

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

In the Matter of:)
XM Satellite Radio Holdings Inc.,)
 Transferor)
))
and))
))
Sirius Satellite Radio Inc.,)
 Transferee)
))
Applications for Consent to the Transfer)
of Control of Licenses, XM Satellite Radio)
Holdings Inc. to Sirius Satellite Radio Inc.,)
as Amended)

MB Docket No. 07-57

THE CONSUMER COALITION FOR
COMPETITION IN SATELLITE RADIO
REPLY TO JOINT OPPOSITION

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SUMMARY

The Joint Opposition does not overcome the many deficiencies in the Consolidated Applications and the objections of the Petitioners and Commenting Parties in this proceeding. XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. (collectively the “Aspiring Monopolists”) have failed to provide the necessary legal and economic support for their broad definition of the relevant market (the “audio pseudo-market”). In particular, they have failed to provide any evidence to support the claim that terrestrial radio—or any other alternative source of audio service—constrains the price of satellite radio service. Moreover, they have failed to prove that the harms to consumers from a satellite radio monopoly in terms of higher prices, more commercials, and less content would be outweighed by demonstrable, substantial, and verifiable merger-specific benefits for consumers – benefits that would not happen *but for* the proposed merger. The Aspiring Monopolists have, instead, further distorted the analytical framework for merger review by introducing distracting side-issues and confusing the benefits to consumers with the private benefits of a merger to monopoly.

The Aspiring Monopolists, despite having commissioned three separate follow-up economic studies, have failed to submit a product-by-product analysis of the cross-price elasticity of demand covering each and every alternative audio alternative with respect to an increase in the price of satellite radio service. Instead, through their expert economists at Charles River Associates (“CRA”), they advocate a complete rejection of the appropriate analytical tool – the “small-but-significant-and-non-transitory-increase-in-price” (“SSNIP”) test from the Department of Justice (“DOJ”) and Federal Trade Commission’s (“FTC”) *Horizontal Merger*

Guidelines – presumably because satellite radio is a product so innovative and unique as to not warrant such analysis.

The Commission should reject this claim and be guided by the *Horizontal Merger Guidelines*. The application of existing antitrust law to products such as satellite radio was recently affirmed in a Congressional report authored by the Antitrust Modernization Commission (“AMC”). The AMC found that “[n]o substantial changes to merger enforcement policy are necessary to account for industries in which innovation, intellectual property, and technological change are central features.

The Aspiring Monopolists urge the Commission to ignore the consumers who are most vulnerable — those who reside in, or travel through rural, unserved and underserved geographic areas. However, they have failed to establish that the proposed transaction will not result in impermissible market concentration in the relevant geographic market(s), even if the Commission accepts the expansive product market they advocate. There is no evidence of uniformity in the availability of all of their pseudo-market audio alternatives. In fact, as C3SR has conclusively established, local radio signals are not uniformly available through out the U.S.

Substantial portions of the United States have few, if any, local radio signals. For example, 2.3 million U.S. residents are located in areas served by five or fewer local radio signals. Furthermore, 45 million U.S. residents are located in areas served by only six to fifteen local radio signals. Combined, over 47 million U.S. residents are in areas served by fewer than 15 local radio signals – half of the average number of local radio signals in urban areas (30 signals). The precise geographic breakdown is presented in the maps attached to C3SR’s Petition to Deny.

The “a la carte” plan proposed by the Aspiring Monopolists does not offer a la carte consumer choice at lower cost; it offers segmented, tiered bundling of reduced total programming that requires consumers to at a minimum pay more on a channel-by-channel basis for what they already receive. The full benefits of the rebundled offerings are not physically possible or available to consumers without the manufacture and sale of next-generation satellite radio receivers, the costs and expenses of which the Aspiring Monopolists conveniently fail to include as being borne by consumers. Moreover, the specifics of the proposed plan are nothing more than illusory promises and confusing formulas that hide increased costs that would be passed on to consumers.

If the Aspiring Monopolists are permitted to merge, 100 percent of the available spectrum for the provision of satellite radio service will be controlled by a single entity – a spectrum monopoly – a result clearly contrary to the Commission’s spectrum policies. It has long been the Commission’s policy to promote competition in the delivery of spectrum-based services as a means to ensure competitive choice and foster entry into the provision of those services. The recent announcement of an interoperable receiver, planned as part of the Aspiring Monopolists’ post-merger re-bundling of channels, is proof positive that the interoperable receiver has long been possible. This merger has been planned to monopolize the spectrum and to use the lack of interoperable receivers as an excuse to avoid the logical requirement of divestiture of one of the two satellite radio licenses.

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to provide a shred of evidence to support the claim that terrestrial radio — or any alternative source of audio service — constrains the price of satellite radio service. Moreover, they have failed to prove that the harms to consumers from a satellite radio monopoly in terms of higher prices, more commercials, and less content would be outweighed by demonstrable, substantial, and verifiable merger-specific benefits for consumers – benefits that would not happen *but for* the proposed merger.⁴ The Aspiring Monopolists have, instead, further distorted the analytical framework for merger review by introducing distracting side-issues and confusing the benefits to consumers with the private benefits of a merger to monopoly.

I. INTRODUCTION

The Joint Opposition was entirely submitted pursuant to the Protective Order issued on July 11, 2007, in this proceeding – with redactions in both the pleading and the attachments.⁵ The redactions in the pleading conceal the arguments made therein from public scrutiny and comment. Certainly, not all of the redacted material is legitimately within the scope of the Protective Order. For example, the Aspiring Monopolists have redacted the market share of terrestrial radio in the “audio entertainment market,” information regarding subscribers’ ability to stream music on their computer that may have been previously disclosed by XM in its 2006 third-quarter 10-Q filing with the Securities and Exchange Commission, as well as

⁴ See *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, para. 98 (2002) (“DirecTV/EchoStar HDO”); see also *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007).

⁵ *Applications of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. for Approval to Transfer Control*, Protective Order, DA 07-3135 (rel. July 11, 2007) (the “Protective Order”).

information regarding an HD radio advertising campaign that the Aspiring Monopolists admit is publicly available in a number of sources.⁶

Submission of the Joint Opposition in this manner requires interested parties and petitioners to submit to the procedure and terms of the Protective Order simply to learn of the arguments being made in the pleading (even if they do not desire access to the underlying data in support of the arguments), which requires almost as much time as the Commission's Rules provide for a Reply to Opposition.⁷ In practical effect, the public and all petitioners in this proceeding have been deprived of sufficient time to participate meaningfully in this phase of the proceeding. C3SR has not yet had the opportunity to thoroughly review the unredacted Joint Opposition. Accordingly, C3SR intends to respond more fully to the Joint Opposition in a subsequent submission. C3SR provides its initial reply to the extent possible herein.

II. THE ILLUSION OF AN AUDIO "PSEUDO-MARKET" DOES NOT JUSTIFY A MERGER TO MONOPOLY

In blatant disregard of the prevailing legal standard, the Aspiring Monopolists continue to claim that the effects of this merger should be evaluated in the context of an enormous audio pseudo-market that includes essentially every audio technology and service, such as MP3 players and iPods, Internet radio services, mobile phone audio services, CDs, and terrestrial AM and FM radio, and HD radio. The Aspiring Monopolists, through their expert economists at Charles River Associates ("CRA"), advocate a rejection of the appropriate

⁶ See Joint Opposition, *supra* note 2, at Exhibit A (pages 3, 19 and 27 of the Economic Analysis of the Competitive Effects of the Sirius-XM Merger prepared by CRA International (the "CRA Study")).

