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August 30, 2007

BY ELECTRONIC TRANSMISSION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Written Ex Parte Presentation in Connection With the
Consolidated Application for Authority to Transfer Control in Connection
With the Sirius/XM Merger, as Amended
(MB Docket No. 07-57)

Dear Ms. Dortch:

On August 24, 2007, Ms. Katie Jones, an employee of Criterion Economics, L.L.C. ("Criterion"), economic consultants to the Consumer Coalition for Competition in Satellite Radio ("C3SR"), sent via e-mail a copy of the article, "Misunderstanding the XM/Sirius merger," attached hereto as Exhibit A, authored by Messrs. J. Gregory Sidak and Hal Singer of Criterion, to the FCC Commissioners and staff members listed in Exhibit B.

Pursuant to Section 1.1206 of the Commission's Rules and DA 07-1435, this letter is submitted via ECFS for inclusion in the public record of these proceedings.

Respectfully submitted,

Benjamin D. Arden
Counsel to C3SR

Attachments

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EXHIBIT A

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Article published Aug 24, 2007

Misunderstanding the XM/Sirius merger

August 24, 2007

By J. Gregory Sidak and Hal J. Singer - It is a knee-jerk reaction among conservative commentators to bless most mergers under the belief that these transactions reflect the salubrious workings of the market. But conservatives should also reject the idea of taking two unregulated competitors and creating in their place a brand-new regulated monopoly through the merger approval process.

One of the year's biggest mergers of competitors working is the proposed combination of XM and Sirius, the two nationwide satellite radio providers. When XM and Sirius first acquired spectrum from the FCC, one licensing condition was that no single company could control all spectrum devoted to satellite radio. For the merger to be approved, the FCC would need to waive this provision. The transaction also requires the approval of the Department of Justice.

The proposed merger has attracted the attention of many diverse interest groups, which seek to extract valuable concessions that benefit their constituents — but not necessarily satellite radio consumers — in return for endorsing the transaction. The merging parties can consent to these concessions as long as they expect the profits earned as a regulated monopolist will exceed the current duopoly profits plus the costs of the concessions. This is how sausage gets made in Washington.

For example, the left-leaning consumer advocacy group, Public Knowledge, blessed the merger after XM and Sirius promised to allocate a specified amount of bandwidth for "noncommercial educational and informational programming." Elsewhere on the political spectrum, the Family Research Council blessed the merger after XM and Sirius promised to block sexually explicit channels in exchange for a small rebate. Given the sheer popularity of Howard Stern and similar types of edgy content among satellite radio subscribers, this "phantom rebate" will likely be redeemed by only a handful of subscribers.

But the biggest concession of all is XM's and Sirius's offer to freeze the monthly subscription price at the current monthly rate of \$12.95 and to offer a variety of new tiered program packages that XM and Sirius generously describe as "a la carte." These offers are intended to neutralize the traditional antitrust concerns that a merger leads to higher prices and win the support of certain vital constituencies.

Assuming that three of five FCC commissioners are persuaded, these concessions and others will assume the force of law by the FCC's order that approves the merger.

Merger opponents argue that this deal is a merger to monopoly and should therefore be

denied. In response, XM and Sirius argue that satellite radio consumers will be protected from harm due to the alleged competition they face from alternative providers in what they call the "audio entertainment" market, including mobile phone providers, iPods/MP3 players, mobile Internet radio and terrestrial radio. Of course, if they truly believed this argument, XM and Sirius would not need to offer to freeze their prices. Competition would keep those prices at competitive levels.

The reason why the price freeze and new packages by themselves cannot fully protect satellite radio consumers is that XM and Sirius compete along multiple dimensions for subscribers, including programming choice, equipment, and the amount of commercial time (virtually none today). Committing to refrain from adjusting one of these levers of competition for a fixed duration does not protect consumers against a degradation of programming, an increase in equipment costs, or a sudden infusion of commercials.

Indeed, in a February 20, 2007 conference call with analysts and investors, Sirius CEO Mel Karmazin explained that advertising would be a central strategy of the combined firm. That statement can't be music to the ears of Sirius customers who signed up under the expectation that they would enjoy "commercial-free" digital radio service.

There is an established framework used by antitrust authorities to analyze mergers, which involves defining the "relevant market" and assessing the power to raise prices within that market. Under that framework, it is clear that this merger has serious problems, so XM and Sirius have rejected that framework. Instead of offering credible evidence that terrestrial radio (or any other audio service) constrains the price of satellite radio, they have approached the government's merger review proceeding as though it were a media blitz for a political campaign.

Many conservative commentators are missing the point that "public interest" groups and some interventionist regulators are getting to plan, through the merger approval process, what a provider of satellite radio should look like, down to the number of channels that would be dedicated to various formats, the types of packages offered, or the monthly subscription price. The result would be a Frankenstein's monster.

The choice for whether to support this merger comes down to whether a competitive market should decide these things (under the current, unregulated duopoly) or social planners should decide (under the proposed, regulated monopoly). Free-market types should prefer the former.

J. Gregory Sidak is Visiting Professor of Law at Georgetown University Law Center. Hal J. Singer is president of Criterion Economics. They have advised the Consumer Coalition for Competition in Satellite Radio, which opposes the merger.

EXHIBIT B

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