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EXECUTIVE SUMMARY

The National Association of Black Owned Broadcasters, Inc. (“NABOB”) submits this Petition to Deny the Application of XM Satellite Radio Holdings Inc. (“XM”) and Sirius Satellite Radio Inc. (“Sirius”) (collectively the “Applicants”), in which the Applicants propose to merge and create a monopoly company which would operate the only satellite digital radio service (“Satellite DARS”) in the United States (the “Application”). For the reasons set forth herein, NABOB submits that the Application must be dismissed or denied.

In order to grant this Application, the Commission must determine that the merger complies with the Communications Act, and the Commission’s Rules, and that the merger will serve the public interest. The Applicants have the burden of demonstrating that the Commission should grant the Application, and they have failed to meet that burden.

The Commission determined when it licensed only two Satellite DARS systems to serve the entire United States that it would not permit the two licensees to later merge to form a single monopoly Satellite DARS licensee. The Applicants have failed to demonstrate that the Commission should reverse its prior determination to grant the Application. The Application is analogous to the application filed by EchoStar and DirecTV to create a monopoly in the direct broadcast satellite service, and, therefore, it should be denied for the same reasons cited by the Commission in the *EchoStar/DirecTV* case.

The Applicants have failed to comply with Section 25.144(a)(3)(ii) of the Commission’s Rules, which required them to include in their systems a receiver that would permit end users to access all licensed Satellite DARS systems. The Applicants also have failed to demonstrate any significant public interest benefit that will result from grant of the Application. Because the Applicants have not developed an interoperable receiver, they will not be able to eliminate much of

their duplicative programming and will not be able to provide any significant new programming services.

The Commission has been directed by the court in the *Prometheus* case to consider the impact of its ownership rule changes on minority ownership, which requires the Commission to consider the impact of a grant of the Application on minority ownership. If granted, the merger would provide a negative precedent and impetus for further consolidation in the broadcast industry. Such consolidation has already resulted in a significant loss of minority ownership in the broadcast industry.

Finally, the imposition of conditions on a grant of the Application would be inadequate to protect competition and consumers. The Applicants have failed to comply with the Commission's rules in the past, and these failures raise significant doubt about the Applicants' compliance with any conditions that the Commission may impose on a merger.

For the foregoing reasons the Application should be dismissed or denied.

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

In the Matter of

Applications for Consent to the
Transfer of Control of Licenses

XM Satellite Radio Holdings Inc.,
Transferor,

to

Sirius Satellite Radio Inc.,
Transferee

MB Docket No. 07-57

To: The Commission

**PETITION TO DENY
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.**

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits this Petition to Deny the above-captioned application of XM Satellite Radio Holdings Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius") (collectively the "Applicants"), in which the applicants propose to merge and create a monopoly company operating the only satellite digital radio service ("Satellite DARS") in the United States (the "Application"). For the reasons set forth below, NABOB submits that the Application must be dismissed or denied.

I. INTRODUCTION

NABOB is the only trade association representing the interests of the 240 African American owned radio stations and 10 African American owned television stations in the United States.

Founded in 1976, one of NABOB's principal objectives has been to promote minority ownership of broadcast facilities. In furtherance of that objective, NABOB has opposed the relaxation of the Commission's ownership rules because that relaxation has fostered and encouraged the excessive consolidation of the ownership of broadcast facilities by a small group of large corporations and has pushed numerous minority owned companies out of the industry. In recent years, NABOB has submitted numerous comments to the Commission proposing the retention of rules that preclude excessive consolidation of ownership, and proposing rule and policy changes that would promote minority ownership of broadcast facilities.¹

The Application submitted by XM and Sirius is another egregious example of the type of industry consolidation that NABOB has opposed for years. XM and Sirius are not content to have a duopoly in the Satellite DARS industry, an industry in which those two companies control the entire spectrum allocated by the Commission for that service. Instead, they have come before the Commission to obtain a Commission sanctioned monopoly in that industry. The creation of a government sanctioned monopoly is rarely, if ever, in the public interest. XM and Sirius have fallen far short of demonstrating that the creation of a government sanctioned monopoly is appropriate in this case.