⁷ Parties may file a reply to opposition "within [five] days after the time for filing oppositions has expired." 47 C.F.R. § 1.45(c). The five-day reply period excludes intermediate holidays. 47 C.F.R. § 1.4(g). When service is required, as it is in this proceeding pursuant to 47 C.F.R. § 1.939(c), and service is made by mail, the parties receive an additional three days (excluding holidays) to file a reply when the response period is less than ten days. 47 C.F.R. § 1.4(h). C3SR is entitled to the additional three days to file the instant reply. The reply deadline for C3SR is August 3, 2007. C3SR only received an unredacted, fully-readable copy of the Joint Opposition on July 31, 2007, and requires additional time for thorough review and comment on the unredacted Joint Opposition.

analytical tool – the “small-but-significant-and-non-transitory-increase-in-price” (“SSNIP”) test – because the satellite radio industry is allegedly too innovative and unique.⁸

The Commission should reject this claim and be guided by the Department of Justice (“DOJ”) and Federal Trade Commission’s (“FTC”) *Horizontal Merger Guidelines*.⁹ The *Guidelines* are derived from and supported in countless economic authorities and precedents.¹⁰ The application of existing antitrust law to products such as satellite radio was recently affirmed in a Congressional report authored by the Antitrust Modernization Commission (“AMC”). The AMC found that “[n]o substantial changes to merger enforcement policy are necessary to account for industries in which innovation, intellectual property, and technological change are central features.”¹¹ The *Guidelines* define an antitrust market as the “narrowest group of products that would allow a hypothetical monopolist to profitably impose a ‘small-but-significant-and-non-transitory-increase-in-price’ (SSNIP) – generally, a five-percent increase above the competitive price.”¹² Frequently, the relevant product market is a narrow range of products within a larger product group.¹³

⁸ “In a growth context like this one, the standard SSNIP test used for market definition – and the associated critical loss analysis - cannot be implemented the same way they might be implemented in mature industries.” See Joint Opposition, *supra* note 2, at Exhibit A (CRA Study at 45).

⁹ U.S. DEP’T OF JUSTICE & FEDERAL TRADE COMMISSION, HORIZONTAL MERGER GUIDELINES (1997) (originally issued on April 2, 1992, revised April 8, 1997) (“*Horizontal Merger Guidelines*” or “*Guidelines*”).

¹⁰ See, e.g., 10 AREEDA, PHILLIP E., EINER ELHAUGE & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION (2d ed. 2004); United States v. Clear Channel Communications, Inc., *Competitive Impact Statement* (Nov. 15, 2000), concerning United States v. Clear Channel Communications, Inc., 2001 WL 34038532 (D.D.C. 2001).

¹¹ Antitrust Modernization Commission, *Report and Recommendation*, 9 (Apr. 2007), available at http://www.amc.gov/report_recommendation/amc_final_report.pdf.

¹² See Expert Declaration of J. Gregory Sidak Concerning the Competitive Consequences of the Proposed Merger of Sirius Satellite Radio, Inc. and XM Satellite Radio, Inc., para. 17 (Mar. 16, 2007) (“Sidak Declaration”) (citing the *Horizontal Merger Guidelines*, *supra* note 9, at § 1.11).

¹³ U.S. DEP’T OF JUSTICE & FEDERAL TRADE COMMISSION, COMMENTARY ON THE HORIZONTAL MERGER GUIDELINES, 6 (2006).

The Commission should question why the Aspiring Monopolists would choose to advocate such an expansive and unprecedented market definition. The answer is that a product-by-product analysis of the cross-price elasticity of demand for alternative audio sources with respect to an increase in the price of satellite radio service would require the narrowest definition. The Aspiring Monopolists, despite having commissioned three separate follow-up economic studies, have failed to submit such an analysis, or to put forward a shred of evidence showing that any constituent element of their pseudo-market, *i.e.*, a particular alternative audio entertainment source, would constrain their ability to raise satellite radio subscription prices post merger. Stated differently, the Aspiring Monopolists have failed to provide sufficient evidence of the cross-price elasticity of demand for any of the following elements of the pseudo market: terrestrial AM, FM, and HD radio; iPods/MP3s; CDs; mobile phone audio services; or mobile Internet radio. By aggregating all of the constituent elements into a single pseudo-market, they seek to obscure this reality. Without significant cross-price elasticity, a satellite radio monopoly would be free to raise satellite radio prices without competitive restraint.¹⁴

This is the fourth time the Aspiring Monopolists have failed in filings before the FCC to proffer evidence on this critical point of merger analysis. The first was their Consolidated Application itself, which imagined an “audio entertainment” market so broad that this merger’s harmful effects would be concealed (and contained no economic expert report whatsoever). The second failure was the Hazlett submission. The third failure was the submission by Dr. Furchtgott-Roth. Finally, in the more than 100 single-spaced pages of the CRA submission appended to the Joint Opposition, the Aspiring Monopolists have, again, failed

¹⁴ If the Aspiring Monopolists believed that the alternative audio sources actually constrained the price of satellite radio, they would not offer to freeze their price at \$12.95. Of course, freezing prices below the post-merger profit-maximizing rate would induce the Aspiring Monopolists to look elsewhere to extract surplus from their subscribers. See Petition to Deny of Consumer Coalition for Competition in Satellite Radio, 20 (“C3SR Petition”).

to address the dispositive question before the FCC and the DOJ.¹⁵ The reason why is obvious. The only intellectually-honest conclusion under existing antitrust standards, especially under Section 7 of the Clayton Act, is that this is a merger to monopoly that would face no competitive pricing constraint.

The Aspiring Monopolists repeatedly argue that satellite radio competes with terrestrial local radio (AM, FM and HD radio).¹⁶ They invite the Commission to assume that because satellite radio is drawing new subscribers from among local radio listeners, local radio somehow constrains the price of satellite radio. They rely on CRA to argue the “dynamic demand spillover effect,” which does nothing more than further confuse matters analytically. The fact that satellite radio is drawing new subscribers from among radio listeners is not materially different from observing that satellite radio is drawing new subscribers from the population at large, because if a product (local radio) is not in the same product market (satellite radio), the fact that a candidate subscriber utilizes that product (local radio) is irrelevant.¹⁷ Stated differently, the fact that all satellite radio listeners are former (or current) local radio listeners does not imply that a sufficient share of current satellite radio listeners would substitute back to local radio in response to a price increase for satellite radio such that the price increase would be rendered unprofitable. Proof of the existence of the spillover effect is not proof that there is sufficient cross-price elasticity of demand.

Simply put, the incentive of the combined companies to gain new customers *post merger* is completely irrelevant to the most important issue at hand — the vulnerability of

¹⁵ See Joint Opposition, *supra* note 2, at Exhibit A.

¹⁶ Supplier views of competition have not been endorsed by the courts, the DOJ, the FTC, or the AMC (as recently as April 2007).

