

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)

REPLY COMMENTS OF NY METRO RADIO KOREA INC.

NY Metro Radio Korea Inc. (d/b/a Korean Radio Broadcasting) (“KRB”),¹ by its attorneys, hereby submits its Reply Comments in response to comments on the Public Notice issued on February 27, 2009 in the above-captioned proceeding (the “Request for Comments”).² As set forth in greater detail below, KRB supports many of the proposals in the comments submitted by RSS Network Corp. (“RSS”);³ however, KRB has different views regarding the eligibility and proper selection of lessees. The Third Party Access Commitment should be implemented by the Commission or its

¹ KRB, founded in 1996, is wholly owned by Young Kwon, a Korean-American. KRB currently provides programming 24/7 on WWRU(AM), Jersey City, New Jersey – the only Korean-language station in the New York area. Over 90% of KRB programming is original locally-produced programming, including news, music, talk, entertainment, and informative tips for new Korean immigrants to the United States. KRB is a Qualified Entity pursuant to *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., To Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12409 para. 134 n.437.

² *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*, Public Notice, DA 09-529 (rel. Feb. 27, 2009). KRB also, through this filing and subject to review of the application process adopted by the Commission as a result of these proceedings, declares its intent to seek a channel lease with Sirius XM Radio Inc. (“Sirius-XM”).

³ RSS Network Corp., Comments (Mar. 30, 2009).

designee (not Sirius-XM) in a neutral manner that does not disqualify experienced programmers and maximizes program diversity and service to unserved or underserved audiences.⁴

RSS advocates many beneficial proposals for the implementation of the Third Party Access Commitment, which KRB supports, including the 24/7 programming requirement; 10-year lease term; leasing preference based on percentage of minority ownership; an expedited timeframe for commencement of programming on the leased channel;⁵ rejection of the single-lessee model; and rejection of the lottery and first come/first served methods for selecting lessees. However, KRB opposes any proposal that would: (1) limit the number of channels available to any specific program category based on the language spoken; (2) disfavor existing radio programming providers in the lessee selection process; or (3) permit Sirius-XM to have any role in the selection of the lessees.

While the Commission clearly has statutory jurisdiction to administer its consent decrees and orders, the Communications Act of 1934, as amended (the "Act"), is silent on the responsibilities of the Commission in the administration of satellite radio channel leases. Therefore, the Commission must administer the leased channel commitment of Sirius-XM in the public interest and in a manner not inconsistent with the

⁴ The Korean-language programming offered on Sirius (no Korean-language programming is available on XM) is geared towards the West Coast Korean population. The Korean population on the East Coast, which represents over 60% of the total Korean population in the United States, is effectively unserved by satellite radio. To ensure true program diversity, foreign-language programming that is not currently available on both Sirius and XM should receive special consideration in the channel allocation process.

⁵ While RSS favors a 90-day period for the commencement of on-air operations following execution of the channel lease, KRB would support an even shorter period (*i.e.*, within 60 days of execution of the channel lease).

Act.⁶ In particular, the Commission must implement the satellite radio channel leasing obligation consistent with the policies expressed in Section 151 of the Act, which defines the purposes of the Commission to include making available communications services, as far as possible, to all the people of the United States, “without discrimination on the basis or race, color, religion, national origin, or sex,” and Section 307(b), which requires the Commission in its “allocation of facilities” to make such distribution “among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”

Accordingly, the Commission, or its designee, should administer the selection of lessees for the channel leasing program independently from Sirius-XM. The voluntary commitment by the merger parties was to make channels available for commercial leasing, not to remain a gatekeeper to leased channel access on the now-monopoly satellite radio system. Content diversity and service to unserved and underserved audiences in diverse geographical areas should be paramount considerations for the Commission in deciding among competing applicants for channel leases, in the event that lease applications exceed the number of lease channels. If the Commission under such circumstances decides to rely on a system of random selection among competing applications, it should restrict applicant eligibility to Qualified Entities proposing service to unserved and underserved audiences.⁷ The Commission should place special emphasis on allocating leased access channels for foreign-language programming that is not available on both Sirius and XM.

⁶ 47 U.S.C. § 154(i).

⁷ The Commission lacks the statutory authority to adopt a competitive-bidding regime for the satellite channel leases, because, in part, the spectrum at issue has already been auctioned, and the lease proceeds are destined for the pockets of Sirius-XM, the satellite radio licensee, not the U.S. Treasury.

Existing radio programming providers should not be discriminated against in the selection of lessees. Providing a preference to applicants without such experience may exclude the best qualified entities from obtaining channels by virtue of their experience. Those providers, like KRB, that currently serve a specific geographic region with foreign-language programming should not be penalized. Such entities should be viewed favorably for their experience, qualification and established track record of success as programmers.

Sirius-XM must not be involved in the determination of selection criteria or the ultimate selection of channel lessees. Experienced programmers should not be excluded from eligibility, and lessees should be determined in a neutral manner that maximizes program diversity and service to unserved or underserved audiences.

Respectfully submitted,

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