As NABOB shall demonstrate below, a grant of the Application: (1) would violate the Commission's *Satellite DARS Report and Order*, (2) should be denied based upon the reasoning of the EchoStar/DirecTV case, and (3) would create a negative impetus and precedent for further

¹ See, e.g., *In the Matter of 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*, 21 FCC Rcd 8834 (2006) ("2006 Ownership Proceeding"), NABOB Comments filed October 23, 2006 ("NABOB 2006 Comments"); *In the Matter of 2002 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*, 17 FCC Rcd 18503 ("2002 Ownership Proceeding"), NABOB Comments filed January 2, 2003 (NABOB 2003 Comments"). NABOB has filed numerous other reply comments, supplemental comments and petitions for reconsideration in these proceedings that will not be cited here.

consolidation in the broadcast industry. In addition, by not using interoperable receivers, XM and Sirius have violated Section 25.144(a)(3)(ii) of the Commission Rules, and the Commission is currently investigating XM and Sirius for numerous other rule violations. Collectively, these rule violations raise questions about whether the Applicants could be relied upon to comply with any conditions that might be placed upon such a merger.

II. THE PUBLIC INTEREST WILL NOT BE SERVED BY A GRANT OF THE APPLICATION

The Commission's review of the Application is governed by Section 310(d) of the Communications Act, which obligates the Commission to determine that "the public interest, convenience, and necessity will be served" by a grant of the Application.² In making this determination, the Commission considers the following factors:

1. Whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules;
2. Whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes; and
3. Whether the potential public interest harms of the proposed transaction outweigh the potential public interest benefits.³

Applying these criteria to the instant Application clearly demonstrates that: (1) the transaction does not comply with the Commission's rules and policies, (2) the transaction would result in public interest harms by substantially frustrating and impairing the pro-competition and consumer protection objectives of the Act, and (3) the potential public interest harms of the proposed transaction substantially outweigh any potential public interest benefits. An analysis of these three

² 47 U.S.C. § 310(d).

³ *EchoStar Communications Corp.*, 17 FCC Rcd 20559, 20574, par. 25 (2002) ("*EchoStar/DirectTV*").

factors necessarily requires a detailed analysis of the transaction under the antitrust laws. Such a detailed analysis is included in the Comments filed in this proceeding by the American Antitrust Institute.⁴ NABOB adopts and concurs in the analysis and conclusions reached in those Comments and will not address the antitrust issues separately in this Petition. NABOB will direct its comments in this Petition to the Communications Act issues raised by this Application.

A. The Proposed Merger Violates the Requirements Established By the Commission When It Created the Satellite Digital Radio Service

The Commission announced the policies and rules that would apply to the satellite digital radio service in the *Satellite DARS Report & Order*.⁵ In the *Satellite DARS Report & Order*, the Commission wrestled with the conflicting objectives of providing each provider enough bandwidth to create a viable national radio service, while at the same time assuring that the service had a competitive market structure.⁶ The Commission concluded that the correct balance would be achieved by dividing the 25 MHz of spectrum allocated to the Satellite DARS service between two licensees.⁷ The Commission stated: “Licensing at least two service providers will help ensure that subscription rates are competitive as well as provide for a diversity of program voices.”⁸

The Commission specifically anticipated the problem placed before it by the instant application, and rejected the idea that Satellite DARS should ever become a monopoly. The Commission stated, “Even after the DARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining Satellite DARS license. This prohibition on transfer of

⁴ Comments of the American Antitrust Institute, dated June 5, 2007.

⁵ *Establishing Rules and Policies for the Digital Audio Radio Satellite Service*, 12 FCC Rcd 5754, 5760-61, par. 13 (1997) (“*Satellite DARS Report & Order*”).

⁶ *Id.* at 5786, par. 77.

⁷ *Id.*

⁸ *Id.*

control will help assure sufficient continuing competition in the provision of Satellite DARS service.”⁹

The Commission foresaw the possibility that the two Satellite DARS operators might seek to create the monopoly being proposed in the Application before the Commission, and the Commission determined that such an application would not be granted. The Applicants have ignored this explicit instruction and are seeking to obtain such a monopoly in spite of the Commission’s direction. The Applicants have the heavy burden of demonstrating that the Commission should reverse its earlier determination and grant them the monopoly they seek. The applicants have failed to offer any compelling reasons to overcome that burden.

