



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

Stamp and Return

June 6, 2008

Jennifer D. Hindin
202.719.4975
jhindin@wileyrein.com

FILED/ACCEPTED

JUN - 6 2008

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

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

Re: REDACTED – FOR PUBLIC INSPECTION
MB DOCKET NO. 07-57

Dear Ms. Dortch:

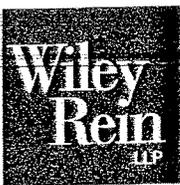
In accordance with the Order adopting the Protective Order,¹ the Order adopting the Second Protective Order,² and the instructions we have received from the staff of the Media Bureau, enclosed please find two *redacted* copies of the attached written ex parte presentation.

Per the Protective Orders, Sirius is filing today, under separate transmittal, one redacted, public version of these documents via ECFS and one unredacted paper copy of these documents with the Secretary's Office. In addition, two unredacted paper copies are being hand-delivered to Jamila Bess Johnson of the Industry Analysis Division of the Media Bureau.

The unredacted version of confidential information will be made available for inspection, pursuant to the terms of the First Protective Order or the Second Protective Order, as applicable, at the offices of Wiley Rein LLP, 1776 K Street NW, Washington, D.C. 20006. Counsel for parties to this proceeding should contact Peter D. Shields at (202) 719-3249 or Nicholas M. Holland at (202) 719-4632 to coordinate access after they comply with the terms of the First Protective Order or Second Protective Order, as applicable. Parties seeking access to Confidential or Highly Confidential documents should serve the required

¹ *Applications of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. For Approval to Transfer Control*, MB Docket No. 07-57, Protective Order, DA 07-3135 (rel. Jul. 11, 2007) ("First Protective Order").

² *Applications of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. For Approval to Transfer Control*, MB Docket No. 07-57, Protective Order, DA 07-4666 (rel. Nov. 16, 2007) ("Second Protective Order").



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Acknowledgement of Confidentiality on Peter D. Shields and Nicholas M. Holland
at Wiley Rein LLP, 1776 K Street, NW, Washington, D.C. 20006.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Jennifer D. Hindin". The signature is fluid and cursive.

Jennifer D. Hindin

Enclosures

cc: Jamila Bess Johnson, Industry Analysis Division, Media Bureau

**REDACTED
FOR PUBLIC INSPECTION**

June 6, 2008

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

Re: XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc., Consolidated
Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite
Radio Inc.
MB Docket No. 07-57

Dear Ms. Dortch:

Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc., by counsel, hereby reply to the May 27, 2008 request by the Consumer Coalition for Competition in Satellite Radio (the “NAB Coalition”)¹ that the Commission designate the above-captioned applications for hearing and “commence an investigation leading to appropriate enforcement actions.”² The NAB Coalition’s Filing is yet another salvo in the National Association of Broadcasters’ long campaign to prevent the merger of XM and Sirius and forestall the creation of a stronger competitor for terrestrial radio.

The NAB Coalition Filing is replete with misstatements of law and false allegations regarding the purpose and production of certain highly confidential documents. Far from demonstrating a violation of the FCC’s requirements, the documents reflect the substantial efforts Sirius and XM made not only to design an interoperable radio but also to analyze the possible production and commercial introduction of interoperable radios. Furthermore, the NAB Coalition Filing is procedurally deficient and falls far short of establishing substantial and material questions of fact

¹ As the Commission is aware, the Consumer Coalition for Competition in Satellite Radio in actuality is a handful of law students, funded by the National Association of Broadcasters and organized by an “executive director” who once was a full-time lobbyist employed by the law firm that represents the Coalition. *See* Joint Opposition to Petitions to Deny and Reply Comments of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. at 6-7, n.17 (filed July 24, 2007) (“Joint Opposition”).

² *See* Written Ex Parte Presentation from Julian L. Shepard, Counsel to the NAB Coalition to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 07-57 (filed May 27, 2008) (“NAB Coalition Filing”).

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that would require designation for an evidentiary hearing. Accordingly, the Commission should dismiss or deny the NAB Coalition Filing.

I. The NAB Coalition's Request Blatantly Mischaracterizes the Interoperability Requirements, Ignores the Companies' Compliance With These Requirements, and Should be Denied.

