

Competition Belied: Opposition To The Proposed Sirius-XM Merger

The Carmel Group's Ping-Pong # 2 and Program Competition Charts

A 2nd Study, Published In October 2007

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The Carmel Group was retained to review the proposed merger by the National Association of Broadcasters, given our company's lengthy history of providing independent and objective analysis of global telecommunications issues.

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“We will give people more choice than they had before and lower prices and less confusion.”
- Sirius CEO, Mel Karmazin, on February 28, 2007, before the U.S. House Judiciary Committee
Antitrust Task Force

Executive Summary

- The two multi-page charts below were created by The Carmel Group in October 2007, eight months following the mid-February 2007 announcement of the proposed merger by the two U.S. satellite radio duopolists, Sirius Satellite Radio (Sirius) and XM Satellite Radio (XM). These two charts indicate clearly and in great detail both 1) the direct competition that exists between Sirius and XM, and 2) the true lack of competition that exists between these two players and the rest of the radio marketplace. Thus, from a competitive point of view, the resulting message remains the same as during the inception of the satellite radio business during the mid-1990s: ***The competition between Sirius and XM is a critical matter for artists, performers, agents and technicians who work for and with these two entities. Many will lose their jobs in a merger. Perhaps more important, continued competition is critical for consumers. These two charts show that without this continued competition, consumers will not be able to obtain substitutable competition from competitors within the all-important vehicle; and importantly, choice, competitive pricing restraints and service will undoubtedly -- and significantly -- suffer.***
- This study is part two of a review of this Sirius-XM merger completed by The Carmel Group on behalf of the National Association of Broadcasters (NAB). Both studies are in opposition to the proposed merger of Sirius and XM, which was filed before the Federal Communications Commission (FCC) in March 2007. The Carmel Group has a long history of opposing anti-competitive mergers such as the proposed Sirius-XM merger.¹
- The purpose of the “Exclusive Programming” chart on page 10 is to indicate the number of programs and channels that are offered exclusively for vehicle bound audiences on either one of Sirius or XM. The nature of this exclusivity – which Sirius and XM fight over vigorously, presumably for the benefit of existing and would-be subscribers – would be lost if the government permits this merger-to-monopoly. More importantly, if any one of these exclusive channels or programs is eliminated by the new monopolist, a subscriber will not be able to replicate or substitute that program or channel in any other nationwide form. This includes AM, FM, HD radio, Internet radio, music-to-cell phones and MP3 devices. For example, for the hundreds of thousands of truckers who subscribe to Sirius or XM today (or both), if the new single company is created, and if that company decides to eliminate any one or many of these exclusive programs or channels included in this chart, those truckers – and every other subscriber – will have nowhere else to obtain that national audio content. Again, this includes

¹ The Carmel Group’s first study was dated April 6, 2007, is titled “The Proposed Sirius-XM Merger - Higher Prices, Less Content and a Monopoly: Good For The Consumer?” and can be accessed by going to the Carmel Group’s website at www.carmelgroup.com. In addition, The Carmel Group was asked to investigate, research, analyze and prepare the first competitive satellite “Ping-Pong” chart, which was used by the government in its review of and opposition to the proposed EchoStar-DirecTV merger in 2002.

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AM, FM, HD radio, Internet radio, music-to-cell phones and MP3 devices. Moreover, this message completely belies the “competition” argument currently maintained by Sirius’ Mr. Karmazin, i.e., that XM and Sirius suffer effective competition today from MP3s, music-to-cell phones, Internet radio, HD radio, and AM/FM radio. ***Put shortly, If you can’t obtain huge swaths of channels and programming anywhere else, how can AM, FM, HD radio, Internet radio, music-to-cell phones and MP3 devices be labeled competitive to satellite radio?***

