

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of** )  
**Petition for Declaratory Ruling** )  
**By Michael Hartleib** ) **MB Docket No. 07-57**  
**RE: FCC Rule 47** )  
**CFR Sec. 25.144(a)(3)(ii)** )

**PETITION FOR DECLARATORY RULING  
TO CLARIFY THE LACK OF ENFORCEMENT AND IMPLEMENTATION  
OF THE INTEROPERABLE MANDATE  
FCC Rule 47 CFR Sec. 25.144(a)(3)(ii)**

**Identification of Party**

Petitioner is **Michael Hartleib**, on his behalf and on behalf of satellite radio consumers and/or shareholders.

**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

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Michael Hartleib respectfully petitions the Commission for a declaratory ruling to clarify the lack of enforcement and implementation of the interoperable mandate FCC Rule 47 CFR Sec. 25.144(a)(3)(ii) requiring the receiver designs to be capable of receiving ALL channels allocated by the FCC for the satellite digital audio radio services (SDARS).

**Identification of Party**

Petitioner is **Michael Hartleib**, on his behalf and on behalf of satellite radio consumers and/or shareholders.

His Mailing Address is:

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## Discussion

The Petitioner argues that the FCC has failed the consumer by not enforcing the interoperable mandate and for allowing both satellite companies to make excuses as to why they have been unable to comply. It has been nearly 10 years since the FCC has granted both licenses; it is unconscionable that this has been allowed to go on for such a prolonged period of time. It appears as though the letter from Thomas S. Tcyz of the International Bureau Satellite Division, dated January 28, 2005 to Sirius and XM (File Nos: IB Docket No. 95-91; SAT-MOD-20040212-00017) was an attempt to resolve the issue by offering a compromise; instead of having a unified standard, you required receiver designs to be capable of receiving all SDARS signals and to be certified. As of the date of this letter, the Petitioner has been told no such certification exists. Also, as per the footnotes of the January 28, 2005 letter, it appears there were citations issued for the failure to comply.

The Petitioner has confirmed information that leads him to believe many of the radios in service today are capable of receiving "either/or" service and signals, but not both simultaneously. The Petitioner has also been told that could be done via a firmware update and/or flash of the receiver. Please note legal definitions obtained from the patent infringement suit (Sirius vs. XM):

*Interoperable Radio" shall mean a radio that, at a minimum, (a) receives and processes the audio portion of both the Sirius Radio System signal and the XM Radio System signal, either as a result of an Interoperable Chipset contained in the unit itself or as a result of an Interoperable Chipset contained in an outboard location which interfaces directly with the unit, and (b) which is capable of providing the user interface for both Sirius Radio System broadcasts and XM Radio System broadcasts, including displaying the artist and title information transmitted as part of such broadcasts, in each case, without the consumer purchasing additional hardware or software.*

*"Interoperability Technology" shall mean the technology, including the technology which is jointly funded and developed by Sirius and XM pursuant to this Agreement or owned and/or licensed by either party, which is required to design, develop and/or manufacture an Interoperable Radio, as well as any enhancements and modifications jointly funded and developed for such technology pursuant to this Agreement (including the industry standards jointly developed by the parties pursuant to Section 3.03), but shall not include Non-core Technology.*

*"Single Mode Radio" shall mean a radio that (a) receives and processes the Sirius Radio System signal or the XM Radio System signal, but not both, and (b) which is capable of providing the user interface for either Sirius Radio System broadcasts or XM Radio System broadcasts, but not both.*

*h) XM and Sirius shall each use commercially reasonable efforts to design and develop Interoperable Radios that are backward compatible with then existing Single Mode Radios.*

The Petitioner alleges interoperable radio and dual mode radio are not the same. The companies frequently interchange these terms to confuse the issue and qualify their responses. As stated in the Engineering Statement prepared on behalf of The National Association of Broadcasters, “It is not possible for the current production satellite receivers to simultaneously receive both XM and Sirius signals”.<sup>1</sup> Interoperable Radio or Interoperable Chip sets can receive and process signals from one or the other service but not both “simultaneously”. Dual Mode Radio can receive and process both signals simultaneously.