The NAB Coalition claims that Sirius and XM failed to comply with the Commission's directive to design an interoperable receiver. Sirius and XM have repeatedly and exhaustively described their compliance with the Commission's interoperability requirement in earlier filings in this proceeding.³ The NAB Coalition ignores this explanation and its own previous statements⁴ and now claims that the applicable rules required Sirius and XM to produce and market an interoperable radio, when in fact the rules required only that the companies develop designs for such a radio – a requirement they fully met. This claim has been made repeatedly by the broadcaster interests, despite a clear statement from the Commission regarding what is required with respect to interoperable radios.

The NAB Coalition blatantly ignores the inconvenient truth: In its implementing rules for the satellite radio service, the FCC required all satellite radio licensees *to develop designs* for an

³ XM Satellite Radio Holdings Inc., Transferor, and Sirius Satellite Radio Inc., Transferee, Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc., MB Docket No. 07-57, File Nos. SAT-T/C-20070320-00054, SAT-T/C-20070320-00053, SES-T/C-20070320-00380, SES-T/C-20070320-00379, SES-T/C-20070625-00863, ULS 0002948781, 004-EX-TC-2007 at 15-16, n.37 (citing certification letters) (filed Mar. 20, 2007) ("Application"); Joint Opposition at 95-96.

⁴ See Petition to Deny of the Consumer Coalition for Competition in Satellite Radio, MB Docket No. 07-57 at 12 (filed July 9, 2007) (acknowledging that any obligation to produce an interoperable radio is only derived from what the NAB Coalition claims is the "spirit" of the Commission's pronouncements rather than the black-letter requirements).

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interoperable radio⁵ and to certify that they had done so.⁶ Sirius and XM have fully complied with this requirement.

The NAB Coalition relies upon unsupported assertions as to the “spirit” and “intent” of the implementing rules and the satellite companies’ licenses to argue that they required the companies to manufacture, import, distribute, deploy, market, sell or subsidize interoperable radios. Nothing could be farther from the truth. The relevant provisions are unambiguous. The implementing rules and license conditions merely require the licensees to design an interoperable receiver. The Commission left the decision to manufacture, import, distribute, deploy, market and sell interoperable radios to the private sector.

As reflected in a thorough review of the documents submitted to the Justice Department and the FCC, Sirius and XM have gone well beyond the FCC’s mandate to simply design an interoperable radio. In fact, Sirius and XM, through a Joint Development Agreement, have developed and built prototype interoperable radios. The companies have not taken the ultimate step of bringing interoperable radios to market – a step that was not mandated by the Commission – because it would not make economic sense for them to do so, since they ordinarily subsidize the production of their radios and would not be assured of recouping these subsidies for interoperable radios through subscription fees. Without such subsidies, the interoperable radios’ cost would make them not commercially viable. The NAB Coalition seeks an interpretation of the relevant provisions inconsistent with their plain meaning and

⁵ See *Establishment of Rules and Policies for the Digital Audio Radio Satellite Svc. in the 2310-2360 MHz Frequency Band*, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5795-98 (¶¶ 102-07) (1997).

⁶ 47 C.F.R. § 25.144(a)(3)(ii). Consistent with this requirement, Sirius’ license contains a condition that Sirius certify “that its final receiver design is interoperable” with respect to XM’s final receiver design. *Satellite CD Radio, Inc., Application for Authority to Construct, Launch and Operate Two Satellites in the Digital Audio Radio Service*, Order and Authorization, 13 FCC Rcd 7971, 7995 (¶ 57) (1997) (“*Sirius Authorization Order*”). XM’s license contains virtually the same condition with respect to Sirius’ receiver design. *American Mobile Radio Corporation, Application for Authority to Construct, Launch, and Operate Two Satellites in the Satellite Digital Audio Radio Service*, Order and Authorization, 13 FCC Rcd 8829, 8830 (¶ 54) (1997) (“*XM Authorization Order*”).

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unambiguous language, which would have resulted in an onerous commercial burden on two unprofitable companies that have billions of dollars in accumulated losses.

Sirius and XM fully complied with the Commission's requirement by certifying to the Commission that they jointly completed a design for an interoperable radio. This compliance has now been a matter of public record for over two years.⁷ Sirius and XM have been entirely candid with the Commission with regard to the design of interoperable receivers, and nothing that the NAB Coalition has put forth shows otherwise. When asked by the Commission staff in writing for an update on their design efforts, Sirius and XM provided their best assessment. When a prototype interoperable radio was produced, XM and Sirius provided it to the staff of the International Bureau and the Enforcement Bureau.

