

Blue Sky Services

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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 )

Blue Sky Services  
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Reply Comment

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In it's JOINT OPPOSITION TO PETITION TO DENY AND REPLY COMMENTS OF SIRIUS SATELLITE RADIO IN. AND X SATELLITE RADIO HOLDINGS INC. filed on July 24<sup>th</sup>, 2007. The applicants noted on page 95-96 the following:

*"In its implementing rules for the satellite radio service, the FCC required all satellite radio licensees "to develop designs" for an interoperable radio and to certify that they have done so. Consistent with the requirement, Sirius' license contains a condition that Sirius certify "that its final receiver design is interoperable" with respect to XM's final receiver design, and XM's license contains virtually the same condition.*

*As the companies explained in the Application, they have fully complied with the Commissions requirement by certifying to the agency that they completed a design for an interoperable radio. In fact, their compliance has now been a matter of public record for over two years.*

*Opponents' various attempts to obfuscate the requirement or misrepresent the companies' interpretation of the requirement" are unavailing. The NAB cites no support for the proposition that "receiver interoperability was to occur prior to the initiation of satellite radio service, and there is none. Likewise, opponents have been unable to point to any Commission requirement that the companies produce, distribute market or sell inter-operable receivers. And, despite the NAB's assertion, neither XM nor Sirius has offered an inconsistent interpretation of the requirement."*

Yet as late as a Securities and Exchange Filing 10-K Annual report submitted on March 13th, 2004. XM Satellite radios “interpretation” of requirement appears as noted:

*Unified Standard for Satellite Radio.* On February 16, 2000, we signed an agreement with Sirius Radio to develop a unified standard for satellite radios enabling consumers to purchase one radio capable of receiving both Sirius Radio’s and our services. The technology relating to this unified standard is being jointly developed and funded by the two companies, who will share ownership of it. ***This unified standard is intended to meet FCC rules requiring interoperability with both licensed satellite radio systems.***

As part of the agreement, each company has licensed to the other its intellectual property relating to the unified standard and its system.

We anticipate that it will take several years to develop radios capable of receiving both services. Currently, consumers are able to purchase radios capable of receiving only one service.

**Both companies expect to work with their automobile and radio manufacturing partners to integrate “the new standard”. Future agreements with automakers and radio manufacturers will specify the unified satellite radio standard.**

The Applicant made it clear that the “Unified Standard for Satellite Radio” included the “enabling of consumers to purchase one radio capable of receiving both Sirius and XM services”, and that this “Unified Standard” would be specified to the automakers and radio manufactures.

Likewise the Sirius Satellite Securities and Exchange Filing 10-K Annual report submitted on March 16th, 2004. Sirius Satellite radios “interpretation” of requirement appears as noted:

On February 16, 2000, we signed an agreement with XM Radio, the holder of the other FCC license to provide a satellite-based digital audio radio service, *to develop a unified standard for satellite radios to enable consumers to purchase one radio capable of receiving both SIRIUS and XM Radio's services.* We expect **“the unified standard”** to detail the technology to be employed by manufacturers of such dual-mode radios. The technology relating to this unified standard is being developed, funded and will be owned jointly by the two companies. ***This unified standard is also intended to meet FCC rules that require interoperability of both licensed satellite radio systems.*** We anticipate that it will still take several years to develop radios capable of receiving both services.

As part of this joint development agreement, we and XM Radio have licensed our intellectual property to one another.

***Both companies expect to work with their automakers and radio manufacturers to integrate the new unified standard and have agreed that future agreements with automakers and radio manufacturers will specify the unified satellite radio standard.*** Furthermore, we and XM Radio have agreed that future agreements with retail and automotive distribution partners and content providers will be on a non-exclusive basis.

Three years ago, both Applicants stated that future agreements with automobile OEM’s would specify the “new unified interoperable standard”. Now, three years later, both Applicants claim the rules do not require them to provide a commercially available interoperable radio at all. Yet seem to imply that it was the intent of the Commission to sponsor some type of Technology/Science Project. In addition, the Applicants seem baffled as to how anyone could interpret their interpretation of the law, any other way.

Do the Applicants present a track record of compliance with their previous commitments regarding Agency Rules and Regulations as written or implied? Is it in the “public interest” for the Agency to abandon facilities based competition in lieu of increased regulation? How can the public interest be assured, if increased regulation agreed upon today by the Applicants, becomes tomorrows battlefield of semantics, interpretation, and procedures? Does the Agency have the legal resources to actively regulate the Applicants self-interpretation of new regulations as they have with previous commitments? Will their interpretations be at odds directly or indirectly with the law or the “spirit of the law”? Do the Applicants meet the Citizenship Test as allowed in Sec. 308(b)?