National Association of
NAB
BROADCASTERS®

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Mel Karmazin
Chief Executive Officer
Sirius Satellite Radio, Inc.
1221 Avenue of the Americas
New York, NY 10020

Dear Mr. Karmazin:

I was disappointed to hear you refer to the National Association of Broadcasters' (NAB) advocacy efforts to oppose a satellite radio merger as "disgraceful," at the recent Lehman Bros. Worldwide Wireless Conference.[1]

NAB's members and dedicated staff serve the public interest with distinction. In 2005 alone, the broadcasting industry contributed more than $10 billion in community service, aired life-saving reports during Hurricane Katrina and other emergencies, issued numerous Amber Alerts that helped rescue missing and abducted children, and generated support for a myriad of community initiatives. Also, local broadcasters inform and educate the public with countless hours of community-responsive local news and public affairs. NAB is proud to represent the interests of local broadcasters vigorously and in a dignified manner.

Your indictment of NAB's advocacy efforts is misguided. We freely admit to identifying antitrust experts who have examined the proposed merger and determined that it will harm consumers and competition, and compensating these individuals for publishing their conclusions. Numerous other analysts, consumer groups, members of Congress, editorialists and individuals have all reached the same conclusion entirely on their own. Indeed, the Federal Communications Commission's (FCC) formal merger record includes hundreds of letters from members of the public (including many self-described satellite radio subscribers) who oppose the merger, all without any prodding from NAB.

On the other hand, a careful reading of the few comments filed by the organizations in favor of the merger reveals that such support is largely based on empty promises.[2] For example, Sirius and XM have apparently pledged to offer more programming opportunities to particular ethnic

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[1] *Communications Daily*, June 1, 2007, at p. 13.

[2] *See, e.g.*, Letter from Harry Alford, National Black Chamber of Commerce, to Marlene Dortch, Secretary, FCC, MB Docket No. 07-57, April 19, 2007; Letter from Robert G. de Posada, The Latino Coalition, to Marlene Dortch, Secretary, FCC, MB Docket No. 07-57, April 16, 2007; Letter from Niel Ritchie, League of Rural Voters, to Marlene Dortch, Secretary, FCC, MB Docket No. 07-57, April 23, 2007.

groups post-merger. However, no mention is made of the structural obstacles of Sirius and XM that will hinder if not totally prevent them from fulfilling these promises.

Sirius and XM use incompatible delivery systems, which prevent Sirius radios from receiving XM programming, and *vice versa*. Therefore, any channels that are carried on both systems post-merger will have to fit separately on each system. However, both Sirius and XM already use all of their spectrum capacity for existing channels, which means that if Sirius wants to add XM channels to its line-up post-merger, to create a "best of both worlds" package,[3] Sirius will have to drop existing channels on a one-to-one basis.

The laws of physics would seem to prohibit a monopoly Sirius/XM from being able to free up any channels for more niche programming,[4] while also keeping its promise to protect existing programming, especially given the priority that Sirius and XM's arrangements with Howard Stern, the NFL and other special programming must receive. Statements from Sirius and XM seem to be in conflict, telling minority and other programmers that the merger will create new opportunities for them, while at the same time assuring Congress and subscribers that no one will lose their favorite channel as a result of the merger. As Gene Kimmelman of the Consumers Union has stated, Sirius and XM's "promise of a benevolent monopoly is not worth the paper it is written on."[5]

These groups also seem to be under the impression that satellite radio rates will somehow decrease post-merger. However, analysts note that a substantial percentage of the satellite radio companies' expenses are fixed for many years, given their huge sunk costs in satellites and long-term contracts with Stern, NASCAR and the like. In this light, it is hard to imagine how a merged Sirius/XM will be able to afford lower subscriber rates, at least for the foreseeable future. I would also note that XM's chief operating officer is already on the record that prices for the merged companies' standard package will increase from the current $12.95 per month to somewhere between $18.00 to $20.00 per month.[6]

Furthermore, allowing Sirius and XM to exercise monopoly control over the satellite radio market inevitably will harm all consumers. Given Sirius and XM's long record of FCC rules violations, such as the failure to fulfill a decade-old FCC requirement to produce a consumer-

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[3] Peter Lauria, *Karmazin Simplies Proposal, New York Post*, March 8, 2007.
[4] At least one respected antitrust expert states that new programming opportunities are more likely to occur in a competitive environment than under a satellite radio monopoly : "[M]any of these programming additions were brought about because of the arms race between Sirius and XM. For example, Spanish-language sports programming may never have come to satellite radio absent competition between the parties." Testimony of David A. Balto before the U.S. Senate Committee on the Judiciary, March 20, 2007.
[5] Testimony before the House Subcommittee on Telecommunications and the Internet, March 7, 2007.
[6] Tom Taylor, *Willing to Pay $18 to $20 a Month for a "Best Of" Sirius+XM linup?, Inside Radio*, March 20, 2007, p. 1.

friendly interoperable receiver,[7] we find it hard to believe that Sirius and XM will comply with any FCC-imposed merger conditions, or to control monopolistic impulses once any such conditions expire in a couple of years. History shows that monopolies invariably lead to higher prices, rates, reduced consumer choice and less innovation.

Finally, the pro-merger organizations seem to believe that allowing Sirius and XM to merge will help them remain viable. This contradicts the companies' statements to Wall Street, that have consistently stated that neither company is failing. In fact, both Sirius and XM have repeatedly pronounced that they will survive and even succeed if the merger is rejected.

Given all this, we believe that the proposed merger is simply a request for a government bailout for operational and financial missteps that have depressed stock prices and in turn, investors. Any gains resulting from a merger of Sirius and XM will largely accrue to Wall Street and the companies' executives, and not African American, Latino or other programmers or consumers. Accordingly, we respectfully urge Sirius and XM to withdraw their application in the best interests of consumers and competition.

Sincerely,

D K. Rehr

David K. Rehr

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[7] Just last month, Sirius admitted that it willfully produced mobile radios that interfere with free, over-the-air FM radio signals, Sirius Satellite Radio Inc., SEC Form 10-Q, May 10, 2007, at p. 19. Sirius and XM have also deployed hundreds of terrestrial repeaters on terms that vary from their FCC authorizations, for which XM is currently under investigation by the FCC.