

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Development of Devices Capable of Supporting)	MB Docket No. 08-172
Multiple Audio Entertainment Services)	

**COMMENTS OF
IBIQUITY DIGITAL CORPORATION**

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Executive Summary

In these comments, iBiquity Digital Corporation (“iBiquity”) encourages the Commission to commence a rulemaking proceeding to require that Sirius XM Radio Inc. (“Sirius XM”) includes HD Radio technology in Satellite Digital Audio Radio Service (“SDARS”) receivers. Specifically, iBiquity encourages the Commission to require that HD Radio technology is included in all SDARS receivers for OEM automobile installation and receivers that use a common control or display for satellite and terrestrial AM/FM service. iBiquity believes this requirement will encourage the development of a competitive platform for satellite and terrestrial digital radio services and will promote the public interest through enhanced competition. At the same time, iBiquity encourages the Commission to refrain from imposing additional regulation on HD Radio receivers in the absence of any competitive concerns about access to HD Radio technology or competitive concerns about terrestrial radio service.

iBiquity’s comments emphasize the potential danger to competition from the merger of the two SDARS licensees creating Sirius XM. The conditions the Commission imposed on the merger will not prevent Sirius XM from using subsidy dollars, promotional funds or other marketplace incentives to encourage SDARS manufacturers to avoid combined satellite/terrestrial receivers or to discourage the introduction of HD Radio receivers. Moreover, cost savings from the merger as well as the size and financial maturity of Sirius XM when compared with iBiquity provide the SDARS provider with a significant ability to skew the marketplace in favor of satellite services. iBiquity encourages the Commission to initiate a rulemaking proceeding to address these issues.

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iBiquity Digital Corporation (“iBiquity”), by its attorneys, hereby submits these comments in response to the Commission’s recent Notice of Inquiry in the above-referenced proceeding.¹ The Commission has asked for input on a series of proposals concerning the potential combination of iBiquity’s HD Radio™ technology with Satellite Digital Audio Radio Service (“SDARS”) technology from the recently merged Sirius XM Radio Inc. (“Sirius XM”).² As is explained in greater detail below, iBiquity believes the public interest can be served best by a Commission rule requiring Sirius XM to include HD Radio technology in satellite receivers that provide analog AM/FM service.

The NOI correctly points out that iBiquity argued in the context of the XM/Sirius merger that the Commission should mandate the inclusion of HD Radio technology in certain SDARS receivers.³ It was, and continues to be, iBiquity’s view that the merger creating Sirius XM presents a danger the combined entity will exercise monopoly power that will impair the ability of HD Radio technology to compete in the radio marketplace. iBiquity’s position enjoyed strong

¹ *Development of Devices Capable of Supporting Multiple Audio Entertainment Services*, MB Docket No. 08-172, Notice of Inquiry (rel. Aug. 25, 2008)(“NOI”).

² Sirius XM is the result of the merger of XM Satellite Radio Holdings Inc. (“XM”) and Sirius Satellite Radio Inc. (“Sirius”).

³ NOI at 5.

support from numerous members of Congress with expertise in telecommunications issues as well as state attorneys general who address competition issues on a regular basis. It also was widely supported by radio broadcasters. Although a divided Commission ultimately did not address iBiquity's concerns in the authorization of the merger,⁴ this proceeding presents the Commission with another opportunity to protect the public interest and insure that the monopoly provider of SDARS service does not impair the ability of HD Radio technology to emerge in the marketplace. The public interest demands the development and maintenance of robust competition to SDARS services, particularly now that a single provider offers them. Commission action to ensure access to the marketplace for a competitive digital AM/FM platform will advance the FCC's longstanding public interest goals to promote competition and availability of a variety of critical radio services, as was most recently summarized in the context of the SDARS merger.⁵

1. **Background**

iBiquity is the inventor and licensor of HD Radio technology, the sole means authorized by the Commission to upgrade AM and FM broadcasting to a digital platform. iBiquity has appeared regularly before the Commission in proceedings concerning digital AM and FM service and has a unique perspective on many of the questions the Commission has presented in this proceeding.

