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Federal Communications Commission
Office of the Secretary

The Honorable Thomas Barnett
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Assistant Attorney General Barnett and Chairman Martin:

I write to you concerning the proposed merger between XM Satellite Radio and Sirius Satellite Radio, now under review at the Justice Department and the Federal Communications Commission. The Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights recently held a hearing to examine the competitive issues surrounding this merger, and we have now completed our examination of this transaction. I have concluded this merger, if permitted to proceed, would cause substantial harm to competition and consumers, would be contrary to antitrust law and not in the public interest, and therefore should be blocked by your agencies.

As you know, XM and Sirius are the only two providers of satellite radio service in the United States. If satellite radio is considered to be a distinct market, this merger is to a two to one merger to monopoly and should be forbidden under the antitrust laws. If satellite radio is a separate market, the combined firm will have the ability to raise price to consumers, who will have no choice to accept the price increase. Such a result should be unacceptable under antitrust law and as a matter of communications policy.

It is my conclusion that satellite radio is in fact a separate market. I reach this conclusion for the following reasons. Satellite radio is the only medium offering hundreds of radio channels (170 channels in the case of XM and more than 75 in the case of Sirius) with a tremendous variety of music formats, entertainment programming, live sports on a national basis and extensive news programming. Satellite radio is delivered in far superior sound quality to terrestrial radio and is largely commercial free. Satellite radio is a national service, delivered to consumers on a nationwide basis, and travels with listeners as they move about the country in their automobiles, where the majority of radio listening occurs.

No other audio service existing currently is a viable substitute for satellite radio. Unlike the national nature of satellite radio, terrestrial radio is locally based, and has a much more limited number of radio stations than satellite radio's channels in any local geographic market. Terrestrial radio cannot move with listeners as they travel to different cities, does not offer the variety of programming available on satellite radio (including, for example, out of town sports broadcasts or specialized music formats), and offers inferior audio quality.

Nor are newer technologies a substitute for satellite radio. MP3 players such as iPods cannot offer the programming offered on satellite radio, such as live news and sports broadcasts. And with the cost of music commonly priced at about one dollar per song, it would cost consumers many thousands of dollars to legally duplicate on an MP3 player the musical offerings available on satellite radio. Nor is wireless internet radio a competitive alternative today. There are very few devices to receive wireless internet radio presently available to consumers. Even more important, the technology to deliver wireless internet to listeners in their automobiles as they travel between cities (and to a large extent within cities) is virtually unavailable. No other technology available today is a substitute for the satellite radio.

The lack of a viable competitive alternative existing today to the satellite radio monopoly created by this merger is a sufficient independent reason to block this merger. The merger's proponents, however, argue that new technologies will in the future create competitive alternatives. However, only new entry that is "timely" is properly considered to be a competitive alternative under antitrust analysis. "Timely" means likely to be on the market within the next two years.[1] No new technology satisfies this requirement. The deficiencies of the new technologies previously identified making these technologies an unsuitable competitive alternative are unlikely to be remedied in the next two years. While it is possible that wireless internet radio, for example, could become a viable competitive alternative sometime in the future, our concern is the marketplace today. Consumers should not suffer the price increases likely to result from a merger to monopoly because of a vague hope that new technologies may deliver new competitive alternatives sometime in the future.

In addition, the parties concede that, due to the enormous capital expenditure running into billions of dollars for new satellites, as well as the regulatory difficulties in obtaining new spectrum licenses, the parties concede that the entry of a new satellite radio service is unlikely. When asked by at our hearing on March 20, 2007, whether entry by another satellite radio company was likely, the CEO of Sirius, Mel Karmazin responded that "I do have a clear answer to that question. . . . You're asking whether I

[1] The antitrust agencies "generally will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact." Department of Justice/Federal Trade Commission Horizontal Merger Guidelines, Sec. 3.2 at 27.

think there will be another satellite competitor, *the answer will be, probably not.*" Without the possibility of new entry of a new satellite competitor, and without the existence of any true competitive alternative from any other audio service, the combination of Sirius and XM will result in a merger to monopoly.

Some public interest advocates have argued that the merger should be subject to binding conditions to protect competition and consumers as an alternative to being blocked. The conditions proposed include (i) a price cap on satellite radio service for a meaningful period of time after the merger; (ii) new pricing choices such as tiered programming; and (iii) the combined company making available a designated portion of its capacity (i.e., 5-10%) for educational, informational or independent entertainment programming over which it has no editorial control. However, I believe that none of these conditions would be sufficient to ameliorate the substantial harm to competition caused by this merger.