The proposal before the Commission is directly analogous to the application acted upon by the Commission when DirecTV and EchoStar sought to merge.¹⁰ In that case, DirecTV and EchoStar were the only two licensed providers of direct broadcast satellite (“DBS”) service. In denying that application, the Commission stated:

We are concerned that ownership of all satellites in the full-CONUS orbital location by one entity . . . could likely undermine our goals of increased and fair competition in the provision of DBS service. We are also concerned that the claimed benefits of efficient and expeditious use of spectrum are outweighed by the potential harms associated with the concentration of ownership of key DBS spectrum licenses in a single licensee.¹¹

The Application before the Commission would similarly undermine the Commission’s goals of increased and fair competition by concentrating ownership of all Satellite DARS licenses in a single licensee. In the *EchoStar/DirecTV* case, the Commission went on to state:

⁹ *Id.* at 5823, par. 170.

¹⁰ *EchoStar/DirecTV*, 17 FCC Rcd at 20559.

¹¹ *Id.* at 20562. par. 3

[T]he record indicates that substantial potential public interest harms may result from the transaction The record before us irrefutably demonstrates that the proposed transaction would eliminate a current viable competitor from every market in the country Perhaps most significantly, each [company] holds licenses for approximately half the total orbital slots that allow broadcast to the entire continental United States – licenses they seek in this proceeding to transfer to a single entity [C]ase law under the antitrust laws is generally quite hostile to proposed mergers that would have these impacts on the competitive structure, because such mergers are likely to increase the incentive and ability to engage in anticompetitive conduct . . .

The Applicants have cited no example where we have permitted a single commercial spectrum licensee to hold the entire available spectrum allocated to a particular service¹²

The facts before the Commission in the instant case could not be more similar. A grant of the Application before the Commission would increase the incentives for, and the ability of, the Applicants to engage in anticompetitive conduct. And, as in the *EchoStar/DirectTV* case, the Applicants have cited no precedent where the Commission has permitted a single commercial licensee to hold the entire available spectrum allocated to a service. The reasoning of the Commission in the *EchoStar/DirectTV* case requires a denial of the Application before the Commission for the same reasons.

B. The Asserted Public Interest Benefits Do Not Outweigh the Public Interest Harms That Would Result From a Grant of the Application

In order to overcome the Commission’s previous determination that the instant transaction would not be permitted, the Applicants must demonstrate that some compelling countervailing public interest benefits will accrue to the American public. The Applicants have failed to demonstrate any such public interest benefits.

First, it must be noted that the Applicants have not asserted that the merger is necessary because one or both of the Applicants cannot survive financially without the merger. Sirius CEO Mel Karmazin testified before Congress that, if the merger is not permitted, Sirius “will be a very

¹² *EchoStar/DirectTV* at 20661-62, pars. 275-277.

healthy company. So this is not about survival.”¹³ It is doubtful that a claim that one or both of the companies is failing would be an adequate justification for permitting the creation of a monopoly, but, given that the Applicants are not asserting such a justification, the issue before the Commission becomes a much simpler one to consider.

The Applicants’ justification for grant of the merger is that consumers will benefit from the proposed merger.¹⁴ The Applicants assert that the merger “will allow the combined company to offer consumers programming choices on a more a la carte basis at lower prices.”¹⁵ However, the applicants have not explained why the merger is needed to allow this change in programming offerings. The Applicants acknowledge that, after the merger, consumers will still need two receivers to receive the programming of both services and this dual receiver problem will not be resolved in the near future.¹⁶ In fact, Mr. Karmizan testified before the U. S. House of Representatives that the merged company will not have a single receiver that can receive all of the programming of both services before 2017 or 2018.¹⁷ Thus, the most useful potential consumer benefit is a distant possibility.

¹³ “Testimony of Mel Karmazin Before the Telecommunications and Internet Subcommittee of the House Energy and Commerce Committee, *Hearing on the Digital Future of the United States: Part II, The Future of Radio*, March 7, 2007 (“Karmazin March 7, 2007 Congressional Testimony”). Mr. Karmazin’s statements cited herein were made during questioning by members of Congress at the hearing. An archived video webcast of the hearing, with Mr. Karmazin’s statements, can be viewed at: http://energycommerce.house.gov/cmte_mtg/110-ti_hrg.030707.future_radio.shtml. See also, *Q4 and Full Year 2006 XM Satellite Radio Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, February 26, 2007 (XM CEO Hugh Panero stated, “Should [the merger] prove impossible, we are well positioned to be a strong and enduring leader in the audio entertainment marketplace.”)

