

BEFORE THE
Federal Communications Commission

In the Matter of)

Applications for Consent to the)
Transfer of Control of Licenses)

XM Satellite Radio Holdings Inc.,)
Transferor)

To)

Sirius Satellite Radio Inc., Transferee)

**To: Office of the Secretary
Federal Communications Commission**

MB Docket No. 07-57

FILED/ACCEPTED

SEP - 4 2008

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

Mt. Wilson FM Broadcasters, Inc. (hereinafter "Mt. Wilson"), licensee of radio stations KKGO(FM), Los Angeles, California and KGIL(AM), Beverly Hills, California, timely filed a Petition to Deny the Applications of Sirius Satellite Radio, Inc. and XM Satellite Radio Holdings, Inc. to merge (collectively "Sirius/XM") and, therefore, is a party in interest. Mt. Wilson, by and through its counsel, respectfully petitions the Commission for reconsideration of the Memorandum Opinion and Order and Report and Order released August 5, 2008 granting the above-referenced applications

Rather than a grant or denial of the application (as anticipated by Mt. Wilson), the Commission decision imposed "conditions" which, if accepted by Sirius/XM, would permit a grant. Mt. Wilson submits that the "conditions" are not adequate. The

No. of Copies rec'd 0 + 4
List ABCDE

“conditions” should have included explicit notification to the satellite operators that the use of unauthorized frequencies to air indecent programming, will be subject to the rule applicable to terrestrial stations, Section 73.3999 of the Rules.

1. With respect to subscription services such as satellite radio, the Commission has previously ruled that “subscription-based services do not call into play the issue of indecency,” Litigation Recovery Trust, 17 FCC Rcd 21852, 21856 (2002). In the interim, however, the Commission has been made aware (2007) of satellite radio unauthorized use of terrestrial radio frequencies and, specifically, the carriage of satellite radio indecent programming over terrestrial radio frequencies. The airing of indecent programming over licensed terrestrial radio frequencies without the consent of the terrestrial radio licensee and without the payment of a subscription fee, cannot be characterized as a subscription service. Moreover, the ultimate listening audience tuned to the terrestrial radio station (and expecting the programming of the terrestrial radio station) cannot be deemed subscribers. In short, programming originated by the satellite radio operator to a non-subscriber licensed terrestrial radio station and to the listening audience is not a subscription service and is not entitled to the protection afforded by Litigation Recovery Trust, supra. While the programming was intended for subscribers, the programming in fact reached a non-subscribing audience through a terrestrial radio station, a station ordinarily subject to Section 73.3999 of the FCC Rules. Neither the terrestrial radio licensee nor members of the listening audience paid for the satellite service.

2. The reasons underlying the airing of satellite radio indecent programming over terrestrial radio frequencies either can be attributed to the satellite operator's faulty transmitter or simply may be inexplicable.¹ Irrespective, indecent programming originating from satellite radio operators was aired over terrestrial radio stations. The imposition of a "condition" providing notification that the airing of indecent programming over terrestrial frequencies will be subject to Section 73.3999 of the FCC rules should ensure more attentiveness to equipment compliance and inherently will serve the public interest.

3. Considering the Commission's belated decision to add "conditions," the fact that consummation has occurred should not be a deterrent. The applicants were aware of the finality date, presumably aware that Petitions for Reconsideration could be filed and, nevertheless, assumed the risk.

Respectfully submitted

MT. WILSON FM BROADCASTERS, INC.

By: 

Robert B. Jacobi
Cohn and Marks LLP
1920 N Street, N.W.
Suite 300
Washington, DC 20036
(202) 239-3860

Its Attorneys

Dated: September 4, 2008

¹ See Commission Orders approving Consent Decrees entered into with Sirius and XM (Orders dated August 5, 2008, FCC 08-176 and 08-177).

CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 4th day of September, 2008, a copy of the foregoing "Petition for Reconsideration" was delivered via first class, U.S. mail, postage prepaid to the following:

Richard Wiley, Esq.
Wiley, Rein, LLP
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Sirius Satellite Radio, Inc.

Gary Epstein, Esq.
Latham & Watkins
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304


Brenda Chapman