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BYRON L. DORGAN

United States Senate

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Federal Communications Commission
Office of the Secretary

August 3, 2007

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

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Assistant Attorney General Barnett and Chairman Martin:

I write to you today to reiterate my concern over the proposed merger of XM and Sirius satellite radio companies. I understand that the Department of Justice and the Federal Communications Commission (FCC) are currently reviewing the merger proposal. I raised concern over this issue in April, but I have continued to monitor developments. I listened to the testimony before the Senate Commerce Committee, I asked the two companies to answer a number of questions to which they submitted responses, and I have followed the recent announcements, and still, I must say I remain deeply opposed to this merger. I urge you to reject the merger of the only two satellite radio companies in the United States.

When the FCC first granted the satellite radio licenses to XM and Sirius, it was under the strict condition that there must be at least two companies in the market. The FCC recognized at the time that competition between the two was a necessity for the public interest. Little has changed since their initial licensing in 1997. While other forms of audio have sprouted up around the country, such as terrestrial radio, webcasting or mp3 players, the companies have not proven beyond a doubt that these forms amount to competition. XM and Sirius argue those forms of audio exist, but they cannot prove these other forms of audio are able to regulate the service or prices of satellite radio. There can be no price check similar to that of two companies with national platforms competing against one another. The true moderator of XM and Sirius products and prices has been the satellite competition, just as the FCC intended.

In 1997 the FCC stated: "Even after licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS license." The full paragraph states the reasoning quite clearly:

> *170. Transfers. We note that DARS licensees, like other satellite licensees, will be subject to rule 25.118, which prohibits transfers or assignments of licenses except upon application to the Commission and upon a finding by the Commission that the public interest would be served thereby. Even after DARS licenses are granted, one licensee will*

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not be permitted to acquire control of the other remaining satellite DARS license. This prohibition on transfer of control will help assure sufficient continuing competition in the provision of satellite DARS service.

The two companies were designed to compete against one another.

Two of the "fortunate four" companies who bid on the licenses were lucky enough to win them. At the time, the bidding was limited to the companies who had expressed interest years before. There may have been other bidders who could have performed this service, but who were shut out of the bidding. The two companies who prevailed now have the honor and responsibility that comes with a national media platform. They have an obligation to serve the public in accordance with the market for audio news and entertainment. But this market would be turn on its head were these two competitors, two of the "fortunate four," allowed to turn into one.

I cannot believe that this merger will result in lower prices or increase diversity. And I cannot believe that the public will be better served by this merger. As I said in April and I still believe, this isn't even a close call. I urge you to reject the merger proposal by XM and Sirius.

Sincerely,

BYRON L. DORGAN
U.S. SENATOR