⁴ *Application for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, FCC 08-178 (rel. Aug. 5, 2008) ("Merger Order").

⁵ See Merger Order at ¶ 31 ("The Commission's public interest evaluation necessarily encompasses the 'broad aims of the Communications Act,' which include, among other things, a deeply rooted preference for *preserving and enhancing competition* in relevant markets, accelerating private sector deployment of advanced services, *ensuring a diversity of information sources and services to the public* and generally managing the spectrum in the public interest.") (emphasis added).

Unlike Sirius XM, iBiquity does not provide service directly to the public nor is iBiquity licensed by the Commission to offer any commercial services. iBiquity owns the intellectual property underlying the HD Radio system and licenses that technology to broadcasters and manufacturers of transmission equipment, semiconductors and receiver equipment incorporating HD Radio technology. In order to foster the rollout of HD Radio technology, iBiquity also develops reference designs and other enabling technology that radio receiver manufacturers use to design their products. Finally, iBiquity works with equipment suppliers to the manufacturers and content providers to broadcasters to ensure they optimize products and services relating to HD Radio technology.

As of October 31, 2008, there were approximately 1,800 AM and FM stations in the United States broadcasting digitally using HD Radio technology.⁶ These stations provide a simulcast of their existing programs in a digital format as well as approximately 936 multicast programs offering new content to the public. The proliferation of multicast channels (also referred to as HD2 and HD3 channels), a unique offering enabled by HD Radio technology, provides the public with a range of new services and program choices.⁷ For instance, WAMU-FM in Washington, DC offers full time bluegrass programming on its HD2 channel, a format that had long ago disappeared from the nation's capital. Greater Media has showcased RIFF-2 in Detroit, offering unsigned bands and local talent access to the airwaves using its HD2 channel. Beasley Broadcasting's WPOW-FM in Miami this summer launched "Pirate Radio" on its HD2 channel. Beasley described the format as "Taking irony to a new level, Miami's

⁶ There also are many HD Radio stations operating commercially or experimentally in Mexico, Brazil, China, Switzerland and several additional countries in Europe and Asia.

⁷ See http://www.ibiquity.com/hd_radio/hdradio_find_a_station. This site provides an interactive map that allows the user to find a list of all HD Radio stations and multicast streams, as well as the format for each programming stream.

Rhythmic CHR *Power 96* has introduced *96 DASH 2 Pirate Radio* an HD2 channel airing the hottest reggae, calypso, dance-hall, soca and roots – island sounds, with sassy delivery and imaging that capture the essence of pirate radio, while abiding by the rules.”⁸ Clear Channel Radio offers *Pride Radio* on HD2 channels hosted by numerous Clear Channel stations with programming targeted at the gay and lesbian community. Several broadcasters recently announced that they are working with WorldBand Media LLC to use their HD 2 channels to offer broadcasting targeted at South Asian communities in several urban areas served by those broadcasters’ stations.⁹ ESPN recently announced that it would provide a full time audio feed of sports programming to HD Radio stations to use for HD2 or HD3 channels.¹⁰ In many cases, these initiatives represent unique programming choices offered only on multicast channels that would not be available without HD Radio technology.

Receiver manufacturers have engaged in similar innovation to accompany these developments in the broadcast industry. Currently, manufacturers offer approximately eighty receiver products that include HD Radio technology. These products include automobile OEM receivers, tabletop radios, aftermarket automobile receivers, home receiver systems, iPod docking stations and car converter products. Although currently there are no portable products

⁸ *Beasley Miami Station Broadcasts “Pirate Radio”... Licensed and Legal!*, available at <http://www.bbgi.com/pdfs/1216049005.pdf> (July 14, 2008).

