



April 24, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 07-57

Dear Mr. Chairman:

I write to you on behalf of American Public Media, a non-profit 501(c)(3) organization, and the largest owner and operator of public radio stations in the nation. American Public Media is also a major producer and distributor of public radio programming.

We are deeply concerned with the Department of Justice's recent decision not to block the merger of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. As disappointing as that outcome was, the Federal Communications Commission could play a crucial role when it examines this merger under its license transfer review authority.

Specifically, the Commission will determine whether allowing these licenses to be transferred is in the public interest pursuant to the Communications Act of 1934. Under this authority, the FCC can approve, deny, or condition the license transfer in order to satisfy the public interest test. We believe that the Commission has a unique opportunity to craft and impose conditions to the XM-Sirius merger that will benefit consumers and in so doing, actually benefit the public interest. Towards that end, we suggest a simple and effective condition to this license transfer: set aside 20 percent of the combined parties' spectrum for non-commercial educational (NCE) use. Because XM-Sirius would be the only satellite radio broadcaster, we ask the Commission to require the combined entity to provide access and broadcast capability to NCE operators using the 20 percent set aside spectrum.

This would follow clear FCC precedent. When the FCC moved the FM band to its present position, 88 – 108 MHz) it set aside 20 percent of the band (88–92 MHz) for non-commercial educational broadcasters in order to assure that frequencies would be available for NCE use. This 1945 set aside was in response to the disappearance of educational programs on commercial radio, even though stations were owned by numerous different broadcasters.

Making a commitment to NCE programming is even more important when a large portion of radio spectrum is controlled by a single broadcaster. When combined, XM and Sirius

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will be the sole provider of satellite radio service for American consumers. Despite the DOJ's conclusion that the XM-Sirius merger will not harm competition, the fact remains that the new entity will enjoy exclusive control over the satellite radio spectrum.

Increased media consolidation in other sectors has homogenized the content available to the public. Without a diversity of news sources and cultural content, differences of opinion and exposure to new forms of art can be lost. Allowing one entity complete financial and editorial control of the satellite radio spectrum exacerbates this problem and creates a danger where monopoly control limits legitimate competing views and artistic approaches. To be sure, a monopoly that creates such outcomes is not in the public interest.

Dedicating a 20 percent block of the satellite radio spectrum to NCE use outside the financial and editorial control of a combined XM-Sirius will mitigate these ill effects. Non-commercial radio has established itself as a crucial venue for free speech on our nation's airwaves, providing an independent reporting of news, information and cultural programming outside the control of commercial interests. Public media forms the base for a democratic dialogue about the issues that matter to Americans and the ideas that will shape our shared future.

Ensuring a place for non-commercial content in the satellite radio spectrum will benefit the public interest. Therefore, should the Commission grant the license transfer between XM and Sirius, we strongly urge you to set aside 20 percent of the satellite radio spectrum for NCE use. Though approving the creation of any monopoly is troublesome, the Commission has, in this instance, an opportunity to create a countervailing public good by imposing a modest condition upon the license transfer.

Sincerely,

A handwritten signature in black ink that reads "Bill Kling". The signature is written in a cursive, flowing style.

William H. Kling
President and CEO

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell