

United States Senate

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Federal Communications Commission
Office of the Secretary

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ARMED SERVICES

COMMERCE, SCIENCE AND
TRANSPORTATION

HOMELAND SECURITY
AND GOVERNMENT AFFAIRS

INDIAN AFFAIRS

SPECIAL COMMITTEE ON AGING

PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS

The Honorable Thomas Barnett
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Dear Gentlemen:

I am writing to express my opposition to the proposed merger between XM Satellite Radio and Sirius Satellite Radio. I do not believe this merger is in the best interest of consumers, and I ask you to reject the merger.

When the Federal Communications Commission (FCC) granted two satellite radio licenses in 1997, it stated: "Even after DARS [Digital Audio Radio Services] licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS license." The FCC's rationale was that the satellite radio market would be sufficiently different from the terrestrial radio market and consumers would benefit from competition. This rationale holds true today. While satellite radio faces competition from terrestrial radio services and portable music devices, such as iPods, the service satellite radio provides is sufficiently different as it is subscription-based, national programming, free from decency and public interest requirements. Furthermore, consumers have benefited from the head-to-head competition between Sirius and XM. Competition has kept prices low, while spurring innovation in both equipment and programming. Sirius has said it would agree to a condition placed on the merger to not raise subscription prices; however, this is an acknowledgment that the market, absent this condition, would not protect consumers.

I also have concerns that the merger not be approved when there are outstanding consumer issues before the FCC regarding XM and Sirius. The original satellite radio service rules require licensees to design satellite radio receivers capable of receiving both services; however, interoperable receivers to date have been a commercial failure because while XM and Sirius subsidize the cost of their exclusive receivers, neither service will subsidize the cost of interoperable ones. As a result, consumers who today wish to switch satellite radio providers generally must buy new equipment. While XM and Sirius argue that merger approval will enhance the availability and distribution of interoperable equipment, it is unclear how long that may take or how solid those guarantees are. In the interim, consumers wishing to realize the benefits of receiving both services will have to bear the cost of buying two pieces of equipment or a new interoperable receiver. The

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problem may be particularly acute for consumers with vehicles with built-in Sirius or XM radios who will not be able to enjoy the benefits of more programming without paying costs associated with new equipment and installation.

I appreciate your review of the concerns I have raised.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with a large loop at the end.

Claire McCaskill
United States Senator

CMC/sw