial radio, satellite television, or cellular telephony. I hope that it will not take the wholly unprecedented, and unjustified, step of creating a monopoly in this instance.

It is essential to recall that the FCC auctioned off the rights to two frequency allocations for satellite radio service. The XM and Sirius corporations won that auction. When it bid, each company *knew* that it would have a satellite radio competitor – indeed, to its presumed delight, just ***one*** competitor. Prior to the auction, the Commission made it clear that it wanted a two-provider framework in order to have at least a modicum of competition, so as to restrain price increases to consumers and also to encourage consumer-friendly behavior in programming, customer service, etc. (Millions of American households remember how their old monopoly cable TV provider used to **take** them for granted -- until the FCC allowed competition to arrive some years ago in the form of DirecTV, Dish Network, et al.) Precisely as the FCC predicted, XM and Sirius competed tooth and nail, investing in equipment, content (most famously **Sirius'** $500+ million deal with radio personality Howard Stem), advertising, receiver rebates, and the like. Millions of people, like this writer, signed up for one or the other of the two services.

Unfortunately, however, the satcasters' business model **(or,** more likely, its execution) may have been stunningly bad: the two companies spent staggering sums of money on both technology and content, and consumers have not yet signed up in sufficient numbers to enable either satcaster to achieve profitability under those circumstances. Obviously, the only way that **a** merger would satisfactorily help the bottom line is if the combined Sirius-XM company could reduce expenses and/or increase revenues ***very*** substantially. As a quasi-monopoly purchaser **of** content (competing only with terrestrial broadcasters, who **are** unable **or** unwilling to compete for

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nationwide exclusive content rights), a monopolist could pay less, even much **less,** for content – which is itself an anti-competitive, and hence undesirable, result, by the way. Presumably, some duplicative costs could legitimately be eliminated. It seems highly doubtful, however, that enough could be saved on the cost side to bring the merged company close to the break-even point. Hence the real allure of a merger is the prospective monopolist's ability to raise rates without prompting a competitor to run advertisements proclaiming itself **to** be the "bargain" satellite service provider. However, preventing such an anti-competitive outcome is ***precisely*** why the Government sold broadcast rights to TWO satcasters, not just one. Both XM and Sirius knowingly agreed to that arrangement.

XM and Sinus now argue, "Neither satellite service can survive on its own, **so** if the Government doesn't let us merge, the public will have <u>no</u> satellite radio at all." **But that simply isn't *so.*** If the two satcasters can't make a profit without the Government, in effect, bailing them out of their remarkably poor business decisions, the logical course of action for one or both satcasters is to seek protection under the federal bankruptcy laws. Each company has enormously valuable assets, which would promptly be taken over by its creditors. Shorn of its ruinous liabilities (bond indebtedness, bank loans, equipment contracts, leases, and huge contracts with sports leagues, Howard Stem, Oprah Winfrey, Bob Dylan, and other content providers), each satcaster could likely operate quite profitably. (If the companies did not successfully emerge from bankruptcy protection, a merger request could always be reconsidered by the FCC <u>at that point</u>.) Continental Airlines and many other major U.S. corporations have emerged from bankruptcy as viable, profitable companies over the years. The losers, alas, would be XM and/or Sirius shareholders, whose stock would become, in all likelihood, worthless. But that is what happens and is expected to happen in a free enterprise system; bad business decisions (by management, unions, shareholders, etc.) and unwise investments are penalized. It is noteworthy that despite the huge financial losses incurred, year after year, by the airline industry, the Government has not allowed a monopoly to be created in air transportation. Rather, it has stood aside as many of America's largest airlines have filed for protection under Chapter 11 of the federal bankruptcy statute – and the Government has done **so** even though commercial airline service, ***unlike satellite radio,*** is crucial to the well-being of the U.S. economy.

Satellite radio isn't some sort of essential public service, like Amtrak, that requires a federal bailout. <u>**The** free market is perfectly and obviously cauable of handling this situation</u>, as has been explained above. There are millions of consumers, like this writer, who are willing to pay every month for our satellite radio subscriptions, and it is inconceivable that the creditors who would take over XM and/or Sirius (if they seek bankruptcy protection) would ignore that enormous demand. In the highly unlikely event that one of the two satellite radio providers were actually to cease doing business, virtually all satellite radio customers would necessarily end up purchasing subscriptions from the single surviving company – a result that would leave consumers no worse off than they would be if the currently proposed merger is approved. In fact, since the surviving company would not have to take **on** the obligations of the failed company, yet would pick up nearly all of its subscribers, it would be in *far* **better** financial shape than a merged Sirius-XM would be.

Finally: If the U.S. Government allows XM and Sirius to merge, the combined company should at least be required to relinquish one of the two frequency blocks it possesses, thus holding open the possibility of entry by a new competitor. Those frequency licenses were, after all, allocated for satellite radio use, not for resale by XM-Sirius to another entity that wishes to use the frequencies for some other purpose (such as data, television, and/or telephone transmission). Even if no competitor emerges, the ever-present threat of such entry might help restrain the new satellite radio monopoly from raising prices excessively.

In sum, not a single good reason exists to let this unprecedented merger win federal approval. In the absence of Government action, the free market will ensure that consumers have access to satellite radio at the lowest competitive price and with the broadest selection of content. As a matter of elementary economics, it is clear that permitting the *first-ever* monopoly in over-the-air consumer media will inevitably produce both higher prices and reduced quality. Thank you for your consideration of this letter.

Sincerely,