¹⁴ “Consolidated Application for Authority to Transfer Control” filed March 20, 2007 (“Consolidated Application”) at 11-12.

¹⁵ *Id.*

¹⁶ Karmazin March 7, 2007 Congressional Testimony.

¹⁷ *Id.*

Indeed, the Applicants' acknowledgment that consumers will need two receivers for the next decade highlights the failure of the licensees to comply with Section 25.144(a)(3)(ii) of the Commission's Rules.¹⁸ In Section 25.1449a(3)(ii), the Commission required each of the two Satellite DARS licensees to "[c]ertify that its Satellite DARS system includes a receiver that will permit end users to access all licensed Satellite DARS systems that are operational or under construction." The Applicants concede that neither of them has ever complied with this rule.¹⁹ This flagrant disregard of the requirement to have an interoperable receiver should cause the Commission to question the likelihood that the Applicants will comply with any conditions the Commission might impose upon the grant of the instant application.

In addition, the failure of the Applicants to offer consumers an interoperable receiver undermines their assertion that they will provide diverse programming. The lack of an interoperable receiver will limit the ability of the Applicants to provide new program offerings. The Applicants cannot place all of their best programming on one system because doing so would deprive the customers on the other system of receiving the most popular programming. In fact, any significant change in the programming on either system risks a loss of customers for that system. The current programming is duplicative because such programming is popular among subscribers on both systems. Thus, the Applicants will have to provide significantly duplicative programming on both systems for the foreseeable future. Both Applicants are currently using all of their channel capacity, and the merger will not enable them to free up much channel capacity without risking loss of subscribers. Therefore, the assertion that the merger will provide the opportunity for diverse programming is unpersuasive.

¹⁸ 47 C.F.R. § 25.144(a)(3)(ii).

¹⁹ Karmazin March 7, 2007 Congressional Testimony.

III. THE PROPOSED MERGER WOULD RESULT IN A FURTHER CONSOLIDATION OF OWNERSHIP IN THE BROADCAST INDUSTRY AND A REDUCTION IN DIVERSE VIEWPOINTS

As stated above, NABOB has long opposed the further consolidation of ownership in the broadcast industry. The proposed merger would exacerbate many of the negative impacts that earlier media consolidation has already created.

In its Comments filed in the Commission's 2003 Ownership Proceeding, NABOB demonstrated that it is the consolidation of broadcast station ownership which has caused the decrease in minority ownership since 1996.²⁰ In 2003, there were 14% fewer minority owned broadcast companies than in 1996.²¹ NABOB showed that changes in the Commission's ownership rules, to allow further concentration of media ownership, would cause further erosion in minority ownership. In its Petition for Reconsideration of the Commission's Report and Order in the 2003 Ownership Proceeding, NABOB demonstrated that the Commission had given no consideration to the impact on minority ownership in its decision to relax its ownership rules.²²

In remanding the Commission's decision, the Third Circuit Court of Appeals cited the Commission's failure to consider the impact on minority ownership as a factor in the decision to remand the case.²³ With respect to the Commission's elimination of the Failed Station Solicitation Rule ("FSSR"), the Court stated:

By failing to mention anything about the effect this change would have on potential station owners, the Commission has not provided a 'reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.' [citations omitted] Furthermore, while the Commission had promised in 1999 to

²⁰ NABOB 2003 Comments at 6-10.

²¹ *Id.* at 6.

²² NABOB Petition for Reconsideration filed September 4, 2003, responding to the Commission's Report and Order in the 2003 Ownership Proceeding.

²³ *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d. 372 (3rd Cir. 2004) (the "*Prometheus* case").

expand opportunities for minorities and women to enter the broadcast industry,' [citation omitted] the FSSR remained its only policy specifically aimed at fostering minority television station ownership. In repealing the FSSR without any discussion of the effect of its decision on minority television station ownership (and without ever acknowledging the decline in minority station ownership notwithstanding the FSSR) the Commission 'entirely failed to consider an important aspect of the problem, and this amounts to arbitrary and capricious rulemaking.²⁴

