JUNE 9, 2008

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation in MB Docket No. 07-57

Dear Mrs. Dortch:

On Friday, June 6th, 2008, Dan Barron, Vice President/Market Manager Entercom Memphis; Tom English, Vice President/Market Manager CCR- Nashville; Bud Walters, President of the Cromwell Group; Craig Jacobus, President of South Central; and Whit Adamson, President of the Tennessee Association of Broadcasters met with Commissioner Tate to discuss their opposition to the proposed merger between XM and Sirius.

The group explained that the merger proponents are asking for something "extraordinary" and that this merger is unlike any merger that has been approved by the Commission to date. Indeed this is why nearly 80 Members of Congress from both sides of the aisle from both the House and the Senate, as well as State Attorneys General of Connecticut, Iowa, Maryland, Missouri, Ohio, Tennessee, Washington, and Wisconsin have contacted the FCC regarding concerns with this merger.

The union between XM and Sirius would result in a single entity in a service controlling the entire amount of dedicated spectrum, in this case, 25 MHz. Such an unprecedented advantage threatens the future viability of the radio industry, in that it would result in a satellite monopoly that would not only control more spectrum than all of FM and AM radio combined, but would also enjoy a dual revenue stream that could easily outbid free radio for talent and programming, as well as erode local free radio's advertising base. None of the proponents' professed public interest benefits outweigh these concrete and certain harms to free radio and ultimately to the listening public.

Moreover, the group explained that the merger would abandon the Commission's precedent in regard to intramodal competition. In 1997, the FCC established rules for the satellite digital audio radio service (SDARS) intended to create a robust and competitive service that would provide consumers a diversity of voices, innovation in technology, all at reasonable subscription rates. Hence, the FCC stated: "… there should be more than one satellite DARS license awarded…. Accordingly, eligible auction participants may acquire only one of the two licenses being auctioned."

And the FCC went on to note that "even after DARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS license." These SDARS rules reflect a consistent and unbroken policy determination by the FCC evident in the licensing of new communications services for more than two decades, including radio cellular service, personal communications service and direct broadcast satellite service that intramodal and intermodal competition are essential to consumer welfare.

Likewise, in 2002, the FCC refused to approve a license transfer that would have permitted the merger of the only two direct broadcast satellite systems, DIRECTV and Echostar, because of concern about concentrating all of the spectrum allotted to that service in one licensee. The very same reasons that caused the FCC to refuse to approve the marriage between DIRECTV and Echostar apply with equal, if not more, force in this instance.

Also discussed was the fact that the XM-Sirius merger would create a single program purchaser, harming those who develop programming who will then be forced to accept less than fair contract terms as they are left with no choice but to negotiate with the only national satellite service in the United States. This type of limitation on programming outlets has historically been of concern to the FCC as it relates to network programming. And there is a concern with the impact on sports programming.

Finally, the group noted that the DOJ decision does not provide any justification for the merger because it didn't follow its own internal merger review guidelines (1) when it factored in future technology without knowing when it (in this instance wireless networks) would enter the market or how successful it would be; and (2) when its closing statement plainly indicates that it was not possible to even estimate let alone verify the claims of efficiency due to a lack of supporting evidence by XM and Sirius. Moreover, DOJ relied on an FCC Order violation in concluding there would be no anticompetitive effect. The FCC must not follow DOJ's lead in rewarding the Applicants for violating the terms of their existing SDARS licenses. Neither XM nor Sirius has made available to the public interoperable radio receivers in violation of their certifications required by FCC rules, undermining intramodal SDARS competition. The FCC should not feel bound by the flawed DOJ decision in making its own independent determination on this matter.

At the meeting, the group distributed two documents elaborating on these points which are both appended to this *ex parte* filing. Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1206, one electronic copy of this letter is being filed in the above-referenced docket. Please direct any inquiries concerning this matter to the undersigned.

Respectfully submitted,

/s/
Jessica Marventano

Senior President, Senior Vice President, Government Affairs, Clear Channel Communications, Inc.

cc: Amy Blankenship, Legal Advisor to Commissioner Tate

Attachments (2)