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APR - 3 2008
Federal Communications Commission
Office of the Secretary

April 3, 2008

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, D.C. 20002

Re: MB Docket No. 07-57
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

The Consumer Coalition for Competition in Satellite Radio ("C3SR"), by its counsel, hereby submits, in the above-referenced proceeding, two redacted copies of the ex parte notice, containing a presentation entitled "Analysis of the Proposed XM-Sirius Merger," for C3SR's April 2, 2008 meeting with staff of the Media Bureau and Office of General Counsel. C3SR, pursuant to the terms of the Second Protective Order,[1] is separately filing one unredacted copy with the Secretary's Office, and two unredacted copies with Jamila Bess Johnson of the Media Bureau. A redacted copy is also being filed in the public record for this proceeding via ECFS.

C3SR shall make the unredacted version of the ex parte notice available for inspection at the offices of Williams Mullen, 1666 K Street NW, Suite 1200, Washington, D.C. 20006. Individuals that have executed the appropriate Acknowledgment of Confidentiality should contact Benjamin D. Arden at 202.293.8135 to coordinate access.

No. of Copies rec'd 0+1
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[1] *Applications of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. for Approval to Transfer Control*, Protective Order, DA 07-4666 (rel. Nov. 16, 2007).

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Please contact the undersigned with any questions.

Respectfully submitted,

Julian L. Shepard
Counsel to C3SR

Enclosures

Analysis of the Proposed XM-Sirius Merger

J. Gregory Sidak
Criterion Economics

Hal J. Singer
Criterion Economics

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Overview

- Evidence of competition between XM and Sirius
- No evidence of competition between SDARS and AM/FM
- Critique of DOJ's analysis

(Nearly) Identical Pricing Implies Direct Competition

Term	XM	Sirius
< 1 year	$12.95	$12.95
1 year	$11.87	$11.91
2 year	$11.33	$11.33

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Satellite Radios Are Similarly Priced

Price	XM Radio	Sirius Radio
Car Radios		
$150-$180	CommanderMT, Xpress RC	Sportster 5
$100-$110	Xpress R	Starmate 4, Sportster 4, Sportster 3
$70	Xpress	Starmate 3
$20-$60	Xpress EZ, Sportscast	Stratus, InV2 Radio, Sirius InV
Portable Radios		
~~$300-$310~~	~~Helix~~	~~Stiletto 2~~
$200	Inno	Stiletto SL1
$160-$170	SkyFi3	Sirius S50
$150	Pink Inno	Stiletto 10

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Other Indicators of Direct Competition

- Sirius announces Howard Stern deal (10/6/04) two days after XM announces Opie & Anthony deal (10/4/04)
- Sirius announces NFL deal (2/4/04) eight months before XM announces MLB deal (10/20/04)
- Sirius announces Spanish language broadcasts of NFL (9/2/05) one month after XM announces launch of Spanish language sports channel (8/9/05)
- Sirius announces women's talk, Cosmo, (9/2/05) four days before XM announces women's talk with Ellen and Tyra (9/6/05)

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Internal documents reveal competition

New Survey Data

- How do existing SDARS customers respond to a small increase in commercial time by one or both SDARS providers?

Key Findings

- Unilateral five-minute increase in commercials would cause significant defection to rival SDARS provider (21-22%)
- Coordinated five-minute increase in commercials would cause less defection to rival SDARS provider (7-8%), which would be internalized by merged firm

Other Important Findings of Survey

- After Rock/Pop/Hip-Hop/R&B combined, Howard Stern was the most popular station among SIRIUS subs
- Entertainment (E!, Maxim, CourtTV, Playboy Radio) and comedy channels were extremely popular
- SDARS subs are long commuters (nearly 60% have at least a 20 minute commute)
  - Implies that the typical commute could cross AM-FM contours

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Evidence Suggests AM/FM Cannot Be Counted on to Constrain SDARS Prices

- CRA regression analysis is weak
  - Even if reliably estimated, the elasticity is NOT price-elasticity

[redacted]

Arbitron Survey Shows Terrestrial Radio Is a Complement to SDARS

- "The analysis also showed that satellite listeners are heavy listeners to radio in general including AM/FM radio. Satellite listeners spent an average of 33 hours a week with radio compared with the typical listener who listened approximately 19 hours a week to radio. Also, people who listened to satellite spent more time with AM/FM radio (14 hours) than they did with satellite radio (10 hours 45 minutes) or Internet (8 hours 15 minutes)."
  - Arbitron Press Release, Satellite Radio Channels Account For 3.4 Percent of All Radio Listening In Fall 2006 Arbitron Survey, available at http://www.onlinepressroom.net/arbitron/.

DOJ's Different Standard for XM-Sirius

- Section 7 of the Clayton Act prohibits any merger, "the effect of [which] may be substantially to lessen competition, or to tend to create a monopoly."
- DOJ substituted a **different** legal standard for the incipiency standard in section 7: "After a careful and thorough review of the proposed transaction, the Division concluded that the evidence does not demonstrate that the proposed merger of XM and Sirius *is likely* to substantially lessen competition, and that the transaction therefore is not likely to harm consumers."

DOJ's Flawed Analysis

- Competition for **existing** customers is over because there is no evidence of switching
- Competition for **potential** customers is also limited
  - Auto channel: Carmakers enter into exclusives
  - Retail channel: Competition from other audio devices; customers with strong preferences for one does not perceive other to be a close substitute

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Competition for Existing Customers

- This is true of any durable good

[redacted]

- **External** survey evidence shows a propensity to switch in response to unilateral quality-adjusted price change
- The two SDARS carriers compete for customers (existing and new) by adding new content

Competition for Potential Customers: Auto Channel

- Dealers are free to install alternative SDARS system
- Switching cost relative to the price of a new car is trivial
- Survey evidence indicates 22% of customers had the device professionally installed *after* the purchase of a vehicle

Competition for Potential Customers: Retail Channel

- XM/Sirius have submitted no evidence to show demand-side substitution
- DOJ concludes: Some customers with preferences for exclusive content of XM do not perceive Sirius to be close substitute and vice versa
  - It is impossible to identify price-insensitive customers; instead, marginal customers constrain prices

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Claimed Merger-Related Efficiencies

- DOJ cites fixed and variable cost savings
- Examples of variable cost savings
  - "consolidate development, production and distribution efforts on a single line of radios and thereby eliminate duplicative costs and realize economies of scale."