

Congress of the United States

Washington, D.C. 20515

07-57

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JUN 18 2007

Federal Communications Commission
Office of the Secretary

June 18, 2007

The Honorable Alberto R. Gonzales
United States Department of Justice
Robert F. Kennedy Building
950 Constitution Avenue, NW
Washington, DC 20530

The Honorable Kevin J. Martin
Chairman, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Deborah Platt Majoras
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Attorney General Gonzales, Chairman Martin and Chairman Majoras:

We are writing to express our concerns regarding a potential merger between Sirius Satellite Radio and XM Satellite Radio -- the nation's only two satellite radio providers. On its face, we believe that sanctioning the marriage of the only competitors in the satellite radio market would create a monopoly which would be devastating to consumers.

The FCC demonstrated sound reasoning in its initial decision to license satellite radio operations.¹ The FCC stated: "Our goal is to create as competitive a market structure as possible..." Indeed, the FCC specifically agreed with outside parties -- *including Sirius* -- that there should be "more than one satellite DARS license awarded. Licensing at least two providers will help ensure that subscription rates are competitive as well as provide for a diversity of voices." Further to the point, the FCC stated: "Even after DARS licenses are granted, *one licensee will not be permitted to acquire control of the other remaining satellite DARS license.*"

¹ *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 12 FCC Red 5457 (1997).

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The FCC decision has resulted in robust competition and expanded choice for the American consumer, all of which would be undermined by a merger of Sirius and XM. Without the presence of a similarly-situated, direct competitor, a united Sirius/XM would be free to raise consumer prices.

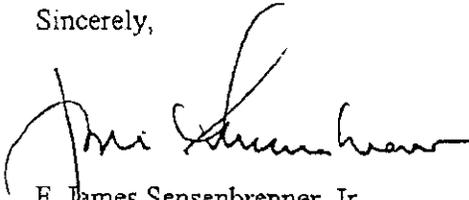
There is scant evidence that a merger would produce any cost savings that a combined Sirius/XM potentially might pass on to subscribers. Both companies are locked into numerous long-term expensive arrangements with their most prized talent and programming. In addition, Sirius and XM would face protracted obstacles to combining their platforms because they use different radio encoding technologies.

Both Sirius and XM have also made expensive missteps as they rushed to beat each other to market. For example, last summer both companies were forced to halt production of certain radio devices that did not comply with the FCC's rules. The satellite radio devices were causing interference so that consumers listening to FM radio service received unwanted, and sometimes indecent, satellite radio programming over FM frequencies, particularly on noncommercial educational and religious channels located at the lower end of the FM band.² In addition, last October both Sirius and XM confessed to a host of mistakes and misrepresentations concerning their terrestrial repeater networks.³ Among other problems, XM revealed that hundreds of its repeaters are operating in violation of their FCC authorizations, and Sirius also disclosed that some of its repeaters vary from their FCC authorizations, including one in Michigan that is actually located 67 miles away from where Sirius had reported to the FCC.

Present circumstances do not warrant the FCC's complete reversal of its conclusions in the satellite radio licensing decision, or the consumer benefits and protections that have resulted from that decision. The FCC has never before allowed the only two competitors in a given market to combine, and we would seriously question an FCC decision to start now.

We call on the Department of Justice, the FCC, and the FTC to protect consumers, and protect competition, by denying this merger.

Sincerely,



F. James Sensenbrenner, Jr.
Member of Congress



Gene Green
Member of Congress

² Greg Levine, *Halt: Karmazin's Sirius Confronts FCC FM Rule*, Forbes.com (July 20, 2006).

³ Olga Kharif, *Shooting Down Satellite Radio?*, BusinessWeek.com (Oct. 30, 2006).

