CUMULUS

May 28, 2008

VIA HAND DELIVERY

The Honorable Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Communication
Application of XM-Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. for Approval to Transfer Control
MB Docket No. 07-57

Dear Mr. Chairman:

Cumulus Media Inc. ("Cumulus"), which owns and operates approximately 340 full-power AM and FM radio stations throughout the country (and is the second largest radio company in terms of number of stations), hereby registers its strong opposition to the Commission's approval of the transfer of control application filed by XM Satellite Radio Holdings Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius") unless the Commission relaxes the ownership limitations in the local radio ownership rule.

In their application and in various documents filed in the above-referenced proceeding, XM and Sirius have maintained that their satellite radio services constitute only a small part of the much larger product market which includes terrestrial radio. For example, XM and Sirius stated as follows in their application: "Satellite radio is a small part of a highly competitive and ever-expanding market for audio entertainment. Indeed, although satellite radio has proven to be an appealing and popular new product, the current 14 million subscribers pales in comparison to terrestrial radio's approximate 230 million weekly listeners." Consolidated Application for Authority to Transfer Control (March 20, 2007) at ii-iii. That perspective was echoed repeatedly in other comments filed by XM and Sirius. *E.g.* Joint *Ex Parte* Submission of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. (November 13, 2007), p.17 ("[t]errestrial radio, of course, remains the largest competitor in this market by a substantial margin").

In later concluding that the proposed merger of XM and Sirius would not "substantially lessen competition," the United States Department of Justice ("DOJ") Antitrust Division similarly found that "the evidence did not support defining a market limited to the two satellite radio firms . . ." "Statement of the Department of Justice Antitrust Division on its Decision to Close Its Investigation of XM Satellite Radio Holdings Inc. Merger with Sirius Satellite Radio Inc." (March 24, 2008) at 1, 2. Stated another way, the DOJ obviously accepted the contention

Cumulus Media Inc.
3280 Peachtree Road NW · Suite 2300 · Atlanta, GA 30305 · tel 404.949.0700 · fax 404.949.0740 · www.cumulus.com 2443103

of XM and Sirius that they compete in a product market that includes terrestrial radio (as well as MP3 players, internet radio, and audio services delivered through wireless telephones).

The Commission can only grant the XM-Sirius application if, like the DOJ, the Commission concludes that satellite radio is part of a larger audio marketplace (in which terrestrial radio also competes) and that consummation of the merger would not create a monopoly of any kind or have any adverse impact on the public interest. To reach that conclusion, however, the Commission would have to acknowledge the gross imbalance in facilities available to the competitors: a merged XM-Sirius entity will have 300 channels in *every* radio market while terrestrial operators like Cumulus will be limited to no more than eight (8) channels in even the largest markets. There would be a similar imbalance in regulatory burdens: The merged XM-Sirius entity will have virtually no regulatory obligations while terrestrial operators like Cumulus will remain subject to extensive regulatory obligations which impose considerable costs (and thus limit the money that can be spent for programming and other services to the public).

Cumulus therefore opposes any approval of the XM-Sirius merger unless such approval includes a commitment by the Commission to relax the local radio ownership rule. 47 C.F.R. §73.3555 (a)(1). The ownership limitations in that rule are largely premised on an assumption that terrestrial radio operators compete *only* with each other. Approval of the XM-Sirius merger would render that assumption obsolete. It would be plainly inequitable to say, as XM and Sirius do, that a merged company (with 300 "radio stations" in *all* of the 68 markets where Cumulus has stations) will not be a monopoly because it will compete with terrestrial radio operators like Cumulus (as well as other providers of audio services which have no limitations), and, at the same time, handicap terrestrial radio owners like Cumulus in that competition by limiting their ownership in even the largest markets to only eight (8) stations. That result cannot serve the public interest – let alone be squared with notions of fair competition.

The Commission does not need any studies to know that increased competition from satellite radio and new technologies poses an economic challenge to free local radio. Approval of the XM-Sirius merger will no doubt provide that merged entity with considerable efficiencies which will only strengthen satellite radio's competitive leverage. Terrestrial radio will be able to compete effectively in that changed and highly competitive environment only if it can obtain similar efficiencies through increased consolidation. To ignore that reality would be to place the vitality of free local radio – and the community services it provides – at risk.

I stand ready to meet with you and the other Commissioners to discuss these matters at greater length. In the meantime, Cumulus would certainly appreciate the Commission's careful consideration of the inequity that would be foisted on terrestrial radio if the XM-Sirius merger application were to be approved without any relaxation of the local radio ownership rule.

Sincerely,

Lewis W. Dickey, Jr.
Chairman & CEO

cc: The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
The Honorable Deborah Taylor Tate
The Honorable Robert M. McDowell
Dara Altman
Elizabeth Andrion
Amy Blakenship
Catherine Bohigian
Rudy Brioche
Rich Chessen
Monica Desai
Patrick L. Donnelly
Helen Domenici
Angela E. Giancarlo
Aaron Goldberger
Daniel Gonzalez
Bruce Gottlieb
Rosemary Harold
Chris Moore
Barry Olson
Christina Chou Pauze
Roy Stewart