In a joint response from Sirius and XM Radio dated March 14, 2005, the companies “reconfirm their compliance with Section 25.144(a)(3)(ii) of the Commission’s rules by including interoperable radios in their respective system designs”.

It is the Petitioner’s opinion that both companies have been less than forthright regarding the interoperability issue and have done their best to confuse this issue. Both companies have argued that there has been minimal demand for a dual mode radio and that the OEM’s have expressed little interest. The fact of the matter is it was their exclusive OEM deals that limited such demand. A consumer’s choice in satellite radio should not be determined by which make or model of vehicle the consumer chooses to purchase; nor is it reasonable to expect that consumers would know the terms and conditions of exclusive content deals which creates yet another problem. Example: On January 1, 2007, NASCAR fans who previously purchased XM radio for NASCAR coverage were forced to purchase new equipment and switch services to enable them to continue their NASCAR coverage (via Sirius). Had the interoperable mandate been enforced, consumers would not be in this position. The lack of enforcement and compliance creates a situation where the consumer is bounced back and forth, thus resulting in a ping-pong effect. This is not consumer friendly.

These issues have directly contributed to the situation we now find ourselves in today. Shareholders have lost billions of dollars as these two companies continue to battle over exclusive content. When the Petitioner (and many others) invested in the sector, the Petitioner knew that an interoperable device would even the playing field, and subsequently the company with the most compelling content would “win the battle”; shareholders would be rewarded, and consumers would have the choice the mandate was supposed to grant them. Unfortunately, the interoperable mandate has yet to be enforced.

It is the understanding of the Petitioner that the role of the FCC is to protect the interest of consumers. The intent of the mandate was clear: consumers were to be given a choice and “so the consumer could switch services with no additional hardware purchases”.<sup>2</sup> The way things are now consumers are being locked out of dashboards and are not able to choose the service or exclusive content they would prefer. Had the mandate been implemented, Sirius shareholders may not be in the position of having to spend nearly \$5 billion to acquire their competitor. The Commission is now forced to make a decision regarding the proposed merger.

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<sup>1</sup> See “An Engineering Statement Prepared on Behalf of the National Association of Broadcasters” dated March 16, 2007 (pg 8).

<sup>2</sup> See “Satellite Radio Tech World” article dated Monday April 30, 2007

The Petitioner is in favor of the merger; provided there are minimal or no restrictions on the combined company. Given the current situation with all of the exclusive deals, the Petitioner does not see any other solution. If the merger is not allowed, the Commission must enforce the mandate for the interoperable device which could have severe consequences for the company with the least compelling content. Without a merger, consumers could end up with a single satellite service provider by default.

Not only was there a mandate for the interoperable device but there was also a settlement between Sirius and XM on their patent infringement case in 2000. In that settlement stipulation, they agreed to develop and implement the interoperable device that was required. Attached is a copy of their February 16, 2000 *Press Release* that specifically addresses these issues.

### Conclusion

Based on the foregoing, **Michael Hartleib** respectfully asks the Commission to explain the lack of enforcement, certification and implementation of the interoperable mandate. As there is direct impact on Satellite radio consumers, the outcome of the Petition for Declaratory Ruling should be determined **apart from and prior to consideration of the pending merger.**

The Petitioner also asks that the Commission follow through with the enforcement of their mandate and force the companies to immediately disclose to the public and their shareholders the availability of an interoperable radio which has existed for several years.

The Petitioner-also asks the FCC to:

- Provide clarity on the multiple terms they use to describe different, but similar, devices (ie: “dual mode”, “interoperable device”, “interoperable radio”, “interoperable technology”, etc.)<sup>3</sup>
- Require companies to explain how they would provide “catastrophic back up” if the receivers are not currently capable of receiving “either/or” services.<sup>4</sup>

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<sup>3</sup> “It is acknowledged that SIRIUS, XM and their manufacturing partners already produce receivers that permit end users to access all Satellite Digital Audio Radio systems in compliance with FCC interoperability obligations. Furthermore, there currently is no assurance that the XM or Sirius manufacturing partners will build dual-mode radios, that they will be cost competitive, or that any significant market for dual-mode radios will develop. Even so, Interoperable Technologies stands to develop the opportunity for dual-mode satellite radio technology.” (Source: Select Satellite Interoperable Technologies, LLC)

<sup>4</sup> Section 14.02. of the JOINT DEVELOPMENT AGREEMENT: “Catastrophic Loss Backup. XM and Sirius shall negotiate in good faith with respect to an agreement to provide service to the other's subscribers in the event of a catastrophic failure of the XM Radio System or the Sirius Radio System.”