- Next, the purpose of “Ping-Pong # 2” chart is to further and more completely outline the announcements of XM and Sirius and how those announcements reflect the two companies’ direct competition with one another. After reviewing each company’s press releases and other announcements during the 1998-2007 timeframe, The Carmel Group was able to compile a sampling of 50 sets of announcements, ranging from sports programming and automobile partnerships, to consumer promotions and consumer electronic product launches. The announcements were organized, compared, and then associated with a like announcement that indicated a clear and direct competitive response, e.g., an XM automobile partnership announcement with Audi on July 15 2003, was paired with a similar announcement made by Sirius on the same day. Or, an XM announcement with Avis rental cars is paired with an announcement from Sirius with Hertz rental cars one month later. Indeed, in the chart immediately below, ***it is most interesting to note that despite the merger plans, nine – more than one per month -- of the ping-pongs involve post-merger announcement competitive responses***, each underlined and highlighted in red.²
- On average, both XM and Sirius responded to competitive programming and product announcements within a mere 3.3 months.³ Sirius’ and XM’s competitive announcements ranged from some being made on the same day, to a handful made several years later. Most were made within weeks and, at most, months, of one another. Of interest in the “Sirius vs. XM Ping-Pong # 2 Chart: Competitive Actions/Reactions” chart below is the fact that from 2000 to late 2007, competition between XM and Sirius, based on their reactive announcements, has taken place within the following main categories:

• OEM & Automobile Partnerships:	32%
• Sport Programming:	25%
• Consumer Electronics:	11%
• Retail Promotions:	12%
• Talk Shows:	6%
• Religious, Trucking, Politics, Traffic & Weather, Other:	14%

² Worth also noting (although a competitive response from XM has not yet surfaced) is the late summer/fall 2007 announcement and commencement of a program with Chrysler involving the installation of video screens and the delivery of Sirius video programming to the back seat screens in certain Chrysler van models. Few would argue that this program would *never* have been activated this early – if at all – were it not for the inherent strength of the competitive relationship that exists between XM and Sirius.

³ This calculus “of average competitive response time” does not include the five-year passage of time involving both a) the replacement of a satellite by Sirius (in response to a superior satellite deployment by XM), and b) the substitution of Sirius for XM as the exclusive provider of NASCAR programming. These two competitive responses were not included in this calculus because they so skewed the overall calculation and the rest of the entries, most of which fell into the range of less than three months. Adding these two examples above into the calculus, the average direct competitive response time rose to 5.4 months.

Sirius vs. XM Ping-Pong Chart # 2: Competitive Actions/Reactions

Sirius vs. XM Ping-Pong Chart: Competitive Actions and Reactions			
TYPE OF ACTION	ACTION	Time Lapse	REACTION
<i>Satellite Plans</i>	January 8, 2001 XM launches two geostationary orbiting satellites manufactured by Boeing.	5 years later	June 8, 2006 Sirius, recognizing the superiority of signals delivered from a geostationary satellite, purchases its first geostationary satellite. Sirius initially launched three elliptical orbiting satellites from Loral in 2000.
<i>Retail Promotion</i>	December 2002 XM launches 1st portable satellite radio.	5 months later	May 2003 Sirius introduces its 1st portable device.
<i>Retail Promotion</i>	April 10, 2003 XM offers a "family discount." XM subscribers can receive a discounted rate of \$6.99 per radio per month.	41 days later	May 21, 2003 Sirius offers a similar "Preferred Plan," whereby an additional subscription costs \$6.99/month extra.
<i>Retail Promotion</i>	September 3, 2003 XM launches sweepstakes for new Cadillac SRX.	19 days later	September 22, 2003 Sirius offers sweepstakes with \$1 million prize.
<i>Talk Show</i>	August 05, 2004 XM announces "shock jocks" <i>Opie & Anthony</i> will return to its service.	2 months later	October 6, 2004 Sirius signs \$500+ million blockbuster deal with "shock jock" Howard Stern.
<i>Talk Show</i>	April 2005 Sirius announces exclusive Martha Stewart channel.	9 months later	February 2006 XM signs exclusive deal with Oprah Winfrey.

