

BEFORE THE

# Federal Communications Commission

In the Matter of )

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

MB Docket No. 07-57

XM Satellite Radio Holdings Inc., )  
Transferor )

To )

Sirius Satellite Radio Inc., Transferee )

**FILED/ACCEPTED**

**SEP 29 2008**

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

Federal Communications Commission  
Office of the Secretary

## REPLY TO SIRIUS XM RADIO, INC. OPPOSITION

Mt. Wilson FM Radio, Inc. (hereinafter "Petitioner" or "Mt. Wilson") timely filed a Petition for Reconsideration of the Federal Communications Commission (hereinafter "the Commission") action granting the consolidated Application to transfer control of XM Radio to Sirius Radio, Inc. (hereinafter "Sirius XM"). The Mt. Wilson Petition primarily focused on the conditions belatedly imposed by the Commission on the grant as a quid pro quo for the Commission action granting the applications, more precisely, the failure of the Commission to include a condition providing notification to Sirius XM that the airing of satellite indecent programming on a terrestrial radio station would be subject to Section 73.3999 of the Commission rules – on the same basis that the initial FCC "conditions" were imposed – VOLUNTARILY.

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1. The Petition referenced incidents (which were the subject of numerous complaints) in 2007 wherein uninvited satellite programming (deemed indecent by listeners) was aired over terrestrial radio stations. The cause of the incidents was attributed to faulty receiving devices.<sup>1</sup>

2. The Mt. Wilson Petition did not suggest or propose Sirius XM accountability for past actions. The Petition did not assert that satellite radio programming (indecent or otherwise) aired on the assigned satellite frequencies was subject to Section 73.3999 of the rules. The Petition does, however, suggest the inclusion of a “condition” (phrased in terms of a notification) that satellite programming aired on a terrestrial radio station would be subject to Section 73.3999, the same rule applicable to terrestrial radio licensees. The proposed Mt. Wilson “condition,” like the previously imposed FCC “conditions,” would be VOLUNTARY. The Mt. Wilson Petition NEVER suggests/implies that satellite programming aired on the assigned satellite frequencies is subject to Section 73.3999 of the FCC rules. Acceptance of the “condition” by Sirius XM to adhere to the mandate of Section 73.3999 in the limited situation where satellite programming deemed indecent is aired on a terrestrial radio station is VOLUNTARY. The “condition” assures accountability for violations (intentional or otherwise) and thereby affirmatively serves the public interest.

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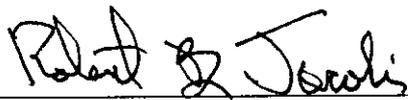
<sup>1</sup> Whether the “fault” was unintentional or intentional (a theory persists that the manufacture of excessive power receiving devices was intended as an aid to make satellite programming available to non-subscribers knowing that satellite operators were immune from accountability) is irrelevant. There is no dispute that programming was aired on terrestrial radio stations.

3. The Sirius XM Opposition does not address the Mt. Wilson proposed addition of a condition to be voluntarily accepted as the "quid pro quo" for the Commission grant. Rejection of the "condition" is an option. Indeed, the matter of "conditions" was an adjunct belatedly adopted to obtain a majority vote.<sup>2</sup> Accountability should not be frustrated/ignored either because of Sirius XM's decision to consummate prior to "finality"<sup>3</sup> or the Commission's belated decision to add "conditions."

"Accountability" should not be frustrated/ignored by the Applicant.

Respectfully submitted

MT. WILSON FM BROADCASTERS, INC.

By: 

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Dated: September 29, 2008

<sup>2</sup> The Commission August 5, 2008 Memorandum Opinion Order and Report offered the first official opportunity to comment on the "Conditions."

<sup>3</sup> The fact that Sirius XM closed prior to finality should not be a factor in evaluating Petitioner's proposed "condition" – an obvious risk assumed by Sirius XM.

CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 29<sup>th</sup> day of September, 2008, a copy of the foregoing "Reply to Sirius XM Radio, Inc. Opposition" was delivered via first class, U.S. mail, postage prepaid to the following:

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