

MICHAEL HARTLEIB
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FILED VIA ECFS

May 12, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Presentation; Consolidated Application for Authority to
Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc.
MB Docket No. 07-57**

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, and the Commission's Public Notice dated March 29, 2007 (DA 07-1435), I respectfully submit the attached Complaint to the DC Bar dated April 30, 2008.

As the Commission is aware, I have attempted to intervene in an ongoing legal action in New York Supreme Court, Index No. 600819/07, entitled *Brockwell vs. Sirius Satellite Radio Inc. et al.* The Judge has denied my Motion to Intervene and I have since filed a Memorandum in Opposition to the Proposed Settlement.

My concern is that there is no benefit to shareholders (i.e. members of the class) and this proposed settlement does nothing but line the pockets of the law firms and indemnify the board of directors and executives and/or related parties for any and all wrongdoing that is known, could have been known, should have been known, might have been known and is an outrageous attempt to strip shareholders of all of their rights.

Even more troubling is that Simpson Thatcher (counsel for the defendants) argued on behalf of the defendants **and** plaintiffs that they could not afford the \$1million needed to send a proper notification to their shareholders via US Mail and submitted to the court that a one-day ad in the Wall Street Journal should be considered as proper notice. Yet executive compensation was recently announced and Mr. Karmazin received over thirty two million dollars (\$32,000,000.00). With all due respect to Mr. Karmazin and executives of Sirius Satellite Radio, I find it personally offensive that such an argument can be presented to the courts when management finds the means to enrich themselves to such a degree when shareholders have suffered the pain incurred by the delay of this merger.

One could argue that less than five percent of the class would be a subscriber to such a publication as the Wall Street Journal.

I, for one, have lost tremendous respect for this company and its management. I am still a large shareholder, but I am deeply troubled by the lack of candor and transparency they are providing their shareholders and intend to take action to protect my rights and the rights of other shareholders.

I, again, strongly submit that it is unconscionable for the FCC to consider transfer of these licenses to one licensee when it is undetermined whether or not these companies are in compliance with the Interoperability Mandate. I am not opposed to the merger as a concept but I am outraged that Sirius failed to disclose to their shareholders all of the facts of interoperability and capabilities of current receivers in the market place prior to the shareholder vote. Also, Sirius refuses to provide the actual number of shares voted and only state that 96.1% of "shares voted" voted in favor of the merger. If this 96.1% is of 50.5% of the shareholders, they did not achieve the simple majority needed to consummate this merger as a simple majority was required. I have personally sent certified letters to the board of directors asking for these figures and demanding an independent audit of the shareholder vote and have received no response. In my opinion, when the Department of Justice approved this merger with no conditions and based it, in large part, on the fact that consumers do not have access to an interoperable device they pulled the pin from a live hand grenade and threw it back in your lap. Shame on the FCC for not protecting consumers' interest by not providing clarity on the Interoperable Mandate and by doing their best to obfuscate the issue.

Respectfully,

Michael Hartleib

OFFICE OF BAR COUNSEL
THE BOARD ON PROFESSIONAL RESPONSIBILITY
DISTRICT OF COLUMBIA COURT OF APPEALS
515 5th Street, NW
Building A, Room 117
Washington, D.C. 20001
(202)638-1501 Fax (202)638-0862

(Please print or type.)

A. Your Name: (Dr.)
2008

Date: April 30,

(Mr)

(Ms)

(Mrs)

Michael

J.

Hartleib

±

(First)

(Initial)

(Last)

Address: P.O.Box 7078

±

(Street)

Laguna Niguel

(Apt.#)

CA

92677

±

(City)

(State)

(Zip)

Business Telephone:

Home Telephone:

Cell:

±

(NOTE: It is very important that we have your telephone number(s) and that you inform our office if you have a change of address.)

B. Attorney Complained Of:

Name:

Gary M. Epstein, Esq. and Latham & Watkins, LLP

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(First)

(Initial)

(Last)

Address: 555 Eleventh Street, NW, Suite 1000

±

(Street)

(Apt. #)

Washington,

DC

20004-1304

±

(City)

(State)

(Zip)

Telephone No. : 202-637-2249

Attorney's Bar No. Unknown

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C. Have you filed a complaint about this matter anywhere else? If yes, please give details. No

D. Do you have a written retainer agreement with the attorney? If yes, please attach a copy. No

E. Where applicable, state the name of the court where the underlying case was filed, and the case name and number. Not Applicable.

F. Do you have other documents that are relevant? If yes, please give details and provide copies. See Statement of Complaint that follows.

SEE REVERSE SIDE FOR REQUIRED DETAILS & SIGNATURE

G. DETAILS OF COMPLAINT:

This complaint arises from a telephone call I received April 14, 2008 at approximately 10:30 am PDT.