¹⁷ Because these arguments could be used in any industry—a law firm or a footwear retailer might reduce its prices to stimulate demand in future periods—they have no force here.

consumers to the exercise of monopoly power in satellite radio services, especially the prices charged to existing subscribers. The question, properly restated, is: How much *monopoly rent* would the combined firms be able to extract, while continuing to gain new customers? The answer, of course, is a considerable amount of monopoly rent, so long as there is relatively little, if any, cross-price elasticity of demand with other audio alternatives, and significant demand for the unique features of the product, *e.g.*, nationwide, real-time, commercial free, multi-channel satellite digital radio service with content that cannot be aired on local radio.

III. RURAL CONSUMERS ARE THE CERTAIN VICTIMS OF THIS PROPOSED MERGER

The Aspiring Monopolists urge the Commission to ignore the consumers who are most vulnerable — those who reside in, or travel through rural, unserved and underserved geographic areas. These consumers include the majority of Sirius and XM subscribers who reside in small cities, towns, or rural areas outside of the major local radio markets; and the other subscribers who reside within the larger local radio markets, for whom the ability to receive satellite radio service nationwide, on highways and roads in remote areas, was an important factor in their decision to subscribe to satellite radio service.¹⁸

The Aspiring Monopolists argue that these concerns are “wholly unjustified” because, “the merged entity will have neither the incentive nor the ability to treat rural customers

¹⁸ Fifty-eight percent of SDARS subscribers live in a small city, town or rural area. See Press Release, Wilson Research Strategies, Survey of Satellite Radio Subscribers Executive Summary 2 (July 9, 2007) (“Wilson Survey”), available at http://www.w-r-s.com/press/WRS_NAB_Sat_Radio_Survey_Press_Release_070710.pdf. Approximately 77 percent of the respondents to a recent survey of satellite radio subscribers who reside in urban areas indicated that nationwide coverage was an important factor in their decision to subscribe to SDARS (nearly half indicated that it was a *very* important factor) (n = 89 out of a total of 501 respondents). See Survey, Wilson Research Strategies, Satellite Radio Usage Study 17 (conducted June 28 and 29, 2007). Rural subscribers with limited terrestrial radio service and urban subscribers that value the ability to travel to areas with limited terrestrial radio service will be more severely impacted by the anticompetitive effects of an SDARS monopoly.

differently from its other customers”¹⁹ The Aspiring Monopolists rely on Section II of their Joint Opposition to argue that these concerns are non-existent given the imaginary cross-price elasticity of demand between satellite radio and local radio service. However, the cross-price elasticity of demand is neither proven there, nor in the references to the attachments to the Joint Opposition. Moreover, it is logical to expect that if such cross-price elasticity actually existed between satellite radio and local radio, it would vary by consumer depending upon the consumer’s preferences and the amount of local radio service available in the consumer’s area of primary use. In other words, cross-price elasticity of demand between satellite radio and local radio is likely not a constant among all consumers in all locations. Cross-price elasticity of demand simply does not exist where the substitute is unavailable (unserved areas) or effectively unavailable (underserved areas).

A. Under the Alleged Audio Pseudo-Market Definition, the Relevant Geographic Market is Not National.

The Commission must identify the appropriate *geographic* market(s) before it can determine if the proposed transaction is in the public interest.²⁰ Determination of the relevant geographic market is guided by the same “smallest market” principle that is applied when evaluating the relevant product market.²¹ A geographic market is defined by the commercial availability of reasonable substitutes. Even if a service is offered on a nationwide basis, if the reasonable substitutes are limited by local availability, the geographic market will be defined

¹⁹ See Joint Opposition, *supra* note 2, at 76.

²⁰ DirecTV/EchoStar HDO, *supra* note 4, at para. 105.

²¹ *Horizontal Merger Guidelines*, *supra* note 9, at § 1.21.

locally.²² The post-merger market concentration in each geographic market must be calculated to determine the likely anticompetitive impact of a proposed transaction.²³

In other words, the variation in competitive choices *within the relevant product market* across localities should inform the relevant geographic market. Under the overly expansive audio pseudo-market, there is no doubt that the alleged competitive choices vary across localities, implying a local geographic market. Under the proper “satellite radio market,” competitive choices do not vary across localities, implying a national geographic market. If the Aspiring Monopolists insist on a pseudo-market definition, then they must face up to the fact the alleged competitive alternatives are depressed in some localities, leading to more vulnerable satellite radio consumers.

The Aspiring Monopolists have failed to establish that the proposed transaction will not result in impermissible market concentration in the relevant geographic market(s), even if the Commission accepts the expansive product market championed by the Aspiring Monopolists. The Aspiring Monopolists attempt to determine post-merger market concentration by providing market share information in the pseudo “audio entertainment market” based on national estimates of time spent listening, revenue, number of listeners, and household ownership.²⁴ Among other errors, the Aspiring Monopolists (and their consulting economists) mistakenly assume that all the important elements in the audio entertainment are equally available throughout the national market. Consumers, however, are limited only to the available alternatives, which, in the case of local radio, vary depending on location. For example, the 69

²² DirecTV/EchoStar HDO, *supra* note 4, at para. 119.

²³ *Id.* at paras. 105, 117-125; *see also Horizontal Merger Guidelines, supra* note 9, at § 1.20.

²⁴ Joint Opposition, *supra* note 2, at Exhibit C.

local radio signals available in Los Angeles are not available as local radio choices in Raleigh, North Carolina.

Similarly, the availability of other elements in the pseudo market advocated by the Aspiring Monopolists varies by geographic location, too. Wireless high-speed broadband access is not universally available. Moreover, access to system-specific mobile phone non-voice features (such as music programming and downloading services) is not universally available.²⁵ In sum, all of the live audio alternatives in the pseudo market are not universally available – their availability depends on location.

Therefore, the fact that satellite radio is a nationwide service does not mean that the variation in the local availability of audio alternatives is irrelevant.²⁶ Indeed, satellite radio is a mobile service, so the lack of universal availability among all of the “live” audio alternatives in the alleged audio pseudo-market is a factor affecting every satellite radio subscriber. A vast majority of satellite radio subscribers said that nationwide availability of satellite radio service was an important factor in their decision to subscribe, and most satellite radio listening is done in automobiles during a daily commute.²⁷ When coupled with the fact that most satellite radio subscribers reside in small cities/towns and rural areas, it is easy to understand how relevant the scarcity or absence of certain audio alternatives can be.

²⁵ As noted by Roderick MacKenzie, XM’s Vice President for Advanced Applications and Services, cellular coverage is “spotty in remote areas,” areas that are also likely unserved or underserved by terrestrial radio. See Andrew T. Giles, *XM Pitches Homeland Security: Is it Just Talk?*, FORBES.COM, Aug. 1, 2007, at http://www.forbes.com/businessinthebeltway/2007/07/31/xm-honda-toyota-biz-wash-cz_atg_0801beltway.html.

²⁶ The use of pre-defined Arbitron Radio Markets, covering 300 markets, would seem the appropriate geographic market area for analysis. For those areas not covered by Arbitron Radio Markets, the Commission’s current method for determining the relevant radio market for multiple ownership analyses would provide an excellent tool for determining the relevant geographic market.

²⁷ See Wilson Survey, *supra* note 18, at 1-2.

