

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**NATIONAL ASSOCIATION OF BROADCASTERS'  
REPLY TO OPPOSITION**

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REPLY TO OPPOSITION**

The National Association of Broadcasters (“NAB”), by its attorneys and pursuant to sections 1.45(c), 1.939, and 25.154(d) of the Commission’s Rules,<sup>1</sup> hereby files this Reply to the Opposition filed by Sirius Satellite Radio, Inc. (“Sirius”) and XM Radio Holdings Inc. (“XM”) (collectively “Applicants”).<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

At least since the breakup of AT&T more than two decades ago, the policy of the United States Government has been to rely on competition rather than regulated monopolies to promote the interests of consumers. Permitting the only two satellite digital audio radio service (“satellite DARS”) licensees to merge would be an unprecedented and indefensible departure from that

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<sup>1</sup> 47 C.F.R. §§ 1.45(c), 1.939(f), 25.154(d); *see also id.* § 1.4(g).

<sup>2</sup> Joint Opposition to Petitions to Deny and Reply Comments of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. (July 24, 2007) (“Opposition”).

core policy. Recognizing this hurdle, Applicants insist that the Commission must disregard controlling Commission and antitrust precedent and apply a new standard tailored to their allegedly “unique” circumstances.<sup>3</sup> Applicants have also promised to provide a whole new array of programming and pricing options if the Commission approves their merger. The fact that Applicants have been compelled to take such actions constitutes a tacit admission that the merger would have serious anti-competitive consequences relating to satellite radio pricing and programming and would not pass the Commission’s merger review under current law.

Applicants are now, at this late date, attempting to bolster their arguments with a voluminous Opposition containing multiple exhibits and a substantial amount of redacted material that NAB has not yet had the opportunity to review.<sup>4</sup> Consequently, and in light of the short time period provided for this Reply under the relevant rules,<sup>5</sup> NAB will focus this pleading on a few of the most obvious problems that are readily apparent from the redacted Opposition and will reserve its right to submit more detailed analysis in *ex parte* presentations once it has had an opportunity to study these materials in more detail. To that end, NAB calls the Commission’s attention to the following:

- Applicants do not effectively refute that Commission spectrum policy precludes one entity from holding all of the available satellite DARS spectrum.
- Applicants insist that the Commission disregard controlling Commission and antitrust precedent.

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<sup>3</sup> See Opposition at 56-57.

<sup>4</sup> NAB notes that, pursuant to the Protective Order, *Sirius Satellite Radio Inc.*, DA 07-3135 (rel. July 11, 2007), it requested un-redacted copies of the Opposition on the morning of July 26, 2007. NAB expects to receive the un-redacted copies today.

<sup>5</sup> See *supra* at n.1.

- Applicants’ new pricing and programming promises are not more choices at lower prices as they claim.
- Applicants do not dispute that they cannot be relied on to meet their promises.

## **II. APPLICANTS DO NOT EFFECTIVELY REFUTE THAT COMMISSION SPECTRUM POLICY PROHIBITS ONE ENTITY FROM HOLDING ALL OF THE AVAILABLE SATELLITE DARS SPECTRUM**

A threshold question in any merger proceeding before the Commission is whether the merger would violate Commission rules or policies, including the Commission’s “well-established federal pro-competitive spectrum policies.”<sup>6</sup> The proposed merger of XM and Sirius would give the combined entity control of 100 percent of all available satellite DARS spectrum in direct violation of these clear Commission spectrum policies. Such a result would be unprecedented in Commission history.<sup>7</sup>

Applicants’ response to this conclusion is nothing more than misdirection. In a single paragraph buried near the end of its Opposition, Applicants argue in essence that the Commission’s long-standing policy against spectrum monopolies is not relevant. Applicants assert that the Commission’s pro-competitive spectrum policies apply only when the Commission “first authorizes a service in a frequency band” and do not apply to mergers or other actions that may come after the initial authorization.<sup>8</sup>

Applicants are wrong. The Commission expressly relied on its anti-spectrum monopoly policies as part of its rationale for not approving the proposed EchoStar/DirecTV merger. In that case, the Commission found:

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<sup>6</sup> Petition to Deny of the National Association of Broadcasters at 4-5 (July 9, 2007) (“NAB Petition to Deny”), quoting *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations)*, 17 FCC Rcd 20559, 20586 ¶ 57 (2002) (“*EchoStar/DirecTV Merger Order*”).