- Please remember, as per the March 14, 2005 letter to Thomas S. Tyez, Chief of Satellite Division, International Bureau, XM and Sirius jointly “reconfirmed their compliance” therefore, current receivers are capable of receiving “either/or” service but not both simultaneously. The Petitioner asks that the FCC require the companies to stop qualifying which type of interoperable radio they are describing and disclose ALL types (ie: a receiver using a common antenna, a common RF tuner, one baseband module, 2 baseband module, or any other derivative thereof) and to stop qualifying their response to the FCC with specific and misleading and/or contradictory responses.<sup>5</sup>
- Require both companies to disclose any and all citations, pending and/or filed due to lack of compliance and/or certification regarding the interoperable mandate.

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<sup>5</sup> “a receiver using a common antenna, a common RF tuner, and two baseband modules, one for XM and one for Sirius” (source: March 14, 2005 letter from Sirius and XM to Mr. Thomas S. Tyez of the FCC).

PRESS RELEASE

For Immediate Release

Sirius Radio and XM Radio Form Alliance to Develop  
Unified Standard for Satellite Radios

New York, NY and Washington, DC -- February 16, 2000 -- Sirius Satellite Radio (NASDAQ: SIRI) and XM Satellite Radio (NASDAQ: XMSR) today announced an agreement to develop a unified standard for satellite radios.

The standard is expected to accelerate growth of the satellite radio category by enabling consumers to purchase one radio capable of receiving both companies' broadcasts. XM Radio and Sirius will jointly fund development of the technology and work together to proliferate the new standard by creating a service mark for satellite radio. As part of the agreement, each company will contribute its intellectual property to the initiative and have agreed to resolve any pending patent litigation.

"This standard is good news both for consumers and for the category," said David Margolese, Sirius Chairman and CEO, and High Panero, XM President and CEO, in a joint statement. "This will allow for reduced subscriber acquisition costs, more satellite radios in the marketplace, and a simplified choice for consumers."

The unified standard will represent a second generation of satellite radios. At the time of the commercial launches of XM Radio and Sirius, consumers will be able to purchase radios capable of receiving one of the two companies' broadcasts. These radios are already being developed by leading electronics and automotive manufacturers. XM and Sirius will work with their existing automobile and radio manufacturing partners to integrate the new standard under the terms of their existing agreements. All future agreements with automakers and radio partners will specify the new satellite radio standard.

XM Radio and Sirius are each building a digital satellite radio service for consumers, offering up to 100 channels of audio entertainment for a monthly subscription fee of \$9.95. For more information about the companies, visit XM Satellite Radio at [www.xmradio.com](http://www.xmradio.com) and Sirius Satellite Radio at

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[www.siriusradio.com](http://www.siriusradio.com).  
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Any statements that express, or involve discussions as to, expectations, beliefs, plans, objectives, assumptions, future events or performance with respect to Sirius Satellite Radio Inc. or XM Satellite Radio Inc. are not historical facts and may be forward-looking and, accordingly, such statements involve estimates, assumptions and uncertainties which could cause actual results to differ materially from those expressed in the forward-looking statements. Accordingly, any such statements are qualified in their entirety by reference to the factors discussed, as the case may be, in XM Satellite Radio Inc.'s registration statement on Form S-1 (File No. 333-93529) filed with the Securities and Exchange Commission or Sirius Satellite Radio Inc.'s Annual Report on Form 10-K for the year ended December 31, 1998, filed under the company's former name, CD Radio Inc. Among the key factors that have a direct bearing on the companies' results of operations are the potential risk of delay in implementing the companies' business plans; increased costs of construction and launch of necessary satellites; dependence on satellite construction and launch contractors; dependence on third-party technology partners; risk of launch failure; unproven market and unproven applications of existing technology; unavailability of satellite radio receivers; and the companies' need for additional financing.

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For more information, please call:

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Respectfully submitted,

Dated: June 24, 2007

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