



June 27, 2008

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

Re: *MB Docket No. 07-57*

Dear Ms. Dortch:

On June 26, 2008, David Rehr and Marsha MacBride of the National Association of Broadcasters ("NAB") met with Commissioner Jonathan Adelstein, Rudy Brioché and Shawn Donilon. Mr. Rehr and Jane Mago of NAB also met with Commissioner Deborah Taylor Tate, Wayne Leighton and Amy Blankenship to discuss the proposed merger of Sirius Satellite Radio, Inc. ("Sirius") and XM Satellite Radio Holdings, Inc. ("XM").

In both meetings, the parties thoroughly aired the numerous important, controversial issues related to the proposed merger.

First, NAB urged the Commissioners to recognize that the proposed merger is contrary to well-established FCC spectrum policy and contrary to the public interest. NAB questioned the policy basis for allowing Sirius and XM to control the entire 25 MHz of spectrum allocated to satellite radio. Especially in this context where neither XM nor Sirius is suggesting that the merger is necessary for satellite radio to survive, NAB noted that there is no justification for reversing the FCC's initial decision to require competition among satellite providers. Nor is there any justification for the unprecedented departure from FCC spectrum licensing policy that would result if the Commission granted a single entity exclusive control over all the spectrum allocated to a particular service.

In addition, NAB pointed out that the benefits that Sirius and XM allege will flow from the merger are not merger specific. Specifically, the Commission needs not give sole control of the only nationwide radio distribution platform to one entity to garner the programming benefits XM and Sirius promise to offer. Either company could offer those benefits right now.

The parties discussed the well-documented history of non-compliance by Sirius and XM and allegations of lack of candor before the Commission. NAB noted that these issues have direct bearing on the Commission's ability to rely on representations by the satellite companies going forward. NAB stated that, in the interests of transparency and public confidence in the Commission's process, it is important for the Commission to have a full public airing of the evidence in the record in order to resolve these charges before ruling on the merger. Doing so would also enhance the certainty and reliability of the Commission's decision.

Finally, the parties discussed the FCC's mandate that satellite radio systems "will include a receiver design that will permit users to access all licensed [satellite radio] systems ..." 12 FCC Rcd 5754, 5797 (1997). While Sirius and XM contend that the Commission merely required the companies to design an interoperable receiver in a lab, with no obligation to do anything to make it commercially available to consumers, such a view is not supported by any fair reading of the FCC's order. Rather, the Commission made clear that the rule was to promote the interests of consumers. Thus, it said: "We believe that, at the very least, consumers should be able to access the services from all licensed satellite DARS systems *and our rule on receiver inter-operability accomplishes this*" *Id.* (emphasis added). In addition, the Commission made clear that "[b]y promoting receiver inter-operability for satellite DARS, we are encouraging consumer investment in satellite DARS equipment ... and enhancing consumers' ability to switch between competing DARS providers" 12 FCC Rcd at 5796. NAB noted that XM and Sirius' attempt to read any obligation to make interoperable radios available to consumers out of the FCC's rule would be akin to cellular telephone providers suggesting that they are merely required to have the ability to port telephone numbers but may refuse to provide the service to consumers because it may not be in their business interest.

NAB noted that XM and Sirius' strained reading of the rule not only defies logic and the language of the FCC's order, it also runs counter to the FCC's apparent understanding of the merger applicants' certifications, as described in a 2005 letter from the International Bureau. The Bureau recognized that in 2000, both companies certified that they would introduce interim interoperable radios prior to the introduction of fully-operational chipsets.¹ Also in 2000, both companies stated their anticipation that "interoperable chips capable of receiving both services would be produced in volume in mid-2004."²

¹ Letter from Chief, Satellite Division, International Bureau, to Sirius Satellite Radio and XM Radio Inc, both dated January 28, 2005.

² *Id.*

Mr. Marlene H. Dortch
June 27, 2008
Page 3

Sirius and XM have repeated their understanding of the interoperability requirement in multiple submissions to the Securities and Exchange Commission. For example, XM Satellite Radio Holdings Inc. SEC Form 10-Q, March 31, 2000, quoting Sirius and XM's Joint Development Agreement:

"Whereas, the FCC has mandated that XM and Sirius deploy a final receiver design that is interoperable;

"Whereas, the parties desire to comply with FCC licensing requirements and to enhance efficiency and consumer welfare by jointly developing and deploying certain interoperable technology for the purpose of producing radios capable of receiving broadcasts from both the XM Radio System and the Sirius Radio System"

In sum, NAB urged the Commission to recognize that it cannot conclude that the issue of XM and Sirius' conduct with regard to inter-operable receivers is irrelevant to the issues in this merger proceeding. The Commission should conduct an open and fair examination of the companies' representations and conduct prior to reaching a final decision on the merger.

Please direct any questions to the undersigned.

Respectfully submitted,



Jane E. Mago
Sr. Vice President and General Counsel
Legal and Regulatory Affairs