Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

July 24, 2007

In the Matter of:	)	
XM Satellite Radio Holdings Inc.,	)	MB Docket No. 07-57
Transferor	)	
	)	
and	)	
	)	
Sirius Satellite Radio Inc.,	)	
Transferee	)	
	)	
	)	
Consolidated Application for Authority	)	
To Transfer Control of XM Radio Inc.	)	
and Sirius Satellite Radio Inc.	)	

RESPONSE OF THE FAMILY RESEARCH COUNCIL

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The Family Research Council ("FRC") submits this response regarding the proposed merger of the two national satellite radio broadcast companies – Sirius and XM. After careful consideration FRC concludes that the merger will serve the public interest. Therefore, we respectfully request that the Federal Communications Commission ("the Commission") approve the merger application while requiring such conditions as are described below.

Background

FRC recognizes that objections to the merger have been lodged by economists, competitors, and public interest groups arguing that the combination of Sirius and XM will reduce competition, lead to higher prices, degrade customer service, and place current Sirius and XM customers at the mercy of a new monopoly company. FRC doubts the validity of such analyses for two reasons – one related to the current condition of the market and the other related to the post-merger conditions that the new Sirius/XM will accept.

First, most Sirius and XM customers listen to the two networks in their cars, and it is the automotive listener who would be most threatened by any anticompetitive power gained by the post-merger Sirius/XM. However, it is clear that a wide array of technologies exist that will lessen the market power that Sirius/XM will have over this class of consumers. The automotive listening environment now includes the ability to play traditional ground-based radio stations, play MP3 files downloaded from home computers, and listen to compact disks. Furthermore, the widespread integration of various portable electronic devices with automobile entertainment is clearly on the way, and the customer will always be able to cancel the Sirius/XM service. "Exit" provides the customer with substantial leverage vis-à-vis Sirius/XM given the variety of media alternatives. With these facts in mind, FRC doubts that the Sirius/XM auto listener will be held hostage by the post-merger company.[1]

Second, the Sirius/XM pledge to expeditiously provide *a la carte* program selection and pricing will allow consumers to reject over-priced channels that the combined Sirius/XM could theoretically force upon them.[2] The *a la carte* option *also* paves the way for another level of competition not seen before in this industry: that is, competition between channels based on the content-based preferences of listeners. Programming that offends the taste or values of listeners will simply be rejected. Consequently, the Sirius/XM merger has the potential to set a precedent that will reshape the manner in which Americans receive entertainment programming.

Merger Principles

The proposed merger's potential to serve the public interest will be greatly enhanced if the Commission's order approving the proposed merger ("Merger Order") advances the following principles:

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[1] Regarding non-automotive Sirius/XM listeners, computer-based internet radio and traditional radio stations provide competition that is widespread and inexpensive.

[2] Two *a la carte* packages were discussed by Sirius and XM executives at a press conference held in Washington, D.C., on July 23, 2007.

First, the Merger Order must require the expeditious, irrevocable movement of the new Sirius/XM to include *a la carte* service and pricing. The Commission should specify clearly defined transition benchmarks which, if not met in a timely manner, will permit the Commission to levy reasonable fines and penalties. The *a la carte* pricing plan must be a permanent feature of the Sirius/XM business model going forward.

Second, the Merger Order must contain an interim plan so that Sirius/XM customers can block vulgar or indecent channels until the full *a la carte* system becomes operational. The cost of each tier should be reduced by the portion of the programming costs attributable to the channels excluded from that tier. Sirius/XM has assured FRC that this is possible. Additionally, the excludable channels must include those like Sirius's Channel 109 ("Out Q") – not merely channels characterized by obscene or indecent language.

Third, the Merger Order's implementation of the new Sirius/XM *a la carte* system must specify an accurate cost accounting methodology. Such an accounting standard must ensure Sirius/XM costumers that they will receive full-value discounts for the channels they choose to block. Variable costs, like those associated with programming, must not be undervalued. Furthermore, we are concerned that exorbitant stock option deals, like the one given to Howard Stern, be properly expensed in this *a la carte* system.[3] Any accounting for such options that attempted to spread such option expenses for Stern over the Sirius or XM network rather than to Stern's channel(s) alone would not be acceptable from our perspective.

Fourth, the Merger Order must contain requirements that each Sirius/XM customer's bill and all Sirius/XM general advertising and promotional materials, including marketing information supplied by the automotive industry to potential purchasers of satellite radio, contain a prominent notice written in plain English presenting the *a la carte* options and explaining them in detail.

In conclusion, FRC supports the Sirius/XM merger as being in the public interest if the FCC Merger Order contains provisions addressing the policy issues raised above. FRC commends Sirius and XM for the important steps they have taken in changing the way Americans purchase broadcast entertainment channels. I am confident that the Commission can guide this process to a successful conclusion.

Tony Perkins
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[3] For example, Reuters reported in January that Stern had recently earned an $83 million bonus as part of a $500 million package. *See* Michele Gershberg (Reuters), "Sirius Gives Howard Stern $83 Million Stock Bonus," *USA Today* (Jan. 12, 2007): < http://www.usatoday.com/money/media/2007-01-09-stern-bonus_x.htm >.