At our hearing, Sirius promised to enter into a price cap after the merger. In answers to written follow-up questions, Mel Karmazin stated that "[f]ollowing the merger, we will not raise either the $ 12.95 that each satellite radio company currently charges consumers, or the $ 26 dollars [sic] that it costs to get both services." He further agreed to this commitment as part of an enforceable FCC order or antitrust consent decree. See Karmazin Answer to Sen. Kohl's Follow-Up Question 1 (copy attached). However, I am concerned that even if either of your agencies were willing to enter into such a decree, enforcement of such a decree might mean that the satellite radio industry would be subject to intrusive governmental regulation for years to come. A competitive marketplace that would not require extensive regulatory oversight is far preferable, and such a competitive marketplace can only be assured by blocking this merger.

In sum, because this merger will result in a satellite radio monopoly, it will violate section 7 of the Clayton Act which forbids any merger or acquisition when "the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly." Elimination of the head-to-head competition currently offered by XM and Sirius leaving only a monopoly satellite radio service will likely result in higher prices and poorer service being offered to consumers. Satellite radio is a unique service for which none of the other audio services is a substitute. Uncertain promises of competition from new technologies tomorrow do not protect consumers from higher prices today. The antitrust laws should not countenance such a dangerous outcome. I therefore urge the Justice Department to bring a legal action to block this merger.

Further, because of the likely harm to competition and consumers, we believe this merger is not in the public interest, and we likewise urge the FCC to deny approval to this merger under the Communications Act. Nor has there any basis demonstrated for the FCC to eliminate its rule – first promulgated when satellite radio was licensed in 1997 -- that there be at least two licensees for satellite radio.

I therefore urge that both of your agencies take all necessary actions to deny approval of this merger and prevent the creation of this satellite radio monopoly.

Thank you for your attention to this matter.

Sincerely,

HERB KOHL
Chairman, Subcommittee on
Antitrust, Competition Policy and
Consumer Rights

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Mel Karmazin
Chief Executive Officer

April 4, 2007

The Honorable Herb Kohl
United States Senate
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Dear Chairman Kohl:

Thank you for the opportunity to discuss the proposed merger of Sirius and XM at the Senate Judiciary Committee, Antitrust Subcommittee hearing last month. I have attached to this letter answers to each of the follow-up questions you raised after the hearing.

As I explained in my testimony, this transaction will benefit consumers in substantial and concrete ways. Simply put, the new company will provide consumers with more choices and lower prices. Both Sirius and XM have made clear that no satellite radio consumer will have to pay more than the current monthly subscription price of $12.95 as a result of the merger. Once interoperable radios become commercially available, those who want to have access to the complete offerings of both companies will be able to receive them on a single device for significantly less than the current price of $25.90. We also are committed to bringing consumers the ability to get the best of each company's current program line-up at a price well below the cost of the two services today. And while no radio will become obsolete as a result of this transaction, we fully expect the merger to stimulate the development of new highly portable, low-cost, and user-friendly devices.

These are not just promises made to appease regulators; they also will make good business sense for Sirius-XM. But each of these important benefits is directly tied to the proposed merger and cannot be realized without it. Most fundamentally, the merger will ensure that satellite radio will remain a strong, effective, and innovative audio entertainment provider.

Today's audio entertainment market is robustly competitive and characterized by an ever-expanding multiplicity of choices. Satellite radio competes directly and intensely with a number of other audio providers for consumer attention. Indeed, in their SEC filings, radio broadcasters routinely point to a host of audio entertainment services, including satellite radio, as direct competitors to terrestrial radio. By the same token, Sirius and XM list a wide range of audio entertainment competitors, including AM/FM radio, in their SEC filings.

In the context of the ongoing media ownership proceeding at the FCC, the broadcast industry aptly has characterized the competitive state of the audio entertainment market. Just months ago, numerous broadcasters filed voluminous evidence with the agency to drive home the point that competition exists among all manner of audio providers, including AM/FM radio and satellite radio, as well as HD radio, Internet radio, iPods and other MP3 players, music

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subscription services, podcasting, and mobile phones. The latest illustration of this growing competition is reflected in the FCC's HD radio decision adopted at the end of last month. The decision will enable more stations to broadcast not only high quality audio entertainment, but also multiple streams of programming and data casting. Moreover, the decision to permit experimental digital subscription services will intensify the competition between AM/FM radio and satellite radio, not only for listeners but also for subscription dollars.

