

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Applications for Consent to the Transfer of) MB Docket No. 07-57
Control of Licenses, XM Satellite Radio)
Holdings Inc., Transferor, to Sirius Satellite)
Radio, Inc., Transferee)
)
)

To: The Commission

COMMENTS OF RSS NETWORK CORP.

RSS NETWORK CORPORATION

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SUMMARY

In these comments, RSS Network Corp. (“RSS”) responds to the Commission’s February 27, 2009 Public Notice calling for comment on implementation issues related to the “Third-Party Access Commitment” from the 2008 Order approving the merger of XM Satellite Radio Holdings, Inc. and Sirius Satellite Radio Inc. to form Sirius XM Radio, Inc. (“Sirius XM”). Under the Third-Party Access Commitment, Sirius XM is obliged to enter into long-term leases or other agreements to provide a Qualified Entity or Entities with rights to four percent of the full-time audio channels on the Sirius platform and four percent of the full-time channels on the XM platform.

RSS, a 100 percent Hispanic-owned company, created the Radio Spanish Satellite service to provide the nation’s Hispanic audiences with new, innovative, and original satellite-delivered Spanish-language audio programming. RSS’s principals have a unique and impressive combination of skills, experience and contacts in the field of Spanish-language broadcast and entertainment services, and are using their knowledge, experience and contacts to develop and present the most popular, high quality, and original Latino entertainment content from throughout the Spanish-language world. RSS has secured rights to Hispanic entertainment, sports and music content with established appeal to all Hispanic audiences within the Sirius and XM satellites’ coverage areas. In these Comments, RSS demonstrates that with a few fair but firm guiding criteria, the Commission can enable the Third-Party Access Commitment to be successfully implemented and leases to be executed by the May 29 implementation deadline.

RSS argues at the outset that the Commission’s definition of Qualified Entity was correct in the *Sirius-XM Order*, and that preference should be given to Qualified Entities that have the highest percentage of minority ownership. Basing the allocation of channels on the population

percentages of each minority group is a fair and equitable method of assigning leases since the goal of the Third-Party Access Commitment is to increase the amount of audio programming targeted to currently underserved, minority groups.

RSS next identifies seven specific criteria for establishing and assessing eligibility to lease the channels that Sirius XM will be making available on its two platforms. The criteria include preferences for original programming, prompt commencement of operation, and a requirement that entities not act as agents or surrogates of any kind for unidentified third parties.

With respect to the remaining implementation issues specified in the February 27 Public Notice, the criteria RSS specifies provide a basis for a rational and straightforward decision between competing interests if the demand for channels exceeds the supply. Given the nature of the systems involved, a random selection process is both inefficient and doomed to failure. RSS also identifies the minimum operational requirements that lessees should be expected to meet, and argues for an initial lease term of ten years. On the question of what entity should make the selection, RSS observes that the key consideration for the Commission is identifying the entity that is in the best position to select and award leases by the May 29 deadline and assist the lessees with getting their programming on the air as soon as possible.

In the end, RSS urges the Commission to adopt RSS's proposed implementation procedures for the Third-Party Access Commitment. By doing so, the Commission will ensure that new, diverse and original programming will be provided for and targeted to underserved minority populations in the United States in the shortest time possible.

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COMMENTS OF RSS NETWORK CORP.

I. INTRODUCTION

RSS Network Corp. (“RSS”), by its attorneys, submits these comments in response to the Public Notice, DA 09-529, that the Commission released on February 27, 2009 in the above-captioned proceeding.¹ The Commission seeks comment on implementation issues related to a condition it imposed in the 2008 order approving the merger of XM Satellite Radio Holdings, Inc. and Sirius Satellite Radio Inc. to form Sirius XM Radio, Inc. (“Sirius XM”). Under the condition, which is referred to in the *Notice* as the “Third-Party Access Commitment,” Sirius XM is obliged “to enter into long-term leases or other agreements to provide a Qualified Entity or Entities with rights to four percent of the full-time audio channels on the Sirius platform and four percent of the full-time channels on the XM platform.”²

RSS, which has created the Radio Spanish Satellite Service, has provided the Commission with its views on a number of the implementation issues surrounding the Third-Party Access

¹ See *Media Bureau Seeks Comment on Implementation of Sirius-XM Merger Condition That Four Percent of Audio Channels Be Leased to Qualified Entities and Extends the Deadline For Compliance With This Condition*, Public Notice, DA 09-529, MB Docket No. 07-57 (Media Bur. released Feb. 27, 2009) (“*Notice*”).