⁹ *See e.g. NextMedia and WorldBand Media to Bring 24x7 South Asian Programming to Northern California’s South Bay Area via HD Radio™ Broadcasting*, available at <http://www.marketwatch.com/news/story/nextmedia-worldband-media-bring-24x7/story.aspx?guid={E02D5C01-09DA-4551-B336-D3ADBAFB66AA}&dist=hppr> (Sept. 15, 2008).

¹⁰ *ESPN Radio Introduces Content and Associated Delivery System for HD Radio™*, available at http://www.espnmediazone.com/corp_info/corp_info_current_releases.html (June 4, 2008).

that include HD Radio technology, new semiconductors entering the market at the end of this year will support HD Radio technology in this important market segment.¹¹

The rollout of HD Radio products has also brought consumers a range of new service offerings. iTunes Tagging allows HD Radio listeners to tag songs they hear on the radio and store that information to enable the consumer to purchase the song through iTunes at a later time. The Broadcaster Traffic Consortium¹² and Clear Channel Radio have each announced plans to offer consumers real-time traffic and navigation information using HD Radio broadcasts. National Public Radio has demonstrated accessible radio offerings for the hearing and sight impaired communities using HD Radio technology. HD Radio multicast streams can support upgraded radio reading services for the sight impaired, and broadcasters can use the datacasting functionality to provide captioned radio for the hearing impaired. NPR recently demonstrated the viability of these offerings by captioning its election night coverage and reporting using HD Radio datacasting.¹³

2. **Multifunction Satellite/Terrestrial Radios Are Not Available to Consumers**

iBiquity is not aware of any existing devices that include both SDARS and HD Radio technology, nor is iBiquity aware of any device manufacturer currently planning to offer this multifunction capability. Although manufacturers have expressed to iBiquity interest in

¹¹ See *iBiquity Digital Certifies Samsung*, available at http://www.ibiquity.com/press_room/news_releases/2008/1246 (Oct. 8, 2008); *iBiquity Digital Certifies LG Innotek*, available at http://www.ibiquity.com/press_room/news_releases/2008/1247 (Oct. 8, 2008).

¹² *Groundbreaking Broadcaster Traffic Consortium to Redefine Radio*, available at <http://www.emmis.com/press/Release.aspx?ID=88581> (April 9, 2008).

¹³ *Captioned Radio Broadcast to Enable Millions of Deaf and Hard-of-Hearing to Experience NPR's Live Coverage of Presidential Election for the First Time*, available at http://i-cart.net/press/102108_ElectionRelease.pdf.

multifunction devices, particularly for OEM auto installation, the marketplace has not functioned properly to facilitate the development and introduction of these devices.

iBiquity believes XM and Sirius were each able to use subscription revenue to put financial incentives that explicitly or implicitly discouraged receiver manufactures from offering multifunction devices. Direct product subsidies, revenue sharing arrangements and sales subsidies for specific SDARS products provided XM and Sirius with control over the development of SDARS receivers and influenced the product plans of manufacturers and retailers. iBiquity expects that the merged Sirius XM will have a stronger position in the marketplace and be able to exert even greater financial leverage to promote exclusively SDARS devices. In fact, Mel Karmazin, CEO of Sirius XM explicitly testified before Congress that he would never support subsidizing devices that included competing technology.¹⁴ Without design assistance or financial support from Sirius XM, a receiver manufacturer would have little incentive to attempt to combine HD Radio technology with SDARS technology. Also, the Commission should not overlook the fact that both XM and Sirius failed to integrate their technology in receivers even with an FCC mandate to offer such devices to the public.

AM/FM radio, as an advertising supported service, does not have the same financial leverage in the receiver or retail marketplace. Thousands of individual radio stations provide terrestrial radio services as opposed to the single provider of satellite radio. The Commission has an obligation to ensure that the merged company does not harm the public interest by deterring competition or blocking the rollout of beneficial new services. The only means to achieve this goal is to eliminate any incentive for Sirius XM to block HD Radio technology through adoption of a requirement to include HD Radio capability in SDARS receivers.

