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May 1, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20445

RE: *Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc.*, MB Docket No. 07–57.

Dear Chairman Martin:

We write concerning the Federal Communication Commission's (Commission) consideration of the proposed merger of XM Satellite Radio (XM) and Sirius Satellite Radio (Sirius). We ask that this letter be made part of the public record in the above-referenced proceeding.

The Commission's review of a proposed merger is not confined to simple economic analysis of the transaction. The Commission has a unique role in reviewing proposed mergers because it is expressly directed to consider the broad public interest, in addition to other factors, when weighing any proposed license transfer. Section 310(d) of the Communications Act (the Act) states that the Commission may only approve license transfers when the "public interest, convenience and necessity will be served thereby" (47 U.S.C. 310(d)). Section 303(r) of the Act expressly empowers the Commission to "prescribe such restrictions and conditions" as may be necessary to carry out the Act, including the requirement that license transfers be in the public interest (47 U.S.C. 303(r)).

We are not taking a position at this time on whether the Commission should approve the merger of XM and Sirius. If the Commission decides to approve the license transfer, however, we believe the public interest requires it to take concrete steps to protect consumers.

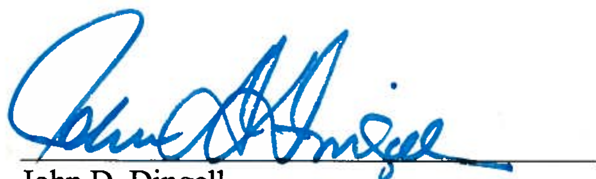
First, the Commission should require the merged entity to adhere, at a minimum, to the pricing constraints that XM and Sirius have already submitted to the Commission. Such a condition would ensure that a combined entity does not take advantage of consumers by leveraging its position as sole provider of satellite radio services by raising prices.

Second, the Commission should require the merged company to permit any device manufacturer to develop equipment that can deliver the company's satellite radio service. Device manufacturers should also be permitted to incorporate in satellite radio receivers any other technology that would not result in harmful interference with the merged company's network, including hybrid digital (HD) radio technology, iPod ports, Internet connectivity, or other technology. This principle of openness would serve to promote competition, protect consumers, and spur technological innovation.

In addition, we believe it is not enough simply to require the open development of satellite radio devices. The Commission must also ensure that consumers have unfettered access to these devices. To that end, the merged company should be prohibited from preventing such devices, and any features such devices might contain, from reaching consumers, through exclusive contracts or otherwise. It would be contrary to the public interest, for example, to permit the merged company to bar HD radio chips or iPod compatibility from inclusion in a manufacturer's satellite radio device, whether that device is freestanding or installed in an automobile.

Thank you for your consideration.

Sincerely,



John D. Dingell
Chairman

Edward J. Markey
Chairman
Subcommittee on Telecommunications
and the Internet

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Telecommunications and the Internet