

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
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XM Satellite Radio Holdings Inc.,)
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 Transferor,)
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and)
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Sirius Satellite Radio Inc.,)
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 Transferee.)
)
Consolidated Application for Authority to)
Transfer Control of XM Radio Inc. and)
Sirius Satellite Radio Inc.)
_____)

MB Docket No. 07-57

To: The Commission

***EX PARTE* COMMENTS OF GEORGETOWN PARTNERS L.L.C.**

A joint filing made by Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. (collectively, “Sirius-XM”) on January 22 with the Federal Communications Commission (“FCC”), entitled “Supplemental Comments of Sirius Satellite Radio Inc. And XM Satellite Radio Holding Inc Regarding The Benefits of A La Carte,” is the latest in a string of misleading and deceptive public filings, regulatory and Congressional testimonies, Op-Ed columns, and other public statements made by Sirius and XM and their executives in an attempt to convince the FCC, the Department of Justice (“DOJ”), members of Congress and the public that its proposed anti-competitive, anti-consumer merger is in fact beneficial and serves the public interest. A review of the filing exposes the Sirius-XM so-called “A La Carte” proposal to be nothing more than a “fairytale” with the potential to in fact have a disturbingly unhappy ending for the public.

I. THE TYPE OF “A LA CARTE” PUT FORTH BY SIRIUS AND XM IS A FAIRYTALE WITH NO PUBLIC INTEREST BENEFIT

Georgetown Partners LLC (“Georgetown”) recognizes and agrees that a la carte offerings benefit consumers in that consumers may select and purchase programming of their choice as opposed to being required to buy entire packages of programming that may include unwanted channels. The Sirius-XM January 22 FCC filing gives the impression that they have an a la carte offering that will be available to owners of Sirius and XM receivers if the FCC approves its proposed merger. In an attempt to further “spin” this deception, Sirius-XM state that their alleged “A La Carte” offerings include two different choices in pricing, “A La Carte I” and “A La Carte II”, to create the impression that the offerings are available now and that they will be rolled out in short order. Nothing could be further from the truth. Sirius-XM know full well that the “A La Carte” offerings they describe will only be available on so-called “next generation”¹ satellite radios that do not exist and for which there are no production plans. The Sirius-XM “A La Carte” offerings are a “fairytale.” There are no public interest benefits in the near or even in the intermediate future.

Unfortunately, this “fairytale” does not have a happy ending. Even assuming that sometime in the distant future these radios were actually to be produced and could be purchased, the more than 30 million present owners of installed automobile satellite radio receivers and the tens of million of future car owners of such radios would have to rip these radios out of their dash boards, junk them, and pay whatever monopoly price the post-merger company would charge for the “next generation” radios.

¹ Sirius-XM Supplemental Comments dated January 22, 2008 at fn. 1.

Furthermore, Sirius-XM have made no guarantee that “A La Carte,” whenever it might become available, will be a permanent option for consumers. Furthermore, even though the companies have put proposed pricing structures in their earlier filings, they offer no guarantees on pricing, on how long these packages will be available, or on what content these packages will include. In fact, no guarantees of any kind are made. Perhaps Sirius-XM feel they do not need to make guarantees because after the merger they basically will be free from any ongoing regulatory oversight.

Rather than focusing on obvious attempts to put one over on the FCC and the American consumer by “marketing” through its filing an illusory “A La Carte” offering, Sirius-XM should withdraw this misleading and disingenuous January 22 filing and submit a filing with a real a la carte offering that benefits the consumer.

II. THE GEORGETOWN PARTNERS’ PROPOSAL WOULD PROVIDE SIGNIFICANT COMPETITION AND DELIVER TO CONSUMERS QUALITY OPTIONS WITH NO COSTLY SUBSCRIPTIONS

Unlike the Sirius-XM “A La Carte” offerings, the Georgetown Partners’ (“Georgetown”) proposal provides true benefits for the public including to every owner of a satellite receiver today and in the future and a competitive presence in the market that otherwise would be ruled by a monopoly. Georgetown’s proposal solves the very problems Sirius-XM would have the Commission and the public believe they are addressing through their so-called “A La Carte” packages.

Specifically, Georgetown proposes that Sirius and XM restructure the merger and lease to Georgetown their broadcast infrastructure and at least 20% of the combined entity’s capacity on a long term or permanent basis. Georgetown, a minority-controlled

company, would use the capacity to offer free, family-friendly, non-subscription-based programming with limited commercials. Further, Georgetown would do so in full compliance with the FCC's terrestrial broadcast regulations governing indecent programming that Sirius and XM avoid by their non-broadcast subscription status. Restructuring the merger as proposed by Georgetown assures competition. It is the only proposal that promotes the public interest and provides consumers true benefits on a sustainable basis.

Georgetown's proposal requires the combined Sirius-XM to carry Georgetown's advertiser-supported programming to everyone with a satellite radio receiver – subscriber or not. The result would be immediate, continuing and permanent tangible benefit to the public. By contrast, under the Sirius-XM "A La Carte" proposal, millions of consumers who have recently purchased new satellite radios and who want to choose the content they receive would be disenfranchised unless they purchase the next-generation satellite radios – but the next-generation radios are not available now and won't be any time in the foreseeable future. Of the more than 30 million receivers in the market today, already some 15 million are owned by consumers who *neither* subscribe to Sirius *nor* XM. Georgetown's proposal offers these non-subscribers an opportunity to obtain substantial benefit from the money they paid for their radios. Georgetown offers a home to the disenfranchised and a use for the millions of expensive unused receivers. Subscribers of the combined company and non-subscribers alike would receive Georgetown's free programming. The result would be greater options in the marketplace for all consumers.

III. CONCLUSION

Try as they might, Sirius-XM are not fooling the public, FCC nor DOJ about the viability or the so-called consumer benefits of their merger proposal as it is now structured. Both the FCC and DOJ are aware of widespread opposition and concerns from a wide array of legislators, industry organizations and community interest groups.

Georgetown urges the FCC not to approve the proposed merger as currently structured because such approval would create unprecedented adverse competitive consequences in the satellite radio market, would harm consumers, and would fail to meet the FCC's public interest standard.

Respectfully submitted,



By: _____

Chester Davenport
Managing Director
Georgetown Partners L.L.C.
6903 Rockledge Drive, Suite 214
Bethesda, MD 20817
Tel: (301) 530-8110

Of Counsel

David R. Siddall
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, DC 20005
Tel: (202) 551-1700

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