¹⁴ Testimony of Mel Karmazin (CEO of Sirius Satellite Radio) before the House Judiciary Committee, Antitrust Task Force, February 28, 2007.

3. **The Merger Order Does Not Ensure Robust Competition Among Audio Services**

The Merger Order does not prevent Sirius XM from using its financial position to discourage the introduction of multifunction devices or the rollout of HD Radio receivers. The Commission has an opportunity to use this proceeding to promote the public interest in competition by ensuring HD Radio technology has access to the marketplace.

The Commission should not overlook the disparity of market position between iBiquity and Sirius XM. Although iBiquity is pleased with the status of the HD Radio rollout and its overall progress in the marketplace, its current position cannot compare with that of Sirius XM. Even with the current economic slowdown, the SDARS provider recently announced it expects to have 19 million subscribers by the end of 2008 and 20.6 million subscribers by December 2009.¹⁵ Sirius XM also projects 2009 revenue of \$2.7 billion and 2010 revenue of \$3 billion.¹⁶ Last month, iBiquity announced that its licensees had manufactured one million modules for HD Radio receivers.¹⁷ With only fifteen percent of U.S. radio stations operating digitally and HD Radio receiver sales at a fraction of SDARS sales, iBiquity has much fewer options to influence the marketplace than Sirius XM.

The SDARS provider's ability to influence the marketplace to the detriment of HD Radio technology could take many forms. For example, Sirius XM could limit its offering of reference designs for receiver manufacturers to satellite-only devices. Any manufacturer seeking to offer both SDARS and HD Radio technology would be forced to invest in its own design, thereby

¹⁵ *SIRIUS XM Releases Projections*, available at <http://investor.sirius.com/releasedetail.cfm?ReleaseID=346082> (Nov. 6, 2008).

¹⁶ *Id.*

¹⁷ *1 Million HD Radio™ Modules Manufactured To Date*, available at http://www.ibiquity.com/press_room/news_releases/2008/1244 (Oct. 8, 2008).

putting itself at a financial disadvantage vis-à-vis manufacturers of satellite-only devices. The Merger Order does not prohibit Sirius XM from limiting its promotional funds to satellite-only devices or offering to reimburse only nonrecurring engineering expenses for stand-alone SDARS receivers. However, these sanctioned activities could discourage the introduction of multifunction devices.

The open device condition and the ban on exclusive arrangements in the Merger Order do not address iBiquity's concerns about competition or ensure a level playing field for HD Radio technology.¹⁸ The open device condition does not prohibit Sirius/XM from using its financial muscle to skew the marketplace in any of the examples discussed above. The open device condition was designed to provide new entrants with access to satellite technology. It does not mandate, encourage or even facilitate the combination of satellite and HD Radio technology.

Even if an open device provision were to encourage new entrants, it is unlikely new receiver manufacturers would introduce combined receivers. Particularly in the automobile OEM market, it is extremely difficult for a new entrant to be certified as a Tier 1 parts supplier. Moreover, it would take several years for any new entrant to develop products and establish a distribution network, particularly one with the required geographically proximity to the automobile assembly plants. iBiquity believes that it is extremely unlikely in a reasonable time frame that any new radio receiver manufacturers would be able to enter the market and alleviate the competition concerns raised in this proceeding regarding the manufacturing and distribution of radio receivers.

Based on Sirius XM's monopoly market position, its subscription economic model and the structure of the marketplace for radio receivers, the Commission should conclude that the

¹⁸ Merger Order at ¶ 126.

open device condition will fail to create an environment that will promote competition to SDARS services and additional steps are necessary to promote the public interest in competition.

