FCC Proceeding 07-57
MB Docket No. 07-57
DA 11-129
Public comments, electronically filed using ECFS on February 24, 2011

The Honorable Genachowski
Chairman, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Public Comment to Media Bureau's Inquiry on Retail Price Cap for Sirius XM

Dear Chairman Genachowski and fellow Commissioners:

As a concerned citizen and consumer following the consummated satellite radio merger between Sirius Satellite Radio Inc., and XM Satellite Radio Holdings Inc., and subsequent actions, I hereby submit these public comments to the January 25, 2011 inquiry made by the Media Bureau 'seeking comment on extension, modification or removal of cap on Sirius XM retail prices'. Please submit my attached comments into the public record.

Respectfully submitted,

Patrick Sharpless

PUBLIC COMMENT TO MEDIA BUREAU'S INQUIRY ON RETAIL PRICE CAP FOR SIRIUS XM

INTRODUCTION

The FCC waited 17 months before granting Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. authority to consolidate their operations; and only then, because the companies agreed to make 'voluntary commitments'. These 'voluntary commitments' ultimately harmed consumers, violated the public trust, unjustly enriched competitors to satellite radio and provided convenient avenues for sophisticated financial institutions and their counterparties to take unfair financial advantage of the satellite radio companies and their shareholders. The FCC held the companies and their shareholders hostage to abusive FCC tactics until commitments that never should have been surrendered in the first place were 'voluntarily committed' to by the companies. Voluntary commitments made under duress hardly constitute fair, open, efficient and transparent FCC activities. It was precisely unconscionable actions like these that led to the House Energy and Commerce Committee initiating a formal investigation into Federal Communications Commission regulatory procedures to determine if they were being conducted in a fair, open, efficient, and transparent manner. The jury is still out on the effectiveness of Congress' oversight role and the FCC's ability to restore the public's trust by implementing sound telecommunication policy.

THE FCC IS INTERFERING WITH THE PUBLIC INTEREST IN WAYS CONGRESS NEVER INTENDED

Congress never intended for the FCC to impose price caps simply because companies sought to improve competitiveness through consolidation. Nor did Congress authorize the FCC to hold companies hostage to unjustifiable demands while cloaking those demands under the shroud of 'voluntary commitments'.

Consumers enjoy maximum benefit when companies can achieve sufficient revenue to afford product improvements and service enhancements capable of satisfying consumer demand for quality entertainment. A free market is the best and most reliable place for determining what price consumers are willing to pay for a given product or service at a given time. When the FCC mandates price controls, they interfere with free market forces and prevent companies from maximizing revenues that would otherwise be available absent the price controls. In the absence of achieving maximum revenue, the cost of existing debt is higher and causes more resources to be spent enriching sophisticated financial institutions engaged in financing the existing debt. Alternatively, if no state mandated price controls exist, and the market allowed more revenue to be achieved by increasing subscriber fees, the company could accelerate debt restructuring, thereby lowering the overall cost of debt, and harness the savings in meaningful ways to attract further investment at lower cost and use the savings to make product improvements and service enhancements. This is why we have competition and free markets—so consumers can benefit from market efficiencies that regulators are unable to achieve with bureaucratic mandates designed to enrich sophisticated financial institutions at the expense of consumers and shareholders. Since when did Congress sanction the FCC to be a proxy for sophisticated financial institutions seeking ill-gotten gains? And who authorized the FCC itself to abuse their own regulatory review process by advancing the interests of sophisticated financial institutions at the expense of consumers and shareholders alike?

The unintended consequence of this price cap scheme is that Sirius XM remains unable to adjust subscription prices for their various service offerings, leaving the company little reason to invest in product improvements and service enhancements without a means to recover the investment. Price caps deprive consumers the opportunity of enjoying what would have been a product improvement or service enhancement, even when deprived consumers would have been willing to pay additional fees to receive the benefit. This free market interference is undesirable to consumers because it interferes with the company's ability to maximize revenues and accelerate debt restructuring, thereby preventing or delaying the rollout of future improvements and enhancements that would be financed from revenues gained by increasing subscription prices and savings from accelerated debt restructuring. The truth is, satellite radio service is underpriced for the value already provided; consumers are willing to pay more, especially if the service is enhanced to satisfy increasing consumer demand. Unfortunately, existing price caps interfere with the company's ability to make product improvements and service enhancements, and compromises the ability of the company to accelerate debt restructurings and save money.

CONCLUSION

While I am somewhat optimistic that today's FCC is capable of restoring the public trust, I remain somewhat skeptical the FCC will take the necessary steps to remedy the damage they caused by delaying the satellite radio merger for 17 months and imposing mandatory sanctions under the cloak of 'voluntary commitments'. The FCC was right to approve the satellite radio merger, but wrong for holding the companies and their shareholders hostage for 17 months and forcing them to make 'voluntary commitments' before the Commission would grant authority to consolidate. It is shameful the FCC would act in such a way, even more so that Congress tolerates it; I'm surprised the DOJ hasn't already intervened and done something to remedy the FCC's unjustifiable actions.

The satellite radio price cap commitment serves no legitimate purpose when Sirius XM competes in a marketplace rife with free services provided by other competitors; without mandating price caps for all market participants, the FCC should avoid targeting specific companies for price caps since doing so enables sophisticated financial institutions to take financial advantage of the company and its shareholders. Sirius XM has satisfied every obligation imposed upon them, voluntarily or otherwise. The company has honored their commitments to: pricing, programming, packages, interoperable receivers and open access for consumer devices. As I recall, the company consented to a 'voluntary' price cap on various retail subscription packages for a period of three years, but never consented to the FCC mandating retail subscription fees in perpetuity; the ongoing review language in the final order was the Commission's doing, and it was highly improper.

The public doesn't want the FCC to impose harmful price caps on companies that need growth revenue to improve products and services the public wants to purchase; doing so artificially enriches sophisticated financial institutions and their counterparties who opportunistically exploit these over-reaching regulatory actions for personal gain, thereby depriving the company of benefits associated with their contribution to the marketplace and depriving shareholders the benefit of their investment. In simple terms, continuing this price cap scheme enables banks to continue stealing more money from the company and their shareholders, and interferes with free market principles that would encourage the company to continue improving the service and thereby adding value to subscription packages provided to consumers. Perpetual price caps are not consistent with sound telecommunication policy in a free market capitalist society, especially when the company targeted for price caps has a subscription based revenue model and is competing against 'free'. The same principles are true when evaluating the legitimacy of regulators dictating the number of channels the company provides, the content on those channels, and the artificial need to divest bandwidth for leasing to qualifying entities.

Enough is enough already. Let the price caps expire and allow Sirius XM to compete on a level playing field without the FCC tying the company's hands and blindfolding them in the ring of competitors, including those competitors who offer services for free. Imposing mandatory pricing schemes upon Sirius XM while refusing to impose the same pricing schemes on other competitors is not only wrong, its scandalous. What makes the FCC think satellite radio deserves mandatory price controls, while the cable, phone and iPod companies don't?