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January 24, 2008

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

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

Dear Ms. Dortch:

The HD Digital Radio Alliance (the "Alliance"), by its attorneys, respectfully submits this letter in the above-referenced docket regarding the remedy proposed by iBiquity Digital Corporation ("iBiquity") in connection with the pending merger between XM and Sirius; namely, that any approval of this merger be conditioned on (a) a requirement that HD Radio™ technology be included in all satellite radio receivers, and (b) a requirement that the merged entity terminate all exclusive arrangements and prohibit the merged satellite company from entering into exclusive arrangements with suppliers, retailers and automobile manufacturers in the future.

The merger of XM and Sirius would reduce consumer choice. And at this point in its development, HD Radio cannot be considered a competitive alternative to satellite radio. There are ample grounds to disapprove this merger. Indeed that is precisely what the FCC should do – refrain from granting the license transfer. Failing that, the Commission should recognize that the merger would not only reduce consumer choice, it would also increase entry barriers. As outlined below and in iBiquity's December 20, 2007, ex parte presentation, the merger would make it more difficult for HD Radio to expand consumer choice. The elimination of exclusives and the inclusion of HD Radio capability in satellite radios are the minimum requirements for ameliorating the entry barriers that would otherwise substantially impede any progress toward additional consumer choice.

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The Alliance is an initiative open to all radio broadcasters focused on promoting consumer awareness and adoption of HD Radio. The Alliance has assisted its members in the conversion of their radio stations to digital transmission, including the development of new “HD-2” channels (which cannot be received by consumers unless they obtain new digital radio receivers). However, the Alliance’s main purpose is to provide marketing support for HD Radio. In particular, the Alliance assists iBiquity and others in their efforts to persuade radio makers to design and produce affordable HD Radio receivers, electronics retailers to carry and promote HD Radio receivers, and, crucially, automobile OEMs to include HD Radios receivers as an option available to consumers across the entire spectrum of automobiles.

While substantial resources have been devoted to the promotion of HD Radio, and the Alliance has been generally successful in achieving its initial goals, many obstacles still must be overcome before HD Radio is adopted widely by consumers. In particular, today, the availability of HD Radio as a factory installed (or even factory authorized) option in automobiles is very limited. As it stands now, there are just two OEM’s that currently offer HD Radio as a factory installed option, and four others that have announced plans. In contrast, 17 OEM’s offer Sirius exclusively, 18 offer XM exclusively and six offer both XM and Sirius, *i.e.*, 41 major auto and motorcycle manufacturers offer factory installed satellite service, an overwhelming majority of the market. Thus, while XM and Sirius have already become entrenched, HD Radio is at the early stages of adoption in the most important distribution channel for both satellite and terrestrial radio.

The Alliance is concerned that the XM/Sirius merger would allow the combined firm to take advantage of its already dominant position and create insurmountable barriers to HD Radio’s achieving adequate adoption by automobile OEMs. XM and Sirius have shown a propensity to extract exclusive agreements, *e.g.*, from content providers and automobile OEMs. Following the merger, this propensity will increase. As the sole provider of satellite radio services, the combined company would be in a stronger position to bargain for exclusivity as against other digital audio such as HD Radio. And because there would be less competition for content and subscribers, there would be more funds available to subsidize exclusivity commitments from OEMs.

In addition – and this is the overriding policy problem with this merger – the combined company would have an unprecedented quantity of spectrum. The spectrum available to terrestrial broadcasters, on the other hand, is capped by regulation at levels well below what would be necessary to match the combined company’s allotment, even with the introduction of HD-2 channels, which today are unavailable to all but the very few consumers that have an HD radio. This inequality of spectrum – implemented by an uneven application of regulatory policy

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– could well make it almost impossible to persuade the automobile OEMs to find a secure place in the dashboard for HD Radio. The conditions proposed by iBiquity could at least provide HD Radio the opportunity to grow into a counterweight to the dominance of a merged XM/Sirius. Such measures would serve the public interest by fostering the consumer choice that is jeopardized by this proposed merger.

In accordance with Section 1.1206 of the Commission's rules, one electronic copy of this letter is being filed in the above-referenced docket. Please direct any inquiries concerning this matter to the undersigned.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation



Charles E. Biggio
Counsel to the HD Digital Radio Alliance

cc: Ms. Michelle Carey, Senior Legal Advisor to Chairman Kevin J. Martin
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