Remarkably, the NAB Coalition's entire argument is based on a distorted reading of four documents culled from more than twelve million pages submitted to the United States Department of Justice as part of the merger review process and thousands of pages of documents provided to the FCC demonstrating compliance with the FCC's interoperability rule. It is essential to understand that these four documents were not prepared by either Sirius or XM, but rather by Interoperable Technologies LLC ("Interoperable Technologies"), a joint venture created by Sirius and XM to further design and develop interoperable radio technologies. Rather than revealing any lack of candor or antitrust violations, as spuriously alleged by the NAB Coalition, the documents cited by the NAB Coalition show that Sirius and XM forthrightly explored avenues to [REDACTED]

Michael DeLuca, Vice President and General Manager of Interoperable Technologies, drafted the highly confidential documents cited by the NAB Coalition. Mr. DeLuca's responsibility at Interoperable Technologies was to develop interoperable radio technology. Mr. DeLuca is an engineer and he also has a law degree. As he notes in his attached Declaration, neither he nor anyone at Interoperable Technologies "had the expertise necessary to know whether the proposals suggested by the documents were feasible or would result in a profitable business centered around interoperable radio."⁸ He has no experience in business planning, finance,

⁷ Application at 15-16, n.37 (citing certification letters); Joint Opposition at 96, n. 339.

⁸ Declaration of Michael DeLuca, ¶ 8 ("DeLuca Declaration") (attached).

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marketing, retail distribution and logistics, customer service or any other expertise that is required to market interoperable radios to the public and, in fact, “Interoperable Technologies employs no marketing staff, advertising staff, programming staff, or the other staff necessary to operate a conventional satellite radio company.”⁹

As the attached declaration makes clear, Mr. DeLuca’s white papers are the aspirational hopes of an engineer who had spent considerable time developing interoperable technology. They are not – and were not intended to be – a business plan or detailed product launch plan for interoperable radios, and no sophisticated business person would ever mistake them for such plans. Moreover, Mr. DeLuca’s views did not represent Sirius’ or XM’s views. Mr. DeLuca has specifically noted that these documents “did not, and were not intended to, reflect the business judgment of Sirius or XM, and they were never endorsed or otherwise adopted by Sirius or XM.”¹⁰

As the leader of this joint venture, Mr. DeLuca had every incentive to promote the interoperable radio, but his [REDACTED] are not representative of the companies’ business plans or conclusions.¹¹ In fact, the documents themselves recognize the limitations of these proposals and estimates. For example, Mr. DeLuca states in one document that [REDACTED]

[REDACTED] ¹² Additionally, he notes that, [REDACTED]

[REDACTED] ¹³ Accordingly, a fair and complete review of the documents themselves undercuts the NAB Coalition’s arguments.

⁹ *Id.* ¶ 3.

¹⁰ *Id.* ¶ 2.

¹¹ For additional information on the purpose of Interoperable Technologies LLC, see DeLuca Declaration, ¶¶ 2-5 (“DeLuca Declaration”).

¹² SIRIUS-FCC-SUPP.001085.

¹³ SIRIUS-FCC-SUPP.001088.

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The NAB Coalition nevertheless tries to make the case that [REDACTED] made by a joint venture company that was not responsible for any business or marketing planning processes related to satellite radio are proof of Sirius' and XM's lack of candor. Despite the extensive verbiage, however, their arguments are not supported by the facts. For example, the NAB Coalition repeatedly cites [REDACTED]

[REDACTED]¹⁴ The NAB Coalition claims that this [REDACTED] the statements of Sirius' Chief Executive Officer, Mel Karmazin, in Congressional testimony that an interoperable radio would cost around \$700 without a subsidy.¹⁵ These statements are not inconsistent because they relate to two different things. Interoperable Technologies' [REDACTED] takes into account only [REDACTED]

[REDACTED] . This estimate [REDACTED]

[REDACTED]¹⁶ As noted by Mr. DeLuca, that price also "does not include any [REDACTED]"¹⁷

Moreover, the NAB Coalition's assertion that [REDACTED] is untrue. Today, Sirius satellite radios are available nationwide at RadioShack and Wal-Mart for approximately \$29 and XM satellite radios are available nationwide starting at similar price points. Most Sirius and XM radios, even those distributed nationally through large volume "big box" retailers, cost less than \$100, and the most expensive comparable radios cost about \$170.

¹⁴ See NAB Coalition Filing at 6, and Exhibit 1 at 2, 5, 6 and 7.

