

**MICHAEL HARTLEIB
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FILED VIA ECFS

June 10, 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:

Given the past response from Sirius Satellite Radio on the FCC's additional request for information regarding, *inter alia*, interoperability of current receivers¹ as well as migration plans for the combined entity², I find it necessary to RE-submit this Petition for Declaratory Ruling dated June 24, 2007. I demand the Petition be considered prior to any ruling on the pending merger as the issue of interoperability remains rife with confusion. The Commission should rule as to the compliance of these two licensees regarding the interoperable mandate. As I have stated previously in past filings, I find it unconscionable that after nearly twelve months since the Petition was properly drafted, executed and filed, according to Michelle Carey, that said Petition has gone publicly unaddressed with no answers to the companies' compliance with said Mandate and/or licensing requirements.

¹ See *SIRIUS SATELLITE RADIO INC. RESPONSE TO INITIAL INFORMATION AND DOCUMENT REQUEST Submitted November 16, 2007* "Receiver models sold since January 2001 have limitations that preclude them from becoming interoperable."

² See *SIRIUS SATELLITE RADIO INC. RESPONSE TO INITIAL INFORMATION AND DOCUMENT REQUEST Submitted November 16, 2007* "Future Sirius receivers would need to have some modifications to their tuner sections in order to tune to the portion of the band currently licensed to XM, but the remainder of the electronics in the Sirius receivers would be unchanged. If such an approach were to be adopted, however, its implementation would be many years in the future. "

Given the recent filings of C3SR and others regarding certain documents that support and/or confirm the allegations set forth in the Petition for Declaratory Ruling, I believe the Commission has a duty to protect the public interest and must address these issues prior to any ruling on the pending merger. Some are alleging a cover up or abuse of process within the FCC. I implore the Commission to promptly address these issues with concise answers as to the two companies' compliance with their licensing requirements.

Please note, on June 9, 2008, I tried to contact Stephen Duall and others in the International Bureau and was replied to by Bill Freedman (at the FCC) directly as he has been assigned to respond to my inquiries. I expressed my concerns to Bill Freedman.

I would like to direct the Commission's attention to the attached Authorization to Construct, Launch and Operate Sirius FM-5, Item #3 which states as follows:

*"The authority granted herein to operate SIRIUS FM-5 is **without prejudice** (emphasis added) to any action that the Commission may take regarding Sirius's compliance with the requirement that its system include a receiver that will permit end users to access all licensed SDARS systems that are operational or under construction."*

Please note the grant date of this Authorization: April 16, 2007. I would argue this Authorization clearly supports my previously asserted concerns in said Petition regarding the issue surrounding the compliance of the Interoperable Mandate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Hartleib', enclosed within a hand-drawn oval.

Michael Hartleib

MH/th

Encl.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Petition for Declaratory Ruling)
By Michael Hartleib) **MB Docket No. 07-57**
RE: FCC Rule 47)
CFR Sec. 25.144(a)(3)(ii))

**PETITION FOR DECLARATORY RULING
TO CLARIFY THE LACK OF ENFORCEMENT AND IMPLEMENTATION
OF THE INTEROPERABLE MANDATE
FCC Rule 47 CFR Sec. 25.144(a)(3)(ii)**

Identification of Party

Petitioner is **Michael Hartleib**, on his behalf and on behalf of satellite radio consumers and/or shareholders.

CC:

The Honorable Chairman Kevin J Martin
The Honorable Michael Copps
The Honorable Jonathan Adelstein
The Honorable Deborah Taylor Tate
The Honorable Robert McDowell
Thomas O. Barnett

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Petition for Declaratory Ruling)
By Michael Hartleib) **MB Docket No. 07-57**
RE: FCC Rule 47)
CFR Sec. 25.144(a)(3)(ii))

**PETITION FOR DECLARATORY RULING
TO CLARIFY THE LACK OF ENFORCEMENT AND IMPLEMENTATION
OF THE INTEROPERABLE MANDATE
FCC Rule 47 CFR Sec. 25.144(a)(3)(ii)**

Michael Hartleib respectfully petitions the Commission for a declaratory ruling to clarify the lack of enforcement and implementation of the interoperable mandate FCC Rule 47 CFR Sec. 25.144(a)(3)(ii) requiring the receiver designs to be capable of receiving ALL channels allocated by the FCC for the satellite digital audio radio services (SDARS).

Identification of Party

Petitioner is **Michael Hartleib**, on his behalf and on behalf of satellite radio consumers and/or shareholders.

