KNOWLEDGE ECOLOGY INTERNATIONAL

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

In the Matter of:

Applications for Consent to the
Transfer of Control of Licenses — MB Docket No. 07-57
XM Satellite Radio Holdings Inc., Transferor,
to Sirius Satellite Radio Inc., Transferee

To: The Commission
Date: July 24, 2007
Re: **KEI Comments on the XM/Sirius Merger**

Knowledge Ecology International (KEI) is a non-profit public interest organization with offices in Washington, DC, London and Geneva. KEI was created in 2006 to support the work earlier carried out by the Consumer Project on Technology (CPTech), an organization that has in the past participated in FCC discussions on media concentration and telecommunications regulation, including mergers on direct broadcast satellite services and the interoperability of information services. Information about KEI is available on the Internet at http://www.keionline.org.

KEI opposes the proposed merger of XM Satellite Radio and Sirius Satellite Radio.

We generally concur with the views set out by Common Cause, Consumer Federation of America, Consumers Union and Free Press, in their July 9, 2007 comments, including their conclusion that:

> This is a merger to monopoly in a distinct product market that should not be allowed. Moreover, the merger does such harm to the competitive fabric of the industry that there can be no pretense that merger conditions could somehow repair the damage. Any offer of short-term price protection for consumers will not compensate for long term pricing abuse, the loss of choice among competitors, or the elimination of competition as the driver of program development and service innovation.

We also concur with the July 9, 2007 submission of the Prometheus Radio Project, U.S. Public Interest Research Group and the Media Access Project, including their conclusion that the merger would be contrary to the public interest, and that allowing for a monopoly provider for satellite radio would lead to greater media consolidation, harm underserved and unserved communities and content providers.

Like many other parties that represent the views and interests of the public and independent content providers, we agree that the satellite radio industry is a distinct market, and that the public interest is not served by the creation of a monopoly.

Our comments will elaborate on the importance of the interoperability of devices that receive satellite radio broadcasts, and unbundling of content.

From the point of view of the public, there is potentially a large benefit from having the ability to use the same device to receive content from the XM and Sirius radio services, as well as a wider range of choices in terms of the bundles of channels subscriptions that one can purchase.

One of the arguments in favor of the merger is that the merger would allow the public to more easily obtain access to content now delivered by the two separate broadcasters. However, since the creation of a monopoly has numerous negative impacts, including those outlined by the parties mentioned above, the public interest is better served by rejecting the monopoly, and taking steps to ensure the availability of interoperable receivers.

As discussed in the July 9, 2007 submission by Common Cause, Consumer Federation of America, Consumers Union and Free Press, the merging parties have not been willing to make interoperable receivers available to the public, because they have sought to avoid the additional inter-service competition. The groups also noted the failure of XM and Sirius to offer pro-competitive or consumer friendly options regarding bundles of channels.[1]

The lack of interoperability and other anti-consumer conduct has undoubtedly made the overall satellite market smaller in terms of subscribers.

Reportedly, in an effort to make the merger more attractive, Sirius and XM have belatedly offered greater choices in terms of unbundled services, if the merger is approved.[2] The FCC should reject this proposal as a rationale to accept the monopoly,

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[1] "Not only are prices high, but also the consumer is offered only large bundles of channels over which they have no choice. Consumer choice and consumer sovereignty are denied. In a product market where the marginal production cost of adding subscribers is almost zero, the bundling strategy is largely anti-consumer." Common Cause, Consumer Federation of America, Consumers Union and Free Press, July 9, 2007, Page 44.

[2] REUTERS, XM, Sirius Promise Low Cost Packages, More Choice, in NTTimes.Com, July 23, 2007. Stephen Labaton, "Radio Plan: A Price Shift for Satellite," New York Times, July 24, 2007. According to Labaton:

> Hoping to persuade skeptical regulators to approve their proposed merger, the nation's two satellite radio companies announced detailed plans Monday to give consumers the ability to choose the programs that make up their subscription package. The companies, Sirius Satellite Radio and XM Satellite Radio, said they would offer two "a la carte" pricing plans. One would enable consumers to purchase the best of the premium services now offered by each company — like professional football, baseball and basketball — for a monthly fee of $14.99. For $6.99 a month, the other would enable listeners to choose 50 of the nonpremium channels, with each

for several reasons. First, the proposed pricing plans, like other proposals on temporary price ceilings, do not represent a long-term sustainable guarantee for consumers. These are more like short-term PR stunts, designed to obscure the fact that the merger will create a monopoly, and over the longer term, monopoly pricing will harm consumers. Second, the proposal provides yet more evidence that the two companies can provide better ways to address consumer concerns regarding access to content, than to create a monopoly.

The success of the Internet and the many services delivered over the Internet is closely tied to the development of interoperable services, and open technology standards, and enormous choice. The FCC should first reject the creation of a monopoly, and then focus its attention on the availability of interoperable receivers, and policies that ensure that consumers can benefit from greater unbundling of content. The FCC should be creating more, rather than less, competition.

Respectfully submitted,
July 24, 2007

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additional channel costing 25 cents. To subscribe to the "à la carte" plans, consumers would have to buy new radios. The companies said they would also let listeners select "family friendly" and other rate plans and would give subscribers a $1 a month credit if they asked to have stations with adult content blocked. Consumers who do not want to change their existing service would not see any changes in their current monthly bill of $12.95.