Only when the relevant product market is properly defined exclusively as satellite radio, can it be said that the relevant *geographic* market is a national market. Given that the Aspiring Monopolists have chosen to advocate a market definition that includes elements with availability that varies with location, the geographic market cannot be homogeneously national, even though satellite radio is a nationwide service. Accordingly, the supporting antitrust analysis must include a complex *geographic* market analysis that addresses the regional and local variations in the availability of all of the audio alternatives in the pseudo-market definition. Again, the Aspiring Monopolists have failed to meet their burden of proof on the issue of the scope of the geographic market.

B. Substantial Geographic Variations in the Availability of Local Radio Signals Has Been Established.

There is no evidence in the record of uniformity in the availability of all of their pseudo-market audio alternatives. In fact, as C3SR has conclusively established, local radio signals are not uniformly available through out the U.S.²⁸ On average, there are 30 local radio signals in urban areas.²⁹ However, substantial portions of the United States have few, if any, local radio signals. For example, 2.3 million U.S. residents are located in areas served by five or fewer local radio signals.³⁰ Furthermore, 45 million U.S. residents are located in areas served by only six to fifteen local radio signals.³¹ Combined, over 47 million U.S. residents are in areas served by fewer than 15 local radio signals – half of the average number of local radio signals in

²⁸ See C3SR Petition, *supra* note 14, at Exhibit C.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

urban areas. The precise geographic breakdown is presented in the maps attached to C3SR's Petition to Deny.³²

The relevance is illustrated in the following example. Imagine a consumer in Los Angeles with access to 69 local radio signals who favors hip hop, urban contemporary, and classic rock radio formats. That consumer might have subscribed to satellite radio primarily because it offered multi-channel commercial-free music in these formats. If so, that particular consumer in this location might decide that a post-merger, five-percent increase in the price of satellite radio coupled with new commercial clutter on the preferred satellite radio channels justified discontinuation of the satellite radio subscription, because the formats of choice were sufficiently available among the 69 available local radio signals. However, if that same consumer was located in an area with no local radio service, or where only a few local radio signals were available, the formats of interest probably are not sufficiently available on local radio, because local radio is unavailable, or generally less available. For this reason, it is safe to say, the cross-price elasticity of demand between satellite radio and local radio is insufficiently large for many if not most consumers in the areas identified in C3SR's submission, "Consumer Vulnerability to a Satellite Radio Monopoly in Rural, Unserved, and Underserved Geographic Areas."³³

It must be emphasized that of the 2.3 million consumers residing in areas receiving five or fewer local radio signals, and the nearly 17 million consumers residing in areas receiving only six to ten local radio signals, it is quite likely that many receive no local radio signals offering the exact music formats they prefer most, or which offer the commercial-free

³² A table summarizing the total Unserved/Underserved population and area in each state, originally provided in the C3SR Petition, is attached hereto at Exhibit A.

³³ See C3SR Petition, *supra* note 14, at Exhibit C.

radio formats that have attracted so many rural subscribers to satellite radio. Satellite radio is a highly unique product. This is likely the case for the majority of current satellite radio subscribers. Fifty-eight percent of the respondents to a recent survey of satellite radio subscribers indicated that they reside in small city/town or rural area.³⁴ For these consumers, there is likely no cross-price elasticity of demand between satellite radio service and local radio service, because it simply cannot exist.

Satellite radio is a unique service, and there is no effective substitute to mitigate the market power of a satellite radio monopoly for rural consumers (or consumers generally). Satellite radio offers a wide range of musical genres, live news, live weather, live traffic and live sports, on a nationwide basis, in even the most remote areas, which most alternatives cannot offer. Satellite radio service offers a passive listening experience driven by the preferences of listeners for specific musical genres and offers a vast multi-channel package of music, news, weather, traffic and sports with virtually “something-for-everyone.” Most importantly for many subscribers, satellite radio today is perceived as offering a commercial-free lineup.

Advertiser-supported local radio is not a price-constraining force for commercial-free satellite radio with its exclusive and uncensored content, vast channel capacity and national footprint. Despite having commissioned three separate economic reports, the Aspiring Monopolists have failed to provide *any* demand-side evidence to the contrary.³⁵ Among other

³⁴ See Wilson Survey, *supra* note 18, at 2.

³⁵ While the CRA submission indicates that satellite radio penetration is positively correlated with the number of local radio stations in a given locality, it says nothing about whether a sufficient share of satellite radio subscribers would switch to terrestrial radio *in response to a small increase in the price of satellite radio*. See Joint Opposition, *supra* note 2, at Exhibit A (CRA Study at Table B-2). Likewise, the fact that disconnecting XM subscribers did not switch to Sirius (and vice versa) does not inform the issue of how satellite radio subscribers would react *to a price increase*. In all likelihood, most satellite radio disconnections are due to the ending of a free trial period which came with the purchase of a new automobile. In contrast, customers who actively subscribed to satellite radio exhibit the lowest churn rates in any subscriber communications service.

things, satellite radio is the only mobile *radio* service with the ability to aggregate local demand across the nation to offer rare radio formats and genres of music.³⁶ Moreover, satellite radio, unlike terrestrial radio, can offer programs without censorship, such as Howard Stern. Most importantly, satellite radio is the only service that can reach every American, including nearly 100 million listeners age 12 and over who are beyond the range of the largest 50 local radio markets measured by Arbitron, and 36 million who live outside of the smallest Arbitron market.³⁷

Local radio (HD, AM and FM), which is not available universally and cannot deliver either the uncensored and exclusive programming or the channel capacity of satellite radio, is at best an imperfect alternative with varying degrees of availability based on location.³⁸ Pre-recorded media devices such as MP3 players and iPods cannot offer live programming and do not permit passive listening. These devices require a significant investment of time and money in the selection, purchase, recording and downloading of content. Cellular telephone providers offer downloadable music, or the distinctive content of other radio services; but these offerings either are not universally available or do not permit passive listening.³⁹ Internet radio

³⁶ Because of its nationwide footprint and its vast channel capacity, satellite radio can offer those formats and genres in many locations where there is insufficient demand to sustain a local radio station dedicated to the format or genre. For example, Zydeco music might now draw a large enough audience in New Orleans to justify a local radio station devoted to that genre. Elsewhere, there is insufficient demand to sustain a Zydeco-oriented local station. In contrast, satellite radio can aggregate the demand for Zydeco in New Orleans with the demand for Zydeco among all its subscribers nationally. In the aggregate, this demand would be quite sufficient.

³⁷ XM Satellite Radio Holdings Inc., SEC Form S-1 (filed June 13, 2000).

³⁸ Local radio is the only alternative that can offer live weather, traffic, news and sports, but as C3SR has demonstrated, local radio service is not universally available. *See generally* C3SR Petition, *supra* note 14, at Exhibit C. Moreover, because the content of local radio is regulated by the FCC, it cannot offer similar programming, much of which is prohibited under the FCC's rules as obscene or indecent.

³⁹ The cost of this alternative includes a properly enabled handset, the recurring monthly cost of cellular service, a special-service incremental charge and the recurring cost of content. *See also* Giles, *supra* note 25 (Roderick MacKenzie, XM's Vice President for Advanced Applications and Services, states that cellular service is inferior to SDARS because cellular "coverage is spotty in remote areas."). Mr. MacKenzie's statement makes it clear that XM

is not a practical alternative for use in automobiles today or in the next several years.⁴⁰ Sixty-eight percent of the respondents to a recent survey of XM and Sirius subscribers indicated they do not subscribe or listen to Internet radio.⁴¹ Most importantly, the Aspiring Monopolists have produced no evidence that any of these mediums are widely available at competitive prices for consumers in rural areas.

