

November 7, 2007

VIA ECFS

Monica Shah Desai
Chief, Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc., MB Docket No. 07-57

Dear Ms. Desai:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Holdings Inc. ("XM"), applicants in the above-referenced proceeding ("Applicants"), submit this letter to address the need for enhanced confidential treatment for certain materials called for by the Commission's request for information and documents dated November 2, 2007 (the "Information Request"), such that only outside counsel and their consultants and employees may have access to such materials.

A portion of the information identified in the Information Request will be submitted without request for confidential treatment or under the existing protective order.¹ Applicants seek enhanced protection for a category of materials related to their operational and financial data (e.g., subscriber data, calculations of costs and revenues), integration plans, contracts and programming agreements, marketing and pricing strategies, and sensitive technical data. These materials constitute the most sensitive data requested by the Commission, and contain information that has been afforded heightened protection in prior proceedings. For the reasons set forth below, disclosure of these materials to Applicants' competitors – some of whom are parties in this proceeding – could have a devastating effect on their businesses and place the companies at a competitive disadvantage. Accordingly, Applicants request that the Commission grant an enhanced level of protection for the specified documents, as it did in the *Sprint/Nextel Second Protective Order*, the *SBC/AT&T Second Protective Order*, the *Verizon/MCI Second Protective Order*,

¹ See *Applications of Sirius Satellite Radio Inc. And XM Satellite Radio Holdings Inc. For Approval to Transfer Control*, Protective Order, DA 07-3135 (July 11, 2007) ("*First Protective Order*").

and the *Liberty/DirectTV Second Protective Order*.² In addition, Applicants request that the Commission establish a prohibition on the copying of any materials bearing the additional legend “Copying Prohibited,” as included in the First Protective Order.³

Applicants seek enhanced protection for the following categories of information:

- Subscriber data, including numbers of customers (by customer type), customer preferences and churn data. See e.g., Information Request, II.B and E and F. Information about Applicants’ subscribers at this level is treated by Applicants as very sensitive data that is not made available to the public. This data is used to study and measure demand for services, as well as to analyze the strengths and weaknesses of different products and service offerings. Any competitor who gained access to this information could be able to exploit any perceived weakness.
- Calculations of costs and revenues, including specific subscriber acquisition costs and revenues and marketing costs and revenues. See e.g., Information Request, II.G and I, IV.A through G. Information describing costs and revenues associated with subscriber acquisition and marketing is used to analyze the companies’ strengths and weaknesses. For example, Specification II.F requests surveys, analyses, and evaluations of listener behavior. Any competitor who gained access to this information could use this information in their own marketing strategies and exploit perceived weaknesses to the detriment of the Applicants. Moreover, access to cost data by competitors could lead to tacit collusive behavior by competitors. This outcome would be contrary to the Commission’s public interest mandate because it would reduce competition in the marketplace. The Commission has previously found that enhanced protection is appropriate for information that “provide[d] revenues and numbers of customers broken down by customer type and market area.”⁴

² See *Applications for the Transfer of Control of Licenses and Authorizations from Nextel Communications Inc. and its Subsidiaries to Sprint Corporation – Order Adopting Second Protective Order*, Order, 20 FCC Rcd 9280 (2005) (“*Sprint/Nextel Second Protective Order*”); *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control, Order Adopting Second Protective Order*, Order, 20 FCC Rcd 8876 (2005) (“*SBC/AT&T Second Protective Order*”); *In re Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Order Adopting Second Protective Order*, Order, 20 FCC Rcd 10420 (2005) (“*Verizon/MCI Second Protective Order*”); *News Corporation and The DIRECTV Group, Inc., and Liberty Media Corporation, Application For Authority to Transfer Control, Supplemental Protective Order*, DA 07-3328 (July 20, 2007) (“*Liberty/DirectTV Second Protective Order*”).

³ First Protective Order ¶ 6.

⁴ See *SBC/AT&T Second Protective Order* ¶ 4; *Verizon/MCI Second Protective Order* ¶ 4.

- Integration plans. *See e.g.*, Information Request, II.D and G, III.E and F, IV.A through G. Applicants seek enhanced protection for confidential and commercially sensitive data related to the companies' plans for post-merger integration, including detailed benefits or efficiencies from the integration of networks and operations, as well as supporting data. Underscoring the importance of maintaining the confidentiality of this data, Applicants have themselves limited the exchange of such information to their counsel and experts.
- Contracts and programming agreements. *See* Information Request, I.B(1)-(8). Information contained in contracts and programming agreements, including duration of contract term, pricing, carriage, and revenues from advertising inserts, is highly proprietary and confidentially maintained by Applicants. A competitor could use this information to competitively disadvantage Applicants because understanding Applicants' costs and pricing structures would allow competitors to act strategically to market their own services in a way that could cause significant harm to Applicants' businesses. Additionally, these contracts and programming agreements involve third parties that are not part of the instant merger proceeding. Information included in contracts and programming agreements could be used to competitively disadvantage these third parties. Moreover, many of these contracts contain confidentiality provisions that prohibit Applicants from disclosing specific contents of the contracts.
- Marketing and pricing strategies. *See e.g.*, Information Request, II.E through I, III.F, IV.C(7), D(3)-(9) and E. Information compiled by the Applicants regarding marketing and pricing strategies, including how Sirius and XM evaluate customer behavior and determine pricing, is among the most competitively sensitive information Applicants possess. Knowledge of this information would allow competitors to adopt their own marketing and pricing strategies to specifically undermine Applicants' plans. Consequently, Applicants seek enhanced protection of all analyses discussing competition for subscribers, engineering plans and forecasts, including plans to construct new facilities, and information and documents that could reveal pricing strategies, competitive strategies, product strategies, merger integration strategies, and marketing strategies.
- Sensitive technical data, including trade secrets. *See e.g.*, Information Request, III.A through G, IV.C(6) and D through F. Technical information about satellites, terrestrial repeaters, and chipsets is sensitive technical data that is highly confidential to the Applicants. Applicants have expended considerable resources developing these technologies. Disclosure of current technical specifications, or any plans for future specifications, will provide Applicants' competitors with significant information that can be used by these competitors in their own technical developments, and could be used to competitively harm Applicants. The heightened protection appropriate for this type of information is evident based on the fact that Applicants have not shared this information with one another, in order to fully protect all trade secrets.

If you have any questions concerning the foregoing, please do not hesitate to contact the undersigned.

Respectfully Submitted,

/s/ Richard E. Wiley

Richard E. Wiley
Robert L. Pettit
Peter D. Shields
Jennifer D. Hindin
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
202.719.7000

Attorneys for Sirius Satellite Radio Inc.

/s/ Gary M. Epstein

Gary M. Epstein
James H. Barker
Brian W. Murray
Barry J. Blonien
Latham & Watkins LLP
555 Eleventh Street, NW
Washington, DC 20004-1304
202.637.2200

Attorneys for XM Satellite Radio Holdings Inc.

cc (via email): Rosemary Harold
 William Freedman
 Jamila Bess Johnson
 Vanessa Lemme