

# KAYE SCHOLER LLP

Bruce A. Eisen  
202 682-3538  
beisen@kayescholer.com

The McPherson Building  
901 Fifteenth Street, NW  
Washington, DC 20005  
202 682-3500  
Fax 202 682-3580  
www.kayescholer.com

May 14, 2008

FILED/ACCEPTED

MAY 14 2008

Federal Communications Commission  
Office of the Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: MM Docket No. 07-57  
Spanish Broadcasting System, Inc. Ex Parte Presentation (written)

Dear Ms. Dortch:

Spanish Broadcasting System, Inc. ("SBS") has been monitoring with great interest the proposed merger between XM Satellite Radio Holdings, Inc. and Sirius Radio, Inc. ("XM/Sirius" or the "merging parties"). SBS is the largest Hispanic-controlled radio broadcasting company in the United States. Together with its affiliates, SBS currently owns and/or operates 21 stations in six of the top-ten Hispanic markets, including New York, Miami, Los Angeles, Chicago, San Francisco and Puerto Rico. An SBS affiliate also owns a full-service television station in the Miami, Florida television market.

SBS is controlled by Raul Alarcon, Jr., a Cuban-American, who, together with his father, had been involved in broadcasting for more than 20 years before acquiring his first broadcast property. Mr. Alarcon's knowledge of the industry and his commitment to Spanish-language programming have resulted in the spectacular growth of SBS licensed facilities. However, as a terrestrial broadcaster, SBS has been skeptical of the proposed XM/Sirius merger for many of the reasons articulated by a host of merger opponents. In short, SBS believed that the merger would threaten competition and ultimately result in higher subscriber prices and a lower quality of service. SBS also notes that the Commission's 1997 rulemaking authorizing the satellite radio service, specifically prohibited one satellite licensee from acquiring the other because the resulting monopoly would be inconsistent with the public interest.

Notwithstanding the solid reasons to oppose the merger, SBS is aware that some parties, including the merging parties, have raised the prospect of conditioning a grant on an agreement by XM/Sirius to relinquish spectrum and to thereby allow others to compete in the satellite radio market. SBS believes that such an alternative is preferable to denying the merger because a leasing arrangement or a transfer of spectrum could advance the public interest by foreclosing a

13126007.WPD

No. of Copies rec'd 091  
List ABCDE

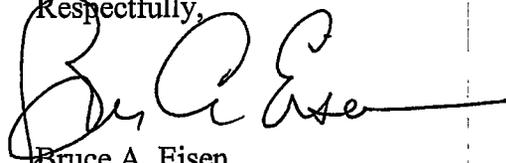
monopoly and providing for diverse programming choices. However, any merger grant should include a condition that the lessee or transferee must be a minority entity, i.e., a company controlled by members of a racial minority group, or an entity that qualifies as an "eligible entity" under the Commission's definition in its 2002 Biennial Review Order. Further, the transferee, as opposed to a lessee, must show that it has a history of developing programming and effectively broadcasting to minority populations, and that it is financially qualified to lease the spectrum and provide the proposed programming.

SBS leaves to the Commission the amount of spectrum that should be made available for these purposes, but acknowledges that some parties have urged no less than 20 percent as a reasonable amount. If it is a lease and not a divestiture of spectrum that is adopted, SBS submits that the Commission must itself approve the rate that the merged party charges the lessee to insure that the former does not resort to exorbitant or predatory pricing policies.

A question of importance would concern the manner in which a transferee would be selected. SBS believes that an entity qualifying under this plan should not be subject to negotiations with the merged party or be compelled to enter some kind of lottery or auction. Rather, the Commission should designate for hearing those parties that meet the threshold eligibility requirements noted above. The Commission should then elicit written showings in order to determine who is best qualified to become the transferee. Factors to be considered should include past broadcasting experience in programming and plans for reaching the widest minority populations.

SBS recognizes that many details would need to be addressed and satisfactorily worked out before a model could be put into place. It might even take an additional rulemaking to determine the method by which a transferee of the spectrum could be selected. The merged satellite licensee could begin operations in the meantime. In any case, SBS opposes the merger in the absence of a workable solution that would give minority and other companies a chance to provide quality programming pursuant to a Commission-approved regulatory procedure in accordance with the instant proposal.

Respectfully,



Bruce A. Eisen

Counsel to Spanish Broadcasting  
System, Inc.