² *Notice* at 1. See also *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, 12408, ¶ 131 (2008) (“*Sirius-XM Order*”). Four percent of the full-time audio channels currently represents six channels on the Sirius platform and six channels on the XM platform, for a total of 12 full-time audio channels.

Commitment.³ In particular, RSS provided criteria for Sirius XM or its proxy to use in selecting lessees from among Qualified Entities, and encouraged the Commission to take all steps possible to expedite the issuance of the leases that will establish new voices catering to the country's minority populations.⁴

In these Comments, RSS reiterates and amplifies upon its views on the best way to implement the Third-Party Access Commitment successfully by the new May 29, 2009 deadline. In particular, RSS urges the Commission to implement the Third-Party Access Commitment quickly and require that Qualified Entities must be minority-owned and controlled at the corporate level and the controlling minority owners must be in full editorial control of programming material. Qualified Entities must be able to demonstrate they will: 1) provide original programming; 2) deliver programming 24 hours a day, seven days a week; and 3) commit to commence programming within 90 days after the lease is awarded. The Commission should also require that leased channels be assigned on the basis of the size of each Qualified Entity's minority group.

II. WHO IS RSS AND WHAT DOES RSS BRING TO THE TABLE?

RSS is uniquely qualified to address the subject of the implementation of the Third-Party Access Commitment. As a 100 percent Hispanic-owned company, RSS is clearly a Qualified Entity, as that term was used in the *Sirius-XM Order*.⁵ RSS, however, is much more than that.

RSS created the Radio Spanish Satellite service two years ago with the aim of providing the nation's Hispanic audiences with new, innovative and original satellite-delivered Spanish-language audio programming. RSS's principals have a unique and impressive combination of skills, experience and contacts in the field of Spanish-language broadcast and entertainment services, and

³ See, e.g., Letter dated December 5, 2008, from Raul R. Rodriguez and Stephen D. Baruch, Counsel to RSS, to Chairman Martin ("December 5 Letter").

⁴ December 5 Letter at 2-4.

⁵ 23 FCC Rcd. at 12409, ¶ 134 n.437.

are using their knowledge, experience and contacts to develop and present the most popular, high quality, and original entertainment content from throughout the Spanish-language world. RSS has secured rights to Hispanic entertainment, sports and music content with established appeal to all Hispanic audiences within the Sirius and XM satellites' coverage areas. Because the Radio Spanish Satellite service is comprised exclusively of original programming, not the retransmission or repackaging of otherwise available radio channels, its inclusion on the Sirius and XM platforms will add important new voices and heretofore unavailable choices for the Nation's Hispanic community.

The promotion of new minority voices – especially qualified speakers who know their audiences – is a very important element of the Third-Party Access Commitment. The channels to be made available through the condition in the *Sirius-XM Order* are not public access channels or otherwise non-commercial; they are intended to provide underserved and underrepresented speakers with a platform from which broad audiences can be affordably reached. The Third-Party Access Commitment means nothing unless it is fulfilled by operators that offer quality programming that will persuade members of the target audiences to purchase Sirius or XM receivers and pay a subscription fee.

RSS understands this reality better than anyone, as it has been working toward the goal of a new satellite service for Hispanic audiences since long before Sirius and XM made their proposals that became the Third-Party Access Commitment. RSS believes in the business of satellite radio and has staked its business plan on that belief. RSS is buoyed by the fact Hispanics comprise fully 15 percent of the general population of the United States – making them not only the largest minority group in the country, but also the fastest growing audio market.

III. DISCUSSION OF IMPLEMENTATION ISSUES

By the time the Third-Party Access Commitment leases are awarded in May, the onset of the program will be delayed by six months from the award date established in the *Sirius-XM Order*. In these difficult times, which are especially challenging for those groups (often comprised disproportionately of minorities), it is critical that leases of the capacity on Sirius and XM that will be used to provide service to the nation's minority communities be swiftly finalized. RSS believes that with a few fair but firm guiding criteria, the Commission can enable the Third-Party Access Commitment to be successfully implemented in full by the May 29 deadline, and RSS itself will have programming on the systems using channels it leases well before Labor Day.

