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March 22, 2007

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

Dear Mr. Chairman:

On March 20, Sirius Satellite Radio Inc. (“Sirius”) and XM Satellite Radio Holdings Inc. (“XM”) filed applications for authority to transfer control of their FCC authorizations in connection with their plan of merger announced on February 19, 2007. Local radio broadcasters oppose this proposed merger because it violates the antitrust laws and established FCC rules and policies requiring that such transactions serve the public interest, convenience and necessity. If approved, the merger will create a government-sanctioned satellite radio monopoly. The merged entity will control all of the spectrum now allocated for satellite radio in the United States and coordinated internationally for such use, thereby barring any meaningful competitive entry within the foreseeable future. This merger to monopoly in satellite radio will create an opportunity for widespread abuse of monopoly power to the detriment of consumers, audio content providers, national and regional radio networks, and free over-the-air local radio stations.

As foreseen by the Commission, competition between two satellite radio providers has served consumers well. Each provider has differentiated itself with unique programming and equipment offerings. The loss of competition will halt further innovations in satellite radio service and technology to the detriment of the public.

Sirius and XM tout certain “merger-specific public interest benefits.” Without exception, however, all of the alleged benefits would be more likely to occur without the merger in an environment of continued competition. Creation of a satellite radio monopoly is certainly not necessary to realize such benefits.

For example, both of the merger parties are free today to unbundle their channel offerings for subscribers at any time. Unbundling is not a merger-specific benefit. Similarly, the offer of a smaller programming package for less than \$12.95 per month is also possible today without a merger.

Moreover, the repackaging of channels from both services into one offering is an illusory consumer benefit because it will result in the elimination of existing channels or formats. The loss of competition in satellite radio ultimately will reduce consumer choice. Such changes and reductions in overall program availability are not merger-specific benefits, and, in the long run, will decrease program diversity.

The hollow promise by Sirius and XM of reduced prices for less overall satellite radio programming is simply not a consumer benefit. Any price concessions offered by the merger parties will clearly be temporary in nature, unlike their monopoly power, which inevitably will lead to price *increases* in the future. As recognized in the 1996 Telecommunications Act and countless Commission decisions, continued competition between two providers is the strongest possible constraint on prices. Moreover, as NAB has previously noted, the fact that XM and Sirius have a long track record of failing to follow FCC requirements casts grave doubts on whether the government could rely on any such promise.

Indeed, one must question whether there is any credible justification for this merger. Sirius and XM claim that changes in the mobile audio marketplace since 1997, when the Commission unanimously rejected a satellite radio monopoly, *alone* justify the wholesale reversal of the Commission's rules requiring competition in satellite radio. However, this is just not so, even under the novel and incorrect definition of the relevant market they propose for purposes of merger review, which is intended to obscure the resulting monopoly in satellite radio. It is simply wrong to equate Internet radio, local AM, FM, and HD radio, MP3 devices, and iPods with satellite radio. While some of these devices may provide one or two parallel features, none resembles XM or Sirius in terms of programming breadth, price, reach and delivery mode. No other audio service is an effective substitute for a national multichannel mobile audio programming service. They cannot be expected to restrain the monopolistic impulses of a united XM-Sirius.

As the Commission recognized when authorizing satellite radio in 1997, national, multi-channel satellite radio would offer services that local radio "inherently cannot provide." There is no doubt that local radio stations compete with other media for the attention of listeners. However, local radio broadcasters do not have a national footprint. Even in the largest urban markets, they cannot offer half as many channels collectively as either one of the current satellite radio licensees, let alone the two combined. Moreover, satellite radio offers a significant amount of content not permitted on broadcast media. The Commission correctly rejected a satellite radio monopoly before the spectrum auction, and it forbade one licensee from ever acquiring the other after the auction. Those restrictions remain in effect today and continue to be justified.

Undoubtedly, a satellite monopoly will cause competitive harm. A satellite radio monopoly would use its monopoly profits from subscription revenue to internally cross-subsidize new offerings and to bolster the satellite radio advance toward advertising revenue from national, regional and local sources. Cross-subsidization will open the door to predatory pricing in advertising markets. That type of unfair competition will harm local radio stations, but more

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importantly, it will harm the public by eroding the valuable, advertiser-supported programming and services provided by local stations.

A satellite radio monopoly will also thwart program access by other media, especially regional and national radio networks. Exclusivity is already the hallmark of satellite radio programming arrangements. With monopoly power, satellite radio will exclude other media from access to premium sports and entertainment programming. Local stations will suffer and the audiences they now serve will have no choice but to subscribe to satellite radio for certain programming.

Just as the Commission previously rejected a merger of the nation's only two direct broadcast television service providers, NAB urges you to recognize the value of continued competition in satellite radio and the adverse consequences of a satellite radio monopoly. The Commission should gather the detailed facts necessary to evaluate the impact of this proposed merger on the public interest. In particular, the Commission should make a detailed and specific request for information from the merger parties and make such information available to all interested parties.

NAB intends to submit a Petition to Deny the proposed merger at the appropriate time. Until such time, 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.

Sincerely,



David K. Rehr

cc: Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell  
Mr. Samuel Feder, General Counsel  
Ms. Monica Desai, Chief, Media Bureau  
Ms. Helen Domenici, Chief, International Bureau

## **CERTIFICATE OF SERVICE**

I, Yvonne Hughes, hereby certify that I have caused copies of the foregoing letter to be served via U.S. Mail on this 22<sup>nd</sup> day of March 2007, on the following parties listed below:

Mr. Patrick L. Donnelly  
Sirius Satellite Radio Inc.  
1221 Avenue of the Americas  
36<sup>th</sup> Floor  
New York, NY 10020

Ms. Dara Altman  
XM Satellite Radio Holdings Inc.  
1500 Eckington Place, NE  
Washington, DC 20002