<sup>7</sup> See *id.* at 9-11; National Association of Broadcasters’ Response to Comments at 4-6 (July 24, 2007).

<sup>8</sup> See Opposition at 90-91.

[T]he proposed transaction is not consistent with this Commission's long-standing spectrum policies, the bulk of which have been aimed at creating competitive spectrum-based communications services within and among the voice, video and data services markets. We have consistently found that from the perspective of spectrum policy, the public interest is better served by the existence of a diversity of service providers wherever possible. Today we have such diversity in the DBS service, and Applicants have presented no compelling reason, from a spectrum policy standpoint, why we should approve license transfers that would effectively replace facilities-based intramodal DBS competition with a monopoly. . . .<sup>9</sup>

In short, just as in the EchoStar/DirectTV merger, "Applicants have cited no example where we have permitted a single commercial spectrum licensee to hold the entire available spectrum allocated to a particular service."<sup>10</sup> Thus, the fact that the proposed merger would grant a single entity control of all satellite DARS spectrum is by itself a threshold basis for denying the merger.<sup>11</sup>

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<sup>9</sup> *EchoStar/DirectTV Merger Order*, 17 FCC Rcd at 20603 ¶ 96. Applicants dispute the relevance of the *EchoStar/DirectTV Merger Order*, arguing that the Commission cannot decide merger cases solely on historical precedent, but must take into account current market realities. Opposition at 91-92. In point of fact, however, to the extent there are differences between the market realities of the Direct Broadcast Satellite ("DBS") market and the satellite DARS market, they weigh against this proposed merger, not in favor of it. Even if the two DBS licensees had been permitted to merge into a DBS monopoly, the merged entity would arguably still have faced direct competition from a comparable multi-channel video programming competitor – cable. See *EchoStar/DirectTV Merger Order*, 17 FCC Rcd at 20609 ¶ 115 ("Based on the evidence in the record, we find that the relevant product market that includes DBS is no broader than the entire MVPD market, but may well be narrower. In fact, the relevant product market may be limited to just DBS services . . . . We refer to hearing the question whether the relevant product market is in fact all MVPD services, or is a smaller subset of MVPD services. For example, the administrative law judge will consider whether the relevant product market includes services provided by all cable companies, or just by high-capacity cable systems, or neither.") In contrast, if the two satellite DARS licensees are permitted to merge, there is no comparable multi-channel audio programming competitor. As such, it is entirely appropriate for the Commission to be guided by the concerns it expressed in the *EchoStar/DirectTV Merger Order* in analyzing the proposed satellite DARS merger.

<sup>10</sup> *EchoStar/DirectTV Merger Order*, 17 FCC Rcd at 20662 ¶ 277. See also *2000 Biennial Regulatory Review; Spectrum Aggregation Limits for Commercial Mobile Radio Services*, 16 FCC Rcd 22668, 22696 ¶ 55 (2002) ("[W]e have an obligation to ensure that acquisitions of CMRS spectrum do not have anticompetitive effects that render them contrary to the public interest.").

<sup>11</sup> An additional threshold issue is that the merger should be dismissed for violation of the satellite DARS anti-merger rule. See NAB Petition to Deny at 6-8. This will be discussed in greater detail in response to the Commission's Notice of Proposed Rulemaking, FCC 07-119 (rel. June 27, 2007).

