

## ELECTRONIC DELIVERY VIA ECFS

May 1, 2008

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

Re: MB Docket No. 07-57  
Notice of Ex Parte Filing

Dear Ms. Dortch:

iBiquity Digital Corporation (“iBiquity”), by its attorneys, hereby submits this letter concerning the proposed merger of Sirius Satellite Radio Inc. (“Sirius”) and XM Radio Inc. (“XM”). In this letter, iBiquity provides a more detailed explanation of conditions iBiquity has suggested should be imposed in the event the Commission approves the pending application for transfer of control necessary to consummate the merger. iBiquity reiterates that it has neither supported nor opposed the proposed merger nor has it taken a position on the applicants’ arguments concerning pre-merger competition. Nonetheless, if the Commission decides to approve the transfer application, the Commission will need to impose conditions to protect the public interest and ensure effective competition in the future between satellite and terrestrial radio.

### Proposed Condition:

If the Commission approves the transfer application, it should condition its approval on the requirement that the combined satellite company mandate that its licensees include HD Radio™ technology for digital AM and FM radio in all satellite receivers containing analog AM or FM radio and that the combined satellite company certify annually to the Commission its compliance with this condition. iBiquity has proposed that the Commission impose this requirement for satellite OEM automobile receivers within three years of the effective date of its approval of the transfer application and, for all other satellite receivers, within one year of the effective date of the approval. These different dates provide sufficient time to meet production cycles for the inclusion of HD Radio technology.

Discussion:

In the event the Commission approves the transfer application and thus authorizes the merger of Sirius and XM, iBiquity believes any such Commission action must be based on a finding that satellite and terrestrial radio services are competitive. That competition cannot flourish, however, if terrestrial radio is locked into an analog platform that limits the range and types of services that can be offered to the public. The successful rollout of HD Radio technology on a nationwide basis will help ensure a digital platform for both satellite and terrestrial radio, thus facilitating competition for programming, services and listeners.

iBiquity believes there are structural barriers to that competition today and the combination of Sirius and XM will exacerbate those problems. The satellite companies have argued that HD Radio technology presents competition to their service offerings and have demonstrated they have every incentive to thwart the rollout of HD Radio broadcasting in order to limit the competitive capabilities of AM and FM broadcasters. Through the use of exclusive arrangements with the distribution channel, strategic ownership interests from key distributors and revenue sharing models, the satellite companies have created legal and/or business barriers to new competitive digital platforms. iBiquity believes a combined satellite company will have greater economic leverage to impose such barriers throughout the distribution channel for radios to the exclusion of terrestrial digital radio.

A simple prohibition of exclusive arrangements or a requirement that the satellite companies open their technology for others to exploit will not provide adequate protection to ensure a competitive landscape for terrestrial and satellite radio services nor will it ensure that terrestrial digital radio technology is included in any receivers. iBiquity's concern is not limited to formal contractual barriers to competition, but focuses equally on existing business relationships in the marketplace that work to favor the satellite companies. Strategic players in the distribution channel for radio receivers have a significant ownership in the satellite companies or sit on the satellite companies' boards of directors. Moreover, the satellite companies have used their subscription revenue to provide an ongoing revenue stream for other players in the radio distribution channel. These factors create structural barriers that provide incentives to key players to favor satellite radio. These barriers for terrestrial digital radio create an opportunity for the satellite companies to work to block the rollout of HD Radio technology. A combined satellite company would have greater leverage to use these business relationships to disadvantage terrestrial digital radio.

The Commission has repeatedly found that AM and FM radio are a vital service. In recognition of the public interest underlying the grant of AM and FM licenses, the Commission imposes public interest obligations on terrestrial radio to ensure it meets the needs of the listening public. For terrestrial AM and FM radio to remain relevant in the 21<sup>st</sup> century, however, AM and FM must transition to a digital platform that will support the introduction of new audio and data services that will allow radio to effectively compete.

Many of the new services that can be offered by HD Radio broadcasting will enhance the diversity of radio programming and provide the listening public with many new vital services. Barriers to the rollout of HD Radio technology from the satellite radio merger will impede the digital transition for AM and FM radio, undercut the public interest in these vital services and impact the future viability of free over-the-air radio. The Commission must take steps to ensure there is a competitive digital platform for both terrestrial and satellite radio if the Commission intends to make a finding that effective programming competition will develop between AM/FM radio and satellite radio.

iBiquity believes the imposition of its requested condition will have a minimal impact on the marketplace. Receiver manufacturers can incorporate HD Radio technology in satellite receivers with minimal incremental cost. Virtually all satellite receivers for car installation have advanced digital tuners and electronic screens. These types of receivers can be upgraded to include HD Radio technology for no more than twelve to fifteen dollars in the worst case. To upgrade the receiver, the manufacturer would need to add an HD Radio baseband chip and additional flash memory and invest a small amount of nonrecurring engineering expense to update the host controller in the receiver. Although iBiquity does not control the pricing of these items, iBiquity estimates the highest cost for these items would range from twelve to fifteen dollars. For less sophisticated satellite receivers that lack a digital tuner, the receiver manufacturer would be able to add an HD Radio module containing a baseband chip and tuner. By early 2009, the next generation HD Radio module will be available for no more than twenty dollars. These prices represent iBiquity's worst case estimates. iBiquity believes it is more likely that costs will be significantly lower due to volume purchases. Moreover, iBiquity believes manufacturers will invest additional money up front to more fully integrate the satellite and HD Radio chips on the same circuit boards in order to reduce the incremental cost for HD Radio functionality to perhaps as low as the six to eight dollar level. In a typical automobile radio that retails from several hundred dollars to well in excess of \$1,000, the additional cost to include HD Radio technology would be negligible.

Conclusion:

iBiquity appreciates this opportunity to provide this input as the Commission considers the pending transfer application. Any questions about the proposed condition or iBiquity's views on the potential barriers to competition should be directed to the undersigned.

Respectfully submitted,

/s/ Albert Shuldiner

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/s/ Robert A. Mazer

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