4. Sirius XM Should Be Required to Contractually Obligate its Licensees to Include HD Radio Technology in certain SDARS Receivers

iBiquity continues to believe the public interest would be served best by Commission regulations designed to ensure AM/FM radio develops as a competitive digital platform to SDARS services. In particular, the Commission should develop rules to mandate that Sirius XM requires in its licenses with receiver manufacturers that HD Radio technology be included in all devices (i) designed for automobile OEM installation or (ii) that include analog AM/FM functionality in the device or through the use of common displays and controls for SDARS and AM/FM service.¹⁹ iBiquity continues to support the recommendations it presented to the Commission in the context of the Commission's consideration of the Sirius/XM merger.²⁰ Specifically, iBiquity recommends the Commission adopt rules with the following elements:

- Sirius XM should certify annually to the Commission that newly introduced SDARS receivers include HD Radio reception capability.
- This requirement should apply to all auto OEM receivers and any SDARS receivers that include the ability to receive analog AM/FM or where the consumer uses the same tuning apparatus or display for both satellite and analog AM/FM radio.
- Devices that are satellite-only or that use a separate satellite control and display would not be subject to the requirement.

¹⁹ iBiquity believes that it would be reasonable to expect this to be implemented after approximately one year for non-OEM radio receivers and three years for OEM radio receivers.

²⁰ See Letter from Albert Shuldiner, Senior Vice President and General Counsel, iBiquity Digital Corporation, and Robert Mazer, counsel to iBiquity, to The Honorable Deborah Taylor Tate, FCC, MB Docket No. 07-57 at 1 (July 9, 2008)(“*iBiquity July 9th Letter*”).

- The Commission's rules should focus on the consumer experience rather than the architecture of the device.
- This requirement should be effective three years after the date of adoption for OEM automobile receivers and one year after the date of adoption for non-OEM receivers.

As iBiquity previously informed the Commission, a mandate to include HD Radio technology in SDARS receivers will have a *de minimis* impact on the cost, design, and functionality of this equipment.²¹ If implemented properly, the inclusion of HD Radio technology should not affect the size, weight, battery life or technical performance of SDARS receivers. Moreover, the mandate should not affect the variety of SDARS receivers available to consumers. To the contrary, the addition of HD Radio technology will provide the consumer with a variety of new programming, services and capabilities.²²

AM/FM radio (and broadcasting in general) always has been a focus of the Commission's regulatory policy. The Commission has spent decades promoting the availability of broadcast services and in recent years the transition of broadcast services to a digital platform. In return, the Commission has imposed on broadcasters a wide range of obligations and regulations designed to promote the public interest. The introduction of the HD Radio system has helped broadcasters to fulfill these obligations through the introduction of new services such as multicasting. The HD2 and HD3 channels are being used to provide listeners with new niche programming, important new public affairs programming and, in the near future, new services for the hearing and visually disabled communities. The Commission should protect the public

²¹ *Id.*

²² *Id.*

interest by enacting these proposed regulations to ensure Sirius XM cannot use its monopoly position to thwart the rollout of HD Radio technology.

The NOI appears to focus on the impact of any requirement on the development of HD Radio services. iBiquity believes the better question is the impact of any such requirement on competition and the public interest. Fostering the development of the HD Radio platform by itself would advance the public's interest in the promotion of this important service. However, the real issue for the Commission in this proceeding is how to shape the Commission's rules to ensure they promote the development of a platform that can provide robust competition to SDARS services. HD Radio technology happens to be the only option to achieve this goal.

The NOI also notes the Commission refrained from imposing a requirement that satellite receivers incorporate terrestrial technology when the Commission established its original SDARS rules.²³ The Commission adopted those rules in 1997, a year before iBiquity's predecessor USA Digital Radio Partners, L.P. filed the original IBOC Petition for Rulemaking with the Commission. In 1997, the Commission was aware of a series of early IBOC tests that at the time had failed to demonstrate the viability of the technology. It is easy to understand the Commission's hesitation in 1997 to burden the SDARS service with an unknown technology that was still in development. The situation today is very different. HD Radio technology is mature, viable and strongly supported by the broadcast industry. iBiquity has licensed most of the manufacturers of SDARS products to produce HD Radio receivers. The Commission cannot be concerned that any requirement to include readily available HD Radio technology would slow the development of SDARS services.

