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July 4, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Consolidated Application for Authority to Transfer Control of
XM Radio Inc. and Sirius Satellite Radio Inc.
MB Docket No. 07-57**

Dear Ms. Dortch:

In an attempt to provide clarity on the Interoperable Mandate, I respectfully submit for your consideration the following:

Dual Mode Radios include chip sets that can receive and process both sets of signals (one from Sirius Satellite Radio and Terrestrial Repeaters and one from XM Satellite Radio and Terrestrial Repeaters) simultaneously, therefore giving consumers continuous access to ALL satellite radio channels.

Interoperable Radios include chip sets that can process signals from **either** Sirius Satellite Radio and Terrestrial Repeaters **OR** from XM Satellite Radio and Terrestrial Repeaters, but **NOT BOTH** simultaneously, and would require some type of switching mechanism to move between one service provider to the other (ie: switching from AM to FM – you can only access AM channels when you are switched to the AM mode and you can only access FM channels when you are switched to the FM mode). I have been told this could be achieved via a firmware update from the satellites to the receivers.

It is important for the Commission to understand the details of these definitions as they are at the heart of the arguments being raised by parties that oppose the merger.

In a recently submitted *Engineering Statement Prepared on Behalf of the National Association of Broadcasters*, it is suggested that satellite radio companies cannot be trusted as they have failed to meet the F.C.C. mandated interoperable obligations. It is also suggested that the companies will not be able to deliver on their promises to provide additional and diverse channels (ie: multi-cultural, multi-lingual and/or educational programming). With the current hierarchical compression, they argue that it is not possible to **add** any meaningful programming without degradation of sound quality. The argument is that the companies will not have the spectrum and/or channels available and that additional content and channels would have to be added on a one-for-one basis; meaning, as one channel is added one channel must be removed.

With all due respect to the N.A.B. and Mr. Dennis Wallace (the preparer of said report), I believe they are being misinformed and/or disingenuous. In speaking with Mr. Wallace, and discussing the conclusion of his report, he confirmed to me that current production receivers **ARE** capable of receiving **EITHER** service from XM Satellite Radio **OR** Sirius Satellite Radio, but not both simultaneously. I ask you to please review the conclusion portion of the *Engineering Statement* dated March 16, 2007:

Conclusions:

*It is not possible for the current production satellite receivers to **simultaneously** (emphasis added) receive both the XM and Sirius signals. In order for consumers to **simultaneously** (emphasis added) receive the signals of both providers, they would need **new** (emphasis added) interoperable radios or need to purchase two separate current production receivers. A merger of XM and Sirius would not change the technical parameters or implementations of their respective SDARS systems. Consumers would still not be able to receive the signals of both SDARS providers without buying a **new** (emphasis added) interoperable radio, or by using two radios simultaneously, one for Sirius, and one for XM. Progress on the design and implementation of a **new** (emphasis added) unified and interoperable radio has been slow and still has not yielded any **commercially** (emphasis added) available receivers. The joint venture of XM and Sirius has been ongoing for over seven years and still has not produced the interoperable radio as required by FCC Rules. This fact may indicate the complexities of design and costs are difficult challenges to resolve. The FCC rules*

9 Ibid.

I agree with the conclusion as it is factually correct, however, I ask the Commission to please note the use of qualifying words (ie: **simultaneously, new, commercially**) and read the above again without the qualifying words which have been placed to mislead and confuse this issue. I hope the Commission can see through this rather transparent attempt to obscure the truth: interoperable radios do exist as is supported by the March 14, 2005 letter authored by Patrick L. Donnelly of Sirius Satellite Radio and William Bailey of XM Satellite Radio where they jointly “reconfirm their compliance with Section 25.114(a)(3)(ii) of the Commissions rules by including interoperable radios in their respective system design”. The *Engineering Statement* seems to conveniently avoid any reference to the companies’ reconfirmation of their compliance with the Interoperable Mandate.

I believe Sirius and XM have contributed to the confusion surrounding the capabilities of current receivers on the market. In their letter of March 14, 2005, Sirius and XM state that they “*are optimistic that, at a minimum, a prototype for **this type** (emphasis added) of interoperable radio (ie: a receiver using a common antenna, a common RF Tuner, and two baseband modules, one for XM and one for Sirius).* I ask the Commission to notice that they are qualifying which type of interoperable radio they reference.

On July 2, 2007, Mel Karmazin, in an exclusive interview with TWICE stated:

***Karmazin** : The opportunity exists for us to **commercially** (emphasis added) market an interoperable radio. Right now we have developed it. There's one in my office right now, which is an interoperable radio, which is a receiver that in essence has an XM component and a Sirius component sort of Velcro-ed together. So we developed that, and one of the things that we have the opportunity to do is to market it into retail stores as an interoperable radio, one (NASDAQ:ROIA) that would be priced attractively and be able to get the consumer both services. A radio that gets the best of both services is sort of attractive and again enables the two companies to not water each other down but to have a stronger service while competing with all of these other technologies.*

I ask the Commission to please note the use of the qualifying word, **commercially**, and read the above again without the qualifying word. I would argue there is no need to use the word “**commercially**” other than to confuse the issue. It is my opinion that interoperable radios have already been “marketed” through O.E.M. channels without the consumer’s knowledge and

that these receivers could not be “commercially” marketed due to the following reasons:

- the companies have not agreed to enable the interoperability function (via a firmware update)
- the F.C.C. has failed to enforce the mandate to require the companies to do so
- the companies may not have the proper certification from the F.C.C. to do so
- and due to the exclusive and exclusionary contracts with the O.E.M.’s by Sirius and XM

The following excerpt is quoted from Interoperable Technologies, LLC which is the joint venture owned by Sirius and XM:

*It is acknowledged that SIRIUS, XM and their manufacturing partners **already** (emphasis added) produce receivers that permit end users to access all Satellite Digital Audio Radio systems in compliance with FCC **interoperability** (emphasis added) obligations. Furthermore, there currently is no assurance that the XM or Sirius manufacturing partners will build **dual-mode** (emphasis added) radios, that they will be cost competitive, or that any significant market for **dual-mode** (emphasis added) radios will develop. Even so, Interoperable Technologies stands to develop the opportunity for **dual-mode** (emphasis added) satellite radio technology.*

It is my opinion that this reconfirms my position of interoperable radios being manufactured but not yet being made available “commercially” to the public. Please note after they acknowledge “*that SIRIUS, XM and their manufacturing partners **already** (emphasis added) produce receivers that permit end users to access all Satellite Digital Audio Radio systems...*” they seem to contradict themselves by saying “*Furthermore, there currently is no assurance that the XM or Sirius manufacturing partners will build **dual-mode** (emphasis added) radios... or that any significant market for **dual-mode** (emphasis added) radios will develop.*” As you can see from the prior definitions of “Interoperable” and “Dual Mode”, they are not one and the same.

Based on the aforementioned observations, it is apparent that the F.C.C. must provide clarity on the lack of enforcement, compliance and implementation of their Interoperable Mandate. The Media Bureau and the International Bureau are unsure whether or not the companies are in compliance or in violation of the Interoperable

Mandate. The Bureaus have forwarded my Petition for Declaratory Ruling to the Enforcement Bureau for review as to the companies' status of compliance. It troubles me that in the middle of a major transaction the public is being asked to comment on a proceeding rife with confusion even at the Regulatory level.

Respectfully ,

Michael Hartleib

CC:

The Honorable Chairman Kevin J Martin

The Honorable Michael Copps

The Honorable Jonathan Adelstein

The Honorable Deborah Taylor Tate

The Honorable Robert McDowell

Thomas O. Barnett