



January 29, 2008

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

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

Dear Ms. Dortch:

Media Access Project (MAP) and the New America Foundation (NAF) respectfully submit these written *ex parte* comments in the above referenced proceeding.

MAP has previously expressed concerns about the implications of this merger and therefore, has asked the Commission to deny the proposed transaction.¹ Nonetheless, in the event the Commission chooses to approve the proposed transaction, MAP has urged the Commission to impose merger conditions in this proceeding to protect the public interest.² MAP writes today, joined by NAF, to reiterate its concerns about the public interest implications of this merger. We also encourage the Commission to adopt a further condition in the event the Commission approves the transaction. We urge the Commission to require the merged entity to make the technical specifications of its devices and network open and available to allow device manufacturers to develop, and consumers to use, any device they choose without interference.

Since MAP's initial filing, the record has evolved to suggest that XM/Sirius intend to adopt a "sole source" model for satellite radio devices once the parties complete the merger. Such a vertical monopoly would, by design and in effect, eradicate consumer choice and price competition across manufactures. Accordingly, MAP and NAF strongly urge the Commission to impose this additional condition on the merged entity. This "open device" principle will allow

¹ MAP, along with Prometheus Radio Project and U.S. PIRG, timely filed an Informal Objection to the proposed transaction on July 9, 2007.

² These conditions include: establishing a set-aside for noncommercial, educational programming; providing leased access of channels; returning of a portion of the spectrum, and requiring must carry for local noncommercial, educational channels.

consumers to make their own choices with respect to devices and will help to protect consumers against limited or no price competition.

In the past, the Commission has undertaken a number of analogous initiatives to protect consumers from incurring higher costs and limited flexibility as a result of mandatory bundling and “sole source” end-user equipment. These include the Commission’s *Carterfone* decision allowing telephone users to connect any telephone or safe device to the network and the Commission’s 2005 order mandating alternatives to cable set-top box leasing. Both examples underscore the continued importance of *Carterfone* and open-device principles as an effective means to encourage competition and reduce costs to consumers.³

Thus, we urge the Commission to require that the merged entity make the technical specifications of its devices and network open and available to allow device manufacturers to develop, and consumers to use, any device they choose without interference. Pursuant to Commission rules, these devices must be certified by the Commission for receiving signals on the frequencies licensed to the merged entity and be subject to a minimum “do-no-harm” requirement.

Respectfully submitted,

_____/s/
Parul P. Desai
Andrew Jay Schwartzman
Media Access Project
Suite 1000
1625 K Street, NW
Washington, DC 20006
(202) 232-4300

_____/s/
Michael Calabrese
Director, Wireless Future Program
New America Foundation
7th Floor
1630 Connecticut Avenue, N.W.
Washington, DC 20009
(202) 986-2700

³ See Rob Frieden, “Wireless *Carterfone*: A Long Overdue Policy Promoting Consumer Choice and Competition,” New America Foundation, available at http://www.newamerica.net/files/Wireless_Carterfone_Frieden.pdf.