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<i>Retail Promotion</i>	November 7, 2005 Sirius launches holiday promotion with \$50 mail-in rebate.	7 days later	November 14, 2005 XM launches marketing campaign highlighting price and content.
<i>Rental Car Installation</i>	December 9, 2002 XM signs deal to offer satellite radio nationwide in Avis rental cars	1 month later	January 8, 2003 Sirius offers satellite radio in Hertz rental cars.
<i>Auto manufacturer/dealership installation</i>	January 14, 2003 XM announces agreement with General Motors to expand installation of XM into a total of 44 GM models.	8 days later	January 22, 2003 Sirius announces agreement with Chrysler, Dodge and Jeep dealerships nationwide to install Sirius radios.
<i>Auto manufacturer installation</i>	April 15, 2003 XM announces agreement with Audi to offer XM in nine 2004 models.	The same day	April 15, 2003 Sirius announces agreement with Audi to offer Sirius in new Audi vehicles.
<i>Automobile installation</i>	July 9, 2003 XM announces Infiniti will offer XM as factory- or dealer- installed option on all models.	The same day	July 9, 2003 Sirius announces Infiniti will offer a factory- installed Sirius option for all 2003 models.
<i>Automobile installation</i>	February 2, 2004 XM announces agreement with GM to expand XM radio offerings into more than 50 GM models.	1 day later	February 3, 2004 Sirius announces its radios will be available in GM and Honda vehicles.
<i>Automobile installation</i>	March 8, 2004 XM announces Audi will offer XM on Audi's 2005 A8 and TT models.	The same day	March 8, 2004 Sirius announces its radios will be available on 2005 Audi A8 and TT models.
<i>Automobile installation</i>	April 6, 2004 Sirius and Chrysler announce extensive factory installation program.	1 day later	April 7, 2004 XM and Honda to double production of vehicles factory installed with XM Satellite Radio for 2005 model year.
<i>Automobile installation</i>	July 13, 2004 Sirius and Porsche announce Sirius Satellite Radio offering.	The same day	July 13, 2004 XM and Porsche to offer factory installed XM Radio on three models.

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Rental car installation	July 15, 2004 Sirius and Hertz expand Sirius service in prestige and luxury line vehicles.	5 months later	December 14, 2004 XM announces National and Alamo will launch XM in rental vehicles nationwide.
Automobile installation	March 7, 2005 Sirius announces agreement with Mitsubishi Motors North America.	16 days later	March 23, 2005 XM announces Hyundai will be first automaker to add XM to its full vehicle lineup.
Automobile installation	May 13, 2005 XM-ready Toyota Avalon, Lexus GS 300 & 430 vehicles available at dealerships nationwide.	1 month later	June 13, 2005 Sirius announces it is available nationwide on select Lexus vehicles and Toyota Land Cruiser models.
Automobile installation	November 2, 2005 XM announces exclusive agreement with Nissan North-America for factory installation of XM as an option in its Infiniti and Nissan vehicles	5 & 6 months later	March & April 2006 Sirius announces Volkswagen and Kia have selected it for exclusive installations of factory installed satellite radio.
Automobile installation	January 9, 2006 XM announces exclusive agreement with Lotus Cars USA to install XM on 2006 Elise models.	2 days later	January 11, 2006 Sirius announces exclusive agreement with Rolls Royce to offer its radios as standard equipment on all Rolls-Royce vehicles.
Automobile installation	February 9, 2006 XM announces Subaru will begin offering XM in its vehicles.	The same day	February 9, 2006 Sirius announces Subaru will begin offering Sirius in its vehicles.
Automobile installation	October 30, 2006 Sirius announces exclusive agreement to install its radios in all Bentley vehicles.	The same day	October 30, 2006 XM announces exclusive agreement with Porsche to install its radios in its vehicles.
Automobile installation	December 5, 2006 XM announces agreement with GM to install XM radios in more than 1.8 million 2007 vehicles.	4 months later	<u>April 3, 2007</u> Sirius announces deal with Ford-Lincoln to offer its radios as standard equipment in its vehicles.
Aviation	July 28, 2003 Sirius and Avionics Innovations announce receipt of FAA approval for use of satellite radio in commercial aircraft.	8 months later	March 8, 2004 XM announces FAA approval of deployment of its <i>WX Satellite Weather Service</i> in commercial aircraft.