A. Preference Should Be Given to Qualified Entities That Have the Highest Percentage of Minority Ownership.

RSS is a little surprised that the Commission has sought comment in the *Notice* on “the definition of a Qualified Entity or Entities.” *See Notice* at ¶ 3. There was no ambiguity in the *Sirius-XM Order* when the Commission – in a definition with which RSS wholeheartedly agrees – defined a Qualified Entity as “any entity that is majority-owned by persons who are African American, not of Hispanic origin; Asian or Pacific Islanders; American Indians or Alaskan Natives; or Hispanics.”⁶ *Notice* at ¶1 n.2.

In RSS's view, to be eligible to become a lessee of Sirius XM channels, an entity must first be a Qualified Entity. To the extent that multiple qualified entities seek leases, RSS urges the Commission to adopt a scheme that gives preference to entities with the greatest percentage of minority ownership and who will maintain active and full managerial and editorial control of their programming.

⁶ *Sirius-XM Order*, 23 FCC Rcd. at 12409 n.437; *Notice* at ¶ 1 n.2.

RSS maintains that there should be multiple leases awarded for the 12 available channels on today's Sirius and XM platforms, and that the channels should be allocated in the first place on the basis of the relative size of the minority group in the general population. The most recent population figures (*see* <http://quickfacts.census.gov/qfd/states/00000.html>) show that Hispanics comprise 15 percent of the general population, African Americans comprise 13 percent of the general population, Asians comprise 4 percent of the general population, and American Indians and Alaskan Natives comprise 1 percent of the general population. The total minority population is thus 33 percent of the nation's population.

Because Hispanics comprise 45 percent of the minority population, Hispanic Qualified Entities are entitled to lease 45 percent of the twelve channels allocated under the Third-Party Access Commitment, which equals a total of five to six channels across both the Sirius and XM platforms. Similarly, four or five channels are to be leased to African American Qualified Entities, one channel is to be leased to an Asian Qualified Entity, and one channel is to be leased to an American Indian and/or an Alaskan Native Qualified Entity.⁷ If Qualified Entities owned by and representing one or more of these minority groups do not seek leases by the deadline set for expressions of interest, then the available channels should be divided ratably among representatives of the minority groups that do timely express interest.

Basing the allocation of channels on the population percentages of each minority group is a fair and equitable method of assigning leases since the goal of the Third-Party Access Commitment is to increase the amount of audio programming targeted to currently underserved, minority groups.

⁷ Whether Hispanics receive six channels and African Americans receive four channels, or each group receives five channels, can be determined later based on the relative demand among Qualified Entities entering the lease assignment process RSS describes in Section III.B below. RSS cannot envision a scenario where it would be in either the lessees' or Sirius XM's interest for a channel lease to be split between entities.

B. The Process for Establishing Eligibility Should be Streamlined and Self-Enforcing, with Clear Criteria.

RSS urges the Commission to establish a process for determining the eligibility of Qualified Entities to lease channels under the Third-Party Access Commitment that is streamlined, self-enforcing, and subject to clear and effective criteria. To do this, entities interested in securing a lease or multiple leases should submit letters to the Commission, under sworn declarations, that contain the following information:

- i. A demonstration that the entity meets the definition of Qualified Entity.
- ii. A statement of which minority group's channel allocation the entity is seeking to use.
- iii. A statement of the number of channels in total that the entity is seeking to lease.
- iv. A detailed explanation of the extent to which principals in the entity (officers, directors, 10%+ equity owners, partners, etc.) own or control a 10% or greater interest in any entity that holds a broadcast radio or television station license.
- v. A description of the extent to which the entity would air original programming over the lease channel.
- vi. A statement that the entity will commence operation over the channels within 90 days after the lease is signed and will be offering programming on a 24/7 basis no later than 180 days after the lease is signed.
- vii. A statement that the entity will directly program the channel and is not acting as an agent or surrogate of any kind for any unidentified third party.

The expression-of-interest/commitment letter would be submitted to Sirius XM (or its proxy), with a copy to the Secretary of the Commission, no later than May 1, 2009. Any letter that is not submitted by that date would be eliminated from consideration for leases, and any letter that fails to provide complete information in response to any of the seven points above would be unfavorably compared to letters containing complete information that are submitted for the same channel or channels.