Now, however, some of the same parties that have portrayed the audio market as abundant and competitive in other contexts are attempting to cast doubt on the merits of a Sirius-XM merger by questioning whether satellite radio fully competes with AM/FM radio and other audio services. At the hearing, Ms. Quass, as a representative of the NAB, tried to make the case that satellite radio should be viewed as a market onto itself. Pointing to minor differences between various audio services, Ms. Quass claims that Sirius and XM are the sole participants in a market for "multichannel mobile audio services" and, therefore, that the proposed merger will create a "monopoly." Mr. Balto echoed this view in his testimony. Of course, this artificially narrow characterization conflicts with the expansive audio market that broadcasters publicly have described.

It is well-established in antitrust law that characterizing a product as "unique" is not sufficient to cabin it into its own market. A laundry list of distinctions between satellite radio and other audio programming alternatives does not make satellite radio a separate product market. Rather, the focus must be on the real-world competitive interplay among programming alternatives, particularly as they constrain the ability of satellite radio to raise prices.

It also is not the case that satellite radio must be considered a distinct market unless there are alternatives that offer *all* of the attributes of satellite radio in a *single* package. Mr. Balto repeatedly invoked the FTC's case against Staples/Office Depot at the hearing as the basis for his argument to the contrary. Mr. Balto neglected to mention, however, that the FTC reached the opposite conclusion eight years after Staples was decided. In approving the merger of Federated and Mays department stores, the FTC found that a combination of products that individually provided only a subset of services nonetheless were part of the relevant product market. Specialty stores were deemed to be in the same market as the department stores.

In the case of satellite radio, there can be no question that the availability of alternatives from a combination of sources limits what consumers are willing to pay for our services. In the five years that we have been in service, Sirius *never* has raised its prices. This is largely because music, sports, and talk content are available not only via satellite radio, but also on terrestrial radio, iPods, and Internet radio, among other sources. Because the importance of sports packages was raised at the hearing, I would like to reiterate that this content is available

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to consumers on other sources aside from satellite radio. For example, Major League Baseball offers the home and away radio feeds of every regular and postseason game through its GameDay package. Other sports leagues offer similar packages.

Given the realities of today's audio entertainment landscape, there is no legitimate basis for concern that this merger will enable the new company to charge "monopoly" prices or otherwise harm consumers or competitors. Although satellite radio has proven to be an appealing and popular new product, it accounts for only a small slice of the audio entertainment market. While XM and Sirius combined have approximately 14 million subscribers, this number pales in comparison to the approximately 230 million Americans that listen to AM/FM radio every week. Likewise, the number of satellite radio subscribers is dwarfed by the 180 million iPods that have been sold to date and the more than 200 million Americans that have access to Internet radio.

A combined Sirius-XM will continue to compete against a host of rivals, including broadcast radio, which is offered to consumers free of charge. The company's prices will continue to be constrained by this inescapable truth. And given that satellite radio accounts for only about 3 percent of all radio listening, we will have every incentive to offer prices that will attract more subscribers, not drive them away.

In addition, there was some discussion at the hearing about whether a combined Sirius/XM would be able to preclude new entry into the audio entertainment market. The answer clearly is no. There are a multitude of new audio entertainment services in the pipeline, and the merger of Sirius and XM will have no impact on these developments. Whether or not any future new entrants will be other "satellite radio" companies is irrelevant. There is nothing in antitrust law that says that new entry must occur via the same technology employed by existing market participants.

In sum, a satellite radio merger affirmatively and substantially will benefit consumers without causing competitive harms. I would welcome the opportunity to sit down with you in person to further discuss my answers to your questions, and any other matter of interest or concern to you as this process moves forward.

Sincerely,

Mel Karmazin

Senator Kohl's Follow-Up Questions for XM/Sirius Hearing

For Mel Karmazin

1. During your testimony at our hearing, you promised not to raise your prices after the merger. You also made these promises at your earlier testimony at the House Judiciary and Commerce Committee. And when I met with XM Chairman Gary Parsons prior to our hearing, he made the same promise. But these promises were somewhat vague and not always consistent. I'd like you to be more specific and clarify what they mean.