### III. APPLICANTS INSIST THAT THE COMMISSION DISREGARD CONTROLLING COMMISSION AND ANTITRUST PRECEDENT

In reviewing proposed mergers, the Commission focuses on the so-called SSNIP price constraint test in defining the relevant product and geographic markets.<sup>12</sup> The Commission confirmed the relevance of the SSNIP test, one that it has relied upon for more than a decade, in its March 26, 2007 order approving the AT&T/BellSouth merger.<sup>13</sup> On the same day, the Commission reiterated the central role of the SSNIP test in addressing the very same satellite DARS market at issue in this case.<sup>14</sup>

Apparently recognizing that applying the SSNIP test leads to the conclusion that satellite DARS is the relevant product market, a conclusion that would effectively kill the merger, Applicants have chosen to try and kill the standard instead. In a transparently result-oriented analysis, Applicants assert that the Commission should ignore the SSNIP test because it “simply fail[s] to produce economically meaningful results” in its purportedly “unique” circumstances.<sup>15</sup>

While the Commission may be able to find a way to approve the merger if it ignores prior Commission precedent and its own well-reasoned conclusions, as Applicants suggest, the

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<sup>12</sup> See *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662, 5676 n.85 (2007) (*AT&T/BellSouth Merger Order*) (“A relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a ‘small but significant and nontransitory increase in price.’”) (emphasis added), quoting Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission (Apr. 2, 1992, revised Apr. 8, 1997) §§ 1.11, 1.12 (*DOJ/FTC Guidelines*), also citing *EchoStar/DirecTV Order*, 17 FCC Rcd at 20605-6 ¶ 106. See also *AT&T/BellSouth Merger Order*, 22 FCC Rcd at 5676 n.86 (“A relevant geographic market has been defined ‘as the region where a hypothetical monopolist that is the only producer of the relevant product in the region would profitably impose at least a ‘small but significant and nontransitory’ increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change.’”) (emphasis added), citing *EchoStar/DirecTV Order*, 17 FCC Rcd at 20609 ¶ 117 (citing *DOJ/FTC Guidelines* § 1.21).

<sup>13</sup> *AT&T/BellSouth Merger Order*, 22 FCC Rcd at 5676 n.85 and n.86.

<sup>14</sup> *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, 22 FCC Rcd 5954, 5964-65 ¶¶ 30, 31 (2007).

<sup>15</sup> Opposition at 56-57.

Commission should be wary of the implications of such action. Discarding precedent would, of course, make it very difficult for any merger to be sustained in court. Applicants' theories supporting a broad market definition would, for example, be inconsistent with the court decision blocking the Staples/Office Depot merger in the office superstore market.<sup>16</sup>

Similarly, applying Applicants' conceptual approach would also call into question the Commission's action on the proposed EchoStar/DirecTV merger. Indeed, under Applicants' theories, the Commission would presumably not only be able to approve a new request by EchoStar to buy DirecTV, but also would be able to approve EchoStar buying Comcast and Verizon on the theory that DBS, cable and FIOS are all part of a broader video entertainment market in which these and other products are all substitutable for one another. Thus, under Applicants' approach, if people are unhappy with the merged EchoStar/DirecTV/Comcast/Verizon, they could simply watch over-the-air television, go to the movies, rent DVDs, watch the Internet or watch video on their cellphones.

#### **IV. APPLICANTS' NEW PRICING AND PROGRAMMING OFFERINGS ARE NOT MORE CHOICES AT LOWER PRICES AS THEY CLAIM**

The core of Applicants' defense of their proposed merger is that the merged entity will offer consumers more choice at lower prices.<sup>17</sup> Applicants offered some clarifications with regard to this claim in their Opposition and are now promising to develop, post-merger, eight

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<sup>16</sup> *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997) (finding that the relevant product market was the office supply superstore submarket and not the broader market of all retailers selling office supplies). Applying Applicants' broad market theories in this case would lead to the conclusion that the relevant market could not be office supplies superstores because consumers can buy office supplies in numerous other retail outlets.

