Congress of the United States
Washington, DC 20515

July 15, 2008

The Honorable Kevin J. Martin
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Mr. Chairman:

I write with respect to the proposed merger of Sirius and XM Satellite Radio. I request that this letter be made part of the public record in the above-referenced proceeding.

The companies in question are requesting that the Commission agree to the consolidation of the only two providers in the Satellite Digital Audio Radio Service ("SDARS") market. I believe that such an extraordinary request compels the Commission to adopt several extraordinary conditions if it wishes to approve the merger. In my view, without meaningful, enforceable conditions this proposed merger should be blocked as inconsistent with the public interest.

First, I believe the Commission should take immediate steps to enforce its previous requirement for interoperable receivers. As you know, during its antitrust review the Department of Justice relied, in part, upon the failure of the Commission to enforce this rule in order to justify approval of the merger. This fact should give great pause to all Commissioners when reflecting upon the marketplace as it has developed, the Commission's own unintended role in that development, and the rationale offered by the companies for the pending merger. The Commission has a duty to see that its previous rule, as well as others, are no longer ignored and will be effectively implemented.

In addition, in light of supplementary information added to the record since House Energy and Commerce Committee Chairman John Dingell (D-MI) and I wrote to you with respect to open receiver devices and prohibitions against exclusive equipment deals, I believe the Commission now needs to go further. It is likely that over time a combined XM-Sirius will not remain largely commercial free, but instead will air more national commercial advertisements. Such a trend will undoubtedly affect the viability of free, over-the-air radio stations in many markets. This would be similar to what occurred during the development of cable television when cable operators initially did not air commercial advertisements but later supplemented revenue from subscription fees by airing such commercials. In short, if the Commission is going to countenance the merger of the two existing satellite radio companies, I believe that terrestrial HD radio technology should be required in all new satellite radio receivers as a condition of the merger. Only through such a mandate will the Commission adequately ensure that competition in digital radio services is as robust as possible and that free, over-the-air radio remains a vibrant marketplace alternative for consumers well into the future.

In order to safeguard consumer welfare with respect to pricing, I believe the Commission should go further as well. I believe the proposed three-year restriction on price hikes should be doubled to six years.

To ensure that diverse, noncommercial voices, including public radio, maintain an important place in our national media mix, the Commission is correct to insist that a combined entity set aside capacity for noncommercial programmers. However, given that the merger will result in the combined company possessing hundreds of channels, significant spectrum, and no alternatives through which other noncommercial programming voices can seek access to a national audience in the SDARS marketplace, the suggestion to set aside only twelve channels for such use appears inadequate. In addition, I believe the set-aside must be expressed and established as a percentage of total capacity rather than specifying a set number of channels so that advances in digital compression and service offerings do not diminish the impact of the set-aside. Moreover, to the extent that the Commission can also find an appropriate mechanism to foster diversity of ownership in a financially viable way in the commercial context, as part of this merger and elsewhere, I encourage the Commission to do so.

Finally, the Commission should take this opportunity to address and achieve progress on the issue of SDARS terrestrial repeaters, which have long been operating under special temporary authority. As you know, the Commission has a rulemaking open to address interference concerns with Wireless Communications Service ("WCS") licensees. The WCS spectrum holds much promise for deployment of advanced broadband services and completing the pending rulemaking quickly to mitigate interference issues will assist in realizing the potential of this allocation.

Thank you for your time and attention to this matter.

Sincerely,

Edward J. Markey

Edward J. Markey
Chairman
House Subcommittee on
Telecommunications and the Internet

EJM/cc