(a) When you say you will not raise your price, what do you mean? Is the price you are referring to the $12.95 that each satellite radio company currently charges consumers, or the $26 dollars that it cost to get both services?

Following the merger, we will not raise either the $12.95 that each satellite radio company currently charges consumers, or the $26 dollars that it costs to get both services.

(b) What time period is your promise not to raise price good for?

We are prepared to discuss with the FCC and the antitrust authorities a substantial period in which we would agree not to raise prices.

(c) Are you willing to commit to these promises in the form of an enforceable FCC order or antitrust consent decree?

Yes. In addition, other alternatives available in the market (such as terrestrial radio, HD radio, Internet radio, and mobile phone offerings) will constrain the company's ability to increase prices.

2. In 2002, the Justice Department filed suit to block the proposal for a merger between the only two satellite TV services, DIRECTV and Echostar. In its lawsuit to block the merger, the Justice Department asserted that -

> **"Echostar and [DIRECTV] compete on a broad array of price and quality characteristics, including programming pricing, programming packages, acquisition of channels, retail compensation, equipment pricing, installation pricing, . . . and targeted promotions. Competition between [DIRECTV] and Echostar has taken the form of measuring themselves against one another, looking to each other when making price and quality decisions, seeking to have a competitive advantage over each other . . . , and imitating competitive improvements that the other has initiated. Consumers have benefited from competition between the two that would be lost after the merger."**

Aren't the same aspects of competition the Justice Department identified as at risk in Echostar/DIRECTV also at risk with respect to your proposed merger between Sirius and XM? Why should this merger be analyzed any differently?

Each merger is decided by the DOJ based on the specific facts of the industry at issue. Multichannel video programming distribution ("MVPD") and audio programming are very separate industries. The DirecTV/EchoStar merger has little relevance to an investigation of the current merger.

There are some obvious and significant differences in the two industries. To take just one example, in DirecTV/EchoStar, across the vast majority of the country, there was at most one other MVPD provider besides the two satellite companies, and in rural areas there was no other competitor. In contrast, there are numerous competitors from which customers today receive audio programming including terrestrial radio, HD radio, Internet radio, music subscription services, iPods and other MP3 players, CD players, and cell phones. These other alternatives constrain the satellite companies because relatively few people today purchase satellite radio (particularly relative to the number of people who purchased MVPD services), and satellite radio competes to get its subscribers away from these alternatives, most of which are much more popular than satellite radio.

3. You have argued that satellite radio competes with digital music players (commonly known as MP3 players) such as the I-Pod. Are I-Pods and similar MP3 players an adequate substitute for satellite radio? In answering this question, please include in your answer specific responses to the following questions –

(a) Considering it costs about a dollar a song to obtain content for an I-Pod, how much would it cost a consumer to duplicate the musical content available on either Sirius or XM?

Consumers do not load their iPods solely with songs downloaded through iTunes. They can and do (legally) load iPods with their own existing music library or with free content that is available (such as podcasts).

Comparing the supposed cost of filling an iPod with satellite radio is a false comparison and misleading if the point being made is about the relative attractiveness of these products to customers. The numbers are clear. Over 100 million iPods have been sold. In comparison, there are only 14 million satellite radio subscribers.

(b) Are live sports broadcasts or news broadcasts available on an I-Pod?

A virtually limitless supply of regional, national, and international sports and news broadcasts are available for MP3 players, such as iPods, in the form of podcasts. Podcasting software and websites allow listeners to download audio shows for free, play them on computers and digital-music players when they want, and subscribe to updates.

In addition to the ability to manually download individual news or sports podcasts of interest, users can either subscribe to a news or sports podcast series from podcast directory software or websites (such as iTunes, Yahoo! Podcasts, Podcast.net, Podcast.com, and PodcastAlley.com; or directly from the news or sports website of interest (such as CNN, available at http://www.cnn.com/services/podcasting/). When subscribing to a podcast, users automatically receive up-to-the-minute news and sports broadcasts directly to their computer, and can transfer them to their portable MP3 players.

