

# GEORGETOWN PARTNERS L.L.C.

October 18, 2007

VIA Email and Electronic Filing

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, Southwest  
Washington, DC 20554

**Re: Written *Ex Parte* Presentation  
Consolidated Application for Authority to Transfer Control of XM Satellite  
Radio Holdings Inc. and Sirius Satellite Radio Inc.  
MB Docket No. 07-57**

Georgetown Partners, LLC (“Georgetown”) has reviewed the record in this proceeding and herewith expresses (i) its support for the Petitions to Defer Action filed by the National Association of Broadcasters (“NAB”) and U.S. Electronics, Inc.; and (ii) its strong opposition to approval of the proposed merger unless appropriately conditioned to provide access for minority-controlled programming.

Consistent with the issues discussed in the Petitions of the NAB and U.S. Electronics, the Commission should defer action, if not deny the applications outright, because unconditional approval of the proposed merger of the only two satellite radio (“SDARS”) licensees would forever totally preclude *any* opportunity for diversity of program ownership and control by minorities, women or small businesses in the sole medium capable of nationwide program broadcasting.

**Statement of Interest**

Georgetown Partners is a minority-owned closely-held limited liability corporation that invests in and manages various properties, including those related to communications. In the past it has held ownership interests in entities regulated by the FCC, and it continues to analyze communications markets regulated by the FCC for opportunities to extend minority ownership and control.

**Diversity of Program Control is a Core Public Interest Principle**

There is no distribution medium comparable to satellite radio for broadcasting programs nationwide. From our investment viewpoint, SDARS is unique in that, unlike individual broadcast radio stations with limited geographic range, SDARS channels provide the means to broadcast programming – including niche programming that may be viable only if broadcast on a nationwide basis -- that is produced by and for various minority communities. The unique reach of the satellite signal enables the aggregation of listening communities across the country that do not have economically-viable numbers within individual cities and towns. In turn, the ability to access a nationwide minority audience is certain to stimulate the development of additional minority produced and distributed content, further enhancing the diversity of material available to the public.

No matter what kind of pseudo-analysis may be written and submitted to the Commission, even carriage on multiple broadcast stations does not approach providing access to every American, everywhere. While the two SDARS licensees have been broadcasting for less than 7 years, their business is growing as more and more vehicles go into service that include satellite radio receivers. Indeed, it is noteworthy that both XM and Sirius truthfully concede that this merger is not absolutely necessary to the future economic viability of either company.

The Commission established only two licenses for SDARS because of spectrum limitations. At the time, consistent with its competitive goals, the Commission explicitly provided that the two licensees would *not* be permitted to merge. Consequently, minority programmers today have two completely independent alternatives to attain national programming reach. However, in the event that the proposed merger is approved without appropriate conditions, there will be but a single entity in control of *all* 300+ nationwide radio broadcast channels. Failure to obtain carriage through the single licensee, no matter the reason, would preclude nationwide coverage and the consequent ability to aggregate niche audiences. There simply would be no alternative. Thus, it should be no surprise that this merger is opposed vigorously by organizations that include the Black Leadership Forum, the National Association of Black Owned Broadcasters, and American Women in Radio and Television.

**Appropriate Conditions Would Alleviate the Harm and Provide a Public Interest Basis for Merger Approval**

As proposed, the merger of Sirius and XM cannot meet any definition of the public interest, convenience and necessity as required by Section 310(d) of the Communications Act. Conditions might be crafted specific to providing an alternative provider, however, that could transform the proposal into one that arguably comports with the public interest.

In determining whether or not to approve the merger, it is submitted that in addition to the conditions now under consideration, Sirius and XM should also be required, as a prerequisite to approval of their proposed merger, to sublease on a permanent basis broadcasting infrastructure and sufficient channel capacity to a minority-controlled entity which would enable that entity to be a viable competitor to the post merger Company. This condition is analogous to

asset divestitures in the antitrust context where the merger companies agree to a “tolling” agreement for the production and/or distribution by the new competitor.

The imposition of this condition for merger approval would serve the following three purposes:

1. The establishment of a viable competitor to the Sirius/XM combined entity;
2. The achievement of the broader public interest objectives of the FCC by encouraging minority participation in the operation and control of broadcast spectrum and the assurance that the satellite radio spectrum would be included under these public interest objectives and considerations; and
3. The introduction of a viable competitor to the post merger company that would foster the availability of true a la carte offerings, enriching the quality and quantity of content available to consumers in satellite radio programming. A merger of XM and Sirius not conditioned upon the introduction of a competitor would only provide for limited a la carte programming choices for consumers, namely the unbundling of an existing limited content package.

Sirius and XM have consistently asserted that approval of their proposed merger would not violate antitrust laws because the real competitor is not each other, but the terrestrial radio companies. If this is indeed true, then the same broader public interest objectives of encouraging and fostering minority participation that apply to broadcast radio companies also should apply to the combined XM-Sirius satellite radio company.

In this proceeding, the Commission has a rare and historic opportunity to meaningfully increase the ownership and control of broadcast properties by requiring, as a condition for

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approval of the merger, that the post merger entity enter into a long term lease with a minority controlled entity for the use of its infrastructure and a significant percentage of its channel capacity. In one stroke, such a condition would accomplish long-sought goals by diversifying control over America's media. Furthermore, throughout the country, America's minority and under-served populations would gain potential access to audiences everywhere. Finally, although accomplished through a leasing arrangement, the maintenance of completely separate and independent control would provide an alternative means for access to the satellite airwaves and break what otherwise would be total monopolistic control.

### **Conclusion**

In an effort to be an agent for positive change, Georgetown Partners proposes leasing from the post merger entity its infrastructure and a significant percentage of its channel capacity to a single entity as a way to meet the public interest test required for approval of this merger. Adoption of this proposal for conditioning approval of the merger would provide access to the airwaves throughout the country for minorities, women, and other underserved populations.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Davenport', with a long horizontal line extending to the right from the end of the signature.

Chester C. Davenport  
Managing Director

## CERTIFICATE OF SERVICE

I, Wanda J. Gerald, hereby certify that, on this 18th day of October, 2007, copies of the foregoing *Ex Parte* Letter were sent by First Class U.S. mail to the following:

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