Even if there were a substitute, most subscribers have significant embedded investments in satellite radio receivers (as much as \$575 to \$1000 for a dealer-installed in-dash satellite radio system including parts and installation), and many would face early termination penalties under their existing service contracts.⁴² Fifty-nine percent of respondents to a recent survey of XM and Sirius subscribers reported that they signed satellite radio subscription contracts for one year or longer.⁴³ It has been reported that satellite radio subscriptions are difficult to cancel. Recently, XM subscribers who attempted to cancel their subscriptions in reaction to the suspension of Opie and Anthony found out how difficult it can be.⁴⁴

does not view cellular telephones as a reasonable alternative to SDARS in terms of offering a comprehensive nationwide coverage area.

⁴⁰ Mobile broadband service, necessary to receive high-quality Internet radio service in vehicles, generally costs far more than a satellite radio subscription, and mobile broadband service is not universally available. The two leading Internet radio service providers, Slacker and Pandora Media, Inc., do not have sufficient market share (even in the aggregate) to be included in the relevant market; and the subscribers they serve today are not able to receive the service in automobiles.

⁴¹ See Wilson Survey, *supra* note 18, at 2.

⁴² According to Crutchfield, an expert in car audio and retail partner of Sirius and XM, the cost of a dealer-installed XM satellite radio sound system in a 2005 Honda Odyssey ranges from \$950 to \$1000. The cost of a dealer-installed Sirius satellite radio sound system in a 2004 BMW 330i is \$575. See Satellite Radio In My Car, at <http://www.crutchfield.com/S-zuhUfzeLE5J/satelliteradio/incar.html>.

⁴³ See Wilson Survey, *supra* note 18, at 1.

⁴⁴ Kara Rowland, *Customers Say XM Didn't Let Them Go Without A Fight*, WASHINGTON TIMES, June 10, 2007, available at <http://www.washingtontimes.com/article/20070620/BUSINESS/106200043/1001>.

The Aspiring Monopolists attempt to shift the burden of proof when they argue that C3SR has not proven that there are any areas receiving absolutely no local radio service. First, the public does not have to prove that it has absolutely no alternatives in rural areas to warrant the protection of the antitrust laws. C3SR, however, has demonstrated that there are so few local radio signals available in certain areas to eliminate the possibility of cross-price elasticity of demand between satellite radio service and local radio service for consumers in those areas. The Aspiring Monopolists must now prove that there is sufficient cross-price elasticity of demand between satellite radio service and other elements of their audio pseudo-market in these rural areas.

Again, the real question is whether a satellite radio monopoly would have the ability to increase its price five percent above the “competitive rate,” for a two year period, without losing a sufficient share of customers to an alternative audio service such that the price increase would be rendered unprofitable. As stated earlier, the Aspiring Monopolists dodge that question completely in their Joint Opposition, as they have failed to produce any real empirical evidence of cross-price elasticity of demand. Instead, with respect to the impact on rural consumers, they incorrectly assume the issue to be an allegation of potential price discrimination by a satellite radio monopoly. C3SR never made that argument, but, if it had, the answer provided in the Joint Reply is wholly insufficient, given the lack of proof of cross-price elasticity of demand. Because the Aspiring Monopolists have not proven that there is sufficient cross-price elasticity of demand between satellite radio service and any of the hypothetical substitutes, their argument that price discrimination against rural subscribers is impossible, is completely hollow.

IV. THE NEW CHANNEL PACKAGES WOULD REDUCE THE VALUE AND INCREASE THE COST OF SATELLITE RADIO SERVICE TO CONSUMERS

The “a la carte” plan proposed by the Aspiring Monopolists does not offer a la carte consumer choice at lower cost; it offers segmented, tiered bundling of reduced total programming that requires consumers to at a minimum pay more on a channel-by-channel basis for what they already receive. The full benefits of the rebundled offerings are not physically possible or available to consumers without the manufacture and sale of next-generation satellite radio receivers, the costs and expenses of which the Aspiring Monopolists conveniently fail to include as being borne by consumers. Moreover, the specifics of the proposed plan are nothing more than illusory promises and confusing formulas that hide increased costs that would be passed on to consumers.

The Aspiring Monopolists fail to explain how disproportionately less content for less money is equivalent or more beneficial than the current competition between the two SDARS providers, and do not offer anything of benefit to outweigh the harms to consumers resulting from the discretionary elimination of certain channels. The offer of a \$1 per month rebate in return for blocking all adult-themed content is a sham—given the popularity of this type of “indecent” content among SDARS subscribers, the likelihood that anyone would take the Aspiring Monopolists up on their sham offer is remote. The Aspiring Monopolists have argued that the proposed merger would increase value by bringing together the channel-by-channel strengths of the individual companies while lowering rates. The Joint Opposition instead promises to provide consumers the option to choose smaller bundled packages from one company or the other, but not both, unless the consumer purchases a new receiver. Most channels will remain bifurcated but for an undefined “best of” channel set (which costs extra). Among the smaller packages, existing consumers must choose from newly designated selections

of standard, premium and super-premium channels. Each premium and super-premium channel will cost more per channel, and the base rates for any package are not guaranteed.⁴⁵ Likewise, the long-run survival of these packages and prices is uncertain.

A. The New Pricing Plan Conceals Additional Consumer Costs

Without integrating the additional per-consumer expense of providing new interoperable receivers, the tiered unbundling plan provides the appearance of choice and rate reductions that would enable existing consumers to choose from among channels they already receive plus less than a dozen new, to-be-determined “best of” channels. On a channel-by-channel value basis, existing consumers lose — not because of the tiering, but because of the monopoly effects combined with tiered bundles.⁴⁶ Individual programming packages would be selected from content that has been newly segmented into higher-priced categories; *i.e.*, standard, premium, and super-premium.⁴⁷ Existing consumers, therefore, are left with a Hobson’s choice: pay more to essentially receive the same content, or pay less and disproportionately forfeit some amount of existing content.

The plain truth is that consumers will not get more without paying more on a channel-by-channel basis, and will inevitably be baited or required to buy an interoperable receiver for an unspecified cost. Without interoperable receivers, consumers will never be able to receive the entire crossover service. A big sports fan, for example, simply won’t be able to receive both XM’s baseball package and Sirius’ separate football package on the same receiver

⁴⁵ See Joint Opposition, *supra* note 2, at Exhibit C (“[a]ll content is subject to change from time to time due to contractual relationships with third-party providers and for other reasons.”).

⁴⁶ See Sidak Declaration, *supra* note 12, at paras. 59, 69, 80-84.

