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United States Senate
WASHINGTON, DC 20510

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20541

The Honorable Thomas Barnett
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Assistant Attorney General Barnett and Chairman Martin:

I am writing to express my opposition to the proposed merger between XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. The Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights, of which I am a member, conducted a hearing on the proposed merger on March 20, 2007. My examination of the record we developed leads me to conclude that the proposed merger would tend substantially to lessen competition in the satellite radio market and would not serve the public interest. The proposed merger may result in higher subscription prices and fewer programming choices, and yield monopoly power to purveyors of highly offensive, sexually explicit programming that is inappropriate and harmful to our nation's families, thereby encouraging the airing of increased amounts of such programming. Accordingly, I urge both of your agencies to reject the proposed merger.

XM and Sirius are the only licensees of satellite radio spectrum and the only participants in the national satellite radio market. No one other than XM and Sirius provide a nationwide, multi-channel mobile audio programming service. No other service or technology is a substitute for satellite radio in this national market. It is for this reason that the FCC initially decided to prohibit the two satellite licensees from merging. None of the testimony presented at our hearing persuaded me that circumstances have changed.

My conclusion that satellite radio is a distinct market is consistent with the FCC's historical approach. In its 1997 *Satellite DARS Order* establishing the service, the Commission emphasized its "national reach" and its ability to "provide new services that local radio inherently cannot provide," such as "continuous radio service to the long-distance motoring public." The Commission has continued to view satellite radio as a distinct market, for example, in its 2002 *Broadcast Ownership Order* and, as recently as March of this year, in its *Satellite Competition Report*.

It is a central tenet of antitrust law, as well as a core element of the public interest, that a monopoly should not be permitted in the absence of "extraordinarily large" countervailing

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benefits. The Commission, for example, recognized this fact and its particular applicability in the context of a spectrum-based service in refusing to permit the proposed EchoStar/DirecTV DBS merger. As the Commission indicated in its *Satellite DARS Order*, a satellite radio monopoly will result in higher prices and fewer programming choices than competition. Any purported benefits do not come close to outweighing this anti-competitive harm to consumers and the public interest.

While XM and Sirius seem potentially willing to agree to certain temporary pricing conditions in order to obtain government approval for their proposed monopoly, such conditions would essentially substitute regulation for competition, contrary to the pro-competitive, deregulatory policies of the Clayton Act and the 1996 Telecommunications Act. For these reasons, the Commission rejected pricing conditions as a basis for approving the proposed EchoStar/DirecTV merger. It and the Antitrust Division should do the same here. Indeed, I believe the FCC should simply enforce its existing anti-merger rule and deny the merger application.

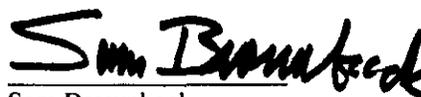
I am further concerned about what an XM/Sirius merger would mean for America's families, and particularly its children. Both XM and Sirius prominently feature sexually explicit programming that is highly inappropriate and contributes to the increasing coarseness of American society. At our hearing, Sirius CEO Mel Karmazin made clear his unwillingness to constrain his company's airing of such programming. It is apparent that such programming will continue to play a central role in the business model of any merged satellite radio entity.

Separate and apart from whether the government should ban or regulate such inappropriate and harmful programming, the government should not reward and encourage it by granting monopoly status to two of its providers. The American people deserve better.

For these reasons, I urge you to take appropriate steps to block this merger.

I appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Sam Brownback". The signature is written in a cursive, slightly slanted style.

Sam Brownback
United States Senator