Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of XM Satellite Radio Holdings Inc., *Transferor* and Sirius Satellite Radio Inc., *Transferee* Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc.	)))))))))))))	MB Docket No. 07-57

COMMENTS OF AMERICANS FOR TAX REFORM

Americans for Tax Reform ("ATR") and 60 Plus hereby submits its comments in the above-referenced proceeding. For the reasons provided herein, ATR urges the Federal Communications Commission ("FCC") to allow the pending merger of Sirius Satellite Radio ("Sirius") and XM Satellite Radio ("XM") to proceed without governmental interference.

ATR is a nonprofit, 501(c)(4) lobbying organization that leads the fight to bring tax and regulatory relief to the American people. We strongly believe that free markets serve the best interests of consumers and that consumers, not the government, should be the arbiters of whether or not companies succeed in the marketplace. We are guided by the principle that competition and technological innovation are strongest when industries are able to exercise their best business judgment in a manner that is free of unnecessary government intervention.

These principles apply directly to the issues at stake in this proceeding. Allowing the proposed merger of the two companies is in the best interest of a principled free market.

The default position of a government in a free society should be to allow the market to function freely. This particular case certainly does not merit what should be an extraordinary step; intervention. The satellite radio business is a subscription service consumers choose to purchase, but are in no way forced to. Only three percent of audio consumers currently choose to subscribe. Terrestrial radio has a near monopoly on audio consumers, and seeks to keep it that way. While satellite radio offers subscribers significantly more choices for programming, the fact that terrestrial radio will continue to be offered free of charge means subscription satellite service will not pose a serious threat to it. Resistance to this proposed merger by terrestrial broadcasters shows a desire to maintain their dominance, not an adherence to the free market principle that have allowed terrestrial radio to maintain its dominance in the first place.

A free market, where companies are free to merge and part ways as they see fit, through the reaction to their product by consumers, is in the best interest of all Americans. While protections against monopolistic dominance of one company over a market is important, that simply will not be the case in this instance. Terrestrial radio will continue to exist, as will CD’s, digitally downloaded music, and MP3 devices.

If consumers, both current and future, do not feel the new product is worth the cost, they are free to exercise that displeasure the way the market intended, by leaving the service. But what consumers do not need is for government to act preemptively on their behalf and block or otherwise hinder market functions.

The proposed new company will benefit the audio market in general as well as individual consumers. Sirius and XM have shown in their public filings and congressional testimony that a combined satellite radio company will expand consumer programming choices, result in lower prices, and spur deployment of technology.

For example, the synergies and efficiencies resulting from the merger will allow the combined company to provide consumers programming choices on a more à la carte basis at lower prices, without a regulatory mandate to do so. After the merger, the companies have promised that customers, if they so choose, will be able to receive fewer channels at a monthly price that is lower than the current subscription price. This is the market working to cater to the needs of their consumers of any age, from young parents with children to seniors. Alternatively, subscribers will be able to receive more channels, including some of most popular and well received programming from both channel lineups, at a slight increase over the cost of getting just one of the services today, and considerably less than the cost of subscribing to both.

The parties have explained that the merger will give consumers other new choices as well. While subscribers already have the ability to block adult-themed satellite radio channels, post-merger they will be able to receive a price credit if they choose to exercise this option. Subscribers also will be able to continue using their existing radios after the deal closes or eventually will be able to purchase new radios capable of receiving all of the content of both services. We agree that the merger is likely to generate these and many other positive results for consumers.

Although some opponents of the merger have attempted to portray a combined Sirius-XM as a media "Goliath," the facts suggest that it more closely resembles a "David" in a large, ever-expanding market. Satellite radio companies compete not just with each other, but also with a litany of other audio services, such as traditional and HD radio and iPods. It is likely that technology will continue to develop and bring even more players to this highly competitive market.

While the combined company would have fewer than 20 million subscribers, this number is dwarfed by the hundreds of millions of weekly broadcast radio listeners, PC owners with access to Internet radio, and iPods in the market. On their face, these figures refute any suggestion that this merger could harm or impede competition in the audio entertainment market. Despite the claims that have been made to the contrary, there simply is no reason to believe that the vibrant competition in the audio entertainment market will cease to exist after the transaction is approved. A realistic examination of the audio entertainment landscape, and the relatively small place that satellite radio commands therein, makes clear that a merged Sirius-XM will be in no position to exercise market power.

In fact, allowing this merger to go forward only will *enhance* competition by allowing satellite radio to become a more efficient and attractive audio entertainment provider. Defining the relevant market in which Sirius and XM compete in an artificially narrow way, as some merger opponents have suggested, will not change this reality.

In light of the intense competition in the audio entertainment market, it will be in the new company's self interest to provide more diverse programming at lower prices. Sirius-XM will continue to face competition from a number of other services, including some formidable players that are offered to consumers free of charge. The only way that the merged company will be able to substantially increase subscribership will be to offer greater programming choices at better prices. If Sirius-XM fails to follow through with its promises, consumers simply will choose to go elsewhere for audio entertainment.

In summation, Sirius and XM should be permitted to pursue their merger. ATR believes such a merger would well serve the public interest, have positive benefits for consumers and allow the free market to determine its effectiveness. Allowing this merger to go forward will intensify competition among audio providers by allowing satellite radio to become a stronger operator. On the other hand, blocking this merger would deprive consumers of concrete benefits and artificially will constrain innovation and competitive developments.

For all of these reasons, I ask the FCC to allow the merger of Sirius and XM to proceed without governmental interference.

Respectfully submitted,

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