

June 18, 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 June 16, 2008, Gigi B. Sohn and Alex Kanous of Public Knowledge (PK) and Andrew Jay Schwartzman and Parul Desai of Media Access Project (MAP) met with Commissioner Jonathan Adelstein, Rudy Brioché, Legal Advisor for Media Issues for the Commissioner, and intern Shawn Donilon. The purpose of the meeting was to discuss the proposed merger of XM Satellite Radio and Sirius Satellite Radio.

Though PK and MAP take different positions as to whether the grant of the applications for transfer are in the public interest, they agree on the nature of the conditions that should attach to any approval. These proposed conditions have been detailed in previous filings. The parties expressed their appreciation that these conditions were mentioned in Chairman Kevin Martin's statement recommending approval of the merger. However, both parties raised three points of concern as to how one of these conditions, the reservation of a non-commercial set-aside, would be implemented.

First, the parties insisted that whatever percentage is reserved for the non-commercial set-aside, it must be a percentage of the combined company's entire spectrum capacity, and not merely of current channel capacity or current on-air channels. The June 16<sup>th</sup> *ex parte* from XM/Sirius detailing the voluntary commitments they will adopt should the merger be approved states that 4% of "full-time audio channels" will be set aside for non-commercial programming. This is unacceptable both as it is not a percentage of spectrum capacity and because the provided definition of "full-time audio channels" will allow for manipulation and abuse.<sup>1</sup> For instance, turning a station off during non-peak times, even for a moment, could render it no longer "full-time."

Second, the parties discussed the method by which the non-commercial programmers will be selected. As stated in MAP and PK's May 14<sup>th</sup> *ex parte*, MAP and PK would prefer to work with the lessee of the commercial set-aside to select eligible non-commercial programmers.

---

<sup>1</sup> The combined company would define "full-time audio channels" as "the aggregate number of channels of music, news, sports, entertainment or audio programming broadcast on a continuous basis, 24 hours a day, seven days a week, plus part-time channels aggregated on a full-time equivalent basis, on the Sirius platform or the XM platform, as the case may be."

Georgetown Partners had proposed such a selection process, and has offered to encode, digitize and send the noncommercial set aside programming to the satellite at its own expense.

Third, PK and MAP stated that no non-commercial programmer should be allocated more than one non-commercial channel. Additionally, non-commercial programming that is already found on XM or Sirius should not count towards the non-commercial set-aside requirement. The point of the set-aside is to foster diversity in broadcasting, which would be facilitated by implementing these two requirements.

PK also stated their opposition to the implementation of conditions set by broadcasters. Most importantly, there should not be a ban on satellite radio providers providing local programming, regardless of whether the merged entity actually plans on providing local service. Broadcasters' local programming is sparse, and permitting satellite radio to compete with terrestrial radio will likely raise the quality and quantity of local broadcasting, thereby serving the public interest.

Finally, MAP suggested the implementation of a rate cap of longer than three years. Though Chairman Martin's statement called for a three year price freeze for consumers, MAP fears that rates could be substantially raised after that point.

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:

Commissioner Jonathan Adelstein  
Rudy Brioché  
Shawn Donilon