His Mailing Address is:

Michael Hartleib
P.O. Box 7078
Laguna Niguel, CA 92607

Discussion

The Petitioner argues that the FCC has failed the consumer by not enforcing the interoperable mandate and for allowing both satellite companies to make excuses as to why they have been unable to comply. It has been nearly 10 years since the FCC has granted both licenses; it is unconscionable that this has been allowed to go on for such a prolonged period of time. It appears as though the letter from Thomas S. Teyz of the International Bureau Satellite Division, dated January 28, 2005 to Sirius and XM (File Nos: IB Docket No. 95-91; SAT-MOD-20040212-00017) was an attempt to resolve the issue by offering a compromise; instead of having a unified standard, you required receiver designs to be capable of receiving all SDARS signals and to be certified. As of the date of this letter, the Petitioner has been told no such certification exists. Also, as per the footnotes of the January 28, 2005 letter, it appears there were citations issued for the failure to comply.

The Petitioner has confirmed information that leads him to believe many of the radios in service today are capable of receiving "either/or" service and signals, but not both simultaneously. The Petitioner has also been told that could be done via a firmware update and/or flash of the receiver. Please note legal definitions obtained from the patent infringement suit (Sirius vs. XM):

Interoperable Radio" shall mean a radio that, at a minimum, (a) receives and processes the audio portion of both the Sirius Radio System signal and the XM Radio System signal, either as a result of an Interoperable Chipset contained in the unit itself or as a result of an Interoperable Chipset contained in an outboard location which interfaces directly with the unit, and (b) which is capable of providing the user interface for both Sirius Radio System broadcasts and XM Radio System broadcasts, including displaying the artist and title information transmitted as part of such broadcasts, in each case, without the consumer purchasing additional hardware or software.

"Interoperability Technology" shall mean the technology, including the technology which is jointly funded and developed by Sirius and XM pursuant to this Agreement or owned and/or licensed by either party, which is required to design, develop and/or manufacture an Interoperable Radio, as well as any enhancements and modifications jointly funded and developed for such technology pursuant to this Agreement (including the industry standards jointly developed by the parties pursuant to Section 3.03), but shall not include Non-core Technology.

"Single Mode Radio" shall mean a radio that (a) receives and processes the Sirius Radio System signal or the XM Radio System signal, but not both, and (b) which is capable of providing the user interface for either Sirius Radio System broadcasts or XM Radio System broadcasts, but not both.

h) XM and Sirius shall each use commercially reasonable efforts to design and develop Interoperable Radios that are backward compatible with then existing Single Mode Radios.

The Petitioner alleges interoperable radio and dual mode radio are not the same. The companies frequently interchange these terms to confuse the issue and qualify their responses. As stated in the Engineering Statement prepared on behalf of The National Association of Broadcasters, “It is not possible for the current production satellite receivers to simultaneously receive both XM and Sirius signals”.³ Interoperable Radio or Interoperable Chip sets can receive and process signals from one or the other service but not both “simultaneously”. Dual Mode Radio can receive and process both signals simultaneously.

In a joint response from Sirius and XM Radio dated March 14, 2005, the companies “reconfirm their compliance with Section 25.144(a)(3)(ii) of the Commission’s rules by including interoperable radios in their respective system designs”.

It is the Petitioner’s opinion that both companies have been less than forthright regarding the interoperability issue and have done their best to confuse this issue. Both companies have argued that there has been minimal demand for a dual mode radio and that the OEM’s have expressed little interest. The fact of the matter is it was their exclusive OEM deals that limited such demand. A consumer’s choice in satellite radio should not be determined by which make or model of vehicle the consumer chooses to purchase; nor is it reasonable to expect that consumers would know the terms and conditions of exclusive content deals which creates yet another problem. Example: On January 1, 2007, NASCAR fans who previously purchased XM radio for NASCAR coverage were forced to purchase new equipment and switch services to enable them to continue their NASCAR coverage (via Sirius). Had the interoperable mandate been enforced, consumers would not be in this position. The lack of enforcement and compliance creates a situation where the consumer is bounced back and forth, thus resulting in a ping-pong effect. This is not consumer friendly.

These issues have directly contributed to the situation we now find ourselves in today. Shareholders have lost billions of dollars as these two companies continue to battle over exclusive content. When the Petitioner (and many others) invested in the sector, the Petitioner knew that an interoperable device would even the playing field, and subsequently the company with the most compelling content would “win the battle”; shareholders would be rewarded, and consumers would have the choice the mandate was supposed to grant them. Unfortunately, the interoperable mandate has yet to be enforced.