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Products or equipment launch	September 4, 2003 Sirius and Antex announce first multi-zone satellite radio receiver.	1 month later	October 4, 2003 XM and Delphi announce XM <i>Roady</i> satellite radio receiver available nationwide.
Product launch, portable receivers	January 7, 2004 Sirius adds JVC <i>Plug & Play Radio</i> and Audiovox <i>Portable Boombox</i> to product line-up.	5 months later	January 12, 2004 XM Cambridge Soundworks introduce <i>Playdock XM</i> , first portable audio system for Delphi's XM <i>Roady Radio</i> .
Product launch, plug and play radio	August 4, 2004 XM and Audiovox introduce XR9, plug and play radio.	12 days later	August 16, 2004 Sirius introduces <i>Sportster</i> plug and play radio.
Product launch, receivers	August 16, 2004 Sirius launches "next generation" receiver.	2 days later	August 18, 2004 XM and Delphi introduce <i>SkyFi2</i> , a "next generation" satellite radio receiver.
Product launch, car stereo head units	January 5, 2005 XM and Panasonic announce plans for introduction of 13 XM-ready car stereo head units in 2005.	The same day	January 5, 2005 Sirius announces introduction of " <i>Starmate</i> ," a portable car stereo head unit.
Product launch, hand-held/wearable radio	January 5, 2005 XM expands line of XM2GO model hand-held satellite radios.	8 months later	August 25, 2005 Sirius unveils wearable satellite radio.
Music	October 25, 2005 Sirius Satellite radio launches " <i>E Street Radio</i> ," a 24-hour Springsteen channel.	7 weeks later	December 13, 2005 XM signs Bob Dylan to host weekly radio show.
Music	<u>June 14, 2007</u> XM announces exclusive deal to broadcast Baltimore Symphony for 2007-08 season	13 weeks later	<u>September 20, 2007</u> Sirius announces exclusive deal to deliver <i>Metropolitan Opera Radio</i> programming.
Sports	September 22, 2003 Sirius announces coverage of Major League Baseball Playoffs and World Series.	25 days later	October, 17, 2003 XM announces coverage of 2003 World Series.

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<i>Sports</i>	<p>January 06, 2000 XM announces exclusive multi-year strategic alliance, creating nation's first 24-hour, 7-day-a-week, all-NASCAR radio channel.</p>	5 years later	<p>February 22, 2005 Sirius announces multi-year strategic agreement, for rights to broadcast NASCAR racing and events.</p>
<i>Sports</i>	<p>December 16, 2003 Sirius announces exclusive 7-year agreement to broadcast all NFL games live, nationwide.</p>	10 months later	<p>October 10, 2004 XM announces an exclusive 11-year, \$650 million agreement enabling XM to broadcast games of every Major League Baseball (MLB) team, nationwide.</p>
<i>Sports</i>	<p>November 29, 2004 Sirius adds Barclays English Premier League Soccer to its sports line-up.</p>	6 months Later	<p>April 26, 2005 XM announces it will to broadcast exclusive coverage of World Cup 2006 Soccer Tournament.</p>
<i>Sports</i>	<p>January 19, 2006 XM announces NASCAR superstar Dale Earnhardt, Jr. joins XM to launch XM Show in February 2006.</p>	4 months later	<p>May 19, 2006 Sirius announces NASCAR driver, Tony Stewart, will host exclusive live talk show.</p>
<i>Sports</i>	<p>March 20, 2006 XM announces it will carry FIFA World Cup 2006.</p>	6 months later	<p>September 19, 2006 Sirius and Chelsea Football Club announce exclusive broadcasting agreement.</p> <p>September 22, 2006 Sirius announces it will add UEFA Champions' League Soccer.</p>
<i>Sports</i>	<p>August 1, 2005 XM and U.S. Tennis Association announce multi-year exclusive broadcast and marketing partnership for U.S. Open and U.S. Open series coverage.</p>	13 months later	<p>June 26, 2006 Sirius announces plans to provide live exclusive 2006 Wimbledon Tennis Championship coverage.</p>
<i>Sports</i>	<p>January 29, 2007 Sirius announces NASCAR driver Juan Pablo Montoya speaks weekly to Sirius listeners.</p>	10 days later	<p>February 8, 2007 XM announces NASCAR superstars Jimmie Johnson's and Dale Earnhardt, Jr.'s plans for exclusive shows on XM.</p>
<i>Sports</i>	<p>February 13, 2007 Sirius creates "Fan's Choice" broadcast for 2007 NASCAR Nextel Cup series races.</p>	1 month later	<p><u>March 15, 2007</u> XM announces NASCAR star Michael Waltrip's exclusive show on XM.</p>

