

**MICHAEL HARTLEIB**  
P.O. Box 7078  
Laguna Niguel, CA 92607

**FILED VIA ECFS**

May 14, 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 letter from the offices of Simpson Thacher & Bartlett dated April 3, 2008.

As I have stated in my previous submission, I find it troubling and concerning that defendants' counsel would draft such a letter on behalf of defendants **and the plaintiff** as I believe this presents a conflict of interest.

Respectfully,



Michael Hartleib

Encl.

## SIMPSON THACHER &amp; BARTLETT LLP

425 LEXINGTON AVENUE  
 NEW YORK, N.Y. 10017-0854  
 (212) 455-3500

FACSIMILE (212) 455-3508

DIRECT DIAL NUMBER

E-MAIL ADDRESS

(212) 455-3539

jyoungwood@stbllaw.com

BY HAND

April 3, 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:

We represent the defendants in the above-captioned matter.

We write jointly on behalf of the defendants and the plaintiffs to further address Your Honor's concerns regarding the form of notice to be provided to the class in this action.

New York law does not require individual notice by mail in all cases. *See In re Colt Indus. Shareholder Litig.*, 155 A.D.2d 154, 157, 160. (N.Y. App. Div. 1<sup>st</sup> Dept. 1990) (upholding notice by newspaper publication only). The parties believe that, under the circumstances of this case, notice by publication is fair, reasonable and cost-efficient. As Your Honor is aware, Sirius publicly disclosed the existence 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 "Investor Relations" section of Sirius' website. The information set forth in the Supplemental Disclosure was digested and understood by the market at large and by Sirius stockholders months ago. Publication in *The Wall Street Journal*, the world's foremost daily financial periodical, would provide additional notice of the settlement to Sirius shareholders. At the March 31 Preliminary Approval hearing, Your Honor expressed the concern that the proposed publication of notice in the *Wall Street Journal* might not reach a broad enough number of shareholders.

As a preliminary matter, the parties wish to reiterate a point concerning the expense that mail notice would engender. Notice by mail would entail a significant expense for which there would be little, if any, incremental benefit to Sirius shareholders, particularly given the fact that it is ultimately the shareholders who would have to pay for it. The law does not favor an expenditure of approximately \$1 million where there is no showing that less costly alternatives are inadequate. 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

**SIMPSON THACHER & BARTLETT LLP**

Hon. Richard B. Lowe III

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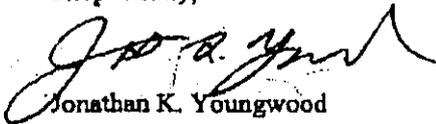
ended December 31, 2007. Respectfully, an additional \$1 million is a meaningful sum to Sirius, especially in this difficult market.

Given the cited law and cost factors, we did not understand Your Honor to be opposed to publication as the method of notice but rather to be concerned regarding the publication selected. The parties wish to address this concern to the greatest extent possible. Toward that end, we would be willing to publish the notice in another national publication of somewhat broader circulation, such as the USA Today, instead of in The Wall Street Journal. Further, Sirius will also be publishing the notice on the Investor Relations section of its website. It is the parties' view that publication in USA Today and on Sirius' website is reasonable under the circumstances and satisfies the requirements of New York law.

Finally, if the Court is inclined to require notice by mail, the parties would be required to consider amending the terms of the proposed settlement and, accordingly, the request for preliminary approval would have to be withdrawn at this time.

As always, the parties remain at the disposal of Your Honor to answer any questions, or to address any additional concerns, that the Court may have.

Respectfully,



Jonathan K. Youngwood

cc: Felipe J. Arroyo  
Joe R. Whatley  
G. Richard Malgran