Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of XM Satellite Radio Holdings Inc., *Transferor,* and Sirius Satellite Radio Inc., *Transferee.* Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc.	))))))))))))))	MB Docket No. 07-57

SUPPLEMENTAL COMMENTS OF SIRIUS SATELLITE RADIO INC.
AND XM SATELLITE RADIO HOLDINGS INC.
REGARDING THE BENEFITS OF A LA CARTE

Sirius Satellite Radio and XM Satellite Radio Holdings submit these supplemental comments in order to highlight the extensive record in these proceedings demonstrating that significant, merger-specific public interest benefits will arise from the new programming options that will be offered by the merged entity. In short, the merger of these two companies and the resulting cost savings will enable the merged firm to offer more choice and lower prices for subscribers of satellite radio. The combined company will benefit from offering these new packages by appealing to a broader subscriber base, leading to increased subscribers and thus allowing satellite radio to become a stronger competitor in the audio entertainment market.

I. CONSUMERS WILL HAVE MORE CHOICE OVER THE CONTENT THEY RECEIVE AND THE MARKET WILL DETERMINE WHAT CONTENT IS OFFERED

Academic studies, consumer groups and FCC studies have all recognized that a la carte and smaller programming packages benefit consumers. In numerous public statements and FCC filings, Sirius and XM have committed to provide these benefits. The combined company will offer consumers both a la carte and smaller programming packages that will provide consumers with greater control over the programming they receive and ensure that customers are only required to pay for that selected programming. These benefits are made possible only through the efficiencies and synergies that result from the merger of Sirius and XM.

As previously explained by the companies, the new programming options provided by the combined company will include two a la carte packages, as well as several new and smaller programming packages. The first a la carte package, which is referred to as A La Carte I, would allow a customer to individually select 50 channels for $6.99 per month. Subscribers to A La Carte I will be able to purchase additional individual channels for 25 cents per month each as well as "premium" packages of certain Sirius channels for $5 or $6 each and of certain XM channels for $3 or $6 each. The second a la carte package, which is referred to as A La Carte II, would allow a customer to select 100 channels, including access to "best-of" programming offered by the other satellite provider—for $14.99 per month. Subscribers would have the ability to craft an individualized line-up that includes some of the most popular and appealing programming currently offered by the other provider. These a la carte programming options will allow customers to select and pay for the exact channels they wish to receive.[1]

The combined company will also offer more limited programming packages, including a

[1] A La Carte I and A La Carte II will be available to customers who select their channels through the Internet and purchase next-generation radios.

“Mostly Music” package, which includes commercial-free music as well as several family-oriented and religious channels, and emergency alerts, for $9.99 per month; a “News, Sports & Talk” package, which includes various sports, talk and entertainment, family, news, traffic and weather, and emergency channels, for $9.99 per month; and two “Family Friendly” packages, which exclude adult-themed content. All of these programming options will ensure that customers receive and pay for only the type of channels they wish to receive. Moreover, customers may block specific channels that they do not wish to receive. As discussed below, the merger will also enable the offering of a new “Best of Both” package, which will enable customers to receive selected programming from both companies at a cost of $16.99 per month, well below the cost of subscriptions to both services today.[2]

In addition to this enhanced ability to control their programming line-ups, customers will continue to have a diverse array of programming from which to choose. Indeed, the availability of these various packages in no way lessens the combined company’s commitment to providing news and entertainment targeted to minorities and other specific interests. Rather, as the companies have explained, the merger will improve the combined entity’s ability and incentive to develop new and diverse programming.

A. The A La Carte and Other Packages Offered by the Combined Company Will Provide Consumers More Control Over Programming and the Option to Only Pay For the Programming They Want

These programming options fulfill the objective repeatedly stated by FCC Chairman Kevin Martin that “no consumer should have to pay for content they do not wish to receive.

[2] The specific “best of” channels will be determined based on contract negotiations and other factors.

Period."[3] In the FCC's 2006 *Further Report on the Packaging and Sale of Video Programming Services to the Public*, the FCC explained that offering programming only "in very large bundles" can fail to provide consumers with the programming they want: "Consumers may find that they are purchasing programming that they do not watch and that programming they find valuable is not offered under bundling. A la carte could be preferable to bundling in providing diverse programming response to consumer demand."[4] The combined company's new programming options will allow customers to choose the programming they want by either selecting individual channels or by selecting packages of types of programming.