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<i>Sports</i>	February 16, 2007 Sirius announces Ricky Rudd to be featured on 'Fan's Choice' broadcast for coming Sunday's Daytona 500 race.	3 months later	<u>May 23, 2007</u> XM provides exclusive satellite radio coverage of the 91 st Indianapolis 500.
<i>Sports</i>	<u>August 21, 2007</u> XM announces college football kick-off with ACC, Big East, Big Ten, Big 12, Pac-10 and SEC game coverage.	8 days later	<u>August 29, 2007</u> Sirius announces kick-off of 2007 college football season coverage.
<i>Talk Show</i>	September 9, 2003 Sirius adds liberal talk-show voice Lynn Samuels to its line-up.	6 months later	March 29, 2004 XM and <i>Air America</i> launch exclusive nationwide progressive talk channel, starring Al Franken, Janeane Garofalo and Chuck D.
<i>Talk Show</i>	July 7, 2004 Sirius expands line-up of talk programming with new conservative channel, <i>Sirius Patriot</i> .	6 months later	January 5, 2005 XM expands 2005 talk programming line-up with Dr. Laura and G. Gordon Liddy.
<i>Trucking</i>	March 3, 2004 Sirius announces Interstate Connections and Sirius team - up to expand distribution into the "heavy truck."	6 months later	September 9, 2004 XM announces " <i>Truckin Bozo</i> " Dale Sommers hosts new exclusive show on XM.
<i>Weather & Traffic</i>	March 26, 2004 Sirius expands traffic and weather information to 20 markets nationwide.	4 months later	July 26, 2004 XM launches 5 more traffic and weather channels for major metropolitan areas.
<i>Religious</i>	April 5, 2005 XM broadcasts live reports from Vatican City and special programs about Pope John Paul II.	2 days later	April 7, 2005 SIRIUS features live coverage of funeral for Pope John Paul II.
<i>Partnership</i>	May 20, 2004 SIRIUS announces partnership to offer satellite radio to millions of <i>Dish Network</i> TV homes.	18 months later	November 15, 2005 XM announces partnership with DirecTV to offer satellite radio to DirecTV subscribers.

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Politics	<u>May 21, 2007</u> XM announces it will launch 1st national radio channel dedicated to the 2008 U.S. presidential election.	2 months later	<u>July 19, 2007</u> Sirius announces host Andrew Wilkow to hit the 2008 campaign trail, talk to next gen voters.
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XM's vs. Sirius' Exclusive Programming Chart

XM's vs. Sirius' Exclusive Programming Chart			
XM Exclusive Programs: Talk & Entertainment	Description:	Sirius Exclusive Programs: Talk & Entertainment	Description:
Oprah & Friends:	Series of talk shows centered around personal development	Martha Stewart Radio	Lifestyle & talk
Oprah's Soul Series		Alexis & Jennifer	(Martha Stewart Radio)
Gayle King		Howard Stern	"Shock Jock"
Bob Greene		Scott Ferrall Show	(Howard Stern Show)
Dr. Mehmet C.		Bubba the Love Sponge	(Howard Stern Show)
Nate Berkus			
Jean Chatzky		Sirius Stars	Current issues talk
Dr. Robin Smith		Sen. Bill Bradley	
Marianne Williamson		Candace Bushnell	
Dr. Maya Angelou		Deepak Chopra	
Peter Walsh		Sonya Fitzpatrick	
Broadminded	Women's Talk Show	Dave Marsh	
Dr. Laura Schlessinger	Women's Talk & Lifestyle	Mary O	
Ron & Fez	Comedy	Jane Pratt	
The Agenda with Joe Solmonese	Lesbian, Gay & Transgender	Judith Regan	
The Bob Edwards Show	Current issues	Richard Simmons	

