Congress of the United States
Washington, DC 20515

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Federal Communications Commission
Office of the Secretary

Chairman Kevin Martin
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Martin:

We are writing to express our opposition to the proposed merger of the country's only two national satellite radio companies—Sirius Satellite Radio and XM Satellite Radio—which the FCC has been requested to approve in a transfer of control application recently filed by the two companies. For the reasons noted in this letter, we believe that approving the proposed merger would result in an unjustifiable government-sanctioned monopoly that would harm consumers and be contrary to the public interest.

We understand that the satellite radio companies attempt to argue that the proposed merger would not result in a monopoly because satellite radio competes with numerous other providers of audio entertainment services, including terrestrial radio, internet radio, and MP3 devices. This claim is not supported by the facts. Sirius and XM now control all of the spectrum allocated by the FCC for a national satellite radio service. When the FCC authorized the service in 1997 it acknowledged that national multi-channel satellite radio would offer services that local radio could not provide. In the largest radio markets in the country, a local broadcaster can own no more than eight radio stations; the reach of their signals is limited to the local market. Sirius and XM each program almost well over 100 channels and all of their channels cover the entire nation. Sirius and XM therefore are the only providers of a national mutichannel audio service that can serve users virtually anywhere. Even a cursory review of each company's marketing and sales materials demonstrates that XM and Sirius presently compete fiercely against each other. Permitting them to combine would unquestionably create a monopoly.

When the FCC authorized the satellite digital audio radio service in 1997, it expressly stated that after the two licenses for the spectrum were granted, to help ensure sufficient continuing competition in the service, one licensee should not be permitted to acquire control of the other licensee. Nothing has changed with respect to the type of service these companies provide that would merit ignoring this requirement. Further, it is important to remember that neither Sirius nor XM are failing companies—indeed, they are far from it. In their joint presentation to Wall Street analysts in February, Sirius and XM lauded the fact that the two companies combined showed a "compounded annual growth rate for the year-end industry subscriptions of 147% for the last four years." Further, each company has made clear that it can succeed without a merger. Why should the government incur the inherent risks of monopoly when the proponents have disavowed any economic need for this particular combination?

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Permitting the proposed merger would in fact hurt consumers and harm competition. Our experience in this country with monopolies -- even arguably benevolent ones -- has not been good. Monopolies inevitably lead to higher prices, reduced consumer choice and diminished innovation. There is no evidence that this one would be any different. The benefits to which Sirius and XM lay claim are not dependent on the merger. If the companies desired, they could reduce prices and unbundle channel packages now. In fact, it is our understanding that these two companies do not have a good track record when it comes to regulatory compliance in that both companies have operated certain repeaters in violation of FCC rules and have produced and distributed receiver equipment that violates FCC requirements. Viewed against this record, any promises these companies make to provide short-term benefits must be treated with a high degree of skepticism. In contrast, there is solid and substantial economic evidence that continued competition between at least two providers of a service will constrain prices and result in the most choice for consumers. The competition between XM and Sirius that has existed during the brief five year period that both companies have been operational has benefited consumers. Each company has differentiated itself by offering unique programming and other options.

To ensure that consumers are permitted to reap the benefits provided by continued competition in the satellite radio industry, we urge the Commission to deny the application for the merger of Sirius and XM.

Sincerely,

James T. Walsh
Member of Congress

John McHugh
Member of Congress