The goal of this approach is to provide a basis upon which Sirius XM or its proxy can make an intelligent selection or selections among Qualified Entities that seek access to the Hispanic, African American, Asian, or American Indian/Native Alaskan channel allotments. As the letters and supporting showings are not applications for Commission licenses, they cannot trigger hearings

or other adjudications of fact for false statements. Nevertheless, as they are supported by sworn declarations and are provided to the Commission, any falsehood or misrepresentation can be expected to be used against the maker thereof in any future Commission proceeding that does involve an assessment of the maker's character qualifications.

With respect to the submissions themselves, the first four elements above are generally self-explanatory. Each entity needs to identify whether it is requesting to lease one or more of the five or six channels that will be leased to Hispanic Qualified Entities, one or more of the four or five channels that will be leased to African American entities, the channel that will be leased to an Asian entity, or the channel that will be leased to an American Indian or Native Alaskan entity. It may be the case that an entity seeking multiple channels from the Hispanic or African American allotment may be in a superior position on the key criteria (e.g., extent of minority ownership and intention to provide original programming) as compared with other entities seeking only one channel from the same allotment. In such a case, leasing multiple channels to the superior entity would advance the public interest goals behind the Third-Party Access Commitment far more than reducing the number of channels the superior entity is entitled to lease in order to achieve the appearance of fairness. Leasing channels to an unqualified or underqualified entity is ultimately unfair to the lessee, Sirius XM, and the listeners who pay for the radios and monthly service. Dividing the channels among the minority groups assures multiple new entry and provides the best opportunity for beneficial new service to underserved groups.

Each letter must also indicate how many channels from each or any allotment it seeks. For simplicity, the Commission's current attribution rules for broadcast applicants should be used to determine the extent of any attributable interests.⁸

⁸ Entities that are new to the radio market will bring fresh voices and perspectives that are truly diverse and will increase the number of radio programmers thereby creating more competition. Lessees who are not connected to existing broadcasters should therefore be given preference over other entities that are already associated with existing broadcast programming.

In RSS's view, the channels on the Sirius and XM platforms should be considered fungible, meaning that the 12 channels from both systems are to be assigned from a common pool, without regard to which system the lease is for. Thus, it does not matter which platform, Sirius or XM, the channels are assigned upon, as long as all of the Hispanic channels are assigned on a single platform and all of the African American channels are assigned on a single platform. Splitting either group's channels between the platforms will make it much more difficult for the channels to positively affect subscribership and meaningfully reach their target minority audiences.

The Commission's stated goal in adopting the Third-Party Access Commitment condition is to "increase minority involvement in the communications industry." *Sirius-XM Order* at 12411, ¶ 135. The *Notice* reiterated this goal stating, the "Commission concluded that the Third-Party Access Commitment would 'further the Commission's goals of fostering competition and diversity on the [satellite radio] platform.'" *Notice* at ¶1. By giving leasing preference to 100% minority-owned programmers who will air new, original programming, the Commission will achieve its goals of expanding diversity and competition in radio. It would undermine this effort if the selected Qualified Entities were not actually operated by the minority group that has been awarded this status. Moreover, if more than one Qualified Entity is otherwise qualified for consideration, the Commission must give greater weight to groups with the greatest minority ownership participation and control. Thus, if a Qualified Entity is a minority-owned entity, a preference among Qualified Entities should be given to those that have the highest percentage of minority ownership.

Another determining factor among Qualified Entities with otherwise equal minority ownership stakes is the degree to which an entity's principals have attributable ownership interests in media outlets (particularly radio and television broadcast licensees). A fundamental purpose for setting aside channels for Qualified Entities is to provide an opportunity for minority groups to have access to airwaves that are not otherwise available to them. The objective should be to establish

new voices with new things to say. Diversity – including diversity in viewpoints, outlets, programs, sources, and minority ownership – has long been a cornerstone of Commission media policy. *See, e.g., 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13627 (2003). In this regard, a preference should be given to Qualified Entities that have no media ownership interests among their principals (i.e., among their officers, directors, managers, partners, and 10%+ equity owners) as compared with Qualified Entities that have other outlets for their voices.

The information on the extent of original programming to be aired relates to the important objective of increasing diversity and competition is to encourage and provide access to radio spectrum to new entities that are not currently providing radio programming. In this regard, detailed examples of the programming offerings the putative lessee contemplates should be provided. It is not enough, and would disserve the interests of minority populations, if the Sirius and XM channels reserved for Qualified Entities were used simply to repeat or “rebroadcast” programming that is already available, whether via other means of delivery, whether terrestrial, cable, or even satellite. By giving preference to entities that will air original programming, these new minority voices will increase diversity and competition in the audio marketplace. For those entities seeking multiple channel leases, the original programming showing must be made with respect to each proposed channel.