¹⁵ See NAB Coalition Filing, Exhibit 1 at 2.

¹⁶ DeLuca Declaration, ¶ 14.

¹⁷ *Id.* ¶ 11.

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The NAB Coalition also expresses concern about [REDACTED]

Contrary to NAB Coalition's insinuations, there was nothing untoward about this decision. Neither Sirius nor XM was ever required to mass produce and distribute interoperable radios on its own part. Each was free to make its own decision [REDACTED]

Consequently, the NAB Coalition's claims that [REDACTED] are patently false. At most, the documents cited by the NAB Coalition reveal the aspirations of one person, employed by a joint venture charged with promoting interoperable radios, who was not engaged to evaluate the practical distribution and sale of interoperable radios, and whose directive was to develop interoperable technologies. As is clear on their face, these limited documents simply do not reflect [REDACTED]

The NAB Coalition's Exhibit 1 professes to show discrepancies between Mel Karmazin's testimony and Interoperable Technologies' documents. In fact, the Exhibit is nothing more than a repetitive and misleading manipulation of four out of twelve million pages of documents. Mr. Karmazin's statements regarding interoperable radios were, and continue to be, accurate. Mr.

¹⁸ See NAB Coalition Filing at 7, 8, and 9, and Exhibit 1 at 1 and 7.

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DeLuca's Declaration both disputes the NAB Coalition's portrayal and supports Mr. Karmazin's statements.

II. The Department of Justice Has Already Decided That the Proposed Merger Presents No Antitrust Concerns.

The NAB Coalition also alleges that Sirius' and XM's actions constitute a Sherman Act violation and invites the Commission to share certain highly confidential documents with the Department of Justice for investigation.¹⁹ As the Commission is fully aware, all of the documents to which NAB Coalition refers were provided to the Department of Justice by the companies. In fact, as indicated above, the Justice Department was provided with over twelve million pages related to this merger, took numerous depositions, heard at length from opponents of the merger, and fully and exhaustively analyzed this transaction over a period of many months. Far from finding Sherman Act violations, the Justice Department concluded, after reviewing the very documents cited by the NAB Coalition, that the merger of Sirius and XM will not result in any anti-competitive harm.

III. The NAB Coalition's Request That the FCC Deny the Merger Application or Designate the Merger for Hearing is Procedurally Deficient and Should be Dismissed.

The NAB Coalition's filing is procedurally defective. In everything but title, the NAB Coalition's most recent filing is a petition to deny. In fact, the NAB Coalition Filing cites Section 310(d) of the Communications Act in concluding that their allegations "raise material questions of fact regarding the proposed merger" that require the applications to be denied or designated for evidentiary hearing.

However, the Commission's rules clearly require petitions to deny and petitions for other forms of relief to be filed within 30 days after the date of public notice of acceptance for filing of an application or major amendment.²⁰ The FCC issued a public notice accepting the Sirius-XM

¹⁹ NAB Coalition Filing at 3.

²⁰ 47 C.F.R. § 25.154(a)(2).

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merger for filing on June 8, 2007.²¹ As such, all petitions to deny were required to be filed almost a year ago, by July 9, 2007.²²

Additionally, the NAB Coalition Filing is substantively deficient. Pursuant to Section 309(d)(1) of the Communications Act and by operation of long-standing Commission precedent, petitions to deny or to designate an application for hearing “shall contain specific allegations of fact sufficient to show . . . that a grant of the application would be prima facie inconsistent” with a finding that the application is in the public interest, convenience, and necessity and, where appropriate, must be supported by an affidavit of person or persons with personal knowledge of these facts.²³ The NAB Coalition Filing contains no such showing – supported by affidavit or otherwise – but relies, instead, as demonstrated above, on speculative statements and surmised interpretation. Accordingly, the NAB Coalition Filing should be denied.

²¹ See Public Notice, *Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. Seek Approval to Transfer Control of FCC Licenses and Authorizations*, MB Docket No. 07-57, DA 07-2417 (June 8, 2007).