²³ NOI at 4, citing *SDARS Report and Order*, 12 FCC Rcd at 5795-96, ¶ 103.

5. **The Public Interest Would Not Be Served by the Mandatory Introduction of SDARS in HD Radio Receivers**

iBiquity's proposal to require Sirius XM to contractually obligate its licensees to include HD Radio technology in certain SDARS receivers is based on iBiquity's concern that a monopoly SDARS provider will use its position in the marketplace, the cost savings from the merger and its relationships with equipment manufacturers and retailers to slow the introduction of HD Radio technology. Because there is no competition within the SDARS service, robust competition from terrestrial digital radio is the only means available to the Commission to ensure a competitive marketplace for radio services. However, due to the limitations of analog technology, AM/FM stations cannot offer consumers the range of audio and data services the SDARS systems support without a digital AM/FM platform from HD Radio technology.

These arguments do not apply in reverse. There is no regulatory concern that would support the mandatory inclusion of SDARS in HD Radio receivers. The Commission's existing station ownership and cross ownership rules ensure competition among radio stations and between radio and other competitive services.²⁴ Therefore, the introduction of SDARS service is not necessary to ensure robust competition for audio entertainment services among terrestrial radio, nor is it necessary to ensure competition for advertising outlets. The Commission's existing rules and policies resolve any potential competition concerns about AM/FM radio.

Similarly, mandatory introduction of SDARS technology is not required to ensure consumer access to SDARS technology. Sirius XM already has a preeminent position in the marketplace for multichannel digital radio and associated data services. As was noted above, there are 19 million subscribers to SDARS service. However, unlike Sirius XM, iBiquity is required to license its technology on reasonable and nondiscriminatory terms in order to satisfy

²⁴ See 47 CFR § 73.3555.

the Commission's patent policy, as well as the requirements of the National Radio Systems Committee and the International Telecommunication Union, both of which have standardized HD Radio technology. In fact, the Commission has repeatedly assured the public that it will review iBiquity's licensing practices to ensure iBiquity complies with its obligations.²⁵ To the extent any manufacturer makes a reasonable request to license HD Radio technology and agrees to comply with iBiquity's standard license terms, iBiquity would be obligated to license its intellectual property to that manufacturer, even for combined satellite/terrestrial receivers.

Based on the SDARS receiver manufacturers' existing access to HD Radio technology, Sirius XM's dominant position in the marketplace and the absence of any clear public interest requirement the Commission seeks to address, it would be inappropriate to burden HD Radio technology with the costs and complications associated with a mandatory inclusion of SDARS technology. As is discussed in greater detail in the next section, the introduction of SDARS technology in HD Radio receivers would increase costs, complicate the design and potentially increase the risk of harm to HD Radio reception.²⁶ Although these types of risks may serve the public interest in the context of including HD Radio technology in SDARS receivers, the cost benefit analysis is much different in the absence of competition or access concerns. Moreover, as a free, universally available service that is already subject to a significant body of regulatory requirements and their associated costs, AM/FM radio should not be burdened with additional costs and constraints that will delay the rollout of a terrestrial digital platform. The public

²⁵ See *Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, 22 FCC Rcd. 10344 (2007).

²⁶ Due to the architecture of the SDARS systems, these costs concerns are different when considering the introduction of HD Radio technology into the SDARS receivers. Although there is some additional cost associated with that requirement, SDARS receivers already contain many elements required for HD Radio functionality, thereby reducing the cost of adding HD Radio technology to SDARS receivers.

interest will be served by imposing protections that ensure a monopoly satellite provider cannot inappropriately control the marketplace, not by burdening terrestrial radio.

