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Congress of the United States
Washington, DC 20515

July 16, 2007

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Federal Communications Commission
Office of the Secretary

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

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

Dear Assistant Attorney General Barnett and Chairman Martin:

We are writing to express our concerns regarding the proposed merger of Sirius Satellite Radio and XM Satellite Radio, now under consideration by the Justice Department ("DOJ") and the Federal Communications Commission ("FCC"). After carefully considering this proposed merger, we have come to the conclusion it is not in the best interest of our constituents.

Our constituents have embraced satellite radio as a supplement to free over-the-air radio and they have benefited greatly from the head-to-head competition between Sirius and XM. Competition has kept prices down, increased innovation, and strengthened customer service.

When the FCC licensed satellite radio service in 1997, it did so on the express condition that the two licenses would not be allowed to merge, saying¹: "Even after [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 concluded that a combination of the only two satellite radio services would result in higher prices, reduced diversity of voices, and a decrease in satellite radio innovation. The reasoning behind this conclusion remains sound today.

XM's and Sirius's product is significantly different from free over-the-air radio and other audio technologies, such as iPods. There is currently no existing audio service or product that qualifies as a viable substitute for satellite radio that could constrain the behavior of an XM-Sirius monopoly. Unlike free over-the-air radio stations, both XM and Sirius have a national footprint that allows them to reach into every corner in America, from major cities to remote rural

¹ Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5457 (1997).

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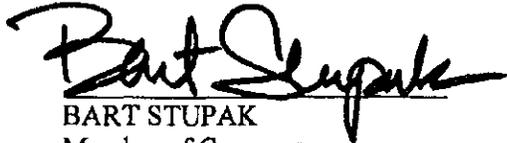
communities. Over-the-air radio stations are restricted to their FCC-licensed contours. And unlike iPods and other Mp3 players, both Sirius and XM can provide immediate and live broadcast service of national programming, including Oprah, and major sports coverage.

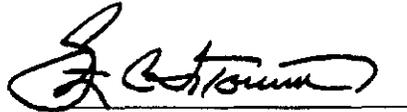
With no viable competition in the national market, a combined XM-Sirius satellite radio monopoly could easily raise prices without losing existing subscribers. Even the promised price caps would provide only temporary protection to consumers, and are an acknowledgement themselves of the monopoly power resulting from a merger. In addition, free over-the-air radio is not enough of a competitor to satellite radio to keep the satellite subscription prices down. Nor do other proposed conditions address our concerns, as the FCC has not adequately enforced other consumer protections in this market, such as the creation of interoperable satellite radio devices.

Finally, if the merger is not approved, both XM and Sirius have said that they will remain viable. As such, there is no compelling public interest rationale for approving the proposed merger.

We strongly suggest the Department of Justice and the FCC preserve national radio competition, and safeguard the interests of American consumers by denying this merger.

Sincerely,


BART STUPAK
Member of Congress


STEVEN C. LATOURETTE
Member of Congress