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FOREIGN RELATIONS  
SMALL BUSINESS

# United States Senate

WASHINGTON, DC 20510-2102

March 26, 2008

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

FILED/ACCEPTED

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Federal Communications Commission  
Office of the Secretary

*MB*  
*XM/Sirius*  
*PV*  
*KM*  
*527*

Dear Chairman Martin:

With the news that the Department of Justice has approved the proposed merger of XM and Sirius with no conditions, the decision as to whether this merger will be permitted to move forward rests with the Federal Communications Commission. While the Department of Justice has found that "the evidence does not demonstrate that the proposed merger of XM and Sirius is likely to substantially lessen competition", serious concerns remain as to how this merger will impact consumers if it is permitted to go forward.

The Commission's 1997 Order establishing the Satellite Digital Audio Radio Service (DARS) "prohibits transfers or assignments of licenses except upon application to the Commission and upon a finding by the Commission that the public interest would be served thereby." The Commission further ruled that "one licensee will not be permitted to acquire control of the other remaining satellite DARS license", in order to "assure sufficient continuing competition in the provision of satellite DARS service." To the extent that this merger would permit the only two entities authorized to provide satellite radio service in the United States to merge, it would seem to directly contradict the intent of the Commission in establishing this service.

For XM and Sirius, the financial incentives to consolidate are indisputable. It does not follow however that it would be in the public interest for these two competing entities to merge. If left unchecked, the entity that would emerge from this partnership would be capable of exercising monopolistic powers that could potentially result in diminished service at increased rates to consumers.

As you consider whether to approve this merger, I urge you to resist rubber stamping the Justice Department's determination that sufficient competition exists. Should the FCC determine that this merger does indeed serve the public interest, I urge you to consider appropriate conditions that will effectively protect the American consumer from what could prove to be an entity with strong monopoly power within the Digital Audio Radio market. As a senior member of the Senate Committee on Commerce,

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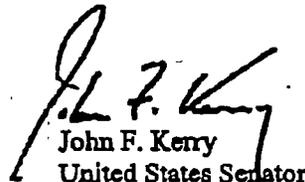
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The Honorable Kevin J. Martin  
March 26, 2008  
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Science and Transportation, I will be following the Commission's consideration of this merger carefully to ensure that the interest of the public is served.

Sincerely,



John F. Kerry  
United States Senator

CC: Commissioner Copps  
Commissioner Adelstein  
Commissioner Tate  
Commissioner McDowell