In particular, the programming options provided by the combined company will enable parents to directly control the programming their children receive. No parent will be required to allow objectionable channels into his or her home, because parents can individually select which programs enter into their homes or they can select programming packages that block any objectionable content. This fulfills the objective of Chairman Martin, who has stated that "parents must have meaningful choices and [] their choices must have meaningful consequences. If a family must continue to pay for programming even when they object to it, there is little or no incentive for programmers to respond. Instead there should be marketplace implications for programmers when consumers don't want a channel."[5] The Family Research Council has announced its support for these programming options, which will allow consumers to reject

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3 Remarks of FCC Chairman Kevin J. Martin, "Providing More Tools for Parents," U.S. Capitol, June 14, 2007, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-274169A1.doc.

4 *Further Report on the Packaging and Sale of Video Programming Services to the Public*, DOC-263740, at 5 (Feb. 9, 2006) (FCC Further Report on Video Programming).

5 Remarks of FCC Chairman Kevin J. Martin, "Providing More Tools for Parents," U.S. Capitol, June 14, 2007, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-274169A1.doc.

programming they find offensive: "With concomitant and commensurate financial benefits to the consumer, programming that offends the taste or values of listeners will simply be rejected. Consequently, the Sirius/XM merger has the potential to reshape the manner in which Americans receive entertainment programming."[6]

B. Consumer Choice Will Lead to Programming Decisions That Are Informed by the Market, Leading to More Programming That Consumers Value

Allowing consumers to individually select channels will provide customers with a greater ability to influence the content of programming they receive, leading to the creation of programming that consumers actually want. When all programming is bundled into one big programming option, it is difficult for consumers to show their support for particular programming content. The new programming options will allow the combined company to make choices about content based on the choices made by subscribers - a "real-time" subscriber survey of the content subscribers value. With a la carte and other programming options, "[i]ndependent and niche networks would be able to demonstrate support for their programming to advertisers by pointing to the actual a la carte sales of their networks."[7] The new programming options will thus allow the combined company to increase the diversity of programming in response to customer demand.

Even consumer groups that oppose the merger have voiced their support for a la carte options, stating that "by allowing consumers to vote with their wallets rather than forcing them to buy channels they never watch, the marketplace will respond by providing more diverse and

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[6] Letter from Tony Perkins, President, Family Research Council to Mr. Joseph P. Clayton, Chairman, Sirius Satellite Radio Inc., and Mr. Gary Parsons, Chairman, XM Satellite Radio Inc. (July 6, 2007).

[7] Letter from Kevin J. Martin to Gary Flowers, et al., Aug. 22, 2007, available at http://www.fcc.gov/commissioners/martin/documents/alacarte-ltr-082207.pdf.

higher quality programming that consumers demand."[8] Where subscribers show a preference for a certain type of content, the combined company will be able to focus on providing consumers more of what they want. As FCC Chief Economist Greg Crawford has noted with specific regard to cable television, individual channels do not have the same value for all consumers.[9] Therefore, by allowing for a la carte, consumers are able to choose the channels they most value and not have to pay for those they do not value. Moreover, the FCC has previously found this consumer choice over content to be an important consumer benefit, stating that "[t]he marketplace will thus be able more quickly to shed unpopular networks in favor of popular networks under a la carte than under bundling and in the process become more responsive to consumer demand for better programming. Programmers may also have an increased incentive to improve their programming under a la carte."[10]

II. A LA CARTE PROGRAMMING AND OTHER NEW SERVICE OFFERINGS WILL LOWER COSTS FOR CONSUMERS

In addition to the public interest benefits that stem from the greater programming choice provided to consumers, the new programming options offered by the combined company will enable consumers to achieve significant savings over the current one-price-fits-all model. In addition, under the proposed "best of both" plans, subscribers will be able to get programming they desire from both providers at a discount over the cost of the two subscriptions they would have to buy today. Finally, under the plan proposed by the two companies, no subscriber will

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8 Letter from Consumers Union, Consumer Federation of America, Free Press, and Communications Workers of America to the United States House of Representatives, Apr. 26, 2007, available at www.freepress.net/docs/2007_-_0426_fcc__cable_choice_-_house.pdf.

