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UNITED STATES
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United States Senate

WASHINGTON, DC 20510-1604

April 10, 2008

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

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Dear Mr. Chairman:

I have strong confidence in your ability to protect the best interests of consumers by correcting the Justice Department's mistake of approving the merger of XM Satellite Radio and Sirius Satellite Radio. The FCC should be mindful that the Justice Department's conclusion lays a dangerous trap for the FCC. The Department completely ignored two decade-old rules that the FCC specifically imposed to ensure intra-market competition between XM and Sirius: (1) a mandate that XM and Sirius produce and make available interoperable radios prior to final design of their systems; and (2) a prohibition against the two satellite radio licensees ever merging.

The FCC must not endorse the Department's flawed finding that XM and Sirius do not compete with each other because it is too expensive for existing subscribers to switch providers. Essentially, the Department rewarded XM and Sirius for their audacious refusal to comply with an FCC requirement to manufacture consumer-friendly interoperable radios.

The FCC must reverse the Department's course, or risk allowing the violation of one pro-competitive rule to form the basis for eliminating another pro-competitive rule. Any other outcome will send the perverse signal to regulated entities that violating the FCC's pro-competitive rules is acceptable so long as it serves your long-term interests.

I am also concerned that the Department of Justice is bending the rules for two companies that have based their business models on peddling obscene and indecent material. A company that has reportedly provided Howard Stern with \$500 million for five years should not come to the government for help when they are unable to turn a profit. I know you share my concerns over the coarsening of the airwaves, and I strongly believe that creating an exception to the FCC's previously stated policy of disallowing such a merger will only aggravate the problem. As I mentioned to you in a previous letter, Sirius CEO Mel Karmazin made clear during his appearance before the Senate Judiciary Committee his unwillingness to constrain his company's airing of highly inappropriate programming during hours when it is likely children may be listening. It is apparent that explicit programming will continue to play a prominent role in the business

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model of any merged satellite radio entity. The impact that this kind of programming has on America's families is devastating.

I challenge the FCC to stand up where the Justice Department has laid down, and demonstrate the backbone to enforce your rules where the Justice Department has shown none. Please do not forfeit this opportunity to hold XM and Sirius accountable for their actions

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Brownback". The signature is stylized and somewhat cursive, with a prominent "S" and "B".

Sam Brownback
United States Senator