Pocasting is a rapidly developing and evolving area. Today alone, subscribers to CNN's podcasting service, for example, can automatically receive hourly and daily broadcasts. Other examples of news organizations that offer podcast subscription services are ABC News and NBC News. ABC News offers podcast versions of "Good Morning America," "Nightline" and other programs via ABC News.com. NBC podcasts hourly news updates which include highlights from prime time shows, including MSNBC's "Hardball with Chris Matthews" and "Countdown with Keith Olbermann."

Below is a list containing just a few of the many currently available sources for news and sports podcasts. A subscription to most of these services is free.

NEWS

http://abcnews.go.com/Technology/Podcasting/

http://www.cnn.com/services/podcasting/

http://www.nbc5.com/podcast/index.html

http://www.npr.org/rss/podcast/podcast_directory.php

http://www.voanews.com/english/podcasts.cfm

http://news.bbc.co.uk/1/hi/programmes/4977678.stm

http://www.cbsnews.com/stories/2005/09/08/podcast_60min/main828230.shtml

http://www.nytimes.com/ref/multimedia/podcasts.html

SPORTS

http://espnradio.espn.go.com/espnradio/podcast/index

http://www.thesportspod.com/

http://www.podcastalley.com/podcast_genres.php?pod_genre_id=2

http://www.podcastdirectory.com/genre/sports/

http://www.nbc5.com/sports/5470670/detail.html

http://collegesportspodcasts.com/

http://www.podcastpickle.com/sections/29/1/

As a more general antitrust matter, pointing out distinctions between satellite radio and other alternatives for audio programming is not the same as proving that satellite radio is a separate relevant market. If these differentiating factors do not allow satellite radio to raise prices to the satellite base, they are largely irrelevant in determining the proper product market and whether the merger would cause anticompetitive effects. In fact, not every differentiated product is its own market. For example, XM and Sirius are themselves differentiated in having different content, so if the existence of differentiation was sufficient to establish a market definition, the two services themselves each would be in separate markets.

In addition, it is also not the case that satellite radio service must be a market unless consumers can find all of the characteristics of satellite radio in a single alternative., The FTC, in examining the merger of Federated and Mays department stores, noted that a combination of sources that individually only provided a subset (e.g., a specialty store) of what was provided by a different format (e.g., a department store) could be in the same product market. The FTC said there: "In summary, we do not believe that the product market in this matter realistically could be limited to conventional department stores. Based on the evidence gathered in this investigation, the Commission has concluded that the product market must be defined to include, at the very least, all department stores and all specialty stores that collectively sell substantially similar products to those offered by Federated and May." (Statement of FTC in Federated/Mays, 2005)

Moreover, pointing out satellite radio's supposed advantages over other formats for audio programming paints a picture that is misleading as to satellite radio's actual position in the marketplace. Terrestrial radio has over 230 million listeners. Over 100 million iPods have been sold. Over 200 million Americans have access to Internet radio. These numbers dwarf the 14 million subscribers to satellite radio.

4. Please identify all devices available today installed in cars to listen to internet radio while traveling in an automobile.

Internet radio is available today in vehicles, and this trend is expected to grow rapidly. PCs with Internet connections are now being installed in cars, boats, and other vehicles. These PCs currently connect to the Internet through regular cellular phone signals, but industry participants expect the in-car systems to eventually move to WiMax in the near future.

Recent examples of in-car PCs are:

- *Autonet Mobile.* Autonet Mobile has reached an agreement with Avis Rent A Car System to provide a rolling Wi-Fi hotspot to Avis customers called Avis Connect. With Avis Connect, Avis will issue motorists a notebook-size portable device that plugs into a car's power supply and delivers a high-speed Internet connection. Autonet Mobile will also be available for purchase in late Spring 2007. (http://www.goautonet.com/wp/;)
- *Ford Motor.* F-Series pickups can now be equipped with FordLink, which went on sale in September 2006. The PC, which runs Microsoft's XP software on an Azentek computer, can play Internet radio and MP3 music files. (http://media.ford.com/newsroom/release_display.cfm?release=24161)
- *KVH Industries.* The TracNet 100 system, introduced in September 2006, displays Internet webpages on a vehicle's navigation and video screens and creates a

wireless connection in the car. The system operates on Verizon Wireless' high-speed network. (http://www.kvh.com/Products/product.asp?id=123; *http://www.usatoday.com/money/autos/2006-10-31-auto-pcs-usat_x.htm)*

