National Association of BROADCASTERS

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November 13, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 07-57

Dear Ms. Dortch:

The National Association of Broadcasters respectfully requests that the attached story from the Washington Post (Nov. 11, 2007 edition) be placed in the above-captioned record.

The article documents the expected consumer harms that will result from a merger of Sirius Satellite Radio Inc. and XM Satellite Radio Inc. The author states that allowing the two satellite radio providers to merge inevitably will lead to reduced programming diversity and higher prices, and rightly notes that letting XM and Sirius continue to compete for listeners is best for consumers.

Please direct any questions to the undersigned.

Respectfully submitted,

Larry Walke

Attachments

The Washington Post

XM-Sirius Merger Made Simple: One Is Always Less Than Two

By Marc Fisher
Washington Post Staff Writer
Sunday, November 11, 2007; M11

Sometime soon, when federal regulators decide whether to allow a merger of the nation's two satellite radio services, XM and Sirius, the government will have to take a stand: Would combining the two companies unfairly diminish consumer choice or, as the companies argue, turn losing operations into a profitable service with lower prices?

But while lawyers at the Justice Department and the Federal Communications Commission fight through a thicket of filings, the questions for listeners are different: Would a single satellite radio company produce more or less interesting and entertaining content? Would the menu of music, news, sports, comedy and talk programming get longer or shorter -- and at what price? Wouldn't reducing the satellite field to one company lead inevitably to service cuts and price increases?

Think about it: Can you name one example of a new consumer technology that was guaranteed to a single provider and still served customers well? (Don't everyone say "cable TV" at once.)

In 1997, when the feds gave the two companies the green light to launch satellites that would each transmit more than a hundred channels of programming across the country, the idea was to provide a far higher quality of music, news and other programming in categories AM and FM radio simply ignored. Satellite would serve up the blues, bluegrass, jazz, classical, dance music, comedy and dozens of other genres that barely exist on commercial radio.

But by the time XM fired up its $13-a-month service in 2001, a year before Sirius's start, the soundscape of the nation had begun to change. Today, the competition is no longer just old-fashioned, over-the-air radio stations, which cling to music formats that have barely changed in decades, but a whole raft of new media that let listeners create their own stations: iPods, Internet radio, podcasts, music blogs, music delivered to cellphones, and the broadcast industry's response to all of that, HD radio, which digitally inserts additional stations on the same frequency as existing ones.

The merger decision turns on this question of competition: When the feds approved satellite radio, they banned XM and Sirius from ever merging, because competition would protect the public from high prices and assure that the companies seek top-quality programming. But the two companies now argue that they no longer exist alone in a satellite silo; rather, they say they are content providers just like Yahoo, ABC, Clear

Channel or The Washington Post, creating material that can then be consumed through all manner of technologies.

That's a fascinating question both legally and socially. Will Americans in a decade or two recognize any useful distinction among different media, or will broadcast, Web, print and phone all merge into one stream of information and entertainment?

XM and Sirius, which now reach about 13 percent of U.S. households, want to branch out beyond sending programming from a satellite into a radio. They want to deliver movies and other video to in-car DVD players. They own a transmission system that can serve cars, businesses and homes, but more important, they are already among the biggest producers of audio entertainment, and they want to sell that content wherever they can.

Sirius Chief Executive Mel Karmazin and XM Chairman Gary Parsons argue that since they have morphed into content providers competing against many different media companies, there is no longer any rationale for preventing a merger. The companies no longer compete mainly against each other and need size and financial prowess to take on Apple, Hollywood, TV networks and the infinite number of music sources on the Web.

But that same argument works against a merger, too, perhaps more persuasively.

The past decade has provided convincing evidence that corporate consolidation in radio and other media leads to dramatic cost-cutting, which results in less local programming and lower quality.

Why wouldn't the same happen in satellite radio?

Unquestionably, a merger would lower the satellite providers' fixed costs, let them quit their marketing war against one another and allow them to reduce spending on programming. Financial analysts say XM and Sirius could save between $3 billion and $7 billion by combining. Why else would the two companies pour so much money into this lobbying battle?

Karmazin, who would be chief executive of the combined satellite provider and is leading the charge for a merger, counters that listeners would benefit by getting the best of both services without having to pay for two subscriptions. To bolster that claim, the companies propose a menu of pricing options: Subscribers could keep their current service at the same price they pay now; add the "best of" the other service for an extra $4 a month; or choose to get fewer channels at a lower price. But while the companies tout these choices as the a la carte offering that cable TV has never consented to, the fact remains that if you want more channels under a combined XM-Sirius operation, you will have to pay more.

The danger in offering packages with fewer channels is the same risk cable TV companies have warned against for years: If consumers can pick and choose channels, that undermines the whole business, because inevitably, the bulk of the audience will spend most of their time listening to a relative handful of channels. Less popular channels, now subsidized by a flat subscription fee, would wither away.

With TV, according to an FCC report, the average cable household only watches 17 of the 100-plus channels they receive. On satellite radio, according to the first-ever satellite ratings report released by Arbitron this fall, a dozen of Sirius's 130 channels were clustered at the top of the heap, including the channels most similar to broadcast radio's offerings -- pop hits, oldies, new and classic country, Howard Stern and a couple of rock formats. On XM, similarly, 20 of the 170 channels drew by far the biggest audiences -- again, classic country; oldies from the '50s, '60s, '70s and '80s; current pop hits; light rock; classic rock; smooth jazz; and urban hits.

How long would more obscure, low-rated satellite programming such as Sirius's Underground Garage rock or NPR Talk channels or XM's Cinemagic movie music or choral classical outlets survive in a monopoly, a la carte system? And if the range of programming narrows, what is satellite offering that AM and FM do not?

Virtually anyone can start an Internet radio station these days and play an intriguing mix of music. But only XM and Sirius -- and National Public Radio, perhaps -- have the resources to produce a great range of creative, professionally produced programming: Bob Dylan's explorations in music and storytelling on XM; original radio dramas; XM's Artist Confidential series of sessions with big-name performers; and specialized programs for truckers, gays, Latinos, NASCAR fans, Broadway lovers, opera buffs, movie-music mavens, presidential campaign addicts and on and on.

That programming diversity is what justifies giving XM and Sirius a chunk of the government-licensed radio spectrum. Reducing the two services to a satellite monopoly will inevitably bring about a diminution of choices, along with higher prices. At XM's Washington headquarters, the number of producers and DJs would decline, meaning more formulaic programming -- if XM even remained here. How long would Karmazin keep production facilities in both the District and New York, where Sirius is based?

Both XM and Sirius say they can survive without the merger, even in fierce competition with all the other content providers scrapping for an audience today. Let them compete.