²² *Id.* In part, of course, the NAB Coalition relies on the highly confidential documents filed by Sirius and XM on April 10, 2008, in response to a document request from the FCC staff. See Letter from Jennifer D. Hindin, Counsel for Sirius Satellite Radio Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 07-57 (filed Apr. 10, 2008); Letter from Gary M. Epstein, Counsel for XM Satellite Radio Holdings Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 07-57 (filed Apr. 10, 2008). The Commission’s rules do not provide for a new filing period to be opened on the event of the filing of these documents. But even if this submission had opened a new filing period, any petition responding to that filing would have been due by May 12, 2008, *more than two weeks before the NAB Coalition got around to submitting this filing*. By any measure, the NAB Coalition’s filing is woefully late and should be dismissed. Additionally, pursuant to Section 25.154(a)(5), all petitions to deny must include “a certificate of service showing that it has been mailed to the applicant no later than the date the pleading is filed with the Commission.” 47 C.F.R. § 25.154(a)(5). The NAB Coalition Filing includes no certificate of service, nor was this pleading served upon the applicants.

²³ 47 U.S.C. § 309(d)(1).

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* * *

In light of the foregoing, Sirius and XM respectfully request that the Commission promptly dismiss or deny the NAB Coalition's latest submission and that the Commission approve the proposed satellite radio merger.

Respectfully submitted,

/s/ Robert L. Pettit

/s/ Gary M. Epstein

Robert L. Pettit
Wiley Rein LLP
Counsel to Sirius Satellite Radio Inc.

Gary M. Epstein
Latham & Watkins LLP
*Counsel to XM Satellite Radio
Holdings Inc.*

**DECLARATION OF MICHAEL DELUCA
Vice President and General Manager, Interoperable Technologies LLC**

I, Michael DeLuca, hereby declare the following:

I. Biographical Information

1. I am the Vice President and General Manager of Interoperable Technologies LLC

(“Interoperable Technologies”). I am the only corporate officer employed by Interoperable Technologies and I am responsible for managing the day-to-day activities of the company and ensuring that Interoperable Technologies is meeting its mandates as established by its Board of Managers. I have held this position since the inception of the company, approximately five years. I hold a bachelor’s degree in electrical engineering from Virginia Tech and a Juris Doctorate from Nova Southeastern University.

II. Purpose

2. This declaration is provided to clarify the purpose of Interoperable Technologies and to provide context for the documents created by Interoperable Technologies and submitted to the FCC by Sirius. In particular, I have reviewed the May 27, 2008 filing by the Consumer Coalition for Competition in Satellite Radio. That filing wholly misconstrues the purpose and content of several documents I produced on behalf of Interoperable Technologies and misrepresents these documents as representing the intentions of either XM or Sirius. As detailed below, these documents represent my own aspirational statements and efforts to advocate IT’s position to Sirius and XM regarding the possible introduction of interoperable satellite radios. Specifically, they did not, and were not intended to,

represent the business judgment of Sirius or XM, and they were never endorsed or otherwise adopted by Sirius or XM.

III. Information Regarding Interoperable Technologies LLC

3. Interoperable Technologies was founded in November 2003 as the result of a Joint Development Agreement (“JDA”) between Sirius and XM. Interoperable Technologies is a separate corporate entity from XM and Sirius that has seven employees and one contractor and reports to a six-person Board of Managers, as reflected in the submitted documents. Interoperable Technologies’ employees and contractors comprise an administrative assistant and several engineers. Interoperable Technologies employs no marketing staff, advertising staff, programming staff, or the other staff necessary to operate a conventional satellite radio company. Interoperable Technologies has no other marketing resources or expertise and receives no advance information from Sirius or XM regarding their business or marketing plans. The information that Interoperable Technologies has regarding Sirius’ or XM’s business is publicly available information collected from press releases, public filings and media reports.

4. Although Interoperable Technologies is entirely funded by Sirius and XM, neither Sirius nor XM has a controlling interest in Interoperable Technologies.

Interoperable Technologies is an independent corporate entity, and neither Sirius nor XM has the authority to unilaterally mandate the day-to-day activities and plans of Interoperable Technologies.

5. Interoperable Technologies' mandate was established by the JDA. From its inception, Interoperable Technologies was directed to further the design and development of interoperable radio technologies. Interoperable Technologies has spent millions of dollars, provided by Sirius and XM, towards that goal and in particular to develop technology that permitted the use of a single radio and antenna to receive both Sirius and XM programming.

