



July 25, 2008

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

Re: MB Docket No 07-57 Ex Parte Presentation

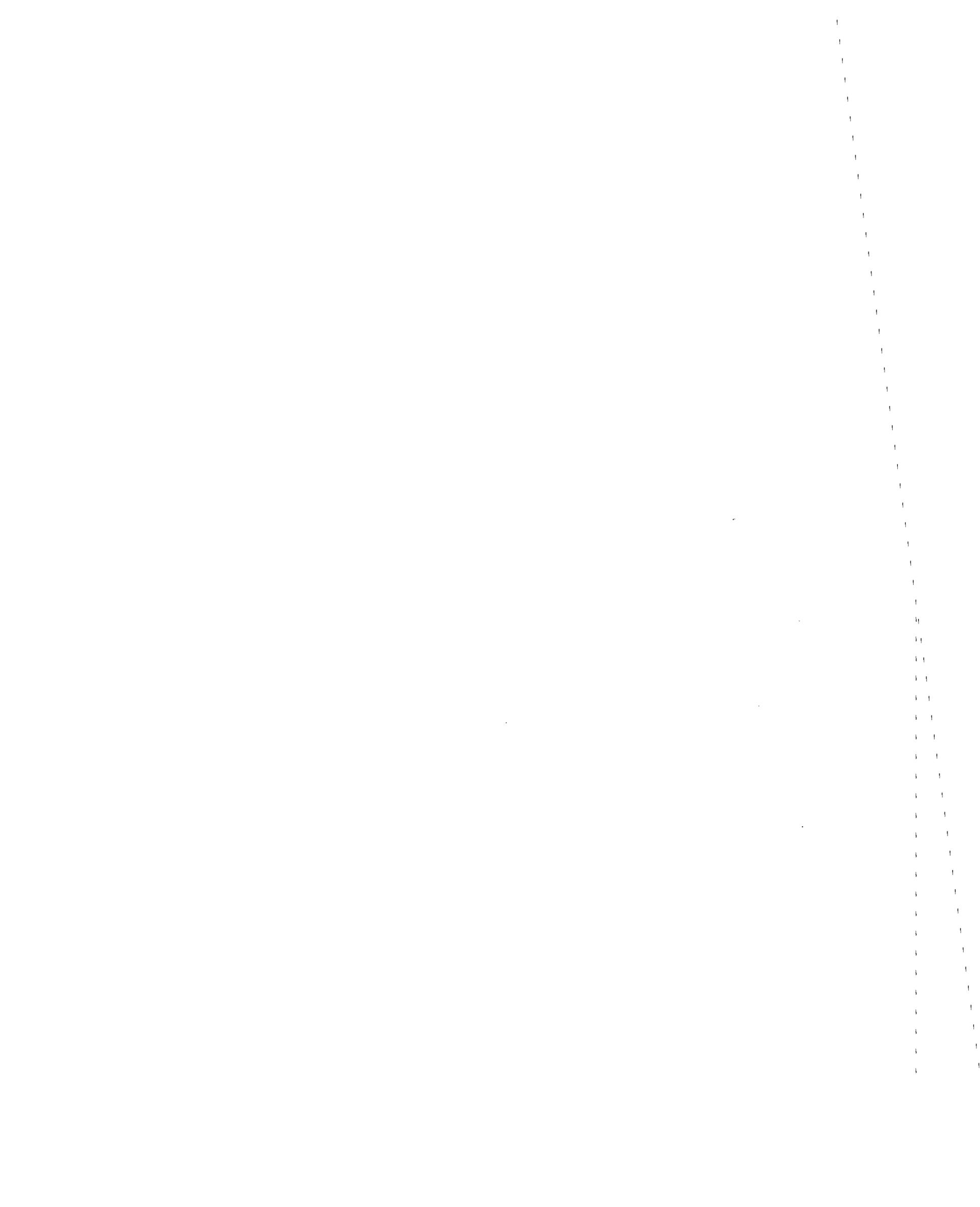
Dear Ms Dortch:

On July 24, 2008, on behalf of William Kling, President and CEO, American Public Media, and Tom Kigin, Executive Vice President, American Public Media, Erik Hotmire, Director, Clark & Weinstock, sent an email to Commissioner Deborah Taylor Tate and Amy Blankenship, Legal Advisor for Children, Family and Media Issues for Commissioner Tate regarding the XM-Sirius license transfer review proceeding.

The email restated arguments for conditions in return for allowing a monopoly use of all satellite frequencies, consistent with a letter filed by a number of public radio organizations, including American Public Media, on July 8, 2008, including:

I. 25 percent of the total satellite radio capacity should be set aside for non-commercial public service channels, minority broadcasters, and emergency services. Something between the Chairman's eight percent and our 25 percent would be acceptable to us.