⁴⁷ The “premium” and “super premium” channels are in many instances the channels that consumers have sought to receive all along, and under the cheapest packages could cost a consumer up to \$18 monthly to receive the same thing. See Joint Opposition, *supra* note 2, at Exhibit B.

due to technological limitations. In an effort to compensate for this limitation, the Aspiring Monopolists propose to allow consumers to choose additional channels from among a select, designated set of “best of” programming.⁴⁸ The Aspiring Monopolists’ state that “[t]hese ‘best of both’ packages will each be available for \$16.99—a decrease of 34 percent from the current combined standard subscription price of \$25.90 that consumers must pay to obtain all of the content from both systems.”⁴⁹ The “best of both” offerings are thinly and vaguely described as the “top selections” from each company.⁵⁰

This is simply not the case. First, the \$16.99 package should not be seen as a decrease from the \$25.90 combined price of subscribing to both XM and Sirius because the package is not the same product. For \$25.90 combined two-receiver service, a consumer would get more than 300 unique channels. Under the proposed \$16.99 plans, the consumer would get less than 200 channels. The cost-savings/value-enhancement assertion first assumes existing customers are subscribing to both systems and paying \$25.90, and then further assumes consumers want to only receive the other company’s “top selections.” Today, that would require the consumer to have two satellite receivers in each vehicle, a highly unlikely scenario. Realistically, the only way to provide crossover “best of” service is to pre-select which channels will be provided. Pre-selection obviously is favorable to the Aspiring Monopolists, but not to consumers. The Aspiring Monopolists concede that the final crossover line-up is “subject to

⁴⁸ In reality, the perceived benefits of “best of” programming may be trumped by the limitations of existing radios and overall finite bandwidth. *See Toyota Comments on Satellite Radio Merger, 2* (“with a finite bandwidth for both XM and Sirius, it may be difficult for a combined entity to deliver more content while maintaining or even improving audio quality.”).

⁴⁹ *See Joint Opposition, supra* note 2, at Exhibits B, C.

⁵⁰ *Id.*

negotiations with the companies' respective content providers," which could change the channel line-up altogether.⁵¹

The attempt to provide crossover programming would likely increase programming costs because "Sirius and XM cannot offer each other's programming to the extent they are bound by exclusive programming agreements or are limited by the technology in existing radios."⁵² Such costs will thereafter find their way into subscription rates. For this and other reasons, the Aspiring Monopolists admit, they "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...over time, programming and other costs likely will increase and these factors might impact future pricing decisions."⁵³

The grand and intricately orchestrated tiered bundling pricing plan comes down to consumers who want less will be able to pay disproportionately less per channel, or pay more to receive some of the total channels they receive today in the \$12.99 bundle. Under the current bundled Sirius package, the per-channel cost to consumers is roughly \$0.09. Under the Aspiring Monopolists' smallest Sirius plan (Sirius A La Carte I), the price-per-channel would increase to nearly \$0.14, a fifty percent increase. If an average consumer wanted to add just one premium Sirius channel under the plan, the per-channel cost would rise to approximately \$0.25.

Therefore after the proposed merger, if an average Sirius consumer selected the Sirius A La Carte I plan and wanted to continue listening to the Howard Stern Show, that individual would be paying almost 277% more per-channel than he or she pays now. Moreover,

⁵¹ See Joint Opposition, *supra* note 2, at 12 n. 29.

⁵² *Id.* at 18.

⁵³ *Id.* at 31.

the same individual would lose all Sirius sports content unless he or she decided to pay even more, and would still be physically unable to receive any XM premium sports or talk channels without purchasing a second XM receiver and getting a second XM a la carte subscription. Everyone else will need to buy a new receiver and rely on the chances that the new monopoly will overcome bandwidth limitations and decide to maintain lower channel-by-channel prices.

B. Plan Obscures the Loss of Existing Content

The Aspiring Monopolists conceal the end result — that the proposed merger will reduce the total diversity of content currently provided in the market, likely eliminating the ability of individual consumers to buy something they actually do want to continue receiving. The Aspiring Monopolists assert that “the merged entity will generate significant merger-specific efficiencies by eliminating duplication in the overhead and production of similarly formatted channels.”⁵⁴ Moreover, “...the merger will increase the combined company’s capacity to provide more programming because it will be able to eliminate duplicative channels.”⁵⁵

The elimination of similarly formatted channels, however, will reduce content diversity. Each channel’s content is unique to that channel. No one channel’s play list, commentaries, selections, discussions, or other broadcast content is ever duplicative of another similarly formatted channel. Eliminating one channel in exchange for another only replaces a “type” of content; it is not a wash in terms of actual content value from the consumer’s perspective. The distinction is crucial to subscribers who receive one or more channels that the Aspiring Monopolists would consider redundant.

⁵⁴ See Joint Opposition, *supra* note 2, at 27.

⁵⁵ *Id.* at 19.

- i. Unique and otherwise inaccessible content, valued by consumers, is at risk.

Consumers who favor a particular channel deemed “redundant” by the Aspiring Monopolists will suffer the loss of valuable content in the new channel plans. For example, a fan of bluegrass music that lives in the Bronx may have decided to purchase XM for the sole reason of being able to listen to Marty Fitzpatrick and his selected play list, only available on XM radio.⁵⁶ Eliminating the XM bluegrass channel in exchange for the “similar content” available on Sirius’s bluegrass channel obviously affects the existing listener. Similarly, in an underserved geographic area where there is no signal from an alternative rock station, alternative rock music consumers subscribing to XM or Sirius to receive such content will likely be affected since “alternative rock” is a wide and varying format. To consumers, each individual alternative rock channel is unique with different overall content. Simply put, satellite radio channels are not fungible.

The Aspiring Monopolists assert “[t]he merger will help to alleviate the financial constraints that may prevent the companies individually from taking chances on niche programming that, by definition, generates interests across a smaller spectrum of listeners.”⁵⁷ This is counter intuitive. In the absence of competition, unpopular content will be even further marginalized due to incentives to maximize profits by conserving bandwidth for other, new subscription services serving the broadest number of subscribers. Over time the amount of programming content devoted to minority or niche audiences will suffer.⁵⁸ The costs to produce

⁵⁶ See <http://www.xmradio.com/onxm/channelpage.xmc?ch=14> (last visited July 30, 2007).

⁵⁷ See Joint Opposition, *supra* note 2, at 19.

⁵⁸ See generally Petition to Deny of the National Association of Black-Owned Broadcasters, Inc.; Petition to Deny of American Women in Radio and Television, Inc.; Comments of Entravision Holdings, LLC; Comments of the Asian American Justice Center.

and maintain unpopular content will have to be socialized to all consumers that by definition seek to receive popular content. As a result, the original promise of satellite radio to be able to reach underserved and niche audiences will fade.⁵⁹

- ii. The proposed tiered bundling packages will seriously disrupt existing content value and consumer satisfaction

There are even unanswered questions regarding how the Aspiring Monopolists' proposed tiered bundling plan would affect popular content. For example, will chosen package options be static, or will consumers be able to migrate between packages and channel selection? If a consumer subscribes to XM solely to follow sports, will he or she be allowed after merger to choose 50 or 100 channels in addition to the 36 existing sports channels? How will the merged company discount the consumer's rate given that sports content is generally seasonal and only supplied at night? These and other questions leave enormous gaps in the monopolists' scheme, resulting in the conclusion that the "a la carte" plan is intended to further goals of advertising benefits rather than ultimately providing them.

