

May 20, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of ex parte* presentation in: MB Docket No.07-57

Dear Ms. Dortch:

On May 20, 2008, Gigi B. Sohn and Alex Kanous of Public Knowledge (PK), Andrew Jay Schwartzman and Parul Desai of Media Access Project (MAP), and Michael Calabrese of the New America Foundation (NAF) met with Chairman Kevin Martin and Elizabeth Andrion, Acting Legal Advisor for Media Issues for the Chairman. The purpose of the meeting was to discuss the proposed merger of XM Satellite Radio and Sirius Satellite Radio.

PK, MAP and NAF observed that they take different positions as to whether grant of the applications for transfer are in the public interest, but are agreed on the nature of conditions which should be attached to any approval. In particular, they discussed two such conditions:

- The new company should make 5% of its channel capacity available to non-commercial educational and informational programming over which it has no editorial control;
- The new company should make the technical specifications of its devices and network open and available to allow device manufacturers to develop, and consumers to use, any device they choose without interference. Pursuant to Commission rules, these devices must be certified by the FCC for receiving signals on the frequencies licensed to the merged entity and be subject to a minimum “do-no-harm” requirement.

These conditions are discussed in detail in PK’s *Notice of Ex Parte* presentation filed on March 10, 2008.

With regard to the noncommercial set-aside, the parties expressed concern that Capitol Hill and FCC discussions over the size of a commercial set-aside for minority programmers are not including discussion of the noncommercial set-aside. While the parties are not opposed to a commercial set-aside, they do not think such a set-aside should be in lieu of a noncommercial set-aside. They also clarified that any set-asides should be a percentage of channel *capacity*, and not simply a percentage of the number of live channels. PK suggested 10% for the minority set-aside and 5% for the noncommercial set aside as reasonable.

The parties then discussed how the commercial and non-commercial might operate, separately and together. The parties expressed no preference as to whether the commercial set

aside should be programmed by one or two programmers, or should be more in the nature of a “leased access” model. The former model provides for less diversity but is easier to administer, while the latter provides more diversity but is much more difficult to administer. The parties expressed support for the proposal of Georgetown Partners to encode, digitize and send the noncommercial set aside programming to the satellite, although the parties made clear that they do not support the Commission giving the commercial set-aside to any one particular party.

The parties urged the Commission to require that the noncommercial set-aside be provided with every programming package (including a la carte packages) that the merged entity and any commercial lease might provide. To the extent that Georgetown Partners has proposed providing a free advertiser-supported service both to subscribers and those persons who have a satellite radio receiver but do not subscribe, the parties urged the Commission to require it, or any similarly situated party, to provide the noncommercial set-aside to the same persons. The parties are not asking the Commission to require any subscription service to make the noncommercial set aside available to non-subscribers.

The parties reviewed the attached document, in which Sirius purports to demonstrate that it already provides noncommercial programming that meets the 5% threshold the parties are seeking. PK pointed out that it would prefer that any programming on the set-aside be programming that would not ordinarily be on satellite radio, but that in any event, several of the channels were owned by the same entity (the parties have asked that the Commission set a limit of one noncommercial programmer per channel, as is required for the DBS noncommercial set-aside), and that the number of channels on which Sirius was basing its calculations was not its full channel capacity, but the channels it is currently using.

Regarding the open device condition, we agreed with the Chairman that should the Commission permit any entity to manufacture a satellite radio receiver, it would obviate the need for a mandate that all satellite radios have an HD radio chip, or that they be interoperable. In that case, the market would inevitably provide for satellite radio receivers with a wide variety of features.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted,

Gigi B. Sohn
President

cc:
Chairman Kevin Martin
Elizabeth Andrión
Andrew Jay Schwartzman
Parul Desai
Michael Calabrese

Sirius Satellite Radio Inc.
Current Public Interest Programming

Sirius currently provides nine channels from “qualified programmers” that offer exclusively noncommercial programming of an educational or informational nature:

1. NPR Now (Channel 134)
2. NPR Talk (Channel 135)
3. CBC Radio One (Channel 137)
4. Premiere Plus (Channel 138)
5. RCI Plus (Channel 188)
6. World Radio Network (Channel 140)
7. BBC World Service News (Channel 141)
8. The Catholic Channel (Channel 159)
9. EWTN Global Catholic Radio Network (Channel 160)

# Public Interest Channels	116 Channels excludes play-by-play sports excludes traffic/weather	129 Channels excludes play-by-play sports includes traffic/weather	135 Channels includes play-by-play sports includes traffic/weather
6	5.17 %	4.65 %	4.44 %
9	7.76 %	6.98 %	6.67 %