March 17, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20054

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

Dear Ms. Dortch:

In this proceeding Georgetown Partners ("Georgetown") repeatedly has emphasized the absolute need for a competitive antidote to the total monopoly that would result if Sirius and XM merge. The proposed merger should be denied or designated for hearing unless the Commission adopts specific conditions with which the applicants are required to comply *before* the merger is allowed to close. Only "fix-it-first" conditions[1] that result in establishing immediate and effective competition to the merged entity have any chance of successfully remedying the anticompetitive effects of the proposed merger. The proposed merger cannot be approved consistent with the public interest without ensuring immediate competition through means of an approved leasing arrangement with an unaffiliated third party that would require an independent entity to initiate competitive programming coincident with the merger's closing.

Specifically, Georgetown reiterates that in order for the Sirius and XM merger to be approved, the companies must lease at least 20 percent of their combined channel capacity and infrastructure to a totally independent and unaffiliated third party, such as Georgetown, to remedy the anticompetitive monopoly that otherwise would result in the satellite DARS market. This is consistent with the Commission's recent conclusion that the satellite DARS is not yet a good substitute for broadcast radio.[2] Due to the proprietary nature of the transmission technologies that Sirius and XM each use and the design of their existing receivers, a lease, rather than an outright transfer of spectrum, is required to restore competition in the satellite DARS market that otherwise would be lost upon consummation of the contemplated merger. A lease also is the appropriate structure for the remedy because of the substantial delay (at least 5-7 years) that would be required to design and launch satellites to compete in this market, and the multiyear exclusive arrangements the merged entity would have with virtually every automobile manufacturer in the country (the major source of growth in satellite DARS), both of which would completely undercut any possibility of effective competition and consumer benefit.

---

[1] *See Written Ex Parte Presentation of Georgetown Partners L.L.C.,* dated February 28, 2008, concerning a "fix-it-first" remedy.

[2] *See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* 23 FCC Rcd 2010 at ¶ 114 & n.370 (2008).

Under Georgetown's proposal, the merged Sirius-XM entity would be paid for the lease and the public interest would be served by the free, over-the-air (advertiser-supported) programming that would be available to all consumers with satellite receivers, including the estimated 17 million receivers (50 percent of the total) that are unsubscribed today even though the cost of the receivers is bundled into the price paid by consumers for their automobiles. Georgetown additionally has committed that if it is the lessee, all programming will comply with the Commission's indecency provisions as applied to broadcasters.

Accordingly, should the Commission consider approving this merger, at a minimum it must include pre-merger conditions to restore competition and comport with the public interest. Georgetown therefore proposes that any such approval be conditioned upon the following conditions *as a minimum*.

1. Consummation of the merger shall not be permitted until a contractual leasing arrangement is submitted to, and approved by, the Federal Communications Commission *and* the Antitrust Division of the U.S. Department of Justice as complying with all aspects of their governing statutory provisions, consistent with the public interest, convenience and necessity, and including (but not limited to) the following requirements.

2. Satellite and network capacity must consist of at least 20 percent of the merged entities' total licensed bandwidth capacity, as measured in megahertz, and shall be leased on an exclusive basis to an entity that is totally independent of and unaffiliated with Sirius or XM. Such lease shall have a term coterminous with the FCC license(s), including replacement and renewed licenses held by Sirius, XM, and/or the merged entity. Included shall be all current and future existing network infrastructure and related services to support use of uplink, satellite, and related terrestrial capacity in the same manner as employed by the merged entity.

3. Lessee's programming shall be carried in the same geographic areas and with the same quality and signal strength as programming provided by the merged entity itself.

4. The merged entity must assure that all programming broadcast on behalf of the Lessee is capable of reception on all radios and other receivers now in existence and to be distributed in the future, including receivers capable of video, audio, data and telemetry, in the same manner that each of the merged entity's services are received.

5. Lessee shall have the sole right to determine the content of its programming, including full control of the production of all content, the bandwidth used to transmit it, and factors affecting its audio quality, video definition, robustness, and any other factor affecting perceived quality and consumer perception.

6. Lessee may sell advertising on its programming free of any restrictions imposed by the merged entity.

7. Lessee will pay a negotiated lease rate on commercial terms as specified in the agreement entered into between the parties and submitted for approval to the Federal Communications Commission and to the Antitrust Division of the U.S. Department of Justice.

The only way to ensure real competition to a merged Sirius-XM is by having these minimum conditions in place and an effective viable competitor able to commence operation immediately upon the merger's closing. The applications to merge should be designated for hearing or otherwise denied should the contemplated leasing arrangement not be submitted with the above provisions and in a form that otherwise can be approved separately and individually by the Federal Communications Commission and the Antitrust Division of the U.S. Department of Justice.

Respectfully,

DR Siddall

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

Counsel to Georgetown Partners, L.L.C.

Andrew G. Berg, Esq.
Sonnenschein Nath & Rosenthal LLP
1301 K Street, Suite 600 East
Washington, DC 20005
Tel: (202) 408-6400

Counsel to Georgetown Partners, L.L.C.