It is in the public interest that lessees begin to air their new, original programming as soon as possible. In this regard, giving a preference to a putative lessee that is prepared in all ways (with material, technical ability, and financial wherewithal) to commence operations within 90 days

after the lease is signed is reasonable.⁹ So too is the requirement that each lessee state in its letter that will be operating on a 24 hours day, 7 days a week basis within six months of the lease's execution. For those entities seeking multiple channels, statement regarding 90-day/six-month operation should be provided for each channel.

Finally, and given the fact that the process being established here is only quasi-FCC, it is important for the putative lessees to indicate unequivocally in their May 1 submissions that they are acting directly, and not as an agent or representative or stalking horse of any kind for an unidentified third party. Specifically, entities should be evaluated on whether they can demonstrate that they have experience in audio and/or media operations, including producing original programming. No sub-leasing or assignments should be permitted to ensure that lessees are capable of meeting this commitment and are focused on airing original programming that will increase diversity and competition on radio. In RSS's view, any arrangement whereby channels are leased on a time-sharing basis will dilute the new, minority voices and their impact, disserve both the minority communities, and marginalize the value of the spectrum resource that is being made available under the Third-Party Access Commitment.

By adopting the criteria presented and discussed above, the Commission will facilitate the prompt and successful implementation of the Third-Party Access Commitment. Certainty, speed, and the absence of any need for direct Commission involvement are all important elements that should be part of the program.

⁹ 90 days is enough time for a lessee to line up staff, equipment and coordinate its technical efforts with Sirius XM. It would serve neither the interest of the listening public nor principles of efficient spectrum use to allow any entity that is selected for a lease to warehouse Sirius and/or XM channels without putting them to their intended use.

C. Criteria for Selecting Among Competing Applicants if Demand Exceeds Supply.

RSS does not favor lotteries or a first-come/first-served approach for selecting among competing applicants for any of the particular channel allotments. The system of assigning preferences that RSS proposes above is designed to get the most qualified entities under a set of relevant criteria into leases with Sirius XM that will both add to the minority voices audiences hear in this country, and lead to a mutually beneficial long-term business relationship between the lessee and Sirius XM. Both the lessees and the lessor are in business to provide programming that subscribers desire enough to purchase equipment for and pay monthly or annual subscription rates to receive. Sirius XM or its proxy should determine who receives leases based on the criteria; randomness in selection is doomed to failure and will ultimately prove inefficient.

D. Lessees Should Expect to Meet Certain Minimum Operational Requirements.

Each lessee should be required to deliver a transmission-quality signal to a designated Sirius XM headend. If the lessee uses its own production facilities to generate the signal and programming, there would be no additional charge from Sirius XM. If the lessee requests that Sirius XM provide studio space and production facilities or otherwise assist in the transmission/delivery of the signal to the headend, the lessee should realistically expect to be charged at fair market rates by Sirius XM for such services.

The leases should not overtly restrict the content of programming, other than to require the lessee to carry sufficient insurance to indemnify Sirius XM against any allegations that the lessee's programming is violative of third-party intellectual property rights or obligations, and to bar the lessee from providing any programming that violates legal prohibitions against obscene material.

Each lessee should be provided access by Sirius XM to information on channel listenership and customer complaints/comments. Each lessee must also designate a point of contact that is available on a 24/7 basis to respond to technical issues with the programming feed. Lessees should

expect to commit in the lease to industry best business practices and to providing programming that is in the best interests of the target community/audience(s).

For their part, the lessees have the right to expect that Sirius XM will include the leased channels in all future promotional materials and channel guides (whether on-line, in print advertising, or in point-of-purchase displays) for the Sirius and XM platforms. It is in the lessees' and Sirius XM's mutual interest that this occur, of course, but there is no real question that the requirement for inclusion in promotional material of all kinds will help advance the new voices the Third-Party Access Commitment facilitates reach their intended audiences.

E. Leases Should Be for an Initial Term of Ten Years.

The Third-Party Access Commitment contemplates "long-term" leases. *Notice* at ¶1. RSS urges the Commission to require that the initial leases be for ten years. The term is reasonable in light of the requirements on lessees to secure investment capital for programming, production facilities, and other substantial start-up and ongoing cost items.¹⁰ The lessees will be able to develop strong business plans to air new, original minority-targeted programming for the foreseeable future, and Sirius XM will have a measure of certainty in knowing that its lessees under the Third-Party Access Commitment are stable and incentivized to remain part of the system for the long haul.