9 Gregory S. Crawford & Joseph Cullen, *Bundling, product choice, and efficiency: Should cable television networks be offered a la carte?*, Information Economics and Policy 19 (2007) 380 (discussing "heterogeneous tastes" with regard to cable channels.).

10 FCC Further Report on Video Programming at 35-36.

pay more than they do today for the content they currently receive. Clearly, the consumer savings made possible by the merger are a significant public interest benefit.

A. The New Programming Offerings Will Result in Significant Cost Savings for Consumers

As Sirius and XM described in their Opposition to Petitions to Deny and Reply Comments,[11] the new programming options that will be offered by the combined company will result in significant cost savings for consumers. First, the combined company will offer a package of 50 channels, customizable by the subscriber, at the monthly price of $6.99. This price point represents a 46 percent savings over the current $12.95 subscription price. In addition, the combined company will offer its music and news programming packages at $9.99 per month. Subscribers that prefer to receive only these categories of content will achieve a 23 percent price decrease over the current subscription price.

The Commission has recognized that consumer savings represent a public interest benefit[12] and that consumer savings are a benefit that will specifically arise from a la carte programming. For example, the Commission has noted in the cable television context that

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[11] *See* Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc., Joint Opposition to Petitions to Deny and Reply, MB Dkt. No. 07-57 (July 24, 2007).

[12] *See, e.g., Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Comm'cns Corp. (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc., Assignees, et al.*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8307 (¶ 243) (2006) ("*Adelphia/Time Warner Order*") (stating that the Commission will consider whether a proposed transaction will enhance a combined company's "ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service, or new products"); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee for Consent to Transfer Control*, Memorandum Opinion and Order, 12 FCC Rcd 19,985, 20,063 (¶ 158) (1997) ("*NYNEX/Bell Atlantic Order*") ("Efficiencies generated through a merger can mitigate competitive harms if such efficiencies . . . result in lower prices, improved quality, enhanced service or new products."); *Merger of MCI Comm'cns Corp. and British Telecomms. plc*, Memorandum Opinion and Order, 12 FCC Rcd 15,351, 15,430 (¶ 205) (1997) ("*MCI/BT Order*") (describing "lower prices, improved quality, enhanced service or new products" as examples of consumer benefits resulting from merger-specific efficiencies that are relevant to the public interest analysis).

subscriber-selected packages like the A La Carte I plan would "provide some consumers lower prices and all consumers the ability to avoid paying for networks they do not watch."[13] The same holds true here. Though XM and Sirius do not anticipate that all consumers will select the a la carte or other smaller programming packages, those that do will achieve significant savings over what they would otherwise pay for the same content absent the merger. A subscriber choosing the A La Carte I plan would save more than 70 dollars a year, while those choosing the music or news packages would each save over 30 dollars a year.

Some commenters, notably NAB and its surrogates, have suggested that the a la carte and smaller programming packages offered by the combined company will not result in consumer benefit because the per-channel price under these proposed packages is higher than it is under the current $12.95 price.[14] These arguments are fundamentally flawed, however, because they presume that all subscribers value all channels equally. Common sense suggests that an individual consumer will prefer certain channels over others and may in fact only listen to a certain number of channels on either Sirius or XM. Take, for example, a subscriber who only listens to 20 channels available on Sirius' service. In that hypothetical scenario, under the current subscription model the subscriber would be paying more than 64 cents per month per valued channel, but under the $6.99 A La Carte I plan, they would be paying approximately 35 cents per month for those channels. Clearly, this hypothetical subscriber benefits under the new a la carte package.[15] Moreover, the nominally higher average price per channel of the new option does not adversely impact consumers who value having more channels because they can

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13 FCC Further Report on Video Programming at ¶ 104.

14 *See e.g.*, National Association of Broadcasters' Reply to Opposition, MB Dkt. No. 07-57, at 6-9 (July 31, 2007).

15 The Commission has noted that a similar calculus is applicable in the cable television context. *See* FCC Further Report on Video Programming at 10, n.20.

continue to purchase the full set of channels at the current price or choose a new option that includes additional programming.