The Court considered the Commission's unfulfilled promise in 1999 to expand opportunities for minorities and women, and recognized a pattern of neglect with respect to the Commission's attitude toward expanding opportunities for minorities and women. The Court added that the Commission deferred consideration of the Minority Media Telecommunications Council's proposals for advancing minority and disadvantaged business ownership of broadcast facilities. The Court then directed the Commission to address these proposals as part of the remand.²⁵

After the *Prometheus* case was remanded to the Commission, the Commission issued a Further Notice of Proposed Rule Making to address the issues directed it to consider on remand.²⁶ NABOB filed Comments in that proceeding in which it continued to press the Commission not to further relax its ownership rules.²⁷ NABOB pointed out the continuing erosion of minority broadcast ownership caused by the 1996 Telecommunications Act rule changes and the Commission's interpretations of that Act have allowed excessive consolidation. NABOB proposed the corrective actions that the Commission should take on remand to comply with the Third Circuit Court of Appeal's directive to consider the impact of its decisions on minority ownership.²⁸

²⁴ 373 F.3d at 421-422.

²⁵ *Id.* at 422, n. 59. Indeed, the proposals of NABOB and Rainbow/PUSH were also ignored by the Commission. *2003 Order*, 18 FCC Rcd 13620 at par. 47-50.

²⁶ The 2006 Ownership Proceeding

²⁷ NABOB 2006 Comments at 2-14.

²⁸ NABOB 2006 Comments at 2-7.

The Application before the Commission is another instance, as were the ownership proceedings, where the Commission must consider the impact of any action it takes on opportunities for minorities. When NABOB filed its Comments in the 2003 Ownership proceeding, the number of minority owned broadcast licensees had decreased by 14% since 1996. That decrease has now reached 30%.

The Commission structured the Satellite DARS service for only two licensees. Neither of those two licenses went to minority controlled companies. It was suggested at the time that minority entrepreneurs might gain opportunities to program some of the channels on the Satellite DARS systems. However, Sirius has provided no channels to African American controlled companies to program, and XM has provided only one, a channel programmed by Radio One. Thus, out of the 300 channels being programmed on Satellite DARS, African American controlled companies program only 0.33%.

Moreover, given the limited access that the separate Applicants have provided to African American owned companies, it is likely that the merged monopoly company would provide no new opportunities for African American and other minority owned companies to program channels. This would then leave one merged monopoly company with the ability to control virtually all of the viewpoints on all of the Satellite DARS spectrum. There could be no viewpoint diversity in the entire Satellite DARS industry. Such a result runs counter to everything the Commission has ever said with respect to promoting viewpoint diversity.²⁹

The Applicants' assertion that the merged monopoly will provide programming diversity is also questionable. The promise of satellite radio was its unique ability to reach underserved audiences, for example: Programming for: African Americans focused on politics and civil rights, Mainstream African American religious denominations, Caribbean Americans (with programming about them, not just their music), second generation Africans in America, Native Americans; and

²⁹ See, e.g., *2002 Ownership Proceeding, NPRM*, 17 FCC Rcd 18503, 18518 at par 41.

speakers of languages other than English or Spanish. The record reflects that the two Satellite DARS companies have failed miserably to serve these constituencies. We have today one Black talk channel (XM 169, programmed by Radio One), no mainstream African American religious denominations with channels, no channel serving the needs of Caribbean Americans, no channels serving the needs of Africans in America, no channel for Native Americans, and three channels in languages other than English and Spanish (Sirius 183, the Korean Channel, Sirius 93 (French music) and XM 245 (French music). Out of 300 channels, this is not a record of significant programming for the underserved. As competing companies, the Applicants have failed to seek out niche markets to improve their competitive position against each other. There is nothing in their record that would suggest that they will do so as a monopoly.

IV. A GRANT OF THIS APPLICATION WOULD BE AN IMPETUS AND PRECEDENT FOR EVEN MORE CONSOLIDATION

The consolidation of the broadcast industry over the past decade has caused a huge loss of viewpoint. A grant of the instant application would be a precedent that licensees would seize upon to justify even further excessive consolidation in the broadcast industry. The Applicants cite the development of internet radio, MP3 players and other new technologies as justification to allow them to have monopoly in Satellite DARS.³⁰ In the ownership proceedings, proponents of further deregulation have pointed to the same technological changes to justify a further relaxation of the Commission's ownership rules.³¹ Thus a grant of the instant application would be used by the proponents of further deregulation as justification for their position. The Commission's answer to the Applicants, and the proponents of further deregulation, should be that the Commission has an

³⁰ Consolidated Application at 23-36.