RSS also believes that there should be an expectation of lease renewal for the lessee in all situations where the lessee remains a Qualified Entity and has satisfied its technical, financial, original programming, and operational requirements as discussed above. This too will promote stability for both the lessees and Sirius XM itself.

¹⁰ If the term were only five years, for example, lessees may have much more difficulty in persuading financiers and investors that there was sufficient time under lease to generate the requisite returns.

F. Leases that are Violated or Terminated for Cause Should Be Made Available Under the Process Identified Here for New Lessees.

Any lessee that fails to commence programming in under the 90/180 day formulation identified above should have its lease(s) voided. Sirius XM, as operator of its system and the business of subscription satellite radio, needs to reserve to itself the usual and customary rights of a capacity lessor to terminate leases where the lessee breaches its obligations with respect to provision of material, technical operation, or other ordinary obligations. Subleases and assignments of lease rights are prohibited. As all of these situations could lead to a future availability of one or more channels from the Third-Party Access Commitment, RSS proposes that the process used for initial leases be repeated (with a public notice from the Commission setting the deadline for submission letters) each time a leased channel becomes available. This would be a fundamentally fair way of ensuring that the objectives of the Commitment are satisfied into the future, and that Sirius XM is not unduly burdened with inefficiently used or unused channels.

G. The Selection of the Lessees Needs to Ensure that New Programming Will Begin to Air in the Most Efficient Manner.

In many respects, if the Commission were to impose the criteria RSS proposes in these Comments, the question of what entity – Sirius XM or an outside third party – actually selects the lessees of channels made available under the Third-Party Access Commitment has reduced significance. The RSS criteria will minimize the degree of subjectivity in making lease assignments. This and other “realities” of the long-term arrangements that are contemplated under the Third-Party Access Commitment mean that Sirius XM should have some role to play in selection of lessees, even if it is not a sole decision making role.

An independent trustee or other unaffiliated third party neither knows the Sirius and XM platforms or requirements, nor has the expectation of an ongoing relationship with the lessees. Even assuming that there is a disinterested entity or organization that is prepared to step into such a

role (a dubious proposition given that the leases are to be free of charge to the lessees), there is a potential under these circumstances for interposing a non-value-added middle man into the mix. Delay and confusion will be the inevitable results.

The key consideration on this implementation issue is what entity in the selection role is in the best position to select and award leases by the May 29 deadline, and to assist the lessees with getting their programming on air as soon as possible? The implementation of the Third-Party Access Commitment has already been extended twice to date, and the public interest would be best served if there were no additional delays.¹¹

In RSS's view, the answer to that question must include Sirius XM in some capacity. If Sirius XM is willing to serve as the selector of the lessees under the Third-Party Access Commitment, RSS would not object to that role for the company. If there is good cause for Sirius XM not to be the sole selector – and RSS is not sure that it saw any reason for turning the selection process over to a third party expressed in the *Sirius-XM Order* – then RSS would support the creation by the Commission of an ad hoc panel that includes Sirius XM in at least an advisory capacity to make the actual selection. The only approach that troubles RSS is the establishment of a lessee selection entity that does not include Sirius XM, as RSS cannot see any way for such an entity to unilaterally ensure that the Commission's new compliance deadline of May 29, 2009 is met.

¹¹ First, the Commission extended the deadline in the *Sirius/XM Order* that commits Sirius XM to enter into lease agreements with Qualified Entities to February 27, 2009. *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holding Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, Order, DA 08-2620, slip op. at 2 (Media Bur., released November 28, 2008). Subsequently, the Commission released the *Notice* on February 27, 2009 which further delayed the compliance deadline for the Third-Party Access Commitment until May 29, 2009 while the Commission seeks comment on the implementation procedures. *Notice* at ¶ 4.

IV. CONCLUSION

On the basis of the foregoing discussion, RSS urges the Commission to adopt these proposed implementation procedures for the Third-Party Access Commitment. By adopting the implementation procedures set forth above, the Commission will insure that new, diverse and original programming will be provided for and targeted to underserved minority populations in the United States in the shortest time possible.

Respectfully submitted,

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