IV. Development of Interoperable Technologies Documents

6. I developed the documents that were provided to the FCC on April 10. These documents were intended to advance my view of the "best case" for the deployment of interoperable radios. Importantly, they *did not* intend to represent the thinking of either Sirius or XM on the viability, total cost, or profitability of interoperable radios.
7. I drafted these documents to stimulate discussion on ways in which interoperable radios might be introduced to the public. These documents were not distributed publicly.
8. No one at Interoperable Technologies had the experience necessary to know whether the proposals suggested by the documents were feasible or would result in a profitable business centered around interoperable radio. No employees of XM and Sirius provided input regarding whether Interoperable Technologies was correct in its proposed assertions prior to their presentations to Sirius and XM. No outside legal or advisory opinions were requested regarding the legality of the proposed business models with regard to antitrust or other legal concerns. No

consumer studies were ever conducted by Interoperable Technologies to determine whether an interoperable radio was an appealing product or whether consumers would purchase such a device.

9. Put simply, the documents did not intend to represent the thinking of Sirius or XM, were advocacy pieces generated by me, and were purposefully written to provide greater weight to the introduction of interoperable technology than to the impact of that technology on the business plans of the satellite radio companies or the ultimate cost or viability of an interoperability business model.

V. [REDACTED]

10. In addition to designing and developing interoperable radios, Interoperable Technologies developed plans for [REDACTED]
[REDACTED]
[REDACTED]

11. As part of these proposals, Interoperable Technologies calculated the [REDACTED]
[REDACTED]. The goal in [REDACTED]
[REDACTED]

[REDACTED]. Interoperable Technologies did not receive information from Sirius or XM regarding the [REDACTED]
[REDACTED] that go into setting the MSRP of a conventional satellite radio device. Notably, the [REDACTED] proposed in the documents does not

include any [REDACTED]

[REDACTED]

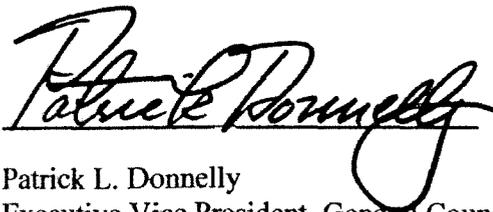
12. The proposals also advanced a [REDACTED] relative to established Sirius and XM practices. The proposals did not evaluate any [REDACTED]

[REDACTED] in response to the marketing of a radio able to receive Sirius or XM service without providing the standard of customer care associated with the Sirius or XM radio brand.

AFFIDAVIT OF PATRICK L. DONNELLY

I, Patrick L. Donnelly, am the Executive Vice President, General Counsel and Secretary at Sirius Satellite Radio Inc. ("Sirius"). I joined Sirius in 1998 and, in addition to the positions I currently hold, previously served as the acting Chief Financial Officer of Sirius from August 1999 to April 2001. I am a member of the Board of Managers of Interoperable Technologies LLC. Prior to joining Sirius, I was Vice President and the deputy general counsel of ITT Corporation. I hold an A.B. degree from Lafayette College and a Juris Doctorate from Cornell Law School.

I hereby declare under penalty of perjury that I am qualified to speak on behalf of Sirius with regard to Sirius' relationship with Interoperable Technologies and the facts surrounding the design and development of interoperable radios. I am also familiar with the facts regarding Interoperable Technologies' [REDACTED]. In addition, I have either prepared or reviewed the preceding letter submitted on behalf of Sirius, and it is complete and accurate to the best of my knowledge, understanding, and belief.



Patrick L. Donnelly
Executive Vice President, General Counsel and Secretary
Sirius Satellite Radio Inc.

Dated: June 6, 2008

REDACTED
FOR PUBLIC INSPECTION

AFFIDAVIT OF JOSEPH M. TITLEBAUM

I, Joseph M. Titlebaum, am General Counsel and Secretary at XM Satellite Radio Inc. ("XM"). I joined XM in 1998. I am a member of the Board of Managers of Interoperable Technologies LLC. Prior to joining XM, I was an attorney with Cleary Gottlieb Steen & Hamilton LLC in New York City. I hold an A.B. degree from Columbia University and a Juris Doctorate from Harvard Law School.

I hereby declare under penalty of perjury that I am qualified to speak on behalf of XM with regard to XM's relationship with Interoperable Technologies and the facts surrounding the design and development of interoperable radios. I am also familiar with the facts regarding Interoperable Technologies' [REDACTED]. In addition, I have reviewed the preceding letter submitted on behalf of XM, and it is complete and accurate to the best of my knowledge, understanding, and belief.



Joseph M. Titlebaum
General Counsel and Secretary
XM Satellite Radio Inc.

Dated:
