



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

TELECOPIER NO.

(410) 576-7830

WRITER'S DIRECT DIAL NO.

(410) 576-6470

April 24, 2008

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

Re: Application of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio
Inc. for Authority to Transfer Control, MB Docket No. 07-57

Dear Chairman Martin:

This letter is submitted by the Attorneys General of Maryland, Connecticut, Ohio and Washington regarding the proposed transfer of licenses requested by Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Holdings Inc. ("XM") to effect their intended merger.

We believe that the proposed merger poses a threat to competition and are concerned that subscribers of the combined XM and Sirius may face the dual harms presented by anticompetitive mergers: higher prices and diminished quality of service. Ordinarily, these concerns are resolved by the presence of competitors that discipline prices and drive innovation. However, the proposed merger will eliminate the only major competition that has disciplined these firms to date. Because this result is incompatible with the public interest, we urge the FCC to reject the application submitted by Sirius and XM that would permit the merger to go forward.

The result we urge is also consistent with the FCC's 1997 rulemaking concerning Satellite Digital Audio Radio Service ("SDARS"). At the conclusion of that proceeding, the FCC provided that "[e]ven after SDARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS license. This prohibition on transfer of control will help assure sufficient continuing competition

in the provision of satellite DARS service.” *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band Report and Order*, 12 FCC Rcd. 5754, 5823 at para. 170 (March 3, 1997) (“*SDARS Report and Order*”). We do not believe that conditions have changed since the FCC’s 1997 ruling to merit reversal of this decision.

Should the FCC approve the proposed merger, the only way it can preserve valuable competition is to introduce a new competitor to the SDARS arena. Thus, we urge that the FCC require XM and Sirius to lease a portion of their satellite capacity, and the means to broadcast from the Sirius and XM satellites, as a precondition to approving their request to transfer licenses.

The leasing solution we advocate is preferable to a simple divestiture of spectrum by Sirius and XM. Construction and launch of satellites to carry a competing SDARS service will require several years. On the other hand, a SDARS service created through leasing spectrum can be made available much more quickly, and the resulting public benefit felt much sooner.

The FCC should permit this lease to be held by a firm that will offer SDARS without charge to listeners. This approach would serve the public interest by ensuring that consumers who purchased a receiver for XM or Sirius but no longer desire to subscribe to satellite radio will still have a use for the receiver. Second, it will ensure that people living in rural areas that are served by only a few radio stations have access to a wide array of broadcasting. Finally, it allows purchasers of vehicles equipped with satellite radio receivers that did not chose to purchase a SDARS subscription to enjoy the benefits of ubiquitous radio service as they travel.

This leasing solution, or any other solution that creates a new provider of SDARS, can only occur in a timely fashion if the Commission requires that Sirius and XM provide the FCC with evidence, prior to approving the application of XM and Sirius, that they have actually negotiated a lease with terms sufficient to permit a firm to offer SDARS. XM and Sirius have already provided alarming evidence of their willingness to flout the mandates of the FCC by their failure to make available to the public a SDARS receiver that is capable of receiving the signals of each firm. As a result, we urge the FCC to make any approval of the license transfer application conditional on negotiating a lease with a firm or firms that will offer a viable competitive choice to consumers. Such a requirement would assure that control over SDARS programming never vests in one SDARS monopolist.

The Honorable Kevin J. Martin
April 24, 2008
Page 3

Thank you for your consideration of this matter.

Very truly yours,



Attorney General Douglas F. Gansler
State of Maryland



Attorney General Richard Blumenthal
State of Connecticut



Attorney General Marc Dann
State of Ohio



Attorney General Rob McKenna
State of Washington

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