<sup>17</sup> See Consolidated Application for Authority to Transfer Control at 11 (Mar. 20, 2007).

new programming offerings for Sirius customers and eight new programming offerings for XM customers, with prices ranging from \$6.99 to \$16.99.<sup>18</sup>

It is important to stress that Applicants' promises are just that – promises; they are not binding commitments.<sup>19</sup> This point is confirmed in a single footnote buried in Applicants' huge package of Opposition materials:

The companies do not have a predetermined time period during which the new prices will remain in effect. Obviously, consumer and market reaction to the new plans will have to be taken into consideration. . . . [O]ver time, programming and other costs likely will increase and these factors might impact future pricing decisions.<sup>20</sup>

In other words, Applicants have not committed to do anything for any particular length of time and they admit that these new prices will increase over time. In short, there is no guarantee that satellite radio subscribers will receive any benefits from these pricing and programming offerings for any particular length of time, if at all.<sup>21</sup>

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<sup>18</sup> Opposition at Exhibits B and C.

<sup>19</sup> This fact runs directly counter to the position taken by the Family Research Council, which emphasizes, as a condition of its support for the merger, that the “*a la carte* pricing plan must be a permanent feature of the Sirius /XM business model going forward.” Response of the Family Research Council at 3 (July 24, 2007).

<sup>20</sup> Opposition at 13-14 n.31.

<sup>21</sup> Some apparent satellite radio subscribers have already expressed concerns that the new service offerings will not benefit existing subscribers: “Officially count me as being opposed to the merger . . . it opens up too many doors for the consumer to get screwed. They are already showing signs of being misleading when they said earlier that the prices would not be raised and that all of the current radios would work . . . both statements are true, kinda, but not really in the nature of which they were made.” Posting by Joe to Orbitcast, <http://www.orbitcast.com/archives/xm-and-sirius-deatil-their-a-la-carte-offering.html> (July 24, 2007, 9:08 AM); “The merger doesn’t benefit the customer anymore, in fact, it will make it worse with all these new plans to keep track of. . . . NO THANKS!” Posting by Flap Jackson to Orbitcast, <http://www.orbitcast.com/archives/xms-postmerger-line-up.html> (July 26, 2007, 13:34 AM); “Finally, as the ‘details’ begin trickling in people are starting to wake up and realize this is a bad deal for existing customers. . . . You will not be getting the best of both services, you will not be getting sports from each service, your bill is going to increase and you’re going to have to buy new equipment which I highly doubt will fill my needs immediately. . . .” Posting by PFreak to Orbitcast, <http://www.orbitcast.com/archiseves/sirius-postmerger-line-up.html> (July 26, 2007, 12:40 PM).

One of Applicants' most emphasized promises – “a la carte” packages – apparently will not even be available to Applicants' 14 million existing subscribers. Such packages will be available “only for subscribers using next generation receivers . . . .”<sup>22</sup> The “a la carte” packages will also not be available for up to a year after any merger is consummated, presumably to permit the development of such “next generation” receivers.<sup>23</sup> Given Applicants' checkered history developing an interoperable receiver, however,<sup>24</sup> it is difficult to know when, if at all, Applicants will be successful in producing the type of receiver necessary to permit a la carte programming. There is also no indication of what the receivers will cost, if and when they are developed. Depending on the cost of the receivers to subscribers, any economic value in the a la carte packages may be nullified or even outweighed by increased receiver costs.

Even if the required new receivers are given and installed for free to new customers a year from now, it is far from clear that the proposed a la carte packages will provide very much in the way of consumer benefits. If a sports fan wants an XM 50-channel “A La Carte I” package that includes play-by-play sports, for example, he will have to pay \$12.99, slightly more than the \$12.95 he would have to pay to get all 170 channels. It is, to say the least, far from clear that it is a consumer benefit to be able to buy significantly fewer channels for slightly more money.<sup>25</sup>

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<sup>22</sup> Opposition at Exhibits B and C.

<sup>23</sup> *See id.* at 14.

<sup>24</sup> *See* NAB Petition to Deny at 52-54.

<sup>25</sup> Similar questions arise with other packages as well. Under the “Sirius Everything & Select XM Package,” for example, a subscriber would pay \$16.99 for the existing 130 Sirius channels and 10 undisclosed XM channels apparently to be chosen by Applicants. A subscriber choosing this option would pay a 31 percent premium to get a 7.6 percent increase in the number of channels. Moreover, the subscriber would not be able to choose the 10 additional channels available in this package and there is no indication that these channels would include premium content, *i.e.*, play-by-play sports, or talk and entertainment programming such as Howard Stern or Oprah. In the end, consumers will not benefit because the plan “either entails less content, or paying premium rates to get the programming the

The situation gets even worse with the XM “A La Carte II” 100-channel package. In that case, a subscriber (whether a sports fan or not) would have to pay even more (\$14.99 or 15 cents per channel) to get fewer than the 170 channels that are normally provided for \$12.95 (7.6 cents per channel).<sup>26</sup> The subscriber would have to pay a 16 percent premium and give up 41 percent of her channels in order to have the right to exercise her a la carte rights.

Given these perverse economic incentives, it is far from clear that anyone will choose to buy these a la carte packages, which may be Applicants’ intent. It is also possible that Applicants simply intend to confuse customers into thinking they are getting value when they are not.<sup>27</sup> Either way, these “promises” may well amount to no more than Applicants’ unmet promises to develop an interoperable receiver, to comply with Commission equipment and repeater rules and authorizations, and to comply with the Commission’s anti-merger rule.

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consumer really wants.” Petition to Deny of the National Association of Telecommunications Officers and Advisors at 4 (July 24, 2007).

<sup>26</sup> The situation is even more egregious for persons who subscribe to both XM and Sirius. These subscribers currently pay \$25.90 for a combined 300 channels, or 8.63 cents per channel. Under the “A La Carte II” package a subscriber would pay \$14.99 for 100 channels, or 14.99 cents per channel, a 74 percent increase in per channel costs and a 67 percent decrease in the number of channels.

<sup>27</sup> Some apparent subscribers seem to agree: “I love how it says the current price for XM and Sirius (select) is \$25.90. Last time I checked you get way more channels when you subscribe to both of them for that price. It makes you think you are getting a deal but really you are only getting 10 Sirius channels and not all of them like you would if you did pay the \$25.90.” Posting by Anonymous Coward to Orbitcast, <http://www.orbitcast.com/archives/xms-postmerger-line-up.html> (July 25, 2007, 7:49 PM); “I agree with some of the previous posters regarding Mel’s smoke & mirrors. . . . The only thing an existing customer can do is keep what he has at the same price or pay more for additional stuff – unless he buys a new radio. . . . ‘A la Carte’ packages are a typical bait & switch. . . .” Posting by JohnG to Orbitcast, <http://www.orbitcast.com/archives/xm-and-sirius-detail-their-a-la-carte-offering.html> (July 25, 2007, 1:54 PM); “These packages will make most of us spend the same or more if we want any SIRIUS/XM Programming. I’m an XM sub[scriber] and I would like to add some of the SIRIUS rock stations. So I could either go with the A La Carte 2 of the Best of Both packages which are \$14.95 or \$16.95 respectively. So in the end if you want to cross over . . . then you can’t do so in any capacity without paying the same or more.” Posting by Mr. FancyPants to Orbitcast, <http://www.orbitcast.com/archives/xm-and-sirius/detail-their-a-la-carte-offering.html> (July 23, 2007, 11:43 AM).

## V. APPLICANTS DO NOT REFUTE THAT THEY CANNOT BE RELIED ON TO MEET THEIR PROMISES

In its Petition to Deny, NAB argued in some detail that, because of Applicants' history of violations of Commission rules and authorizations, Applicants cannot be relied on to keep their promises and comply with any regulatory conditions that might be imposed.<sup>28</sup> Quite tellingly, Applicants do not respond to this argument but set up a straw man instead, arguing that their various violations do not disqualify them to be Commission licensees.<sup>29</sup>

NAB is not arguing that XM and Sirius are not qualified to be Commission licensees. NAB's point is that Applicants' compliance history "suggests a resistance to taking steps to serve the public interest that do not serve the company's view of its own private economic interest."<sup>30</sup> Accordingly, and consistent with Commission precedent, the Commission should take Applicants' compliance history into account "in assessing the likelihood that potential beneficial conduct will occur in the absence of private economic incentives."<sup>31</sup> Put another way, the Commission should consider whether XM and Sirius can be relied on to provide consumers the "benefits" they promise today, given their compliance record. Applicants' assertions that they have cooperated with the Enforcement Bureau's investigation, taken steps to fix their violations, and are qualified to be licensees are simply not relevant to this analysis.<sup>32</sup>

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<sup>28</sup> NAB Petition to Deny at 50-58.