B. The "Best of Both" Offerings Will Provide Consumers with An Option They Have Long Desired – Popular Programming From Both Satellite Radio Providers Available on One Radio and at One Price

In addition to the A La Carte I option and the smaller programming packages discussed above, the combined company will offer two options that combine programming from the two services. The first, the A La Carte II package, provides consumers with the opportunity to pick 100 a la carte channels, including some of the best programming from the other service, at $14.99 per month, a small premium over the current price. The other packages, "Sirius Everything & Select XM" and "XM Everything & Select Sirius," allow a subscriber to choose all of the programming of one of the services and some of the best programming from the other service for $16.99 per month. Both of these packages represent a significant discount over the only way to receive all this programming today – namely buying two satellite radios (one for each provider) and paying two $12.95 per month subscription fees, or $25.90 total per month.

The opportunity to purchase some of the best programming of the other service and the convenience of a single radio and a single subscription fee is very attractive to subscribers. Numerous public commenters have expressed interest in being able to receive exclusive content not available on their current service provider and in combining their access to that content into a single receiver. For example, public commenter and XM subscriber Richard Shirley noted that he "would love to have some of the programs and stations that only Sirius provides."[16] Commenter Jeff Clements stated that "[a]s a Sirius listener, the idea of being able to listen to programming that is exclusive to XM such as Major League Baseball or a variety of other music

[16] Brief Comments of Richard Shirley, MB Dkt. No. 07-57 (June 14, 2007).

for what is being promised as a nominal fee is extremely appealing; further, I wouldn't have to purchase a different subscription or another radio."[17] These are just two of the literally hundreds of subscribers who have taken time to express their support for the XM-Sirius merger, many of whom share the same interest in receiving exclusive content from both providers on one radio.

C. No Subscriber Will Pay More For What They Receive Today

Finally, no subscriber will pay more for the content they receive today. Subscribers who are happy with the value provided by their current service and pricing plan will keep getting that same content at the same $12.95 price in place today. Thus, no current subscriber will be harmed by the introduction of the a la carte and smaller programming packages.

III. A LA CARTE WILL ALLOW SATELLITE RADIO TO BECOME A STRONGER COMPETITOR

In addition to providing consumers with significant choice and cost savings, the new a la carte and best-of-both offerings will make satellite radio a more attractive audio entertainment option, leading to increased subscribers for the combined provider.[18] This increased subscribership will help to ensure that satellite radio is a viable competitor in the audio entertainment market by building the subscriber base and allowing the combined company to leverage the high fixed costs of providing satellite radio service.

As Sirius and XM have shown in previous filings, the primary competitor to satellite radio is free, over-the-air, terrestrial radio. Terrestrial radio is a formidable and well-entrenched

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17 Brief Comments of Jeff Clements, MB Dkt. No. 07-57 (June 13, 2007).

18 Charles River Associates International, *Economic Analysis of the Competitive Effects of the Sirius - XM Merger*, ¶ 167 (July 24, 2007).

competitor to satellite radio because it requires virtually no consumer equipment start-up costs[19] and charges no subscription fees. Thus, the more satellite radio can minimize start-up costs and subscription fees for consumers, the more likely it is to turn those consumers into subscribers, the lifeblood of the business, and the better it can compete with terrestrial radio. Mel Karmazin, CEO of Sirius, put it best in a speech to the National Press Club, stating that "the way we can compete more effectively with free, is not to go from $12.95 to $14.95 or $15.95, but the way we can compete better with free is by executing the 46 percent price reduction that we've set in a la carte."[20]

In addition to signing up new subscribers through lower pricing, the combined company can expect that the new best of both programming packages will attract new subscribers. Consumers who did not value the programming available on either service highly enough to justify the subscription cost may change their minds now that they can get all of the programming they want with one service and at a lower price than the cost of two subscriptions.

[19] AM/FM radios are so common as to be ubiquitous given their inclusion in nearly every automobile sold in the United States and in a panoply of small home appliances like alarm clocks.

[20] *See* Mel Karmazin, CEO, Sirius Satellite Radio, Remarks at the National Press Club: Potential Merger of Sirius Satellite Radio and XM Satellite Radio (July 23, 2007).

IV. CONCLUSION

The merger-specific benefits described herein are clearly in the public interest. When combined with the other merger-specific benefits that Sirius and XM have previously discussed, it is clear that the merger is in the public interest and that the Commission should approve the application.

Respectfully Submitted,

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