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May 7, 2008

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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: **Notice of Ex-Parte Presentation in MB Docket 07-57**

Dear Ms. Dortch:

On Monday, May 5, 2008, Peter Smyth, President and CEO of Greater Media, Inc. ("Greater Media"), and Steven A. Lerman and Sally A. Buckman of Leventhal Senter & Lerman PLLC, met with Commissioner Jonathan S. Adelstein and Rudy Brioche, his Legal Advisor for media issues, to discuss Greater Media's views regarding the proposed XM/Sirius merger.

Specifically, Greater Media maintained that the proposed merger is not in the public interest, and therefore, the Commission should not grant the pending license transfer application. Greater Media emphasized that the policy underlying the satellite digital audio radio service ("SDARS") monopoly prohibition -- to provide an opportunity for a competitive SDARS service to promote the benefits to consumers that a competitive service offers -- continues to be valid and that permitting XM and Sirius to merge in contravention of the SDARS monopoly prohibition would undermine the FCC's regulatory objectives and result in substantial harm to consumers and the free over-the-air radio broadcast service. Greater Media also emphasized that if the pending license transfer application is approved, one licensee would control 25 megahertz of spectrum, which is more than the entire AM and FM terrestrial bands combined and would have over 300 channels in every market.

Finally, Greater Media explained that in the event the Commission decides to ignore its own rules and policy judgments and approves the pending license transfer application, it should require that the combined entity only be permitted to subsidize or license receiving equipment that includes HD tuners and allows users to switch easily between the satellite and AM/FM bands.

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Greater Media distributed a summary of the key points addressed in its meeting which is attached hereto as Attachment 1.

In accordance with Section 1.1206 of the Commission's rules, one electronic copy of this letter is being filed in the above referenced docket. Please direct any inquiries concerning this matter to the undersigned.

Respectfully submitted,

Sally A. Buckman

SAB:gfe
cc: Commissioner Jonathan S. Adelstein
Rudy Brioche

I. The FCC Should Not Waive the SDARS Monopoly Prohibition

In 1997, when the FCC established the SDARS service, it awarded 12.5 MHz of spectrum each to two licensees. The FCC explicitly stated at the time: "although spectrum constraints limit us to licensing just two satellite DARS systems at this time, our licensing approach nonetheless provides the opportunity for a competitive DARS service. Our goal is to create as competitive a market structure as possible, while permitting each DARS provider to offer sufficient channels for a viable service." The FCC noted that having at least two SDARS operators to compete for customers "will help insure that subscription rates are competitive as well as provide for a diversity of programming voices."

The creation of a SDARS Monopoly Provider would eviscerate these fundamental and well-reasoned regulatory objectives. It would also aggregate 25 MHz of spectrum in one licensee – more spectrum than is allocated to the entire AM and FM terrestrial radio bands combined (21.18 MHz). It would permit a SDARS Monopoly Provider to transmit over 300 channels in each market, forty (40) times more channels than the most consolidated terrestrial broadcast radio licensee in even the largest markets. A merger of XM and Sirius would combine and enhance what are now two separate SDARS revenue streams. The inevitable result will be siphoning of advertising revenue, talent and high-quality programming from free, terrestrial radio, undermining an already financially challenged radio industry and impairing the ability of terrestrial broadcasters to fulfill their core mission to serve their local communities.

II. Recent DOJ and FCC Determinations As to Terrestrial/SDARS Competition Are Irreconcilable

In permitting the proposed XM/Sirius merger to proceed, DOJ concluded that "its investigation did not support defining a market limited to the two satellite radio firms." Instead, DOJ accepted arguments made by XM and Sirius that they competed for listeners with "traditional AM/FM radio, HD radio, MP3 players (e.g., iPods) and audio offerings delivered to wireless telephones." On the other hand, in February, 2008, the FCC reached a diametrically contrary conclusion in its Quadrennial Regulatory Review of broadcast ownership rules. The FCC concluded that "there continues to be a lack of persuasive evidence that various entertainment alternatives … are good substitutes for listening to radio." The FCC thus rejected the argument that terrestrial radio competes with satellite radio and other providers of audio entertainment. The pronouncements of the FCC and DOJ cannot be reconciled and cannot both be correct. If DOJ is correct that there is broad competition for listeners which impacts terrestrial radio, then that should mean that the FCC cannot delete the SDARS Monopoly Prohibition without also permitting the broadcast multiple ownership rules to be relaxed so that these services operate on a reasonably level regulatory playing field. On the other hand, if the FCC is correct that satellite radio and terrestrial radio do not compete with one another in the "audio marketplace," waiving the SDARS Monopoly Prohibition would be totally inappropriate since it would indisputably create a monopoly in the satellite market.

III. DOJ Approval Also Relied on XM/Sirius Violations of an FCC Order

DOJ concluded that the merger would not affect existing satellite radio subscribers because XM and Sirius do not currently compete with each other, due to the fact that XM and Sirius radio equipment is not interoperable. According to DOJ, the absence of interoperability precludes consumers from switching between the two firms' products. In 1997, the FCC expressly conditioned the XM and Sirius licenses on certification that "its final user receiver design is interoperable." In its current deliberations, the FCC should take into account the fact that XM and Sirius failed to comply with their interoperability certification and that eliminating the SDARS Monopoly Prohibition would effectively condone a blatant violation of FCC rules.

IV. Impact of A SDARS Monopoly on Terrestrial Radio

A SDARS Monopoly, facing no satellite competition, would have the leverage to be able to enter into exclusive arrangements for the most popular content, particularly sports programming and celebrity talk shows. By denying such programming to terrestrial operators, the SDARS Monopoly will undermine terrestrial radio's ability to sell to advertisers, will create a downward spiral in which terrestrial broadcast content quality will decline, and will effectively enhance subscription radio service at the expense of free terrestrial service. These are the same types of factors the FCC was concerned when it concluded that the proposed merger of EchoStar and DirecTV would not be in the public interest. Such anti-consumer consequences will be similar to the migration of high-value content from free, over-the-air television to cable. Just as cable was initiated as a subscription-based service and evolved into a service with two revenue streams, the SDARS Monopoly will inevitably siphon advertising dollars and program product from free to paid radio, sapping the economic life blood of terrestrial broadcast radio and undermining its ability to serve local communities.

V. SDARS/HD Interoperability

If the FCC rescinds the SDARS Monopoly Prohibition, it must insure that subscribers to a SDARS Monopoly service are not limited in their opportunity to sample other audio services. In order to provide such assurance, any order approving the XM/Sirius merger should be explicitly conditioned on the requirement that the combined entity may only subsidize or license satellite radio receiving equipment that includes HD AM/FM tuners and allows users to switch easily between the satellite and AM/FM bands. Conversion to HD for the radio industry offers similar benefits for consumers as conversion to digital television, including enhanced audio quality and multiple program streams. At this juncture, it is critical that radio broadcasters' costly efforts to convert to digital be encouraged, not stymied. In light of the fact that XM and Sirius failed to comply with the interoperability requirement imposed in 1997, any such SDARS/HD interoperability mandate should be reinforced with a strict spectrum forfeiture condition, requiring that a merged XM/Sirius forfeit half of its assigned spectrum if it fails to comply with the interoperability condition within one year of the consummation of the merger.