<sup>29</sup> Opposition at 94-99.

<sup>30</sup> *EchoStar/DirectTV Merger Order*, 17 FCC Rcd at 20579 ¶ 35.

<sup>31</sup> *Id.*

<sup>32</sup> See Opposition at 96-99. "[N]othing less than full and complete cooperation and candor is expected during the course of Commission investigations . . ." *Lebanon Educational Broadcasting Foundation*, 21 FCC Rcd 1442, 1445 ¶ 11 (EB 2006) (quotation marks and footnotes omitted). Moreover, "[a]ll licensees and Commission regulatees are expected to promptly take corrective action when violations are brought to their attention." *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875-76 ¶ 26 (2002).

While all the key relevant facts are not in the record here in light of Applicants' pending challenges to the Enforcement Bureau's decision to disclose such facts,<sup>33</sup> what we do know is that some of the violations by Sirius were intentional,<sup>34</sup> and that "executive and senior-level employees" of both companies "were involved in" or "were aware of potential non-compliance."<sup>35</sup> These facts alone should give the Commission pause. The unheeded warning the Commission received a decade ago with respect to receiver interoperability promises rings just as true today with Applicants' latest promises: "The Commission should not rely on the DARS Applicants' commitments. To begin with, they are neither enforceable nor unequivocal. EIA/CEG fears that, once the DARS Applicants receive their licenses, they will seek a competitive advantage in developing their own unique transmission standards[,]" that is, they will no longer stick to their promises.<sup>36</sup>

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<sup>33</sup> *Review of Freedom of Information Action*, FOIA Control No. 2007-235 – XM Records, Application for Review of XM Radio Inc. (July 2, 2007); *Review of Freedom of Information Action*, FOIA Control No. 2007-235 – Sirius Records, Application for Review of Sirius Satellite Radio Inc. (July 2, 2007).

<sup>34</sup> Sirius Satellite Radio Inc., Quarterly Filing (SEC Form 10-Q) at 35 (Nov. 8, 2006) ("certain SIRIUS personnel requested manufacturers to produce SIRIUS radios that were not consistent with these rules."). *See also* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Patrick L. Donnelly, Executive Vice President and General Counsel, Sirius, File No. EB-06-SE-250 at 3 (Aug. 7, 2006) ("In its response to our June 20, 2006 LOI, Sirius stated that 'a number of Sirius' product management and engineering managers decided in July 2004 to increase emissions levels to be competitive with XM and other products transmitting to car radios, and requested that manufacturers make necessary changes.'"). (The Enforcement Bureau provided a copy of this letter to NAB in response to NAB's Freedom of Information Act ("FOIA") request. *See* Letter from David H. Solomon, Counsel to NAB, to Kathryn S. Berthot, Chief Spectrum Enforcement Division, Enforcement Bureau (March 22, 2007)).

<sup>35</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, to David H. Solomon, Counsel for NAB; FOIA Control No. 2007-235 – XM Records at 4-5, 7 (June 18, 2007); Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, to David H. Solomon, Counsel for NAB; FOIA Control No. 2007-235 – Sirius Records at 4 (June 18, 2007).

<sup>36</sup> Reply Comments of the Consumer Electronics Group of the Electronic Industry Association, IB Docket No. 95-91 at 8 (Oct. 13, 1995).

**VI. CONCLUSION**

Accordingly, for the reasons set forth herein and in NAB's earlier pleadings, NAB respectfully requests that the Commission dismiss, deny or designate for hearing the XM/Sirius merger application.

Respectfully submitted,

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July 31, 2007

**CERTIFICATE OF SERVICE**

I, Sarah D. Gutschow, hereby certify that, on this 31<sup>st</sup> day of July, 2007, copies of the forgoing National Association of Broadcasters' Reply to Opposition were delivered via U.S. first class mail, postage prepaid to the following:

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