It is the understanding of the Petitioner that the role of the FCC is to protect the interest of consumers. The intent of the mandate was clear: consumers were to be given a choice and “so the consumer could switch services with no additional hardware purchases”.⁴ The way things are now consumers are being locked out of dashboards and are not able to choose the service or exclusive content they would prefer. Had the mandate been implemented, Sirius shareholders may not be in the position of having to spend nearly \$5 billion to acquire their competitor. The Commission is now forced to make a decision regarding the proposed merger.

³ See “An Engineering Statement Prepared on Behalf of the National Association of Broadcasters” dated March 16, 2007 (pg 8).

⁴ See “Satellite Radio Tech World” article dated Monday April 30, 2007

The Petitioner is in favor of the merger; provided there are minimal or no restrictions on the combined company. Given the current situation with all of the exclusive deals, the Petitioner does not see any other solution. If the merger is not allowed, the Commission must enforce the mandate for the interoperable device which could have severe consequences for the company with the least compelling content. Without a merger, consumers could end up with a single satellite service provider by default.

Not only was there a mandate for the interoperable device but there was also a settlement between Sirius and XM on their patent infringement case in 2000. In that settlement stipulation, they agreed to develop and implement the interoperable device that was required. Attached is a copy of their February 16, 2000 *Press Release* that specifically addresses these issues.

Conclusion

Based on the foregoing, **Michael Hartleib** respectfully asks the Commission to explain the lack of enforcement, certification and implementation of the interoperable mandate. As there is direct impact on Satellite radio consumers, the outcome of the Petition for Declaratory Ruling should be determined apart from and prior to consideration of the pending merger.

The Petitioner also asks that the Commission follow through with the enforcement of their mandate and force the companies to immediately disclose to the public and their shareholders the availability of an interoperable radio which has existed for several years.

The Petitioner-also asks the FCC to:

- Provide clarity on the multiple terms they use to describe different, but similar, devices (ie: “dual mode”, “interoperable device”, “interoperable radio”, “interoperable technology”, etc.)⁵
- Require companies to explain how they would provide “catastrophic back up” if the receivers are not currently capable of receiving “either/or” services.⁶

³ “It is acknowledged that SIRIUS, XM and their manufacturing partners already produce receivers that permit end users to access all Satellite Digital Audio Radio systems in compliance with FCC interoperability obligations. Furthermore, there currently is no assurance that the XM or Sirius manufacturing partners will build dual-mode radios, that they will be cost competitive, or that any significant market for dual-mode radios will develop. Even so, Interoperable Technologies stands to develop the opportunity for dual-mode satellite radio technology.” (Source: Select Satellite Interoperable Technologies, LLC)

⁴ Section 14.02. of the JOINT DEVELOPMENT AGREEMENT: “Catastrophic Loss Backup. XM and Sirius shall negotiate in good faith with respect to an agreement to provide service to the other's subscribers in the event of a catastrophic failure of the XM Radio System or the Sirius Radio System.”

- Please remember, as per the March 14, 2005 letter to Thomas S. Tyez, Chief of Satellite Division, International Bureau, XM and Sirius jointly “reconfirmed their compliance” therefore, current receivers are capable of receiving “either/or” service but not both simultaneously. The Petitioner asks that the FCC require the companies to stop qualifying which type of interoperable radio they are describing and disclose ALL types (ie: a receiver using a common antenna, a common RF tuner, one baseband module, 2 baseband module, or any other derivative thereof) and to stop qualifying their response to the FCC with specific and misleading and/or contradictory responses.⁷
- Require both companies to disclose any and all citations, pending and/or filed due to lack of compliance and/or certification regarding the interoperable mandate.

⁵“a receiver using a common antenna, a common RF tuner, and two baseband modules, one for XM and one for Sirius” (source: March 14, 2005 letter from Sirius and XM to Mr. Thomas S. Tyez of the FCC).

PRESS RELEASE

For Immediate Release

Sirius Radio and XM Radio Form Alliance to Develop
Unified Standard for Satellite Radios

New York, NY and Washington, DC -- February 16, 2000 -- Sirius Satellite Radio (NASDAQ: SIRI) and XM Satellite Radio (NASDAQ: XMSR) today announced an agreement to develop a unified standard for satellite radios.

The standard is expected to accelerate growth of the satellite radio category by enabling consumers to purchase one radio capable of receiving both companies' broadcasts. XM Radio and Sirius will jointly fund development of the technology and work together to proliferate the new standard by creating a service mark for satellite radio. As part of the agreement, each company will contribute its intellectual property to the initiative and have agreed to resolve any pending patent litigation.

