

June 5, 2006

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Chairman:

NAB continues to be concerned about the unequal regulatory treatment between free over-the-air and satellite radio. This disparate treatment appears increasingly unjustifiable, particularly in light of the availability of satellite radio content to nonsubscribers, including members of the public who object to their receipt of sexually explicit and profane satellite content. NAB urges the FCC to open an investigation to examine the issues raised by free access to satellite radio programming, and to consider whether the inequitable regulatory treatment of satellite and broadcast radio should continue.

As documented by the Baltimore Sun, Boston Globe and other publications, interference from satellite radio devices is causing “bleed through” so that nonsubscribers listening to FM radio, especially in their cars, receive satellite radio programming via FM frequencies, at least for limited periods of time. According to some reports, this interference can affect car radios at distances of one quarter mile or more from the satellite radio device. Consumers listening to National Public Radio and Christian programming on noncommercial stations at the lower end of the FM spectrum have been particularly subject to the receipt of unwelcome satellite programming that could clearly fall within the FCC’s definition of indecent material. NAB member radio stations have forwarded to the FCC numerous complaints those stations received from their listeners. As the attached sample of these complaints shows, radio listeners are upset that the broadcast programming of their choice is being interrupted, especially if the unwanted programming is sexually explicit or contains profane language. Some of the complaining listeners have stated that they no longer listen to the FM stations of their choice when children are in their cars due to concerns about receiving the undesired satellite programming.

Beyond causing annoyance to their listeners, radio broadcasters are concerned that this interference problem may subject them to indecency complaints and investigations. If sexually explicit content from satellite radio is heard by listeners over broadcast frequencies as the result of signal bleed problems, then broadcasters – who alone, at this time, are the object of strict content regulation – may be forced to prove themselves innocent of broadcasting the indecent material actually aired by Sirius or XM. As I am sure you would agree, this would be patently unfair to broadcast stations.

The FCC's current policy toward satellite radio is even more inequitable when one considers that, in addition to unwanted receipt of satellite radio programming due to interference, satellite radio content is available to nonsubscribers in other contexts as well. For example, satellite radios are available in many cars from major rental car companies, including Hertz, Avis, Alamo, National and Zipcar. XM and Sirius also have arrangements with numerous American, European and Japanese automobile manufacturers. Satellite radios are installed in these manufacturers' new cars, and the purchasers of these cars receive satellite radio programming for a number of months without subscribing to XM or Sirius.

To the extent that satellite radio service is now received free by nonsubscribers, this undermines the frequently-made argument that satellite radio should be regulated very differently than traditional broadcast radio simply because satellite is a subscription service. Given that satellite radio content is in fact available to and received by nonsubscribers, NAB requests that the FCC consider the issues raised by free access to satellite radio programming.

With regard to the question of indecency specifically, NAB notes that broadcast content regulation has been justified, at least in part, on the interest in "protect[ing] the listener or viewer from unexpected program content."¹ This interest is especially strong if children are involved.² As described above and in the attached complaints, members of the public today are disturbed about receiving "unexpected" sexually explicit and profane satellite program content, particularly if children are listening. In light of this problem and the availability of satellite radio programming on a nonsubscription basis in other contexts, merely asserting that "subscription-based services do not call into play the issue of indecency" no longer seems adequate to justify the inequitable regulatory treatment of free over-the-air and satellite radio.³

NAB looks forward to discussing these and other issues of concern to local, free over-the-air broadcasters with you and your fellow Commissioners. Please let us know what we can do to assist the FCC in its consideration of these or other matters.

Best wishes.

Sincerely,



David K. Rehr

¹ *FCC v. Pacifica Foundation*, 438 U.S. 726, 748-49 (1978).

² See *id.* at 749-50 (discussing children's accessibility to programming that could "enlarge[] a child's vocabulary in an instant").

³ Letter from W. Kenneth Ferree, Chief, Media Bureau, DA 04-3907 (Dec. 15, 2004), quoting *Litigation Recovery Trust*, 17 FCC Rcd 21852, 21856 (2002).