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September 12, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation; Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc.
MB Docket No. 07-57

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, and the Commission's Public Notice dated March 29, 2007 (DA 07-1435), and as directed by Commission staff, this ex parte report is submitted for the record.

On Thursday, September 11 at approximately 1:30 pm PST, I received a joint call from the Media Bureau's Royce Sherlock and Marsha Glauberman. I was first informed that Rosemary Harold was no longer with the Bureau. Ms. Harold was the Bureau staff member who had been assigned to my Petition for Declaratory Ruling filed in this Docket concerning compliance with the interoperability mandate. No explanation was provided as to why I was being formally notified that Ms. Harold had left the Bureau.

I was next asked for information about the Petition for Review filed with the U.S. Court of Appeals for the District of Columbia Circuit. I answered truthfully that from my knowledge and perspective (based on how my Petition for Declaratory Ruling had been handled), that grounds existed to allege that the FCC had allowed itself to be drawn into and thereby become complicit in a potentially criminal enterprise of the two SDARS licensees to combine the entire SDARS spectrum into one entity. I also pointed out that grounds also existed to find the FCC was drawn into a well-orchestrated conspiracy to prevent and preclude consumer's access to or knowledge of interoperable devices and that the purpose of this conspiracy was to prevent the two licensees from having to compete through the availability of interoperable devices as the Commission had required ten years earlier.

I also raised concerns about the Commission's refusal to disclose incriminating documents that the licensees had kept secret by obtaining protective orders and which the Commission did keep secret despite demands that they be placed in the record. This refusal raises another question suggesting the merger approval was prejudged and the proper procedures to ensure an impartial decision based on public interests and not those of the licensees ignored resulting in a breach of the statutory mandate to serve the public's interest and risk becoming complicit in the fraud perpetrated by the two SDARS companies.

I commented in addition that it was not only unconscionable and perhaps a violation of Federal Law for this Commission to withhold documents from the Public's view, but most importantly, the Department of Justice. The FCC failed to provide the Department of Justice with documentation by which these two SDARS companies admitted to conspiring to restrain free trade in violation of anti-trust laws.

I informed Ms. Sherlock and Ms. Glauberman that Chairman Martin's decision to unilaterally reclassify a properly formatted Petition for Declaratory Ruling was an absolute abuse of power and a violation of the Chairman's duty to protect the public's interest.

I informed them that it is quite likely they will have to re-address the FCC's merger decision if the Federal Courts rule that the FCC violated their procedures and rescinds and/or enjoins said merger. I stated that the Commission may be addressing this issue all over again in the not so distant future and both acknowledged that that could be the case.

I stated I would be submitting my Petition for Review with this Ex-Parte to be part of this official docket. I was under the impression Docket 07-57 was closed but, Ms. Sherlock and Ms. Glauberman informed that I must file an Ex Parte detailing our discussion, hence, this submission.

Respectfully,

Michael Hartleib

MH/th

Encl.

In the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MICHAEL HARTLEIB Petitioner, v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA Respondents.	)	Petition for Review Case No. _____

Pursuant to 47 U.S.C. §§ 402(b)(6), 402(c), 28 U.S.C. §2343, and Federal Rule of Appellate Procedure 15(a), Michael Hartleib, hereby petitions for review of the order of the Federal Communications Commission ("Commission") approving the transfer of satellite radio and related licenses from XM Satellite Radio Holdings Inc., et al to Sirius Satellite Radio Inc., (collectively, the "Applicants") in *In the Matter of Applications for Consent to the Transfer of Control of the Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee,* MB Docket No. 07-57, August 5, 2008, (the "Merger Order"); and the orders of the Commission adopting consent decrees against the Applicants for violations of Commission rules in *In the Matter of XM Radio, Inc., File Nos. E|B-06-SE-148 and EB-06-SE-356, Acct. No. 200832100062, FRN No. 0007714579,* August 5, 2008, and in *In the Matter of Sirius Satellite Radio Inc., File Nos. EB-06-SE-250 and EB-06-SE-386, Acct. No. 2008832100061, FRN No. 0006345730,* August 5, 2008 (collectively, the "XM/Sirius Sanctions Orders").

Petitioner petitions for review of the Commission's Merger Order on the grounds that: (1) the Commission violated its obligations under law by excluding from the record evidence directly related to its obligations to determine whether the Merger would serve the public interests; (2) arbitrarily and capriciously ignored the Applicants' failure to comply with the Commission's order mandating the provision of interoperable satellite radios; (3) arbitrarily and capriciously ignored the Applicants' disclosures of their active concealment of and misrepresentations about their failure to comply with the Commission's order mandating the provision of interoperable satellite radios ("Disclosures"); (4) arbitrarily and capriciously failed to consider whether these Disclosures revealed a conspiracy by the Applicants to violate the antitrust laws by eliminating the opportunity for competition that compliance with the interoperability mandate would have provided; (5) arbitrarily and capriciously failing to inform the Department of Justice of these Disclosures or to seek its opinion on whether actions described in the Disclosures provided evidence of a conspiracy to violate the antitrust laws; (6) arbitrarily and capriciously refused to follow its procedures governing petitions for declaratory ruling; (7) arbitrarily and capriciously denied Petitioner's Petition for Declaratory Ruling seeking the Commission's declaration whether the Applicants' failure to comply with the interoperability mandate required the Commission to determine whether the public interest could be served in light of such failure; (8) arbitrarily and capriciously adopted consent decrees that excluded consideration of the Applicants' violations of the interoperability mandate thereby exonerating them for their violations; (9) arbitrarily and capriciously denied Petitioner his right to be heard on the record; (10) arbitrarily and capriciously selected facts without reasonable investigation and analysis that favored approval of the Merger while systematically ignoring facts requiring its rejection; and (11) otherwise acted arbitrarily and capriciously and contrary to law.

Petitioner requests that this Court find the Merger Order and the XM/Sirius Sanctions Orders are unlawful, and vacate, enjoin and set them aside the Commission's Merger Order and XM/Sirius Consent Decisions and order all such other relief as may be just and proper.

Respectfully submitted,

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Michael Hartleib, Pro se