- A public interest set aside is essential because this is more than the "business" merger that Justice approved. This is a "spectrum merger" that creates an unprecedented monopoly in one category of spectrum.
- The Chairman's proposal of four percent for noncommercial broadcasters is simply not a strong enough condition to meet the public interest test for a monopoly spectrum merger approval. NPR, American Public Media, and PRI should all have the ability to provide their programming on one or more channels of their own.
- Noncommercial, nonprofit broadcasters need long term assurances to their right to broadcast on these channels in order to justify investment in them. (Just like broadcast licenses.) They cannot be at risk of being removed for business reasons or of having



escalating charges for their use of the channels. They need to have control of their channels.

- FCC's 1945 decision to allocate a 20 percent public service spectrum set-aside on the then new FM band made public radio possible. A 25 percent set-aside of the satellite radio spectrum (which might also include minority broadcasters and emergency services) would follow that precedent.
- The 1945 set-aside enabled 2900 local non-commercial FM stations to be created. Setting aside 25 percent of this satellite spectrum will enable 75 national stations to be created. The Chairman's proposal of eight percent would equate to only 24 channels, and his proposal would allocate half of those to commercial minority operation.
- We advocate for setting aside 25 percent of the satellite radio capacity (spectrum and booster spectrum), as opposed to just channels. This will allow for future innovation in satellite radio technology and maintain control of the number of channels outside XM and Sirius. This is consistent with the definition of the licenses the FCC has granted to XM-Sirius.
- These channels need to be "**open access**", requiring no subscription fee for satellite receivers to receive them. They should be able to be operated with no spectrum cost (no Sirius-XM cost) for the programmers. Once granted, they should not have any oversight or control exercisable by XM-Sirius. They are a balance to the XM-Sirius monopoly.
- "**Open Access**" is consistent with the philosophy of public service channels. They must be accessible to the public without restrictions. It is the price the satellite operator should pay for the monopoly use of the remainder of this spectrum.
- There is a difference between noncommercial and minority broadcasters. At least half of this set-aside should be reserved for nonprofit, noncommercial broadcasters.
- This set-aside will greatly increase the diversity of programming on satellite radio, will benefit consumers, and will incent them to own satellite radios which will benefit the business of XM-Sirius.

II. Terrestrial HD Radio technology should be required in all new satellite radio receivers.

- A merger condition requiring inclusion of HD radio technology in all new satellite receivers is also essential.
- HD Chipsets mitigate possible marketplace manipulation by the merged company by creating a receiver that is "signal agnostic." Satellite radios today receive and play terrestrial analog broadcasts. It is imperative that future satellite radios, like televisions, be signal agnostic, and broadcast programming regardless of the source.

- XM-Sirius merger fundamentally alters market conditions:
 - Combination of SDARS providers into a monopoly changes conditions in other audio marketplaces, including terrestrial broadcasting. Normal “demands of the marketplace” will be upended by Commission merger approval.
 - Existing business relationships between merged satellite entity and retail distribution channel create roadblocks to normal “market conditions.”
 - Auto companies own significant share of XM, sit on its board and have inherent financial incentive to favor satellite rollout over HD rollout. These existing incentives will be boosted by the merger.
 - Opportunities for marketplace manipulation by the merged company will be expanded, which will impede rollout/acceptance of HD radio.

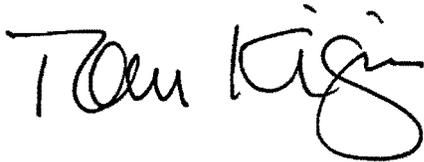
- HD Radio is public radio’s terrestrial platform of the future:
 - Public radio has invested heavily in development and implementation of the digital radio broadcasting standard. Our investments, with considerable support from Congress, total millions of dollars.
 - HD Radio is public radio’s path to improved and expanded public service. Its numerous public interest benefits include:
 - i. Improved access by persons with disabilities through conditional access (HD technology allows programming on secondary channels for the visually and hearing impaired);
 - ii. Geographically targeted emergency alerts; and
 - iii. Access to multiple and diverse program streams.
 - Congressional appropriations subcommittees have recently approved additional \$40 million to assist public radio stations transition to HD radio capability. This congressional investment will be marginalized by the merger without certainties that all new satellite receivers are equipped with HD Radio technology.

III. The issues we discussed today should be addressed by a Notice of Proposed Rulemaking “NPRM”

- We advocate for an additional FCC rulemaking relating to these issues.
- The FCC Media Bureau has advised that this type of rulemaking would take six months to one year.

- Issues covered in the rulemaking would include:
 - How the 25 percent setaside would be managed;
 - What entity would administer these “licenses”;
 - What kinds of revenue generation would be allowed on the channels to pay for content production;
 - How the inclusion of the HD chipset would be implemented.
- At the least, the nation’s foremost public service broadcasters should be assured of an adequate number of channels to assure that their programming is available on satellite.

Sincerely,

A handwritten signature in black ink that reads "Tom Kigin". The signature is written in a cursive, flowing style.

Thomas J Kigin
Executive Vice President
American Public Media

cc. Commissioner Deborah Taylor Tate
Amy Blankenship, Legal Advisor for Children, Family and Media Issues