6. **SDARS Operation Would Impose Costs and Constraints on HD Radio Receivers**

Any requirement that HD Radio receivers include SDARS technology would impose technical constraints and costs on HD Radio technology that could significantly retard the rollout of this important, subscription-free, universally available service. Due to the operation of the SDARS system in the S-band, manufacturers would be required to add an S-band antenna that would not otherwise be required in the HD Radio receiver.²⁷ In addition, because the SDARS service includes two incompatible systems, HD Radio receiver manufacturers would be required to add two chip sets and essentially two systems to provide full SDARS reception. The double system requirements and the new antenna system would impose significantly higher cost obligations on HD Radio receivers than would be the case for adding HD Radio functionality to SDARS receivers.

The Commission also should consider the technical constraints that would be created by any requirement that HD Radio receivers include SDARS capability. It is unclear whether the SDARS antenna could be economically incorporated into a cell phone form factor or certain other small profile portable device. If that is the case, a mandatory inclusion of SDARS capability in HD Radio receivers would preclude manufacturers from including HD Radio technology in whole classes of devices representing millions of units sold each year. Blocking HD Radio technology from these classes of devices would neither serve the public interest nor

²⁷ SDARS receivers already include AM/FM antennas so any requirement to add HD Radio technology would not increase antenna costs.

advance the Commission's often stated goals of promoting widespread adoption of HD Radio technology.²⁸

7. The Commission Should Refrain From Any Attempt to Impose Regulations on iBiquity

The Commission lacks authority to impose regulatory requirements on iBiquity. Unlike Sirius XM, which is a Commission licensee, iBiquity holds no authorization or license from the Commission concerning HD Radio broadcasting.²⁹ Although the Commission has regulations that enable the introduction of HD Radio broadcasting, the Commission's regulations focus on broadcasters' technical operations and provide authorization for broadcasters to transmit using HD Radio technology.³⁰ The Commission does not regulate iBiquity. At the same time, broadcasters do not have direct contractual relations with receiver manufacturers that would allow the broadcasters to contractually control or direct certain behavior by the receiver industry.

The Commission's regulatory status with Sirius XM is very different. Because the Commission licensed the Sirius and XM satellite systems, the Commission has explicit authority under Title III of the Communications Act³¹ to impose reasonable regulations on Sirius XM. Requiring that Sirius XM contractually obligate its licensees to include HD Radio technology in certain classes of SDARS receivers would be consistent with the Commission's overall

²⁸ See Merger Order at ¶ 130 ("We note our actions today do not diminish our commitment to HD Radio technology.").

²⁹ iBiquity has held and currently holds certain experimental authorizations for testing HD Radio technology. These experimental authorizations by themselves do not provide a sufficient nexus for the Commission to impose regulatory requirements on iBiquity's licensing practices.

³⁰ See *Digital Audio Broadcast Systems, First Report and Order*, 17 FCC Rcd. 19990, 19993 (2003) and *Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 22 FCC Rcd. 10344 (2007).

³¹ 47 U.S.C. § 301 et. seq.

regulation of the SDARS service. The Commission has already regulated Sirius XM receivers in the context of the approval of the recent merger.³² Further regulation of the SDARS licensee to mandate the inclusion of HD Radio technology in SDARS receivers would be consistent with the existing regulatory environment for the SDARS service.

8. **Conclusion**

iBiquity appreciates this opportunity to comment on this important issue that will have a profound impact on the development of competition for SDARS services. iBiquity encourages the Commission to initiate a rulemaking proceeding to require that Sirius XM includes HD Radio technology in SDARS receivers. At the same time, for the reasons set out above, the Commission should refrain from imposing any additional regulatory constraints on HD Radio receivers.

Respectfully submitted,

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³² See e.g. *Merger Order* at ¶ 113 (requiring interoperable receivers).