

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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)	

COMMENTS OF MEDIA ACCESS PROJECT

Media Access Project (“MAP”) submits these brief comments in response to the Media Bureau’s Public Notice seeking comment on the implementation of the Sirius-XM merger condition that four percent of audio channels be leased to qualified entities. *See Public Notice, Media Bureau Seeks Comment on Implementation of Sirius-XM Merger Conditions That Four Percent of Audio Channels Be Leased to Qualified Entities and Extends the Deadline for Compliance with this Condition*, MB Docket No. 07-57 (Feb. 27, 2009). In seeking approval of the transfer of control of licenses, Sirius Satellite Radio Inc. (“Sirius”) and XM Satellite Radio Holdings Inc. (“XM”) voluntarily committed “to set aside 4 percent of the full-time audio channels for noncommercial educational and informational programming on both Sirius’s and XM’s current systems. Memorandum Opinion and Order and Report and Order, *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holding Inc., Transferor To Sirius Satellite Radio, Inc., Transferee*, 23 FCCRcd 12348, 12413 (2008) (“Sirius-XM Order”). The Commission now seeks comment on how the set-aside should be implemented.

MAP suggests that the Commission could look to the implementation of the Direct Broadcast Satellite (“DBS”) public interest obligations to answer some of the pending questions. *See Report and Order, In the Matter of Implementation of Section 225 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCCRcd 23254 (1998) (“DBS Order”). For instance, like in the DBS service, the definition of noncommercial educational and informational programming should be “an entity with an educational mission that is organized under the tax code as a nonprofit corporation.” *Id.* at 23290-91. The Commission has already noted that the “merged entity will not be permitted to initially select a qualified programmer to be carried on more than one of its reserved channels.” *Sirius-XM Order*, 23 FCCRcd at 12414. To help to ensure there is no misuse of that condition, the Sirius-XM must make sure that in fact only one entity is allowed access to a channel. To do this, Sirius-XM must treat program suppliers who are directly or indirectly under common control or ownership as one entity. *See DBS Order*, 13 FCCRcd at 23303.

In determining how to choose which noncommercial educational and informational programmers will be allowed to take advantage of the set-aside, the Commission should consider either the Commission or Sirius-XM conducting a lottery. Importantly, the merged entity should not have the discretion to pick and choose which programming will be carried on the set-aside. Thus, selection through a lottery is an impartial and easy means for selecting the noncommercial educational and informational programmers.

Finally, each programmer should be granted a level of certainty that it will be allowed continued carriage on the set-aside. Thus, MAP suggests that the Commission adopt a set renewal period and/or criteria which would allow for automatic renewal for carriage on the set-aside.

Respectfully submitted,

/s/

Parul P. Desai
Andrew Jay Schwartzman
MEDIA ACCESS PROJECT
Suite 1000
1625 K Street, NW
Washington, DC 20006
(202) 232-4300

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