Background. I own a substantial number of shares in Sirius Satellite Radio Inc. (Sirius). Sirius and XM Satellite Radio Inc. (XM) have agreed to merge and filed applications with the Federal Communications Commission (FCC) for approval to do so. These applications are being considered by the FCC in its Media Bureau Docket No. 07-57.

In March 2007, a shareholder class action was brought against Sirius alleging improper or inadequate valuation of the stock that would be transferred if the merger was completed as proposed. *Brockwell v. Sirius Satellite Radio (Index No. 600819/07)* (Supreme Court of the State of New York). In late 2007, a settlement of this class action was announced. However, details about the terms of the settlement and what value the shareholders would receive if it was effected were not provided. Since then, I have tried to obtain the terms and to force the parties in the suit to make full disclosure of the terms of settlement and the value the shareholders could be

expected to receive if the settlement was approved. I have been denied access to any such information.

However, my efforts in this regard discovered that the law firm serving as lead counsel for the class, Robbins, Umeda & Fink, San Diego, California had a long-term relationship with the putative class representative plaintiff, Greg Brockwell. The firm has represented Mr. Brockwell as representative class plaintiff in numerous class actions. As I investigated further, I learned that the firm representing Mr. Brockwell had long term relationships with the New York firm of Milberg Weiss and with William Lerach as well. This caused concern that the class action in the *Brockwell* case raised issues whether Mr. Brockwell was a paid plaintiff. My understanding is that using paid plaintiffs in class action cases led to the indictments and convictions of ranking members of the Milberg Weiss firm and Mr. Lerach for obstruction of justice.

I therefore took my concerns to the United States Attorney's Office for the Central District of California. My intent was simply to pass on the facts that I learned through my efforts to get to the bottom of the settlement being made in the *Brockwell* case in New York.

Complaint. With this background in mind, the following occurred. On April 14, 2008, I had multiple telephone conversations with members of the US Attorney's office for the Central District of California regarding the Milberg Weiss and William Lerach cases and how those cases and circumstances related to the Robbins, Umeda & Fink firm, class representative plaintiff Greg Brockwell and the *Brockwell* case and its proposed settlement. During the time frame in which my calls were made to the US Attorney's Office, I received an incoming call on my cell phone. My phone's caller ID displayed the words "Gary's Office" as a pre-programmed number in my contact list. This is unusual because I do not recall having at any time entered such a number or identified one as such as "Gary's Office."

I took the call and it lasted approximately 20 minutes. The person who called me identified himself as a "US Attorney" and as calling on "behalf of the US Attorney's Office". The caller specifically wanted me to address the issues I had raised in my telephone conversations with other members of the US Attorney's Office for Central District of California. Believing I was speaking with a member of that office, I proceeded to share confidential and privileged information with the caller.

After the call ended, it occurred to me that I really didn't know who I had just spoken with because I realized that I had no knowledge of what my cell phone displayed when the call came in. I then called "Gary's Office" and

discovered the call had been made from someone at the Washington, D.C. law firm of Latham & Watkins. I knew this because my phone displayed its number, i.e., 202-637-2200. It made no sense to me that a US Attorney from the Central District of California would have called me from the offices of Latham & Watkins in Washington, D.C. It also was quite strange that the firm is counsel of record for XM representing it in the merger proceeding before the FCC.

In an attempt to get clarification, I called Gary Epstein, a partner in the firm and lead counsel for XM in the merger proceeding before the FCC. I called Mr. Epstein several times, at both his home and his office, each time leaving detailed messages for him. I placed these calls beginning at approximately 12:30 pm PDT on April 14, 2008. As of this date, my calls and concerns have not been addressed by Mr. Epstein or his firm.

Since at the time I believed I was speaking with a US Attorney and divulging confidential information, if Latham & Watkins, Mr. Epstein or someone else at the firm gained information from me by pretending to be a federal official, it appears that not only was there a breach of professional ethics, but quite possibly a violation of Federal Law. Since I have given Mr. Epstein an opportunity to clarify this matter in his own interests and he has not done so, I am compelled in order to protect my interests to bring this to the Bar Association's attention.

I have a copy of my cell phone call summary for the date of April 14, 2008 and will provide it as needed. I have also informed Richard E. Robinson, Lead Investigator in the Millberg Weiss case of the details of this telephone call.