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XM's Exclusive Programs: Entertainment & Talk Cont.	Description:	Sirius' Exclusive Programs: Entertainment & Talk Cont.	Description:
Opie & Anthony Show	"Shock Jock"	Jay Thomas	
		Barbara Walters	
America Right	Conservative Talk show.	Sirius Patriot	Conservative Talk
Laura Ingraham		Bill Bennett	
Roy Masters		Mike Church	
		Andrew Wilkow	
Air America	Liberal Talk Show	Sirius Left	Liberal Talk
Randi Rhodes		Alex Bennett	
Rachel Maddow		Lynn Samuals	
Lionel		Mike Feder	
		Bill Press	
		Jim Breuer	Raw Dog Comedy
		Pete Dominick	Raw Dog Comedy
		Blue Collar Radio	Comedy
		PJ Walsh	
		Ralphie May	
		Catholic Channel	Religious
		Bob Dunning	
		Fr. Dave Dwyer	
		Edward Cardinal Legan	
		Fr. Paul Keenan	
		Dave & Susan Konig	
		Gus Lloyd	

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XM's Exclusive Programs: Sports	Description:	Sirius' Exclusive Programs: Sports	Description:
Major League Baseball	Baseball	National Football League	Football
National Hockey League	Hockey	Canadian Football League	Football
Indy Racing League	Indy car racing	National Basketball Association	Basketball
Professional Golf Association	Golf	Big East Conference	Football
		Big Ten Conference	Football
Basketball & Beyond with Coach K	Sports talk	South Eastern Conference	Football
60/20 Sports with James Carville & Luke Russert	Sports talk	Notre Dame	Football
Ripkin Baseball	Baseball talk	NCAA March Madness	Basketball
		English Premier League	Soccer
		UEFA Champions League & World Soccer Daily	Soccer
Andretti Green Racing show	Indy Car Racing & Interviews	Lance Armstrong	Sports talk
Michael Waltrip Out loud	NASCAR	Bill Walton	Basketball talk
Dale Jr's Unrestricted	NASCAR	Scott Ferrall	
Jimmie Johnson... "Not What You Expected"	NASCAR	Tony Hawk	
		Bam Margera	Skateboarding
Artist Confidential (Interview & Live Music)			Rap/Hip Hop Channel
		Shade 45	
Classical Confidential		50 Cent	DJ/Host
Artist2Artist	(Conversation & Interview)	DJ Cipha Sounds	
			DJ/Host
Offstage	(Artists DJ music selections)	Eminem	Host
Then...Again...Live...	(Classic Albums Reinvented)	DJ Muggs	DJ/Host
Theme Time Radio Hour with Bob Dylan		DJ Clinton Sparks DJ/Host	
Welcome to Da Chuuch with Big Snoop Dogg	(Rap)	DJ Whoo Kid	DJ/Host
Ludacris' Open Mic	(Rap)	Hip Hop Nation	Rap & Hip Hop Channel
In the Swing Seat with Wynton Marsalis		DJ Premier	DJ/Host
Bill Anderson Visits with the Legends		Outlaw Country	Country Music Channel
Dunk Rider Radio with Trick Daddy	(Rap)	Mojo Nixon	Host

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XM's Exclusive Programs: Music (Cont.)	Description:	Sirius' Exclusive Programs: Music (Cont.)	Description:
Rancid Radio	(Hard Rock)	Shooter Jennings Host	
The Wolfman Jack Show	(Oldies)	Hillbilly Jim	Host
		Totally 70's	70's Music Channel
		Magic Matt Alan	Host
		Barry Williams	Host
		Big 80's	80's Music Channel
		Mark Goodman	Host
		Alan Hunter	Host
		Martha Quinn	Host
		Cousin Brucie	60's Music