- *Microsoft and Azentek*. Microsoft, working with hardware maker Azentek, will offer consumers a choice of two small PCs in 2008. One is a small portable model that can be carried around and temporarily popped into the dash where the stereo is located. The other, a more powerful model, is installed in the dash. Azentek currently offers larger computers for cars with built-in WLAN antenna, GPS, or bluetooth. (http://www.azentek.com/webpages/products.html; http://www.usatoday.com/money/autos/2006-10-31-auto-pcs-usat_x.htm)
- *Mini-box*: The VoomPC in-car computer system, reintroduced in January 2007, can use any operating system and offers vehicle manufacturers the ability to integrate a GPS navigation, communication, entertainment, and WiFi/GPS connectivity capability into private cars. http://www.mini-box.com/site/index.html
- *Slacker*: The Slacker Portable Player, an iPod-like device scheduled for a summer 2007 release, allows users to listen to multiple pre-loaded internet radio stations away from their computers. Users who install the Slacker Car Kit, a dock and antenna, can retrieve updates of new music for the Players' radio stations while driving. While connected to the internet via the antenna, the Player stores new music so there is continuous play. (http://www.slacker.com/products.html; http://blogs.pcworld.com/techlog/archives/003878.html)
- *InFusion*: InFusion, a portable music player first introduced in 2005, uses a technology called iRoamer to provide users with a portable Internet radio connection. Providing access to streaming media content (e.g. radio, music) via Wi-Fi internet access points, InFusion allows users to tune into any internet available radio station without the need of a PC. The InFusion player also includes the ability to record streaming content, removable storage to provide a multi-format MP3 player, and an FM receiver. The product finished in the top three products of the "Audio to go" category at the 2005 International Consumer Electronics Show. (http://www.greyinnovation.com/Newssection/InFusion.htm; http://www.torianwireless.com/products/InFusionSpecSheet.pdf)

5. Please provide your best estimate of the number of people who today listen to wireless internet radio while traveling in an automobile.

Currently, Sirius does not have any information regarding the number of people who listen to wireless internet radio while traveling in an automobile.

6. When evaluating the impact of the entry of new competition in evaluating the competitive effects of a merger, in order for the new competition to be considered competitively significant for the purposes of antitrust analysis, it must be "timely" – that is, likely to be accomplished within two years. This principle is stated in the Department of Justice/Federal Trade Commission <u>Horizontal Merger Guidelines</u>, section 3.2 ("the agency

will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact") and also the March 2006 Justice Department/FTC Commentary to the Horizontal Merger Guidelines.

(a) Has Sirius argued, or does it plan to argue, that the Justice Department should not follow this two year time frame in analyzing the competitive effects of new entry with respect to the Sirius/XM merger? If so, please cite the legal authority on which Sirius intends to rely.

Sirius' and XM's arguments about why this merger does not result in anticompetitive effects do not rest on entry outside a two-year period. The alternatives to satellite radio such as terrestrial radio, HD radio, internet radio, MP3 players, and audio programming through mobile phones are already in the market today.

As a point of antitrust policy, entry after the two year period plays a part in the competitive effects analysis of the merger. The prospect of entry outside the two-year period could deter anti-competitive conduct during the initial time period because anticompetitive conduct, by making higher profits available and/or because of the customer dissatisfaction that would be caused, would further encourage the entry of the future product. This effect could serve to constrain market power today and if so, it should not be ignored by the agency, nor is it in fact ignored. In recent DOJ testimony before the Antitrust Modernization Commission, DOJ noted there is "flexibility" with the two-year period, and in certain cases, "entry occurring beyond two years might nonetheless effectively deter or counteract the adverse competitive effects of the proposed merger, and we have been and are willing to consider this in appropriate cases." (Statement of James J. O'Connell on Behalf of the United States Department of Justice, Antitrust Modernization Commission, November 8, 2005).

(b) Does Sirius contend that there are reasons unique to the market affected by this merger so that entry by new forms of competition which is likely to occur more than two years after the Sirius/XM merger is competitively significant? If so, please explain why.

As noted in our response to (a) of this question, the alternatives to satellite radio such as terrestrial radio, HD radio, internet radio, MP3 players, and audio programming through mobile phones are already in the market today and Sirius is not relying on competition outside the two-year period to prove that anticompetitive effects will not occur.