

FCC Proceeding 07-57

MB Docket No. 07-57

Reply Comments, electronically filed using ECFS on July 25, 2008

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

Re: Reply Comments to the July 23, 2008 Meeting and Subsequent Notice of
Ex-Parte filed on July 24, 2008 by Jane E. Mago of NAB

Dear Chairman Martin and Fellow Commissioners:

As a concerned citizen and consumer following the proposed satellite radio merger between Sirius Satellite Radio and XM Satellite Radio, I hereby submit these reply comments to the July 23, 2008 meeting and subsequent notice of ex-parte filed on July 24, 2008 by Jane E. Mago of NAB.

Please submit my attached comments into the public record.

Respectfully submitted,

Patrick Sharpless
Citizen and Consumer

INTERNALLY CONFLICTED MESSAGES ARE A BAD FOUNDATION FOR DECISIONMAKING

According to the July 24, 2008 ex-parte filing from Jane E. Mago of NAB:

Yesterday, the undersigned along with Marsha MacBride of the National Association of Broadcasters, Jessica Marventano of Clear Channel Communications, Diane Warren of the HD Alliance, Anne Lucey and John Orlando of CBS, Whit Adamson of the Tennessee Association of Broadcasters, and Larry Sidman of Paul, Hastings spoke with Commissioner Deborah Taylor Tate and Amy Blankenship about the proposed merger of Sirius Satellite Radio, Inc. ("Sirius") and XM Satellite Radio Holdings, Inc. ("XM").

In light of published reports that the Commission was considering approval with conditions, the parties explained the need for a condition to prevent the combined XM and Sirius from using their monopoly power over satellite radio to harm further development of digital terrestrial radio. Specifically, the parties urged the Commissioner to condition any approval of the merger so that all consumers would have access to radio equipment that would allow them to switch between digital satellite offerings and terrestrial digital offerings.

I am hearing an internally conflicted message from this terrestrial radio coalition. On the one hand they claim further development of digital terrestrial radio will be harmed by the satellite radio merger unless further conditions are imposed, but on the other hand, CBS Radio is rethinking and evolving their business which has led them to transform and compete more directly with satellite radio:

***CBS Radio Launches Next Generation Video Platform
Available to All of Its 140 Stations***

http://www.cbsradio.com/press_center/releases/pressrelease130835-07-23-08.html

CBS RADIO, a division of CBS Corporation comprised of 140 major market radio stations, announced today a strategy designed to augment its current delivery methods providing all of its stations with the capability to fully

develop into a video medium in addition to its audio content side of the business.

“Rethinking and evolving our business had led us to this transformation and in the very near future every station will have a major video component transforming radio from a purely audio medium to a visual one as well,” said David Goodman, President, Digital Media and Integrated Marketing, CBS RADIO.

With respect to the specific request to condition any approval of the merger so that all consumers would have access to radio equipment that would allow them to switch between digital satellite offerings and terrestrial digital offerings, this sort of mandate is simply not within the authority of the FCC to authorize. Doing so would violate the principles of a free market and prevent consumers from choosing a satellite radio receiver free from equipment they do not wish to purchase. Those seeking this sort of mandate are not concerned with the public interest, but rather their own personal profit. The FCC would be ill advised to mandate such a requirement since upon review, the courts would certainly reject it.

SOUND TELECOMMUNICATION POLICY SHOULD ALWAYS PROTECT COMPETITION, AND AVOID PROTECTING COMPETITORS

I don't see how this terrestrial radio coalition can look at Commissioner Tate with a straight face without disclosing the new CBS Radio business strategy. The next generation video platform being launched by CBS Radio directly competes with Sirius Satellite Radio's Backseat TV. Terrestrial radio is responding to competition from satellite radio by employing the newly announced, next generation video platform. Despite what the terrestrial radio coalition says, the satellite radio merger doesn't harm further development of digital terrestrial radio; nor is it appropriate for more concessions to protect the terrestrial radio coalition from satellite radio competition. Don't allow yourselves to be hoodwinked by these opportunistic parties who care far more about their own profits than they do the public interest.

The public wants to know if the terrestrial radio coalition was candid with Commissioner Tate in their July 23, 2008 meeting. Did this coalition disclose to Commissioner Tate the fact that CBS Radio was rolling out their next generation video platform to all 140 CBS Radio stations, or did the terrestrial radio coalition again demonstrate a lack of candor in an attempt to abuse the regulatory review process by knowingly withholding relevant information regarding further development of digital terrestrial radio, thereby leaving Commissioner Tate in the

position of supporting the coalition's agenda absent the necessary information to make an informed decision?