National Association of
NAB
BROADCASTERS®

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The Honorable John Conyers
United States House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Conyers:

Thank you again for the opportunity to participate in the House Anti-Trust Task Force hearing on the proposed merger of XM Satellite Radio and Sirius Satellite Radio. In reflecting on our discussion, I thought there were a few issues that warranted further discussion.

1. *Do local broadcasters compete with XM and Sirius?*

No, not in the relevant national market for deciding whether the merger should be approved. The basic characteristics of satellite radio are unique. XM and Sirius offer a pre-packaged bundle of national, mobile, digital radio channels. Local radio broadcasters do not offer a large bundle of programming, nor can they cross-subsidize hundreds of niche programs to reach specific audiences.

A local radio station's programming is not a reasonable alternative to the array of services offered by XM or Sirius. For example, although WDMK-FM in Mt. Clemens delivers local outstanding news and entertainment, no educated consumer would consider this local station's programming a comparable product to Sirius' 133 channels or XM's 170 channels. Also, all of XM and Sirius' channels are heard nationwide, while local radio stations can only broadcast within their FCC-defined market. The national availability of satellite radio sets it apart from terrestrial radio.

2. *If broadcasters do not compete with XM and Sirius, why is NAB opposed to the merger?*

Because XM and Sirius do compete in the local markets of terrestrial broadcasters. Simply put, every person who listens to satellite radio is one person not listening to a local radio station, which affects a station's ratings and, in turn, ad revenues.

Competition between satellite and terrestrial radio is only one-way: radio stations are not players in the national market for mobile, bundled, digital satellite radio services, but at the same time, XM and Sirius definitely impact the business of broadcasters in local markets.

3. ***Do any other products or services compete with XM and Sirius?***

No, not enough to impact the satellite radio market. iPods only allow consumers to store and play music from their own collection. Internet radio and cell phone music do not offer comparable sound quality, and neither is convenient to access in cars. Also, the new rate scheme recently approved by the U.S. Copyright Royalty Board will make Internet streaming too expensive for many, if not most, radio stations to provide. HD radio stations are still new, and will never be available nationwide. No other product resembles satellite radio in terms of quality, price, and delivery method. Some may offer one or two parallel features, but this kind of "bank shot" competition has never worked to restrain the behavior of dominant market players in other industries.

Also, what would be the impact of Mr. Karmazin's argument that satellite radio is just another option among all of the above? Could one company purchase every radio station in a market, or the entire country for that matter? Could Apple Inc. acquire a merged XM-Sirius? Mr. Karmazin's view of the market does not hold water when taken to its logical conclusion.

4. ***What are broadcasters' specific concerns?***

A united XM-Sirius will be able to exercise monopoly control over its prices and programming. It is no coincidence that XM and Sirius currently charge the same $12.95 per month. Also, XM and Sirius will no longer need to compete with each other for exclusive content or to develop superior equipment.

A combined XM-Sirius also will be able to offer money-losing products like a low-cost a la carte package of channels, or charge predatory advertising rates, and offset the lost revenue with the monopoly rents it can charge for its national, mobile radio services. The impact of these and similar monopolistic activities would be devastating for local broadcasters.

5. ***Would a merger be good public policy?***

No, it would reverse FCC policy, violate both the 1996 Telecommunications Act and anti-trust principles, and reward bad actors for poor decision-making. First, when the FCC created satellite radio in 1997, it foresaw the risks of a monopoly by specifically licensing multiple providers to ensure "intra-market" competition, and going-forward, preventing one satellite provider from ever acquiring control of the other. Second, a merger would violate congressional policy favoring competition over regulation, as expressed in the 1996 Act, since numerous restrictions would be needed to constrain a united XM-Sirius' monopolistic impulses. Third, only a few years ago the FCC rejected the proposed DirecTV-EchoStar merger as anti-competitive, and that situation was less problematic than XM-Sirius, as the FCC viewed the relevant market there to include three competitors (DirecTV, EchoStar and cable), while here, only XM and Sirius along occupy the relevant market. Fourth, most of XM and Sirius' wounds are self-inflicted, as both took on tremendous debt to launch their satellites and secure exclusive programming deals.

Finally, XM and Sirius' problems are nothing more than bad business decisions by bad actors. In only a few years, both have produced a long record of FCC rules infractions. XM recently confessed to operating at least 142 terrestrial repeaters at unauthorized locations and more than 221 repeaters at unlawful power levels. XM also revealed the operation of at least 19 repeaters without any FCC authorization at all, and to our knowledge, continues to operate at least four unauthorized repeaters. XM is currently under investigation by the FCC for these breaches. Sirius, for its part, constructed at least 11 repeaters at unauthorized locations, including one in Michigan that is 67 miles away from its reported location. Both XM and Sirius also continue to operate receivers that cause unlawful interference on FM frequencies, despite numerous complaints from the public. Moreover, of particular interest to consumers, XM and Sirius have not complied with the FCC's 1997 mandate to develop a customer-friendly dual receiver.

6. ***Would a merger make economic sense?***

No, because XM and Sirius can deliver all the benefits they propose whether they merge or not. If XM and Sirius are worried about acquiring new subscribers, there is nothing to stop them from reducing rates right now to jump start enrollments. Similarly, if there is consumer demand for access to both baseball and football, there is nothing to stop XM and Sirius from opening up their exclusive contracts with Major League Baseball and the NFL.

Accordingly, XM and Sirius are not credible candidates for merger, not deserving of a government bailout for their bad business decisions, and definitely not trustworthy stewards of monopoly control over the market for national, mobile, digital radio service. Local broadcasters call on the Anti-Trust Task Force to protect consumers, and protect competition, by opposing a merger of the nation's only two satellite radio providers.

Sincerely,

David K. Rehr

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