

*Bert W. King*

24 Jones Avenue, Greenville, SC 29601

July 12, 2007

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
455 12<sup>th</sup> Street N.W.  
Washington, DC 20005

Re: MB Docket No. 07-57

Dear Ms. Dortch:

I respectfully submit my reply to comments in the matter of the Consolidated Application for Authority to transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc. Specifically, I am replying to the comments of The American Antitrust Institute, Rockwell Collins, Garmin, and the Aircraft Owners and Pilots Association and to the Primosphere motion and petition.

Sincerely,



Bert W. King



## **1. Summary**

1. The comments of The American Antitrust Institution outlay the case against the merger perfectly, and I urge the commission to give these comments careful consideration.
2. The case against the merger is further strengthened by the merger to a monopoly of the satellite-based weather systems (SBWS).
3. Primosphere offers a unique solution to the anticompetitive effects of the merger. The Commission should dismiss Primosphere's current motion but allow it to re-apply for authority to launch and operate satellites for a satellite audio digital audio radio service (SDARS) and to consolidate this application with the Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc. for consideration by the Commission.
4. The Commission should reject all calls for price controls and rule in favor of competition as a means of keeping prices and quality of service in check.

## **2. The American Antitrust Institute**

5. The American Antitrust Institute outlays the case against the merger perfectly in its well-researched comments.
6. The Institute rightly points out that the combination of XM and Sirius is a merger to a monopoly, is not in the public interest, violates the Commission's long standing policies, and "poses significant risk of anticompetitive effects, including higher prices, reduced quality and reduced consumer choice."

7. The most important point is that “To whatever extent satellite radio competes with terrestrial radio and other alternatives, it is clear that XM and Sirius compete more directly with one another.”
8. One aspect not mentioned by the Institute is an important but often forgotten part of the business for satellite-based weather systems (SBWS). There are two commercial providers of this service for pilots, mariners, emergency responders, and outdoor enthusiasts: XM and Sirius.
9. The combination of XM and Sirius is also a merger to a monopoly in the SBWS market.

### **3. Satellite-based Weather Systems (SWBS)**

10. Garmin, Rockwell Collins, and the Aircraft Owners and Pilots Association (AOPA) have all filed comments regarding the merger and SBWS. These three all represent aviation. None of these entities have taken a position against the merger. However, all three have asked the Commission to impose conditions on the merger.
11. In addition, ground and marine packages are offered for boaters, emergency responders, and outdoor enthusiasts.
12. XM partnered with Weather Works, an affiliate and licensee of Barons Services, to provide weather data in 2003<sup>1</sup>. The service is offered on commercial aviation by LiveTV and to others via Garmin and Heads Up Technologies. It is primarily a graphical system.

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<sup>1</sup> [http://xmradio.mediaroom.com/index.php?s=press\\_releases&item=1237](http://xmradio.mediaroom.com/index.php?s=press_releases&item=1237)

XM offers aviation, ground, and mariner packages. The following excerpt from the XM website shows graphically the abilities of the XM weather system<sup>2</sup>:

### XM WX Satellite Weather Products



[AIRMETs \(AIRman's METeological Information\)](#)



[Buoy Data](#)



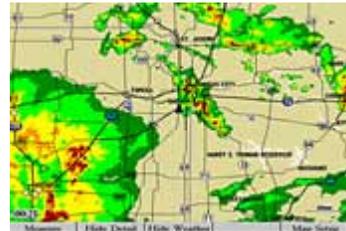
[City Forecasts](#)



[County Warnings](#)



[Echo Tops](#)



[High Resolution NEXRAD](#)



[Hurricane Track](#)



[Lightning](#)



[METARs or Surface Observations](#)



[NWS Marine Zone Forecast](#)



[Precipitation Type \(at surface\)](#)



[Satellite Mosaic](#)

<sup>2</sup> [http://www.xmradio.com/weather/learn\\_about.xmc#proddefs](http://www.xmradio.com/weather/learn_about.xmc#proddefs)



Sea Surface Temperature



Severe Weather Storm Tracks



SIGMETs (SIGNificant METeoroological Information)



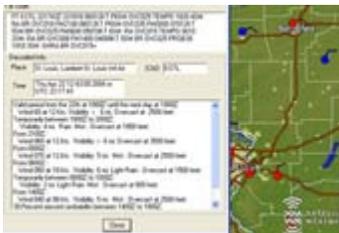
Surface Analysis Weather Maps



Surface Pressure



Surface Wind Speed and Direction



TAFs or NWS Forecasts (Terminal Aerodrome Forecasts)



TFRs (Temporary Flight Restrictions)



Visibility Forecast



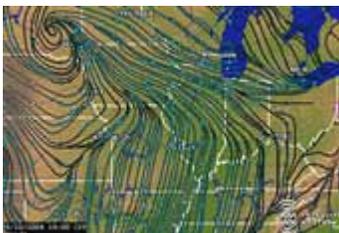
Wave Direction



Wave Height



Wave Period



Winds Aloft (at altitude)

