

May 29, 2009

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation  
Media Bureau Docket No. 07-57

Dear Ms. Dortch:

On May 28, 2009, representatives of Howard University met with representatives of the Commission to discuss the voluntary commitment of Sirius XM Radio Inc. ("Sirius XM") to make available nationwide channel capacity to Qualified Entities and the Commission's adoption of rules for the distribution and use of those channels. Participating in the meeting on behalf of the Commission were Sarah Whitesell, Marcia Glauber, Royce Sherlock, Rebekah Goodheart, Mania Baghdadi, Julie Salovaara, Belinda Nixon, Manuel Arreaza, Rosalee Chiara, and Elvis Stumbergs. Participating on behalf of Howard University were Steven Harris, Senior Associate for Government Relations, Jim Watkins, General Manager of WHUR radio, and the undersigned.

The Howard University representatives discussed the University's vision of programming a nationwide simulcast channel on the Sirius XM network comprised of original entertainment and educational programming for the African American community using the resources of the University's commercial radio station, WHUR, and the University's HD radio and Internet-based programming capabilities.

A central focus of the discussion was the importance of retaining the original vision of the Sirius XM commitment by ensuring that Qualified Entities provide new and diverse programming to minority audiences in the United States. In this regard, the Commission should not broaden the scope of the Qualified Entity definition (such as through the use of the Small Business Administration's ("SBA") "Socially and Economically Disadvantaged Businesses" standard) without combining it with a requirement that the Qualified Entity provide original and

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diverse programming on a fulltime basis to historically underserved audiences. If constructed in this manner, the Qualified Entity requirements should be able to withstand constitutional challenge.

Further, if the Commission does adopt a broader standard, the Commission should ensure that it does not inadvertently exclude applicants that are fully capable and ready to provide original and diverse programming to minority audiences. For example, the SBA classification could exclude Howard University and its commercial radio station, WHUR, from participating in the application process.

In this same regard, if the Commission retains the requirement that was adopted in the Sirius XM order that a Qualified Entity be majority minority-owned, the Commission should clarify that, in the case of an institution such as Howard University (which is not "owned" by anyone), it is sufficient for the applicant to be majority minority-controlled.

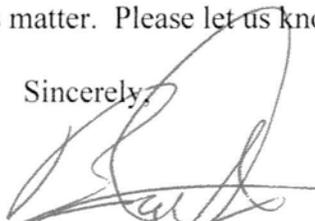
The Howard University representatives also expressed support for the adoption of basic qualification requirements obligating applicants to demonstrate that they are ready and able to provide original and diverse programming to historically underserved audiences on a 24/7 basis using capacity on the Sirius XM network. Although these requirements should be rigorous, they should not be arbitrary, such as an arbitrary requirement that qualified applicants must own a certain number of radio stations in a certain number of markets.

Finally, the Howard University representatives discussed whether an independent selection committee should be appointed to oversee the application and selection process, and whether that selection committee should be appointed by the Commission or by Sirius XM. Because of the complexities inherent in such an approach, the Howard University representatives acknowledged that the most appropriate course of action may be for the Commission to direct Sirius XM to make the selections, just as Sirius XM already does with respect to its set-aside channels for noncommercial, educational and informational programming.

The attached talking points were distributed to the participants of the meeting and formed the outline for much of the discussion.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,



Bruce A. Orcott

**Proposed Procedures for Implementing  
The XM-Sirius Third-Party Access Commitment**

**Howard University**

**MB Docket 07-57**

**May 28, 2009**

- The definition of “Qualified Entities” should:
  - include minority-controlled entities *or* entities with minority-controlled boards;
  - consider an entity’s ties to and service on behalf of minorities, rather than a strict application of a 51% requirement, or other quantitative criteria;
  - give preference to entities with an educational mission and a plan to provide educational programming.
- The Commission should refrain from adopting rules that inappropriately disqualify applicants that may be able to serve the public interest. The Commission should:
  - Refrain from restricting Qualified Entities to social and economically disadvantaged businesses. Other entities may be equally worthy and qualified.
  - Refrain from employing a lottery, auction, or first-come, first-served process because of the potentially arbitrary nature of the results.
  - Refrain from giving preference either to entities that have no media ownership interests (which may not be capable of programming a channel), or to entities with large media holdings (which may not promote sufficient diversity).
- The Commission should impose minimum qualifications on Qualified Entities to ensure that diverse programming is provided to minority consumers. Qualified Entities should:
  - deliver programming 24 hours a day, 7 days a week;
  - commit to commencing programming within 90 days after the lease is awarded;
  - demonstrate they have the internal resources to produce diverse programming.
- The selection process should be structured to ensure that the selected Qualified Entities will serve minority audiences, and to ensure compliance with constitutional requirements.
- Applicants should be permitted to apply for the right to program more than one channel, and to request access to simulcast channels on both the XM and Sirius systems.