

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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|--|---|----------------------------------|
| In the Matter of |) | |
| |) | |
| XM Satellite Radio Holdings Inc., |) | File Nos. SAT-T/C-20070320-00054 |
| <i>Transferor</i> |) | SAT-T/C-20070320-00053 |
| |) | SES-T/C-20070320-00380 |
| And |) | SES-T/C-20070320-00379 |
| |) | 0002948781 |
| Sirius Satellite Radio Inc., |) | 004-EX-TC-2007 |
| <i>Transferee</i> |) | |
| |) | |
| Consolidated Application for Authority |) | Docket No. MB 07-57 |
| to |) | |
| Transfer Control of XM Radio Inc. and |) | |
| Sirius Satellite Radio Inc. |) | |

**COMMENTS ON CONSOLIDATED APPLICATION FOR AUTHORITY
TO TRANSFER CONTROL**

New ICO Satellite Services G.P. (“ICO”) submits these comments in response to the request for Commission approval of the proposed transfer of control of the licenses held by Sirius Satellite Radio Inc. (“Sirius”), XM Satellite Radio Holdings Inc. (“XM”) and their subsidiaries (collectively, “the Merger Parties” and, if merged, the “Merged Entity”), pursuant to a merger agreement between applicants XM and Sirius.¹

ICO is a next-generation satellite communications company based in Reston, Virginia. ICO is developing an advanced hybrid system, combining

¹ FCC Public Notice, *Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. Seek Approval To Transfer Control of FCC Authorizations And Licenses*, DA 07-2417 (June 8, 2007).

both satellite and terrestrial communications capabilities, in order to offer wireless voice, data, video, and Internet services on mobile and portable devices.

ICO takes no position on the merits of the proposed merger at this time. However, should the Commission deem that a merger is in the public interest, ICO urges the Commission to ensure that any approval of the merger is subject to conditions to safeguard the ability of potential competitors to enter the markets in which the Merged Entity would operate. The Merger Parties argue that there is enough competition to support the proposed merger because “new devices and services emerge every day.”² The ability of other entities to compete with the Merged Entity through new devices or services, however, could be thwarted or impeded by existing or future contractual arrangements that inhibit competition. This includes, for example, exclusive agreements with automobile manufacturers. The Commission should therefore ensure the potential for competition with the Merged Entity (if the merger is approved) by prohibiting the Merged Entity from maintaining or entering into agreements that would have the effect of limiting the ability of other entities to provide competitive products or services.

Respectfully submitted,

NEW ICO SATELLITE SERVICES
G.P.

² Sirius and XM Consolidated Application for Authority to Transfer Control, at 23 (February 19, 2007).

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