Comments of

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On

Applications of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings, Inc.
for Consent to Transfer Control
MB Docket No. 07-57

Submitted to the

Federal Communications Commission

July 9, 2007

In accordance with the Public Notice issued by the Commission on June 8, 2007 we respectfully submit these comments on the applications of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. for consent to transfer control of licenses in connection with their proposed merger. We believe that the proposed merger is consistent with the public interest, and the Commission should grant the applications.

Sirius and XM won their licenses in an FCC auction 10 years ago and began offering service in 2002 and 2001, respectively. Growth has been rapid, with combined subscribership nearing 14 million last year. But despite this growth, the firms have struggled financially. The cost of launching and maintaining satellites and other infrastructure is high; as is the cost of programming (Howard Stern alone costs Sirius some $100 million per year.) Neither XM nor Sirius has ever made a profit – Sirius lost $1.1 billion and XM $719 million, in 2006 alone.

By merging their operations, XM and Sirius hope to improve this financial performance. Among the benefits they foresee: accelerated development of new technologies as research budgets are combined and increased variety of programming due to increased channel capacity. In addition, the firms predict they will save $200-$400 million in costs. Of course, none of these benefits are guaranteed. In dynamic markets, no particular outcome is ever certain. Nor should it be – whether a particular business plan works is best determined by consumers in the marketplace[1]. The Commission's duty is to determine whether a proposed transaction is inconsistent with the public interest. Because of the dynamic competition in the audio entertainment market, there is little or no possibility of such harm from this proposed merger.

This January, the National Association of Broadcasters filed comments in the Commission's Quadrennial Regulatory Review proceeding declaring that "…there can be no reasonable doubt that the current media marketplace is robustly competitive, and indeed exploding at the seams with consumer choices for both delivery mechanisms and content."[2] It was right. Consumers today can choose among terrestrial radio, satellite radio, and – increasingly – Internet-based radio programming Excluding Internet programming, XM and Sirius account for only 3.4 percent of total radio listenership[3]. Moreover, other forms of audio entertainment compete for American ears. In fact, i-Pods and other MP3 devices, which have grown phenomenally in recent years, may be the biggest challenge to radio of any kind.[4]

Critics of the XM-Sirius merger, however, have argued that this competition doesn't count. Satellite radio, it is argued, is so different from these other alternatives that it is really a separate market all to itself. But is the satellite radio business really that distinct? To consumers, after all, radio is radio. They don't care how it gets there. Certainly, there are differences – terrestrial radio has more local programming and is free, while satellite radio is more specialized and is subscription based. But these differences do not

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[1] For this reason, the Commission should refrain from imposing any conditions on the proposed merger imposing price or service guarantees.

[2] Reply Comments of the National Association of Broadcasters "2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996", , MB Docket No. 06- 121, at 34 (filed Jan. 16, 2007).

[3] "Arbitron: Satellite Radio Accounts For 3.4% Of All Radio Listening," RadioInk.com (http://www.radioink.com/HeadlineEntry.asp?hid=137022&pt=archive).

[4] See, Remarks of David Rehr, National Association of Broadcasters, National Press Club, October 4, 2006, p. 5 ("Who are our newer competitors?. On the radio side, we have satellite radio, Internet radio, iPods, other MP3 players, cell phones and others. How will we compete?").

mean that the two industry segments operate in separate markets. Instead, they are simply alternatives within the market from which consumers may choose. Such differences are not at all unusual in a healthy marketplace. In fact, rather than preclude competition between the segments, they foster it.

Critics have also argued that if competition does exist between satellite radio and broadcast radio, it is on a "one-way" basis. Specifically, they have argued that XM and Sirius compete with traditional radio in *local* markets, but that traditional radio doesn't compete with satellite for *national* programming. However, while broadcasters transmit signals locally, national programming – through networks and syndication – is commonplace. Critics also argue that competition is uneven because satellite radio is subscription-based and – unlike broadcasters whose ad-revenue depends upon ratings – doesn't lose money unless a customer drops his or her subscription. But does satellite radio really have a lock on consumers? A radio subscription isn't like an electric bill; few consumers see it as a "must-have". If radio broadcasters provide enough of what they want, subscribers will leave.

The merger of XM and Sirius will not harm the public interest. Satellite radio is just one of an increasing array of audio entertainment choices available to Americans. Rather, the transaction offers a number of potential benefits to consumers, and increases competition. The Commission should not block this merger.