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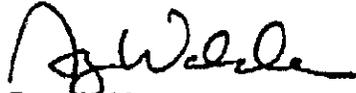
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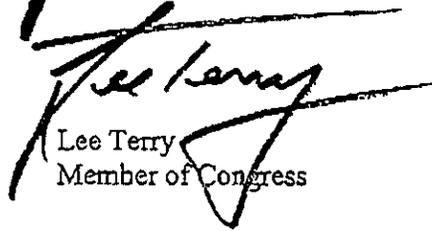
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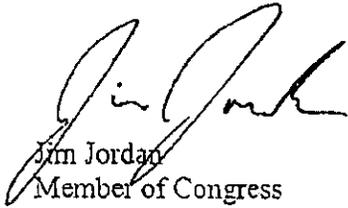
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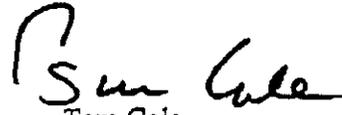
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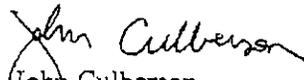
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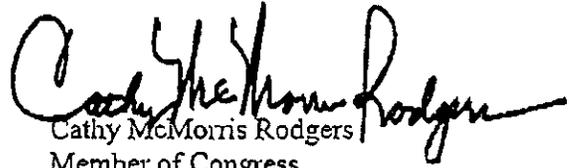
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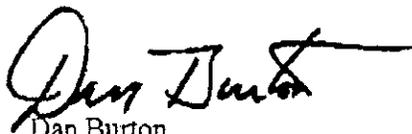
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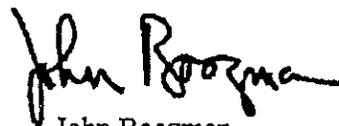
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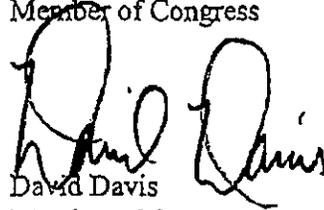
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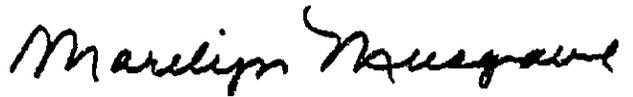
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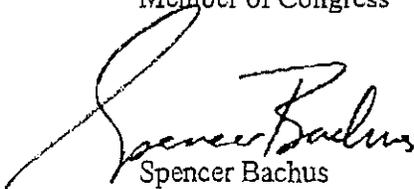
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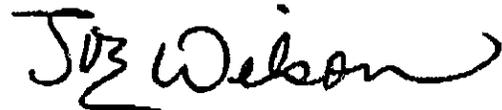
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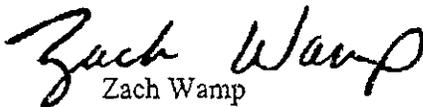
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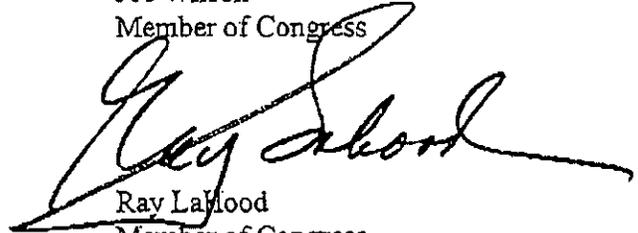
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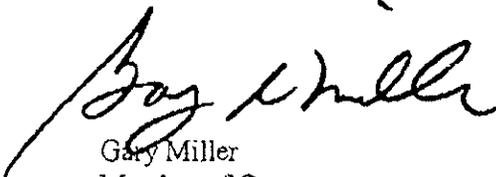
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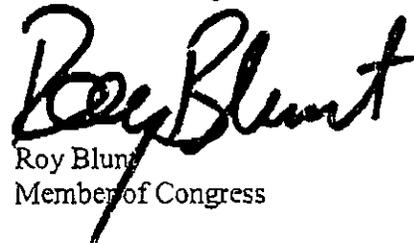
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cc: Thomas O. Barnett, Assistant Attorney General Antitrust, Department of Justice

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