**The Undersigned hereby certifies to the Office of Bar Counsel
that the statements in the foregoing Complaint are
true and correct to the best of my knowledge.**

SIGNATURE

MICHAEL HARTLEIB
P.O. Box 7078
Laguna Niguel, CA 92617

April 8, 2008

Re: *Brockwell v. Sirius Satellite Radio (Index No. 600819/07)*

The Honorable Richard B. Lowe III
The Supreme Court of the State of New York
County of New York
100 Centre Street, Room 1735
New York, N.Y. 10007

Dear Justice Lowe:

As you know from my filings attempting to intervene in the reference case, I am a shareholder of Sirius Satellite Radio and have been for a number of years owning hundreds of thousands of shares.

The purpose of this letter is to respectfully bring to your attention facts that it is submitted are important to your consideration of the letter sent to you April 3, 2008 by Jonathan K. Youngwood of Simpson Thatcher & Bartlett LLP purporting to address “Your Honor’s concerns regarding the form of notice to be provided to the class in this action.”

While I am no lawyer, it strikes me as odd that Mr. Youngwood states that he and his firm filed the April 3rd letter “jointly on behalf of the defendants and the **plaintiffs**.” (emphasis added) The issue, of course, is what type of notice is required to properly inform the Sirius shareholders of the proposed settlement of the class action. As a shareholder, one of the reasons I have filed to intervene in this case is because the so-called notices given and proposed by Sirius are devoid of any meaningful information by which a shareholder can judge the merits of the settlement of this action or of the merits of the merger itself.

Disagreement with the adequacy of the shareholder notices creates, in my understanding, a conflict of interests between Sirius and the class. I do not, therefore, understand how Mr. Youngwood gained the authority, if he did, to represent opposing interests. The Court may wish to inquire about the circumstances that surround Mr. Youngwood’s purported representation of the defendants and the **plaintiffs** in this matter.

Mr. Youngwood offers as support of Sirius’s position that direct mail notification to all shareholders would impose an economic hardship on Sirius. He cites the facts that “Sirius reported a loss of approximately \$1 billion during the year ended December 31, 2006, and a loss of additional \$500 million for the year ended December 31, 2007.” He goes on to say that “Respectfully, an additional \$1 million is a meaningful sum to Sirius, especially in this difficult market.”¹ The Court may wish to reflect on these representations in light of these facts. Sirius is merging with the only other satellite radio network provider that exists – XM Satellite Radio – and will become the sole provider of satellite radio services.

The proposed merger is valued at \$5 billion and its approval has been cleared by the Department of Justice and it is expected that the Federal

¹ see April 3, 2008 letter from Simpson, Thacher & Bartlett LLP attached

Communications Commission that regulates Sirius and XM will grant its approval this month.

Mr. Karmizan, Sirius's CEO and reputed CEO of the merged entity has been criticized for his compensation package that is in the neighborhood of \$30 million a year. The cost of shareholders direct notice then would be 3% of Mr. Karmizan's salary for one year and infinitesimal compared to the value of the \$5 billion merger itself.

The Court may wish to ask Mr. Youngwood these questions. Would the dire financial condition of Sirius represented to the Court raise an issue of the financial qualifications of Sirius to be a Commission licensee? How does the dire financial condition of Sirius represented to the Court relate to Sirius's public position that if the merger is not approved, it will be able to continue to operate on its own and the merger is not being justified on the "failing firm" antitrust doctrine.

Mr. Youngwood cites its "public disclosure" of "the proposed settlement in its November 5, 2007 Current Report on Form 8-K (the 'Supplemental Disclosure'), and that filing remains posted in the 'Investors Relations' section of Sirius' website." One of the reasons I sought intervention is my strong objection that these so-called notices are meaningless claptrap. They provide no notice to shareholders of any substantive terms of the settlement or why it is in their interests. Moreover, I have statements from Sirius representatives that admit that these so-called disclosures are meaningless and the only reason the firm representing the plaintiff agreed to settle this case is because they "liked the check".

Since the notice is itself completely inadequate and uninformative, Mr. Youngwood's offer to publish it by other means begs the question. No matter where the notice is published it will fail to inform shareholders about what they need to know. That being the case, a notice sent directly to each shareholder will not solve the problem. But what Sirius and its counsel's arguments reveal is that they know the notice is deficient and do not want to risk notifying shareholders directly because, if they do, there would likely be shareholder repercussions.

Mr. Youngwood shows unusual temerity by making a not so veiled threat that if direct shareholder notice is provided it would consider amending the terms of the settlement and withdraw Sirius's request for preliminary approval. I believe that this would actually benefit shareholders and are actions that should be taken. One must wonder then why using such actions are believed to support the relief requested. It seems that it suggests that the Court would be concerned if the request for preliminary approval

were withdrawn. Not being a lawyer, I don't understand why the Court would be concerned about such an action.

I respectfully request that the Court consider the matters raised in this letter. They are submitted in the interest of all shareholders and in the integrity of the judicial process.

Respectfully submitted,

Michael Hartleib