"This standard is good news both for consumers and for the category," said David Margolese, Sirius Chairman and CEO, and High Panero, XM President and CEO, in a joint statement. "This will allow for reduced subscriber acquisition costs, more satellite radios in the marketplace, and a simplified choice for consumers."

The unified standard will represent a second generation of satellite radios. At the time of the commercial launches of XM Radio and Sirius, consumers will be able to purchase radios capable of receiving one of the two companies' broadcasts. These radios are already being developed by leading electronics and automotive manufacturers. XM and Sirius will work with their existing automobile and radio manufacturing partners to integrate the new standard under the terms of their existing agreements. All future agreements with automakers and radio partners will specify the new satellite radio standard.

XM Radio and Sirius are each building a digital satellite radio service for consumers, offering up to 100 channels of audio entertainment for a monthly subscription fee of \$9.95. For more information about the companies, visit XM Satellite Radio at www.xmradio.com and Sirius Satellite Radio at

www.siriusradio.com.

Any statements that express, or involve discussions as to, expectations, beliefs, plans, objectives, assumptions, future events or performance with respect to Sirius Satellite Radio Inc. or XM Satellite Radio Inc. are not historical facts and may be forward-looking and, accordingly, such statements involve estimates, assumptions and uncertainties which could cause actual results to differ materially from those expressed in the forward-looking statements. Accordingly, any such statements are qualified in their entirety by reference to the factors discussed, as the case may be, in XM Satellite Radio Inc.'s registration statement on Form S-1 (File No. 333-93529) filed with the Securities and Exchange Commission or Sirius Satellite Radio Inc.'s Annual Report on Form 10-K for the year ended December 31, 1998, filed under the company's former name, CD Radio Inc. Among the key factors that have a direct bearing on the companies' results of operations are the potential risk of delay in implementing the companies' business plans; increased costs of construction and launch of necessary satellites; dependence on satellite construction and launch contractors; dependence on third-party technology partners; risk of launch failure; unproven market and unproven applications of existing technology; unavailability of satellite radio receivers; and the companies' need for additional financing.

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For more information, please call:

Sirius Satellite Radio:
Mindy Kramer
212-584-5138

XM Satellite Radio:
Vicki Stearn
202-969-7070

Respectfully submitted,

Michael Hartleib
P.O. Box 7078
Laguna Niguel, A 92607

Dated: June 24, 2007

Sirius Satellite Radio Inc.
IBFS File No. SAT-LOA-20060901-00096
Call Sign S2710

The application of Sirius Satellite Radio Inc. (Sirius), IBFS File No. SAT-LOA-20060901-00096, IS GRANTED, and Sirius IS AUTHORIZED to construct, launch, and operate a geostationary satellite, SIRIUS FM-5, Call Sign S2710, at the 96° W.L. orbital location, using the frequency bands 2320.0-2332.5 MHz (space-to-Earth) and 7050.5-7072.5 MHz (Earth-to-space), in accordance with technical specifications set forth in its application and consistent with the Commission's rules, unless specifically conditioned or waived herein, and subject to the following conditions:

1. Sirius shall operate SIRIUS FM-5 in compliance with all relevant international and bilateral agreements between the United States and the Administrations of Canada and the United Mexican States regarding the provision of SDARS in North America. Prior to commencing operation of SIRIUS FM-5, Sirius shall have received from the Commission notification that the Administrations of Canada and the United Mexican States have been notified of the Sirius application referenced above and have concurred in the operating parameters and characteristics of the SIRIUS FM-5 satellite.

2. Sirius shall prepare the necessary information, as may be required, for submission to the International Telecommunication Union (ITU) to initiate and complete the advance publication, international coordination, due diligence, and notification process of its space stations, in accordance with the ITU Radio Regulations. Sirius shall be held responsible for all cost-recovery fees associated with these ITU filings. We also note that no protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual Administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other Administrations. See 47 C.F.R. § 25.111(b).

3. The authority granted herein to operate SIRIUS FM-5 is without prejudice to any action that the Commission may take regarding Sirius's compliance with the requirement that its system include a receiver that will permit end users to access all licensed SDARS systems that are operational or under construction.

4. The license term for SIRIUS FM-5 is eight years and will begin on the date Sirius certifies to the Commission that the satellite has been successfully launched and put into operation.



File # SAT-LOA-20060901-00096
with attached conditions
Call Sign S2710 Grant Date 4/16/07
(or other identifier) Term Dates
From see conditions To: see conditions
Approved: Robert G. Nelson Chief
Satellite
Division