³¹ See, e.g., *2002 Ownership Proceeding Report and Order*, 18 FCC Rcd at 13730-13742, pars. 287-315.

obligation to promote viewpoint diversity. In order to meet that obligation, the Commission must assure that there are diverse voices deciding what programming will be delivered to the American people over all of the airwaves that the Commission licenses. That cannot be accomplished through the creation of a government authorized monopoly over the Satellite DARS spectrum. It also cannot be accomplished if the Commission allows a handful of large companies to control the terrestrial broadcast system. Monopoly and oligopoly raise the same problems for viewpoint diversity. Both market situations undermine viewpoint diversity; the difference is only a matter of degree. A grant of the instant application can only make a bad situation worse.

V. IMPOSITION OF CONDITIONS ON THE MERGER WOULD NOT BE AN ADEQUATE MEANS OF PROTECTING COMPETITION OR CONSUMERS

The Applicants suggest that conditions imposed on the merger are an adequate protection for consumers and competitors.³² However, any such conditions would be inadequate. The Applicants record of noncompliance with existing Commission rules provides no confidence that they will abide by any conditions imposed upon the merger.

As pointed out above, each of the Applicants has flagrantly violated Section 25.144(a)(3)(ii) of the Commission's rules which requires that each Satellite DARS system "includes a receiver that will permit end users to access all licensed Satellite DARS systems that are operational or under construction." Each of the Applicants certified ten years ago that it would comply with this rule, but neither has met that commitment. This is a very significant violation on the part of the Applicants. The Commission imposed this requirement to foster competition between the only two licensed DARS operators, and to reduce transaction costs for consumers seeking to switch between the competing providers.³³ If the Applicants failed to provide this important consumer benefit mandated

³² Karmazin March 7, 2007 Congressional Testimony.

³³ *Satellite DARS Report & Order*, 12 FCC Rcd at 5797.

by the Commission ten years ago, what basis could the Commission have for believing that the Applicants will comply with any conditions imposed upon their merged monopoly?

In addition to the very serious failure to develop an interoperable receiver, the Commission is currently investigating each of the Applicants for violations of other Commission rules. Both Applicants are being investigated for violations of the Commission's technical rules in connection with special temporary authority to use terrestrial repeaters.³⁴ Both Applicants are also being investigated for violations of the equipment rules, because their receivers have interfered with reception of terrestrial radio signals and have resulted in "signal bleed" of the Satellite DARS signal into terrestrial receivers.³⁵

VI. CONCLUSION

NABOB has demonstrated that the proposed transaction: (1) is contrary to the Commission's previous determination in the *Satellite DARS Report & Order* barring a merger to create such a monopoly in the Satellite DARS service, (2) would allow the creation of a monopoly that would be a negative precedent and impetus for further consolidation in the broadcast industry, and (3) would provide no countervailing public interest benefit. In addition, the Applicants' history of violation of the Commission's rules demonstrates that the Applicants could not be relied upon to comply with any conditions the Commission might impose on the merger if the Application were granted.

³⁴ See FCC File Nos. SAT-STA-20061002-00114 (XM Radio); SAT-STA-20061013-00122 (Sirius).

³⁵ See "A Mystery Heard on Radio: It's Stern's Show, No Charge," New York Times, January 26, 2007 at A17.

Respectfully submitted,

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July 9, 2007

AFFIDAVIT

I, James L. Winston, serve as Executive Director of the National Association of Black Owned Broadcasters, Inc. ("NABOB"). I have personal knowledge of the facts related to NABOB set forth in the preceding Petition to Deny, and I hereby declare, under penalty of perjury, that the facts contained herein are true and accurate to the best of my knowledge, information and belief.

7/9/07
Date


James L. Winston

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on July 9, 2007, true copies of the foregoing "Petition to Deny" were mailed first class U.S. mail, postage pre-paid to the following:

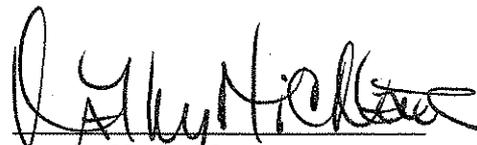
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