C. Plan Conceals Costs of Interoperability

This conclusion is most apparent as to the issue of interoperability. Even though each individual company agreed as part of Commission licensure to design and develop an interoperable radio, the two companies assert that there will only be a "commercial incentive to produce and distribute" such systems as a result of merger.⁶⁰ More importantly, the Aspiring Monopolists do not explain how they will purchase or otherwise credit existing customers to obtain and install any future interoperable systems. The removal and re-installation costs for all

⁵⁹ *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Bands*, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5756 (1997).

⁶⁰ See Joint Opposition, *supra* note 2, at 21 (citing CRA Study).

existing embedded hardware, for instance, will impose even more significant and intolerable cost burdens on existing consumers. Any perceived benefits of the proposed tiered bundling plans are negligible if the Aspiring Monopolists require each consumer to purchase next generation radios.

V. THE MERGER WOULD CREATE AN UNPRECEDENTED SATELLITE RADIO SPECTRUM MONOPOLY

If the Aspiring Monopolists are permitted to merge, 100 percent of the available spectrum for the provision of SDARS will be controlled by a single entity – a spectrum monopoly – a result clearly contrary to the Commission’s spectrum policies. It has long been the Commission’s policy to promote competition in the delivery of spectrum-based services as a means to ensure competitive choice and foster entry into the provision of those services.⁶³ In fact, in the DirecTV/EchoStar HDO, the Commission cited the licensing of two SDARS providers as a primary example of the application of the FCC’s competitive spectrum policy.⁶⁴ Licensing two SDARS providers would “ensure competitive rates, diversity of programming voices, and other benefits of a competitive DARS environment.”⁶⁵ According to the Aspiring Monopolists, however, licensing more than one SDARS provider has actually led to higher rates, less diverse programming, and has generally provided no benefits to the consumer, whatsoever.

The claim that other entities could provide audio content using non-SDARS spectrum, thus avoiding a spectrum monopoly, is irrelevant, and represents another attempt by the Aspiring Monopolists to artificially inflate the appropriate scope of analysis as a means to

⁶³ See DirecTV/EchoStar HDO, *supra* note 4, at para. 88.

⁶⁴ *Id.*

⁶⁵ *Id.*

evade settled Commission policy. This argument is nearly identical to the argument put forth by the merger parties in the DirecTV/EchoStar proceeding — an argument that was flatly rejected by the Commission. The FCC found that the concentration of 100 percent of the “current U.S. allotted full-CONUS DBS spectrum” in a single entity was inconsistent with the Commission’s spectrum policy. The FCC focused specifically on the loss of intramodal competition in the DBS service.⁶⁶ The same holds true in the present transaction. There can be no doubt that a variety of products could produce aural media, using all types of spectrum. This does not, however, negate the fact that this transaction will create a spectrum monopoly in the provision of SDARS – a clear violation of the Commission’s spectrum policy.⁶⁷

One commenting party suggested that post-merger divestiture of a small portion of SDARS spectrum would help promote competition in SDARS by allowing a future entrant access to the SDARS market.⁶⁸ However, it is highly unlikely that a new entrant with a spectrum disadvantage could meaningfully compete with the merged company. The recent announcement of an interoperable receiver, planned as part of the Aspiring Monopolists’ post-merger re-bundling of channels, is proof positive that the interoperable receiver has long been possible. This merger has been planned to monopolize the spectrum and to use the lack of interoperable receivers as an excuse to avoid the logical requirement of divestiture of one of the two satellite radio licenses. However, because consumers and equipment vendors are prisoners of the current

⁶⁶ “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 Applications have presented no compelling reason, for a spectrum policy standpoint, why we should approve license transfers that would effectively replace facilities based intramodal DBS service competition with a monopoly on full-CONUS DBS licenses.” See DirecTV/EchoStar HDO, *supra* note 4, at para. 96.

⁶⁷ The finding that the spectrum monopoly created by the proposed DirecTV/EchoStar merger would be inconsistent with the FCC’s spectrum policy was not based on any claim that DBS was an “emerging” market. Any attempt by the Aspiring Monopolists to distinguish the spectrum policies announced in the DirecTV/EchoStar decision based on such a claim must be rejected.

⁶⁸ See Comments of Entravision Holdings, LLC.

system as a direct result of the Aspiring Monopolists' calculated decision to deprive consumers of an interoperable radio, any divestiture requirement should be a complete divestiture of an entire satellite system and license, including terrestrial repeaters.

Additionally, the Aspiring Monopolists' claim that divestiture would prevent them from realizing "merger-specific" efficiencies, such as expanded programming choices and additional services, is contradicted by their own pleading. In no uncertain terms, the Aspiring Monopolists claim that each SDARS system has additional capacity to add new channels and services.⁶⁹ Therefore, according to the Aspiring Monopolists' own statements, the merger is not necessary to add new programs and services, and divestiture will not prevent the merged entity from expanding its offerings. Far from advancing spectrum policy, the Aspiring Monopolists' own pleading demonstrates that allowing the merged entity to control 100 percent of the SDARS spectrum will not produce any additional consumer benefits in programs or services.

⁶⁹ See Joint Opposition, *supra* note 2, at 89-90.

VI. CONCLUSION

For the reasons set forth in C3SR's Petition to Deny, in its Response Comments, and in this Reply to Joint Opposition, the proposed merger is contrary to the public interest and C3SR respectfully requests that the Applications be designated for hearing.

Respectfully submitted,

**CONSUMER COALITION FOR
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August 3, 2007

CERTIFICATE OF SERVICE

I, Jacqueline A. Thomas, hereby certify that on this 3rd day of August, 2007, a copy of the foregoing "The Consumer Coalition for Competition in Satellite Radio Reply to Joint Opposition" was served by first-class U.S. mail, postage prepaid, to the following:

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EXHIBIT A

SUMMARY OF UNSERVED/UNDERSERVED AREAS BY STATE

Affected Population (State)

Percentage of Population Affected
(State)

Percentage of Total Area Affected
(State)