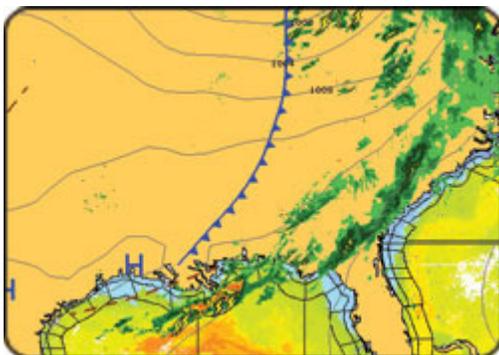


Wind Shear Detection

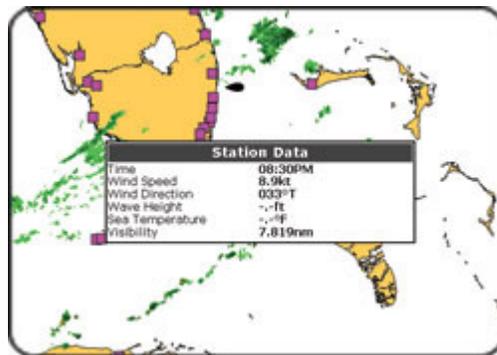
13. One can see why these systems contribute to safety in the skies, on the water, and on the ground.

14. Sirius currently offers only a mariner package but plans to expand into the aviation market and, according to Rockwell Collins, was recently certified. Sirius combined with WSI of the Weather Channel fame for its weather data. Examples of its service taken from the Sirius website are shown below<sup>3</sup>:

- WSI NOWRAD Weather radar
- Lightning strikes
- Buoy reports
- NOAA marine zone forecasts
- Storm tracks, watches and warnings
- Weather, wind and wave forecasts
- High resolution sea surface temperature
- And much more!



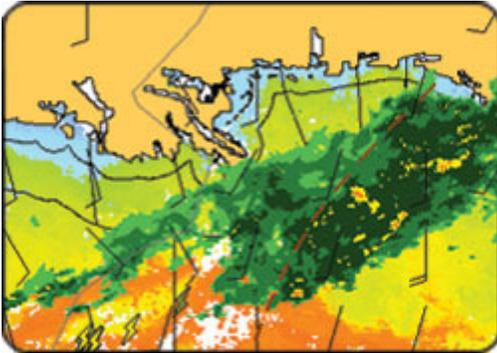
WSI NOWRad® with Lightning Strikes provides nationwide, high-resolution weather radar imagery and the ability to anticipate



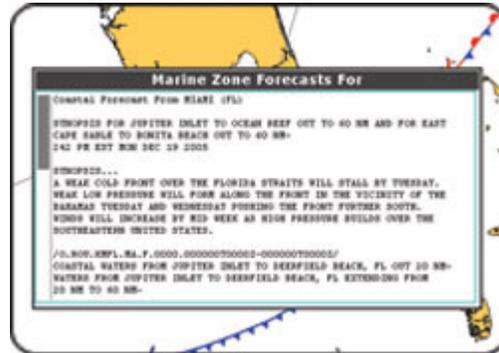
See buoy reports for current conditions on the water.

<sup>3</sup> <http://www.sirius.com/servlet/ContentServer?pagename=Sirius/Page&c=FlexContent&cid=1139320916898>

developing weather conditions.



High-resolution Sea Surface Temperature images help sport fisherman narrow the search for game.



Wind, waves and storm forecasts help you plan a day, a weekend or a week of cruising.

15. According to Garmin's April 26, 2007 comment, it has sold 28,000 units capable of receiving the XM weather service. It has spent over \$4 million to develop and certify the base hardware and software for the XM based system. It is spent at least another \$5 million on aircraft certifications. Obviously, it has a vested interest in the XM service.
16. XM has direct, exclusive licensing agreements with Garmin and Heads Up Technologies, according to the comments of Rockwell Collins filed on July 9, 2007. Although Rockwell Collins has an XM receiver capable of receiving the XM service, XM has refused to enter into a direct licensing agreement with Rockwell Collins. Rockwell Collins is essentially locked out of the market until Sirius has its system commercially available. If Sirius and XM merge, Rockwell may be locked out of the SBWS altogether. Rockwell Collins has a vested interest in competition in order to gain access.
17. The Aircraft Owners and Pilots Association (AOPA) has a vested interest in affordable SBWS. Economically priced service and equipment encourages the proliferation of SBWS and consequently improves safety.

18. Garmin, Rockwell Collins, and the AOPA favor government regulation to offset the anticompetitive effects of the merger in the SBWS market.
19. Garmin believes that the Commission has the mandate to ensure that this merger does not endanger public safety. Therefore, Garmin urges the FCC to mandate the XM system remain in its present form for 20 years.
20. Rockwell Collins believes that the Commission should mandate that both systems continue with no appreciable price for at least 3 years and that there should be no customer discrimination.
21. The AOPA wants the same assurances in the graphical avionics market as the audio based systems; that is no increase in price and guarantees that the equipment will not become obsolete.
22. The Commission has long standing policies of favoring competition over regulation and I encourage the Commission to continue these policies here. There is no better way to address the concerns than by competition. Consequently, the Commission should deny the merger. I urge the Commission to reject all calls for price controls.
23. One has to ask why the combined entity would agree to price controls. The only answer is that the two accepted that the combination would be anticompetitive and would result in a monopoly; therefore, price controls could be used as a remedy.
24. Choice is a public benefit and the a la carte selection of channels is a good thing for subscribers. However, this is not merger specific. Both could do this today without the

merger. Giving the subscriber less for fewer channels is not a public good, nor is it a detriment. It is simply giving the customer what he pays for.

