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March 3, 2011

VIA ECFS

Mr. William Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Consolidated Application for Authority to Transfer Control of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc., MB Docket No. 07-57

Dear Mr. Lake:

We write as a follow up to the February 24, 2011 correspondence that we submitted to the Media Bureau of the Federal Communications Commission in the above-referenced proceeding. In that correspondence, we made reference to certain documents that have been filed under seal with the federal district court for the Southern District of New York in an action entitled *Blessing v. Sirius XM Radio Inc.*, (the “*Blessing* action”) and stated:

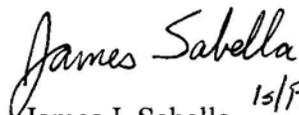
...we believe that the Media Bureau would be aided by having access to the papers and discovery record submitted to the Court in the *Blessing* action and have sought Sirius XM’s concurrence in making the documents submitted to the Court public.

In the aftermath of our submission to the FCC, counsel representing Sirius XM Radio has corresponded with us on March 1, 2011 (a copy of such correspondence is attached as Appendix A to this letter) and stated their opposition to making documents available to the Commission’s Media Bureau. While not denying that documents relevant to the Media Bureau’s inquiry presently are filed under seal, counsel for Sirius XM asserts that “whether or not any of the papers that the parties have filed under seal in the District Court become” unsealed, “plaintiffs are and will continue to be ‘unable to share’ (them) with the FCC...”

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Out of an abundance of caution as it relates to compliance with the *Blessing* Court's protective order, and in recognition of Sirius XM's position that such documents may not be "shared" (even if they become matters of public record), we do not currently envision providing a submission of underlying discovery materials from the *Blessing* action to the FCC Media Bureau. Notwithstanding the foregoing, we invite you to review the public filings in connection with this matter, and we reiterate our earlier position that the Media Bureau "would be aided by having access to the papers and discovery record." We will continue in our efforts to make a significant portion of those materials matters of public record. Although we will not share any such materials with the Bureau, we will notify you in the event that any of the sealed documents become matters of public record.

Respectfully submitted,


James J. Sabella ^{1s/PFN}
Grant & Eisenhofer P.A.


Christopher B. Hall ^{1s/PFN}
Cook, Hall & Lampros, LLP


Paul F. Novak
Milberg LLP

cc: Marcia Glauberman

Enclosure

PFN:ga

Appendix A

JONES DAY

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March 1, 2011

BY E-MAIL

James J. Sabella
Grant & Eisenhofer, P.A.
485 Lexington Avenue, 29th Floor
New York, New York 10017

Re: *Blessing v. Sirius XM Radio Inc.*, No. 1:09-cv-10035(HB)(RLE) (S.D.N.Y.)

Dear Mr. Sabella:

We write in further response to plaintiffs' attempt to unseal certain portions of the record that have been filed under seal by both plaintiffs and Sirius XM in accordance with the Protective Order that governs this action.

We have recently become aware that, on February 24, 2011, plaintiffs wrote a letter to the Federal Communications Commission in which plaintiffs' counsel stated their plan to "share" with the FCC Sirius XM's confidential documents and other documents that are currently filed under seal in the District Court. Plaintiffs represented that they would submit these documents to the FCC in the "near future" after "such documents become unsealed." Any such submission, as we understand plaintiffs' plan, would lead to Sirius XM's documents and information being placed on the FCC's public record.

Plaintiffs' February 24 letter exposes plaintiffs' effort to place on the FCC's public record copies of documents and other information that Sirius XM has disclosed to plaintiffs in this action. The Protective Order that plaintiffs themselves asked Judge Baer to enter, however, forbids plaintiffs from doing so. Under it, all information or documents disclosed by Sirius XM in this action must be used solely in this action and cannot be supplied to the FCC in connection with its regulatory proceeding—regardless of whether such material has been designated confidential or has been filed under seal. *See* Protective Order ¶ 4 ("All information or documents disclosed in this Action, whether or not containing Confidential or Highly Confidential Information, shall be used for purposes of preparation for trial, pretrial proceedings and trial of this Action and not in connection with any other litigation or judicial or regulatory proceeding or for any business, commercial, competitive, personal or other purpose.").

Accordingly, plaintiffs are and will continue to be "unable to share" with the FCC any papers filed under seal in the District Court and all other material disclosed to plaintiffs in this action by Sirius XM. This is true whether or not any of the papers that the parties have filed under seal become accessible in this action at some point in the future. Further, the plain terms

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of the Protective Order *required* plaintiffs and Sirius XM to submit under seal any material designated confidential. *See* Protective Order ¶ 5 (“If any party wishes to submit Confidential Information to the Court, the party shall, unless directed by the Court to do otherwise, submit such Confidential Information ‘under seal’ . . .”).

We are aware that there are, and we will identify by the end of this week, certain exhibits filed under seal by plaintiffs—and to a lesser extent by Sirius XM—that were either not designated confidential or that Sirius XM has now concluded do not contain Sirius XM’s confidential information. After conferring with plaintiffs concerning such material, we will be amenable to re-filing that material on the public docket in this action, along with appropriately redacted briefs. The Protective Order, however, will continue to prohibit plaintiffs and their counsel from submitting to the FCC any information or documents disclosed by Sirius XM to plaintiffs in this action—regardless of whether it remains under seal.

Sincerely,

A handwritten signature in cursive script that reads "Todd R. Geremia". The signature is written in black ink and is positioned above the printed name.

Todd R. Geremia