State	Affected Population (State)				Percentage of Population Affected (State)			Percentage of Total Area Affected (State)				
	0-5 Stations	6-10 Stations	11-15 Stations	Total Affected Population	0-5 Stations	6-10 Stations	11-15 Stations	Total Affected Population	0-5 Stations	6-10 Stations	11-15 Stations	Total Affected Area
Alabama	80,509	550,544	637,292	1,268,345	1.81%	12.38%	14.33%	28.52%	7.75%	34.40%	23.46%	65.61%
Alaska	138,893	79,951	41,312	260,156	22.15%	12.75%	6.59%	41.50%	98.08%	0.88%	0.66%	99.62%
Arizona	235,434	306,100	221,588	763,122	4.59%	5.97%	4.32%	14.87%	52.87%	18.35%	10.71%	81.94%
Arkansas	56,829	410,011	487,635	954,475	2.13%	15.34%	18.24%	35.70%	9.12%	35.18%	25.11%	69.41%
California	156,391	304,100	619,339	1,079,830	0.46%	0.90%	1.83%	3.19%	32.71%	20.33%	12.94%	65.98%
Colorado	113,685	171,756	156,880	442,321	2.64%	3.99%	3.65%	10.28%	46.64%	21.20%	10.75%	78.58%
Connecticut	9,799	121,491	273,164	404,454	0.29%	3.57%	8.02%	11.88%	1.72%	17.27%	21.23%	40.22%
Delaware	4,186	143,581	213,462	361,229	0.53%	18.32%	27.24%	46.10%	2.09%	31.21%	39.93%	73.23%
Florida	46,954	329,406	947,985	1,324,345	0.29%	2.06%	5.93%	8.29%	6.79%	17.13%	25.06%	48.98%
Georgia	132,915	679,723	1,050,470	1,863,108	1.62%	8.30%	12.83%	22.76%	8.74%	31.42%	29.89%	70.05%
Hawaii	20,942	66,071	125,892	212,905	1.73%	5.45%	10.39%	17.57%	35.96%	28.90%	19.58%	84.44%
Idaho	47,792	97,612	125,139	270,543	3.69%	7.54%	9.67%	20.91%	50.61%	19.38%	9.39%	79.38%
Illinois	42,251	478,317	1,087,169	1,607,737	0.34%	3.85%	8.75%	12.95%	3.19%	26.83%	34.60%	64.62%
Indiana	66,478	684,965	1,287,744	2,039,187	1.09%	11.26%	21.18%	33.54%	4.59%	29.81%	35.64%	70.04%
Iowa	23,769	337,448	644,994	1,006,211	0.81%	11.53%	22.04%	34.38%	2.37%	26.40%	36.03%	64.81%
Kansas	72,969	238,367	315,377	626,713	2.71%	8.87%	11.73%	23.31%	21.31%	37.03%	21.70%	80.04%
Kentucky	7,545	580,414	950,401	1,538,360	0.19%	14.36%	23.51%	38.06%	0.75%	33.84%	38.21%	72.80%
Louisiana	11,616	252,235	479,241	743,092	0.90%	5.64%	10.72%	17.27%	5.47%	23.77%	27.05%	56.29%
Maine	50,503	199,802	329,509	579,814	7.54%	15.67%	25.85%	49.06%	57.66%	18.59%	15.05%	91.29%
Maryland	45	249,594	441,885	691,524	0.22%	4.71%	8.34%	13.28%	1.77%	20.36%	30.43%	52.56%
Massachusetts	4,698	112,735	578,690	696,123	0.31%	1.78%	9.11%	11.20%	4.39%	17.32%	22.42%	44.12%
Michigan	22,613	802,292	1,166,584	1,991,489	1.57%	8.07%	11.74%	21.38%	16.79%	31.33%	23.38%	71.50%
Minnesota	57,995	460,132	548,006	1,066,133	3.36%	9.35%	11.14%	23.85%	27.92%	27.28%	23.07%	78.26%
Mississippi	2,004	453,673	783,234	1,238,911	1.35%	15.95%	27.53%	44.83%	4.35%	20.42%	24.59%	49.36%
Missouri	7,099	452,323	860,478	1,319,900	0.62%	8.08%	15.38%	24.08%	5.00%	31.20%	33.20%	69.40%
Montana	110,833	104,807	172,134	387,774	20.86%	11.62%	19.08%	51.56%	73.45%	13.20%	9.05%	95.71%
Nebraska	36,045	175,217	213,800	425,062	5.43%	10.24%	12.49%	28.16%	43.65%	25.28%	16.01%	84.94%

SUMMARY OF UNSERVED/UNDERSERVED AREAS BY STATE

Affected Population (State)

Percentage of Population Affected
(State)

Percentage of Total Area Affected
(State)

State	Affected Population (State)				Percentage of Population Affected (State)			Percentage of Total Area Affected (State)				
	0-5 Stations	6-10 Stations	11-15 Stations	Total Affected Population	0-5 Stations	6-10 Stations	11-15 Stations	Total Affected Population	0-5 Stations	6-10 Stations	11-15 Stations	Total Affected Area
Nevada	33,547	61,475	51,669	146,691	2.37%	3.08%	2.59%	8.03%	83.87%	5.39%	1.70%	90.96%
New Hampshire	10,816	275,000	613,149	898,965	2.81%	22.25%	49.62%	74.68%	25.25%	43.60%	25.36%	94.21%
New Jersey	335	383,272	790,519	1,174,126	0.07%	4.55%	9.39%	14.02%	1.13%	12.44%	20.27%	33.84%
New Mexico	54,519	175,814	210,029	440,362	6.46%	9.67%	11.55%	27.67%	60.24%	18.75%	9.73%	88.72%
New York	67,160	724,560	1,530,427	2,322,147	1.11%	3.82%	8.06%	12.99%	23.34%	25.07%	21.15%	69.56%
North Carolina	3,733	395,835	979,240	1,378,808	0.56%	4.92%	12.17%	17.65%	2.59%	15.78%	27.85%	46.21%
North Dakota	60,201	104,212	126,135	290,548	18.04%	16.23%	19.64%	53.90%	51.65%	23.57%	17.40%	92.62%
Ohio	13,139	636,997	1,561,177	2,211,313	0.34%	5.61%	13.75%	19.71%	2.82%	23.41%	33.73%	59.96%
Oklahoma	25,586	240,473	477,852	743,911	2.22%	6.97%	13.85%	23.04%	18.41%	25.71%	25.54%	69.66%
Oregon	26,862	121,603	223,951	372,416	1.36%	3.55%	6.55%	11.46%	58.04%	12.53%	10.61%	81.19%
Pennsylvania	40,594	835,550	1,786,593	2,662,737	1.16%	6.80%	14.55%	22.51%	11.26%	28.46%	28.82%	68.55%
Rhode Island	1,010	2,434	69,987	73,431	0.10%	6.68%	24.17%	30.94%	0.93%	3.13%	30.78%	34.84%
South Carolina	224	377,300	690,747	1,068,271	0.47%	9.40%	17.22%	27.09%	2.32%	27.63%	31.88%	61.83%
South Dakota	61,642	119,054	147,752	328,448	14.27%	15.77%	19.57%	49.62%	52.41%	26.44%	11.29%	90.14%
Tennessee	713	347,436	967,472	1,315,621	0.32%	6.11%	17.01%	23.43%	2.02%	22.76%	34.87%	59.65%
Texas	167,059	1,000,509	813,290	1,980,858	2.22%	4.80%	3.90%	10.92%	36.40%	19.43%	13.59%	69.41%
Utah	14,818	93,363	123,219	231,400	1.48%	4.18%	5.52%	11.18%	52.94%	22.56%	10.47%	85.97%
Vermont	7,757	187,043	195,441	390,241	6.54%	30.72%	32.10%	69.37%	15.94%	48.39%	27.31%	91.64%
Virginia	36,159	725,674	785,112	1,546,945	2.73%	10.25%	11.09%	24.07%	14.22%	30.69%	25.33%	70.24%
Washington	45,356	207,865	290,467	543,688	1.64%	3.53%	4.93%	10.09%	35.57%	18.97%	15.10%	69.63%
West Virginia	40,002	259,294	540,543	839,839	7.20%	14.34%	29.89%	51.43%	25.39%	26.38%	30.45%	82.23%
Wisconsin	32,405	473,668	681,306	1,187,379	2.83%	8.83%	12.70%	24.36%	16.46%	31.81%	21.85%	70.12%
Wyoming	35,551	126,588	138,676	300,815	12.82%	25.64%	28.08%	66.54%	62.53%	26.91%	8.91%	98.35%
Total	2,339,980	16,717,686	28,554,157	47,611,823	0.8%	5.9%	10.1%	16.90%	44.60%	19.40%	15.60%	79.70%