25. Price controls are difficult to enforce. XM and Sirius say that subscribers will be able to continue to receive similar service at the base rate of \$12.95, according to the application. The two say nothing about multi-terms discounts, family plan pricing, activation fees, or rebates, all of which can be manipulated to affect what the subscriber pays. There is nothing in the application that says the family plan will remain at \$6.99 a month or that it will continue to exist at all or that discounted multi-year subscriptions will continue to be available. There are a lot of ways for the merged entity to get around its promises. Competition is the best way to control prices and ensure the quality of service.

#### **4. Primosphere**

26. In its motion filed on July 03, 2007, Primosphere asked that its application to launch and operate satellites for a satellite digital audio radio service (SDARS) be combined with the consolidated application of XM and Sirius.

27. Primosphere is attempting to exploit a legal or procedural loophole to gain access to a satellite radio license. Primosphere withdrew its Application for Review after losing its case in the DC court of appeals. The Commission should summarily dismiss this motion.

28. However, Primosphere offers a unique solution to the anticompetitive effects of the merger in case the Commission is inclined to accept the merger. It is still one of 4 entities eligible to hold a SDARS license.

29. I urge the Commission to allow Primosphere to re-submit an application to start a SDARS service and to consider it concurrently with the present proceedings.
30. There are a number of possible scenarios. Primosphere could simply be granted one of SDARS licenses. Since it will take five years or so to launch and start operations, Primosphere could lease this spectrum back to the combined entity until such time that it was ready to commence operation. This would give XM and Sirius time to consolidate its service into one of the satellite radio bands.
31. Alternatively, Primosphere could be given a portion of the spectrum and satellite rights to begin service almost immediately. However, this would likely result in reduced service to present subscribers and would not allow transition time for XM and Sirius to consolidate their service.
32. Both XM and Sirius have been working on hierarchical modulation (HM) techniques to increase the effective bandwidth by at least 25%. Sirius intends to use this efficiency to broadcast backseat video. XM has not announced plans. A better idea than the above would be to grant Primosphere the HM bandwidth and satellite rights to broadcast it. To make the service more compelling, Primosphere could also be granted the Sirius HM bandwidth.
33. Sirius presently has a monopoly on backseat video. However, the Commission should consider that Sirius and XM have always been direct competitors. XM launched its service with some commercials. Sirius went commercial free on the music channels. XM later went with commercial free music. Sirius charged \$12.95 a month and XM \$9.99. Sirius was able to charge more because it was perceived as having premium

content. XM added premium content and subsequently raised its price to \$12.95. XM announced traffic and weather stations. Sirius soon followed suit. XM started its satellite-based weather system. Sirius soon followed. The point is, that absent of the merger, XM would be likely to follow Sirius into backseat video in order to remain competitive. This merger, if approved, will guarantee that backseat video remains a monopoly of satellite radio.

34. Since Primosphere would have less spectrum available under the current proposal, granting it the backseat video business might be compensation.

35. Primosphere could also mitigate the anticompetitive effects of the SBWS monopoly. Primosphere could be granted the spectrum and rights for one of the services.

36. In the event that the Commission grants Primosphere bandwidth, the Commission should also require and enforce interoperability for all future receivers to ensure that Primosphere has access to the automobile OEM and retail markets.

## **5. Conclusion**

37. I thank the Commission for the opportunity to express my opinions here. I urge the Commission once again to deny the merger because of the anticompetitive effects that it will undoubtedly have.

38. In its consideration, I urge the Commission to regard the comments of The American Antitrust Institute. They have presented a convincing, well research argument against the merger.

39. In the event that the Commission is disposed to grant the merger, please give consideration to Primosphere as a competitor. Satellite radio needs competition. It is clear that XM and Sirius have competed directly with one another and the result has been an ever-expanding content and value to the subscriber.

40. I also urge the Commission not to overlook the importance of the SBWS markets and the safety benefits it provides. This too is in danger of becoming a monopoly. XM is effectively a monopoly there today in the aviation market and has used its market power to exclude suppliers to the detriment of the aviation market. Competition promises to rein in this market power. Please ensure that this market remains competitive.

41. I also urge the Commission to use competitive influence over government regulation. The consumer will more likely continue to reap the benefits.

42. I commend the Commission in its foresight to institute rules to prevent the ownership of both satellite radio licenses by one entity. There is no reason to change this rule, unless there is a clear public benefit. XM and Sirius, as a single entity, apparently intend to broadcast similar content in two different bands for the foreseeable future. It provides no competition and is a horrible inefficient use of the public's resources with no public benefit. Unless XM and Sirius can come up with a plan to rapidly use one of these bands for expanded service, they should not be allowed to keep both bands, in the event that the merger is approved.